

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended January 25, 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

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.)

**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)

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 February 21, 2003 was 236,002,569 shares.

TABLE OF CONTENTS

PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

CONDENSED CONSOLIDATED BALANCE SHEETS

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

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

Item 3. Quantitative and Qualitative Disclosures About Market Risks

Item 4. Controls and Procedures

PART II — OTHER INFORMATION

Item 1. Legal Proceedings

Item 6. Exhibits and Reports on Form 8-K

SIGNATURES

EXHIBIT 2.1

EXHIBIT 2.2

EXHIBIT 10.24

EXHIBIT 10.36

EXHIBIT 10.37

EXHIBIT 10.48

EXHIBIT 12.1

EXHIBIT 99.1

BROCADE COMMUNICATIONS SYSTEMS, INC.

FORM 10-Q

QUARTER ENDED JANUARY 25, 2003

INDEX

	<u>Page</u>
PART I - FINANCIAL INFORMATION	
Item 1. Financial Statements	
Condensed Consolidated Statements of Operations for the Three Months Ended January 25, 2003 and January 26, 2002	3
Condensed Consolidated Balance Sheets as of January 25, 2003 and October 26, 2002	4
Condensed Consolidated Statements of Cash Flows for the Three Months Ended January 25, 2003 and January 26, 2002	5
Notes to Condensed Consolidated Financial Statements	6
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	16
Item 3. Quantitative and Qualitative Disclosures About Market Risks	32
Item 4. Controls and Procedures	33
PART II - OTHER INFORMATION	
Item 1. Legal Proceedings	33
Item 6. Exhibits and Reports on Form 8-K	34
SIGNATURES	37

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	
	January 25, 2003	January 26, 2002
Net revenues	\$ 123,116	\$ 123,078
Cost of revenues	57,023	48,978
Gross margin	66,093	74,100
Operating expenses:		
Research and development	31,870	29,302
Sales and marketing	30,761	25,590
General and administrative	4,962	4,543
Amortization of deferred stock compensation	69	242
Restructuring costs	10,118	—
Total operating expenses	77,780	59,677
Income (loss) from operations	(11,687)	14,423
Interest and other income, net	4,959	3,335
Interest expense	(3,350)	(1,310)
Gain on investments, net	374	—
Income (loss) before provision for income taxes	(9,704)	16,448
Income tax (benefit) provision	(2,814)	4,777
Net income (loss)	\$ (6,890)	\$ 11,671
Net income (loss) per share – Basic	\$ (0.03)	\$ 0.05
Net income (loss) per share – Diluted	\$ (0.03)	\$ 0.05
Shares used in per share calculation – Basic	234,898	228,256
Shares used in per share calculation – Diluted	234,898	248,233

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)

	January 25, 2003	October 26, 2002
Assets		
Current assets:		
Cash and cash equivalents	\$ 420,107	\$ 516,535
Short-term investments	90,654	50,988
Total cash, cash equivalents and short-term investments	510,761	567,523
Marketable equity securities	3,057	226
Accounts receivable, net of allowances for doubtful accounts of \$2,837 and \$3,763, respectively	71,934	97,707
Inventories, net	5,472	5,402
Deferred tax assets, net	28,418	28,418
Prepaid expenses and other current assets	16,739	16,429
Total current assets	636,381	715,705
Long-term investments	382,645	320,865
Property and equipment, net	140,445	143,625
Deferred tax assets, net	221,017	221,878
Convertible subordinated debt issuance costs	9,657	10,274
Other assets	4,660	9,316
Total assets	\$1,394,805	\$1,421,663
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 46,484	\$ 57,538
Accrued employee compensation	22,132	23,930
Deferred revenue	18,007	22,430
Current liabilities associated with lease losses	7,904	8,204
Other accrued liabilities	44,218	49,364
Total current liabilities	138,745	161,466
Non-current liabilities associated with lease losses	20,441	22,602
Convertible subordinated debt	550,000	550,000
Commitments and contingencies (Note 8)		
Stockholders' equity:		
Preferred stock, \$0.001 par value 5,000 shares authorized, no shares outstanding	—	—
Common stock, \$0.001 par value, 800,000 shares authorized:		
Issued and outstanding: 235,719 and 234,652 shares at January 25, 2003 and October 26, 2002, respectively	236	235
Additional paid-in capital	580,564	577,171
Deferred stock compensation	—	(69)
Accumulated other comprehensive income	7,529	6,078
Retained earnings	97,290	104,180
Total stockholders' equity	685,619	687,595
Total liabilities and stockholders' equity	\$1,394,805	\$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)

	Three Months Ended	
	January 25, 2003	January 26, 2002
Cash flows from operating activities:		
Net income (loss)	\$ (6,890)	\$ 11,671
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Tax benefits from employee stock option transactions	—	13,396
Deferred taxes	—	(9,719)
Depreciation and amortization	11,196	6,494
Loss on disposal of property and equipment	389	395
Amortization of debt issuance costs	617	250
Net gains on investments and marketable equity securities	(374)	—
Amortization of deferred stock compensation	69	242
Provision for doubtful accounts receivable and sales returns	—	300
Non-cash restructuring charges	2,719	—
Changes in operating assets and liabilities:		
Accounts receivable	25,773	(4,931)
Inventories	(70)	1,137
Prepaid expenses and other assets	87	(815)
Accounts payable	(11,054)	6,167
Accrued employee compensation	(1,798)	(1,945)
Deferred revenue	(4,423)	1,253
Other accrued liabilities	(5,147)	(2,723)
Liabilities associated with lease losses	(2,461)	(1,431)
Net cash provided by operating activities	<u>8,633</u>	<u>19,741</u>
Cash flows from investing activities:		
Purchases of property and equipment	(8,147)	(24,540)
Purchases of short-term investments	(39,714)	—
Proceeds from maturities of short-term investments	—	37,364
Purchases of long-term investments	(60,755)	—
Net cash provided by (used in) investing activities	<u>(108,616)</u>	<u>12,824</u>
Cash flows from financing activities:		
Proceeds from issuance of common stock, net	3,395	36,293
Proceeds from issuance of convertible subordinated debt	—	537,625
Net cash provided by financing activities	<u>3,395</u>	<u>573,918</u>
Effect of exchange rate fluctuations on cash and cash equivalents	160	—
Net increase (decrease) in cash and cash equivalents	(96,428)	606,483
Cash and cash equivalents, beginning of period	516,535	150,118
Cash and cash equivalents, end of period	<u>\$ 420,107</u>	<u>\$756,601</u>

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) 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 Fibre Channel fabric 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 are 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 January 25, 2003, and for the three months ended January 25, 2003 and January 26, 2002, has 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 January 25, 2003, results of operations for the three months ended January 25, 2003 and January 26, 2002, and cash flows for the three months ended January 25, 2003 and January 26, 2002, have been made. The results of operations for the three months ended January 25, 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 of debt securities issued by United States government agencies. Short-term and long-term investments are maintained at two major financial institutions, are classified

[Table of Contents](#)

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 gain on investments, 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 gain on investments, net on the Condensed Consolidated Statements of Operations.

The Company also has certain other 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 gain on investments, 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.

Notes Receivable from Non-Executive Employees

The Company occasionally provides loans to various employees principally related to the respective employees' relocation to the San Francisco Bay area. The loans are 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 January 25, 2003 and October 26, 2002, the Company had outstanding loans to various employees totaling \$7.1 million and \$9.0 million, respectively. None of these loans have been issued to executive officers.

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 four 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 principally 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 January 25, 2003, and October 26, 2002, 75 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 January 25, 2003, and January 26, 2002, four customers each represented greater than ten percent of the Company's total revenues for combined totals of 76 percent and 70 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.

[Table of Contents](#)

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 materially impact future operating results.

The Company's business is concentrated in the storage area networking industry, which has been impacted 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.

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 software operating system, 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. The Company accrues for estimated warranty costs and reduces revenue for estimated sales returns and other allowances at the time of shipment. A provision for estimated future costs relating to warranty expense is recorded as cost of revenues when revenue is recorded. Warranty costs, sales returns and other allowances are estimated based upon historical experience.

Computation of Net Income (Loss) per Share

Basic net income per share is computed using the weighted-average number of common shares outstanding during the period, less shares subject to repurchase. Diluted net income 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.

[Table of Contents](#)

Comprehensive Income (Loss)

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

	Three Months Ended	
	January 25, 2003	January 26, 2002
Net income (loss)	\$(6,890)	\$11,671
Other comprehensive income:		
Change in net unrealized gains on marketable equity securities and short-term investments	1,291	(397)
Cumulative translation adjustments	160	—
	<u> </u>	<u> </u>
Total comprehensive income (loss)	<u>\$(5,439)</u>	<u>\$11,274</u>

Reclassifications

Certain reclassifications have been made to prior year 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" (FIN 45). FIN 45 requires that upon issuance of a guarantee, the guarantor must recognize and disclose a liability for the fair value of the obligation assumed under the guarantee. FIN 45 also requires additional disclosure by a guarantor in its interim and annual financial statements about the obligations associated with guarantees issued. 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.

As of January 25, 2003 and October 26, 2002, the Company's accrued warranty was \$3.8 million and \$4.0 million, respectively (see Note 8). To date, there have been no known events or circumstances that have resulted in an indemnification related liability to the Company.

In December 2002, the FASB issued Statement of Financial Accounting Standards No. 148, "Accounting for Stock-Based Compensation — Transition and Disclosure" (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.

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 is 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. Restructuring Costs

During the three months ended January 25, 2003, the Company completed a restructuring program to realign the organization and reduce the Company's expense structure. The restructuring program included a workforce reduction of approximately 12 percent, consolidation of excess facilities, and the restructuring of certain business functions.

[Table of Contents](#)

The following table summarizes the restructuring costs incurred and charged to restructuring expense during the three months ended January 25, 2003, costs paid or otherwise settled, and the remaining unpaid or otherwise unsettled accrued liabilities (in thousands):

	Severance and Benefits	Contract Terminations	Equipment Impairment	Total
Restructuring costs incurred	\$ 8,549	\$ 947	\$ 622	\$10,118
Cash payments	(5,414)	(195)	—	(5,609)
Non-cash charges	(2,097)	—	(622)	(2,719)
Remaining accrued liabilities at January 25, 2003	\$ 1,038	\$ 752	\$ —	\$ 1,790

Severance and benefits charges of \$8.5 million consisted of severance and associated employee termination costs related to the reduction of the Company's workforce, including outplacement services and the write-off of 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 restructuring program are included in other accrued liabilities on the accompanying Condensed Consolidated Balance Sheets. Remaining accrued liabilities related to severance and benefits are expected to be substantially paid or otherwise settled during the second quarter of fiscal year 2003. Remaining accrued liabilities related to contract terminations are expected to be paid or otherwise settled over their respective remaining contract terms through July of 2003.

4. Balance Sheet Details

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

	January 25, 2003	October 26, 2002
Inventories, net:		
Raw materials	\$ 1,867	\$ 645
Finished goods	3,605	4,757
Total	\$ 5,472	\$ 5,402
Property and equipment, net:		
Computer equipment and software	\$ 66,905	\$ 64,220
Engineering and other equipment	99,293	96,904
Furniture and fixtures	3,810	3,647
Leasehold improvements	32,660	31,259
	202,668	196,030
Less: Accumulated depreciation and amortization	(62,223)	(52,405)
Total	\$140,445	\$143,625

Leasehold improvements as of January 25, 2003 and October 26, 2002, are shown net of estimated asset impairments related to facilities lease losses (see Note 6).

5. 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
January 25, 2003				
U.S. government obligations	\$460,663	\$12,647	\$ (11)	\$473,299
Marketable equity securities	2,883	269	(95)	3,057
Total	\$463,546	\$12,916	\$(106)	\$476,356
Reported as:				
Short-term investments				\$ 90,654
Marketable equity securities				3,057
Long-term investments				382,645
Total				\$476,356
October 26, 2002				
U.S. government obligations	\$361,074	\$10,779	\$ —	\$371,853
Marketable equity securities	347	—	(121)	226
Total	\$361,421	\$10,779	\$(121)	\$372,079
Reported as:				
Short-term investments				\$ 50,988
Marketable equity securities				226
Long-term investments				320,865
Total				\$372,079

No gains or losses were realized on the sale of investments or marketable equity securities for either of the three months ended January 25, 2003, or January 26, 2002. As of January 25, 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.

The following table summarizes the maturities of the Company's investments in debt securities issued by United States government agencies as of January 25, 2003 (in thousands):

	Amortized Cost	Fair Value
Less than one year	\$ 90,395	\$ 90,654
Due in 1 – 2 years	250,301	257,939
Due in 2 – 3 years	119,967	124,706
Total	\$460,663	\$473,299

6. Liabilities Associated with Facilities Lease Losses

During the three months 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 months ended January 25, 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.

[Table of Contents](#)

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	(2,258)
Non-cash charges	(203)
Reserve balances at January 25, 2003	\$28,345

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.

7. 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 and thereafter	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 PortalSM Market. On January 24, 2003, the average bid and ask price on the Portal Market of the notes was 74.56, resulting in an aggregate fair value of approximately \$410.1 million.

8. Commitments and Contingencies

Leases

The Company leases its facilities and certain equipment under various operating lease agreements expiring 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 January 25, 2003 were \$261.2 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 January 25, 2003, the Company had recorded \$28.3 million in facilities lease loss reserves related to future lease commitments, net of expected sublease income (see Note 6).

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 three months ended January 25, 2003 (in thousands):

	Accrued Warranty
Balance at October 26, 2002	\$3,966
Liabilities accrued for warranties issued during the period	285
Warranty claims paid during the period	(205)
Changes in liability for pre-existing warranties during the period	(224)
Balance at January 25, 2003	\$3,822

In addition, the Company has standard indemnification clauses contained within its various customer contracts. As such, 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 January 25, 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 a manufacturing agreement with Solectron Corporation (Solectron) under which the Company provides to Solectron a twelve-month product forecast and places purchase orders with Solectron sixty calendar days in advance of the scheduled delivery of products to the Company's customers. As of January 25, 2003, the Company's commitment to Solectron for inventory components used in the manufacture of Brocade products was \$30.7 million, net of purchase commitment reserves of \$1.7 million, which the Company expects to utilize during future normal ongoing operations. Although the Company's purchase orders placed with Solectron are cancelable, the terms of the agreement require the Company to purchase from Solectron all inventory components not returnable or usable by other Solectron customers.

In addition, the Company purchases several key components used in the manufacture of its products. As of January 25, 2003, the Company had non-cancelable purchase commitments for various components totaling \$11.3 million, net of purchase commitment reserves of \$0.1 million, which the Company expects to utilize during future normal ongoing operations.

Legal Proceedings

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. The Company believes that it has meritorious defenses to the claims and intends to defend the action vigorously.

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. No arbitration date has been set. The Company believes that it has meritorious defenses to the claims and intends to defend the action vigorously.

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

[Table of Contents](#)

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.

9. 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 29.9 million 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 29.9 million new stock options to be granted on July 10, 2003, represent approximately 12.7 percent of the Company's total shares of common stock outstanding as of January 25, 2003, and could have a dilutive impact 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 impact to the Company's financial position, results of operations, or cash flows for the three months ended January 25, 2003, was associated with this transaction.

10. 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 products are shipped. Domestic revenues include sales to certain OEM customers who take possession of Brocade products domestically and then distribute these products to their international customers. Domestic and international revenues were approximately 69 percent and 31 percent of total revenues, respectively, for the three months ended January 25, 2003. Domestic and international revenues were approximately 70 percent and 30 percent of total revenues, respectively, for the three months ended January 26, 2002. To date, service revenue has not exceeded 10 percent of total revenues. Identifiable assets located in foreign countries were not material as of January 25, 2003, and October 26, 2002. For the three months ended January 25, 2003 and January 26, 2002, four customers each represented greater than ten percent of the Company's total revenues for combined totals of 76 percent and 70 percent of total revenues, respectively.

11. Gain on Investments, net

Net gain on investments for the three months ended January 25, 2003 consisted of a gain of \$2.5 million resulting from a publicly traded company's acquisition of 100 percent of the equity of a non-publicly traded company in which Brocade had a minority equity investment. As a result of this acquisition, Brocade received common shares of the publicly traded company in exchange for its minority equity investment in the non-publicly traded company. In addition, during the three months ended January 25, 2003, the Company recorded an impairment charge of \$2.2 million related to an other-than-temporary decline in the estimated fair value of a minority equity investment in a different non-publicly traded company that supplies semiconductors and

[Table of Contents](#)

related software based on an alternative transport protocol. During the three months ended January 25, 2003, several developers of this alternative transport protocol abandoned their development programs due to a lack of general demand for the alternative transport protocol. The impairment charge reduced the carrying value of the Company's investment to zero, which is the estimated fair value.

12. 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	
	January 25, 2003	January 26, 2002
Net income (loss)	\$ (6,890)	\$ 11,671
Basic and diluted net income (loss) per share:		
Weighted-average shares of common stock outstanding	235,130	231,000
Less: Weighted-average shares of common stock subject to repurchase	(232)	(2,744)
Weighted-average shares used in computing basic net income (loss) per share	234,898	228,256
Dilutive effect of common share equivalents	—	19,977
Weighted-average shares used in computing diluted net income (loss) per share	234,898	248,233
Basic net income (loss) per share	\$ (0.03)	\$ 0.05
Diluted net income (loss) per share	\$ (0.03)	\$ 0.05

For the three months ended January 25, 2003 and January 26, 2002, potential common shares in the form of stock options to purchase a weighted-average of 65.7 million and 29.4 million shares of common stock, respectively, were antidilutive and therefore not included in the computation of diluted earnings per share. In addition, for the three months ended January 25, 2003 and January 26, 2002, potential common shares resulting from the potential conversion on a weighted-average basis, of the Company's convertible subordinated debt, of 12.6 million and 5.0 million common shares, respectively, were antidilutive and therefore not included in the computation of diluted earnings per share.

13. Subsequent Events

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 and stock options. 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 final purchase price of this transaction will be based on several factors including the average price of the Company's common stock at the time the definitive agreement was signed, the calculated value of assumed warrants and stock options, direct acquisition costs, and the intrinsic value of unvested assumed stock options and common stock subject to repurchase by the Company. The Company currently anticipates the final purchase price will be in the range of \$135 million to \$145 million.

The acquisition of Rhapsody will be accounted for as an asset purchase. Accordingly, the final purchase price will be allocated to the assets acquired, liabilities assumed, and acquired in-process research and development based on their respective fair values. The excess of purchase price over the fair value of net assets received will be allocated to acquired in-process research and development and acquired intangible and non-monetary assets. The final purchase price allocation will depend upon the final valuation of the assets acquired and liabilities assumed based upon independent appraisals and an audit of the Rhapsody balance sheet as of the closing date. Although this analysis is not yet complete, the Company currently expects to incur a charge in the range of \$125 million to \$135 million related to the write-off of acquired in-process research and development expenses.

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;
- amortization of deferred stock compensation;
- interest income and expense;
- income taxes;
- liquidity and sufficiency of existing cash, cash equivalents, and short-term investments for near-term requirements; 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 Management’s Discussion and Analysis of Financial Condition and Results of Operations and 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 filed with the SEC on January 22, 2003.

Recent Events

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 assumed warrants and stock options. Additional details related to the acquisition are noted below under the heading “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	
	January 25, 2003	January 26, 2002
Net revenues	100.0%	100.0%
Cost of revenues	46.3	39.8
Gross margin	53.7	60.2
Operating expenses:		
Research and development	25.9	23.8
Sales and marketing	25.0	20.8
General and administrative	4.1	3.7
Amortization of deferred stock compensation	—	0.2
Restructuring costs	8.2	—
Total operating expenses	63.2	48.5
Income (loss) from operations	(9.5)	11.7
Interest and other income, net	4.0	2.7
Interest expense	(2.7)	(1.0)
Gain on investments, net	0.3	—
Income (loss) before provision for income taxes	(7.9)	13.4
Income tax (benefit) provision	(2.3)	3.9
Net income (loss)	(5.6)%	9.5%

Revenues. Our revenues are derived primarily from sales of our SilkWorm family of products. Net revenues for the three months ended January 25, 2003, and January 26, 2002, were each \$123.1 million. Revenue growth was negatively impacted by declines in average selling prices, offset by an increase in total volume. Revenue growth was also negatively impacted by the continuing unfavorable economic conditions and reduced IT spending environment that began in fiscal year 2001, and by recent reductions in the supply of our product maintained by our primary OEM customers. 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 impacted.

Domestic and international revenues were approximately 69 percent and 31 percent of total revenues, respectively, for the three months ended January 25, 2003. Domestic and international revenues were approximately 70 percent and 30 percent of total revenues, respectively, for the three months ended January 26, 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 January 25, 2003, and January 26, 2002, four customers each represented greater than ten percent of our total revenues for combined totals of 76 percent and 70 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. In addition, during fiscal year 2002, HP and Compaq, two of our significant OEM customers, merged. While to date the impact of this merger has not been material, we are unable to predict the impact this merger may have on our business. It is possible that, as a result of this merger, sales of our products to the combined company could be disrupted or decline.

Gross margin. Gross margin for the three months ended January 25, 2003 was 53.7 percent, compared with 60.2 percent for the three months ended January 26, 2002. The reduction in gross margin was 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 increased to \$31.9 million for the three months ended January 25, 2003, compared with \$29.3 million for the three months ended January 26, 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 design, development, testing and enhancement of our products; depreciation related to engineering and other test equipment; and IT

[Table of Contents](#)

and facilities expenses. The increase in R&D expenses reflects our belief that continued investment in R&D is a critical factor in maintaining our competitive position. We currently anticipate that R&D expenses for the next three months will increase on an absolute dollars basis primarily resulting from incremental spending associated with our acquisition of Rhapsody.

Sales and marketing expenses. Sales and marketing expenses increased to \$30.8 million for the three months ended January 25, 2003, compared with \$25.6 million for the three months ended January 26, 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 next three months will decrease on an absolute dollar basis, primarily resulting from our restructuring program completed during the three months ended January 25, 2003.

General and administrative expenses. General and administrative (G&A) expenses were \$5.0 million for the three months ended January 25, 2003, compared with \$4.5 million for the three months ended January 26, 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 next three months will increase slightly on an absolute dollar basis.

Restructuring costs. During the three months ended January 25, 2003, we completed a restructuring program to realign the organization and reduce our expense structure. The restructuring program included a workforce reduction of approximately 12 percent, consolidation of excess facilities, and the restructuring of certain business functions. As a result of the restructuring program, we recorded restructuring costs of \$10.1 million during the three months ended January 25, 2003 (see Note 3 "Restructuring Costs," of the Notes to Condensed Consolidated Financial Statements).

Amortization of deferred stock compensation. Amortization of deferred stock compensation was \$0.1 million and \$0.2 million for the three months ended January 25, 2003 and January 26, 2002, respectively. As of January 25, 2003, all previously recorded deferred stock compensation had been fully amortized. During the next three months we anticipate recording additional deferred stock compensation in connection with our acquisition of Rhapsody.

Interest and other income, net. Net interest and other income was \$5.0 million for the three months ended January 25, 2003, compared with \$3.3 million for the three months ended January 26, 2002. The increase was primarily the result of increased average cash and investment balances. The increase in cash and investment balances was primarily related to cash generated from operations and the proceeds from the \$550 million in aggregate principal amount of two percent convertible subordinated notes due 2007 that we issued in December 2001 and January 2002 (see Note 7, "Convertible Subordinated Debt," of the Notes to Condensed Consolidated Financial Statements).

Interest expense. Interest expense was \$3.4 million for the three months ended January 25, 2003, compared with \$1.3 million for the three months ended January 26, 2002. Interest expense primarily represents the interest cost associated with our convertible subordinated notes issued during the three months ended January 26, 2002.

Gain on investments, net. Net gain on investments for the three months ended January 25, 2003, consisted of a gain of \$2.5 million resulting from a publicly traded company's acquisition of 100 percent of the equity of a non-publicly traded company in which we had a minority equity investment. In addition, during the three months ended January 25, 2003, we recorded an impairment charge of \$2.2 million related to an other-than-temporary decline in the estimated fair value of a minority equity investment in a different non-publicly traded company (see Note 11, "Gain on Investments, net," of the Notes to Condensed Consolidated Financial Statements).

Income tax (benefit) provision. Our effective tax rate for the three months ended January 25, 2003 was a benefit of 29 percent, compared with a provision of 29 percent for the three months ended January 26, 2002. Our ability to maintain our current 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. We currently anticipate that our effective tax rate for the next three months will be negatively impacted as a result of nondeductible expenses incurred in connection with our acquisition of Rhapsody.

[Table of Contents](#)

Acquisition of Rhapsody. 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 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.

The final purchase price of this transaction will be based on several factors including the average price of our common stock at the time the definitive agreement was signed, the calculated value of assumed warrants and stock options, direct acquisition costs, and the intrinsic value of unvested assumed stock options and common stock subject to repurchase by us. We currently anticipate the final purchase price will be in the range of \$135 million to \$145 million.

The acquisition of Rhapsody will be accounted for as an asset purchase. Accordingly, the final purchase price will be allocated to the assets acquired, liabilities assumed, and acquired in-process research and development based on their respective fair values. The excess of purchase price over the fair value of net assets received will be allocated to acquired in-process research and development and acquired intangible and non-monetary assets. The final purchase price allocation will depend upon the final valuation of the assets acquired and liabilities assumed based upon independent appraisals and an audit of the Rhapsody balance sheet as of the closing date. Although this analysis is not yet complete, we currently expect to incur a charge in the range of \$125 million to \$135 million related to the write-off of acquired in-process research and development expenses.

In addition, for the next three months, we currently expect to incur estimated incremental operating expenses, which will be primarily R&D expenses, of approximately \$7.0 million in connection with the acquisition of Rhapsody. For the next three months, we also expect to incur non-cash charges of approximately \$0.5 million to \$1.5 million associated with the amortization of estimated acquired intangible assets and deferred stock compensation.

Liquidity and Capital Resources

Cash, cash equivalents, short-term investments and long-term investments were \$893.4 million as of January 25, 2003. For the three months ended January 25, 2003, we generated \$8.6 million in cash from operating activities, primarily related to a decrease in accounts receivable. Days sales outstanding in receivables for the three months ended January 25, 2003 was 53 days, compared with 58 days for the three months ended October 26, 2002.

Net cash used in investing activities for the three months ended January 25, 2003 totaled \$108.6 million and was the result of \$100.5 million in purchases of short and long-term investments, and \$8.1 million invested in capital equipment. Net cash provided by financing activities for the three months ended January 25, 2003 totaled \$3.4 million, and was the result of net proceeds from the issuance of common stock related to employee participation in employee stock programs.

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 a manufacturing agreement with Solectron under which we provide to Solectron a twelve-month product forecast and place purchase orders with Solectron sixty calendar days in advance of the scheduled delivery of products to our customers. As of January 25, 2003, our commitment to Solectron for inventory components used in the manufacture of our products was \$30.7 million, net of purchase commitment reserves of \$1.7 million, which we expect to utilize during future normal ongoing operations. Although the purchase orders we place with Solectron are cancelable, the terms of the agreement require us to purchase from Solectron all inventory components not returnable or usable by other Solectron customers.

In addition, we purchase several key components used in the manufacture of our products. As of January 25, 2003, we had non-cancelable purchase commitments for various components totaling \$11.3 million, net of purchase commitment reserves of \$0.1 million, which we expect to utilize during future normal ongoing operations.

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 7, "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

[Table of Contents](#)

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 and thereafter	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 January 25, 2003 (in thousands):

	Total	Less than 1 year	1 – 3 years	After 3 years
Contractual Obligations:				
Convertible subordinated notes, including interest	\$594,000	\$11,000	\$22,000	\$561,000
Non-cancelable operating leases	261,164	31,746	56,167	173,251
Unconditional purchase obligations, gross	43,854	43,854	—	—
Total contractual cash obligations	\$899,018	\$86,600	\$78,167	\$734,251
Other Commitments:				
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: the rate of revenue growth; the timing and extent of spending to support product development efforts and the expansion of sales and marketing; the timing of introductions of new products and enhancements to existing products; and 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 three months ended January 25, 2003 and January 26, 2002, were \$0.5 million and \$0.4 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, on an on-going basis, our estimates and judgments, 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 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 impact on the results that we report in our Condensed Consolidated Financial Statements. The SEC considers an entity's most critical

[Table of Contents](#)

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 customer's 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. 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 software operating system, 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. We accrue for warranty costs and reduce revenue for estimated sales returns and other allowances at the time of shipment. A provision for estimated future costs relating to warranty expense is recorded as cost of revenues when revenue is recorded. Warranty costs, sales returns and other allowances are estimated 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 impact 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 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.

[Table of Contents](#)

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 months ended January 25, 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 are effective prospectively for exit or disposal activities initiated after December 31, 2002; however, early application is encouraged. 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" (FIN 45). FIN 45 requires that upon issuance of a guarantee, the guarantor must recognize and disclose a liability for the fair value of the obligation assumed under the guarantee. FIN 45 also requires additional disclosure by a guarantor in its interim and annual financial statements about the obligations associated with guarantees issued. 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. As of January 25, 2003 and October 26, 2002, our accrued warranty was \$3.8 million and \$4.0 million, respectively (see Note 8, "Commitments and Contingencies," of the Notes to Condensed Consolidated Financial Statements). To date, there have been no known events or circumstances that have resulted in an indemnification related liability to us.

In December 2002, the FASB issued Statement of Financial Accounting Standards No. 148, "Accounting for Stock-Based Compensation — Transition and Disclosure" (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.

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 is 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 impact the predictability of our quarterly results include the following:

- changes in general economic conditions and specific economic conditions in the computer, storage, and networking industries. 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 or 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 impacted 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.

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 impacted 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 our SAN solutions and technologies is competitive and is likely to become even more competitive as a result of recently introduced products by existing and new competitors. Currently, we believe that we face competition primarily from developers of Fibre Channel switching or interconnection products, including Cisco, INRANGE, McDATA, and QLogic. Increased competition could result in pricing pressures, reduced sales, reduced margins, reduced profits, reduced market share, or the failure of our products to achieve or maintain market acceptance.

The current and potential market for SAN solutions and technologies is continuously evolving and subject to rapid technological change. Major server and storage providers are continually introducing new SAN-oriented solutions and products and enhancing existing SAN-oriented solutions and products. As the SAN market evolves, additional technologies may become available for interconnecting servers and storage. In addition, networking companies, manufacturers of networking equipment, or other companies may develop competitive products. Furthermore, our OEM partners or other partners could also develop and introduce products competitive with our product offerings. We believe the competitive factors in this market segment include product performance and features, product reliability, price, size and extent of installed base, ability to meet delivery schedules, customer service, technical support, and distribution channels.

Some of our competitors have longer operating histories and significantly greater human and financial resources than us. As a result, these competitors could adopt more aggressive pricing policies and devote greater resources to the development, promotion, and sale of their products than us. These advantages could allow them to respond more quickly to changes in customer or market requirements. In addition, some of our competitors have established supplier or joint development relationships with current or potential customers of ours. These competitors may be able to leverage their existing relationships to discourage these customers from purchasing additional products from us. These competitors may also be able to persuade our customers to replace our products with their products. Increased competition may result in reduced product prices, lower gross margins, and reduced market share. We may not have the financial resources, technical expertise or marketing, manufacturing, distribution, and support capabilities to compete successfully in the future. There can also be no assurance that we will be able to compete successfully against current or future competitors or that current or future competitive pressures will not materially harm our business.

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

Although our customer base has increased, 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 January 25, 2003, four customers each represented greater than ten percent of our total revenues for a combined total of 76 percent of our total revenues. During fiscal year 2002, two of our significant OEM partners, HP and Compaq, merged. We are unable to predict the impact this merger may have on our business. While to date the impact of this merger has not been material, this merger may result in a decrease or a disruption in our sales to the combined company.

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 percent 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.

[Table of Contents](#)

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.

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

We currently derive substantially all 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 only recently introduced and, therefore, the demand and market acceptance of these products is uncertain. Factors that may affect the market acceptance of our products include the performance, price, and total cost of ownership of our products; the features and functionality of our products; the 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. During the second quarter of fiscal 2002, we introduced the SilkWorm 12000 Core Fabric Switch targeted at expanding our existing market and gaining market share in the high-end enterprise-class market. We expect to launch new products and product enhancements during the next year that will further expand the market opportunity for the SilkWorm 12000 Core Fabric Switch. We expect that our future revenue growth will be dependent on the success of the SilkWorm 12000 Core Fabric Switch, the success of other members 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.

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. For example, during the fourth quarter of fiscal 2002, we introduced the SilkWorm 3900 Enterprise Fabric Switch, a new enterprise-class, 32-port fabric switch that we expect will meet customer needs in both the mid-range and enterprise end-user markets. Because the SilkWorm 3900 Enterprise Fabric Switch is designed for customers in multiple market segments, it could potentially adversely impact sales of our existing mid-range products and result in an overall decline in product revenues. 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, as well as 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.

International political instability may increase our cost of doing business and disrupt our business.

Increased international political instability, evidenced by the occurrence and threat of terrorist attacks, enhanced national security measures, sustained military action in Afghanistan, threatened military action in Iraq and the conflicts in the Middle East and Asia, may halt or hinder our ability to do business and may increase our costs. This increased instability may, for example, negatively impact the reliability and cost of transportation, negatively affect the desire of our employees and customers to travel, 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. If this international political instability continues or escalates, our business and results of operations could be harmed.

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

[Table of Contents](#)

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 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 work force worldwide, could seriously harm our business and financial results.

Failure to adequately anticipate future OEM and end-user product needs could negatively impact 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 impact 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 impacted. 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 impacting 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 has 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.

[Table of Contents](#)

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 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 impact of this customer seasonality on our business in the past.

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, as well as 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 maintain or expand our distribution channels, manage distribution relationships successfully, or market our products through distribution partners effectively. Our failure to manage successfully our distribution relationships or the failure of our distribution partners to sell our products could reduce our revenues.

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 impact our ability to manufacture and sell our products.

We currently depend on two third-party contract manufacturers, Soletron and Foxconn, to manufacture our products. If we should fail to effectively manage the production of our products through Soletron and Foxconn, or if Soletron 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 Fabric Operating System 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.

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 a restructuring program that included a workforce reduction, consolidation of excess facilities, and the restructuring of certain business functions. As part of this restructuring program, we reduced our workforce by approximately 12 percent. 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. Because we cannot predict our revenue with certainty, additional restructuring activity may be necessary to reduce our expenses.

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 29.9 million 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 29.9 million new stock options to be granted on July 10, 2003, represent approximately 12.7 percent of the total shares of our common stock outstanding as of January 25, 2003, and could have a dilutive impact 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.

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.

[Table of Contents](#)

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 impact 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 others' intellectual property. 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.

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 comprise 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 us, 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.

[Table of Contents](#)

Furthermore, the full impact 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 are currently in litigation regarding alleged nondisclosure of improprieties in the distribution of shares in our initial public offering by our underwriters, including undisclosed fees and commissions received by the underwriters and alleged laddering arrangements. We believe that the claims are without merit and intend to defend ourselves vigorously. In addition, 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 impact 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 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 four major financial institutions in the United States. As of January 25, 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 issued by United States government agencies as of January 25, 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 January 25, 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 agency debt securities	\$483,524	\$479,675	\$475,870	\$473,299	\$469,480	\$465,738	\$462,039

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 January 25, 2003. Carrying value approximates fair value.

	Amount	Average Interest Rate
Cash and cash equivalents	\$420,107	1.3%
Short-term investments	90,654	2.1%
Long-term investments	382,645	3.6%
Total	\$893,406	2.4%

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 PortalSM Market. On January 24, 2003, the average bid and ask price on the Portal Market of our convertible subordinated notes due 2007 was 74.56, resulting in an aggregate fair value of approximately \$410.1 million. Our common stock is quoted on the Nasdaq National Market under the symbol "BRCD." On January 24, 2003, the last reported sale price of our common stock on the Nasdaq National Market was \$4.80 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 \$0.8 million, \$1.5 million, and \$2.3 million in the fair value of marketable equity securities as of January 25, 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

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. We believe that we have meritorious defenses to the claims and intend to defend the action vigorously.

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 intends to defend the action vigorously.

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 Brocade. No appeal has been filed.

[Table of Contents](#)**Item 6. Exhibits and Reports on Form 8-K****(a) Exhibits.**

Exhibit Number	Description of Document
2.1	Agreement and Plan of Reorganization by and among Brocade, Rhapsody Networks, Inc., and certain other parties dated November 5, 2002.
2.2	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.
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.
10.23 (8) #	Extension Agreement between EMC Corporation and Brocade dated December 18, 2000.
10.24	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.

[Table of Contents](#)

Exhibit Number	Description of Document
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.
10.33 (11) #	Amendment No. 5 to Statement of Work No. 1 between International Business Machines Corporation and Brocade.
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 +	Amendment No. 8 to Statement of Work No. 1 between International Business Machines Corporation and Brocade.
10.37 +	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.
10.43 (12) +	OEM Purchase Agreement between Brocade and Hewlett-Packard Company dated April 20, 2001 (2001 OEM Purchase Agreement).
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 +	OEM Purchase Agreement between Brocade and Hewlett-Packard Company dated December 16, 2002.
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.

Confidential treatment granted as to certain portions, which portions were omitted and filed separately with the Securities and Exchange Commission.

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

(1) Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended.

(2) Incorporated by reference from Brocade's Registration Statement on Form S-8 (Reg. No. 333-95653) filed on January 28, 2000.

(3) Incorporated by reference from Brocade's Annual Report on Form 10-K for the fiscal year ended October 31, 1999, as amended.

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

(5) Incorporated by reference from Brocade's Annual Report on Form 10-K for the fiscal year ended October 28, 2000.

[Table of Contents](#)

- (6) Incorporated by reference from Brocade's Quarterly Report on Form 10-Q for the fiscal quarter ended January 27, 2001.
- (7) Incorporated by reference from Brocade's Quarterly Report on Form 10-Q for the fiscal quarter ended July 28, 2001.
- (8) Incorporated by reference from Brocade's Annual Report on Form 10-K for the fiscal year ended October 27, 2001.
- (9) Incorporated by reference from Brocade's Quarterly Report on Form 10-Q for the fiscal quarter ended January 26, 2002.
- (10) Incorporated by reference from Brocade's Registration Statement on Form 8-A filed on February 11, 2002.
- (11) Incorporated by reference from Brocade's Quarterly Report on Form 10-Q for the fiscal quarter ended April 27, 2002.
- (12) Incorporated by reference from Brocade's Quarterly Report on Form 10-Q for the fiscal quarter ended July 27, 2002.
- (13) Incorporated by reference from Brocade's Annual Report on Form 10-K for the fiscal year ended October 26, 2002.

(b) Reports on Form 8-K.

We filed two reports on Form 8-K during the quarter ended January 25, 2003. Information regarding the items reported on is as follows:

<u>Date</u>	<u>Item Reported On</u>
November 5, 2002	Announcement of agreement to acquire Rhapsody Networks, Inc. Announcement of financial results for the fourth quarter and fiscal year ended October 26, 2002.
November 21, 2002	

Items 2, 3, 4, and 5 are not applicable and have been omitted.

SIGNATURES

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

Brocade Communications Systems, Inc.

Date: March 7, 2003

By: /s/ ANTONIO CANOVA

Antonio Canova
Vice President, Finance and
Chief Financial Officer

CERTIFICATIONS

I, Gregory L. Reyes, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Brocade Communications Systems, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. Brocade Communications Systems, Inc.'s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for Brocade Communications Systems, Inc. and we have:
 - a. designed such disclosure controls and procedures to ensure that material information relating to Brocade Communications Systems, Inc., including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
 - b. evaluated the effectiveness of Brocade Communications Systems, Inc.'s disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
 - c. presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluations as of the Evaluation Date;
5. Brocade Communications Systems, Inc.'s other certifying officer and I have disclosed, based on our most recent evaluation, to Brocade Communications Systems, Inc.'s auditors and the audit committee of Brocade Communications Systems, Inc.'s board of directors (or persons performing the equivalent functions):
 - a. all significant deficiencies in the design or operation of internal controls which could adversely affect Brocade Communications Systems, Inc.'s ability to record, process, summarize and report financial data and have identified for Brocade Communications Systems, Inc.'s auditors any material weaknesses in internal controls; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in Brocade Communications Systems, Inc.'s internal controls; and
6. Brocade Communications Systems, Inc.'s other certifying officer and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: March 7, 2003

By:

/s/ Gregory L. Reyes

Gregory L. Reyes
*Chairman of the Board and
Chief Executive Officer
(Principal Executive Officer)*

[Table of Contents](#)

I, Antonio Canova, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Brocade Communications Systems, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. Brocade Communications Systems, Inc.'s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for Brocade Communications Systems, Inc. and we have:
 - a. designed such disclosure controls and procedures to ensure that material information relating to Brocade Communications Systems, Inc., including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
 - b. evaluated the effectiveness of Brocade Communications Systems, Inc.'s disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
 - c. presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluations as of the Evaluation Date;
5. Brocade Communications Systems, Inc.'s other certifying officer and I have disclosed, based on our most recent evaluation, to Brocade Communications Systems, Inc.'s auditors and the audit committee of Brocade Communications Systems, Inc.'s board of directors (or persons performing the equivalent functions):
 - a. all significant deficiencies in the design or operation of internal controls which could adversely affect Brocade Communications Systems, Inc.'s ability to record, process, summarize and report financial data and have identified for Brocade Communications Systems, Inc.'s auditors any material weaknesses in internal controls; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in Brocade Communications Systems, Inc.'s internal controls; and
6. Brocade Communications Systems, Inc.'s other certifying officer and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: March 7, 2003

By:

/s/ Antonio Canova

Antonio Canova
Vice President, Finance and
Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit Index

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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.
10.23 (8) #	Extension Agreement between EMC Corporation and Brocade dated December 18, 2000.
10.24	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.



[Table of Contents](#)

Exhibit Number	Description of Document
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.
10.33 (11) #	Amendment No. 5 to Statement of Work No. 1 between International Business Machines Corporation and Brocade.
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 +	Amendment No. 8 to Statement of Work No. 1 between International Business Machines Corporation and Brocade.
10.37 +	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.
10.43 (12) +	OEM Purchase Agreement between Brocade and Hewlett-Packard Company dated April 20, 2001 (2001 OEM Purchase Agreement).
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 +	OEM Purchase Agreement between Brocade and Hewlett-Packard Company dated December 16, 2002.
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.

Confidential treatment granted as to certain portions, which portions were omitted and filed separately with the Securities and Exchange Commission.

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

(1) Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended.

(2) Incorporated by reference from Brocade's Registration Statement on Form S-8 (Reg. No. 333-95653) filed on January 28, 2000.

(3) Incorporated by reference from Brocade's Annual Report on Form 10-K for the fiscal year ended October 31, 1999, as amended.

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

(5) Incorporated by reference from Brocade's Annual Report on Form 10-K for the fiscal year ended October 28, 2000.

[Table of Contents](#)

- (6) Incorporated by reference from Brocade's Quarterly Report on Form 10-Q for the fiscal quarter ended January 27, 2001.
- (7) Incorporated by reference from Brocade's Quarterly Report on Form 10-Q for the fiscal quarter ended July 28, 2001.
- (8) Incorporated by reference from Brocade's Annual Report on Form 10-K for the fiscal year ended October 27, 2001.
- (9) Incorporated by reference from Brocade's Quarterly Report on Form 10-Q for the fiscal quarter ended January 26, 2002.
- (10) Incorporated by reference from Brocade's Registration Statement on Form 8-A filed on February 11, 2002.
- (11) Incorporated by reference from Brocade's Quarterly Report on Form 10-Q for the fiscal quarter ended April 27, 2002.
- (12) Incorporated by reference from Brocade's Quarterly Report on Form 10-Q for the fiscal quarter ended July 27, 2002.
- (13) Incorporated by reference from Brocade's Annual Report on Form 10-K for the fiscal year ended October 26, 2002.

AGREEMENT AND PLAN OF REORGANIZATION
BY AND AMONG
BROCADE COMMUNICATIONS SYSTEMS, INC.
MAVERICK ACQUISITION CORP.
RHAPSODY NETWORKS, INC.
AND WITH RESPECT TO ARTICLES VII AND IX ONLY
DOUGLAS M. LEONE
AS STOCKHOLDER REPRESENTATIVE
AND
U.S. BANK, N.A.
AS ESCROW AGENT
DATED AS OF NOVEMBER 5, 2002

TABLE OF CONTENTS

	Page

ARTICLE I THE MERGER.....	2
1.1 The Merger.....	2
1.2 Effective Time.....	2
1.3 Effect of the Merger.....	2
1.4 Certificate of Incorporation and Bylaws.....	2
1.5 Directors and Officers.....	3
1.6 Effect of Merger on the Capital Stock of the Constituent Corporations.....	3
1.7 Dissenting Shares.....	12
1.8 Surrender of Certificates.....	13
1.9 No Further Ownership Rights in Company Capital Stock.....	14
1.10 Lost, Stolen or Destroyed Certificates.....	15
1.11 Tax Consequences.....	15
1.12 Taking of Necessary Action; Further Action.....	15
ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY.....	15
2.1 Organization of the Company.....	15
2.2 Company Capital Structure.....	16
2.3 Subsidiaries.....	18
2.4 Authority.....	18
2.5 No Conflict.....	18
2.6 Consents.....	19
2.7 Company Financial Statements.....	19
2.8 No Undisclosed Liabilities.....	20
2.9 No Changes.....	20
2.10 Tax Matters.....	23
2.11 Restrictions on Business Activities.....	25
2.12 Title to Properties; Absence of Liens and Encumbrances; Condition of Equipment; Customer Information.....	25
2.13 Intellectual Property.....	27
2.14 Agreements, Contracts and Commitments.....	33
2.15 Interested Party Transactions.....	34
2.16 Governmental Authorization.....	35
2.17 Litigation.....	35
2.18 Minute Books.....	35
2.19 Environmental Matters.....	36
2.20 Brokers' and Finders' Fees; Third Party Expenses.....	37
2.21 Employee Benefit Plans and Compensation.....	37
2.22 Insurance.....	42
2.23 Compliance with Laws.....	42

TABLE OF CONTENTS

	Page

2.24 Foreign Corrupt Practices Act.....	42
2.25 Warranties; Indemnities.....	42
2.26 Complete Copies of Materials.....	42
2.27 Representations Complete.....	43
2.28 Information Statement.....	43
2.29 Spreadsheet.....	43
ARTICLE III REPRESENTATIONS AND WARRANTIES OF PARENT AND SUB.....	43
3.1 Organization, Standing and Power.....	43
3.2 Authority.....	44
3.3 Consents.....	44
3.4 Parent Common Stock.....	44
3.5 Broker's and Finders' Fees.....	44
3.6 SEC Documents; Parent Financial Statements.....	45
3.7 No Vote Required.....	45
3.8 No Conflicts.....	45
3.9 Information Statement.....	45
ARTICLE IV CONDUCT PRIOR TO THE EFFECTIVE TIME.....	46
4.1 Conduct of Business of the Company.....	46
4.2 No Solicitation.....	49
ARTICLE V ADDITIONAL AGREEMENTS.....	50
5.1 Fairness Hearing; Stockholder Approval.....	50
5.2 Restrictions on Transfer.....	52
5.3 Access to Information.....	52
5.4 Confidentiality.....	52
5.5 Expenses.....	53
5.6 Public Disclosure.....	53
5.7 Consents.....	54
5.8 FIRPTA Compliance.....	54
5.9 Reasonable Efforts.....	54
5.10 Notification of Certain Matters.....	55
5.11 Additional Documents and Further Assurances.....	55
5.12 S-8 Registration.....	55
5.13 New Employment Arrangements.....	55
5.14 Severance or Transitional Packages.....	56
5.15 Vesting Waivers.....	56
5.16 Affiliate Agreements.....	56
5.17 Statement of Expenses.....	57

TABLE OF CONTENTS

	Page	

5.18	Termination of 401(k) Plan.....	57
5.19	Resignation of Officers and Directors.....	57
5.20	Proprietary Information and Inventions Assignment Agreement.....	57
5.21	HSR Act.....	58
5.22	Spreadsheet.....	58
5.23	No Liability for New Employees.....	59
5.24	Voting Agreements.....	59
5.25	Non-Competition Agreements.....	59
5.26	Termination of Agreements.....	59
5.27	Closing Financial Statements.....	59
5.28	Tax Matters.....	60
5.29	Nasdaq Listing.....	60
5.30	Termination of Warrants.....	60
5.31	Indemnification.....	60
ARTICLE VI	CONDITIONS TO THE MERGER.....	60
6.1	Conditions to Obligations of Each Party to Effect the Merger.....	60
6.2	Conditions to the Obligations of Parent and Sub.....	61
6.3	Conditions to Obligations of the Company.....	64
ARTICLE VII	SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ESCROW.....	66
7.1	Survival of Representations, Warranties and Covenants.....	66
7.2	Indemnification.....	66
7.3	Escrow Arrangements.....	67
7.4	Stockholder Representative.....	74
7.5	Maximum Payments; Remedy.....	75
7.6	Right of Set-Off.....	75
ARTICLE VIII	TERMINATION, AMENDMENT AND WAIVER.....	76
8.1	Termination.....	76
8.2	Effect of Termination.....	77
8.3	Amendment.....	77
8.4	Extension; Waiver.....	77
ARTICLE IX	GENERAL PROVISIONS.....	77
9.1	Notices.....	77
9.2	Interpretation.....	79
9.3	Counterparts.....	79
9.4	Entire Agreement; Assignment.....	79
9.5	Severability.....	80

TABLE OF CONTENTS

	Page

9.6 Other Remedies.....	80
9.7 Governing Law.....	80
9.8 Rules of Construction.....	80
9.9 WAIVER OF JURY TRIAL.....	80

INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION
- - - - -	- - - - -
Exhibit A	Form of Voting Agreement*
Exhibit B-1	Form of Non-Competition Agreement*
Exhibit B-2	Form of Non-Competition Agreement*
Exhibit C	Form of Certificate of Merger*
Exhibit D	Form of Standard Waiver of Vesting*
Exhibit E	Form of Affiliate Agreement*
Exhibit F	Form of Legal Opinion of Counsel of the Company*
Exhibit G	Form of CEO and CFO Certification*
Exhibit H	Form of Legal Opinion of Counsel of Parent*
Exhibit I	Form of Tax Representation Letter*

SCHEDULES

Disclosure Schedule of Rhapsody Networks, Inc.*
 Schedule 4.1 Conduct of the Business*
 Schedule 5.15 Vesting Waivers*
 Schedule 5.16 Affiliates to Sign Affiliate Agreements*
 Schedule 5.24 Persons to Sign Voting Agreements*
 Schedule 5.25 Persons to Sign Non-Competition Agreements*
 Schedule 6.2(b) Required Consents*
 Schedule 6.2(c) Termination of Agreements*
 Schedule 6.2(l) Rhapsody Employee Hiring Requirements*
 Annex A: Earn-Out Payment Conditions

* A copy of these omitted schedules will be provided supplementally to the Commission upon request.

THIS AGREEMENT AND PLAN OF REORGANIZATION (the "AGREEMENT") is made and entered into as of November 5, 2002 by and among Brocade Communications Systems, Inc., a Delaware corporation ("PARENT"), Maverick Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Parent ("SUB"), Rhapsody Networks, Inc., a Delaware corporation (the "COMPANY"), and, with respect to ARTICLE VII and ARTICLE IX hereof only, Douglas M. Leone as stockholder representative (the "STOCKHOLDER REPRESENTATIVE"), and U.S. Bank, N.A. as escrow agent (the "ESCROW AGENT").

RECITALS

A. The Boards of Directors of each of Parent, Sub and the Company believe it is in the best interests of each company and its respective stockholders that Parent acquire the Company through the statutory merger of Sub with and into the Company (the "MERGER") and, in furtherance thereof, have approved the Merger.

B. Pursuant to the Merger, among other things, and subject to the terms and conditions of this Agreement (i) all of the issued and outstanding capital stock of the Company shall be converted into the right to receive the consideration set forth herein, and (ii) all issued and outstanding options to purchase capital stock of the Company shall be assumed by Parent and converted into options to purchase common stock of Parent.

C. A portion of the consideration otherwise payable by Parent in connection with the Merger shall be placed in escrow by Parent as security for the indemnification obligations set forth in this Agreement.

D. The Company, on the one hand, and Parent and Sub, on the other hand, desire to make certain representations, warranties, covenants and other agreements in connection with the Merger.

E. Concurrent with the execution and delivery of this Agreement, as a material inducement to Parent and Sub to enter into this Agreement (i) all executive officers and directors of the Company and certain principal stockholders of the Company are entering into Voting Agreements, in form attached hereto as EXHIBIT A (the "VOTING AGREEMENTS"), with Parent, (ii) Key Employees (as defined in SECTION 1.6 hereof) and executive officers of the Company who are listed on SECTION 5.25 of the Disclosure Schedule are entering into Non-Competition Agreements, each in the form attached hereto as EXHIBIT B (the "NON-COMPETITION AGREEMENTS"), with Parent effective as of the Effective Time and (iii) the Key Employees are accepting offers of employment from Parent effective as of the Effective Time.

F. The parties intend, by executing this Agreement, to adopt a plan of reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "CODE").

NOW, THEREFORE, in consideration of the mutual agreements, covenants and other promises set forth herein, the mutual benefits to be gained by the performance thereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, the parties hereby agree as follows:

ARTICLE I

THE MERGER

1.1 THE MERGER

At the Effective Time (as defined in SECTION 1.2 hereof) and subject to and upon the terms and conditions of this Agreement and the applicable provisions of the General Corporation Law of the State of Delaware ("DELAWARE LAW"), Sub shall be merged with and into the Company, the separate corporate existence of Sub shall cease, and the Company shall continue as the surviving corporation and as a wholly-owned subsidiary of Parent. The surviving corporation after the Merger is sometimes referred to hereinafter as the "SURVIVING CORPORATION."

1.2 EFFECTIVE TIME

Unless this Agreement is earlier terminated pursuant to SECTION 8.1 hereof, the closing of the Merger (the "CLOSING") will take place as promptly as practicable after the execution and delivery hereof by the parties hereto, and following satisfaction or waiver of the conditions set forth in ARTICLE VI hereof, at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California, unless another time or place is mutually agreed upon in writing by Parent and the Company. The date upon which the Closing actually occurs shall be referred to herein as the "CLOSING DATE." On the Closing Date, the parties hereto shall cause the Merger to be consummated by filing a Certificate of Merger in substantially the form attached hereto as EXHIBIT C, with the Secretary of State of the State of Delaware (the "CERTIFICATE OF MERGER"), in accordance with the applicable provisions of Delaware Law (the time of acceptance by the Secretary of State of the State of Delaware of such filing shall be referred to herein as the "EFFECTIVE TIME").

1.3 EFFECT OF THE MERGER

At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of Delaware Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, except as otherwise agreed to pursuant to the terms of this Agreement, all the property, rights, privileges, powers and franchises of the Company and Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Sub shall become the debts, liabilities and duties of the Surviving Corporation.

1.4 CERTIFICATE OF INCORPORATION AND BYLAWS

(a) Unless otherwise determined by Parent prior to the Effective Time, the certificate of incorporation of the Surviving Corporation shall be amended and restated as of the Effective Time to conform to the certificate of incorporation of Sub as in effect immediately prior to the Effective Time, until thereafter amended in accordance with Delaware Law and as provided in such certificate of incorporation; provided, however, that at the Effective Time, Article I of the certificate of incorporation of the Surviving Corporation shall be amended and restated in its entirety to read as follows: "The name of the corporation is Rhapsody Networks, Inc."

(b) Unless otherwise determined by Parent prior to the Effective Time, the bylaws of Sub, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation at the Effective Time until thereafter amended in accordance with Delaware Law and as provided in the certificate of incorporation of the Surviving Corporation and such bylaws.

1.5 DIRECTORS AND OFFICERS

(a) DIRECTORS OF COMPANY. Unless otherwise determined by Parent prior to the Effective Time, the directors of Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation immediately after the Effective Time, each to hold the office of a director of the Surviving Corporation in accordance with the provisions of Delaware Law and the certificate of incorporation and bylaws of the Surviving Corporation until their successors are duly elected and qualified.

(b) OFFICERS OF COMPANY. Unless otherwise determined by Parent prior to the Effective Time, the officers of Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation immediately after the Effective Time, each to hold office in accordance with the provisions of the bylaws of the Surviving Corporation.

1.6 EFFECT OF MERGER ON THE CAPITAL STOCK OF THE CONSTITUENT CORPORATIONS

(a) DEFINITIONS. For all purposes of this Agreement, the following terms shall have the following respective meanings:

(i) "COMPANY ASSUMED WARRANT" shall mean any issued and outstanding warrant to purchase Company Capital Stock listed on SECTION 1.6(a)(i) of the Disclosure Schedule, to the extent it is not exercised or cancelled prior to the Effective Time.

(ii) "COMPANY CAPITAL STOCK" shall mean the Company Common Stock, the Company Preferred Stock and any other shares of capital stock, if any, of the Company, taken together.

(iii) "COMPANY COMMON STOCK" shall mean shares of common stock, \$0.001 par value per share, of the Company.

(iv) "COMPANY COMMON STOCKHOLDER" shall mean a holder of Company Common Stock, each of whom are listed on SECTION 1.6(a)(IV) of the Disclosure Schedule.

(v) "COMPANY MATERIAL ADVERSE EFFECT" shall mean any change, event or effect that is materially adverse to the business, assets (whether tangible or intangible), financial condition, operations or capitalization of the Company; provided, however, that in no event shall any change, event or effect (alone or in combination) be taken into account in determining whether there has been or will be a Company Material Adverse Effect to the extent such change, event or effect results from changes affecting any of the industries in which the Company operates generally or the United States economy generally (which changes in each case do not disproportionately affect the Company).

(vi) "COMPANY OPTIONS" shall mean all issued and outstanding options (including commitments to grant options) to purchase or otherwise acquire Company Common Stock (whether or not vested) held by any person or entity, each of which are listed on SECTION 1.6(a)(VI) of the Disclosure Schedule.

(vii) "COMPANY PREFERRED STOCK" shall mean the Company Series A Preferred Stock and the Company Series B Preferred Stock, taken together.

(viii) "COMPANY PREFERRED STOCKHOLDER" shall mean a holder of Company Preferred Stock, each of whom are listed on SECTION 1.6(a)(VIII) of the Disclosure Schedule.

(ix) "COMPANY SERIES A PREFERRED STOCK" shall mean the Series A Redeemable Preferred Stock, par value \$0.001 per share, of the Company.

(x) "COMPANY SERIES B PREFERRED STOCK" shall mean the Series B Convertible Preferred Stock, par value \$0.001 per share, of the Company.

(xi) "COMPANY UNVESTED COMMON STOCK" shall mean any shares of Company Common Stock issued and outstanding immediately prior to the Effective Time that are unvested or are subject to a repurchase option, risk of forfeiture or other condition under any applicable stock restriction agreement or other agreement with the Company.

(xii) "ESCROW AGENT" shall mean U.S. Bank, N.A., or another institution acceptable to Parent and the Stockholder Representative.

(xiii) "ESCROW AMOUNT" shall mean 2,018,843 shares of Parent Common Stock escrowed pursuant to SECTION 1.8 hereof.

(xiv) "ESTIMATED THIRD PARTY EXPENSES" shall mean the amount of Third Party Expenses (as defined in SECTION 5.5 hereof) set forth on the Statement of Expenses (as defined in SECTION 5.5 hereof).

(xv) "EXCHANGE RATIO" shall mean the Residual Proceeds divided by (the Total Outstanding Shares, rounded to the nearest ten thousandth (0.0001) (with amounts 0.00005 and above rounded up).

(xvi) "FAIR MARKET VALUE" shall mean the last reported sale price of Parent Common Stock on the Nasdaq National Market or, if no such reported sale takes place on any such day, the average of the closing bid and asked prices.

(xvii) "GAAP" shall mean United States generally accepted accounting principles consistently applied.

(xviii) "KEY EMPLOYEES" shall mean the employees listed in SCHEDULE 1.6(a)(xviii) hereof.

(xix) "KNOWLEDGE" or "KNOWN" shall mean the actual knowledge of the Company's officers and directors; provided, however, that such persons shall have made due and diligent inquiry of those employees of the Company whom such officers and directors reasonably believe would have actual knowledge of the matters represented.

(xx) "LIEN" shall mean any lien, pledge, charge, claim, mortgage, security interest or other encumbrance of any sort.

(xxi) "PARENT COMMON STOCK" shall mean shares of the common stock, par value \$0.001 per share, of Parent together with associated preferred stock purchase rights.

(xxii) "PARENT OPTION" shall mean any option to purchase shares of Parent Common Stock issued pursuant to the terms of SECTION 1.6(d) hereof in connection with the assumption of a Company Option.

(xxiii) "PLANS" shall mean the Company's 2000 Equity Incentive Plan.

(xxiv) "PRO RATA PORTION" shall mean, with respect to each Stockholder, an amount equal to the quotient obtained by dividing (x) a number equal to (A) Total Consideration issuable pursuant to SECTION 1.6(b) in respect of the shares of Company Capital Stock owned by such Stockholder as of the Effective Time less (B) Total Consideration issuable pursuant to SECTION 1.6(b) in respect of the shares of Company Unvested Common Stock owned by such Stockholder as of the Effective Time, by (y) a number equal to (C) Total Consideration issuable to all Stockholders pursuant to SECTION 1.6(b) less (D) Total Consideration issuable to all Stockholders for Company Unvested Common Stock pursuant to SECTION 1.6(b).

(xxv) "RELATED AGREEMENTS" shall mean the Voting Agreements, Non-Competition Agreements, Certificate of Merger, Waivers of Vesting and Affiliate Agreements.

(xxvi) "RESIDUAL PROCEEDS" shall mean the Total Adjusted Consideration less the aggregate Series A Preference Amounts and the aggregate Series B Preference Amounts.

(xxvii) "SEC" shall mean the United States Securities and Exchange Commission.

(xxviii) "SERIES A PREFERENCE AMOUNT" shall mean a number of shares of Parent Common Stock equal to \$0.86667 divided by the Trading Price.

(xxix) "SERIES B PREFERENCE AMOUNT" shall mean a number of shares of Parent Common Stock equal to \$2.06 divided by the Trading Price.

(xxx) "STOCKHOLDER" shall mean any holder of any Company Capital Stock immediately prior to the Effective Time.

(xxxi) "THIRD PARTY EXPENSE PURCHASE PRICE ADJUSTMENT" shall mean the amount by which the Estimated Third Party Expenses exceed \$1,000,000, as reflected in the Statement of Expenses (as defined in SECTION 5.17).

(xxxii) "THIRD PARTY EXPENSE PURCHASE PRICE ADJUSTMENT SHARES" shall mean a number of shares of Parent Common Stock equal to the quotient obtained by dividing the Third Party Expense Purchases Price Adjustment by the Trading Price.

(xxxiii) "TOTAL CONSIDERATION" shall mean 20,475,000 shares of Parent Common Stock.

(xxxiv) "TOTAL ADJUSTED CONSIDERATION" shall mean the sum obtained by subtracting the Third Party Expense Purchase Price Adjustment Shares from the Total Consideration.

(xxxv) "TOTAL OUTSTANDING SHARES" shall mean the aggregate number of shares of Company Capital Stock (including Company Options, Company Assumed Warrants and any other rights whether vested or unvested convertible into, exercisable for or exchangeable for, shares of Company Capital Stock on an as-converted, exercised or exchanged to Company Capital Stock basis) issued and outstanding immediately prior to the Effective Time.

(xxxvi) "TRADING PRICE" shall mean the average of the closing price of one share of Parent Common Stock as reported on the Nasdaq National Market for the ten (10) trading days ending two (2) business days prior to the Closing Date (as adjusted as appropriate to reflect any stock splits, stock dividends, combinations, reorganizations, reclassifications or similar events).

(b) EFFECT ON CAPITAL STOCK.

(i) Conversion of Company Series B Preferred Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Sub, the Company or the holders of Company Series B Preferred Stock, each outstanding share of Company Series B Preferred Stock issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares (as defined in SECTION 1.7(a) hereof), upon the terms and subject to conditions set forth in this SECTION 1.6 and throughout this Agreement, including, without limitation, the escrow provisions set forth in ARTICLE VII hereof, will be canceled and extinguished and be converted automatically into the right to receive, upon surrender of the certificate representing such shares of Company Series B Preferred Stock in the manner provided in SECTION 1.8 hereof, a number of shares of Parent Common Stock equal to (i) the Series B Preference Amount plus (ii) the Exchange Ratio; provided however that the number of shares of Parent Common Stock in excess of the number that is three (3) times the Series B Preference Amount shall be reallocated to the outstanding shares of Company Common Stock.

(ii) Conversion of Company Series A Preferred Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Sub, the Company or the holders of Company Series A Preferred Stock, each outstanding share of Company Series A Preferred Stock issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares (as defined in SECTION 1.7(a) hereof), upon the terms and subject to conditions set forth in this SECTION 1.6 and throughout this Agreement, including, without limitation, the escrow provisions set forth in ARTICLE VII hereof, will be canceled and extinguished and be converted automatically into the right to receive, upon surrender of the certificate representing such shares of Company Series A Preferred Stock in the manner provided in SECTION 1.8 hereof, a number of shares of Parent Common Stock equal to (i) the Series A Preference Amount plus (ii) the Exchange Ratio; provided however that the number of shares of Parent Common Stock in excess of the number that is three (3) times the Series A Preference Amount shall be reallocated to the outstanding shares of Company Series B Preferred Stock and outstanding shares of Company Common Stock on an as-converted-to-common-stock basis.

(iii) Conversion of Company Common Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Sub, the Company or the holders of shares of Company Capital Stock, each outstanding share of Company Common Stock, including Company Unvested Common Stock (but excluding, for the avoidance of doubt, unexercised Company Options) issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares (as defined in SECTION 1.7(a) hereof), upon the terms and subject to conditions set forth in this SECTION 1.6 and throughout this Agreement, including, without limitation, the escrow provisions set forth in ARTICLE VII hereof, will be canceled and extinguished and be converted automatically into the right to receive, upon surrender of the certificate representing such shares of Company Capital Stock in the manner provided in SECTION 1.8 hereof, a number of shares of Parent Common Stock equal to the Exchange Ratio. Each share of Parent Common Stock exchanged for Company Unvested Common Stock pursuant to this SECTION 1.6(a)(i) shall, except as otherwise set forth in this

Agreement or the Related Agreements, continue to have, and be subject to, the same terms and conditions (including vesting terms) set forth in the Plans, as applicable, and the agreements relating thereto, as in effect immediately prior to the Effective Time. For the avoidance of doubt, at the Effective Time, Parent will be deemed to have assumed the stock options of the Company upon exercise of which all such Company Unvested Common Stock was issued. Certain holders of Company Unvested Common Stock have waived and amended all rights regarding any acceleration of vesting including, without limitation, acceleration upon a change of control, termination without cause, or constructive termination or similar provision contained in any agreement relating to Company Unvested Common Stock, by execution of the form of waiver in the form attached hereto as EXHIBIT D (each, a "WAIVER OF VESTING").

(iv) Notwithstanding the foregoing, in the event of a discrepancy between the provisions of subparagraphs (i), (ii) and (iii) of this SECTION 1.6(b) and the Company's Certificate of Incorporation regarding the allocation of the Merger Consideration, it is the intent of the parties hereto that the provisions of the Company's Certificate of Incorporation shall control; provided however that the discount from market value attributable to restrictions on free marketability specified in SECTION 3(c)(III)(B) of the Company's Certificate of Incorporation shall be deemed to be zero; and provided further that for the purposes of determining the allocation of the Merger Consideration, shares of Company Common Stock issuable upon the exercise of Company Options and Company Assumed Warrants shall be deemed outstanding.

(v) The shares of Parent Common Stock to be received in connection with the Merger or to be received upon exercise of vested or unvested Company Options assumed in connection with the Merger shall be restricted such that each Stockholder may not: (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, or otherwise dispose of or transfer any shares of Parent Common Stock to be received in connection with the Merger or to be received upon exercise of vested or unvested Company Options assumed in connection with the Merger or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Parent Common Stock to be received in connection with the Merger or to be received upon exercise of vested or unvested Company Options assumed in connection with the Merger, whether any such swap or transaction is to be settled by delivery of Parent Common Stock or other securities, in cash or otherwise (collectively, the "LOCK-UP PROVISION"). The Lock-up Provision shall lapse as follows: (A) a number of shares equal to forty five percent (45%) of the shares of Parent Common Stock to be received by each Stockholder (including for the purpose of calculating the percentages in this sentence all shares subject to assumed Company Options, whether vested or unvested, and the aggregate number of additional shares that may be issued upon payment in full of the Earn-Out Payment) shall be freely tradeable and transferable upon the Closing, to the extent vested or, if forty five percent (45%) of such shares are not vested, up to forty five percent (45%) of such shares upon vesting), (B) a number of shares equal to thirty percent (30%) of the shares of Parent Common Stock to be received by each Stockholder shall be freely tradeable and transferable on the date that is six (6) months after the Closing, to the extent vested or, if thirty percent (30%) of such shares are not vested, up to thirty

percent (30%) of such shares upon vesting), and (C) the remaining twenty five percent (25%) of the shares of Parent Common Stock to be received by such Stockholder (including shares released from the escrow and shares received upon payment of the Earn-Out Payment, if any) shall be freely tradeable and transferable on the first anniversary of the Closing. Certificates that represent shares of Parent Common Stock to be received in connection with the Merger or issued upon exercise of vested or unvested Company Options assumed in connection with the Merger shall be legended to reflect the Lock-up Provision (the "LOCK-UP LEGEND").

(vi) For purposes of calculating the number of shares of Parent Common Stock issuable to each Stockholder pursuant to this SECTION 1.6(b), the number of shares of Parent Common Stock issuable to each Stockholder shall be rounded down to the nearest whole number of shares of Parent Common Stock, and no cash will be paid for fractional shares; provided, however, that the maximum number of shares of Parent Common Stock issuable pursuant to the Merger shall not exceed the Total Adjusted Consideration.

(c) EARN-OUT PAYMENT.

(i) Amount of Earn-Out Payment. As additional Merger Consideration, Parent shall make available to the Exchange Agent (as defined in SECTION 1.8), on behalf of and for distribution to the persons, in the amounts and in the manner to be set forth on SCHEDULE 1.6(c) (the "EARN-OUT PAYEES"), an aggregate amount of 2,925,000 shares of Parent Common Stock (the "EARN-OUT PAYMENT"). The Company shall deliver SCHEDULE 1.6(c) at the same time that it delivers the Spreadsheet (as defined in SECTION 5.22). Parent shall make the Earn-Out Payment available to the Exchange Agent, on behalf of and for distribution to the Earn-Out Payees, as soon as practicable following the date on which it is determined, in the manner provided below, that the conditions for payment of the Earn-Out Payment set forth on ANNEX A have been satisfied (the "EARN-OUT PAYMENT DATE").

(ii) Determination of Earn-Out Payment; Dispute Resolution. At any time at which Parent or the Stockholder Representative believes in good faith that the conditions for payment of the Earn-Out Payment have been satisfied, Parent or the Stockholder Representative (the "NOTIFIER"), shall deliver to the other party (the "RECIPIENT"), as soon as practicable, a written statement that summarizes such party's belief, and the basis therefor (the "CONDITION SATISFACTION NOTICE"). The Notifier's determination under this SECTION 1.6(c) of whether and when the conditions for payment of the Earn-Out Payment were satisfied shall be conclusive and binding upon all parties hereto unless, within ten (10) days following receipt by the Recipient of the Condition Satisfaction Notice, the Recipient notifies the Notifier in writing that the Recipient disagrees with the Notifier's determination. Such notice shall include a summary of the reasons why the Recipient disagrees with the Notifier's determination together with a copy of any information, other than that previously provided by the Notifier, used in making such determination.

If the Notifier disagrees with the Recipient's determination, Parent's Chief Financial Officer, or his designee, shall promptly meet with the Stockholder Representative, or his designee, and the parties shall attempt in good faith to reach a resolution of such disagreement. If such disagreement

is not resolved within five (5) days after delivery of the Recipient's notice, then the dispute shall be resolved in accordance with SECTIONS 7.3(h)(ii), (iii) AND (iv). Parent shall not be required to make the Earn-Out Payment, or any portion thereof, to the Exchange Agent until the period during which the Stockholder Representative may object to the amount of an Earn-Out Payment has lapsed or, if properly contested in accordance with the provisions hereof, the amount and timing of the Earn-Out Payment has been agreed upon by the parties or resolved in accordance with Sections 7.3(h)(ii), (iii) and (iv).

(iii) Rights Not Transferable. The rights of Earn-Out Payees to the Earn-Out Payment are personal to each Earn-Out Payee and shall not be transferable for any reason other than by operation of law, will or the laws of descent and distribution. Any attempted transfer of such right by any holder thereof (other than as permitted by the immediately preceding sentence) shall be null and void.

(iv) Method of Payment. The portion of the Earn-Out Payment that is not subject to any contingencies shall be made available by Parent to the Exchange Agent, on behalf of and for the account of the Earn-Out Payees, and shall be issued by the Exchange Agent to the address of the Earn-Out Payees provided to the Exchange Agent by the Stockholder Representative, after taking such action as is necessary to assure that all applicable federal or state income withholding and any other taxes are withheld and deducted from such funds otherwise to be paid. The portion of the Earn-Out Payment that is subject to contingencies shall be made available by Parent to the Exchange Agent, on behalf of and for the account of the Earn-Out Payees, in installments upon the satisfaction of all applicable contingencies. The Earn-Out Payment shall be subject to a right of set-off as set forth in SECTION 7.6 below.

(d) ASSUMPTION OF COMPANY OPTIONS; TREATMENT OF COMPANY WARRANTS.

(i) As soon as practicable following the Closing but effective as of the Effective Time, each Company Option shall be assumed by Parent as a Parent Option. Each Company Option so assumed by Parent pursuant to this SECTION 1.6(d) shall continue to have, and be subject to, the same terms and conditions (including vesting terms) set forth in the applicable Plan and the option agreements relating thereto, as in effect immediately prior to the Effective Time, except that (A) such assumed Company Option will be exercisable for that number of whole shares of Parent Common Stock equal to the product of the number of shares of Company Common Stock that were issuable upon exercise of such Company Option immediately prior to the Effective Time multiplied by the Exchange Ratio, rounded down to the nearest whole number of shares of Parent Common Stock, (B) the per share exercise price for the shares of Parent Common Stock issuable upon exercise of such assumed Company Option shall be equal to the quotient obtained by dividing the exercise price per share of Company Common Stock at which such assumed Company Option was exercisable immediately prior to the Closing Date by the Exchange Ratio, rounded up to the nearest whole cent, and (C) each holder of Company Options shall have waived and amended all rights regarding any acceleration of vesting including, without limitation, acceleration upon a change of control, termination without cause, or constructive termination or similar provision contained in

any agreement relating to Company Options, by execution of the Waiver of Vesting; provided, however, that in the case of any Company Option to which Section 421 of the Code applies by reason of its qualification under Section 422 of the Code, the exercise price of the option, the number of shares purchasable pursuant to such option and the terms and conditions of exercise of such option shall be determined in order to comply with Section 424 of the Code.

(ii) At the Effective Time, each outstanding Company Assumed Warrant shall be assumed by Parent. Each Company Assumed Warrant so assumed by Parent pursuant to this SECTION 1.6(d) shall continue to have, and be subject to, the same terms and conditions (including vesting terms) set forth in such warrant agreements relating thereto, as in effect immediately prior to the Effective Time, except that (A) such Company Assumed Warrant will be exercisable for that number of whole shares of Parent Common Stock equal to the number of shares of Parent Stock that would have been received by the holder of such Company Assumed Warrant pursuant to SECTION 1.6(b) if such Company Assumed Warrant had been exercised in its entirety prior to the Effective Time, rounded down to the nearest whole number of Parent Common Stock; (B) the aggregate exercise price for the shares of Parent Common Stock issuable upon exercise of such Company Assumed Warrant shall be equal to the aggregate exercise price of such Company Assumed Warrant as in effect immediately prior to the Effective Time; and (C) the Parent Common Stock issuable upon exercise of such Company Assumed Warrant shall be marked with the Lock-up Legend and subject to the Lock-up Provision as set forth in SECTION 1.6(b)(V).

(iii) Prior to the Effective Time, the Company shall take all action necessary to effect the transactions anticipated by this SECTION 1.6(d) under all Company Option agreements, all agreements related to Company Unvested Common Stock, all Company Assumed Warrant agreements and any other plan or arrangement of the Company (whether written or oral, formal or informal).

(e) ASSUMPTION AGREEMENT. As soon as administratively practicable following the Closing, Parent shall issue to each holder of a Company Option to be assumed by Parent pursuant to SECTION 1.6(d) hereof a document evidencing the assumption of such Company Option, by Parent, and each former holder of a Company Option so assumed by Parent shall acknowledge the receipt of the same in exchange for such holder's Company Option.

(f) WITHHOLDING TAXES. Any number of shares of Parent Common Stock issuable to a Stockholder pursuant to SECTION 1.6(b) or SECTION 1.6(c) hereof shall be subject to, and reduced by, the number of shares of Parent Common Stock with an aggregate value, based on the Trading Price, equal to the required amount of any state, federal and foreign withholding taxes incurred (and not previously paid by or on behalf of such Stockholder or the Company) in connection with the acquisition of Company Capital Stock upon the exercise of Company Options, upon the lapsing of repurchase rights in respect of shares of Company Common Stock, or upon payment of a bonus in the form of Company Common Stock, if any, to such Stockholder rounded to the nearest whole share (with amounts greater than 0.5 shares rounded up).

(g) STOCKHOLDER LOANS. In the event that any Stockholder has outstanding loans from the Company as of the Effective Time, such loans may be subject to repayment through the reduction of the consideration otherwise payable to such Stockholder pursuant to this SECTION 1.6 pursuant to a separate written agreement between Parent and such Stockholder.

(h) CAPITAL STOCK OF SUB. Each share of Common Stock of Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of Common Stock of the Surviving Corporation. Each stock certificate of Sub evidencing ownership of any such shares shall continue to evidence ownership of such shares of capital stock of the Surviving Corporation.

(i) SHARES SUBJECT TO VESTING. If any shares of Company Capital Stock issued and outstanding immediately prior to the Effective Time are unvested or are subject to a repurchase option, risk of forfeiture or other condition under any applicable stock restriction agreement or other agreement with the Company, then the shares of Parent Common Stock issued in exchange for such shares of Company Capital Stock shall also be unvested and subject to the same repurchase option, risk of forfeiture or other condition (including any requirement that any unvested shares be held in escrow), and the certificate representing such shares of Parent Common Stock may accordingly be marked with appropriate legends in the discretion of Parent, except that certain holders of Company Unvested Common Stock have waived and amended all rights regarding acceleration or lapsing of repurchase rights upon a change of control, termination without cause or constructive termination, to the extent such provisions exist, by entering into a Waiver of Vesting.

1.7 DISSENTING SHARES

(a) Notwithstanding any other provisions of this Agreement to the contrary, any shares of Company Capital Stock held by a holder who has not effectively withdrawn or lost such holder's appraisal rights under Delaware Law or the Corporations Code of the State of California ("CALIFORNIA LAW"), as applicable ("DISSENTING SHARES") shall not be converted into or represent a right to receive the applicable consideration for Company Capital Stock set forth in SECTION 1.6 hereof, but the holder thereof shall only be entitled to such rights as are provided by Delaware Law or California Law, as applicable.

(b) Notwithstanding the provisions of SECTION 1.7(a) hereof, if any holder of Dissenting Shares shall effectively withdraw or lose (through failure to perfect or otherwise) such holder's appraisal rights under Delaware Law or California Law, as applicable, then, as of the later of the Effective Time and the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive the consideration for Company Capital Stock, as applicable, set forth in SECTION 1.6 hereof, without interest thereon, and subject to the provisions of SECTION 7.3 hereof, upon surrender of the certificate representing such shares.

(c) The Company shall give Parent (i) prompt notice of any written demand for appraisal received by the Company pursuant to the applicable provisions of Delaware Law or California Law, as applicable, and (ii) the opportunity to participate in all negotiations and proceedings with respect to such demands. The Company shall not, except with the prior written consent of Parent, make any payment with respect to any such demands or offer to settle or settle any such demands. Notwithstanding the foregoing, to the extent that Parent or the Company (i) makes any payment or payments in respect of any Dissenting Shares in excess of the consideration that otherwise would have been payable in respect of such shares in accordance with this Agreement or (ii) incurs any other costs or expenses, (including specifically, but without limitation, attorneys' fees, costs and expenses in connection with any action or proceeding or in connection with any investigation) in respect of any Dissenting Shares (excluding payments for such shares) (together "DISSENTING SHARE PAYMENTS"), Parent shall be entitled to recover under the terms of ARTICLE VII hereof the amount of such Dissenting Share Payments without regard to the Threshold Amount (as defined in SECTION 7.3(b) hereof).

1.8 SURRENDER OF CERTIFICATES

(a) EXCHANGE AGENT. The Secretary of Parent, or an institution selected by Parent, shall serve as the exchange agent (the "EXCHANGE AGENT") for the Merger.

(b) PARENT TO PROVIDE PARENT COMMON STOCK. Promptly after the Effective Time, Parent shall make available to the Exchange Agent for exchange in accordance with this ARTICLE I the shares of Parent Common Stock issuable pursuant to SECTION 1.6 hereof in exchange for outstanding shares of Company Capital Stock; provided, however, that, on behalf of the Stockholders, Parent shall deposit into the Escrow Fund (as defined in SECTION 7.3(a) hereof) a number of shares of Parent Common Stock (not including any Company Unvested Common Stock equal to the Escrow Amount out of the aggregate number of shares of Parent Common Stock otherwise issuable to the Stockholders pursuant to SECTION 1.6 hereof. Each Stockholder shall be deemed to have contributed his or her Stockholder's Pro Rata Portion of the Escrow Amount to the Escrow Fund, rounded to the nearest whole number of shares of Parent Common Stock. If the sum of the Pro Rata Portions (each rounded to the nearest whole number of shares of Parent Common Stock) for all Stockholders does not equal the Escrow Amount, then the appropriate number of shares of Parent Common Stock will be added to or subtracted from the Pro Rata Portion of Sequoia Capital X such that the sum of the rounded Pro Rata Portions does equal the Escrow Amount.

(c) EXCHANGE PROCEDURES. Promptly after the Effective Time, Parent shall mail a letter of transmittal in such form and having such provisions as Parent may reasonably request to each Stockholder at the address set forth opposite each such Stockholder's name on the Spreadsheet (as defined in SECTION 5.22 hereof). After receipt of such letter of transmittal, the Stockholders will surrender the certificates representing their shares of Company Capital Stock (the "COMPANY STOCK CERTIFICATES") to the Exchange Agent for cancellation together with a duly completed and validly executed letter of transmittal. Upon surrender of a Company Stock Certificate for cancellation to the

Exchange Agent, or such other agent or agents as may be appointed by Parent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, subject to the terms of SECTION 1.8(e) hereof, the holder of such Company Stock Certificate shall be entitled to receive from the Exchange Agent in exchange therefor, a certificate representing the number of whole shares of Parent Common Stock (less the number of shares of Parent Common Stock to be deposited in the Escrow Fund on such holder's behalf pursuant to SECTION 1.8(b) hereof and ARTICLE VII hereof) to which such holder is entitled pursuant to SECTION 1.6(b) hereof in exchange for such Company Stock Certificate, and the Company Stock Certificate so surrendered shall be canceled. Until so surrendered, each Company Stock Certificate outstanding after the Effective Time will be deemed from and for all corporate purposes, to evidence only the right to receive the number of full shares of Parent Common Stock into which such shares of Company Capital Stock shall have been so converted.

(d) DISTRIBUTIONS WITH RESPECT TO UNEXCHANGED SHARES. No dividends or other distributions declared or made after the Effective Time with respect to Parent Common Stock with a record date after the Effective Time will be paid to the holder of any unsurrendered Company Stock Certificate with respect to the shares of Parent Common Stock represented thereby until the holder of record of such Company Stock Certificate shall surrender such Company Stock Certificate. Subject to applicable law, following surrender of any such Company Stock Certificate, there shall be paid to the record holder of the certificates representing whole shares of Parent Common Stock issued in exchange therefor, without interest, at the time of such surrender, the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such whole shares of Parent Common Stock.

(e) TRANSFERS OF OWNERSHIP. If any certificate for shares of Parent Common Stock is to be issued in a name other than that in which the Company Stock Certificate surrendered in exchange therefor is registered, it will be a condition of the issuance or delivery thereof that the certificate so surrendered will be properly endorsed and otherwise in proper form for transfer and that the person requesting such exchange will have paid to Parent or any agent designated by it any transfer or other taxes required by reason of the issuance of a certificate for shares of Parent Common Stock in any name other than that of the registered holder of the certificate surrendered, or established to the satisfaction of Parent or any agent designated by it that such tax has been paid or is not payable.

(f) NO LIABILITY. Notwithstanding anything to the contrary in this SECTION 1.8, neither the Exchange Agent, the Surviving Corporation, nor any party hereto shall be liable to a holder of shares of Company Capital Stock for any amount paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

1.9 NO FURTHER OWNERSHIP RIGHTS IN COMPANY CAPITAL STOCK

The shares of Parent Common Stock paid in respect of the surrender for exchange of shares of Company Capital Stock in accordance with the terms hereof shall be deemed to be full satisfaction of all rights pertaining to such shares of Company Capital Stock, and there shall be no

further registration of transfers on the records of the Surviving Corporation of shares of Company Capital Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Company Stock Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this ARTICLE I.

1.10 LOST, STOLEN OR DESTROYED CERTIFICATES

In the event any Company Stock Certificates shall have been lost, stolen or destroyed, the Exchange Agent shall issue in exchange for such lost, stolen or destroyed certificates, upon the making of an affidavit of that fact by the holder thereof, such amount, if any, as may be required pursuant to SECTION 1.6 hereof; provided, however, that Parent may, in its discretion and as a condition precedent to the issuance thereof, require the Stockholder who is the owner of such lost, stolen or destroyed certificates to either (i) deliver a bond in such amount as it may reasonably direct or (ii) provide an indemnification agreement in a form and substance acceptable to Parent, against any claim that may be made against Parent or the Exchange Agent with respect to the certificates alleged to have been lost, stolen or destroyed.

1.11 TAX CONSEQUENCES

It is intended by the parties hereto that the Merger shall constitute a reorganization within the meaning of Section 368(a) of the Code.

1.12 TAKING OF NECESSARY ACTION; FURTHER ACTION

If at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company, Parent, Sub, and the officers and directors of the Company, Parent and Sub are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Parent and Sub, subject to such exceptions as are specifically disclosed in the disclosure schedule (referencing the appropriate section numbers) supplied by the Company to Parent (the "DISCLOSURE SCHEDULE"), on the date hereof and as of the Effective Time, as though made at the Effective Time, as follows:

2.1 ORGANIZATION OF THE COMPANY

The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has the corporate power to own or lease its

properties and to carry on its business as currently conducted and as currently contemplated to be conducted. The Company is duly qualified or licensed to do business and in good standing as a foreign corporation in each jurisdiction in which the nature of the activities conducted by the Company requires such qualification and the absence of such qualification or license would have a Company Material Adverse Effect. The Company has delivered a true and correct copy of its certificate of incorporation and bylaws, each as amended to date and in full force and effect on the date hereof, to Parent. SECTION 2.1 of the Disclosure Schedule lists the directors and officers of the Company as of the date hereof. The operations now being conducted by the Company are not now and have never been conducted by the Company under any other name. SECTION 2.1 of the Disclosure Schedule also lists every state or foreign jurisdiction in which the Company has employees or facilities or otherwise carries on business.

2.2 COMPANY CAPITAL STRUCTURE

(a) The authorized capital stock of the Company consists of 65,554,830 shares of Common Stock, of which 19,709,888 shares are issued and outstanding, 14,226,092 shares of Series A Preferred Stock, of which 13,759,608 shares are issued and outstanding, and 24,900,000 shares of Series B Preferred Stock, of which 24,271,844 shares are issued and outstanding. Each share of Series A Preferred Stock and each share of Series B Preferred Stock is convertible on a one-share for one-share basis into Company Common Stock. As of the date hereof, the capitalization of the Company is as set forth in SECTION 2.2(a)(1) of the Disclosure Schedule. As of the date hereof, the Company Capital Stock is held by the persons with the addresses and in the amounts set forth in SECTIONS 1.6(a)(iv) AND 1.6(a)(viii) of the Disclosure Schedule. All outstanding shares of Company Capital Stock are duly authorized, validly issued, fully paid and non-assessable and not subject to preemptive rights created by statute, the certificate of incorporation or bylaws of the Company, or any agreement to which the Company is a party or by which it is bound, and have been issued in compliance with federal and state securities laws. All outstanding shares of Company Capital Stock and Company Options have been issued or repurchased (in the case of shares that were outstanding and repurchased by the Company or any stockholder of the Company) in compliance with all applicable federal, state, foreign, or local statutes, laws, rules, or regulations, including federal and state securities laws. The Company has not, and will not have, suffered or incurred any liability (contingent or otherwise) or claim, loss, liability, damage, deficiency, cost or expense relating to or arising out of the issuance or repurchase of any Company Capital Stock or options to purchase Company Capital Stock, or out of any agreements or arrangements relating thereto (including any amendment of the terms of any such agreement or arrangement). There are no declared or accrued but unpaid dividends with respect to any shares of Company Capital Stock. The Company has no other capital stock authorized or, as of the date hereof, issued or outstanding. SECTION 2.2(a)(2) of the Disclosure Schedule sets forth for all holders of Company Unvested Common Stock as of the date hereof, the name of such holder of such Company Unvested Common Stock, the repurchase price of such Company Unvested Common Stock, and the vesting schedule for such Company Unvested Common Stock, including the extent vested as of October 25, 2002 and

whether the vesting of such Company Unvested Common Stock will be accelerated by the transactions contemplated by this Agreement. No vesting provisions applicable to any shares of Company Unvested Common Stock, to Company Options, or to any other rights to purchase Company Common Stock will accelerate as a result of the Merger or as a result of any other events.

(b) Except for the Plans, the Company has never adopted, sponsored or maintained any stock option plan or any other plan or agreement providing for equity compensation to any person. The Company has reserved 21,304,471 shares of Company Common Stock for issuance to employees and directors of, and consultants to, the Company upon the issuance of stock or the exercise of options granted under the Plans or any other plan, agreement or arrangement (whether written or oral, formal or informal), of which (i) 1,961,437 shares are issuable, as of the date hereof, upon the exercise of outstanding, unexercised options granted under the Stock Plan, and (ii) 15,466,638 shares have been issued and remain outstanding, as of the date hereof, upon the exercise of options granted under the Stock Plan. SECTION 2.2(b) of the Disclosure Schedule sets forth for each outstanding Company Option as of the date hereof, the name of the holder of such option, the domicile address of such holder, the number of shares of Company Capital Stock issuable upon the exercise of such option, the exercise price of such option, the vesting schedule for such option, including the extent vested as of October 25, 2002 and whether the vesting of such option will be accelerated by the transactions contemplated by this Agreement, and whether such option is a nonstatutory option or intended to qualify as an incentive stock option as defined in Section 422 of the Code. SECTION 2.2(b)(1) of the Disclosure Schedule sets forth the outstanding principal, accrued interest and applicable rate of interest of all outstanding Stockholder loans of the type described in SECTION 1.6(g) hereto. As of the date hereof, an aggregate of 1,975,271 shares of Company Common Stock are issuable upon the exercise of outstanding Company Options. Except for warrants listed on SECTION 2.2(b)(2) and the Company Options, there are no options, warrants, calls, rights, convertible securities, commitments or agreements of any character, written or oral, to which the Company is a party or by which the Company is bound obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of the capital stock of the Company or obligating the Company to grant, extend, accelerate the vesting of, change the price of, otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. There are no outstanding or authorized stock appreciation, phantom stock, profit participation, or other similar rights with respect to the Company. Except as contemplated hereby, there are no voting trusts, proxies, or other agreements or understandings with respect to the voting stock of the Company. There are no agreements to which the Company is a party relating to the registration, sale or transfer (including agreements relating to rights of first refusal, co-sale rights or "drag-along" rights) of any Company Capital Stock. As a result of the Merger, Parent will be the sole record and beneficial holder of all issued and outstanding Company Capital Stock and all rights to acquire or receive any shares of Company Capital Stock, whether or not such shares of Company Capital Stock are outstanding.

(c) As of the Effective Time, the allocation of the Total Consideration set forth in SCHEDULE 1.6(b) will be consistent with the certificate of incorporation of the Company as of immediately prior to the Effective Time. The valuation of the shares of Parent Common Stock

subject to the Lock-up Provision (as reflected in SCHEDULE 1.6(b)) has been approved by the Company's Board of Directors and, as of the Effective Time, will have been approved by the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all Company Preferred in accordance with the Company's charter.

2.3 SUBSIDIARIES

The Company does not have and never has had any subsidiaries. The Company does not otherwise own and has never otherwise owned any shares of capital stock or any interest in any other corporation, limited liability company, partnership, association, joint venture or other business entity. The Company does not control and has never controlled, directly or indirectly, any other corporation, limited liability company, partnership, association, joint venture or other business entity.

2.4 AUTHORITY

The Company has all requisite power and authority to enter into this Agreement and any Related Agreements to which it is a party and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and any Related Agreements to which the Company is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of the Company and no further action is required on the part of the Company to authorize the Agreement and any Related Agreements to which it is a party and the transactions contemplated hereby and thereby, subject only to the adoption of this Agreement by the Stockholders. The vote required to approve this Agreement by the Stockholders is set forth in SECTION 2.4 of the Disclosure Schedule. This Agreement and the Merger have been approved by the Board of Directors of the Company without any abstentions or dissentions. This Agreement and each of the Related Agreements to which the Company is a party has been duly executed and delivered by the Company and assuming the due authorization, execution and delivery by the other parties hereto and thereto, constitute the valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms.

2.5 NO CONFLICT

(a) The execution and delivery by the Company of this Agreement and any Related Agreement to which the Company is a party, and the consummation of the transactions contemplated hereby and thereby, will not conflict with or result in any violation of or default under (with or without notice or lapse of time, or both) or give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any benefit under (any such event, a "CONFLICT") (i) any provision of the certificate of incorporation, bylaws or charter documents of the Company, as amended, (ii) any mortgage, indenture, lease, contract, covenant or other agreement, instrument or commitment, permit, concession, franchise or license (each a "CONTRACT" and collectively the "CONTRACTS") to which the Company or any of its respective properties or assets

(whether tangible or intangible) is subject, or (iii) any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Company or any of its respective properties (whether tangible or intangible) or assets in effect as of the date hereof.

(b) The Company is in compliance with and has not breached, violated or defaulted under, or received notice that it has breached, violated or defaulted under, any of the terms or conditions of any Contract, nor does the Company have knowledge of any event that would constitute such a breach, violation or default with the lapse of time, giving of notice or both.

(c) Each Contract is in full force and effect, and the Company is not subject to any default thereunder, nor to the knowledge of the Company is any party obligated to the Company pursuant to any such Contract subject to any default thereunder.

(d) SECTION 2.5(d) of the Disclosure Schedule sets forth all necessary consents, waivers and approvals of parties to any Contracts as are required thereunder in connection with the Merger for any such Contract to remain in full force and effect without limitation, modification or alteration after the Effective Time so as to preserve all rights of, and benefits to, the Company under such Contracts to the same extent as prior to the Effective Time.

(e) As of immediately after the Effective Time, the Surviving Corporation will be permitted to exercise all of its rights under the Contracts without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments which the Company would otherwise be required to pay pursuant to the terms of such Contracts had the transactions contemplated by this Agreement not occurred.

2.6 CONSENTS

No consent, notice, waiver, approval, order or authorization of, or registration, declaration or filing with any court, administrative agency or commission or other federal, state, county, local or other foreign governmental authority, instrumentality, agency or commission (each, a "GOVERNMENTAL ENTITY") or any third party, including a party to any agreement with the Company (so as not to trigger any Conflict), is required by, or with respect to, the Company in connection with the execution and delivery of this Agreement and any Related Agreement to which the Company is a party or the consummation of the transactions contemplated hereby and thereby, except for (i) such consents, notices, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under state and federal securities laws, (ii) such consents listed on SECTION 2.5 of the Disclosure Schedule, (iii) the issuance of the California Permit (as defined in SECTION 5.1) by the California Department of Corporations, (iv) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR ACT"), (v) the filing of the Certificate of Merger with the Delaware Secretary of State and (vi) the adoption of this Agreement and approval of the transactions contemplated by this Agreement by the Stockholders.

2.7 COMPANY FINANCIAL STATEMENTS

SECTION 2.7 of the Disclosure Schedule sets forth the Company's (i) unaudited balance sheet as of January 26, 2002 (the "YEAR END BALANCE SHEET DATE"), and January 31, 2001 and the related unaudited statements of operations, stockholders' equity and cash flows for the respective twelve (12) month periods then ended (the "YEAR-END FINANCIALS"), and (ii) unaudited balance sheet as of September 28, 2002 (the "BALANCE SHEET DATE") and the related unaudited statements of operations, stockholders' equity and cash flows for the eight (8) month period then ended (the "Interim Financials"). The Year-End Financials and the Interim Financials (collectively referred as the "FINANCIALS") are true and correct in all material respects and have been prepared in accordance with GAAP consistently applied on a consistent basis throughout the periods indicated and consistent with each other (except that the Financials do not contain footnotes). The Financials present fairly the Company's consolidated financial condition, operating results and cash flows as of the dates and during the periods indicated therein, subject in the case of the Interim Financials to normal year-end adjustments, which are not material in amount or significance in any individual case or in the aggregate. The Company's balance sheet as of the Balance Sheet Date is referred to hereinafter as the "CURRENT BALANCE SHEET."

2.8 NO UNDISCLOSED LIABILITIES

The Company does not have any liability, indebtedness, obligation, expense, claim, deficiency, guaranty or endorsement of any type, whether accrued, absolute, contingent, matured, unmatured or other (whether or not required to be reflected in financial statements in accordance with GAAP), which individually or in the aggregate (i) has not been reflected in the Current Balance Sheet, or (ii) has not arisen in the ordinary course of business consistent with past practices since the Balance Sheet Date.

2.9 NO CHANGES

Except in compliance with this Agreement, since the Current Balance Sheet Date (or, with respect to subsections (c) and (d) below, between the Current Balance Sheet Date and the date hereof), there has not been, occurred or arisen any:

(a) transaction by the Company except in the ordinary course of business as conducted on that date and consistent with past practices;

(b) amendments or changes to the certificate of incorporation or bylaws of the Company;

(c) capital expenditure by the Company exceeding \$25,000 individually or \$75,000 in the aggregate;

(d) payment, discharge or satisfaction, in any amount in excess of \$25,000 in any one case, or \$50,000 in the aggregate, of any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise of the Company), other than payments, discharges or

satisfactions in the ordinary course of business of obligations set forth in the Balance Sheet or Disclosure Schedule;

(e) destruction of, damage to, or loss of any material assets (whether tangible or intangible), material business or material customer of the Company (whether or not covered by insurance);

(f) employment dispute, including but not limited to, claims or matters raised by any individuals or any workers' representative organization, bargaining unit or union regarding labor trouble or claim of wrongful discharge or other unlawful employment or labor practice or action with respect to the Company;

(g) change in accounting methods or practices (including any change in depreciation or amortization policies or rates) by the Company other than as required by GAAP;

(h) change in any material election in respect of Taxes (as defined below), adoption or change in any accounting method in respect of Taxes, agreement or settlement of any claim or assessment in respect of Taxes, or extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes;

(i) revaluation by the Company of any of its assets (whether tangible or intangible);

(j) declaration, setting aside or payment of a dividend or other distribution (whether in cash, stock or property) in respect of any Company Capital Stock, or any split, combination or reclassification in respect of any shares of Company Capital Stock, or, except in accordance with the Company's certificate of incorporation, any issuance or authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of Company Capital Stock, or any direct or indirect repurchase, redemption, or other acquisition by the Company of any shares of Company Capital Stock (or options, warrants or other rights convertible into, exercisable or exchangeable therefor), except in accordance with the agreements evidencing Company Options, Company Unvested Common Stock or Company Warrants;

(k) increase in the salary or other compensation payable or to become payable by the Company to any of its officers, directors, employees or advisors, or the declaration, payment or commitment or obligation of any kind for the payment (whether in cash or equity) by the Company of a severance payment, termination payment, bonus or other additional salary or compensation to any such person;

(l) material agreement, contract, covenant, instrument, lease, license or commitment to which the Company is a party or by which it or any of its assets (whether tangible or intangible) are bound or any termination, extension, amendment or modification of the terms of any agreement, contract, covenant, instrument, lease, license or commitment to which the Company is a party or by which it or any of its assets are bound;

(m) sale, lease, license or other disposition of any of the assets (whether tangible or intangible) or properties of the Company, including, but not limited to, the sale of any accounts receivable of the Company, or any creation of any security interest in such assets or properties;

(n) loan by the Company to any person or entity, incurring by the Company of any indebtedness, guaranteeing by the Company of any indebtedness, issuance or sale of any debt securities of the Company or guaranteeing of any debt securities of others, except for advances to employees for travel and business expenses in the ordinary course of business consistent with past practices;

(o) waiver or release of any right or claim of the Company, including any write-off or other compromise of any account receivable of the Company;

(p) commencement or settlement of any lawsuit by the Company, the commencement, settlement, notice or, to the Knowledge of the Company, threat of any lawsuit or proceeding or other investigation against the Company or its affairs, or to the Knowledge of the Company, any reasonable basis for any of the foregoing;

(q) notice of any claim or potential claim of ownership by any person other than the Company of the Company Intellectual Property (as defined in SECTION 2.13 hereof) owned by or developed or created by the Company or of infringement by the Company of any other person's Intellectual Property (as defined in SECTION 2.13 hereof);

(r) issuance or sale, or contract or agreement to issue or sell, by the Company of any shares of Company Capital Stock or securities convertible into, or exercisable or exchangeable for, shares of Company Capital Stock, or any securities, warrants, options or rights to purchase any of the foregoing, except for issuances of Company Capital Stock upon the exercise of options issued under the Plans or upon the exercise of Company Warrants;

(s) (i) sale or license of any Company Intellectual Property or execution, modification or amendment of any agreement with respect to the Company Intellectual Property with any person or entity or with respect to the Intellectual Property of any person or entity, or (ii) purchase or license of any Intellectual Property or execution, modification or amendment of any agreement with respect to the Intellectual Property of any person or entity, (iii) agreement or modification or amendment of an existing agreement with respect to the development of any Intellectual Property with a third party, or (iv) change in pricing or royalties set or charged by the Company to its customers or licensees or in pricing or royalties set or charged by persons who have licensed Intellectual Property to the Company;

(t) agreement or modification to any agreement pursuant to which any other party was granted marketing, distribution, development, manufacturing or similar rights of any type or scope with respect to any products or technology of the Company;

(u) event or condition of any character that has had or is reasonably likely to have a Company Material Adverse Effect;

(v) lease, license, sublease or other occupancy of any Leased Real Property by the Company; or

(w) agreement or commitment by the Company, or any officer or employees on behalf of the Company, to do any of the things described in the preceding clauses (a) through (v) of this SECTION 2.9 (other than negotiations with Parent and its representatives regarding the transactions contemplated by this Agreement and the Related Agreements).

2.10 TAX MATTERS

(a) DEFINITION OF TAXES. For the purposes of this Agreement, the term "TAX" or, collectively, "TAXES" shall mean (i) any and all federal, state, local and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes as well as public imposts, fees and social security charges (including but not limited to health, unemployment and pension insurance), together with all interest, penalties and additions imposed with respect to such amounts, (ii) any liability for the payment of any amounts of the type described in clause (i) of this SECTION 2.10(a) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period, and (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) of this SECTION 2.10(a) as a result of any express or implied obligation to indemnify any other person or as a result of any obligation under any agreement or arrangement with any other person with respect to such amounts and including any liability for taxes of a predecessor entity.

(b) TAX RETURNS AND AUDITS.

(i) The Company has (a) prepared and timely filed all required federal, state, local and foreign returns, estimates, information statements and reports relating to any and all Taxes concerning or attributable to the Company or its operations ("RETURNS") when due and such Returns are true and correct and have been completed in accordance with applicable law and (b) timely paid all Taxes shown to be due on such Returns.

(ii) The Company has withheld with respect to its Employees all federal, state and foreign income taxes and social security charges and similar fees, Federal Insurance Contribution Act ("FICA"), Federal Unemployment Tax Act ("FUTA") and other Taxes required to be withheld, and has timely paid such taxes withheld over to the appropriate authorities.

(iii) There is no Tax deficiency assessed or proposed against the Company, and the Company has not executed any waiver of any statute of limitations on or extending the period for the assessment or collection of any Tax.

(iv) No audit or other examination of any Return of the Company is presently in progress, nor has the Company been notified of any request for such an audit or other examination.

(v) The Company does not have any liabilities for unpaid Taxes for periods ending on or before the Balance Sheet Date which have not been accrued or reserved on the Balance Sheet, whether asserted or unasserted, contingent or otherwise, and the Company has not incurred any liability for Taxes since the Current Balance Sheet Date other than in the ordinary course of business.

(vi) The Company has made available to Parent or its legal counsel, copies of all foreign, federal, state and local income, payroll and unemployment Returns and all state and local property and sales and use Returns for the Company filed for all periods since its inception that have been requested by Parent.

(vii) There are no Liens on the assets of the Company relating to or attributable to Taxes other than Liens for Taxes not yet due and payable.

(viii) To the Knowledge of the Company, there is no basis for the assertion of any claim relating or attributable to Taxes which, if adversely determined, would result in any Lien on the assets of the Company.

(ix) None of the Company's assets is treated as "tax-exempt use property," within the meaning of Section 168(h) of the Code.

(x) The Company has not filed any consent agreement under Section 341(f) of the Code or agreed to have Section 341(f)(4) of the Code apply to any disposition of a subsection (f) asset (as defined in Section 341(f)(4) of the Code) owned by the Company.

(xi) The Company has (a) never been a member of an affiliated group (within the meaning of Code Section 1504(a)) filing a consolidated federal income Tax Return (other than a group the common parent of which was Company), (b) never been a party to any Tax sharing, indemnification or allocation agreement, (c) no liability for the Taxes of any person (other than Company) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract or agreement, or otherwise and (d) never been a party to any joint venture, partnership or other arrangement that could be treated as a partnership for Tax purposes.

(xii) The Company has not been, at any time, a "United States Real Property Holding Corporation" within the meaning of Section 897(c)(2) of the Code.

(xiii) No adjustment relating to any Return filed by the Company has been proposed formally or, to the Knowledge of the Company, informally by any tax authority to the Company or any representative thereof.

(xiv) The Company has not constituted either a "distributing corporation" or a "controlled corporation" in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code (x) in the two (2) years prior to the date of this Agreement or (y) in a distribution which could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) in conjunction with the Merger.

(c) EXECUTIVE COMPENSATION TAX. There is no contract, agreement, plan or arrangement to which the Company is a party, including, without limitation, the provisions of this Agreement, covering any Employee of the Company, which, individually or collectively, could give rise to the payment of any amount that would have been deductible but for Sections 280G, 404 or 162(m) of the Code.

2.11 RESTRICTIONS ON BUSINESS ACTIVITIES

There is no agreement (non-competition or otherwise), commitment, judgment, injunction, order or decree to which the Company is a party or otherwise binding upon the Company which has or may reasonably be expected to have the effect of prohibiting or impairing any business practice of the Company, any acquisition of property (tangible or intangible) by the Company, the conduct of business by the Company, or otherwise limiting the freedom of the Company to engage in any line of business or to compete with any person. Without limiting the generality of the foregoing, the Company has not entered into any agreement under which the Company is restricted from selling, licensing, manufacturing or otherwise distributing any of its technology or products or from providing services to customers or potential customers or any class of customers, in any geographic area, during any period of time, or in any segment of the market.

2.12 TITLE TO PROPERTIES; ABSENCE OF LIENS AND ENCUMBRANCES; CONDITION OF EQUIPMENT; CUSTOMER INFORMATION

(a) The Company does not own any real property, nor has the Company ever owned any real property. SECTION 2.12(a) of the Disclosure Schedule sets forth a list of all real property currently leased, subleased or licensed by or from the Company or otherwise used or occupied by the Company for the operation of its business (the "LEASED REAL PROPERTY"), the name of the lessor, licensor, sublessor, master lessor and/or lessee the date and term of the lease, license, sublease or other occupancy right and each amendment thereto and, with respect to any current lease, license, sublease or other occupancy right the aggregate annual rental payable thereunder.

(b) The Company has provided Parent true, correct and complete copies of all leases, lease guaranties, licenses, subleases, agreements for the leasing, use or occupancy of, or otherwise granting a right in or relating to the Leased Real Property, including all amendments, terminations

and modifications thereof ("LEASE AGREEMENTS"); there are no other Lease Agreements affecting the Leased Real Property to which the Company is a party and, to the Knowledge of the Company there are no other Lease Agreements affecting the Leased Real Property, other than those identified in SECTION 2.12(a) of the Disclosure Schedule. All such Lease Agreements are valid and effective in accordance with their respective terms, and there is not, under any of such leases, any existing default by the Company or to the Knowledge of the Company, by any party thereto, or event of default by the Company or to the Knowledge of the Company, by any other party thereto (or event which with notice or lapse of time, or both, would constitute a default by the Company or to the Knowledge of the Company, by any other party thereto). The Company has not received any notice of a default, alleged failure to perform, or any offset or counterclaim with respect to any such Lease Agreement, which has not been fully remedied and withdrawn. Except as set forth in SECTION 2.12(b) of the Disclosure Schedule, the Closing will not affect the enforceability against any person of any such Lease Agreement or the rights of the Company or the Surviving Corporation to the continued use and possession of the Leased Real Property for the conduct of business as presently conducted. The Company currently occupies all of the Leased Real Property for the operation of its business except as set forth in SECTION 2.12(a) of the Disclosure Schedule. There are no other parties occupying, or with a right to occupy, the Leased Real Property, except as set forth in SECTION 2.12(a) of the Disclosure Schedule. The Company has performed all of its obligations under any termination agreements pursuant to which it has terminated any leases of real property that are no longer in effect and has no continuing liability with respect to such terminated real property leases.

(c) To the Knowledge of the Company, the Leased Real Property is in good operating condition and repair, free from structural, physical and mechanical defects, is maintained in a manner consistent with standards generally followed with respect to similar properties, and is otherwise suitable for the conduct of the business as presently conducted. Neither the operation of the Company on the Leased Real Property nor, to the Company's knowledge, such Leased Real Property, including the improvements thereon, violate in any material respect any applicable building code, zoning requirement or statute relating to such property or operations thereon.

(d) The Company has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of its tangible properties and assets, real, personal and mixed, used or held for use in its business, free and clear of any Liens, except (i) as reflected in the Current Balance Sheet, (ii) Liens for Taxes not yet due and payable, and (iii) such imperfections of title and encumbrances, if any, which do not detract from the value or interfere with the present use of the property subject thereto or affected thereby.

(e) SECTION 2.12(e) of the Disclosure Schedule lists all material items of equipment (the "EQUIPMENT") owned, leased or used by the Company, and such Equipment is (i) adequate for the conduct of the business of the Company as currently conducted and as currently contemplated to be conducted, and (ii) in good operating condition, regularly and properly maintained, subject to normal wear and tear. After the Effective Time, the Surviving Corporation will have the same rights to, and use of, the Equipment that the Company had prior to the Effective Time.

(f) The Company has sole and exclusive ownership, free and clear of any Liens, of all customer lists, customer contact information, customer correspondence and customer licensing and purchasing histories relating to its current and former customers (the "CUSTOMER INFORMATION"). No person other than the Company possesses any claims or rights with respect to use of the Customer Information.

2.13 INTELLECTUAL PROPERTY

(a) For all purposes of this Agreement, the following terms shall have the following respective meanings:

"INTELLECTUAL PROPERTY" shall mean any or all of the following (i) works of authorship including, without limitation, computer programs, source code, and executable code, whether embodied in software, firmware or otherwise, architecture, documentation, designs, files, records, and data, (ii) inventions (whether or not patentable), discoveries, improvements, and technology, (iii) proprietary and confidential information, trade secrets and know how, (iv) databases, data compilations and collections and technical data, (v) logos, trade names, trade dress, trademarks and service marks, (vi) domain names, web addresses and sites, (vii) tools, methods and processes, (viii) devices, prototypes, schematics, breadboards, netlists, maskworks, test methodologies, Verilog files, emulation and simulation reports, test vectors and hardware development tools, and (ix) any and all instantiations of the foregoing in any form.

"INTELLECTUAL PROPERTY RIGHTS" shall mean worldwide common law and statutory rights associated with (i) patents and patent applications, (ii) copyrights, copyright registrations and copyright applications, "moral" rights and mask work rights, (iii) the protection of trade and industrial secrets and confidential information, (iv) other proprietary rights relating to intangible intellectual property, (v) trademarks, trade names, domain names and service marks, (vi) analogous rights to those set forth above, and (vii) divisions, continuations, renewals, reissuances and extensions of the foregoing (as applicable).

"COMPANY INTELLECTUAL PROPERTY" shall mean any and all Intellectual Property and Intellectual Property Rights that are owned by or exclusively licensed to the Company, including without limitation Company Registered Intellectual Property.

"REGISTERED INTELLECTUAL PROPERTY" shall mean Intellectual Property Rights that have been registered, filed, or otherwise perfected or recorded with or by any state, government or other public or quasi-public legal authority.

"SOFTWARE" means any and all computer software and code, including assemblers, applets, compilers, source code, object code, data (including image and sound data), design tools and user interfaces, in any form or format, however fixed. Software shall include source code listings and documentation.

"COMPANY PRODUCTS" means all products, Software or service offerings of the Company that have been sold, distributed or otherwise disposed of prior to the date of this Agreement or which the Company intends to sell, distribute or otherwise dispose of in the future, including any products, Software or service offerings under development.

"COMPANY REGISTERED INTELLECTUAL PROPERTY" means all Registered Intellectual Property owned by, or filed in the name of, the Company.

When used in SECTION 2.13 of this Agreement, the phrase "AS THE COMPANY CURRENTLY PLANS TO CONDUCT ITS BUSINESS" or any similar phrase thereto means, with respect to products currently under development, the functionality and feature set for such products based upon the current specifications, or, if no such specifications exist, the functionality and feature set of the most recent version of any prototype or development version of such products.

(b) SECTION 2.13(b) of the Disclosure Schedule contains a complete and accurate list (by name and version number) of all Company Products.

(c) SECTION 2.13(c) of the Disclosure Schedule (i) lists all Company Registered Intellectual Property and (ii) lists any proceedings or actions pending before any court, tribunal (including the United States Patent and Trademark Office (the "PTO") or equivalent authority anywhere in the world) related to any of the Company Registered Intellectual Property.

(d) Each item of Company Registered Intellectual Property (other than pending applications) is in force, and all necessary registration, maintenance and renewal fees in connection with such Company Registered Intellectual Property have been paid and all necessary documents and certificates in connection with such Company Registered Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining such Registered Intellectual Property. As of the date of this Agreement, other than as set forth in SECTION 2.13(d) of the Disclosure Schedule, there are no actions that must be taken by the Company before February 28, 2003, that, if not taken, would result in the invalidity or abandonment of such Company Registered Intellectual Property or would otherwise cause such Company Registered Intellectual Property to not be in force, including the payment of any registration, maintenance or renewal fees or the filing of any documents, applications or certificates for the purposes of maintaining, perfecting or preserving or renewing any Registered Intellectual Property. In each case in which the Company has acquired ownership of, or purports to have acquired ownership of, any material Intellectual Property Rights from any person, the Company has obtained a valid and enforceable assignment sufficient to irrevocably transfer all rights (other than "moral rights" and other rights that are inherently non-assignable) in such Intellectual Property Rights (including the right to seek past and future damages with respect thereto) to the Company and, to the maximum extent provided for by, and in accordance with, applicable laws and regulations, and except as set forth in SECTION 2.13(d) of the Disclosure Schedule, the Company has recorded each such assignment with the relevant governmental authorities, including the PTO, the U.S. Copyright Office, or their respective equivalents in any relevant foreign jurisdiction, as the case may be.

(e) Each item of Company Intellectual Property owned by Company, including all Company Registered Intellectual Property listed in SECTION 2.13(c) of the Disclosure Schedule, is free and clear of any Liens or other restrictions on, or payment obligations with respect to, the transferability, alienability or licensability thereof, other than (i) non-exclusive licenses of Intellectual Property granted by the Company, which do not otherwise restrict Company's exploitation of such Intellectual Property, and (ii) as set forth on SECTION 2.13(e) of the Disclosure Schedule. The Company is the exclusive owner or exclusive licensee of all Company Intellectual Property.

(f) Except as set forth in SECTION 2.13(f) of the Disclosure Schedule, to the extent that any Intellectual Property material to Company's business has been developed or created independently or jointly by any person other than the Company for which the Company has, directly paid compensation for such development or creation, the Company has a written agreement with such person with respect thereto, and the Company thereby has obtained ownership of, and is the exclusive owner of, all such Intellectual Property therein and associated Intellectual Property Rights by operation of law or by valid assignment, and has required the waiver of all non-assignable rights, including but not limited to, all author or moral rights.

(g) Except as set forth in SECTION 2.13(g) of the Disclosure Schedule, the Company has not (i) transferred ownership of, or granted any exclusive license of or exclusive right to use, or authorized the retention of any exclusive rights to use or joint ownership of, any Intellectual Property or Intellectual Property Rights that is or was Company Intellectual Property, to any other person or (ii) permitted the Company's rights in such Company Intellectual Property to enter into the public domain (other than through the expiration of Registered Intellectual Property at the end of its statutory term).

(h) Except as set forth on SECTION 2.13(h) of the Disclosure Schedule, all Intellectual Property used in or necessary to the conduct of Company's business as presently conducted or as the Company currently plans to conduct it (other than Software licensed to Company pursuant to "shrink-wrap" and other similar unsigned, generally available commercial licenses licensed on a mass-market basis,) was written and created solely by either (i) employees of the Company acting within the scope of their employment who have validly and irrevocably assigned all of their rights, including all Intellectual Property Rights therein, to the Company or (ii) by third parties who have validly and irrevocably assigned all of their rights, including all Intellectual Property Rights therein, to the Company, and no such third party owns or has any exclusive rights to any such Company Intellectual Property.

(i) Other than (i) the Intellectual Property licensed to Company pursuant to "shrink-wrap" and other similar unsigned, generally available commercial licenses licensed on a mass-market basis, and (ii) the Intellectual Property licensed to the Company pursuant to the licenses set forth on SECTION 2.13(i) of the Disclosure Schedule, (a) the Company Intellectual Property, other than patents owned by or exclusively licensed to the Company, constitutes all of the Intellectual Property and Intellectual Property Rights, other than patents, that are used in, or necessary to or that

otherwise would be infringed by the conduct of the business of the Company as it currently is conducted or as the Company currently plans to conduct it, and (b) to the Knowledge of the Company, the patents owned by or exclusively licensed to the Company constitute all patents that are used in, or necessary to or that otherwise would be infringed by the conduct of the business of the Company as it currently is conducted or as the Company currently plans to conduct it.

(j) Other than "shrink-wrap" and other similar unsigned, generally available commercial licenses licensed on a mass-market basis, SECTION 2.13(j) of the Disclosure Schedule lists all contracts, licenses and agreements to which the Company is a party pursuant to which Company grants a license or any rights to any Company Registered Intellectual Property or any other material Company Intellectual Property, to any third party.

(k) Except as set forth in SECTION 2.13(k) of the Disclosure Schedule, other than pursuant to "shrink-wrap" and other similar unsigned, generally available commercial licenses licensed on a mass-market basis, but not including public or open technology, no third party who has licensed Intellectual Property or Intellectual Property Rights to the Company has ownership rights or license rights to improvements made by the Company in such Intellectual Property which has been licensed to the Company.

(l) Other than "shrink-wrap" and other similar unsigned, generally available commercial licenses licensed on a mass-market basis, SECTION 2.13(l) of the Disclosure Schedule lists all contracts, licenses and agreements between the Company and any other person wherein or whereby the Company has agreed to, or assumed, any obligation or duty to indemnify, reimburse, hold harmless, guaranty, or otherwise assume or incur any obligation or liability with respect to, or to provide such person a right to terminate or rescind such agreement as a result of, or has made any express warranty concerning the absence of, the infringement or misappropriation by the Company, or such other person of the Intellectual Property Rights of any person other than the Company or such other person.

(m) There are no contracts, licenses or agreements between the Company and any other person with respect to Company Intellectual Property or other Intellectual Property used in and/or necessary to the conduct of the business as it is currently conducted or as the Company currently plans to conduct it, under which there is any material dispute regarding the scope of such agreement, or performance under such agreement (other than routine warranty claims) including with respect to any payments to be made or received by the Company thereunder.

(n) Except as set forth in SECTION 2.13(n) of the Disclosure Schedule, the operation of the business of the Company as it is currently conducted, or is currently contemplated to be conducted, by the Company, including but not limited to the design, development, use, import, branding, advertising, promotion, marketing, manufacture and sale of any product, technology or service (including products, technology or services currently under development) of the Company does not (i) infringe or misappropriate any Intellectual Property Rights, other than patents, of any person, (ii) to the Knowledge of the Company, infringe any patent of any person, (iii) violate any proprietary right, other than patents, of any person (including any right to privacy or publicity) under

the laws of any jurisdiction, or (iv) constitute unfair competition or trade practices under the laws of any jurisdiction in which the Company or its Subsidiaries, as applicable, do business, and, with respect to each of subsections (i), (ii), (iii) and (iv) above, the Company has not received written notice from any person claiming that such operation or any product, technology or service (including products, technology or services currently under development) or Intellectual Property of the Company infringes or misappropriates any Intellectual Property Rights of any person or constitutes unfair competition or trade practices under the laws of any jurisdiction (nor does the Company have Knowledge of any legitimate basis for any claim).

(o) Except as set forth in SECTION 2.13(o) of the Disclosure Schedule, neither this Agreement nor the completion of the transactions contemplated by this Agreement will, pursuant to any express provision(s) of any written agreements to which the Company is a party, in and of itself, directly result in: (i) Parent or the Surviving Corporation granting to any third party any right to any Intellectual Property Rights owned by or licensed to Parent or the Surviving Corporation, which would not have been granted in the absence of this Agreement or the completion of the transactions contemplated hereby, (ii) Parent or the Surviving Corporation, becoming bound by, or made subject to any non-compete or other material restriction on the operation or scope of their respective businesses to which the Surviving Corporation or Parent would not have been bound or subject in the absence of this Agreement or the transactions contemplated hereby, (iii) Parent or the Surviving Corporation being obligated to pay any royalties or other material amounts to either third party in excess of those payable by any of them, respectively, in the absence of this Agreement or the transactions contemplated hereby, (iv) Parent or the Surviving Corporation becoming bound by, or made subject to, any restriction on, or payment obligation with respect to, the transferability, alienability or licensability of any Company Intellectual Property to which the Surviving Corporation or Parent would not have been bound or subject in the absence of this Agreement or the transactions contemplated hereby, or (v) the Surviving Corporation not having all of the Intellectual Property Rights possessed by Company immediately prior to the Closing Date; in each of (i), (ii), (iii), (iv) and (v), without reference to any contractual commitment between Parent and any third party other than the Related Agreements, any other agreements entered into concurrently with this Agreement or as of the Closing Date as part of the transactions contemplated by this Agreement, and agreements Parent automatically becomes subject to as a direct result of the transactions contemplated by this Agreement.

(p) To the Knowledge of the Company, no person or entity is infringing or misappropriating any Company Intellectual Property.

(q) The Company has taken all reasonable steps that are required or necessary to protect the Company's rights in trade secrets and other material confidential information of the Company or provided by any other person to the Company under a duty of confidentiality binding on the Company. Without limiting the foregoing, the Company has, and enforces, a policy requiring each employee to execute proprietary information, confidentiality and assignment agreements substantially in the Company's standard forms, and all current and former employees of the Company have executed such an agreement in substantially the Company's standard form. In

addition, except as set forth in SECTION 2.13(q) of the Disclosure Schedule, Company has entered into a written agreement with each current and former consultant or contractor whom Company specifically retained to develop or create for Company any Intellectual Property material to the Company's business, requiring each such current and former consultant or contractor to assign such Intellectual Property to Company.

(r) No Company Intellectual Property, or Intellectual Property Rights subsisting therein, is subject to any proceeding or outstanding decree, order, judgment or settlement agreement or stipulation that restricts in any manner the use, transfer or licensing thereof by the Company or adversely affects the use or enforceability of such Company Intellectual Property by the Company.

(s) To the Knowledge of the Company, no (i) product, technology, service or publication of the Company, (ii) material published or distributed by the Company, or (iii) conduct or statement of the Company constitutes a defamatory statement, false advertising or otherwise violates any law or regulation regarding advertising, publishing or distribution of content.

(t) (i) (A) No government funding, facilities or resources of a university, college, or other educational institution or research center was used in the development of the Company Intellectual Property owned by the Company, and (B) no Governmental Entity, university, college, other educational institution or research center has any claim or right in or to the Company Intellectual Property owned by the Company.

(ii) Except as set forth on SECTION 2.13(t)(ii) of the Disclosure Schedule, no current or former employee, consultant or independent contractor of the Company who was involved in, or who contributed to, the creation or development of any Company Intellectual Property, also performed research or development services for the government, a university, college or other higher educational institution, or a similar research center, during a period of time during which such employee, consultant or independent contractor was also performing services for the Company, in a manner that would cause the government or such university, college or other higher educational institution, or similar research center, to have any rights in or to any Company Intellectual Property owned by the Company or purported to be owned by Company, or which, but for such person's services performed for such educational institution or research center, would have been owned by Company.

(u) SECTION 2.13(u) of the Disclosure Schedule sets forth all Intellectual Property, other than Company Intellectual Property, that (i) Company has incorporated into, integrated or bundled with any Company Product, or (ii) other than Software licensed to Company pursuant to "shrink-wrap" and other similar unsigned, generally available commercial licenses licensed on a mass-market basis, is used in the development or compilation of any Company Product.

(v) (i) SECTION 2.13(v)(i) of the Disclosure Schedule sets forth all Software that constitutes open source, public source or freeware Intellectual Property (excluding immaterial Software for which no license terms, including attribution requirements, are applicable), or any

modification or derivative thereof, including any version of any Software licensed pursuant to any GNU-, GPL-, or Mozilla-based, or any other similar public license or limited public license, that was directly used in, incorporated into, integrated or bundled with any Company Intellectual Property, or incorporated into, integrated or bundled with, or directly used in the development or compilation of any Company Products.

(ii) Except as set forth in SECTION 2.13(v)(ii) of the Disclosure Schedule, the use or distribution of the Software identified in SECTION 2.13(v)(i) of the Disclosure Schedule (the "Open Software"), as used or distributed by Company, or contemplated to be used or distributed by Company, does not impose any material obligations or restrictions (other than attribution requirements) upon the use, disclosure or distribution of any Software or Intellectual Property other than the Open Software, including without limitation obligating the disclosure of the source code of any Software or Intellectual Property other than the Open Software, or the distribution without charge of any Software or Intellectual Property other than the Open Software.

(w) Company has the right to use all Software development tools, library functions, compilers and all other third-party Software that Company uses to create, modify, compile, operate or support any Software that is Company Intellectual Property or is incorporated into any Company Product.

(x) SECTION 2.13(x) of the Disclosure Schedule sets forth a true and accurate list of all agreements to which Company is a party or which govern Company's use of any Software used by Company in the conduct of its business (including unsigned, generally available commercial licenses licensed on a mass-market basis) pursuant to which: (i) Company is granted the right to distribute Software not owned by Company that Company distributes or plans to distribute; (ii) Company is granted access to, or any rights to use, the source code of any Software not owned by Company that the Company uses or plans to use in source code form; or (iii) Company is granted the right to use any Software that constitutes open source, public source or freeware Intellectual Property and that is used in the Company's business (excluding immaterial Software for which no license terms, including attribution requirements, are applicable), or any modification or derivative thereof, including any version of any Software licensed pursuant to any GNU-, GPL-, or Mozilla-based, or any other similar public license or limited public license.

2.14 AGREEMENTS, CONTRACTS AND COMMITMENTS

Except as set forth in SECTION 2.14 of the Disclosure Schedule, the Company is not a party to, nor is it bound by:

(a) any employment or consulting agreement, contract or commitment with an employee or individual consultant or salesperson, or consulting or sales agreement, contract, or commitment with a firm or other organization;

(b) any agreement or plan, including, without limitation, any stock option plan, stock appreciation rights plan or stock purchase plan, any of the benefits of which will be increased, or the

vesting of benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement;

(c) any fidelity or surety bond or completion bond;

(d) any lease of personal property having a value in excess of \$25,000 individually or \$75,000 in the aggregate;

(e) any agreement of indemnification or guaranty;

(f) any agreement, contract or commitment relating to capital expenditures and involving future payments in excess of \$25,000 individually or \$75,000 in the aggregate;

(g) any agreement, contract or commitment relating to the disposition or acquisition of assets or any interest in any business enterprise outside the ordinary course of the Company's business;

(h) any mortgages, indentures, guarantees, loans or credit agreements, security agreements or other agreements or instruments relating to the borrowing of money or extension of credit;

(i) any purchase order or contract for the purchase of materials involving in excess of \$25,000 individually or \$75,000 in the aggregate;

(j) any construction contracts;

(k) any dealer, distribution, joint marketing or development agreement;

(l) any sales representative, original equipment manufacturer, manufacturing, value added, remarketer, reseller, or independent software vendor, or other agreement for use or distribution of the products, technology or services of the Company; or

(m) any other agreement, contract or commitment that involves \$25,000 individually or \$75,000 in the aggregate or more and is not cancelable without penalty within thirty (30) days.

2.15 INTERESTED PARTY TRANSACTIONS

No officer of the Company (nor to the Company's Knowledge, any ancestor, sibling, descendant or spouse of any of such persons, or any trust, partnership or corporation in which any of such persons has or has had an interest), has or has had, directly or indirectly, (i) an interest in any entity which furnished or sold, or furnishes or sells, services, products, technology or Intellectual Property that the Company furnishes or sells, or currently proposes to furnish or sell, or (ii) any interest in any entity that purchases from or sells or furnishes to the Company, any goods or services, or (iii) a beneficial interest in any Contract to which the Company is a party; provided, however, that

ownership of no more than one percent (1%) of the outstanding voting stock of a publicly traded corporation shall not be deemed to be an "interest in any entity" for purposes of this SECTION 2.15.

No affiliate (as defined in Rule 405 under the Securities Act) of the Company (nor to the Company's Knowledge, any ancestor, sibling, descendant or spouse of any of such persons, or any trust, partnership or corporation in which any of such persons has or has had an interest), has or has had, directly or indirectly, (i) any interest in any entity that purchases from or sells or furnishes to the Company, any goods or services, other than such terms as would be on an arm's length basis or (ii) a beneficial interest in any Contract to which the Company is a party, other than Contracts having such terms as would be on an arm's length basis; provided, however, that ownership of no more than one percent (1%) of the outstanding voting stock of a publicly traded corporation shall not be deemed to be an "interest in any entity" for purposes of this SECTION 2.15. To the Company's Knowledge, there are no agreements, contracts, or commitments with regard to contribution or indemnification between or among any of the Stockholders.

2.16 GOVERNMENTAL AUTHORIZATION

Each consent, license, permit, grant or other authorization (i) pursuant to which the Company currently operates or holds any interest in any of its properties, or (ii) which is required for the operation of the Company's business as currently conducted or currently contemplated to be conducted or the holding of any such interest (collectively, "COMPANY AUTHORIZATIONS") has been issued or granted to the Company. The Company Authorizations are in full force and effect and constitute all Company Authorizations required to permit the Company to operate or conduct its business or hold any interest in its properties or assets.

2.17 LITIGATION

There is no action, suit, claim or proceeding of any nature pending, or to the Knowledge of the Company, threatened, against the Company, its properties (tangible or intangible) or any of its officers or directors, nor to the Knowledge of the Company is there any reasonable basis therefor. There is no investigation or other proceeding pending or, to the Knowledge of the Company, threatened, against the Company, any of its properties (tangible or intangible) or any of its officers or directors by or before any Governmental Entity, nor to the Knowledge of the Company is there any reasonable basis therefor. No Governmental Entity has at any time challenged or questioned the legal right of the Company to conduct its operations as presently or previously conducted or as presently contemplated to be conducted. There is no action, suit, claim, order, injunction or proceeding of any nature pending, or overtly threatened, against the Company, its properties or any of its officers or directors arising out of, or in any way connected with, the Merger or the other transactions contemplated by the terms of this Agreement.

2.18 MINUTE BOOKS

The minutes of the Company made available to counsel for Parent contain complete and accurate records of all actions taken, and summaries of all meetings held, by the stockholders, the

Board of Directors of the Company (and any committees thereof) since the time of incorporation of the Company. The minute books of the Company are in the possession of the Company.

2.19 ENVIRONMENTAL MATTERS

(a) HAZARDOUS MATERIAL. The Company has not: (i) operated any underground storage tanks at any property that the Company has at any time owned, operated, occupied or leased, or (ii) released any amount of any substance that has been designated by any Governmental Entity or by applicable federal, state or local law to be radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment, including, without limitation, PCBs, asbestos, petroleum, and urea-formaldehyde and all substances listed as hazardous substances pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or defined as a hazardous waste pursuant to the United States Resource Conservation and Recovery Act of 1976, as amended, and the regulations promulgated pursuant to said laws (a "HAZARDOUS MATERIAL"), but excluding office and janitorial supplies properly and safely maintained. As of the Closing, except in compliance with Environmental Laws and in a manner that could not reasonably be expected to subject the Company to liability, no Hazardous Materials are present in, on or under any property, including the land and the improvements, ground water and surface water thereof, that the Company has at any time owned, operated, occupied or leased. The Company's operations and business have been and are in compliance in all material respects with Environmental Laws. "ENVIRONMENTAL LAWS" means all applicable Federal, state, local and foreign laws, regulations, statutes, rules, and codes which prohibit, regulate or control Hazardous Materials or any Hazardous Material Activity or which relate to pollution of the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or the protection of human health, reproduction, and worker safety, and any and all amendments and modifications or any of the foregoing.

(b) HAZARDOUS MATERIALS ACTIVITIES. The Company has not (i) transported, stored, used, manufactured, disposed of, released or exposed its employees or others to Hazardous Materials or (ii) disposed of, transported, sold, or manufactured any product containing a Hazardous Material in violation of any rule, regulation, treaty or statute promulgated by any Governmental Entity to prohibit, regulate or control Hazardous Materials (each or both of the foregoing (i) or (ii) being collectively referred to herein as "HAZARDOUS MATERIALS ACTIVITIES").

(c) PERMITS. The Company currently holds all environmental approvals, permits, licenses, clearances and consents (the "ENVIRONMENTAL PERMITS") necessary for the conduct of its Hazardous Materials Activities and other businesses of the Company as such activities and businesses are currently being conducted and as currently contemplated to be conducted. SECTION 2.19(c) of the Disclosure Schedule accurately describes all of the Environmental Permits currently held by the Company.

(d) ENVIRONMENTAL LIABILITIES. No action, proceeding, revocation proceeding, amendment procedure, writ, injunction or claim is pending, nor to the Knowledge of the Company threatened, concerning any Environmental Permit, Hazardous Material or any Hazardous Materials Activity of the Company. The Company has no Knowledge of any fact or circumstance that could reasonably be expected to impose upon the Company any environmental liability.

(e) REPORTS AND RECORDS. The Company has delivered to Parent all records in the Company's possession concerning the Hazardous Materials Activities of the Company relating to its business and all environmental audits, environmental assessments and sampling data related to any Leased Real Property or any property formerly owned, operated, occupied or leased by the Company or otherwise in the possession of the Company or its agents. The Company has complied with all environmental disclosure obligations imposed by applicable law with respect to this transaction.

2.20 BROKERS' AND FINDERS' FEES; THIRD PARTY EXPENSES

Other than fees payable to Goldman, Sachs & Co., the Company has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions, fees related to investment banking or similar advisory services or any similar charges in connection with the Agreement or any transaction contemplated hereby. SECTION 2.20 of the Disclosure Schedule sets forth the principal terms and conditions of any agreement, written or oral, with respect to such fees. SECTION 2.20 of the Disclosure Schedule sets forth the Company's current reasonable estimate of all Third Party Expenses (as defined in SECTION 5.5 hereof) expected to be incurred by the Company in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby.

2.21 EMPLOYEE BENEFIT PLANS AND COMPENSATION

(a) DEFINITIONS. For all purposes of this Agreement, the following terms shall have the following respective meanings:

"AFFILIATE" shall mean any other person or entity under common control with the Company within the meaning of Section 414(b), (c), (m) or (o) of the Code, and the regulations issued thereunder.

"COMPANY EMPLOYEE PLAN" shall mean any plan, program, policy, practice, contract, agreement or other arrangement providing for compensation, severance, termination pay, deferred compensation, performance awards, stock or stock-related awards, fringe benefits or other employee benefits or remuneration of any kind, whether written, unwritten or otherwise, funded or unfunded, including without limitation, each "employee benefit plan," within the meaning of Section 3(3) of ERISA which is or has been maintained, contributed to, or required to be contributed to, by the Company or any Affiliate for the benefit of any Employee, or with respect to which the

Company or any Affiliate has or may have any liability or obligation and any International Employee Plan.

"COBRA" shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

"DOL" shall mean the United States Department of Labor.

"EMPLOYEE" shall mean any current or former employee, consultant or director of the Company or any Affiliate.

"EMPLOYEE AGREEMENT" shall mean each management, employment, severance, consulting, relocation, repatriation, expatriation, visas, work permit or other agreement, or contract (including, without limitation, any offer letter or any agreement providing for acceleration of Company Options or Company Unvested Common Stock, or any other agreement providing for compensation or benefits) between the Company or any Affiliate and any Employee.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"FMLA" shall mean the Family Medical Leave Act of 1993, as amended.

"HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, as amended.

"INTERNATIONAL EMPLOYEE PLAN" shall mean each Company Employee Plan or Employee Agreement that has been adopted or maintained by the Company or any Affiliate, whether formally or informally or with respect to which the Company or any Affiliate will or may have any liability with respect to Employees who perform services outside the United States.

"IRS" shall mean the United States Internal Revenue Service.

"PBGC" shall mean the United States Pension Benefit Guaranty Corporation.

"PENSION PLAN" shall mean each Company Employee Plan which is an "employee pension benefit plan," within the meaning of Section 3(2) of ERISA.

(b) SCHEDULE. SECTION 2.21(b)(1) of the Disclosure Schedule contains an accurate and complete list of each Company Employee Plan, each Employee Agreement under each Company Employee Plan, and each Employee Agreement. The Company has not made any plan or commitment to establish any new Company Employee Plan or Employee Agreement, to modify any Company Employee Plan or Employee Agreement (except to the extent required by law or to conform any such Company Employee Plan or Employee Agreement to the requirements of any applicable law, in each case as previously disclosed to Parent in writing, or as required by this

Agreement), or to enter into any Company Employee Plan or Employee Agreement. SECTION 2.21(b)(2) of the Disclosure Schedule sets forth a table setting forth the name and salary of each employee of the Company.

(c) DOCUMENTS. The Company has provided to Parent (i) correct and complete copies of all documents embodying each Company Employee Plan and each Employee Agreement including, without limitation, all amendments thereto and all related trust documents, (ii) the three (3) most recent annual reports (Form Series 5500 and all schedules and financial statements attached thereto), if any, required under ERISA or the Code in connection with each Company Employee Plan, (iii) if the Company Employee Plan is funded, the most recent annual and periodic accounting of Company Employee Plan assets, (iv) the most recent summary plan description together with the summary(ies) of material modifications thereto, if any, required under ERISA with respect to each Company Employee Plan, (v) all material written agreements and contracts relating to each Company Employee Plan, including, without limitation, administrative service agreements and group insurance contracts, (vi) all communications material to any Employee or Employees relating to any Company Employee Plan and any proposed Company Employee Plans, in each case, relating to any amendments, terminations, establishments, increases or decreases in benefits, acceleration of payments or vesting schedules or other events which would result in any liability to the Company, (vii) all correspondence to or from any governmental agency relating to any Company Employee Plan, (viii) all current COBRA forms and related notices, (ix) all current policies pertaining to fiduciary liability insurance covering the fiduciaries for each Company Employee Plan, (x) all discrimination tests for each Company Employee Plan for the three (3) most recent plan years, (xi) all registration statements, annual reports (Form 11-K and all attachments thereto) and prospectuses prepared in connection with each Company Employee Plan, and (xii) the most recent IRS determination or opinion letter issued with respect to each Company Employee Plan.

(d) EMPLOYEE PLAN COMPLIANCE. The Company has performed all obligations required to be performed by it under, is not in default or violation of, and the Company has no knowledge of any default or violation by any other party to, any Company Employee Plan, and each Company Employee Plan has been established and maintained in all material respects in accordance with its terms and in material compliance with all applicable laws, statutes, orders, rules and regulations, including but not limited to ERISA or the Code. Any Company Employee Plan intended to be qualified under Section 401(a) of the Code has obtained or timely applied for a favorable determination letter (or opinion letter, if applicable) as to its qualified status under the Code. No "prohibited transaction," within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA, and not otherwise exempt under Section 408 of ERISA, has occurred with respect to any Company Employee Plan. There are no actions, suits or claims pending or, to the knowledge of the Company, threatened or reasonably anticipated (other than routine claims for benefits) against any Company Employee Plan or against the assets of any Company Employee Plan. Each Company Employee Plan can be amended, terminated or otherwise discontinued after the Effective Time in accordance with its terms, without liability to Parent, the Company or any Affiliate (other than for payment of benefits or ordinary administration expenses). There are no audits, inquiries or proceedings pending or to the knowledge of the Company or any Affiliates,

threatened by the IRS, DOL, or any other Governmental Entity with respect to any Company Employee Plan. Neither the Company nor any Affiliate is subject to any penalty or tax with respect to any Company Employee Plan under Section 502(i) of ERISA or Sections 4975 through 4980 of the Code. The Company has timely made all contributions and other payments required by and due under the terms of each Company Employee Plan.

(e) NO PENSION PLANS. Neither the Company nor any Affiliate has ever maintained, established, sponsored, participated in, or contributed to, any (i) Pension Plans subject to Title IV of ERISA.

(f) NO SELF-INSURED PLANS. Neither the Company nor any Affiliate has ever maintained, established sponsored, participated in or contributed to any self-insured plan that provides benefits to Employees (including, without limitation, any such plan pursuant to which a stop-loss policy or contract applies).

(g) COLLECTIVELY BARGAINED, MULTIEMPLOYER AND MULTIPLE-EMPLOYER PLANS. At no time has the Company or any Affiliate contributed to or been obligated to contribute to any Multiemployer Plan. Neither the Company nor any Affiliate has at any time ever maintained, established, sponsored, participated in or contributed to any multiple employer plan or to any plan described in Section 413 of the Code.

(h) NO POST-EMPLOYMENT OBLIGATIONS. No Company Employee Plan provides, or reflects or represents any liability to provide, retiree life insurance, retiree health or other retiree employee welfare benefits to any person for any reason, except as may be required by COBRA or other applicable statute, and the Company has not ever represented, promised or contracted (whether in oral or written form) to any Employee (either individually or to Employees as a group) or any other person that such Employee(s) or other person would be provided with retiree life insurance, retiree health or other retiree employee welfare benefits, except to the extent required by statute or by individual conversion policies provided under the terms of the Company Employee Plan.

(i) COBRA; FMLA; HIPAA. The Company and each Affiliate has, prior to the Effective Time, complied with COBRA, FMLA, HIPAA, the Women's Health and Cancer Rights Act of 1998, the Newborns' and Mothers' Health Protection Act of 1996, and any similar provisions of state law applicable to its Employees. To the Knowledge of the Company has no unsatisfied obligations to any Employees or qualified beneficiaries pursuant to COBRA, HIPAA or any state law governing health care coverage or extension.

(j) EFFECT OF TRANSACTION. The execution of this Agreement and the consummation of the transactions contemplated hereby will not (either alone or upon the occurrence of any additional or subsequent events) constitute (i) an event under any Company Employee Plan, Employee Agreement, trust or loan that will or may result in any payment (whether of severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits or (ii) be deemed a "parachute payment" under Section 280G of the Code with respect to any Employee.

(k) EMPLOYMENT MATTERS. The Company is in compliance with all applicable foreign, federal, state and local laws, rules and regulations respecting employment, employment practices, terms and conditions of employment, employee safety and wages and hours, and in each case, with respect to Employees: (i) has withheld and reported all amounts required by law or by agreement to be withheld and reported with respect to wages, salaries and other payments to Employees, (ii) is not liable for any arrears of wages, severance pay or any taxes or any penalty for failure to comply with any of the foregoing, and (iii) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any governmental authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for Employees (other than routine payments to be made in the normal course of business and consistent with past practice). There are no action, suits, claims or administrative matters pending, threatened or reasonably anticipated against the Company or any of its Employees relating to any Employee, Employee Agreement or Company Employee Plan. There are no pending or threatened or reasonably anticipated claims or actions against Company or any Company trustee under any worker's compensation policy. The services provided by each of the Company's and its Affiliates' Employees is terminable at the will of the Company.

(l) LABOR. As of the date hereof, no work stoppage or labor strike against the Company is pending, or to the Knowledge of the Company, threatened, or reasonably anticipated. As of the date hereof, the Company does not know of any activities or proceedings of any labor union to organize any Employees. As of the date hereof, there are no actions, suits, claims, labor disputes or grievances pending or threatened or reasonably anticipated relating to any labor matters involving any Employee, including, without limitation, charges of unfair labor practices. The Company has not engaged in any unfair labor practices within the meaning of the National Labor Relations Act. The Company does not presently, nor has it been in the past, a party to, or bound by, any collective bargaining agreement or union contract with respect to Employees and no collective bargaining agreement is being negotiated by the Company.

(m) NO INTERFERENCE OR CONFLICT. To the Knowledge of the Company, no officer or Employee of the Company is obligated under any contract or agreement, subject to any judgment, decree, or order of any court or administrative agency that would interfere with such person's efforts to promote the interests of the Company or that would interfere with the Company's business. Neither the execution nor delivery of this Agreement, nor the carrying on of the Company's business as presently conducted or proposed to be conducted nor any activity of such officers or Employees in connection with the carrying on of the Company's business as presently conducted or currently proposed to be conducted, to the Knowledge of the Company, conflicts with or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any contract or agreement under which any of such officers or Employees is now bound.

(n) INTERNATIONAL EMPLOYEE PLAN. Neither the Company nor any Affiliate currently or has it ever had the obligation to maintain, establish, sponsor, participate in, be bound by or contribute to any International Employee Plan.

(o) RETENTION MATTERS. Except as contemplated by this Agreement, the Company has no Knowledge that any employee or group of employees that the Parent has expressed to the Company that it intends to employ following the Effective Time intends not to continue in the employ of the Company, the Surviving Corporation or Parent, as applicable.

2.22 INSURANCE

SECTION 2.22 of the Disclosure Schedule lists all insurance policies and fidelity bonds covering the assets, business, equipment, properties, operations, employees, officers and directors of the Company or any Affiliate, including the type of coverage, the carrier, the amount of coverage, the term and the annual premiums of such policies. There is no claim by the Company or any Affiliate pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed or that the Company or any Affiliate has a reason to believe will be denied or disputed by the underwriters of such policies or bonds. In addition, there is no pending claim of which its total value (inclusive of defense expenses) will exceed the policy limits. All premiums due and payable under all such policies and bonds have been paid, (or if installment payments are due, will be paid if incurred prior to the Closing Date) and the Company and its Affiliates are otherwise in material compliance with the terms of such policies and bonds (or other policies and bonds providing substantially similar insurance coverage). The Company has no Knowledge or reasonable belief of threatened termination of, or premium increase with respect to, any of such policies. Neither the Company nor any Affiliate has ever maintained, established, sponsored, participated in or contributed to any self-insurance plan.

2.23 COMPLIANCE WITH LAWS

The Company has complied with, is not in violation of, and has not received any notices of violation with respect to, any foreign, federal, state or local statute, law or regulation.

2.24 FOREIGN CORRUPT PRACTICES ACT

The Company (including any of its officers or directors) has not taken any action which would cause it to be in violation of the Foreign Corrupt Practices Act of 1977, as amended, or any rules or regulations thereunder.

2.25 WARRANTIES; INDEMNITIES

Except for the warranties and indemnities contained in those contracts and agreements set forth in SECTION 2.13(1) of the Disclosure Schedule and warranties implied by law, the Company has not given any warranties or indemnities relating to products or technology sold or services rendered by the Company.

2.26 COMPLETE COPIES OF MATERIALS

The Company has delivered or made available true and complete copies of each document that has been requested by Parent or its counsel.

2.27 REPRESENTATIONS COMPLETE

None of the representations or warranties made by the Company (as modified by the Disclosure Schedule) in this Agreement, and none of the statements made in any exhibit, schedule or certificate furnished by the Company pursuant to this Agreement, taken as a whole, contains, or will contain at the Effective Time, any untrue statement of a material fact, or omits or will omit at the Effective Time to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which made, not misleading.

2.28 INFORMATION STATEMENT

Except for information furnished in writing by Parent to the Company for inclusion in any document mailed, delivered or otherwise furnished to Stockholders by the Company in connection with the solicitation of their consent to this Agreement and the Merger, such document will not contain, at or prior to the Effective Time, any untrue statement of a material fact and will not omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which made not misleading.

2.29 SPREADSHEET

The information contained in the Spreadsheet (as defined in SECTION 5.22) shall be complete and correct as of the Closing Date.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF PARENT AND SUB

Each of Parent and Sub hereby represents and warrants to the Company that on the date hereof and as of the Effective Time, as though made at the Effective Time, as follows:

3.1 ORGANIZATION, STANDING AND POWER

Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Sub is a corporation duly organized, validly existing and in good standing under the laws of Delaware. Each of Parent and Sub has the corporate power to own its properties and to carry on its business as now being conducted and is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the failure to be so qualified or licensed would have a material adverse effect on the business, assets (including intangible assets), condition (financial or otherwise), results of operations or capitalization of Parent (a "PARENT MATERIAL ADVERSE EFFECT"); provided, however, that in no event shall any of the following, alone or in combination, be taken into account in determining whether there has been or will be a Parent

Material Adverse Effect: (i) any change in the price per share of Parent Common Stock or a change in the trading volume of Parent Common Stock, (ii) event or effect to the extent such change, event or effect results from changes affecting any of the industries in which Parent operates generally or the United States economy generally (which changes in each case do not disproportionately affect Parent).

3.2 AUTHORITY

Each of Parent and Sub has all requisite corporate power and authority to enter into this Agreement and any Related Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and any Related Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Parent and Sub. This Agreement and any Related Agreements to which Parent and Sub are parties have been duly executed and delivered by Parent and Sub and constitute the valid and binding obligations of Parent and Sub, enforceable against each of Parent and Sub in accordance with their terms.

3.3 CONSENTS

No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity, or any third party is required by or with respect to Parent or Sub in connection with the execution and delivery of this Agreement and any Related Agreements to which Parent or Sub is a party or the consummation of the transactions contemplated hereby and thereby, except for (i) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under state and federal securities laws, (ii) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings which, if not obtained or made, would not have a Parent Material Adverse Effect, (iii) the issuance of the California Permit, (iv) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under the HSR Act, and (v) the filing of the Certificate of Merger with the Delaware Secretary of State.

3.4 PARENT COMMON STOCK

The Parent Common Stock which constitutes the Total Adjusted Consideration has been duly authorized and, upon consummation of the transactions contemplated by this Agreement, will be validly issued, fully paid and nonassessable.

3.5 BROKER'S AND FINDERS' FEES

Other than fees payable to Morgan Stanley & Co., Inc., which fees are the responsibility of Parent, neither Parent nor Sub has incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or any transaction contemplated hereby.

3.6 SEC DOCUMENTS; PARENT FINANCIAL STATEMENTS

A true and complete copy of each annual, quarterly and current report, and definitive proxy statement filed by Parent with the SEC on or after January 24, 2002 (the "PARENT SEC DOCUMENTS") is available on the Web site maintained by the SEC at <http://www.sec.gov>. As of their respective filing dates, the Parent SEC Documents complied in all material respects with the requirements of the Exchange Act, and the rules and regulations of the SEC promulgated thereunder applicable to such Parent SEC Documents, and none of the Parent SEC Documents contained on their filing dates any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, except to the extent corrected by a subsequently filed Parent SEC Document. The financial statements of Parent included in the Parent SEC Documents (the "PARENT FINANCIAL STATEMENTS") complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto, except in the case of pro forma statements, or, in the case of unaudited financial statements, except as permitted under Form 10-Q under the Exchange Act) and fairly presented the consolidated financial position of Parent and its consolidated subsidiaries as of the respective dates thereof and the consolidated results of Parent's operations and cash flows for the periods indicated (subject to, in the case of unaudited statements, normal and recurring year-end audit adjustments).

3.7 NO VOTE REQUIRED

No vote of the holders of Parent capital stock is required to authorize the Merger.

3.8 NO CONFLICTS

The execution and delivery of this Agreement and any Related Agreement to which Parent or Sub is a party do not, and the consummation of the transactions contemplated hereby will not result in any Conflict with (i) any provision of the certificate of incorporation or bylaws of Parent or Sub, as amended, (ii) any mortgage, indenture, lease, contract or other agreement or instrument, permit, concession, franchise or license to which Parent or any of its respective properties or assets are subject and which has been filed as an exhibit to Parent's Annual Report on Form 10-K for the fiscal year ended October 27, 2001 ("PARENT 10-K") and such other filings under the Exchange Act which are made subsequent to the Parent 10-K and prior to the date hereof, or (iii) any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Parent or Sub or their respective properties or assets, except in each case where such conflict will not have a Parent Material Adverse Effect.

3.9 INFORMATION STATEMENT

The information provided in writing by Parent or Sub to the Company for the express purpose of including in any documents mailed, delivered or otherwise furnished to Stockholders by the Company in connection with the solicitation of their consent to this Agreement and the Merger,

will not contain, at or prior to the Effective Time, any untrue statement of a material fact and will not omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which made, not misleading.

ARTICLE IV

CONDUCT PRIOR TO THE EFFECTIVE TIME

4.1 CONDUCT OF BUSINESS OF THE COMPANY

Except as otherwise contemplated herein, during the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Effective Time, the Company agrees to conduct the business of the Company, except to the extent that Parent shall otherwise consent in writing, in the usual, regular and ordinary course in substantially the same manner as heretofore conducted, to pay the debts and Taxes of the Company when due in accordance with past practice, to pay or perform other obligations when due in accordance with past practice, and, to the extent consistent with such business, to preserve intact the present business organizations of the Company, keep available the services of the present officers and key employees of the Company and preserve the relationships of the Company with customers, suppliers, distributors, licensors, licensees, and others having business dealings with them, all with the goal of preserving unimpaired the goodwill and ongoing businesses of the Company at the Effective Time. The Company shall promptly notify Parent of any event or occurrence or emergency known to it not in the ordinary course of business of the Company and any material event known to it involving the Company that arises during the period from the date of this Agreement and continuing until the earlier of the termination date of this Agreement or the Effective Time. Except as expressly contemplated by this Agreement and except as expressly set forth in the Disclosure Schedule, the Company shall not, without the prior written consent of Parent, from and after the date of this Agreement:

(a) enter into any commitment, activity or transaction not in the ordinary course of business consistent with past practice;

(b) make any expenditures or enter into any commitment or transaction exceeding \$25,000 individually or \$75,000 in the aggregate other than pursuant to purchase orders disclosed in the Disclosure Schedules and the following items in the ordinary course of business consistent with past practice: payroll, interest, rent and utilities.

(c) (i) sell, license or transfer to any person or entity any rights to any Company Intellectual Property or enter into any agreement with respect to any Company Intellectual Property with any person or entity, (ii) buy or license any Intellectual Property or enter into any agreement with respect to the Intellectual Property of any person or entity, (iii) enter into any agreement with respect to the development of any Intellectual Property with a third party, (iv) or change pricing or

royalties charged by the Company to its customers or licensees, or the pricing or royalties set or charged by persons who have licensed Intellectual Property to the Company;

(d) enter into or amend any Contract pursuant to which any other party is granted marketing, distribution, development, manufacturing or similar rights of any type or scope with respect to any products or technology of the Company;

(e) amend or otherwise modify (or agree to do so), or violate the terms of, any of the Contracts set forth or described in the Disclosure Schedule;

(f) commence or settle any litigation;

(g) declare, set aside, or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any Company Capital Stock, or split, combine or reclassify any Company Capital Stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of Company Capital Stock, except for the issuance of Company Common Stock pursuant to the conversion of Company Preferred Stock, or repurchase, redeem or otherwise acquire, directly or indirectly, any shares of Company Capital Stock (or options, warrants or other rights exercisable therefor) except in accordance with the agreements evidencing Company Unvested Common Stock;

(h) issue, grant, deliver or sell or authorize or propose the issuance, grant, delivery or sale of, or purchase or propose the purchase of, any Company Capital Stock or any securities convertible into, or subscriptions, rights, warrants or options to acquire, or other agreements or commitments of any character obligating it to issue or purchase any such shares or other convertible securities, except for (i) the issuance of Company Common Stock pursuant to the conversion of Company Preferred Stock and (ii) the issuance of Company Capital Stock pursuant to the exercise of outstanding Company Assumed Warrants or Company Options, including by way of net issue exercise provisions of such Company Assumed Warrants or Company Options;

(i) cause or permit any amendments to the certificate of incorporation, bylaws or other organizational documents of the Company;

(j) acquire or agree to acquire by merging or consolidating with, or by purchasing any assets or equity securities of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets which are material, individually or in the aggregate, to the business of the Company;

(k) sell, lease, license or otherwise dispose of any of its properties or assets, including without limitation the sale of any accounts receivable of the Company, except properties or assets (whether tangible or intangible) which are not Intellectual Property and only in the ordinary course of business as conducted on that date and consistent with past practices;

(l) incur any indebtedness or guarantee any indebtedness or issue or sell any debt securities or guarantee any debt securities of others;

(m) grant any loans to others or purchase debt securities of others or amend the terms of any outstanding loan agreement;

(n) grant any severance or termination pay (in cash or otherwise) to any Employee, including any officer, except payments made pursuant to standard written agreements outstanding on the date hereof and disclosed in the Disclosure Schedule;

(o) adopt or amend any Company Employee Plan, enter into any employment contract, pay or agree to pay any bonus or special remuneration to any director or Employee, or increase or modify the salaries, wage rates, or other compensation (including, without limitation, any equity-based compensation) of its Employees except payments made pursuant to standard written agreements outstanding on the date hereof and disclosed in SECTION 4.1(o) of the Disclosure Schedule or except to the extent required to conform any such Company Employee Plan with the Uruguay Round Agreements Act, the Small Business Job Protection Act of 1996, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Taxpayer Relief Act of 1997 and the Internal Revenue Service Restructuring and Reform Act of 1998 or Employee Agreement to the requirements of applicable law or as required by this Agreement;

(p) revalue any of its assets (whether tangible or intangible), including without limitation writing down the value of inventory or writing off notes or accounts receivable other than in the ordinary course of business consistent with past practice;

(q) pay, discharge, waive or satisfy any claim, liability, right or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction in the ordinary course of business consistent with past practice of liabilities reflected or reserved against in the Current Balance Sheet or incurred in compliance with this Agreement;

(r) make or change any material election in respect of Taxes, adopt or change any accounting method in respect of Taxes, enter into any closing agreement, settle any claim or assessment in respect of Taxes, or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes;

(s) enter into any strategic alliance, affiliate agreement or joint marketing arrangement or agreement;

(t) take any action to accelerate the vesting schedule of any of the outstanding Company Options, Company Unvested Common Stock or Company Common Stock;

(u) except as set forth on SECTION 4.1(u) of the Disclosure Schedule, hire or terminate any Employees, or encourage any Employees to resign from the Company;

(v) promote or terminate any employees or change the employment status or titles of any of the employees of the Company;

(w) alter, or enter into any commitment to alter, its interest in any corporation, association, joint venture, partnership or business entity in which the Company directly or indirectly holds any interest;

(x) cancel, amend or renew any insurance policy;

(y) enter into any agreement to purchase or sell any interest in real property, grant any security interest in any real property, enter into any lease, sublease, license or other occupancy agreement with respect to any real property or alter, amend, modify or terminate any of the terms of any Lease Agreements; or

(z) take, or agree in writing or otherwise to take, any of the actions described in SECTIONS 4.1(a) through 4.1(y) hereof, or any other action that would (i) prevent the Company from performing, or cause the Company not to perform, its covenants hereunder or (ii) cause or result in any of its respective representations and warranties contained herein being untrue or incorrect.

4.2 NO SOLICITATION

Until the earlier of (i) the Effective Time, or (ii) the date of termination of this Agreement pursuant to the provisions of SECTION 8.1 hereof, the Company shall not (nor shall the Company permit any of its officers, directors, employees, stockholders, agents, representatives or affiliates to), directly or indirectly, take any of the following actions with any party other than Parent and its designees: (a) solicit, encourage, seek, entertain, support, assist, initiate or participate in any inquiry, negotiations or discussions, or enter into any agreement, with respect to any offer or proposal to acquire all or any material part of the business, properties or technologies of the Company or any amount of the Company Capital Stock (whether or not outstanding), whether by merger, purchase of assets, tender offer, license or otherwise, or effect any such transaction, (b) disclose any information not customarily disclosed to any person concerning the business, technologies or properties of the Company, or afford to any person or entity access to its properties, technologies, books or records, not customarily afforded such access, (c) assist or cooperate with any person to make any proposal to purchase all or any part of the Company Capital Stock or assets of the Company, or (d) enter into any agreement with any person providing for the acquisition of the Company, whether by merger, purchase of assets, license, tender offer or otherwise. The Company shall immediately cease and cause to be terminated any such negotiations, discussion or agreements (other than with Parent) that are the subject matter of clause (a), (b), (c) or (d) above. In the event that the Company or any of the Company's affiliates shall receive, prior to the Effective Time or the termination of this Agreement in accordance with SECTION 8.1 hereof, any offer, proposal, or request, directly or indirectly, of the type referenced in clause (a), (c), or (d) above, or any request for disclosure or access as referenced in clause (b) above, the Company shall immediately (x) suspend any discussions with such offeror or party with regard to such offers, proposals, or requests and (y) notify Parent thereof, including information as to the identity of the offeror or the party making any such offer or proposal and the

specific terms of such offer or proposal, as the case may be, and such other information (including a copy of any written offer or proposal related thereto) as Parent may reasonably request. The parties hereto agree that irreparable damage would occur in the event that the provisions of this SECTION 4.2 were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed by the parties hereto that Parent shall be entitled to an immediate injunction or injunctions, without the necessity of proving the inadequacy of money damages as a remedy and without the necessity of posting any bond or other security, to prevent breaches of the provisions of this SECTION 4.2 and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which Parent may be entitled at law or in equity. Without limiting the foregoing, it is understood that any violation of the restrictions set forth above by any officer, director, agent, representative or affiliate of Company shall be deemed to be a breach of this Agreement by Company.

ARTICLE V

ADDITIONAL AGREEMENTS

5.1 FAIRNESS HEARING; STOCKHOLDER APPROVAL

(a) As soon as reasonably practicable following the execution of this Agreement, Parent and the Company shall prepare the necessary documents to apply to obtain, and Parent shall apply to obtain, a permit (a "CALIFORNIA PERMIT") from the California Commissioner of Corporations (after a hearing before such Commissioner) pursuant to Sections 25121 and 25142 of the California Corporate Securities Law of 1968 (the "FAIRNESS HEARING LAW"), so that (i) the issuance of Parent Common Stock in the Merger, and (ii) the assumption of Company Options, shall be exempt from registration under the Securities Act, by virtue of the exemption provided by Section 3(a)(10) thereof, and the Company shall prepare, with the cooperation of Parent, a related information statement or other disclosure document (the "INFORMATION STATEMENT"). The Information Statement shall constitute a disclosure document for the offer and issuance of the shares of Parent Common Stock to be received by the holders of Company Common Stock in the Merger. The Company shall cooperate with, and provide information to, Parent in connection with Parent's application for the California Permit. Company and Parent will respond to any comments from the California Department of Corporations and work together in good faith to use their commercially reasonable efforts to have the California Permit granted as soon as practicable after such filing. Each of Parent and the Company agrees to provide promptly to the other such information concerning its business and financial statements and affairs as, in the reasonable judgment of the providing party or its counsel, may be required or appropriate under the Fairness Hearing Law for inclusion in the Information Statement, or in any amendments or supplements thereto, and to cause its counsel and auditors to cooperate with the other's counsel and auditors in preparation of the Information Statement. Anything to the contrary contained herein notwithstanding, the Company shall not include in the Information Statement any information with respect to Parent or its affiliates or

associates, the form and content of which shall not have been approved by Parent prior to such inclusion, except as required pursuant to the Fairness Hearing Law or other applicable law. As promptly as practical after the date of this Agreement, Parent and Company shall prepare and make such filings as are required of them under applicable blue sky laws relating to the transactions contemplated by this Agreement. Company shall use reasonable and good faith efforts to assist Parent as may be necessary to comply with the securities and blue sky laws relating to the transactions contemplated by this Agreement. Company Assumed Warrants which are not exercised for Company Capital Stock prior to the Effective Time shall be converted into warrants to purchase Parent Common Stock which shall be restricted securities.

(b) If the California Commissioner of Corporations denies the California Permit (after Parent has exhausted all opportunities of appeal) provided that the Company and the signatories to the Voting Agreements have cooperated in good faith to obtain the California Permit, Parent will prepare and file with the SEC a Registration Statement on Form S-4 (the "REGISTRATION STATEMENT") with respect to the Total Consideration. Company and Parent will respond to any comments of the SEC, and Parent will use its reasonable efforts to have the Registration Statement declared effective under the Securities Act as promptly as practicable after such filing. Notwithstanding the foregoing, if Parent shall determine pursuant to the good faith judgment of its Chief Executive Officer, or alternatively, the Board of Directors of Parent, that it would be significantly harmful to Parent and its stockholders to file the Registration Statement (or an amendment thereto), due to the existence of a material development or potential material development with respect to or involving Parent which Parent would be obligated to disclose in the Prospectus contained in the Registration Statement, which disclosure would in the good faith judgment of the Chief Executive Officer or the Board of Directors of Parent be premature or otherwise inadvisable at such time and would not be in the best interests of Parent and its stockholders, then Parent shall notify the Company in writing to the effect of the foregoing, and Parent will not be required to file the Registration Statement or amendment thereto until the earlier of (1) 90 days after the denial of the Permit and (2) as soon, in the judgment of Parent, as disclosure of the material information relating to such pending development would not have a adverse effect on Parent's ability to consummate the transaction, if any, to which such development relates.

(c) As promptly as practicable after the receipt of a California Permit or following the effectiveness of the Registration Statement, the Company shall submit this Agreement and the transactions contemplated hereby to the Stockholders for approval and adoption as provided by Delaware Law and the certificate of incorporation and bylaws of the Company. Such submission, and any proxy or consent in connection therewith, shall specify that adoption of this Agreement shall constitute approval by the Stockholders of: (i) the escrow and indemnification obligations of the Stockholders set forth in ARTICLE VII hereof and the deposit of Parent Common Stock equal to the Escrow Amount into the Escrow Fund, (ii) the Lock-up Provision, and (iii) in favor of the appointment of Douglas M. Leone as Stockholder Representative, under and as defined in this Agreement. Any materials to be submitted to the Stockholders in connection with the solicitation of their approval of the Merger and this Agreement (the "SOLICITING MATERIALS") shall be subject to review and approval by Parent and shall include information regarding the Company, the terms of

the Merger and this Agreement, and the unanimous recommendation of the Board of Directors of the Company in favor of the Merger and this Agreement and conversion of Company Preferred Stock into Company Common Stock. Anything to the contrary contained herein notwithstanding, the Company shall not include in the Soliciting Materials any information with respect to Parent or its affiliates or associates, the form and content of which shall not have been approved by Parent prior to such inclusion. The Company shall consult with Parent regarding the date of the Company Stockholders' meeting or the date of the solicitation of stockholder approval by written consent to approve this Agreement and the Merger (the "COMPANY STOCKHOLDERS' MEETING/SOLICITATION") and shall not postpone or adjourn (other than for absence of a quorum) the Company Stockholder Meeting/Solicitation without the consent of the Parent. The Company shall use its best efforts to obtain the consent of its Stockholders sufficient to approve the Merger and this Agreement and to enable the Closing to occur as promptly as practicable following the date hereof and, in any event, within thirty (30) days following the receipt of the California Permit. Notwithstanding the foregoing, the Company shall give Stockholders sufficient notice such that no Stockholder will be able to exercise appraisal rights pursuant to Section 262 of Delaware Law if such Stockholder has not perfected such appraisal rights prior to Closing.

5.2 RESTRICTIONS ON TRANSFER

All certificates representing Parent Common Stock deliverable to any Stockholder of the Company pursuant to this Agreement and in connection with the Merger and any certificates subsequently issued with respect thereto or in substitution therefor (including any shares issued or issuable in respect of any such shares upon any stock split, stock dividend, recapitalization, or similar event) shall bear the Lock-up Legend (as defined in section 1.6(b)) as well as any legend required by the California Commissioner of Corporations or such as are required pursuant to any federal, state, local or foreign law governing such securities.

5.3 ACCESS TO INFORMATION

The Company shall afford Parent and its accountants, counsel and other representatives, reasonable access during the period from the date hereof and prior to the Effective Time to (i) all of the properties, books, contracts, commitments and records of the Company, including the Company's source code, (ii) all other information concerning the business, properties and personnel (subject to restrictions imposed by applicable law) of the Company as Parent may reasonably request, and (iii) all Employees of the Company as identified by Parent. The Company agrees to provide to Parent and its accountants, counsel and other representatives copies of internal financial statements (including Tax Returns and supporting documentation) promptly upon request. No information or knowledge obtained in any investigation pursuant to this SECTION 5.3 or otherwise shall affect or be deemed to modify any representation or warranty contained herein or the conditions to the obligations of the parties to consummate the Merger in accordance with the terms and provisions hereof.

5.4 CONFIDENTIALITY

Each of the parties hereto hereby agrees that the information obtained in any investigation pursuant to SECTION 5.3 hereof, or pursuant to the negotiation and execution of this Agreement or the effectuation of the transactions contemplated hereby, shall be governed by the terms of the Confidentiality Agreement effective as of October 14, 2002 (the "CONFIDENTIALITY AGREEMENT") between the Company and Parent. In this regard, the Company acknowledges that the Parent Common Stock is publicly traded and that any information obtained during the course of its due diligence could be considered to be material non-public information within the meaning of federal and state securities laws. In addition, the Company shall use commercially reasonable efforts to inform the Company's Representatives (as defined in the Confidentiality Agreement) that any information obtained during the course of its due diligence could be considered to be material non-public information within the meaning of federal and state securities laws. Accordingly, the Company acknowledges and agrees not to engage in, and will use commercially reasonable efforts to prevent the Company's Representatives from engaging in, any transactions in the Parent Common Stock in violation of applicable insider trading laws.

5.5 EXPENSES

Whether or not the Merger is consummated, all fees and expenses incurred in connection with the Merger including, without limitation, all legal, accounting, financial advisory, consulting and all other fees and expenses of third parties incurred by a party in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby ("THIRD PARTY EXPENSES"), shall be the obligation of the respective party incurring such fees and expenses; provided, however, that all expenses incurred by the Company in the preparation of the Required Financial Statements (as defined below) shall not be Third Party Expenses. Any Third Party Expenses incurred by the Company in excess of \$1,000,000 that are not reflected on the Statement of Expenses, and thus are not part of the Third Party Expense Purchase Price Adjustment, if any ("EXCESS THIRD PARTY EXPENSES"), shall be paid out of the Escrow Amount in accordance with ARTICLE VII and shall not be limited by the Threshold Amount (as defined in SECTION 7.3(b) hereof). Third Party Expenses shall not be incurred by the Company after the Closing Date without the express prior written consent of Parent. "REQUIRED FINANCIAL STATEMENTS" shall mean financial statements meeting the requirements of Rule 3-05 of SEC Regulation S-X required or advisable to be included by Parent in (i) any Current Report on Form 8-K, (ii) any other annual, quarterly or other report, registration statement, and definitive proxy statement required to be filed by Parent with the SEC, or (iii) the application for the California Permit and the Information Statement.

5.6 PUBLIC DISCLOSURE

No party shall issue any statement or communication to any third party (other than their respective agents that are bound by confidentiality restrictions) regarding the subject matter of this Agreement or the transactions contemplated hereby, including, if applicable, the termination of this Agreement and the reasons therefor, without the consent of the other party (provided, however, that Parent, in its sole discretion, can determine the timing of any such statement or communication made

on or after the execution of this Agreement), except that this restriction shall be subject to Parent's obligation to comply with applicable securities laws and the rules of the Nasdaq Stock Market.

5.7 CONSENTS

The Company shall use commercially reasonable efforts to obtain all necessary consents, waivers and approvals of any parties to any Contract (including with respect to the Lease Agreements) as are required thereunder in connection with the Merger or for any such Contracts to remain in full force and effect, all of which are listed in SECTION 2.5 of the Disclosure Schedule, so as to preserve all rights of, and benefits to, the Company under such Contract from and after the Effective Time. Such consents, waivers and approvals shall be in a form reasonably acceptable to Parent. Notwithstanding the terms of SECTION 5.5 above, in the event that the other parties to any such Contract, including lessor or licensor of any Leased Real Property, conditions its grant of a consent, waiver or approval (including by threatening to exercise a "recapture" or other termination right) upon the payment of a consent fee, "profit sharing" payment or other consideration, including increased rent payments or other payments under the Contract, the Company shall be responsible for making all payments required to obtain such consent, waiver or approval and shall indemnify, defend, protect and hold harmless Parent from all losses, costs, claims, liabilities and damages arising from the same. On or prior to the Closing, the Company shall enter into a written agreement with LSI Logic Corporation and/or Avnet, Inc., or a written amendment to an existing agreement between the Company and LSI Logic Corporation and/or Avnet, Inc., pursuant to which Company shall receive rights to use and incorporate into its products the ARM966 (encrypted and unencrypted), Merlin3 and Gigablaze semiconductor cores, in substantially the same manner as Company was authorized to use and incorporate such cores under the Coreware Product License Agreements by and between LSI Logic Corporation and the Company dated as of January 10, 2001 and March 12, 2001.

5.8 FIRPTA COMPLIANCE

On the Closing Date, the Company shall deliver to Parent a properly executed statement (a "FIRPTA COMPLIANCE CERTIFICATE") in a form reasonably acceptable to Parent for purposes of satisfying Parent's obligations under Treasury Regulation Section 1.1445-2(c)(3).

5.9 REASONABLE EFFORTS

Subject to the terms and conditions provided in this Agreement, each of the parties hereto shall use commercially reasonable efforts to take promptly, or cause to be taken, all actions, and to do promptly, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated hereby, to obtain all necessary waivers, consents and approvals and to effect all necessary registrations and filings and to remove any injunctions or other impediments or delays, legal or otherwise, in order to consummate and make effective the transactions contemplated by this Agreement for the purpose of securing to the parties hereto the benefits contemplated by this Agreement; provided, however, that Parent shall not be required to agree to any divestiture by Parent or the Company or any of Parent's subsidiaries

or affiliates, of shares of capital stock or of any business, assets or property of Parent or its subsidiaries or affiliates, or of the Company, its affiliates, or the imposition of any material limitation on the ability of any of them to conduct their businesses or to own or exercise control of such assets, properties and stock. In addition, the Company shall use commercially reasonable efforts to obtain from all lessors, licensors, sublessees and licensees of Leased Real Property estoppel certificates confirming that the applicable lease agreements are in full force and effect and that there are no defaults thereunder.

5.10 NOTIFICATION OF CERTAIN MATTERS

Each party shall give prompt notice (in any event within 24 hours) to the other parties of: (i) the occurrence or non-occurrence of any event known to such party, the occurrence or non-occurrence of which is likely to cause any representation or warranty of such party contained in this Agreement to be untrue or inaccurate at or prior to the Effective Time, and (ii) any failure of such party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this SECTION 5.10 shall not (a) limit or otherwise affect any remedies available to the party receiving such notice or (b) constitute an acknowledgment or admission of a breach of this Agreement. No disclosure by the Company pursuant to this SECTION 5.10, however, shall be deemed to amend or supplement the Disclosure Schedule or prevent or cure any misrepresentations, breach of warranty or breach of covenant.

5.11 ADDITIONAL DOCUMENTS AND FURTHER ASSURANCES

Each party hereto, at the request of another party hereto, shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of the Merger and the transactions contemplated hereby.

5.12 S-8 REGISTRATION

Not later than sixty (60) days after the Closing Date, Parent agrees to file, if available for use by Parent, with the SEC a registration statement on Form S-8 registering that number of shares of Parent Common Stock equal to the number of shares of Parent Common Stock issuable upon the exercise of all Company Options assumed by Parent pursuant to SECTION 1.6(d) hereof.

5.13 NEW EMPLOYMENT ARRANGEMENTS

(a) Parent may offer certain Employees "at-will" employment by Parent and/or the Surviving Corporation, to be effective as of the Closing Date, upon proof of a legal right to work in the United States, and/or continued "at-will" employment by the Surviving Corporation from and after the Closing Date on terms that are the same as or different than the employment terms presently applicable to such Employees. Such "at-will" employment will: (i) be set forth in offer letters on Parent's standard form (each, an "OFFER LETTER"), (ii) be subject to and in compliance with Parent's

applicable policies and procedures, including, but not limited to, employment background checks and the execution of an employee proprietary information agreement, governing employment conduct and performance, (iii) have terms, including the position and salary, which will be determined by Parent, and (iv) supersede any prior express or implied employment agreements, arrangement or offer letter in effect prior to the Closing Date. At the same time as the execution of this Agreement, each Key Employee has executed an Offer Letter. Each employee of the Company who remains an employee of Parent or the Surviving Corporation after the Closing Date shall be referred to hereafter as a "CONTINUING EMPLOYEE." Continuing Employees shall be eligible to receive benefits consistent with Parent's applicable human resources policies. Parent will or will cause the Surviving Corporation or appropriate subsidiary of Parent to give Continuing Employees full credit under such policies for prior service at the Company for purposes of eligibility, benefit accrual, and determination of the level of benefits under Parent's benefit plans, programs or policies, provided that such credit does not result in duplication of benefits. In furtherance of the foregoing, and at Parent's request the Company shall terminate all employment agreements and other arrangements with its employees effective as of the Closing Date. Parent shall use commercially reasonable efforts to provide to Continuing Employees the opportunity to enroll in a special offering period under the Parent Employee Stock Purchase Plan, the offering period of which shall commence as soon as is administratively practicable following the Effective Time.

5.14 SEVERANCE OR TRANSITIONAL PACKAGES

Parent shall work with Company to provide certain employees of the Company who are not offered employment with Parent or who will be offered transitional employment with Parent severance or transitional packages; provided however, that such severance or transitional packages shall be no more favorable than severance or transitional packages offered to similarly situated employees of Parent.

5.15 VESTING WAIVERS

Concurrently with the execution of this Agreement, each individual listed in SCHEDULE 5.15 has entered into a vesting waiver with Parent in the form attached hereto as EXHIBIT D.

5.16 AFFILIATE AGREEMENTS

SCHEDULE 5.16 to this Agreement sets forth those persons who, in the Company's reasonable judgment, are or may be "affiliates" of the Company within the meaning of Rule 145 (each such person, a "RULE 145 AFFILIATE") promulgated under the Securities Act ("RULE 145"). The Company shall provide Parent such information and documents as Parent shall reasonably request for purposes of reviewing such list. Parent and Sub shall be entitled to issue appropriate stop transfer instructions to the transfer agent for Parent Common Stock and to place the following legend on the certificates evidencing any Parent Common Stock to be received by such Affiliates pursuant to the terms of this Agreement:

"THE SHARES REPRESENTED BY THIS CERTIFICATE WERE ISSUED IN A TRANSACTION TO WHICH RULE 145 APPLIES AND MAY ONLY BE

TRANSFERRED IN CONFORMITY WITH RULE 145(d) OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR IN ACCORDANCE WITH A WRITTEN OPINION OF COUNSEL, REASONABLY ACCEPTABLE TO THE ISSUER IN FORM AND SUBSTANCE, THAT SUCH TRANSFER IS EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED."

The legend set forth above shall be removed (by delivery of a substitute certificate without such legend) and Parent shall so instruct its transfer agent, if Affiliate delivers to Parent (i) satisfactory written evidence that the shares have been sold in compliance with Rule 145 (in which case, the substitute certificate shall be issued in the name of the transferee), or (ii) an opinion of counsel, in form and substance reasonably satisfactory to Parent, to the effect that public sale of the shares by the holder thereof is no longer subject to Rule 145.

5.17 STATEMENT OF EXPENSES

The Company shall provide Parent with a statement of Estimated Third Party Expenses incurred by the Company three (3) business days prior to the Closing Date in form reasonably satisfactory to Parent (the "STATEMENT OF EXPENSES").

5.18 TERMINATION OF 401(k) PLAN

Effective as of the day immediately preceding the Closing Date, each of the Company and any Affiliate (as such term is defined in SECTION 2.21) shall terminate any and all Company Employee Plans intended to include a Code Section 401(k) arrangement (each, a "401(k) PLAN") (unless Parent provides written notice to the Company that such 401(k) plans shall not be terminated). Unless Parent provides such written notice to the Company, no later than five (5) business days prior to the Closing Date, the Company shall provide Parent with evidence that such Company Employee Plan(s) have been terminated (effective as of the day immediately preceding the Closing Date) pursuant to resolutions of the Board of Directors of the Company or such Affiliate, as the case may be. The form and substance of such resolutions shall be subject to review and approval of Parent. The Company also shall take such other actions in furtherance of terminating such Company Employee Plan(s) as Parent may reasonably require. In the event that termination of a 401(k) Plan would reasonably be anticipated to trigger liquidation charges, surrender charges or other fees then the Company shall take such actions as are necessary to reasonably estimate the amount of such charges and/or fees and provide such estimate in writing to Parent no later than fifteen (15) calendar days prior to the Closing Date.

5.19 RESIGNATION OF OFFICERS AND DIRECTORS

The Company shall obtain the resignations of all officers and directors of the Company, effective as of the Effective Time.

5.20 PROPRIETARY INFORMATION AND INVENTIONS ASSIGNMENT AGREEMENT

Between the date hereof and the Closing, each new employee and new independent contractor of the Company shall enter into and execute a proprietary information and inventions assignment agreement with the Company in the form approved by Parent prior to the date hereof.

5.21 HSR ACT

To the extent applicable, as soon as may be reasonably practicable, Company and Parent (and any applicable Stockholder of the Company) each shall file, and the Company shall use best efforts to cause any applicable Stockholder of the Company to file, with the United States Federal Trade Commission (the "FTC") and the Antitrust Division of the United States Department of Justice ("DOJ") Notification and Report Forms relating to the transactions contemplated herein as required by the HSR Act as well as comparable pre-merger notification forms required by the merger notification or control laws and regulations of any applicable jurisdiction, as agreed to by the parties. Company and Parent (and/or any applicable Stockholder) each shall, the Company shall use best efforts to cause any applicable Stockholder of the Company to, promptly (a) supply the others with any information which reasonably may be required in order to effectuate such filings and (b) supply any additional information which reasonably may be required by the FTC, the DOJ or the competition or merger control authorities of any other jurisdiction and which the parties may reasonably deem appropriate; provided, however, that Parent shall not be required to agree to any divestiture by Parent or the Company or any of Parent's affiliates of shares of capital stock or of any business, assets or property of Parent or its affiliates or of the Company or its affiliates, or the imposition of any material limitation on the ability of any of them to conduct their businesses or to own or exercise control of such assets, property and stock.

5.22 SPREADSHEET

The Company shall deliver a spreadsheet (as the same may be updated as described below, the "Spreadsheet") substantially in the form attached hereto as SCHEDULE 5.23, which spreadsheet shall be certified as complete and correct by the Chief Executive Officer and Chief Financial Officer of the Company as of the Closing and which shall separately list, as of the Closing, (i) all Stockholders and their respective addresses of record, the number of shares of Company Capital Stock held by such persons (including the respective certificate numbers and whether such shares constitute Company Unvested Common Stock (including, for each certificate, the number of shares that are vested as of the Closing), the date of acquisition of such shares, the Exchange Ratio applicable to each holder, Total Consideration to be issued to each holder, the number of shares, if any, to be paid by the Stockholder in settlement of outstanding Stockholder loans, the number of shares of the Total Consideration to be deposited into the Escrow Fund on behalf of each holder, and such other information relevant thereto or which the Exchange Agent may reasonably request, and (ii) all holders of Company Options and their respective addresses, the number of shares of Company Capital Stock underlying each such Company Option, the grant dates of such Company Options and the vesting arrangement with respect to such Company Options and such other information relevant thereto or which Parent may reasonably request. The Company shall deliver the Spreadsheet three (3) business days prior to the Closing Date. The certification of the

completeness and correctness of the Spreadsheet as of the Closing will be based on the assumption that there are no changes in the information required to be set forth therein between the date of delivery and the Closing. The Company will use commercially reasonable efforts to avoid the occurrence of any such changes and will deliver an updated Spreadsheet, similarly certified, promptly after the occurrence of any such changes; provided, however, that no updates may be made to the Spreadsheet after the Effective Time.

5.23 NO LIABILITY FOR NEW EMPLOYEES

The parties hereto agree that neither Parent nor Sub shall have any liability for any Employees hired by Company after the date hereof, in the event the Merger is not consummated.

5.24 VOTING AGREEMENTS

Concurrently with execution of this Agreement, the persons listed on SECTION 5.24 of the Disclosure Schedule have executed and delivered to Parent Voting Agreements in the form attached hereto as EXHIBIT A.

5.25 NON-COMPETITION AGREEMENTS

Concurrently with execution of this Agreement, the Key Employees of the Company listed on SECTION 5.25 of the Disclosure Schedule have executed and delivered to Parent a Non-Competition Agreement in the form attached hereto as EXHIBIT B.

5.26 TERMINATION OF AGREEMENTS

The Company shall use its best efforts to terminate each of the agreements listed on Schedule 6.2(c) to this Agreement (the "TERMINATED AGREEMENTS"), concurrent with or prior to Closing, such that each such agreement shall be of no further force or effect. Prior to Closing, the Company shall pay all amounts owed under the Terminated Agreements (as a result of the termination of the Terminated Agreements or otherwise), and the Surviving Corporation will not incur any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise) under any Terminated Agreement following the Closing Date.

5.27 CLOSING FINANCIAL STATEMENTS

The Company shall prepare or cause to be prepared and delivered to Parent, as promptly as practicable at the Company's expense, the Required Financial Statements (as defined in SECTION 5.5 hereof). The Company shall use commercially reasonable efforts to assist Parent in the preparation of pro forma financial statements meeting the requirements of Article 11 of SEC Regulation S-X required or advisable to be included by Parent (i) any current report on Current Report on Form 8-K, (ii) any other annual, quarterly or other report, registration statement, and definitive proxy statement required to be filed by Parent with the SEC, or (iii) the application for the California Permit and the Information Statement.

5.28 TAX MATTERS

At or prior to Closing, the Company and Parent shall execute and deliver to Cooley Godward LLP (or Wilson Sonsini Goodrich & Rosati, P.C., if Cooley Godward LLP fails to deliver the tax opinion contemplated by SECTION 6.3(d)) tax representation letters in substantially the form attached hereto as EXHIBIT I (which will be used in connection with the legal opinion contemplated by SECTION 6.3(d)).

5.29 NASDAQ LISTING

Parent shall use reasonable efforts to cause the shares of Parent Common Stock to be received by Stockholders in connection with the Merger or issuable with respect to Parent Options to be authorized for listing on the Nasdaq National Market.

5.30 TERMINATION OF WARRANTS

The Company shall use its commercially reasonable efforts to terminate all outstanding unexercised Company Assumed Warrants, if any, as of immediately prior to the effective time.

5.31 INDEMNIFICATION

Subject to the last paragraph of SECTION 7.2 hereof, from the Effective Time until the sixth anniversary of the Effective Time, Parent shall cause the Surviving Corporation to fulfill and honor all obligations of the Company pursuant to the Company's Certificate of Incorporation and Bylaws as they are in effect on the date hereof and pay all amounts that become due and payable under such provisions; provided that such indemnification shall be subject to any limitation imposed from time to time under applicable law. If any claim, action, suit, proceeding or investigation is asserted for which a person is entitled to indemnification under the Company's Certificate of Incorporation or Bylaws, any counsel retained by the indemnified parties shall be reasonably satisfactory to Parent and the Surviving Corporation. This Section shall survive the consummation of the Merger, is intended to benefit each indemnified party and shall be enforceable by the indemnified parties.

ARTICLE VI

CONDITIONS TO THE MERGER

6.1 CONDITIONS TO OBLIGATIONS OF EACH PARTY TO EFFECT THE MERGER

The respective obligations of the Company and Parent to effect the Merger shall be subject to the satisfaction, at or prior to the Effective Time, of the following conditions:

(a) CALIFORNIA PERMIT; REGISTRATION STATEMENT. (i) The Commissioner of Corporations for the State of California shall have approved the terms and conditions of the transactions contemplated by this Agreement, and the fairness of such terms and conditions

following a hearing for such purpose, and shall have issued a California Permit or (ii) the SEC shall have declared the Registration Statement effective.

(b) NO ORDER. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, injunction or other order (whether temporary, preliminary or permanent) which is in effect and which has the effect of making the Merger illegal or otherwise prohibiting consummation of the Merger.

(c) NO INJUNCTIONS OR RESTRAINTS; ILLEGALITY. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger shall be in effect, nor shall any proceeding brought by an administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, seeking any of the foregoing be threatened or pending.

(d) HSR ACT. If applicable, all waiting periods under the HSR Act relating to the transactions contemplated hereby will have expired or terminated early and all material foreign antitrust approvals required to be obtained prior to the Merger in connection with the transactions contemplated hereby have been obtained.

(e) STOCKHOLDER APPROVAL. Stockholders holding a sufficient number of outstanding shares of Company Capital Stock (as required under the Company's certificate of incorporation, Delaware Law and California Law) shall have approved this Agreement, the Merger, and the transactions contemplated hereby and thereby, including the appointment of the Stockholder Representative, the Lock-up Provisions and the deposit of the Escrow Amount into the Escrow Fund.

6.2 CONDITIONS TO THE OBLIGATIONS OF PARENT AND SUB

The obligations of Parent and Sub to consummate and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, exclusively by Parent and Sub:

(a) REPRESENTATIONS, WARRANTIES AND COVENANTS. The representations and warranties of the Company contained in this Agreement and all other documents delivered pursuant hereto to which it is a party shall have been true and correct in all material respects (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) when made and shall be true and correct on and as of the Closing Date as though such representations and warranties were made on and as of such time, except for (i) inaccuracies which, individually or in the aggregate, would not have a Company Material Adverse Effect (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) and (ii) representations and warranties of the Company as of a specified date, which shall be true and correct in all material respects as of such date (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein). In addition, the representations and warranties contained in Sections 2.1, 2.2, 2.4 and

2.13 shall each be true and correct in all material respects (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) on and as of the Closing Date (other than the representations and warranties of the Company as of a specified date, which shall be true and correct in all material respects as of such date (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein)). The Company shall have performed and complied in all material respects with all covenants and obligations under this Agreement required to be performed and complied with by it as of the Closing.

(b) THIRD PARTY CONSENTS. Company shall have delivered to Parent all necessary consents, waivers and approvals of parties to any Contract (including Lease Agreements) set forth on SCHEDULE 6.2(b) hereto as are required thereunder in connection with the Merger, or for any such Contract to remain in full force and effect without limitation, modification or alteration after the Effective Time.

(c) TERMINATION OF AGREEMENTS. The Company shall have terminated each of those agreements listed on SCHEDULE 6.2(c) to this Agreement and each such agreement shall be of no further force or effect.

(d) NO MATERIAL ADVERSE EFFECT. There shall not have occurred since the date of this Agreement any event or condition of any character that has had or is reasonably likely to have a Company Material Adverse Effect.

(e) RESIGNATION OF OFFICERS AND DIRECTORS. Parent shall have received a written resignation from each of the officers and directors of the Company effective as of the Effective Time.

(f) LEGAL OPINION. Parent shall have received a legal opinion from legal counsel to the Company, substantially in the form attached hereto as EXHIBIT F.

(g) APPRAISAL RIGHTS. Stockholders holding no more than ten percent (10%) of the Total Outstanding Shares shall continue to have a right to exercise appraisal, dissenters' or similar rights under applicable law with respect to their Company Capital Stock by virtue of the Merger.

(h) CERTIFICATE OF THE COMPANY. Parent shall have received a certificate, validly executed by each of the Chief Executive Officer and Chief Financial Officer of the Company for and on the Company's behalf, to the effect that, as of the Closing:

(i) (A) all representations and warranties of the Company contained in this Agreement and all other documents delivered pursuant hereto to which it is a party shall have been true and correct in all material respects (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) when made; (B) all representations and warranties of the Company contained in this Agreement and all other documents delivered pursuant hereto to which it is a party shall be true and correct on and as of the Closing Date as though such representations and warranties were made on and as of such time, except for (i) inaccuracies which,

individually or in the aggregate, would not have a Company Material Adverse Effect (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) and (ii) representations and warranties of the Company as of a specified date, which shall be true and correct in all material respects as of such date (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein); and (C) the representations and warranties contained in SECTIONS 2.1, 2.2, 2.4 and 2.13 shall each be true and correct in all material respects (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) on and as of the Closing Date (other than the representations and warranties of the Company as of a specified date, which shall be true and correct in all material respects as of such date (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein));

(ii) all covenants and obligations under this Agreement to be performed or complied with by the Company or on or before the Closing have been so performed or completed with in all material respects; and

(iii) as of the Closing, all other conditions to the obligations of Parent and Sub set forth in this SECTION 6.2 have been satisfied (unless otherwise waived in accordance with the terms hereof).

(i) CERTIFICATE OF SECRETARY OF COMPANY. Parent shall have received a certificate, validly executed by the Secretary of the Company, certifying as to (i) the terms and effectiveness of the certificate of incorporation and the bylaws of the Company, (ii) the valid adoption of resolutions of the Board of Directors of the Company (whereby the Merger and the transactions contemplated hereunder, were approved by the Board of Directors) and (iii) the valid adoption by the Stockholders of resolutions adopting this Agreement.

(j) FIRPTA CERTIFICATE. Parent shall have received a copy of the FIRPTA Compliance Certificate, validly executed by a duly authorized officer of the Company.

(k) STATEMENT OF EXPENSES. Parent shall have received from the Company the Statement of Expenses pursuant to SECTION 5.17 hereof three (3) business days prior to the Closing Date.

(1) NEW EMPLOYMENT ARRANGEMENTS. (i) Each of the Key Employees (A) shall have entered into "at-will" employment arrangements with Parent and/or the Surviving Corporation pursuant to their execution of an Offer Letter which shall be in full force and effect, (B) shall have agreed to be employees of Parent after the Closing and (C) shall be employees of the Company immediately prior to the Effective Time. (ii) At least ninety percent (90%) of the individuals listed on SCHEDULE 6.2(1)(ii) (A) shall have entered into "at-will" employment arrangements with Parent and/or the Surviving Corporation pursuant to their execution of an Offer Letter which shall be in full force and effect, (B) shall have agreed to be employees of Parent after the Closing and (C) shall be employees of the Company immediately prior to the Effective Time; provided however that this condition shall not be deemed to have been satisfied if more than two (2) employees in Groups B, D or F listed on SCHEDULE 6.2(1)(ii) shall have declined the Parent Offer Letter and provided further

that this condition shall not be deemed to have been satisfied if more than three (3) employees in Groups A, C or E listed on SCHEDULE 6.2(1)(ii) shall have declined the Parent Offer Letter. (iii) At least seventy percent (70%) of the individuals listed on SCHEDULE 6.2(1)(iii) (A) shall have entered into "at-will" employment arrangements with Parent and/or the Surviving Corporation pursuant to their execution of an Offer Letter which shall be in full force and effect, (B) shall have agreed to be employees of Parent after the Closing and (C) shall be employees of the Company immediately prior to the Effective Time.

(m) VESTING WAIVER. Each individual listed on SCHEDULE 5.15 shall have entered into a vesting waiver in the form attached hereto as EXHIBIT D.

(n) NON-COMPETITION AGREEMENTS. The Key Employees and executive officers of the Company shall have executed and delivered to Parent a Non-Competition Agreement in the form attached hereto as EXHIBIT B, and all of such Non-Competition Agreements shall be in full force and effect.

(o) AFFILIATE AGREEMENTS. Each of the persons listed in SECTION 5.16 of the Disclosure Schedule shall have executed an Affiliate Agreement substantially in the form attached hereto as EXHIBIT E and such Affiliate Agreements shall be in full force and effect.

(p) REQUIRED FINANCIAL STATEMENTS. The Company shall have delivered to Parent the Required Financial Statements, including any audit letter required therein, which shall have been certified by the form of certification attached hereto as EXHIBIT G, by the Chief Executive Officer and Chief Financial Officer of the Company.

(q) SPREADSHEET. The Company shall have delivered three (3) business days prior to the Closing Date to Parent and the Exchange Agent the Spreadsheet, which shall have been certified as true and correct by the Chief Executive Officer and the Chief Financial Officer of the Company.

6.3 CONDITIONS TO OBLIGATIONS OF THE COMPANY

The obligations of the Company to consummate and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, exclusively by the Company:

(a) REPRESENTATIONS, WARRANTIES AND COVENANTS. The representations and warranties of Parent and Sub contained in this Agreement and all other documents delivered pursuant hereto to which it is a party shall have been true and correct in all material respects (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) when made and shall be true and correct on and as of the Closing Date as though such representations and warranties were made on and as of such time, except for (i) inaccuracies which, individually or in the aggregate, would not have a Parent Material Adverse Effect (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) and (ii) representations and warranties

as of a specified date, which shall be true and correct in all material respects as of such date (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein). In addition, the representations and warranties contained in Section 3.1 shall be true and correct in all material respects (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) on and as of the Closing Date (other than the representations and warranties of the Parent as of a specified date, which shall be true and correct in all material respects as of such date (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein)). Each of Parent and Sub shall have performed and complied with in all material respects with all covenants and obligations under this Agreement required to be performed and complied with by such parties as of the Closing Date.

(b) CERTIFICATE OF PARENT. Company shall have received a certificate executed on behalf of Parent by a Vice President for and on its behalf to the effect that, as of the Closing:

(i) (A) all representations and warranties of Parent and Sub contained in this Agreement and all other documents delivered pursuant hereto to which it is a party shall have been true and correct in all material respects (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) when made; (B) all representations and warranties of Parent and Sub contained in this Agreement and all other documents delivered pursuant hereto to which it is a party shall be true and correct on and as of the Closing Date as though such representations and warranties were made on and as of such time, except for (i) inaccuracies which, individually or in the aggregate, would not have a Parent Material Adverse Effect (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) and (ii) representations and warranties as of a specified date, which shall be true and correct in all material respects as of such date (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein); and (C) the representations and warranties contained in SECTION 3.1 shall be true and correct in all material respects (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) on and as of the Closing Date (other than the representations and warranties of the Parent as of a specified date, which shall be true and correct in all material respects as of such date (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein));

(ii) all covenants and obligations under this Agreement to be performed by Parent and Sub on or before the Closing have been so performed in all material respects;

(iii) as of the Closing, all other conditions to the obligations of the Company set forth in this SECTION 6.3 have been satisfied (unless otherwise waived in accordance with the terms hereof).

(c) LEGAL OPINION. The Company shall have received a legal opinion from Wilson Sonsini Goodrich & Rosati, P.C., legal counsel to the Parent, substantially in the form attached hereto as EXHIBIT H.

(d) TAX OPINION. The Company shall have received a legal opinion of Cooley Godward LLP, dated as of the Closing Date, to the effect that the Merger will constitute a reorganization within the meaning of Code Section 368(a) (it being understood that in rendering such opinion, Cooley Godward LLP may rely upon the tax representation letters referenced in SECTION 5.28). Notwithstanding the foregoing, if the Company's counsel does not render such opinion, this condition shall nevertheless be deemed satisfied if Wilson Sonsini Goodrich & Rosati, counsel to Parent, renders such opinion to the Company.

(e) NO MATERIAL ADVERSE EFFECT. There shall not have occurred since the date of this Agreement any event or condition of any character that has had or is reasonably likely to have a Parent Material Adverse Effect.

ARTICLE VII

SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ESCROW

7.1 SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS

The representations and warranties of the Company contained in this Agreement, or in any certificate or other instruments delivered pursuant to this Agreement, shall survive until 5:00 pm San Jose, California time on the first anniversary of the Closing Date (such date, the "SURVIVAL DATE"). The representations and warranties of Parent and Sub contained in this Agreement, or in any certificate or other instrument delivered pursuant to this Agreement, shall terminate at the Closing.

7.2 INDEMNIFICATION

From and after the Effective Time (but subject to SECTION 7.1 hereof), the Stockholders agree to indemnify and hold Parent and its officers, directors, and affiliates, including the Surviving Corporation (the "INDEMNIFIED PARTIES"), harmless against all claims, losses, liabilities, damages, deficiencies, costs and expenses, including reasonable attorneys' fees and expenses of investigation and defense and diminution in value (hereinafter individually a "LOSS" and collectively "LOSSES") discovered by an Indemnified Party on or prior to the Survival Date that was incurred or sustained by the Indemnified Parties, or any of them (including the Surviving Corporation), directly or indirectly, as a result of (i) any breach or inaccuracy of a representation or warranty of the Company contained in this Agreement or in any certificate or other instruments delivered pursuant to this Agreement, (ii) any failure by the Company to perform or comply with any covenant applicable to it contained in this Agreement, (iii) any Dissenting Share Payments, or (iv) any Excess Third Party Expenses. The Stockholders shall not have any right of contribution from the Surviving Corporation or Parent with respect to any Loss claimed by an Indemnified Party. Notwithstanding any provision of this Agreement, the Certificate of Incorporation or Bylaws of the Company, or in any agreement between the Company and any Company Stockholder to the contrary entered into prior to the Closing, in no event shall the Surviving Corporation, as the successor in interest to the Company by virtue of the Merger, be obligated to reimburse, contribute, indemnify or hold harmless any

Company Stockholder for or in connection with any Losses or obligations of the Company Stockholder under this ARTICLE VII, whether or not such person would otherwise be entitled to payment pursuant to SECTION 5.31 hereof.

7.3 ESCROW ARRANGEMENTS

(a) ESCROW FUND. By virtue of this Agreement and as security for the indemnity obligations provided for in SECTION 7.2 hereof, at the Effective Time, the Stockholders will be deemed to have received and deposited with the Escrow Agent the Escrow Amount (plus any New Shares as defined in SECTION 7.3(e)(II) hereof) without any act of the Stockholders. The Escrow Amount shall be available to compensate the Indemnified Parties for any claims by such parties for any Losses suffered or incurred by them and for which they are entitled to recovery under this ARTICLE VII. Promptly after the Closing, the Escrow Amount, without any act of the Stockholders, will be deposited with the Escrow Agent, such deposit of the Escrow Amount to constitute an escrow fund (the "ESCROW FUND") to be governed by the terms set forth herein. The Escrow Fund shall be funded exclusively with shares of Parent Common Stock that are not unvested or subject to a repurchase option, risk of forfeiture or other condition under any applicable stock restriction agreement or other agreement. The Escrow Agent may execute this Agreement following the date hereof and prior to the Closing, and such later execution, if so executed after the date hereof, shall not affect the binding nature of this Agreement as of the date hereof between the other signatories hereto.

(b) THRESHOLD AMOUNT. Notwithstanding any provision of this Agreement to the contrary, except as set forth in the second sentence of this SECTION 7.3(b), an Indemnified Party may not recover any Losses under SECTION 7.2 unless and until one or more Officer's Certificates (as defined below) identifying such Losses under SECTION 7.2 in excess of \$200,000 in the aggregate (the "THRESHOLD AMOUNT") has or have been delivered to the Escrow Agent or the Stockholder Representative (as defined IN SECTION 7.4 hereof) as provided in SECTION 7.3(f) hereof, in which case Parent shall be entitled to recover all Losses so identified. Notwithstanding the foregoing, Parent shall be entitled to recover for, and the Threshold Amount shall not apply as a threshold to, any and all claims or payments made with respect to (A) Losses resulting from any breach of representation or warranty contained in SECTION 2.2 (Company Capital Structure) or in SECTION 2.10 (Tax Matters) hereof, (B) any Dissenting Share Payments, (C) any Excess Third Party Expenses, and (D) Losses resulting from the failure of any Stockholder to pay Agent Interpleader Expenses or Agent Indemnification Expenses pursuant to clauses (vi) and (vii) of SECTION 7.3(j) hereof or Independent Accounting Firm Expenses pursuant to SECTION 5.5 hereof. Losses not subject to the Threshold Amount shall not be included in determining whether the Threshold amount has been exceeded. For the purposes hereof, "OFFICER'S CERTIFICATE" shall mean a certificate signed by any officer of Parent in good faith: (1) stating that an Indemnified Party has paid, sustained, incurred, or properly accrued, or reasonably anticipates that it will have to pay, sustain, incur, or accrue Losses, and (2) specifying in reasonable detail the individual items of Losses included in the amount so stated, the date each

such item was paid, sustained, incurred, or properly accrued, or the basis for such anticipated liability, and the nature of the misrepresentation, breach of warranty or covenant to which such item is related.

(c) ESCROW SOLE REMEDY. Except to the extent that the Losses resulted from fraud or any knowing and intentional breaches of covenants committed by the Company, claims by an Indemnified Party for Losses shall be satisfied solely from the Escrow Fund.

(d) ESCROW PERIOD; DISTRIBUTION UPON TERMINATION OF ESCROW PERIODS. Subject to the following requirements, the Escrow Fund shall be in existence immediately following the Effective Time and shall terminate at 5:00 p.m., local time at Parent's headquarters, on the date thirty (30) days after the Survival Date (the "ESCROW PERIOD") and the shares held in Escrow shall be delivered to Stockholders promptly thereafter; provided, however, that the Escrow Period shall not terminate with respect to any amount which, in the good faith judgment of Parent, is necessary to satisfy any unsatisfied claims specified in any Officer's Certificate delivered to the Escrow Agent and the Stockholder Representative prior to the Escrow Period termination date with respect to Losses arising prior to the Survival Date. As soon as each such claim has been resolved, the Escrow Agent shall deliver the remaining portion of the Escrow Fund, if any, not required to satisfy such claim or any remaining claim. Deliveries of the Escrow Amount out of the Escrow Fund to the Stockholders pursuant to this SECTION 7.3(d) shall be made in proportion to their respective Pro Rata Portions of the remaining shares in the Escrow Fund, with the amount delivered to each Stockholder rounded to the nearest whole number of shares of Parent Common Stock. If the sum of the Pro Rata Portions (each rounded to the nearest whole number of shares of Parent Common Stock) does not equal the remaining shares in the Escrow Fund, then the appropriate number of shares of Parent Common Stock will be added to or subtracted from the Pro Rata Portion of Sequoia Capital X such that the sum of the rounded Pro Rata Portions does equal the remaining shares in the Escrow Fund.

(e) PROTECTION OF ESCROW FUND.

(i) The Escrow Agent shall hold and safeguard the Escrow Fund during the Escrow Period, shall treat such fund as a trust fund in accordance with the terms of this Agreement and not as the property of Parent and shall hold and dispose of the Escrow Fund only in accordance with the terms of this ARTICLE VII.

(ii) Any shares of Parent Common Stock or other equity securities issued or distributed by Parent after the Effective Time (including shares issued upon a stock split) ("NEW SHARES") in respect of Parent Common Stock in the Escrow Fund which have not been released from the Escrow Fund shall be added to the Escrow Fund and become a part thereof. New Shares issued in respect of shares of Parent Common Stock which have been released from the Escrow Fund shall not be added to the Escrow Fund but shall be distributed to the record holders thereof. Cash dividends on Parent Common Stock shall not be added to the Escrow Fund but shall be distributed to the record holders thereof.

(iii) Each of the Stockholders shall have voting rights with respect to the shares of Parent Common Stock contributed to and held in the Escrow Fund by such Stockholder (and on any voting securities added to the Escrow Fund in respect of such shares of Parent Common Stock).

(f) CLAIMS FOR INDEMNIFICATION.

(i) Upon receipt by the Escrow Agent at any time on or before the last day of the Escrow Period of an Officer's Certificate, the Escrow Agent shall, subject to the provisions of SECTION 7.3(g) and SECTION 7.3(h) hereof, deliver to Parent, as promptly as practicable, Parent Common Stock held in the Escrow Fund equal to such Losses (as calculated based on the Trading Price).

(ii) Failure by the Stockholder Representative to object in writing within the 30-day period after delivery by the Parent of the Officer's Certificate shall be an irrevocable acknowledgment by the Stockholder Representative and the Stockholders that the Indemnified Party is entitled to the full amount of the claim for Losses set forth in such Officer's Certificate.

(g) OBJECTIONS TO CLAIMS AGAINST THE ESCROW FUND. At the time of delivery of any Officer's Certificate to the Escrow Agent, a duplicate copy of such certificate shall be delivered to the Stockholder Representative, and for a period of thirty (30) days after such delivery, the Escrow Agent shall make no delivery to Parent of any Escrow Amount pursuant to SECTION 7.3(f) (other than Agreed-Upon Losses as described below) hereof unless the Escrow Agent shall have received written authorization from the Stockholder Representative to make such delivery. After the expiration of such thirty (30) day period, subject to the limitations set forth in SECTION 7.3(f)(i), the Escrow Agent shall make delivery of shares of Parent Common Stock from the Escrow Fund equal to the amount of Losses claimed in the Officer's Certificate, provided that no such payment or delivery may be made if the Stockholder Representative, shall object in a written statement to the claim made in the Officer's Certificate (an "OBJECTION NOTICE"), and such Objection Notice shall have been delivered to the Escrow Agent prior to the expiration of such thirty (30) day period. Notwithstanding the foregoing, the Stockholder Representative hereby waives the right to object to any claims against the Escrow Fund in respect of any Agreed-Upon Loss (as defined in SECTION 7.3(h)(v) hereof). The Stockholder Representative hereby authorizes the Escrow Agent to deliver shares of Parent Common Stock from the Escrow Fund equal to the amount of Losses claimed in any Officer's Certificate in respect of any Agreed-Upon Loss upon receipt of such Officer's Certificate without regard to the thirty (30) day period set forth in this SECTION 7.3(g).

(h) RESOLUTION OF CONFLICTS; ARBITRATION.

(i) In case the Stockholder Representative delivers an Objection Notice in accordance with SECTION 7.3(g) (other than Agreed-Upon Losses as defined in SECTION 7.3(h)(v) hereof), the Stockholder Representative and Parent shall attempt in good faith to agree upon the rights of the respective parties with respect to each of such claims. If the Stockholder Representative and Parent should so agree, a memorandum setting forth such agreement shall be prepared and

signed by both parties and shall be furnished to the Escrow Agent. The Escrow Agent shall be entitled to rely on any such memorandum and make distributions from the Escrow Fund in accordance with the terms thereof.

(ii) If no such agreement can be reached after good faith negotiation and prior to thirty (30) days after delivery of an Objection Notice, either Parent or the Stockholder Representative may demand arbitration of the matter unless the amount of the Loss is at issue in pending litigation with a third party, in which event arbitration shall not be commenced until such amount is ascertained or both parties agree to arbitration, and in either such event the matter shall be settled by arbitration conducted by one arbitrator mutually agreeable to Parent and the Stockholder Representative. In the event that, within thirty (30) days after submission of any dispute to arbitration, Parent and the Stockholder Representative cannot mutually agree on one arbitrator, then, within fifteen (15) days after the end of such thirty (30) day period, Parent and the Stockholder Representative shall each select one arbitrator. The two arbitrators so selected shall select a third arbitrator. If either Parent or the Stockholder Representative fails to select an arbitrator during this fifteen (15) day period, then the parties agree that the arbitration will be conducted by one arbitrator selected by the party not so failing to select an arbitrator.

(iii) Any such arbitration shall be held in Santa Clara County, California, under the rules then in effect of the American Arbitration Association. The arbitrator(s) shall determine how all expenses relating to the arbitration shall be paid, including without limitation, the respective expenses of each party, the fees of each arbitrator and the administrative fee of the American Arbitration Association. The arbitrator or arbitrators, as the case may be, shall set a limited time period and establish procedures designed to reduce the cost and time for discovery while allowing the parties an opportunity, adequate in the sole judgment of the arbitrator or majority of the three arbitrators, as the case may be, to discover relevant information from the opposing parties about the subject matter of the dispute. The arbitrator, or a majority of the three arbitrators, as the case may be, shall rule upon motions to compel or limit discovery and shall have the authority to impose sanctions, including attorneys' fees and costs, to the same extent as a competent court of law or equity, should the arbitrators or a majority of the three arbitrators, as the case may be, determine that discovery was sought without substantial justification or that discovery was refused or objected to without substantial justification. The decision of the arbitrator or a majority of the three arbitrators, as the case may be, as to the validity and amount of any claim in such Officer's Certificate shall be final, binding, and conclusive upon the parties to this Agreement. Such decision shall be written and shall be supported by written findings of fact and conclusions which shall set forth the award, judgment, decree or order awarded by the arbitrator(s), and the Escrow Agent shall be entitled to rely on, and make distributions from the Escrow Fund in accordance with, the terms of such award, judgment, decree or order as applicable. Within thirty (30) days of a decision of the arbitrator(s) requiring payment by one party to another, such party shall make the payment to such other party.

(iv) Judgment upon any award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The forgoing arbitration provision shall apply to any dispute among

the Stockholders and the Indemnified Party under this ARTICLE VII hereof, whether relating to claims upon the Escrow Fund or to the other indemnification obligations set forth in this ARTICLE VII.

(v) This SECTION 7.3(h) shall not apply to claims against the Escrow Fund made in respect of (A) any Dissenting Share Payments (as defined in SECTION 1.7(c)), (B) any Excess Third Party Expenses (as defined in SECTION 5.5) and (C) any Agent Interpleader Expenses or Agent Indemnification Expenses pursuant to clauses (vi) and (vii) of SECTION 7.3(j) hereof (each of (A), (B) and (C), an "AGREED-UPON LOSS"). Claims against the Escrow Fund made in respect of any Agreed-Upon Loss shall be resolved in the manner described in SECTION 7.3(g) above. Notwithstanding the foregoing, at any time within thirty (30) days after the payment of any such claim, the Stockholder Representative may challenge the appropriateness of such claim by delivering an Objection Notice as described above, in which case the procedures set forth in this SECTION 7.3(h) shall apply to the resolution of such challenge.

(i) THIRD-PARTY CLAIMS. In the event Parent becomes aware of a third party claim (other than a claim that is the subject of an Agreed-Upon Loss) (a "THIRD PARTY CLAIM") which Parent reasonably believes may result in a demand against the Escrow Fund or for other indemnification pursuant to this ARTICLE VII, Parent shall notify the Stockholder Representative of such claim, and the Stockholder Representative shall be entitled on behalf of the Stockholders, at its expense, to participate in, but not to determine or conduct, the defense of such Third Party Claim. Parent shall have the right in its sole discretion to conduct the defense of, and to settle, any such claim; provided, however, that except with the consent of the Stockholder Representative, no settlement of any such Third Party Claim with third party claimants shall be determinative of the amount of Losses relating to such matter. In the event that the Stockholder Representative has consented to any such settlement, the Stockholders shall have no power or authority to object under any provision of this ARTICLE VII to the amount of any Third Party Claim by Parent against the Escrow Fund with respect to such settlement. Notwithstanding anything in this Agreement to the contrary, this SECTION 7.3(i) shall not apply to any third party claim that is the subject of an Agreed-Upon Loss. Claims against the Escrow Fund made in respect of any Agreed-Upon Loss shall be resolved in the manner described in SECTION 7.3(h)(v) above.

(j) ESCROW AGENT'S DUTIES.

(i) The Escrow Agent shall be obligated only for the performance of such duties as are specifically set forth herein, and as set forth in any additional written escrow instructions which the Escrow Agent may receive after the date of this Agreement which are signed by an officer of Parent and the Stockholder Representative, and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall not be liable for any act done or omitted hereunder as Escrow Agent while acting in good faith and in the exercise of reasonable judgment, and any act done or omitted pursuant to the advice of legal counsel shall be conclusive evidence of such good faith.

(ii) The Escrow Agent is hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person, excepting only orders or process of courts of law, and is hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case the Escrow Agent obeys or complies with any such order, judgment or decree of any court, the Escrow Agent shall not be liable to any of the parties hereto or to any other person by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

(iii) The Escrow Agent shall not be liable in any respect on account of the identity, authority or rights of the parties executing or delivering or purporting to execute or deliver this Agreement or any documents or papers deposited or called for hereunder.

(iv) The Escrow Agent shall not be liable for the expiration of any rights under any statute of limitations with respect to this Agreement or any documents deposited with the Escrow Agent.

(v) In performing any duties under this Agreement, the Escrow Agent shall not be liable to any party for damages, losses, or expenses, except for negligence or willful misconduct on the part of the Escrow Agent. The Escrow Agent shall not incur any such liability for (A) any act or failure to act made or omitted in good faith, or (B) any action taken or omitted in reliance upon any instrument, including any written statement or affidavit provided for in this Agreement that the Escrow Agent shall in good faith believe to be genuine, nor will the Escrow Agent be liable or responsible for forgeries, fraud, impersonations, or determining the scope of any representative authority. In addition, the Escrow Agent may consult with legal counsel in connection with performing the Escrow Agent's duties under this Agreement and shall be fully protected in any act taken, suffered, or permitted by him/her in good faith in accordance with the advice of counsel. The Escrow Agent is not responsible for determining and verifying the authority of any person acting or purporting to act on behalf of any party to this Agreement.

(vi) If any controversy arises between the parties to this Agreement, or with any other party, concerning the subject matter of this Agreement, its terms or conditions, the Escrow Agent will not be required to determine the controversy or to take any action regarding it. The Escrow Agent may hold all documents and the Escrow Amount and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in the Escrow Agent's discretion, may be required, despite what may be set forth elsewhere in this Agreement. In such event, the Escrow Agent will not be liable for damages. Furthermore, the Escrow Agent may at its option, file an action of interpleader requiring the parties to answer and litigate any claims and rights among themselves. The Escrow Agent is authorized to deposit with the clerk of the court all documents and the Escrow Amounts held in escrow, except all costs, expenses, charges and reasonable attorney fees incurred by the Escrow Agent due to the interpleader action (the "AGENT INTERPLEADER EXPENSES") and which the parties agree to pay as follows: fifty percent (50%) to be paid by Parent and fifty percent (50%) to be paid by the Stockholders on the basis of the

Stockholders' respective Pro Rata Portions; provided, however, that in the event any Stockholder fails to timely pay his or her Pro Rata Portion of the Agent Interpleader Expenses, the parties agree that Parent may at its option pay such Stockholder's Pro Rata Portion of the Agent Interpleader Expenses and recover an equal amount (which shall be deemed a Loss) from such Stockholder's Pro Rata Portion of the Escrow Fund. Upon initiating such action, the Escrow Agent shall be fully released and discharged of and from all obligations and liability imposed by the terms of this Agreement.

(vii) The parties and their respective successors and assigns agree jointly and severally to indemnify and hold Escrow Agent harmless against any and all losses, claims, damages, liabilities, and expenses, including reasonable costs of investigation, counsel fees, including allocated costs of in-house counsel and disbursements that may be imposed on Escrow Agent or incurred by Escrow Agent in connection with the performance of his/her duties under this Agreement, including but not limited to any litigation arising from this Agreement or involving its subject matter, other than those arising out of the negligence or willful misconduct of the Escrow Agent (the "AGENT INDEMNIFICATION EXPENSES") as follows: fifty percent (50%) to be paid by Parent and fifty percent (50%) to be paid by the Stockholders on the basis of the Stockholders' Pro Rata Portions; provided, however, that in the event any Stockholder fails to timely pay his or her Pro Rata Portion of the Agent Indemnification Expenses, the parties agree that Parent may at its option pay such Stockholder's Pro Rata Portion of the Agent Indemnification Expenses and recover an equal amount (which shall be deemed a Loss) from such Stockholder's Pro Rata Portion of the Escrow Fund; and provided further, that in no event shall any Stockholder's liability pursuant to this paragraph exceed amounts actually received by it pursuant to the Merger.

(viii) The Escrow Agent may resign at any time upon giving at least thirty (30) days written notice to the Parent and the Stockholder Representative; provided, however, that no such resignation shall become effective until the appointment of a successor escrow agent which shall be accomplished as follows: Parent and the Stockholder Representative shall use their best efforts to mutually agree on a successor escrow agent within thirty (30) days after receiving such notice. If the parties fail to agree upon a successor escrow agent within such time, the Escrow Agent shall have the right to appoint a successor escrow agent authorized to do business in the State of California. The successor escrow agent shall execute and deliver an instrument accepting such appointment and it shall, without further acts, be vested with all the estates, properties, rights, powers, and duties of the predecessor escrow agent as if originally named as escrow agent. Upon appointment of a successor escrow agent and delivery to such successor all documents and Escrow Amounts held hereunder, the Escrow Agent shall be discharged from any further duties and liability under this Agreement.

(k) FEES. All fees of the Escrow Agent for performance of its duties hereunder shall be paid by Parent in accordance with the standard fee schedule of the Escrow Agent. It is understood that the fees and usual charges agreed upon for services of the Escrow Agent shall be considered compensation for ordinary services as contemplated by this Agreement. In the event that the conditions of this Agreement are not promptly fulfilled, or if the Escrow Agent renders any

service not provided for in this Agreement but that has been requested by an officer of Parent, or if the parties request a substantial modification of the terms of the Agreement, or if any controversy arises, or if the Escrow Agent is made a party to, or intervenes in, any litigation pertaining to the Escrow Fund or its subject matter, the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs, attorney's fees, including allocated costs of in-house counsel, and expenses occasioned by such default, delay, controversy or litigation.

(1) SUCCESSOR ESCROW AGENTS. Any corporation into which the Escrow Agent in its individual capacity may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Escrow Agent in its individual capacity shall be a party, or any corporation to which substantially all the corporate trust business of the Escrow Agent in its individual capacity may be transferred, shall be the Escrow Agent under this Escrow Agreement without further act.

7.4 STOCKHOLDER REPRESENTATIVE

(a) By virtue of the approval of the Merger and this Agreement by the requisite vote of the Stockholders, with respect to the Escrow and SECTION 1.6(c) each of the Stockholders shall be deemed to have agreed to appoint Douglas M. Leone as its agent and attorney-in-fact, as the Stockholder Representative for and on behalf of the Stockholders to give and receive notices and communications, to authorize payment to any Indemnified Party from the Escrow in satisfaction of claims by any Indemnified Party, to agree or disagree with the determination of the Earn-Out Payment, to object to such payments, to agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such claims or disputes related to the Earn-Out Payment, to assert, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to, any other claim by any Indemnified Party pursuant to the Escrow or SECTION 1.8(c), in each case relating to this Agreement or the transactions contemplated hereby, and to take all other actions that are either (i) necessary or appropriate in the judgment of the Stockholder Representative for the accomplishment of the foregoing or (ii) specifically mandated by the terms of this Agreement. Such agency may be changed by the Stockholders from time to time upon not less than thirty (30) days prior written notice to Parent; provided, however, that the Stockholder Representative may not be removed unless holders of a two-thirds interest of the Escrow Fund agree to such removal and to the identity of the substituted agent. A vacancy in the position of Stockholder Representative may be filled by the holders of a majority in interest of the Escrow Fund. No bond shall be required of the Stockholder Representative, and the Stockholder Representative shall not receive any compensation for its services. With respect to the Escrow or SECTION 1.8(c), notices or communications to or from the Stockholder Representative shall constitute notice to or from the Stockholders.

(b) The Stockholder Representative shall not be liable for any act done or omitted hereunder as Stockholder Representative while acting in good faith and in the exercise of reasonable

judgment. The Stockholders on whose behalf the Escrow Amount was contributed to the Escrow Fund shall indemnify the Stockholder Representative and hold the Stockholder Representative harmless against any loss, liability or expense incurred without gross negligence or bad faith on the part of the Stockholder Representative and arising out of or in connection with the acceptance or administration of the Stockholder Representative's duties hereunder, including the reasonable fees and expenses of any legal counsel retained by the Stockholder Representative ("STOCKHOLDER REPRESENTATIVE EXPENSES"). A decision, act, consent or instruction of the Stockholder Representative with respect to SECTION 1.6(c) or the Escrow, including but not limited to an amendment, extension or waiver of this Agreement pursuant to SECTION 7.3 and SECTION 7.4 hereof, shall constitute a decision of the Stockholders and shall be final, binding and conclusive upon the Stockholders; and the Escrow Agent and Parent may rely upon any such decision, act, consent or instruction of the Stockholder Representative as being the decision, act, consent or instruction of the Stockholders. The Escrow Agent and Parent are hereby relieved from any liability to any person for any acts done by them in accordance with such decision, act, consent or instruction of the Stockholder Representative.

7.5 MAXIMUM PAYMENTS; REMEDY

(a) Except as set forth in SECTION 7.5(b) and SECTION 7.5(c) hereof, the maximum amount an Indemnified Party may recover from a Stockholder individually pursuant to the indemnity set forth in SECTION 7.2 hereof for Losses shall be limited to a number of shares equal to such Stockholder's Pro Rata Portion of the Escrow Fund.

(b) Notwithstanding anything to the contrary set forth in this Agreement, nothing in this Agreement shall limit the liability of any Stockholder (and the Escrow Fund shall not be the exclusive remedy) in respect of Losses arising out of any fraud committed by such Stockholder or any knowing and intentional breaches of covenants on the part of such Stockholder. For the avoidance of doubt, a Stockholder shall not be liable for any amount in excess of its Pro Rata Portion of the Escrow Fund for any fraud committed by another Stockholder or any knowing and intentional breaches of covenants on the part of another Stockholder.

(c) Nothing herein shall limit the liability of the Company or the Stockholders for any breach or inaccuracy of any representation, warranty or covenant contained in this Agreement or any Related Agreement if the Merger does not close. For the avoidance of doubt, nothing herein shall be construed to mean that any representation, warranty or covenant made by the Company is also made by any of the Stockholders, or vice versa.

7.6 RIGHT OF SET-OFF

Notwithstanding anything set forth in this Agreement to the contrary, if the Escrow Fund shall be insufficient to satisfy any and all Losses incurred by Parent, its officers, directors or affiliates (including the Surviving Corporation) with respect to which any of them would otherwise

be entitled to indemnification under this Article VII ("EXCESS LOSSES"), Parent shall be entitled to set-off any such Excess Losses against the Earn-Out Payment payable by Parent under this Agreement as and when it becomes due. Any such payment shall be withheld on a pro rata basis from the Earn-Out Payments otherwise then payable with respect to each Earn-Out Payee. Neither the exercise of nor the failure to exercise such right of set-off will constitute an election of remedies or limit Parent in any manner in the enforcement of any other remedies that may be available to it.

ARTICLE VIII

TERMINATION, AMENDMENT AND WAIVER

8.1 TERMINATION

Except as provided in SECTION 8.2 hereof, this Agreement may be terminated and the Merger abandoned at any time prior to the Closing:

(a) by unanimous agreement of the Company and Parent;

(b) by Parent or the Company if the Closing Date shall not have occurred by March 31, 2003; provided, however, that such date shall be extended to June 30, 2003 in the event that the condition set forth in SECTION 6.1(a) or the condition set forth in SECTION 6.1(b) has not been met; provided further, however, that the right to terminate this Agreement under this SECTION 8.1(b) shall not be available to any party whose action or failure to act has been a principal cause of or resulted in the failure of the Merger to occur on or before such date and such action or failure to act constitutes breach of this Agreement;

(c) by Parent or the Company if: (i) there shall be a final non-appealable order of a federal or state court in effect preventing consummation of the Merger, or (ii) there shall be any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to the Closing by any Governmental Entity that would make consummation of the Closing illegal;

(d) by Parent if there shall be any action taken, or any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to the Merger by any Governmental Entity, which would: (i) prohibit Parent's ownership or operation of any portion of the business of the Company or (ii) compel Parent or the Company to dispose of or hold separate all or any portion of the business or assets of the Company or Parent as a result of the Merger;

(e) by Parent if it is not in material breach of its obligations under this Agreement and there has been a breach of any representation, warranty, covenant or agreement of the Company contained in this Agreement such that the conditions set forth in SECTION 6.2(a) hereof would not be satisfied and such breach has not been cured within fifteen (15) calendar days after written notice thereof to the Company; provided, however, that no cure period shall be required for a breach which by its nature cannot be cured;

(f) by the Company if it is not in material breach of its obligations under this Agreement and there has been a breach of any representation, warranty, covenant or agreement of Parent contained in this Agreement such that the conditions set forth in SECTION 6.3(a) hereof would not be satisfied and such breach has not been cured within fifteen (15) calendar days after written notice thereof to Parent; provided, however, that no cure period shall be required for a breach which by its nature cannot be cured;

(g) by Parent if there is a Company Material Adverse Effect;
or

(h) by the Company if there is a Parent Material Adverse Effect.

8.2 EFFECT OF TERMINATION

In the event of termination of this Agreement as provided in SECTION 8.1 hereof, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent, the Company, or their respective officers, directors or stockholders, if applicable; provided, however, that each party hereto shall remain liable for any breaches of this Agreement prior to its termination; and provided further, however, that, the provisions of SECTIONS 5.4, 5.5 and 5.6 hereof, ARTICLE IX hereof and this SECTION 8.2 shall remain in full force and effect and survive any termination of this Agreement pursuant to the terms of this ARTICLE VIII.

8.3 AMENDMENT

This Agreement may be amended by the parties hereto at any time by execution of an instrument in writing signed on behalf of the party against whom enforcement is sought. For purposes of this SECTION 8.3, the Stockholders agree that any amendment of this Agreement signed by the Stockholder Representative shall be binding upon and effective against the Stockholders whether or not they have signed such amendment.

8.4 EXTENSION; WAIVER

At any time prior to the Closing, Parent, on the one hand, and the Company, on the other hand, may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations of the other party hereto, (ii) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto, and (iii) waive compliance with any of the covenants, agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

ARTICLE IX

GENERAL PROVISIONS

9.1 NOTICES

All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial messenger or courier service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with acknowledgment of complete transmission) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice); provided, however, that notices sent by mail will not be deemed given until received:

(a) if to Parent or Sub, to:

Brocade Communications Systems, Inc.
1745 Technology Drive
San Jose, California 95110
Attention: Ronald Epstein
Facsimile No.: (408) 487-8101

with a copy to:

Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304
Attention: Katharine A. Martin
Facsimile No.: (650) 493-6811

(b) if to the Company to:

Rhapsody Networks, Inc.
3450 W. Warren Ave.
Fremont, CA 94538
Attention: Attn: Michael Klayko
Facsimile No.: (510) 687-0136

with a copy to:

Cooley Godward LLP
One Maritime Plaza, Floor 20
San Francisco, California 94111
Attention: Kenneth L. Guernsey
Facsimile No.: (415) 951-3699

(c) if to the Stockholder Representative, to:

Douglas M. Leone
c/o Sequoia Capital
3000 Sand Hill Road
Building 4, Suite 180
Menlo park, California 94025
Facsimile No.: (650) 854-2977

with a copy to:

Cooley Godward LLP
One Maritime Plaza, Floor 20
San Francisco, California 94111
Attention: Kenneth L. Guernsey
Facsimile No.: (415) 951-3699

(d) if to the Escrow Agent, to:

U.S. Bank, N.A.
Corporate Trust Services
One California Street
San Francisco, California 94111
Attention: Ann Gadsby
Facsimile No.: (415) 273-4593

9.2 INTERPRETATION

The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

9.3 COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

9.4 ENTIRE AGREEMENT; ASSIGNMENT

This Agreement, the Exhibits hereto, the Disclosure Schedule, the Confidentiality Agreement, and the documents and instruments and other agreements among the parties hereto referenced herein: (i) constitute the entire agreement among the parties with respect to the subject

matter hereof and supersede all prior agreements and understandings both written and oral, among the parties with respect to the subject matter hereof, (ii) are not intended to confer upon any other person any rights or remedies hereunder, and (iii) shall not be assigned by operation of law or otherwise, except that Parent may assign its rights and delegate its obligations hereunder to its affiliates as long as Parent remains ultimately liable for all of Parent's obligations hereunder.

9.5 SEVERABILITY

In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

9.6 OTHER REMEDIES

Any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

9.7 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof. Each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue of any court within Santa Clara County, State of California, in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein, agrees that process may be served upon them in any manner authorized by the laws of the State of California for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction, venue and such process.

9.8 RULES OF CONSTRUCTION

The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefor, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

9.9 WAIVER OF JURY TRIAL

EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AND ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER

BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF ANY PARTY HERETO IN NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, Parent, Sub, the Company, the Escrow Agent and the Stockholder Representative have caused this Agreement to be signed, all as of the date first written above.

BROCADE COMMUNICATIONS SYSTEMS, INC.

By: /s/ Gregory L. Reyes

Name: Gregory L. Reyes
Title: Chief Executive Officer

RHAPSODY NETWORKS, INC.

By: /s/ Michael Klayko

Name: Michael Klayko
Title: Chief Executive Officer and President

MAVERICK ACQUISITION CORP.

By: /s/ Gregory L. Reyes

Name: Gregory L. Reyes
Title: Chief Executive Officer

U.S. BANK, N.A.

By: /s/ Ann Gadsby

Name: Ann Gadsby
Title: Vice President

STOCKHOLDERS' REPRESENTATIVE

/s/ Douglas M. Leone

Douglas M. Leone

ANNEX A

EARN-OUT PAYMENT CONDITIONS

The Earn-Out Payment shall be paid if, and only if, one or more of the following occurs on or before November 30, 2003:

1. The Company's Mercury product ("Target Product") has been qualified for general release to customers by either EMC Corporation or Hewlett-Packard Company (the "Qualification Condition"). Such qualification shall be deemed to occur upon notification by EMC Corporation or Hewlett-Packard Company that the product has been qualified in a manner consistent with the manner in which other products of Parent have been qualified. This condition will not be deemed to be satisfied if the resources expended to satisfy it exceed the resources contemplated by the Qualification Project Plan (as defined below).
2. Parent cancels or requires the cancellation of the Target Product development and commercialization effort, unless the reason for such abandonment is Parent's good faith determination that the Qualification Condition is no longer achievable due to schedule delays or budget overruns.
3. Parent fails to devote to the Qualification Project Plan at least the number and type of personnel and all or substantially all of the other resources contemplated by the Qualification Project Plan and such failure is not corrected within fifteen (15) business days after Parent receives written notification thereof setting forth in reasonable detail the nature of the failure(s).
4. Parent makes or requires to be made any material modification to the Target Product specifications or features, as in effect at the Effective Date, which has the effect of materially increasing the amount of effort or time required to satisfy the Qualification Condition; unless the modification is approved by Michael Klayko.
5. Parent makes or requires to be made a material change in the required application for the Target Product after agreement to such application by either EMC Corporation or Hewlett-Packard Company; unless the modification is approved by Michael Klayko.

SIGNATURE PAGE TO AGREEMENT AND PLAN OF REORGANIZATION

QUALIFICATION PROJECT PLAN

Beginning promptly after the date hereof, representatives of Parent and the Company will work together in good faith to develop, by January 15, 2003, a plan for the Target Product development and other activities necessary to satisfy the Qualification Condition on or before November 30, 2003 (the "Qualification Project Plan"). The Qualification Project Plan will be based on the Company's third quarter 2002 financial plan for engineering and marketing attached hereto, with such additions and subtractions to spending and headcount outlined in such plan to adjust for (i) reprioritization of the Company's products (other than Mercury) and (ii) Parent's undertaking to provide SQA, ops, manufacturing, and general and administrative support. The Qualification Project Plan may be amended, from time to time, in a writing signed by an authorized officer of Parent and Michael Klayko (or any successor designated by Michael Klayko or by any such successor).

The Qualification Project Plan will set forth, among other things, the feature set, anticipated timetable, milestones, required resources, responsibilities and target application(s). The Qualification Project Plan will also identify the non-development resources of Parent that will be required for execution of the plan, which will include documentation, test, manufacturing, operations, information technology infrastructure, source code, APIs and design specifications.

The Qualification Project Plan will be approved by continuing Company management and the management of Parent and will thereafter constitute the plan of record for qualification of the Target Product.

If the parties cannot agree on the Qualification Project Plan, then (i) the Qualification Project Plan shall be the financial and headcount resources identified for the Company's engineering and marketing organizations in the Q3 Plan, (ii) the feature set shall be the feature set of the Mercury product as contemplated on the date hereof as modified to ensure (a) Eport functionality compatible with Parent's products, (b) manufacturability of the Target Product, (c) compatibility with Parent's manageability APIs, and (d) quality control acceptable to end-user customers.

SIGNATURE PAGE TO AGREEMENT AND PLAN OF REORGANIZATION

For the same reasons explained above, this rep MUST be dated unless the buyer wants the Company to freeze all development activity between signing and closing.

FIRST AMENDMENT
TO
AGREEMENT AND PLAN OF REORGANIZATION

This FIRST AMENDMENT to AGREEMENT AND PLAN OF REORGANIZATION (this "Amendment") is made and entered into as of January 3, 2003 by and among Brocade Communications Systems, Inc., a Delaware corporation ("Parent"), Maverick Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Parent ("Sub"), Rhapsody Networks, Inc., a Delaware corporation (the "Company"), Douglas M. Leone (the "Stockholder Representative"), and U.S. Bank, N.A. (the "Escrow Agent").

WHEREAS, the parties have previously entered into that certain Agreement and Plan of Reorganization, dated as of November 5, 2002 (the "Agreement"); and

WHEREAS, the parties wish to amend the Agreement pursuant to Section 8.3 thereof as set forth below;

NOW, THEREFORE, the parties hereto agree as follows:

1. All capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Agreement. All references to the Agreement in any other agreement among the parties relating to the transactions contemplated by the Agreement shall be deemed to refer to the Agreement as amended hereby.
2. Section 1.6(a)(xv) of the Agreement is hereby amended and restated to state in its entirety as follows:
 - (xv) "EXCHANGE RATIO" shall mean the Residual Proceeds divided by the Total Outstanding Shares, rounded to the nearest ten billionth (.0000000001) (with amounts .0000000005 and above rounded up).
3. Section 1.6(b)(v) of the Agreement is hereby amended and restated to state in its entirety as follows:
 - (v) The shares of Parent Common Stock to be received in connection with the Merger or to be received upon exercise of vested or unvested Company Options assumed in connection with the Merger shall be restricted such that each Stockholder may not: (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, or otherwise dispose of or transfer any shares of Parent Common Stock to be received in connection with the Merger or to be received upon exercise of

vested or unvested Company Options assumed in connection with the Merger or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Parent Common Stock to be received in connection with the Merger or to be received upon exercise of vested or unvested Company Options assumed in connection with the Merger, whether any such swap or transaction is to be settled by delivery of Parent Common Stock or other securities, in cash or otherwise (collectively, the "LOCK-UP PROVISION"). The Lock-up Provision shall lapse as follows: (A) a number of shares equal to forty five percent (45%) of the shares of Parent Common Stock to be received by each Stockholder (including for the purpose of calculating the percentages in this sentence all shares subject to assumed Company Options, whether vested or unvested, and the aggregate number of additional shares that may be issued upon payment in full of the Earn-Out Payment) shall be freely tradeable and transferable upon the Closing, to the extent vested or, if forty five percent (45%) of such shares are not vested, up to forty five percent (45%) of such shares upon vesting), (B) a number of shares equal to thirty percent (30%) of the shares of Parent Common Stock to be received by each Stockholder shall be freely tradeable and transferable on the date that is six (6) months after the Closing, to the extent vested or, if thirty percent (30%) of such shares are not vested, up to thirty percent (30%) of such shares upon vesting), and (C) the remaining twenty-five percent (25%) of the shares of Parent Common Stock to be received by such Stockholder (including shares released from the escrow and shares received upon payment of the Earn-Out Payment, if any) shall be freely tradeable and transferable on the first anniversary of the Closing; provided however, that if such Stockholder is a non-officer employee of the Company at the Effective Time, then the remaining twenty-five percent (25%) of the shares of Parent Common Stock to be received by such Stockholder (including shares released from the escrow and shares received upon payment of the Earn-Out Payment, if any) shall be released from the Lock-up Provision (but not the escrow or any other restriction) on the date that is six (6) months after the Closing. Certificates that represent shares of Parent Common Stock to be received in connection with the Merger or issued upon exercise of vested or unvested Company Options assumed in connection with the Merger shall be legended to reflect the Lock-up Provision (the "LOCK-UP LEGEND").

4. This Amendment shall be governed by and construed in accordance with the laws of the State of California, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.
5. This Amendment may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.
6. Except as amended by this Amendment, the terms and conditions of the Agreement shall remain unchanged and the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Parent, Sub, the Company, the Escrow Agent and the Stockholder Representative have caused this First Amendment to Agreement and Plan of Reorganization to be signed by their duly authorized respective officers, all as of the date first written above.

BROCADE COMMUNICATIONS
SYSTEMS, INC.

By: /s/ Antonio Canova

Name: Antonio Canova

Title: VP, Finance and Chief Financial Officer

STOCKHOLDER REPRESENTATIVE:

/s/ Douglas M. Leone

Douglas M. Leone

ESCROW AGENT:

U.S. BANK, N.A.

By: /s/ Ann Gadsby

Name: Ann Gadsby

Title: Vice President

RHAPSODY NETWORKS, INC.

By: /s/ Duston Williams

Name: Duston Williams

Title: Chief Financial Officer

MAVERICK ACQUISITION CORP.

By: /s/ Antonio Canova

Name: Antonio Canova

Title: Treasurer

EMC CORPORATION

November 13, 2002

Brocade Communications
Attn: Jean Burkhead
Mary Beth Vassallo

RE: Agreement dated 1/25/00

Dear Jean:

In accordance with Article 3.1 of the above referenced agreement this letter serves as notification that EMC would like to renew the Agreement for an additional one (1) year term.

Sincerely,

/s/ Alfred Windhol

Alfred Windhol
Commodity Specialist

50 Constitution Boulevard, Franklin Mass. 02038

[IBM LOGO]

5600 Cottle Road
San Jose, CA 95193 0001

September 4, 2002

Brocade Communications Systems, Inc.
1901 Guadalupe Parkway
San Jose, CA 95131

Attention: Mr. Patrick Johnston

Subject: Amendment 8 to SOW#1 of the IBM/Brocade Goods Agreement ROC-P-68

Dear Patrick:

This letter (the "Amendment") serves as Amendment Number 8 to SOW#1, including all amendments thereto ("SOW#1") of the Goods Agreement ROC-P-68, including all amendments thereto (the "Goods Agreement") which the parties hereto do mutually agree to amend as follows:

- 1. Modify the third sentence in the first paragraph of the SOW#1 to read as follows:

"The Term of this SOW #1 shall be effective from April 15, 1999 to December 31, 2003 , and shall automatically renew for another term of one (1) year unless either party gives written notice (90) days prior to the termination of this Agreement, this process will be repeated for up to two (2) additional years."

- 2. Section 1.0, "Product Description", modify the first sentence to read as follows:

"Except as provided in the next sentence, and, effective until December 31, 2002, Buyer agrees to purchase from Supplier substantially all of its [*] or any [*] assuming substantially the same requirements for IBM-logoed versions of 16-port and 32-port fibre channel switches provided, however, that [*] remains [*] (the term [*] meaning that the [*] does not [*] of the then [*] products of [*] sold in [*] to OEM Customers), and that switches provided by Supplier continue to meet the agreed to quality, schedule and supply requirements specified in the Agreement."

- 3. Delete the table in Section 1.1, "Specifications," and replace as follows:

IBM SPECIFICATION/ATTACHMENTS (IF APPLICABLE)	ENGINEERING CHANGE LEVEL	DESCRIPTION
[*]	Version 1.0	SilkWorm 2000 Family Product Specification 90-0000001-01
[*]	Dated 8/06/2001	Supplier Quality Attachment
[*]	Version 10	Packaging and Materials Handling Specification
[*]	Dated 10/17/00	IBM CSP Requirements
[*]	Version 2.0	Brocade Fabric OS Publication 53-0001487-03
[*]	Version 2.1	Brocade WebTools Reference Manual Publication 53-0001490-02
[*]	Version 2.0	Brocade Zoning Reference Manual Publication 53-0001488-02
[*]	Version 1.0	SilkWorm 3800 Product Specification - 90-0000077-01

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

Version date July 2002 SilkWorm 3900 Product Specification -
79-0000002-01

Version 1.0 SilkWorm 3200 Product Specification
Reference 90-0000077-01

Version A SilkWorm 12000 Product
Specification 79-0000001-01

Dated 05/01/02 2109-M12, CTO Training Workbook

V. 4-09-02 "SW12000" Port Card Installation Guidelines

4. Delete pricing table in its entirety in Section 2.1, "Pricing" and replace with the following:

IBM P/N / NUMA-Q P/N	BROCADE P/N	DESCRIPTION	UNIT PRICE
[*]	[*]	8-Port Fibre Channel Switch Single Power Supply (SW2400) Includes SES, Web tools, Zoning and Fabric Watch - whole unit switch Product	[*]
[*]	[*]	16 Port Fibre Channel Switch Single Power Supply (SW2800) Includes SES, Web tools, Zoning and Fabric Watch - whole unit switch Product	[*]
[*]	[*]	Silkworm 2000 Power Supply	[*]
[*]	[*]	Mainboard, SW 2400 (8-port)	[*]
[*]	[*]	Fan Tray, SW 2400 (8-port)	[*]
[*]	[*]	Chassis, SW 2400 (8-port)	[*]
[*]	[*]	Mainboard, SW 2800 (16-port)	[*]
[*]	[*]	Fan Tray, SW 2800 (16-port)	[*]
[*]	[*]	Chassis, SW 2800 (16-port) with operator panel / LCD	[*]
[*]	[*]	Quick Loop License	[*]
[*]	[*]	Fabric Watch License	[*]
[*]	[*]	Extended Fabrics	[*]
[*]	[*]	Extended Fabrics	[*]
[*]	[*]	Remote Switch	[*]
[*]	[*]	Remote Switch	[*]
[*]	[*]	8 Port Fibre Channel Switch Single Power Supply (SW3200)	[*]

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

Includes Web Tools		
[*]	[*]	Full Fabric Upgrade Includes Zoning and Fabric Watch
[*]	[*]	16 Port Fibre Channel Switch Single Power Supply (SW3800) Includes Web tools, Zoning and Fabric Watch - whole unit switch Product
[*]	[*]	Fan (SW3800)
[*]	[*]	Power Supply (SW3800)
[*]	[*]	Mainboard FRU (SW3800)
[*]	[*]	32 Port Fibre Channel Switch Double Power Supply (SW3900) Includes, Webtools, Zoning, Fabric Watch, Trunking, and Performance Monitor - whole unit switch Product
[*]	[*]	Fan (SW3900)
[*]	[*]	Power Supply (SW3900)
[*]	[*]	Mainboard FRU (SW3900)
[*]	[*]	LUN Zoning
[*]	[*]	LUN Zoning
[*]	[*]	LUN Zoning
[*]	[*]	Advanced Security
[*]	[*]	Advanced Security
[*]	[*]	Advanced Security
[*]	[*]	Performance Bundle (Trunking and Performance Monitoring)
[*]	[*]	Performance Bundle (Trunking and Performance Monitoring)
[*]	[*]	32 Port Fibre Channel Core Switch (SW12000) Includes 2 Stiletto Port Blades, 2 CP Blades, 4 Power Supplies, 3 Blowers, 6 Port Blade Filler Panels, 1 Cable Management Pillar, Fabric OS, Advanced Web Tools, Advanced Zoning, Fabric Watch,

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

		Performance Monitoring, Trunking.	
[*]	[*]	Rack Mounting Kit 14U, FRU	[*]
[*]	[*]	Switch Blade 16 port, 2GB	[*]
[*]	[*]	Chassis Door, Includes Plastic and Metal door Components and IBM Front Badge	[*]
[*]	[*]	Control Processor Blade	[*]
[*]	[*]	Stiletto Port Blade Slot Filler Panel, SW12000, FRU	[*]
[*]	[*]	Power Supply, 180-264VAC, 1000W, FRU	[*]
[*]	[*]	Blower Assembly, FRU	[*]
[*]	[*]	Cable Management Pillar, FRU	[*]
[*]	[*]	WWN Card	[*]
[*]	[*]	Power Plug, Switch and Distribution Panel	[*]
[*]	[*]	Chassis FRU includes backplane, blower and power supply backplane, AC and blower harness.	[*]
[*]	[*]	Rear WWN Bezel Assy	[*]
[*]	[*]	Cable Management Tray	[*]
[*]	[*]	AC Power Cord, FRU	[*]
[*]	[*]	AC Power Cord, UK/Ireland, 250V, FRU	[*]
[*]	[*]	AC Power Cord, Cont. Europe CEE7/7, FRU	[*]
[*]	[*]	AC Power Cord, AUST/INZ, 250V	[*]
[*]	[*]	AC Power Cord, Intl IEC	[*]
[*]	[*]	Remote Switch software	[*]
[*]	[*]	Extended Fabric software	[*]
[*]	[*]	Fabric Manager 3.x	[*]

All prices are in U.S. dollars.

5. Section 9.3, "Post Warranty Services," "Pricing" delete in its entirety and replace with the following:

"Post Warranty repair (CSP) pricing for the items set forth below shall be [*] the amount set forth in the column designated "Post Warranty Repair Price" or [*].

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

IBM P/N	BROCADE P/N	DESCRIPTION	POST WARRANTY REPAIR PRICE
[*]	[*]	Mainboard, SW 2400, 8 port	[*]
[*]	[*]	Mainboard, SW 2800, 16 port	[*]
[*]	[*]	8 Port FC Switch	
[*]	[*]	Mainboard, SW 3800, 16 port	
[*]	[*]	Mainboard, SW 3900, 32 port	[*]
[*]	[*]	Port Blade	
[*]	[*]	CP Blade	
[*]	[*]	Chassis	

Products returned to Supplier will include a description of the failure specified on the RMA field return form provided that such form is included by Supplier with each FRU shipment. If the total quantity of Product returned to Supplier over the previous [*] (which shall include [*]), Buyer will [*] Product [*] in accordance with Section 9.2 The [*] to repair a returned Product shall not [*].

In the event Supplier determines, in good faith, that a Product returned for repair is unrepairable, Buyer may purchase a replacement FRU [*]. All other FRUs that are not listed in this Section 9.3, "Pricing" have been determined by Supplier to be non-repairable. Any change in [*] shall be as [*] by the Parties.

Please have your authorized representative indicate acceptance thereof by signing both copies of the Amendment and returning one copy to the attention of Karen Takahashi at 5600 Cottle Road, San Jose, California 95193.

The effective date of this Amendment shall be the date on the top of this Amendment (the "Effective Date").

The parties acknowledge that they have read this Amendment, understand it, and agree to be bound by its terms and conditions. All capitalized terms not defined herein shall have the meaning set forth in the Goods Agreement or the SOW #1. All other terms and conditions of the Goods Agreement and SOW#1 that are unaffected by the revisions set forth in this Amendment shall remain in full force and effect. Further, the parties agree that this Amendment and the Goods Agreement and SOW#1 are the complete and exclusive statement of the agreement between the parties, superseding all proposals or other prior agreement, oral or written, and all other communications between the parties relating to this subject.

ACCEPTED AND AGREED TO:
INTERNATIONAL BUSINESS MACHINES CORPORATION
By: _____
Authorized Signature Date

ACCEPTED AND AGREED TO:
BROCADE COMMUNICATIONS SYSTEMS, INC.
By: _____
Authorized Signature Date

Type or Print Name

Type or Print Name

Title & Organization

Title & Organization

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

[IBM LOGO]
 5600 Cottle Road
 San Jose, CA 95193 0001

January 1, 2003

Brocade Communications Systems, Inc.
 1745 Technology Drive
 San Jose, CA 95110

Attention: Mr. Michael Harrison

Subject: Amendment 9 to SOW#1 of the IBM/Brocade Goods Agreement ROC-P-68

Dear Michael:

This letter (the "Amendment") serves as Amendment Number 9 to SOW#1, including all amendments thereto ("SOW#1") of the Goods Agreement ROC-P-68, including all amendments thereto (the "Goods Agreement") which the parties hereto do mutually agree to amend as follows:

1. Delete pricing table in its entirety in Section 2.1, "Pricing" and replace with the following:

IBM P/N / NUMA-Q P/N	BROCADE P/N	DESCRIPTION	UNIT PRICE
[*]	[*]	8-Port Fibre Channel Switch Single Power Supply (SW2400) Includes SES, Web tools, Zoning and Fabric Watch - whole unit switch Product	[*]
[*]	[*]	16 Port Fibre Channel Switch Single Power Supply (SW2800) Includes SES, Web tools, Zoning and Fabric Watch - whole unit switch Product	[*]
[*]	[*]	Silkworm 2000 Power Supply	[*]
[*]	[*]	Mainboard, SW 2400 (8-port)	[*]
[*]	[*]	Fan Tray, SW 2400 (8-port)	[*]
[*]	[*]	Chassis, SW 2400 (8-port)	[*]
[*]	[*]	Mainboard, SW 2800 (16-port)	[*]
[*]	[*]	Fan Tray, SW 2800 (16-port)	[*]
[*]	[*]	Chassis, SW 2800 (16-port) with operator panel / LCD	[*]
[*]	[*]	Quick Loop License	[*]
[*]	[*]	Fabric Watch License	[*]

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

[*]	[*]	Extended Fabrics	[*]
[*]	[*]	Extended Fabrics	[*]
[*]	[*]	Remote Switch	[*]
[*]	[*]	Remote Switch	[*]
[*]	[*]	8 Port Fibre Channel Switch Single Power Supply (SW3200) Includes Web Tools	[*]
[*]	[*]	Full Fabric Upgrade Includes Zoning and Fabric Watch	[*]
[*]	[*]	16 Port Fibre Channel Switch Single Power Supply (SW3800) Includes Web tools, Zoning and Fabric Watch - whole unit switch Product	[*]
[*]	[*]	Fan (SW3800)	[*]
[*]	[*]	Power Supply (SW3800)	[*]
[*]	[*]	Mainboard FRU (SW3800)	[*]
[*]	[*]	32 Port Fibre Channel Switch Double Power Supply (SW3900) Includes, Webtools, Zoning, Fabric Watch, Trunking, and Performance Monitor - whole unit switch Product	[*]
[*]	[*]	Fan (SW3900)	[*]
[*]	[*]	Power Supply (SW3900)	[*]
[*]	[*]	Mainboard FRU (SW3900)	[*]
[*]	[*]	LUN Zoning	[*]
[*]	[*]	LUN Zoning	[*]
[*]	[*]	LUN Zoning	[*]
[*]	[*]	Advanced Security	[*]
[*]	[*]	Advanced Security	[*]
[*]	[*]	Advanced Security (SW2800)	[*]
[*]	[*]	Advanced Security	[*]
[*]	[*]	Performance Bundle (Trunking and Performance Monitoring)	[*]
[*]	[*]	Performance Bundle (Trunking and Performance Monitoring)	[*]
[*]	[*]	32 Port Fibre Channel Core Switch (SW12000) Includes 2	[*]

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

Stiletto
 Port Blades, 2 CP
 Blades, 4 Power
 Supplies, 3 Blowers, 6
 Port Blade Filler
 Panels, 1 Cable
 Management Pillar,
 Fabric OS, Advanced Web
 Tools, Advanced Zoning,
 Fabric Watch,
 Performance Monitoring,
 Trunking.

[*]	[*]	Rack Mounting Kit 14U, FRU	[*]
[*]	[*]	Switch Blade 16 port, 2GB	[*]
[*]	[*]	Chassis Door, Includes Plastic and Metal door Components and IBM Front Badge	[*]
[*]	[*]	Control Processor Blade	[*]
[*]	[*]	Stiletto Port Blade Slot Filler Panel, SW12000, FRU	[*]
[*]	[*]	Power Supply , 180-264VAC, 1000W, FRU	[*]
[*]	[*]	Blower Assembly, FRU	[*]
[*]	[*]	Cable Management Pillar, FRU	[*]
[*]	[*]	WWN Card	[*]
[*]	[*]	Power Plug, Switch and Distribution Panel	[*]
[*]	[*]	Chassis FRU, includes backplane, blower and power supply backplane, AC and blower harness.	[*]
[*]	[*]	Rear WWN Bezel Assy	[*]
[*]	[*]	Cable Management Tray	[*]
[*]	[*]	AC Power Cord, FRU	[*]
[*]	[*]	AC Power Cord, UK/Ireland, 250V, FRU	[*]
[*]	[*]	AC Power Cord, Cont. Europe CEE7/7, FRU	[*]
[*]	[*]	AC Power Cord, AUST/INZ, 250V	[*]
[*]	[*]	AC Power Cord, Intl IEC	[*]
[*]	[*]	Remote Switch software	[*]
[*]	[*]	Extended Fabric software	[*]

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

software

[*]

[*]

Fabric Manager 3.x

[*]

All prices are in U.S. dollars.

Please have your authorized representative indicate acceptance thereof by signing both copies of the Amendment and returning one copy to the attention of Karen Takahashi at 5600 Cottle Road, San Jose, California 95193.

The effective date of this Amendment shall be the date on the top of this Amendment (the "Effective Date").

The parties acknowledge that they have read this Amendment, understand it, and agree to be bound by its terms and conditions. All capitalized terms not defined herein shall have the meaning set forth in the Goods Agreement or the SOW #1. All other terms and conditions of the Goods Agreement and SOW#1 that are unaffected by the revisions set forth in this Amendment shall remain in full force and effect. Further, the parties agree that this Amendment and the Goods Agreement and SOW#1 are the complete and exclusive statement of the agreement between the parties, superseding all proposals or other prior agreement, oral or written, and all other communications between the parties relating to this subject.

ACCEPTED AND AGREED TO:
INTERNATIONAL BUSINESS MACHINES
CORPORATION

ACCEPTED AND AGREED TO:
BROCADE COMMUNICATIONS SYSTEMS, INC.

By: _____
Authorized Signature Date

By: _____
Authorized Signature Date

Type or Print Name

Type or Print Name

Title & Organization

Title & Organization

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

OEM PURCHASE AGREEMENT

by and between

HEWLETT-PACKARD COMPANY

and

BROCADE COMMUNICATIONS SYSTEMS, INC.

OEM PURCHASE AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into between HEWLETT-PACKARD COMPANY, a Delaware corporation ("HP") and BROCADE COMMUNICATIONS SYSTEMS, INC., a Delaware corporation, having its principal place of business at 1745 Technology Drive, San Jose, California 95110, and Brocade Communications Switzerland SarL., a corporation organized under the laws of Geneva, and having its principal place of business at 29 Route de l'Aeroport, Case Postale 105, CH-1215, Geneva 15, Switzerland, (collectively "Supplier") ("Supplier"), effective as of December 16, 2002, (the "Effective Date"). The parties hereby agree as follows:

1. SCOPE OF AGREEMENT

- 1.1 General. This Agreement specifies the terms and conditions under which Supplier will sell, license, and support the OEM Products listed in Exhibit (A) to this Agreement. The OEM Products are regarded as "Original Equipment Manufacturer" products that will either be sold separately or incorporated into HP Products for resale worldwide under HP's private label or [*] under Supplier's label, as set forth herein. The OEM Products and the HP Products will be marketed, serviced, and supported by HP's field organization and channel partners, subject to the marketing, service, and support obligations of Supplier pursuant to this Agreement.
- 1.2 Eligible Purchasers. This Agreement enables HP [*] to purchase OEM Products from Supplier under the terms of this Agreement or any subsequent Product Addendum. The terms and conditions of this Agreement will control and take precedence over any conflicting terms in a Product Addendum unless a subsequently executed OEM Product addendum specifically refers to and amends a term of this Agreement.
- 1.3 Term Of Agreement. This Agreement will commence as of the Effective Date and continue for a two-year period (the "Term"), unless terminated earlier under the terms of this Agreement. [*] This Agreement may be terminated at the end of the initial Term or at the end of any subsequent renewal period if one party provides the other at least [*] prior written notice of its intent to terminate.
- 1.4 [*] Volume. [*] in this Agreement [*] HP to purchase any [*] quantity of OEM Products. This Agreement sets forth the terms and conditions during the Term which govern Orders and acknowledgments for OEM Products. Any Order or acknowledgment or other legally binding volume commitment for Product which is entered during the Term will remain governed by this Agreement notwithstanding expiration or termination of this Agreement for any reason. Unless otherwise agreed, if HP fails, for any reason or no reason, to purchase committed volume, Supplier's sole and exclusive remedy will be to [*], except that HP will have [*] within which to purchase Product at the then current volume

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rate and pricing then in effect. In no event will HP be liable for [*]; provided that Supplier may invoice HP Supplier's customary [*] if HP fails to comply with Section 3.9; and provided further that HP will remain obligated to pay amounts due and owing under Sections 4.2 and 4.3.

2. DEFINITIONS

The following capitalized terms will have these meanings throughout this Agreement:

- 2.1 "Days" means business days.
- 2.2 "Delivery Date" means the date specified in an Order for the delivery of OEM Products by Supplier to the destination required under the Order.
- 2.3 "Documentation" means the user and technical manuals and other documentation that Supplier will make available with the OEM Products.
- 2.4 [*]
- 2.5 "E-Room" means that secure, password-protected web application accessible by Supplier and HP that indicates all transaction activity of OEM Products between Supplier and HP under this Agreement.
- 2.6 "Failure" means an instance where the OEM Product does not conform to specifications in Exhibit (A) or contains a defect in workmanship, materials, or design that prevents the OEM Product from fully performing as set forth in Exhibit (A).
- 2.7 "Forecast" means HP's estimate, submitted to Supplier in writing, of its stocking requirements for OEM Products (including, without limitation, Parts) over a six-month period or such other period designated by the parties.
- 2.8 [*] OEM Product unit(s) is confirmed upon HP's publication to the E-Room of an SAP 411 movement-type transaction indicating such unit conversion.
- 2.9 "HP Products" means those products or systems that will incorporate or be distributed in conjunction with the OEM Products and that will be marketed and sold to end-user customers by HP and its distributors.
- 2.10 "HP Property" means all property, including without limitation, models, tools, equipment, copies of designs and documentation and other materials that may be furnished to Supplier by HP or on HP's behalf or separately paid for by HP for

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use by Supplier in connection with this Agreement.

- 2.11 "Intellectual Property Rights" means all rights in patents, copyrights, moral rights, trade secrets, mask works, Marks, and other similar rights.
- 2.12 "Lead Time" means the time between the date an Order is received by Supplier and the [*].
- 2.13 "Marks" means the trademarks, service marks, trademark and service mark applications, trade dress, trade names, logos, insignia, symbols, designs, or other marks identifying a party or its products.
- 2.14 "Noncomplying Product" means any OEM Product received by HP that does not comply with the Specifications as set forth in Exhibit (A) or does not otherwise comply with the requirements of an Order as set forth in Section 3.1 herein, and the provisions of this Agreement. Noncomplying Products include, without limitation, dead-on-arrival products.
- 2.15 "OEM Products" means the products listed in Exhibit (A), all related Documentation, Software licenses and media, Parts, and other deliverables provided pursuant to this Agreement.
- 2.16 "Orders" means a written or electronic purchase order or release issued by HP to Supplier for purchase of the OEM Products.
- 2.17 "Parts" means the replacement parts (FRUs), components, consumables, or other products that are to be supplied under this Agreement or that may be supplied in conjunction with or as additions to the OEM Products.
- 2.18 "Product Addendum" means an addendum to this Agreement entered into between Supplier and an Eligible Purchaser naming additional OEM Products and product specific requirements in addition to those requirements specified in this Agreement.
- 2.19 "Shipment Date" means the date confirmed by Supplier to HP regarding a particular Order for the shipment of OEM Products by Supplier to the destination required under the Order.
- 2.20 [*] means those [*] as listed in Exhibit (B) to which Supplier shall deliver OEM Products as ordered by HP under this Agreement and more particularly in Exhibit (J) attached hereto.
- 2.21 "Software" means any software or firmware included, bundled, or licensed in

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conjunction with the OEM Products, as listed in Exhibit (A).
The Software described herein is licensed and not sold.

- 2.22 "Specifications" means the technical and functional requirements for the OEM Products as specified or referenced in Exhibit (A) or as agreed to in writing by the parties.
- 2.23 "[*] Level" means the actual [*] [*] level to be maintained at each designated [*] for a given planning period which shall be [*] to the then-current [*] , subject to the limitation in Section 3.5 below.
- 2.24 [*].
- 2.25 "Subsidiary" means an entity controlled by or under common control with a party to this Agreement, through ownership or control of more than 50% of the voting power of the shares or other means of ownership or control, provided that such control continues to exist.
- 2.26 "Support" means ongoing maintenance and technical support for the OEM Products provided by Supplier to HP as more fully described in Exhibit (D).
- 2.27 "Technical Information" means Supplier's information and technology necessary to support OEM Products and to exercise any other rights provided under this Agreement, specifically including, without limitation, Supplier's [*] technology deemed necessary by HP to support OEM Products and to exercise any rights provided under this Agreement, including, but not limited to: (i) specifications, software, schematics, designs, drawings or other materials pertinent to the most current revision level of manufacturing of the OEM Products; (ii) copies of all inspection, [*] procedures and any other work processes; (iii) supplier history files; (iv) support documentation; and (v) any additional technical information or materials listed in this Agreement.
- 2.28 "Technical Materials" means any production software [*] of OEM Products.

3. ORDER, SHIPMENT, AND INVENTORY OF OEM PRODUCTS

- 3.1 Orders. Each delivery of OEM Products to [*] will be initiated by [*] [*] [*] Order issued to Supplier by HP. Each Order will include: (i) unit quantity; (ii) shipping destination; (iii) Delivery Date; and (iv) other instructions or requirements pertinent to the Order. HP may schedule regular intervals for deliveries by an appropriate Order setting forth the intervals. To the extent of any inconsistency between the terms of an Order and the terms of this Agreement, the

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terms specified in this Agreement will control and take precedence. Any additional terms contained in Orders or Supplier's Order acknowledgements shall not be binding unless accepted by the other party in writing. At the end of each month, Supplier will [*] [*] of OEM Products [*] [*] . HP's world-wide and site management teams shall participate in periodic [*] management meetings with Supplier to discuss [*] acceptable [*] and [*] on hand. HP and Supplier shall make [*] efforts to implement a system that provides on line inventory [*] visibility, and engage [*] . Supplier shall implement a buffer stock of [*] of FGI based on HP's forecast ("Buffer Stock"). In the event that HP draws upon the Buffer Stock faster than forecasted, replenishment of the Buffer Stock shall be subject to a minimum lead time of [*].

- 3.2 Order Acknowledgment. An Order will be deemed to have been placed as of the date of receipt of the Order by Supplier. Supplier will promptly confirm the receipt of an Order either electronically or by facsimile transmission within Forecasts and Lead Time requirements of this Agreement either electronically or by facsimile to HP within [*]. For Orders exceeding Forecast, Supplier will have [*] in which to reject the Order with respect to the excess. If an HP Order exceeds the Forecast or shortens the Lead Time, Supplier will use its [*] efforts to fill such excess or accommodate such shorter Lead Time.
- 3.3 Emergency Orders. If HP deems it necessary, HP may order OEM Products by facsimile on an emergency basis ("Emergency Order") subject to the availability of such OEM Products in Supplier's inventory. Supplier will use its [*] efforts to ship the Emergency Order to HP's designated Eligible Purchaser(s) [*] upon receipt of such Emergency Order by Supplier. Subject to HP's approval, HP will pay [*] related to such Emergency Orders.
- 3.4 Forecasts. HP will provide a [*] rolling Forecast monthly of its projected Orders [*] [*] , to be provided to Supplier between the eleventh and fifteenth day of the month preceding the month applicable to such Forecast. Any quantities listed in any Forecast or other correspondence between the parties are [*]. HP may [*] revise any such Forecasts, provided that such revisions occur at least [*] prior to the projected Order Shipment Date.
- 3.5 Lead Time. Lead Time for each OEM Product within the then-current Forecast unit volume will be no more than [*] without prior written consent from HP. Lead Time for FRU products within the then-current Forecast unit volume from Supplier to the designated HP global service support organization will be no more than [*] . Notwithstanding the foregoing, Lead Time specifically and only for OEM Product units ordered by HP under [*] order will be no more than [*] as measured from the date of shipment.

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- 3.6 [*]. Pursuant to the terms and conditions of the Agreement, Supplier will maintain [*] the obligation [*] [*]. HP's payment obligation and transfer of title to HP for such OEM Products shall occur [*] [*] of such OEM Product units [*] . Under the terms and conditions set forth in Exhibit (J) of the Agreement, Supplier will [*] [*] HP's Order requirements as defined by the most current HP forecast. Supplier will [*] [*] to support the flexibility plan outlined in order changes. If [*], Supplier will use [*] efforts to [*] Additionally, Supplier will [*] to maintain the then-current required Stocking Level of inventory for each [*]. Supplier will ship ordered OEM Products to HP-designated [*]; however, HP may request [*] changes [*].
- 3.7 [*] Level Requirements. Supplier shall deliver the then-current [*] Level volumes to the [*] locations as [*] specified in the [*] which shall apply ([*] as specified in advance by HP). Supplier may make [*] shipments of OEM Products or ship [*] units to the [*].
- 3.8 Product Supply Assurance. Supplier agrees that, during the Term of the Agreement and specifically in the event of any allocated OEM Product status initiated or experienced by Supplier, Supplier will [*] give all HP Orders no less order fulfillment and shipping [*] than that given to Supplier's [*] with [*] volumes of OEM Products, with such allocation to be made on a [*] between HP and Supplier's other [*].
- 3.9 [*] Inventory
- (a) In the event any OEM Product unit(s) shall [*] [*] for greater than [*], then, upon [*] notification from [*] of [*] request to [*] will, within [*] [*] receipt of [*] notice, elect to either [*] [*] of such units [*] [*] , or [*] at [*]) of the units from the [*] [*].
- (b) In the event [*] does not confirm its intent to [*] such units within [*] of receipt of [*] notice, such units shall be deemed [*] [*] [*].
- (c) [*] of OEM Product units [*] [*] from the [*] under this Section shall be at [*] [*].
- 3.9 Order Changes. HP may, [*] any Order within Forecast, subject to the following Order increase limitations: [*] permissible [*] increase in Forecast; [*] permissible [*] increase in Forecast; and [*] permissible [*] increase in Forecast. In the event HP increases any Order, Supplier will use [*] efforts to fulfill such Order for the Delivery Date requested by HP.
- 3.10 Shipment Requirements. Supplier will give HP [*] notice if it [*] or [*] that it will

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not meet a Delivery Date or that only a portion of the OEM Products will be available for shipment to meet a Delivery Date. For partial shipments, Supplier will ship the available OEM Products unless directed by HP to reschedule shipment. If Supplier ships any OEM Product by a method other than as specified in the corresponding Order, [*] will [*] in the [*] of freight. Upon [*] by the parties, [*] may utilize [*] options to any HP-designated delivery destination in the same manner as delivered [*] unless otherwise [*] by the parties. If HP designates a [*] location outside the country in which the Order is placed, [*] agrees to pay [*] associated with the shipment.

- 3.11 Meeting Delivery Dates. If due to Supplier's failure to make a timely shipment, the specified method of transportation would not permit Supplier to meet the Delivery Date, the OEM Products affected will be shipped by air transportation or other expedient means [*]. [*] will [*] for any resulting [*] in the freight cost [*] that which [*] would have been required [*] by the specified method of transportation.
- 3.12 Title And Risk Of Loss. Title to OEM Product hardware and media ordered under this Agreement and risk of loss or damage for each OEM Product unit will pass from [*] upon [*] of such unit(s) [*] the designated [*] or upon [*] of product [*] , as more fully described in Exhibit (J) attached hereto.
- 3.13 Packing List. Each delivery of OEM Products to HP must include a packing list that contains at least:
- (a) The Order number and the HP part number;
 - (b) The quantity of OEM Products or Parts shipped; and,
 - (c) The date of shipment.
- 3.14 Packaging. Supplier must preserve, package, handle, and pack all OEM Products as specified in Exhibit (A-3).
- 3.15 Responsibility For Damage. [*] will be liable for any loss or damage due to its failure to properly preserve, package, handle, or pack OEM Products in accordance with Exhibit (A). In order to assert a claim against Supplier under the provisions of this Section 3.17, HP will not be required to first assert any claims for such loss or damage against the common carrier involved. Further, HP will not be liable for any loss or damage due to a release of chemicals or other hazardous materials to the environment prior to Supplier's release of the corresponding OEM Product to the designated carrier.

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4. PRICES AND PAYMENT TERMS

- 4.1 OEM Product Pricing and Discounts. Supplier's prices for the OEM Products and Parts are listed in Exhibit (C), payable in U.S. currency unless otherwise agreed, and may not be [*] without [*] consent. All OEM Products (including Parts and Software) under this Agreement shall be subject to [*] adjustment, to be agreed between the parties as follows, and [*] [*]) [*] for the duration of the Term(s) of this Agreement. Supplier and HP agree to initiate in [*] pricing discussions beginning upon the [*] of the the-current [*] for pricing for each such successive [*] . In general, the [*] [*] [*]. The [*] will be [*] determined by [*] and determined in good faith based upon [*], [*], and other relevant factors to the business model.
- 4.2 Changed Prices. Subject to the terms and conditions of Section 4.5 below, if during the Term and any extensions thereof, [*] or [*] are put in effect by mutual agreement of HP and Supplier, or reduced prices or price formulas are otherwise put in effect by Supplier, then [*] or [*] (if resulting in [*] than the then [*]) [*] to all Orders accepted by Supplier after the [*] of such [*] or [*] and to all [*] Orders.
- 4.3 Payment Procedure. Payment for OEM Products will be net [*] after [*] of each OEM Product unit(s) [*] [*]. No invoice may be dated earlier than date of Delivery. Any [*] will be calculated from the same date. Payment will be in U.S. currency unless otherwise stated. [*] will not be liable for any [*] related to or [*] for unordered or Noncomplying Products provided that [*] does not [*] such unordered or Noncomplying Product(s).
- 4.4 Offset. With respect to any payment, reimbursement or other amount owed by Supplier to HP under this Agreement, [*] may [*] any such amount [*] against any amount then [*] or to be [*] (including amounts to be [*] under future invoices) by [*] to [*] under this Agreement or any other agreement.
- 4.5 [*] Warranty. If during the Term or any extensions thereof, Supplier provides a [*] or [*] to [*] with [*] terms and conditions and [*] volumes of OEM Products or newer OEM Products as set forth in Section 10.3 herein (with such [*] volumes as measured over Supplier's most recent [*]), then Supplier agrees to offer such [*] or [*] [*] to the third party. Supplier agrees to fulfill its obligations in this Section in good faith and further agrees that it will not create any [*] or other conditions that serve to deny [*] the [*] of its [*]. In addition, [*] may [*] any amounts due under this Agreement against future invoices.

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4.6 Sales Taxes And Duties. Prices are [*] of all taxes or duties imposed after [*] of the respective OEM Product units (other than taxes levied on [*] income) that [*] may be required to collect or pay upon shipment of the OEM Products. [*] shall be responsible for all such taxes or duties imposed on OEM Products before[*]. Any taxes or duties applicable to [*] under this Section 4.5 must appear as a separate item on Supplier's invoice. HP agrees to [*] such taxes or duties unless HP is [*] from such taxes or duties. Where applicable, HP will provide Supplier with an exemption resale certificate or other proof of exemption. In the event that Supplier is later assessed by any taxing authority taxes, which are the legal obligation of HP, HP will [*] [*] Supplier for such taxes or duties [*] by Supplier. This clause shall survive the termination of the Agreement.

5. NONCOMPLYING PRODUCTS

5.1 Repair Or Replacement. HP's acceptance of each OEM Product unit shall occur upon [*] of such unit(s) unless HP notifies Supplier in writing sent by mail, facsimile, or other electronic means within [*] after [*] that such OEM Product unit is a Noncomplying Product. Supplier shall [*] or [*] (at [*]) each such Noncomplying Product pursuant to the warranty provisions under Article (9) herein. HP may [*], subject to the provisions of Article (18) below, to return a Noncomplying Product for replacement or repair at [*]. Determination of whether to repair or replace such Noncomplying Products will be at Supplier's sole option. Additionally, HP may return for repair or replacement an entire lot of OEM Products if a tested sample (consisting of not less than [*]) of that lot contains greater than [*] Noncomplying Products. In the event of an overshipment, HP may elect to keep the additional units, subject to the payment procedures in Section 4.3.

5.2 Replacement and Repair Period. Supplier will return the replacement or repaired OEM Products as soon as possible but in no event later than [*] after receipt of the Noncomplying Product from HP. Supplier's opportunity to cure any failure to meet such deadline, pursuant to Article (18) below, will apply to only [*] such breaches per [*] during the Term.

6. RETURN OF PRODUCTS

6.1 Return Materials Authorization. All OEM Products returned by HP to Supplier must be accompanied by a Return Materials Authorization ("RMA"). Supplier will issue an RMA for OEM Products for which HP has verified Failure within

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[*] of HP's request.

6.2 Return Charges. All Noncomplying Products returned by HP to Supplier within the respective warranty period for each OEM Product, and all replacement or repaired OEM Products shipped by Supplier to HP to replace Noncomplying Products will be at [*], including [*] ([*] for replacement or repaired OEM Products).

6.3 Duty To Remove Marks Or Destroy Noncomplying Products. Supplier agrees not to sell, transfer, distribute, or otherwise convey any part, component, product, or service bearing or incorporating HP Marks, part numbers, or other identifiers, including any HP packaging, copyrights, or code (that are human-readable and physically appear thereon) to any party other than to Eligible Purchasers. Supplier will remove from all rejected, returned, or unpurchased OEM Products any such HP Marks or identifiers, even if such removal would require destruction of the OEM Products. Supplier further agrees not to represent that such OEM Products that are Noncomplying Products are built for HP or to HP specifications. Supplier will [*] [*] [*], or [*] [*] as a result of Supplier's breach of its obligations under this Section 6.3.

7. ENGINEERING PROCESS OR DESIGN CHANGES

7.1 Supplier Proposed Changes. Supplier will not, [*] (which such consent shall not be unreasonably withheld), make or incorporate in OEM Products any of the following changes (collectively, "Engineering Changes"):

- (1) Process or design changes affecting form, fit, or function;
- (2) [*], or;
- (3) Process step discontinuances affecting: (a) the electrical performance, mechanical form, fit, or function, or software compatibility that affects form, fit, or function; and (b) the environmental compatibility or chemical characteristics, or the [*] of OEM Products.

7.2 Notice Of Proposed Change. Supplier will give HP notice of any proposed Engineering Change, and will provide evaluation samples and other appropriate information as specified by HP at least [*] prior to the first scheduled release of any OEM products involving a

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change to the respective firmware that would affect OEM Product form, fit, or function, and at least [*] prior to the first proposed shipment of any OEM Products involving any other Engineering Change. Regardless of whether HP approves a proposed Engineering Change, Lead Time will not be changed except as provided in Section 3.4 above.

- 7.3 Request for Enhancement. HP proposed changes and enhancement requests will be reviewed, as appropriate, by the [*] teams of Supplier. Where [*] and [*] by HP and Supplier, such changes will be implemented in the [*] or as otherwise specifically agreed.
- 7.4 HP Proposed Changes. HP may change HP-supplied drawings, designs, [*] [*] prior to [*] of corresponding released OEM Products. Any such change will be phased in upon a date and upon terms [*]. If any such change [*] affects the prices or delivery schedules of OEM Products, [*] [*] [*] will be made provided that Supplier makes a [*] claim for an adjustment within [*] from the date HP gives notice to Supplier of the change and HP agrees [*] to the adjustment.
- 7.5 Option To Terminate. If the parties are [*], acting reasonably and in good faith, upon an adjustment pursuant to Section 7.3 above, [*] may without any liability terminate this Agreement as to any OEM Products affected, subject to the terms and conditions of Article (24) herein.
- 7.6 Safety Standard Changes. Supplier will [*] give notice to HP if any upgrade, substitution, or other change to an OEM Product is required to make that product meet applicable safety standards or other governmental statutes, rules, orders, or regulations, even those that are not defined as Engineering Changes in Section 7.1 above. All affected OEM Products [*], [*], either be [*] for upgrade to current revisions or upgraded by Supplier [*] pursuant to the procedures outlined in Section 10.4 below. If an OEM Product meets applicable safety standards and other governmental requirements at the time of manufacture, HP and Supplier will [*] of any subsequent upgrade, substitution, or other required change required in an [*] based on good faith discussions between the parties. If such discussions render no [*] solution, the parties may either mutually agree to escalate the matter to their respective vice presidents or general managers, as applicable, or in the alternative, [*].
- 7.7 Technical Cooperation. Subject to the confidentiality provisions in Article (21) below, during the term of the Agreement, the parties will discuss architecture and explore the possibilities for technically integrating Supplier and HP products. Each party will designate a technical representative to lead these discussions as well as to address other technical issues relating to the product enhancements and

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co-marketing alliance. Supplier agrees to share and review with HP engineers the following for current and future products (which such information shall not be unreasonably withheld or delayed):

- (a) [*];
- (b) [*] information necessary for HP [*] efficiently;
- (c) [*] information necessary for HP [*] problems;
- (d) [*] issues and resolution for such items, and;
- (e) New product features and quarterly roadmap.

8. QUALITY

- 8.1 Quality Programs. Supplier agrees to maintain [*] quality program for all OEM Products. Supplier's program will be in accordance with the current version of [*], and if applicable, any additional or substitute quality requirements agreed to by the parties in writing. Supplier will, upon HP's request, provide to HP copies of[*].
- 8.2 HP's Right To Inspect. Supplier grants HP the right to inspect (upon reasonable notice and during normal business hours) [*], the OEM Products and all associated [*]. [*] may be inspected at any time during the Term or any extensions thereof. HP's inspection may be for any reason [*] related to this Agreement, including to assure Supplier's compliance with HP's requirements. HP's right of inspection will apply as well[*]. Supplier will inform [*] of HP's right to inspect, and, if necessary, use all reasonable efforts to secure such rights for HP.

9. WARRANTIES

- 9.1 Product Warranties. Supplier represents and warrants to HP that, for a period of [*] months from the date of [*] for each hardware OEM Product unit (excluding SFP's) and [*] for each Software and [*] OEM Product, that all OEM Products under this Agreement will:
 - (1) Be manufactured, processed, and assembled by Supplier or by companies under Supplier's direction;

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- (2) Conform to the then-current Specifications and other criteria referred to in this Agreement or agreed to by the parties in writing;
- (3) Be new, except as otherwise provided by the parties;
- (4) Conform strictly to the requirements of all Orders as set forth under the terms and conditions of this Agreement;
- (5) Be free from defects in design, material, and workmanship;
- (6) [*].

9.2 OEM Product [*] Warranties. Supplier represents and warrants with regard to all OEM Products (including Software and Documentation to the extent included with, licensed, or distributed in conjunction with OEM Products) that, subject to the terms and conditions of Article (15) herein, not to Supplier's reasonable knowledge, violate or infringe any third party Intellectual Property Rights and Supplier warrants that it is not aware of any facts upon which such claim could be made. If Supplier learns of any claim or any facts upon which claim could be made, it will promptly notify HP of such information.

Notwithstanding the foregoing, a breach of this Section 9.2 in no way constitutes a material breach of the Agreement. If Supplier breaches this intellectual property warranty, HP may immediately [*] and may immediately cancel any unfilled accepted Orders without liability, such remedies being in addition to any other remedies provided by this Agreement, or otherwise available to HP under law or equity, subject to the limitation of liability in Article (23) below. If a U.S. District Court or any court worldwide adjudges that Product, or any item or part thereof, infringes any United States Patent or any patent worldwide, irrespective of whether further right of appeal lies available to Supplier, or if Product or use is enjoined at any stage of the proceedings, any unfilled Accepted Orders [*] without liability for HP. Supplier will have responsibility and is obligated for a breach of the foregoing warranty to the extent that any Product is used in an infringing system and the Product does not have a substantially non-infringing use.

9.3 Warranty Periods. All warranties set forth in Sections 9.1 and 9.2 above will [*] payment by HP. The warranties set forth in Sections 9.1(2) and 9.1(5) are effective upon Delivery, are continuing, and will remain in effect for the longer of Supplier's normal warranty period or as stated in Exhibit (H) following acceptance of the OEM Product. All warranties set forth in Section 9.2 are effective at Delivery, are continuing, and will remain in effect [*].

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- 9.4 Software and Documentation Warranty. If Product includes or constitutes Software, Supplier provides additional warranties, and warrants Software and related Documentation as set forth in Exhibit (I).
- 9.5 Services and Support Warranty. Supplier warrants that all Services and Support will be provided in a professional and workmanlike manner by competent, experienced personnel possessing suitable expertise in the subject matter.
- 9.6 Compliance with Applicable Law. [*] warrants that it will comply with Applicable Law in its performance under this Agreement.
- 9.7 Warranty Exclusions. The warranties specifically set forth in Section 9.1(1-5) will not apply to any OEM Product or Parts to the extent such OEM Product or Parts: (i) have been improperly installed, repaired, altered, or otherwise modified (other than by Supplier or Supplier's authorized Subcontractors); (ii) have been subjected to misuse, abuse, negligence or accident; (iii) have been used in a manner contrary to Specifications or Supplier's written instructions or Documentation; (iv) are comprised of materials provided or a design stipulated by HP and not approved by Supplier in writing or; (v) are used Product or Parts (to the extent HP may have waived Section 9.1 in a particular instance), and do not cover normal wear and tear.
- 9.8 DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SUPPLIER MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING PRODUCT INCLUDING MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE.
- 9.9 [*] Warranty. In addition to the warranties specified above, Supplier warrants to HP all OEM Products [*] against [*] for a period of [*] after [*] of such OEM Product unit. An [*] means:
- (a) unit failures that (i) are caused by [*] failure or defect, provided that such failure or defect is attributable to Supplier, and (ii) [*] [*] of the [*] (as listed in Exhibit (H), Section 4.1), [*] [*] [*] , or;
 - (b) the occurrence of more than one failure classified as a Hazard Class (2) or higher safety incident defined as (i) a [*] condition that is likely to produce [*] bodily injury or property damage and is likely to occur after a single event, or (ii) a noncompliance event involving a safety-related standard, license, or testing agency evaluation, or;
 - (c) any known problem which, in HP's [*] subject to Supplier's concurrence (which such concurrence shall not be unreasonably withheld or delayed) creates a

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significant risk to the health or safety of individuals who operate the OEM Product or to the continuous business operations of companies or organizations that employ the OEM Product for an intended or reasonably foreseeable use.

10. SUPPORT SERVICES

- 10.1 General. Supplier will provide trained HP support personnel with Support for the OEM Products as specified in Exhibit (D). Supplier will maintain such number of qualified personnel as is necessary to provide timely and knowledgeable maintenance and support service in accordance with the terms and conditions of Exhibit (D). Supplier warrants that all Support will be provided in a professional and workmanlike manner. HP will provide direct maintenance and support to HP's customers with respect to the use of the OEM Product as distributed with HP Products. Supplier and HP will maintain and support each OEM Product distributed by HP for [*] and [*] after the date of last Shipment Date by Supplier to [*] [*] of each OEM Product unit. HP acknowledges that Supplier may independently offer and provide support services to OEM Product customers; however, in no event may Supplier use HP Confidential Information or HP Property to direct or provide such support without HP's prior consent. Response times and problem classification for the OEM Products are as set forth in Exhibit (D).
- 10.2 New HP Products. Upon request by HP, Supplier will use reasonable efforts to provide HP with the OEM Products adapted for use with new releases of HP Products within timeframes and at such additional costs, if any, to be negotiated by the parties, provided that HP makes available to Supplier such HP Property as may be reasonably necessary for Supplier to develop any adaptation.
- 10.3 New Product Supply Assurance. Supplier agrees that, during the term of the Agreement and any extensions thereof, any such newer products will be made available to HP for shipment [*] the [*] date made [*] by Supplier to [*] with [*] volumes of OEM Products (as measured over Supplier's most recent [*]), and shall be made available to HP in [*] quantity to accommodate all HP Orders within Forecast designating such newer products. In the event of any allocated OEM product status initiated by Supplier, Supplier will [*] give all HP Orders [*] and [*] than that given to Supplier's [*] with [*] volumes of OEM Products (as measured over Supplier's most [*]), with such [*] to be made on a [*] between HP and Supplier's [*].
- 10.4 HP Property. HP may, at HP's sole election, provide to Supplier HP Property under the terms of an HP Equipment Loan Agreement attached as Exhibit (E) to this Agreement, solely for use in Supplier's manufacturing, testing, adapting and

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supporting the OEM Products. All HP Property will be clearly segregated from Supplier's property and identified as the sole property of HP. HP Property may not be transferred, assigned, loaned or otherwise encumbered in any way. HP Property may be provided to third parties for fulfillment of Supplier's obligations hereunder only upon HP's prior written consent. HP property will be returned to HP, [*], upon termination of this Agreement.

10.5 Substitute Products. If Supplier develops any generally available products that are to replace the OEM Product(s) or that are the same or substantially similar to the OEM Products available under this Agreement, HP will have the right to substitute the newer products at [*] as the substantially similar OEM Products for all subsequent purchases under this Agreement. Such substitute products must be compatible with the current version of the OEM Products.

10.6 Failure Rate. Notwithstanding that the warranties given in Section 9.1 above apply to [*] of the hardware components of OEM Products, Supplier and HP acknowledge that a failure rate equivalent to the rates as measured over [*] set forth in Section 4.1 of Exhibit (H) is expected. If the actual failure rate for OEM Products exceeds this expected rate, Supplier will provide additional engineering and technical support needed to bring the actual failure rate within the specified failure rate.

10.7 Class Failure Remedies. Upon the occurrence of any of the following events: (i) a failure rate exceeding[*]; (ii) [*]; or (iii) a safety standard change under Section 7.5 above (each referred to as a "Class Failure"), HP will have the following additional remedies for a [*] period after [*] of such OEM Product unit(s):

(1) In the event of a Class Failure, Supplier will use its reasonable efforts to provide a initial root cause analysis, failure analysis, and corrective action plan to HP no later than [*] following the receipt of the Class Failure part. HP will make available such information and assistance as reasonably required to allow Supplier to conduct its root cause analysis and provide its corrective action plan.

(2) If, after review of the root cause analysis and corrective action plan, [*] determines in its [*] opinion that the Class Failure necessitates [*] may then elect to have the OEM products: (i) returned to Supplier for repair or replacement; (ii) repaired or replaced by Supplier in the field; or (iii) repaired or replaced by HP in the field, including products in distributor inventory and HP's installed base. [*] perform a field repair, [*] the appropriate replacement OEM products, spares, or upgrades [*]

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and will, within [*] after completion[*]. Supplier will give such OEM products, spares, or upgrades Supplier's [*] [*] [*].

10.8 Survival Of Support Obligations. Supplier's maintenance and support obligations specified in this Article (10), and in the Support Terms in Exhibit (D) will run for the Term and any additional periods under Section 1.3 above and will continue for a period of [*] after the date of last Shipment Date by Supplier to [*] [*] of each OEM Product unit. This obligation includes, without limitation, making necessary Parts available to HP as further provided in the Support Terms.

11. OBSOLESCENCE AND MANUFACTURING RIGHTS

11.1 [*] Rightst. In the event HP becomes entitled to terminate this Agreement [*] in accordance with Article (20) hereunder, then Supplier shall [*] [*] to [*] purchase orders [*] OEM Products at the [*] [*] Supplier can demonstrate to HP's reasonable satisfaction that its performance is no longer impaired. This Section is not intended to [*] [*] a royalty-free license to use, manufacture, sell or import the Products. Instead, it is intended to permit [*] [*] Products [*] [*] in limited circumstances; under such circumstances, [*] will [*] [*] [*] set forth hereunder for the OEM Products ordered pursuant to this Section.

11.2 [*] Rights. Subject to the terms and conditions of this Agreement and specifically that of Section 19.1 below, Supplier acknowledges its obligation to manufacture, supply, and support the OEM Products [*]. If, however, after [*] of such products, Supplier seeks to discontinue the supply or support of any OEM Product (a "Discontinued Product"), Supplier will give notice to HP no less than [*] in advance of the last date the Discontinued Product can be ordered. After receipt of notice of discontinuance, HP may, at its option:

- (1) [*] [*] [*] [*] as set forth in [*] above if during [*] such product discontinuance event occurs, or;
- (2) In accordance with the terms and conditions of this Section 11.2, place orders for any demand during the [*] of such notice for delivery of Discontinued Products prior to the end of the notice period. To the extent that such orders exceed HP's previous Forecast for such Discontinued Products, the orders shall be non-cancelable. Supplier shall accept only forecasted orders in the [*] of the stated notice period, and such orders shall be non-cancelable. All shipments must be completed prior to the end-of-life date stated in such notice by Supplier to HP above, or;

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(3) Subject to the terms and conditions of Section 11.3 below, [*].

11.3 HP's Right [*]. In the event of: (i) an uncured breach by Supplier of this Agreement as defined in Sections 20.2 (3), (4), and (5) that causes a cessation in the supply of OEM Products to HP (and such cessation is not due to a force majeure event as described in Article (19)) and; (ii) as part of the Resolution Process outlined in Section 20.5, HP demonstrably showing that the [*] available to HP under Sections 11.1 and 11.2 above are [*]. In evaluating the extent to which an [*], " [*] shall consider without restriction: (1) the time required to implement [*], (2) the cost of implementing the [*], and (3) the risks involved in implementing [*]. If [*] will be [*] for a period of [*] and thereafter subject to a [*] at a [*] approximately [*] to the[*].

11.3.1 Supplier will furnish to HP all [*] relating to the Discontinued OEM Product at Supplier's [*] within [*] after HP has notified Supplier of HP's exercise of its rights under this Section 12.2. HP will [*] on such [*] within [*] after receipt of Supplier's invoice or receipt of such [*], whichever is later. If HP [*] to obtain possession of any such [*] [*] [*] Supplier's invoice.

11.3.2 Supplier will furnish to HP within [*] after HP's written request, the names and addresses of [*]. Supplier will use [*] efforts to enable HP to [*].

11.3.3 Supplier will furnish to HP [*] [*] deemed necessary [*] to service and support the Discontinued OEM Product.

11.3.4 Supplier will [*] it may have with third parties [*] Discontinued OEM Product.

11.4 Consulting Services. In support of [*] or other services provided to HP herein, Supplier will, upon HP's request, provide additional consulting services at the rate of [*], plus [*].

12. TRAINING

12.1 Technical Training. Supplier will provide to HP [*] technical training classes for HP technical personnel. The schedule for such classes will be as mutually agreed in writing by the parties, with the first of such training provided by Supplier no later than [*] before FCS (first customer shipment) for each respective OEM Product. Each class provided by Supplier under this Section will accommodate at least [*] HP personnel, and will be made available at Supplier's designated training site in San Jose, California. At HP's sole election and upon not less than

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[*] advance notice to Supplier, after the first training class is provided by Supplier, Supplier will provide the [*] [*] [*] [*]. All such training provided by Supplier will be [*]. Supplier will maintain a designated training contact for HP learning products personnel, and will provide technical support to an HP trainer for the first [*] classes taught by HP utilizing the training provided hereunder by Supplier. HP may further request and Supplier will provide, for up to [*] HP technical personnel, additional training [*] as reasonably necessary to inform HP personnel of each upgraded, enhanced, or new version of the OEM Products. Other training (including without limitation Supplier's Educational Services technical training) will be provided upon mutually agreed terms and conditions.

12.2 Presales Training. Supplier will provide to HP no later than [*] before FCS for each respective OEM Product, presales training at Supplier's San Jose, California facility sufficient to cover up to [*] HP trainers in order to allow HP to become fully familiar with the OEM Product and its market. Such training will be [*]. HP may further request and Supplier will provide additional training [*] as reasonably necessary to inform up to [*] HP personnel of each upgraded, enhanced, or new version of the OEM Products.

12.3 HP's Rights in Training Classes and Materials. Subject to the provisions of Article (21) herein, HP may [*] [*] under this Agreement (excluding Supplier's Educational Services classes, methods, and materials). None of the training materials provided [*] by Supplier to HP under this Article (12) may be offered for resale by HP to HP's Customers. Supplier will provide all such presales training and technical training materials to HP no later than [*] before FCS for each respective OEM Product.

13. MARKETING AND LICENSING

13.1 Marketing and Distribution. HP will have the authority to market the OEM Products and the HP Products containing the OEM Products to the extent it deems appropriate and in its [*]. Without limiting the generality of the foregoing sentence, nothing in this Agreement shall be construed or interpreted to place a [*] obligation upon HP with respect to marketing or distributing the HP Products or OEM Products or to preclude HP from independently developing, purchasing, licensing, or marketing any product which performs the same or similar function as the OEM Products. HP will have the right to use its own business and license terms for all marketing and distribution of the OEM Products and HP Products. HP will take all reasonable steps to describe OEM Products accurately.

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- 13.2 Distribution Rights. For so long as HP has the right to distribute any of Supplier's OEM products by virtue of any then-current agreement between HP and Supplier, Supplier [*] [*] the OEM Products or any other OEM products that perform the same or similar functionality; provided that nothing in this Section 13.2 shall be construed to prevent Supplier from [*] [*] [*] [*] [*] , or; (ii) [*] to whom Supplier has [*] [*]. For purposes of this Section 13.2, an [*] is any person or entity who purchases the OEM Product[*].
- 13.3 Sales and Marketing Activity. During the Term of this Agreement and any extension(s) thereof, Supplier shall, upon request of HP, deliver to HP [*] sales, training, product, educational, and marketing collateral intended by Supplier for use in the distribution, sale, or marketing of the OEM Products. All such collateral content intended by Supplier for use with the OEM Products shall be developed by Supplier and provided to HP in electronic form. All such collateral and related sales activity from or by Supplier, its employees, agents, and subcontractors (excluding Supplier's current and future indirect channels of distribution that are resellers, service bureaus, third party distributors, or third party OEMs (any of which who are neither owned nor controlled in whole or in part by Supplier) which in turn sell or distribute the OEM Products to End Users), which is intended by Supplier for [*] shall be first coordinated through the HP-designated business contact as listed in Exhibit (G) attached hereto [*], before Supplier may direct any such collateral or sales activity to such HP customers.
- 13.4 POS Data. For the term of the Agreement, HP shall provide to Supplier, on a monthly basis, "Point of Sale Data" relative to the OEM Products. Within [*] after the end of each calendar month, HP shall provide a Point of Sale Data report covering the sales during that month. For the purposes of this Agreement, "Point of Sale Data" shall refer [*] to: the geographic location, separated by country internationally and by zip code domestically, of each of the OEM Products sold by HP (as determined by the "ship to" address); the HP Product Number identification for each of the Products sold; and the total number of the Products sold. [*] provide the Point of Sale Data. Such Point of Sale Data shall be deemed Confidential Information subject to the provisions of Article 21 (Confidentiality) of the Agreement. This Point of Sale Data shall only be used for [*]. Supplier will destroy the provided data as soon as its legal obligation to maintain it is fulfilled.
- 13.5 Software License. Supplier hereby grants to HP, under Supplier's Intellectual Property Rights, a non-exclusive, worldwide, license to use, display, distribute, import, and disclose the Software both separately and in combination, in object code format only, and only for use in conjunction with the support and distribution of OEM Products or associated HP Products. The license grant under this Section 13.5 includes the right of HP to sublicense distributors, resellers, and

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other third parties solely to the extent necessary to allow HP to distribute and support the OEM Products and associated HP Products through HP's distribution and support channels. The rights granted to HP under this Section 13.5 also include the right of End Users to continue use of the Software in conjunction with the operation of the OEM Products so long as they are not in breach of the HP End-User license agreement issued with the particular OEM Product(s), and HP shall retain the license set forth above for the sole purpose of assisting End-Users with the maintenance and support of the OEM Products. The rights granted in this Section 13.5 shall also apply to all subsequent versions or revisions of the Software that are provided to HP either at no charge or for a fee, as described in Exhibit (C), whether generally or privately released, including all bug fixes, error corrections, updates, enhancements, license keys, or minor modifications of the Software or Documentation released for use with the OEM Product(s) during the Term of the Agreement and any extensions thereof, and irrespective of whether such subsequent versions or revisions are differentiated by version number (e.g., 1.x or x.1) or nomenclature. Notwithstanding the foregoing, Supplier may offer and HP may choose to purchase paid Software upgrades at mutually agreed pricing.

13.6 Device Object License. Supplier will use all reasonable efforts to develop, test, and distribute to HP [*] a device object applicable to HP's OpenView Storage software product according to the specifications and requirements set forth in HP OpenView Storage Area Manager Developer's Guide, Edition 1200, as referenced in Exhibit (A-6) attached hereto. Supplier hereby grants to HP, under Supplier's intellectual property rights, a non-exclusive, worldwide license to use, reproduce, display, translate, import, disclose, distribute, modify and prepare [*] compilations of such device object as developed by Supplier, for use with OEM Products and HP Products. These rights are exercisable in any medium. Such license will include the right of HP to sublicense distributors, resellers, and other third parties to achieve the foregoing.

13.7 License to the Documentation. Supplier hereby grants to HP, under Supplier's intellectual property rights, a non-exclusive, worldwide license to use, reproduce, display, import, disclose, distribute, and prepare compilations of the Documentation and compilations based upon the Documentation for use in conjunction with the support and distribution of Software. These rights are exercisable in any medium. Such license will include the right of HP to sublicense distributors, resellers, and other third parties to achieve the foregoing. The right to prepare compilations is granted solely for the purposes of combining Documentation of more than one Software, condensing Documentation, and formatting and preparing Documentation for user accessibility. The rights granted to HP under this Section 13.7 are subject to the payment obligations as generally set forth in Article (4) above and more particularly in Exhibit (C)

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attached hereto provided, however, that (a) End-Users shall be permitted continued use of the Documentation in conjunction with the operation of the OEM Products so long as they are not in breach of the HP End-User license agreement issued with the particular OEM Product(s), and (b) HP shall retain the license set forth above for the purpose of assisting End-Users with the maintenance and support of the OEM Products.

- 13.8 License to Photograph (Marketing Materials). Supplier hereby grants to HP, under Supplier's intellectual property rights, a non-exclusive, worldwide license to capture visual images of the Software screen displays and packaging, the Documentation and the CD-ROM, if any, and to use, reproduce, display, perform, distribute, import and modify such photographs and modifications and images solely in connection with HP's marketing and support of the Software and training with respect to the Software. Such license will include the right of HP to sublicense distributors, resellers, and other third parties to achieve the foregoing. The rights granted to HP under this Section 13.8 are subject to Supplier's right to review and approve (which such approval shall not be unreasonably withheld or untimely delayed) any visual images submitted by HP (excluding HP's standard then-current trademarks, servicemarks, and logos), and the payment obligations as generally set forth in Article (4) above and more particularly in Exhibit (C) attached hereto.
- 13.9 Restrictions. HP will not decompile, reverse engineer, disassemble, or otherwise modify any Software without written authorization from Supplier, except as permitted by law.
- 13.10 Localized Versions. The licenses granted hereunder with respect to the Software and associated Documentation will include all localized versions thereof available from Supplier. In the event HP reasonably requires a localized version of the Software, then Supplier agrees to negotiate [*] the commercial terms and conditions under which such localized version would be produced for HP. All of the licensing terms for such localized version would be consistent with this Agreement.
- 13.11 Limited Right of Sublicense and License. The parties expressly agree that no right of sublicense to the Software is hereby granted under this Agreement by Supplier to HP except for the right of HP to sublicense the Documentation and object code of the Software directly to End-User Customers. Based on Supplier's representations herein, HP agrees that Supplier is the owner of the Software and Documentation contained in the OEM Products.
- 13.12 Localized Software. The licenses granted hereunder for the Software and Documentation shall include any localized version(s) thereof which Supplier

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publishes or makes generally available during the Term of this Agreement and any extension(s) thereof.

- 13.13 End User License Terms. Supplier hereby grants to HP the right to use and HP will use its then-current standard form software license terms for marketing and licensing Software under this Agreement. Such terms will be substantially in the form of that as set forth in Exhibit (I) attached hereto.
- 13.14 No Rights In Marks. Except as otherwise specified in this Agreement, nothing in this Agreement should be construed to grant either party any rights in the Marks of the other party. HP and Supplier acknowledge, however, that HP may use the name of Supplier and the name of the OEM Products in advertising and marketing the OEM Products or the HP Products. The OEM Products will be affixed with copyright notices sufficient to give notice as to the rights of the parties in their respective products.
- 13.15 HP Marks. Supplier will ensure that the OEM Products contain the HP Marks, serial number, format, and packaging specified by HP and conforming to the HP specifications as set forth in Exhibit (A). Except as provided herein, Supplier will have no other right or license in any HP Marks.

14. LOSS OF BUSINESS CONTROL

- 14.1 Business Continuity. Supplier will develop and keep current a formal business continuity plan that details Supplier's strategies for response to and recovery from a broad spectrum of potential disasters that could disrupt operations and timely delivery of Product, material and services required pursuant to this Agreement.
- 14.2 Safety, Security and Fire Protection. Supplier will be responsible for maintaining [*] [*], [*] all warehouse and storage facilities and operations (except HP Warehouses) in accordance with applicable and prudent safety, security, fire protection standards. Supplier will allow [*] such facilities and operations and will cooperate in the resolution of recommendations for improvement.

15. INTELLECTUAL PROPERTY PROTECTION

- 15.1 Supplier's Duty to Defend. Except as provided in Section 15.4, Supplier will, to the maximum extent permitted by law, [*] and[*] , on a worldwide basis, HP, [*], officers, directors, employees, agents and representatives (individually, an "Indemnitee" and collectively, "Indemnitees") from and against any [*]:

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- (i) any [*];
- (ii) any combination of any [*] with an [*] in an application which is intended by Supplier or reasonably inferable as intended by Supplier from Specifications, Supplier's written designs or Documentation, where there is no substantial non-infringing use of the indemnified Product other than as part of that combination;
- (iii) any [*];
- (iv) any [*];
- (v) a [*], or;
- (vii) anything else (including [*]) provided as part of [*];

or use of any of the foregoing, constitutes an [*] "IP Claim"). Supplier will have the same duty [*] as set forth in the previous sentence in cases where any of the following applies with respect to an IP Claim: (a) there is a breach of [*] [*] ; (b) [*] is a direct infringer; (e) [*] is a contributory infringer; or (d) [*] has induced infringement. Without limiting the generality of the foregoing, Supplier will pay [*] incurred by Indemnitees and will pay any[*].

15.2 HP's Duty to Notify. HP will give Supplier [*] notice of any IP Claim. If Supplier assumes defense of such IP Claim without reservation of rights, HP will provide Supplier the authority, information and reasonable assistance (at [*] expense) necessary to defend. Supplier will control defense, and HP will not settle such IP Claim without Supplier's consent, [*]; provided that if Supplier does not diligently pursue resolution of such IP Claim or fails to provide HP, upon request at any time and from time to time, with reasonable assurance that it will diligently pursue resolution, then HP may, without in any way limiting its other rights and remedies, defend the claim [*]. Any settlement or compromise Supplier desires to enter into will be [*]. HP and any other Indemnitee may, in its or their discretion, participate in the defense of such IP Claim.

15.3 Actions After Injunction or Order. If the use or combination of any Product is enjoined, if the combination of any Product with an HP Product is enjoined where such combination is intended by Supplier or reasonably inferable from Specifications, Supplier's written designs or Documentation or if a court or government agency enters an injunction or order forbidding the importing of any Product or preventing the Delivery of any Product to HP (any of which Product being referred to as "Infringing Product"), Supplier [*], as may be reasonable under the facts and circumstances and within a [*] time, [*], and having reviewed its options with HP:

15.3.1 Procure for HP and its customers the right to continue using or combining the Infringing Product;

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15.3.2 Replace the Infringing Product with a non-infringing Product acceptable to HP and of equivalent form, fit, function and performance;

15.3.3 Modify the Infringing Product to be non-infringing, without detracting from form, fit, function or performance; or

15.3.4 Replace the Infringing Product with a non-infringing Product acceptable to HP and of equivalent form, fit, function and performance from a third party supplier on HP's approved vendor list at the time of the infringement and pay to HP the sum of: (a) [*].

If none of the foregoing options is commercially achievable, HP may return the affected Product, and Supplier will [*] with respect thereto.

In addition to the above, Supplier will pay HP [*]. If a change in any Product or the use thereof is required due to an IP Claim, Supplier will [*] HP for its [*] in procuring a reasonable substitute product, including [*].

15.4 Limitations. Nothing in this Article (15) applies to any Product or Parts to the extent such Product or Parts (i) have been improperly installed, repaired, altered or otherwise modified (other than by Supplier or Supplier's authorized Subcontractors), (ii) have be subjected to misuse, abuse, negligence or accident, (iii) have been used in a manner contrary to Specifications or Supplier's written instructions or Documentation or (iv) are comprised of materials provided or a design stipulated by HP and not approved by Supplier in writing to the extent that the claim arises from Supplier's compliance with a Unique Specification; provided that all implementations of that Unique Specification necessarily constitute or require an unauthorized use or infringement of a third party Intellectual Property Right and Supplier is unaware of such unauthorized use or infringement; and provided further that Supplier (a) has not [*] such Unique Specification, (b) has not provided [*] such Unique Specification or (c) has not [*] to such Unique Specification. To the extent that any of the foregoing limitations would otherwise apply, it will not apply where the Product is claimed to be an unauthorized use, misappropriation or infringement on account of a manufacturing process used by Supplier unless HP has required Supplier to use in manufacture of such Product the particular manufacturing steps that resulted in such claim.

16. TRADE REQUIREMENTS

16.1 The parties understand that this Agreement is subject to compliance with U.S. and other national export, import, customs and trade-related laws and regulations and

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Supplier understands that it is responsible for implementing procedures to ensure its material compliance with all guidelines established under the HP Regional Trade Guidelines as set forth under Exhibit (K) attached hereto; provided however, that to the extent Supplier, upon timely advance notice, can demonstrably show that compliance with any particular provision would create a significant hardship, then HP and Supplier will negotiate in good faith to resolve such objection. The parties acknowledge that they are knowledgeable about all such laws, regulations, and HP requirements and agree to comply with the same as applicable.

16.2 Supplier, at each of its sites, is responsible for determining the appropriate country of origin ("CO") for the product(s) it manufactures or assembles for HP and for marking these products in accordance with the requirements set out in BF Regional Trade Guidelines. Further, Supplier will cooperate fully with HP in supplying data to facilitate HP's origin reporting requirements and qualification for preferential origin programs such as NAFTA, IFTA, FME, EXIM and the like including, but not limited to, [*].

16.3 The following trade data elements must be able to be printed out or be capable of being transferred electronically on each commercial invoice prior to shipment of Product and must be sent to HP via the standard electronic/EDI shipping confirmation signal:

- Country of Origin [*]
- Import Country HTS Classification [*]
- ECCN [*]
- License [*]
- Destination Control Statement
- HP Part Number
- Appropriate INCOTERM

Further, Supplier must maintain, and reproduce upon demand, all documentation relating to the international transport of HP goods for a period of not less than [*] from the date of each shipment. All such record keeping system will comport with the legal requirements of the U.S. and other nations including, but not limited to, requirements set out in Parts 762 and 772, U.S. Department of Commerce, Export Administration Regulations and the U.S. Customs Record-Keeping Regulations, 19 C.F.R. 163.

Supplier will provide [*] notice to HP (via the site's appointed HP representative) in the event of an action by the U.S. or other national government customs/export authorities that relates specifically to goods or services provided to HP by Supplier's sites.

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Supplier will afford HP, and HP's duly appointed agents, reasonable [*] for trade compliance audit purposes and further agrees to respond in a timely manner to HP's requests for production of trade control records and to comply with all [*].

- 16.4 Supplier must be capable of producing accurate and complete shipping documentation for each Supplier site and each shipment from such site. Supplier is responsible for knowing and understanding shipping documentation standards applied in the normal course of international business and for knowing and understanding additional requirements outlined in HP Regional Trade Guidelines.
- 16.5 Supplier is responsible for knowing and understanding the terms of sale governing its agreement(s) with HP. Supplier is responsible for understanding the scope of its responsibilities under the applicable sales term(s), for ensuring that [*] are likewise educated, and for implementing procedures to ensure that the site, the site's employees and the site's agents fulfill the Supplier's responsibilities under the applicable term(s).
- 16.6 For each transaction where HP is to be importer of record, the Supplier is responsible for ensuring that commercial documentation accurately reflects the actual price paid or payable between HP and Supplier's site. It is Supplier's responsibility that each of its sites reconciles its financial records against commercial documentation in order to validate HP's use of transaction value, whenever possible, for declarations to Customs. When transaction value cannot be applied, Supplier will apply sequentially the World Trade Organization ("WTO") valuation rules for HP transactions. Supplier acknowledges that it is knowledgeable about the requirements for transaction value declarations and agrees to comply with same.
- 16.7 Duty Drawback. Unless otherwise requested, Supplier will allow HP to be the importer of record for all Deliveries. If HP is not importer of record and Supplier obtains duty drawback rights to Product, Supplier will, [*], provide HP with documents required by the customs authorities of the country of receipt to prove importation and to transfer duty drawback rights to HP if HP has paid [*] deposit of the subject duties.

17. CLASSIFICATION AND LICENSING AUTHORITY

- 17.1 Where Products are of HP's design, technology, software or manufactured to HP's functional specification, HP will assist the Supplier in the export of the commodities by providing Export Control Commodity Numbers ("ECCN") and Harmonized Tariff Code Numbers ("HTS") on behalf of HP's subsidiary

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Hewlett-Packard International GmbH ("HPIG"). Supplier will comply with Applicable Law governing import or export of Product and will be solely responsible for obtaining all requisite licenses and other authorizations. Supplier will not export, re-export or otherwise disclose, directly or indirectly, technical data or the direct product of such technical data received from HP without HP's prior knowledge and written consent.

- 17.2 Supplier's Declaration. Where Products are of Supplier's design, technology, software or manufactured to the Supplier's functional specification; the Supplier will provide HP with the correct ECCN or with sufficient technical information to determine classification. Additionally, the Supplier must provide any additional information that it knows will affect the determination of license authority.
- 17.3 Country of Origin Marking. The Supplier will mark the containers, in English, as well as all Product and Spares with the Country of Origin, in compliance with Section 304 of the United States Tariff Act. If the Product or Spares itself cannot be marked legibly due to size, then its immediate container must be marked with a signed certificate stating Country of Origin (manufacture) by quantity and part number (HP's and Supplier's).

18. GOVERNMENTAL COMPLIANCE

- 18.1 Duty to Comply. Supplier, its agents, employees and Subcontractors will comply with all Applicable Law in its performance of this Agreement. Upon request, Supplier agrees to [*] any applicable law or regulations. HP is neither responsible for monitoring Supplier's nor Supplier's Subcontractor's compliance with any Applicable Law.
- 18.2 Social and Environmental Responsibility. Supplier warrants that in all countries in which Supplier and, to Supplier's knowledge, information and belief, Supplier's authorized Subcontractors do business, its and their operations comply with all applicable laws and regulations governing protection of the environment, employee health and safety, and labor and employment practices, including but not limited to, laws and regulations relating to working hours, working conditions, wages, benefits, child labor, forced labor, freedom of association and equal employment opportunity. Supplier [*] HP Supplier Social and Environmental Responsibility Agreement and comply with HP's Supplier Code of Conduct (www.hp.com/go/supplierE), [*].
- 18.3 Environmental Requirements. Without limiting the generality of Sections 18.1 and 18.2 above, Supplier warrants and agrees that:

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18.3.1 Product Content. All Products and their packaging will comply with HP's General Specifications for Environment, DWG No. A-5951-1745-1 www.hp.com/go/supplierE) and, for purposes of this Agreement, such specifications are part of the Specifications for the Product.

18.3.2 Shipment. All Products will be shipped in conformance with all applicable national and international transportation regulations including, where applicable, regulations regarding chemicals and hazardous materials or dangerous goods, including regulations regarding fumigation and aeration. All packaging materials, including pallets, [*] where applicable.

18.3.3 Chemical Substances. Each chemical substance contained in the Product [*] chemical substances compiled and published by the United States Environmental Protection Agency pursuant to the Toxic Substances Control Act.

18.3.4 Supplier will provide complete and accurate Material Safety Data Sheets (MSDS) for Product to HP prior to shipment.

18.3.5 Environmental Information. Supplier will furnish HP any information reasonably requested by HP to confirm compliance with Applicable Law or to determine the environmental effects of materials included in the Products or in its packaging.

18.3.6 Supplier will comply with all Applicable Law governing import or export of Product and will be solely responsible for obtaining all requisite licenses and other authorizations.

18.3.7 Disposition of Excess Materials. Supplier will recycle or dispose of any excess or waste materials generated from manufacture of Product [*] in compliance with the provisions of this Agreement, Applicable Law [*].

18.3.8 Manufacturer will continuously implement and maintain processes and policies designed to protect the environment at any facility at which Product manufacturing operations are performed under this Agreement.

18.3.9 Take Back. Supplier will accept back [*] material included in the Product or its packaging returned freight prepaid by HP from any country that legally requires Product take back from the user at the end of the Product life.

18.4 Ozone Depleting Substances. Supplier hereby certifies that [*] Product:

18.4.1 Contains any "Class I Substance" or "Class II Substance" as those terms are defined in 42 U.S.C. Section 7671 and implementing regulations of the United

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States Environmental Protection Agency at 40 C.F.R. Part 82, as now in existence or hereafter amended; or

18.4.2 Has been manufactured with a process that uses any "Class I or Class II Substance."

18.5 Procurement Regulations. HP is a commercial corporation that is also a contractor and subcontractor for the U.S. government. All of the Products to be purchased from Subcontractor by HP pursuant to a subcontract/purchase order in the United States, its territories, possessions, the District of Columbia and the Commonwealth of Puerto Rico are deemed to be "Commercial Items" as defined in Federal Acquisition Regulation ("FAR") 2. 10 1, Part 12 and 52.202. 1 (c). Notwithstanding any other clause in HP's contract with the U.S. government, only those clauses identified in the clause at FAR 52.244-6 are required to be in agreements (subcontracts) for commercial items or commercial components. In addition, and in accordance with determinations made as a result of U.S. government audits, HP is required to flow down FAR 52.219-9, Small Business Subcontracting Plan, on all subcontracts/purchase orders with large business concerns that exceed \$500,000 in value.

Pursuant to FAR 52.212-5(e) and/or FAR 44.402(b), subcontractor, meaning any supplier, distributor, vendor or firm that furnishes supplies or services to or for a prime contractor or another subcontractor in support of U.S. government business, [*] the following FAR clauses, [*]:

FAR 52.222-26, Equal Opportunity (February 1999)
FAR 52.219-8, Utilization of Small Business Concerns (October 2000)

APPLICABLE IF THE SUBCONTRACT/PURCHASE ORDER EXCEEDS \$2,500:
FAR 52.222-41, Service Contract Act of 1965, as Amended (May 1989) if the purchase order is principally for the furnishing of services through the use of service employees.

APPLICABLE IF THE SUBCONTRACT/PURCHASE ORDER IS FOR \$10,000 OR MORE:

FAR 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (April 1998)
FAR 52.222-36, Affirmative Action for Workers with Disabilities (June 1998)

APPLICABLE IF THE SUBCONTRACT/PURCHASE ORDER EXCEEDS \$500,000 AND SUBCONTRACTOR IS NOT A SMALL BUSINESS:
FAR 52.219-9, Small Business Subcontracting Plan (October 2000)

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18.6 Anti-Terrorism Security Measures. Supplier acknowledges that its failure to comply with the laws, or regulations of any applicable governmental authority, U.S. CTPAT or equivalent security guidelines or TAPA[*] security requirements will be considered by HP as negligence and failure on the part of Supplier to provide due care for HP shipments. Supplier will be liable for all [*] imposed on HP, and [*], relating to Supplier's noncompliance with any such security regulations, guidelines or requirements.

19. FORCE MAJEURE EVENTS

19.1 Delaying Causes. Neither party will be liable for any delay in performance under this Agreement caused by any act of God or other cause beyond Supplier's reasonable control and without Supplier's fault or negligence including but not limited to fire, flood, war, embargo, riot or an unforeseeable intervention of any government authority, which causes complete business interruption (a "Delaying Cause"). A Delaying Cause does not include delays in transportation, [*] or economic considerations or inefficiencies. No Delaying Cause will suspend or excuse either party's obligations as set forth in Articles 15, 21, and 22.

19.2 Occurrence of a Delaying Cause. Any party whose performance is affected by a Delaying Cause will notify the other party [*] upon commencement of a Delaying Cause and will provide its best estimate of the expected duration of such occurrence. Upon notice to Supplier during pendency of a Delaying Cause, HP may [*] unfilled Accepted Orders [*]. Any party whose performance is affected by a Delaying Cause will exercise reasonable diligence to overcome and effect cessation of the Delaying Cause and to mitigate effects thereof. Performance of the parties' respective obligations to purchase and sell Product will be suspended to the extent affected by, and for the duration of, a Delaying Cause, and during pendency of a Delaying Cause affecting Supplier's ability to make timely Delivery, HP may purchase replacement Product elsewhere and [*]. If, however, Supplier's performance is delayed for reasons set forth above for a cumulative period of [*] calendar days or more, HP, notwithstanding any other provision of this Agreement to the contrary, [*] issued hereunder by notice to Supplier.

19.3 Resumption of Performance. The parties will resume performance under this Agreement once the Delaying Cause ceases, and HP may, upon written notice not later than [*] following such cessation, extend the Term up to the length of time the Delaying Cause endured.

20. EVENTS OF DEFAULT

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- 20.1 Notice Of Breach. If either party is in breach of any provision of this Agreement, the non-breaching party may, by written notice to the breaching party, except as otherwise prohibited by the United States bankruptcy laws, terminate the whole or any part of this Agreement or any Order, unless the breaching party cures the breach within [*] after receipt of such written notice.
- 20.2 Causes Of Breach. For purposes of Section 20.1 above, the term "breach" includes without limitation any:
- (1) Proceeding, whether voluntary or involuntary, in bankruptcy or insolvency by or against a party;
 - (2) Appointment, with or without a party's consent, of a receiver or an assignee for the benefit of creditors;
 - (3) Failure by Supplier to make a delivery of OEM Products in accordance with the requirements of this Agreement or any accepted Order;
 - (4) Failure by Supplier to replace or repair Noncomplying Products in a timely manner as required by Article (5) above; or
 - (5) Other failure by a party to comply with any material provision of this Agreement with additional failure to provide the non-breaching party, upon written request, with reasonable assurances of future performance.
- 20.3 HP's Rights Upon Breach. In the event HP terminates this Agreement in whole or in part as provided above for a material breach by Supplier, in addition to any other remedies provided HP under this Agreement, HP may procure, upon such terms and in such manner as HP reasonably deems appropriate, products and services substantially similar in functionality to the OEM Product and services as to which this Agreement is terminated. Supplier agrees to continue the performance of this Agreement to the extent not terminated under the provisions of this Section.
- 20.4 Purchase Hold. If any Eligible Purchaser having the right to purchase an OEM Product under this Agreement or under any other agreement with Supplier believes in good faith that an OEM Product is defective, then, irrespective of any other rights provided HP hereunder, HP may implement a [*]. Such [*] may be removed if HP reasonably believes that Supplier has taken sufficient action to correct the defect or given sufficient assurances that such defect will be corrected [*].

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20.5 Escalated Resolution Process. In the event of any dispute arising from or regarding the subject matter of this Agreement, the parties agree to negotiate in good faith an equitable resolution of the disputed matter. If the parties are not able to resolve the dispute within [*] of first written communication of the dispute, then the parties agree to escalate such resolution process to their respective Escalation Management as designated in Exhibit (G). The Escalation Management shall meet within [*] of escalation to resolve the disputed matter. If the dispute is not resolved within an additional [*] period from the end of the [*] period set forth above, then either HP or Supplier may commence legal, equitable, or other action upon providing the other party not less than [*] prior written notice of such intent.

21. CONFIDENTIAL INFORMATION

21.1 Confidential Information. During the Term, a party (the "Recipient") may receive or have access to certain information of the other party (the "Discloser") that is marked as "Confidential Information," including, though not limited to, information or data concerning the Discloser's products or product plans, business operations, strategies, customers and related business information. The Recipient will protect the confidentiality of Confidential Information with the same degree of care as the Recipient uses for its own similar information, but not less than reasonable care. Confidential Information may only be used by those employees of the Recipient who have a need to know such information for purposes related to this Agreement. Supplier will, upon HP's written request, use commercially reasonable efforts to cause any entity or person designated by HP to enter into a nondisclosure agreement which affords materially comparable protections for HP's Confidential Information as the Confidential Disclosure Agreement referenced in Exhibit (F). The parties acknowledge that all Technical Information and Forecasts are deemed Confidential Information to be protected for a term of [*] from date of disclosure.

21.2 Exclusions. The foregoing confidentiality obligations will not apply to any information that: (a) is known by the Recipient prior to disclosure; (b) was developed by the Recipient prior to disclosure or is subsequently developed independently and without reference to the disclosure; (c) is or becomes publicly available through no fault of the Recipient; (d) is rightfully received from a third party with no duty of confidentiality; (e) is disclosed by the Recipient with the Discloser's written approval or; (f) is disclosed under operation of law.

22. INSURANCE AND INDEMNITY

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22.1 Without limiting any of the obligations or liabilities of Supplier, Supplier will maintain [*] as long as this Agreement is in effect, insurance policies of the kind and limits listed below:

Worker's Compensation Insurance: Supplier will maintain Workers Compensation Insurance as required by Applicable Law having jurisdiction over Supplier's employees wherever work is to be performed under this Agreement.

Employer's Liability Insurance: Supplier will maintain Employer's Liability Insurance in an amount keeping with the law of the nation, state, territory or province having jurisdiction over Supplier's employees wherever work is to be performed under this Agreement [*].

General Liability Insurance: Supplier will maintain Comprehensive or Commercial General Liability Insurance (including but not limited to premises and operations, products and completed operations, broad form contractual liability, broad form property damage and personal injury liability) with a minimum limit of [*] combined single limit per occurrence and [*] in the aggregate, for claims of bodily injury, including death, and property damage that may arise from use of the Products or acts or omissions of Supplier under this Agreement. Each policy obtained by Supplier will [*] a loss covered thereunder.

Claims Made Coverage. If any policies have "claims made" coverage, Supplier will maintain such coverages [*]. Any such coverage must have a retroactive date no later than the date upon which work commenced under this Agreement.

Additional Requirements. All deductibles on policies providing coverage will be paid by Supplier. In the event Supplier is self insured for matters described in Article (14), Supplier agrees to respond to any claims or losses made against or incurred by HP in the same fashion as if insurance had been purchased with the same or broader coverage terms than what is generally available to similar Supplier's. In no event will the coverages or limits of any insurance required under this Article, or the lack or unavailability of any other insurance, be deemed to limit or diminish Supplier's obligations or liability to HP under this Agreement. In addition, where allowed by law [*].

All insurance policies will be written by a company authorized to do business in the territory and jurisdiction where the project is located. In no event will the coverage or limits of any insurance maintained by Supplier under this Article, or the lack or unavailability of any other insurance, limit or diminish in any way Supplier's obligations or liability to HP under this Agreement. All insurance policies will be written with appropriately licensed and financially responsible insurers

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Certificate of Insurance. Supplier will furnish Certificates of Insurance acceptable to HP before any Work is commenced hereunder by Supplier. The Certificate of Insurance will provide that there will be no cancellation or reduction of coverage without [*] prior written notice to HP.

22.2 Indemnity. Supplier will, to the maximum extent permitted by law, indemnify, defend and hold harmless HP [*] [*] from and against any and all claims, liability, loss or damage for bodily injury, occupational sickness or disease or death of any person, including any employee of Supplier or any Subcontractor, or for any physical damage to property, or loss of use thereof, (i) to the extent [*] or (ii) which is proximately caused by the negligence, strict liability or other fault of, or breach of this Agreement [*] by, Supplier, [*] and its and their employees, agents [*], in whole or in part or jointly with HP. In the event any claim, liability, loss or damage is caused by the joint or concurrent negligence, strict liability or other fault of Supplier and HP, except to the extent due to HP's passive negligence or HP's failure to manage or supervise Supplier, [*] and its and their employees, agents [*], or HP's failure to oversee or control Supplier's performance under this Agreement [*] and its and their employees, agents [*], then such claim, liability, loss or damage, and costs of defense will be borne by Supplier and HP in proportion to its respective degree of fault. Supplier will [*] defend any suit, action or other proceeding asserting a claim covered hereunder, and Supplier will pay [*]. Supplier will not have any obligation to defend, indemnify or hold harmless hereunder when the occurrence giving rise to such claim, charge, liability, loss or damage is caused solely by the negligence, strict liability or other fault of HP. Supplier's obligations to defend, indemnify and hold harmless hereunder will not be limited or otherwise affected by any insurance, self-insurance or retention of risk which it may carry or assume.

22.3 HP's Duty to Notify. HP will give Supplier [*] notice of any such claim or action for which Supplier is obligated to indemnify under Section 22.2. If Supplier assumes defense of such claim or action without reservation of rights, HP will provide Supplier the authority, information and reasonable assistance (at Supplier's expense) necessary to defend. Supplier will control defense, and HP will not settle any such claim or action without Supplier's consent [*]; provided that if Supplier does not diligently pursue resolution of the claim or fails to provide HP, upon request at any time and from time to time, with reasonable assurance that it will diligently pursue resolution, HP may, without in any way limiting its other rights and remedies, defend the claim and collect [*] doing so from Supplier. Any settlement or compromise Supplier desires to enter into will be subject to HP's approval. HP and any other Indemnitee may, in its or their discretion, participate in the defense of such claim or action.

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23. LIMITATION OF LIABILITY

UNLESS OTHERWISE STATED HEREIN, NEITHER PARTY WILL BE LIABLE FOR ANY [*] OF THE OTHER ARISING OUT OF ANY PERFORMANCE OF THIS AGREEMENT OR IN FURTHERANCE OF THE PROVISIONS OR OBJECTIVES OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE ABOVE, THE PARTIES WILL BE RESPONSIBLE FOR [*] INCLUDED IN AN AWARD OR SETTLEMENT OF A THIRD PARTY CLAIM UNDER [*]. EXCEPT FOR THE PARTIES' RESPECTIVE OBLIGATIONS UNDER [*], THE PARTIES' RESPECTIVE AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE [*] OF (i) USD [*], OR (ii) [*] UNDER THIS AGREEMENT IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE IMPOSITION OF LIABILITY.

24. TERMINATION

- 24.1 Outstanding Orders. All accepted Orders issued prior to the expiration of this Agreement must be fulfilled pursuant to and subject to the terms of this Agreement, even if the Delivery Dates are after expiration. Upon termination of this Agreement for Supplier's breach, HP may cancel any outstanding Order or require Orders to be fulfilled even if a Delivery Date is after the date of termination. If this Agreement is terminated due to HP's breach, then HP will reimburse Supplier for its reasonable direct costs to rework HP-customized OEM Product units [*] [*] back to Supplier's standard product, as described in Exhibit (A-1) attached hereto. Such reimbursement costs shall specifically exclude any costs for Supplier's excess materials used in connection with the customization of OEM Products.
- 24.2 Return Of HP Property. Supplier must return all HP Property to HP upon expiration or termination. All such property must be in good condition, normal wear and tear excepted. HP will determine the manner and procedure for return. HP will bear all return freight costs if return is due to HP convenience or an uncured breach by HP. Otherwise, Supplier will bear all such costs.
- 24.3 Surviving Provisions. Notwithstanding the expiration or early termination of this Agreement, the provisions regarding [*] Confidentiality in Article (21), [*] Limitation of Liability in Article (23), and the Miscellaneous provisions below will each survive in accordance with their terms.

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25. MISCELLANEOUS

- 25.1 Notices. All notices to be given under this Agreement must be in writing addressed to the receiving party's designated recipient specified in Exhibit (G). Notices are validly given upon the earlier of confirmed receipt by the receiving party or three days after dispatch by courier or certified mail, postage prepaid, properly addressed to the receiving party. Notices may also be delivered by telefax and will be validly given upon oral or written confirmation of receipt. Either party may change its address for purposes of notice by giving notice to the other party in accordance with these provisions.
- 25.2 Independent Contractors. The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent or joint-venturer of or with the other. Nothing in this Agreement precludes either party from independently developing, manufacturing, selling or supporting products similar to the OEM Products.
- 25.3 Assignment. Neither party may, directly or indirectly, in whole or in part, either by operation of law or otherwise, assign or transfer this Agreement or delegate any of its obligations under this Agreement without the other party's written consent, which such consent shall not be unreasonably withheld or untimely delayed. Any attempted assignment, transfer, or delegation without such prior written consent will be void. Notwithstanding the foregoing, HP or its permitted successive assignees or transferees may assign or transfer this Agreement or delegate any rights or obligations hereunder without consent: (1) to any entity controlled by, or under common control with, HP, or its permitted successive assignees or transferees; or (2) in connection with a merger, reorganization, transfer, sale of assets or product lines, or change of control or ownership of HP, or its permitted successive assignees or transferees. Without limiting the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their permitted successors and assigns.
- 25.4 No Waiver. The waiver of any term, condition, or provision of this Agreement must be in writing and signed by an authorized representative of the waiving party. Any such waiver will not be construed as a waiver of any other term, condition, or provision except as provided in writing, nor as a waiver of any subsequent breach of the same term, condition, or provision. Other than as expressly agreed herein, all remedies of a party provided herein, together with all remedies available at law or in equity, shall be cumulative.
- 25.5 Headings. The Section headings used in this Agreement

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are for convenience of reference only. They will not limit or extend the meaning of any provision of this Agreement, and will not be relevant in interpreting any provision of this Agreement.

- 25.6 Publicity. Subject to the terms and conditions of Article (21) above, neither party may publicize or disclose to any third party, without the written consent of the other party, the existence or terms of this Agreement except as required under applicable federal securities laws. In the event that Supplier becomes aware that disclosure is likely to be required by operation of law, Supplier shall promptly provide HP with ample notice and opportunity to seek a protective order. Supplier agrees that in the event that disclosure to the SEC is likely, Supplier shall promptly file a request for confidential treatment. Without limiting the generality of the foregoing sentence, no press releases regarding the subject matter, content, or existence of this Agreement may be made without the prior mutual written consent of each party.
- 25.7 Severability. If any provision in this Agreement is held invalid or unenforceable by a body of competent jurisdiction, such provision will be construed, limited or, if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability. The parties agree to negotiate in good faith a valid, enforceable substitute provision that most nearly effects the parties' original intent in entering into this Agreement or to provide an equitable adjustment in the event no such provision can be added. The other provisions of this Agreement will remain in full force and effect.
- 25.8 Subcontractors and Subsidiaries. Each party unconditionally guarantees to the other party the performance of all obligations by any of its subcontractors and Subsidiaries under the Agreement (including, without limitation, payment obligations), as amended from time to time, or any other obligation of any subcontractors or Subsidiary to the other party, now existing or hereafter arising. If either party's subcontractors or Subsidiary does not perform such obligation, such party shall immediately perform such obligation.
- 25.9 Entire Agreement. This Agreement comprises the entire understanding between the parties with respect to its subject matters and supersedes any previous or contemporaneous communications, representations, or agreements, whether oral or written. For purposes of construction, this Agreement will be deemed to have been drafted by both parties. No modification of this Agreement will be binding on either party unless in writing and signed by an authorized representative of each party.
- 25.10 Governing Law. This Agreement and each Order and Acknowledgment will be governed in all respects by California law without reference to any choice or

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conflict of laws provisions of California or the law of any other jurisdiction. The parties hereby submit to the jurisdiction of the courts of California or any court of the United States sitting in California with subject matter jurisdiction, and waive any venue objections against the United States District Court for the Northern District of California and the Superior and Municipal Courts of the State of California, in any litigation arising under this Agreement. The parties exclude application of the 1980 United Nations Convention on Contracts for the International Sale of Goods, if applicable.

25.11 Authority of Signatory. If HP or Supplier executes this Agreement by agent or representative, such agent or representative by his/her act of signing this Agreement individually warrants and represents to the parties, and HP and Supplier warrant and represent respectively to each other, that he/she is authorized to execute, acknowledge and deliver this Agreement on behalf of HP or Supplier, as the case may be, and thereby to bind the respective party to the same.

25.12 Exhibits. Each of the following Exhibits referred to in this Agreement is incorporated in full in this Agreement wherever reference to it is made:

- EXHIBIT (A) OEM PRODUCTS AND SPECIFICATIONS
 - (A-1) Supplier Product Specifications
 - (A-2) HP Configuration Specification Document
 - (A-3) Packaging
 - (A-4) Documentation
 - (A-5) HP StorageWorks SDK Developers' Guide
 - (A-6) OEM Product [*] Requirements
- EXHIBIT (B) ELIGIBLE PURCHASERS & [*]
- EXHIBIT (C) PRICING AND FEES
- EXHIBIT (D) SERVICE AND SUPPORT REQUIREMENTS
- EXHIBIT (E) HP EQUIPMENT LOAN AGREEMENT
- EXHIBIT (F) CONFIDENTIAL DISCLOSURE AGREEMENT
- EXHIBIT (G) RECIPIENTS FOR RECEIPT OF NOTICES
- EXHIBIT (H) HP Supplier Quality System Requirements
- EXHIBIT (i) hp END USER SOFTWARE LICENSE AGREEMENT
- EXHIBIT (J) [*] REQUIREMENTS
- EXHIBIT (K) HP REGIONAL TRADE GUIDELINES

AGREED:

BROCADE COMMUNICATIONS HEWLETT-PACKARD COMPANY
SYSTEMS, INC.

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By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

BROCADE COMMUNICATIONS
SWITZERLAND, SARL.

By: _____

Name: _____

Title: _____

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EXHIBIT (A-1)

SUPPLIER PRODUCT SPECIFICATIONS

Note: Supplier product specifications for all OEM Products shall immediately follow this cover page and be incorporated into this Exhibit (A-1) by reference.

The 2 Gbit/sec Brocade SilkWorm 3900 Enterprise Fabric Switch provides an entry point to enterprise SANs, improving availability, performance, and manageability at an attractive price.

SILKWORM SWITCH FAMILY

SilkWorm 3900

Highlights

Increased Flexibility for Evolving SAN Requirements

- Provides 32 ports in a 1.5U enclosure along with auto-sensing 1 and 2 Gbit/sec interfaces for seamless integration with existing fabrics
- Leverages Brocade Advanced Fabric Services to provide the highest levels of SAN performance, security, and manageability
- Meets mission-critical availability requirements with network resiliency, automatic data path rerouting, non-disruptive code load, and redundant, hot-pluggable components
- Increases performance by employing Brocade Inter-Switch Link (ISL) Trunking to create a data path with up to 8 Gbit/sec throughput per trunk
- Provides substantial cost savings by supporting a SAN infrastructure that increases productivity, maximizes IT resource utilization, and reduces capital expenditures

The Brocade(R) SilkWorm(R) 3900 32-port, auto-sensing Fibre Channel switch provides an intelligent and cost-effective solution to meet a wide range of Storage Area Network (SAN) requirements. As the latest addition to the Brocade 2 Gbit/sec fabric switch family, the SilkWorm 3900 is ideal for organizations that face rapidly changing storage requirements.

With the performance capabilities of an enterprise switch and the cost-effectiveness of a modular switch solution, the SilkWorm 3900 enables a flexible SAN infrastructure. Designed for midsize to large storage networks, the SilkWorm 3900 enables organizations to implement a SAN infrastructure that best meets their current needs and

expands seamlessly as their storage requirements evolve. The SilkWorm 3900 provides a complete solution for a departmental SAN fabric, as a small core, or an edge switch extending the reach of an enterprise core-to-edge SAN built around the Brocade SilkWorm 12000 Core Fabric Switch (see Figure 1).

Based on a third-generation Brocade intelligent architecture, the SilkWorm 3900 provides a highly available, scalable, and secure foundation for SAN applications such as high-speed data backup, server and storage consolidation, remote mirroring, and long-distance data replication.

HIGH AVAILABILITY FOR BUSINESS CONTINUANCE

By combining the proven reliability of the SilkWorm switch family with a wide range of hardware and software availability features--such as seamless upgrades of switch software--the SilkWorm 3900 supports a SAN fabric capable of delivering overall system availability greater than 99.999 percent.

The core-to-edge SAN model uses redundant fabrics, hot-pluggable components, and multiple data paths to help ensure high availability across the fabric. In addition, Brocade Fabric Shortest Path First (FSPF) enables the fabric to automatically isolate problems and reroute traffic around failed links onto alternate paths. As a result, the SilkWorm 3900 provides a SAN infrastructure solution that is designed to meet the most demanding business continuance requirements.

INDUSTRY-LEADING PERFORMANCE

The SilkWorm 3900 provides numerous business advantages for organizations that want to increase application performance and operational productivity. It can deliver up to 128 Gbit/sec of aggregated throughput, with 32 ports capable of 2 Gbit/sec full-duplex performance. To achieve even higher performance, organizations can use Brocade ISL Trunking, which combines as many as four ISLs into a single logical ISL with up to 8 Gbit/sec throughput.

Fibre Channel speed is also possible at longer distances for remote operations. By leveraging the Brocade Extended Fabrics feature and Dense Wave Division Multiplexing (DWDM) technology, storage networks can span up to 100 km over Metropolitan Area Networks (MANs) at high speed--significantly enhancing disaster recovery operations.

A DESIGN TO LEVERAGE INTELLIGENCE IN THE FABRIC

To help maximize IT investments and reduce costs, the SilkWorm 3900 is designed to leverage the industry's only intelligent fabric services architecture. The proven intelligence in the Brocade Fabric OS and third-generation Brocade ASIC technology enables the high levels of security, management, and performance required by the most demanding SAN environments.

Organizations can utilize leading capabilities such as frame filtering and Brocade Advanced Fabric Services to unlock the intelligence of the Brocade SAN fabric for a variety of applications. For instance, Brocade Advanced Zoning enables organizations to implement robust, hardware-enforced zoning based on World Wide Name (WWN). Advanced Performance Monitoring provides fabric-wide performance analysis to support tasks such as load balancing and application charge-back. And ISL Trunking provides 8 Gbit/sec throughput to support high-performance applications.

OPEN SAN MANAGEMENT

The SilkWorm 3900 simplifies SAN management by networking core and edge switches under a common management platform based on Brocade Fabric OS. An embedded real-time operating system, Fabric OS includes standard management interfaces, a full range of management tools, and a Brocade Fabric Access API that supports third-party SAN management applications. This open systems approach enables heterogeneous device connectivity, automatic data routing, and a seamless upgrade path among all SilkWorm products.

To simplify SAN administration and reduce management costs, the SilkWorm 3900 supports the following functions:

- Simple Network Management Protocol (SNMP)-based interfaces to access switch information
- Switch management through a command line interface, WEB TOOLS, or Fabric Manager
- End-to-end fabric visibility through Advanced Performance Monitoring
- Real-time health monitoring through Fabric Watch
- Third-party SAN management application development through the Fabric Access API

SEAMLESS UPGRADES AND INVESTMENT PROTECTION

To protect existing investments, the SilkWorm 3900 provides backward and forward compatibility with the SilkWorm family of switches. In addition, translatable mode capabilities enable legacy private loop devices to join the Fibre Channel SAN fabric.

The SilkWorm 3900 integrates with heterogeneous environments that include operating systems such as Windows NT, UNIX, and Linux--giving organizations the flexibility to select storage solutions that best match their particular needs. As a result, these organizations can more easily implement cost-efficient and highly manageable enterprise SAN fabrics.

HIGHER FABRIC SECURITY FOR CRITICAL INFORMATION

The SilkWorm 3900 is designed to provide the highest level of SAN fabric security to help organizations safeguard their critical information. For example, Brocade Zoning logically groups a SAN fabric into secure zones to help ensure that SAN-attached devices can access only their authorized storage resources. Advanced Zoning provides even more control over the fabric through robust hardware-enforced zoning by WWN. These capabilities enable organizations to simplify administration while significantly increasing their control over data access.

MAXIMIZING SAN INVESTMENTS

Brocade and its partners offer complete SAN solutions to meet a wide range of technology and business requirements. These solutions include education and training, support, service, and professional services to help optimize SAN investments. For more information, contact an authorized Brocade sales partner or visit www.brocade.com.

Systems Architecture

Fibre Channel ports 32 universal ports (E, F, and FL)
Interoperability SilkWorm 2000, 3000, and 12000 switches
Performance Auto-sensing of 1 Gbit/sec and 2 Gbit/sec port speeds
ISL Trunking Up to four 2.125 Gbit/sec ports per trunk; up to 8.5 Gbit/sec per ISL trunk
Aggregate bandwidth 128 Gbit/sec end-to-end
Switch core Non-blocking
Fabric latency <2.1 usec. with no contention, cut-through routing
Maximum frame size 2112-byte payload
Classes of service Class 2, Class 3, Class F (inter-switch frames)
Port types FL_Port, F_Port, and E_Port; self-discovery based on switch type (U_Port); optional port type control
Data traffic types Fabric switches support unicast, multicast (256 groups), and broadcast
Media types Small Form-Factor Pluggable (SFP)
Laser Short-wave, long-wave, and extended long-wave
Fabric services Simple Name Server, Registered State Change Notification (RSCN), Alias Server (multicast), and Brocade Zoning, Advanced Zoning, Extended Fabrics, Fabric Watch, ISL Trunking, and Remote Switch (some services are optional)
Options Redundant power supply, SFP media, and rack-mount kit

Management

Supported software Telnet, SNMP, WEB TOOLS, and Fabric Manager (optional)
Management access 10/100 Ethernet (RJ-45), serial port
Diagnostics POST and embedded online/offline diagnostics

Mechanical Specifications

Enclosure Back-to-front airflow, power from rear
1.5U, 19-in.-EIA compliant

Size Depth: 58.56 cm (23.06 in.) Height: 6.55 cm (2.58 in.) Width: 42.86 cm (16.87 in.)
Weight Single power supply weight: 14.33 kg (31.60 lbs) Double power supply weight: 16.24 kg (35.80 lbs)
Mounting option Rack-mountable in standard rack; Telco-style mid-mounting

Environment

Temperature Operating: 10(degree)C to 40(degree)C (50(degree)F to 104(degree)F) Nonoperating: -25(degree)C to 70(degree)C (-13(degree)F to 158(degree)F)
Humidity Operating: 20% to 85% non-condensing at 40(degree)C (104(degree)F) Nonoperating: 10% to 85% non-condensing, at 70(degree)C (158(degree)F)
Altitude Operating: up to 3,000 m (9,800 ft) Nonoperating: up to 12 km (40,000 ft)
Shock Operating: 80 G, 2.4ms, half-sine Nonoperating: 20 G, 11 milliseconds, half-sine wave
Vibration Operating: 0.5 G, 5-500 Hz Non-operating: 2.0 G, 5-500 Hz

Power

AC Input Nominal: 100 to 240 VAC auto-ranging; 5.0 A
Frequency 47 to 63 Hz

Figure 1. The SilkWorm 3900 provides a reliable building block for departmental SANS and a high-performance edge switch for enterprise core-to-edge SANS.

SILKWORM SWITCH FAMILY

FIBRE CHANNEL STANDARDS AND REVISIONS

FC-AL-2 Rev 7.0 FC-FLA Rev 2.7 FC-GS-3 Rev 7.01 FC-FG Rev 3.5
FC-FS Rev 1.7
FC-PH Rev 4.3 FC-PH-2 Rev 7.4 FC-PH-3 Rev 9.4 FC-PLDA Rev 2.1
FC-SW-2 Rev 5.4
FC-VI Rev 1.6 IPFC RFC 2625

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EXHIBIT (A-2)

Note: HP configuration specifications for all OEM Products shall immediately follow this cover page and be incorporated into this Exhibit (A-2) by reference.

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BROCADE / HP CONFIDENTIAL

CONFIGURATION SPECIFICATIONS

HP STORAGEWORKS CORE SWITCH
2/64

[PICTURE]

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-2

[*]

Revision 0

[*]

BROCADE 12000 INFORMATION

PRODUCT : hp StorageWorks Core Switch 2/64

MODEL NUMBERS:

[*] hp StorageWorks Core Switch 2/64
[*] Blade

[*] hp StorageWorks Core Switch 2/64 (w/ 32 ports)
[*]

[*] hp StorageWorks Core Switch Blade (16 port)
[*]

SUPPLIER: Brocade

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Date:
5/15/2002

Configuration
Specification

Page A2-3

[*]

Revision 0

[*]

DOCUMENT REVISION HISTORY

REVISION #	DATE	DESCRIPTION
00	1/24/02	Preliminary
01	2/26/02	Added p/n's, agency label and button drawings
02	2/28/2002	Changed bar coding of FRU spec. Page 8
03	3/14/2002	product name change, brocade badges
04	3/19/02	Added FRU information & license information
05	3/20/02	Dropped AZ. Removed reference to quickloop Added 5.X Port card requirements
06	3/25/02	Corrected rail kit pn in 4.0 to -87903 not -87902
E7	3/29/02	Added contents of rack mount hw kit (BOB)
E8	4/9/02	CD-Rom artwork
E9	4/23/02	Corrected formatting issues, added pn to assy & rail kit subcomponents.
E10	4/23/02	Add route.delayReroute:1 All material to be included from Brocade (Polish Doc, Power Cord, Getting Started Guide, BOB)
E11	5/24/02	Included changes to make similar to pre merger Compaq model.
E12	5/29/02	Pre Merger Compaq team added their content
E13	5/30/02	Added shipping labels, Compaq part # labels, and locations

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Date:
5/15/2002

Configuration
Specification

Page A2-4

[*]

Revision 0

[*]

TABLE OF CONTENTS

	DOCUMENT REVISION HISTORY	4
1.	SCOPE OF DOCUMENT	6
2.	HP'S GENERAL REQUIREMENTS	6
2.1	Bar Code Requirements	6
2.2	Power Cords	6
3.0	PURCHASED PARTS	7
4.0	SWITCH	8
4.1	Switch Configuration	8
4.2	Switch: Configuration Parameters	8
4.3	Switch: Licenses	9
4.4	Switch: Accessory Kit	9
4.5	Switch: Rack Mount Kit A6509-87903	11
4.6	Switch: Labels	12
4.7	Label Locations	14
4.8	Label: Accessory Kit	14
4.9	Label: Rack Mount Kit	14
4.10	Label: Agency	15
4.11	Switch: FRUs	15
4.12	Switch: Packaging	15
4.13	Switch: Documentation CD-ROM Artwork	18
5.0	PORT CARD	19
5.1	Port Card: Serial Label	19
5.2	Port Card Packaging:	19
5.3	Port Card Shipping Labeling:	19
6.0	Polish Enterprise Safety & Reg Info 5953-5086	20
7.0	Power Cord Retaining Clamp	24

- - - - -

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1. SCOPE OF DOCUMENT

This document describes the expectations of how HP expects to receive the 2Gb Network Switch and all parts, devices and components associated with the switch. Typical expectations described in this document are:

- Part Numbering and Cross Referencing
- Configuration and revision
- Labeling
- Packaging

This document supercedes any specification described in the Supplier's Product Specification Documentation.

2. HP'S GENERAL REQUIREMENTS

2.1 Bar Code Requirements [MSOffice3]

- The bar code symbol bar shall be Code 39 (also known as "Code 3 of 9") as specified by the AIM Uniform Symbology Specification Code 39.
- The symbol bar shall start with a minimum "Quiet Zone" of .25 inches and an asterisk "Start" character (* in Code 39) where applicable (no adjacent labels). The symbol shall end in the asterisk followed again by a minimum .25 inches of "Quiet Zone".
- The bar code height shall be .125 inches (minimum).

2.2 Power Cords

Accessory kit includes a total of four power cords (2 PDU and 2 Standard external power, see CSD for part numbers).

[MSOffice4]

Power cords have strict sourcing requirements. Power cords may only be sourced from HP specified vendors and only under the HP part number. No other power cord shall be considered. The power cords to be included with the 12000 switch are manufactured by Feller US Corp., part number 20000127

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Date:
5/15/2002

Configuration
Specification

Page A2-6

[*]

Revision 0

[*]

3.0 PURCHASED PARTS

HP PART NUMBER / COMPAQ PART NUMBER	BROCADE PART NUMBER	DESCRIPTION	CONTENTS	CONTENT
[*] [*] [*]	HQ-12000- 0001 [MSOffice5]	Switch, fc 128 kit	Switch Accessory Kit Rack Mount Kit	A6509-70001 A6509-87901 A6509-87903
[*] [*] [*]	HQ-12000- 0002	Port Card	Port card Installation Sheet (Brocade Pub # 53- 0000157-09)	A6510-60001 A6510-96001

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Date: 5/15/2002	Configuration Specification	Page A2-7
[*]	Revision 0	[*]

4.0 SWITCH

[*]

PART NUMBER: [*]
 [*]
 [*]

DESCRIPTION: HP STORAGEWORKS CORE SWITCH 2/64

4.1 Switch Configuration

ITEM	DESCRIPTION (6/1)	7/26
Chassis Color	No Paint. Clear anodized aluminum. Not Customizable	
Chassis Door (metal)	Graphite, Compaq P/N 114047-064	
Chassis Door (plastic)	Graphite, Compaq P/N: 114047-064	
Chassis Door 2" Badge	No Badge	
WWN bezel (plastic)	Graphite, Compaq P/N: 114047-064	
WWN Mylar label	Graphite background, Opal font/accent font:"Thesis Sans Bold" (hp StorageWorks)	
WWN 1" Badge	No Badge	
Cable Management Tray	Graphite, Compaq P/N: 114047-064	
Agency Certification	HP customized. See Section 8.0	
Cable Pillars	Included, quantity 16.	
Firmware	4.0.0a	
IP Address default	10.77.77.77	
Subnetmask	255.255.255.0	
Power Supplies	Quantity 4	
Blowers	Quantity 3	

4.2 Switch: Configuration Parameters

CLI Timeout	10 minutes
	[HP Silkworm 12000 logical switch 0 and logical switch 1]
[Configuration]	
	oemLogo:1
	snmp.sysObjectID:1588.2.1.1.10
	snmp.sysObjectID.default:1588.2.1.1.10
	switch.status.policy.PowerSupplies.down 3
	thresh.alarmsfilter:1

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route.delayReroute:1

Brocade WWN

Core PID bit set to 1

4.3 Switch: Licenses

LICENSES	SHIPPING STATUS	HP PN	CPQ PN (SS, SN *)	BROCADE PN
FabricOS 4.0	Factory installed			
Adv. Webtools	Factory installed			HP-1200AWT-01
Adv. Zoning	Factory installed			HP-1200ADZ-01
Fabric Watch	Factory installed			HP-1200FWH-01
Adv. Perf. Monitoring	Factory installed		[*] [*] [*]	HP-1200PRF-01
LUN Zoning (**)	Customer option		[*] [*] [*]	
Qkloop Fabric Assist (**)	Customer option		[*] [*] [*]	
Secure Fabric O/S (**)	Customer option		[*] [*] [*]	
ISL Trunking	Customer option	[*]	[*] [*] [*]	HP-1200TRK-01
Extended Fabrics	Customer option	[*]	[*] [*] [*]	HP-1200EXF-01
Remote Switch	Customer option	[*]	[*] [*] [*]	HP-1200RSW-01
Repair keys	None	None		None

* SS = Software Salable, SN = Software Non-Salable

** Available post FRS

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Date:
5/15/2002

Configuration
Specification

Page A2-9

[*]

Revision 0

[*]

4.4 Switch: Accessory Kit

HPPN: [*] BROCADE PN: TBD

HP PART NUMBER	CPQ PN	BROCADE PN	DESCRIPTION (HPPN)	QTY
[*]			DOCUMENTATION CD-ROM See Section 4.8	[*]
[*]			RBII MOUNTING HARDWARE "Bag 0 Bolts" 4 M5 Tinnermans (0590-2318) 4 M5 Torx screws (0515-0671)	[*]
[*]			Polish Enterprise Safety & Reg Info. SEE SECTION 6.0	[*]
[*]			Modem Setup Procedure	[*]
[*]			SERIAL CABLE & ADAPTOR	[*]
[*]			INSTALLATION GUIDE Note: Print on Demand item	[*]
			READ ME FIRST	[*]
		58-0000006-01	POWER CORDS (C19-C20)	[*]
		58-0000011-01	POWER CORDS (NEMA-L6-20 TWIST LOCK)	[*]
[*]			CORD RETAINING CLAMP See section 7.0	[*]
[*]			CABLE GUIDE PILLAR	[*]
		58-0000010-01	ESD WRIST STRAP	[*]
		60-0000775-01	FABRIC MANAGER 3.02	[*]

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Date: 5/15/2002 Configuration Specification Page A2-10
 [*] Revision 0 [*]

4.5 Switch: Rack Mount Kit [*]

DESCRIPTION	QTY
ASSY, BRKT, RACK MNT, LEFT	[*]
BRKT, RACK MNT, UPPER, LEFT	[*]
BRKT, RACK MNT, UPPER, REAR	[*]
SCR,10-32,3/8 PPH,ST,ZNC, PATCHLOK	[*]
ASSY, BRKT, RACK MNT, RIGHT	[*]
BRKT, RACK MNT, UPPER, RIGHT	[*]
BRKT, RACK MNT, UPPER, REAR	[*]
SCR,10-32,3/8 PPH,ST,ZNC, PATCHLOK	[*]
ASSY, SHELF, RACK MNT, LEFT	[*]
BRKT, SHELF, RACK MNT, LEFT	[*]
BRKT, EIA, RACK MNT, LT	[*]
SCR,10-32,3/8 PPH,ST,ZNC, PATCHLOK	[*]
ASSY, SHELF, RACK MNT, RIGHT	[*]
BRKT, SHELF, RACK MNT, RIGHT	[*]
BRKT, EIA, RACK MNT, RT	[*]
SCR,10-32,3/8 PPH,ST,ZNC, PATCHLOK	[*]
ASSY, HARDWARE, RACK MNT, SW12000	[*]
SCR,10-32,5/16PFH,ST,ZC,UNDRCT, PATCHLK	[*]
ASSY, HARDWARE, RACK MNT, SW6400	[*]
SCR,8-32X5/16", FHP,100 D,ST,ZNC,PATCHLOK	[*]
ASSY, HARDWARE, RITTAL RACK	[*]
WASHER, ALIGNMENT, RACK MNT	[*]
SCR,1/4-20 X .5", PHP, PATCHLOK	[*]
NUT,RETAINER,10-32	[*]
SCR,10-32X.63", PHP,SQCONESEM	[*]
SCR,1/4-20X.5", PHP,SQCONESEM	[*]

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Date: 5/15/2002	Configuration Specification	Page A2-11
[*]	Revision 0	[*]

4.6 Switch: Labels[MSOffice6]

LABELS

Brocade Std Product [PICTURE]
(Placement: Front
Inside Left - SFP side)

Brocade Serial [PICTURE]
Number
(Placement: Front
Inside Left - SFP side)

Compaq product label [PICTURE]
(includes 2-5-2 p/n,
6-3 p/n, s/n)
(Placement: Front
Inside Left - SFP side)

Switch HP Serial Number HP Serial Number:[*]
(Placement: Back of [PICTURE]
unit)

[*] Serial Number Format:
US = Country of Manufacture
B = Supplier ID, Brocade

0 = Revision 0. To be updated per applicable PCNs
V = Project Identifier
xxxxx = sequential numeric counter starting with 00001 and
not reset when revision level is changed.
(Note: For June 3, 02 launch use serial # block [*]. For merged
product use serial numbers block [*] onwards)

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OMITTED PORTIONS.

Date: Configuration Page A2-12
5/15/2002 Specification
[*] Revision 0 [*]

HP Part Number
Label

HP Part Number: [*]
[PICTURE]

(Placement: Back of
unit)

5x5 part number in human readable and 3x9 bar code.

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Date:
5/15/2002

Configuration
Specification

Page A2-13

[*]

Revision 0

[*]

4.7 Label Locations

[PICTURE]

4.8 Label: Accessory Kit

Description: Accessory Kit

HP Part Number: [*]
[PICTURE]

4.9 Label: Rack Mount Kit

Description: Rack mount kit for 12000 switch

HP Part Number: [*]
[PICTURE]

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Date:
5/15/2002

Configuration
Specification

Page A2-14

[*]

Revision 0

[*]

4.10 Label: Agency

[PICTURE]

4.11 Switch: FRUS

HP DESCRIPTION	BROCADE PART NUMBERS	HP REPLACEMENT PART NUMBER	HP EXCHANGE PART NUMBER	COMPAQ DESCRIPTION	COMPAQ FRU PART NUMBER
Port Card	HP-12000-0004		[*]	SWITCH12000 PORT	283802-001
Power Supply	XHP-12000-0104	[*]		PWR SPLY, SW12000, 1000W	283804-001
Blower Assembly	XHP-12000-0122	[*]		BLOWER, SW12000 CP	283801-001
Rear WVN Assembly	XHP-12000-0123	[*]			
CP Card	XHP-12000-0103		[*]	SWITCH12000 CP	283803-001
				RACK MNT KIT, SW12000, 14U	283805-001
				PANEL, FILLER, PORT CARD	283806-001
				SW12000 CP PILLAR	283807-001

4.12 Switch: Packaging

Brocade Standard Packaging for the switch

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-15

[*]

Revision 0

[*]

HP SHIPPING LABEL

[PICTURE]

COMPAQ SHIPPING LABEL

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-16

[*]

Revision 0

[*]

[PICTURE]

LABEL PLACEMENT: Add the Compaq shipping label on the same side of the shipping crate as the HP shipping label but separated from each other (i.e. opposite corners of the box)

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-17

[*]

Revision 0

[*]

4.13 Switch: Documentation CD-ROM Artwork

CD-ROM is included in the accessory kit.[MSOffice8]

[PICTURE]

- -----

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Date:
5/15/2002

Configuration
Specification

Page A2-18

[*]

Revision 0

[*]

5.0 Port Card

5.1 Port Card: Serial Label

Port Card HP Serial Number HP Serial Number:[*]
[PICTURE]

[*] Serial number format:
US = Country of Manufacture
B = Supplier ID, Brocade
0 = Revision 0. To be updated per applicable PCNs
W = Project Identifier
xxxxx = sequential numeric counter starting with 00001 and
not reset when revision level is changed.

5.2 PORT CARD: PART NUMBER LABEL (IMAGE NOT SHOWN)

5.3 Port Card Packaging:

Standard Brocade packaging.

5.4 Port Card Shipping Labeling:

Label must contain:
SHIP TO ADDRESS
DESCRIPTION
HP SERIAL NUMBER
COUNTRY OF ORIGIN
HP PURCHASE ORDER
CE MARK
GOST MARK

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-19

[*]

Revision 0

[*]

6.0 POLISH ENTERPRISE SAFETY & REG INFO 5953-5086

[PICTURE]

- -----

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Date:
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Configuration
Specification

Page A2-20

[*]

Revision 0

[*]

[PICTURE]

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-21

[*]

Revision 0

[*]

[PICTURE]

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-22

[*]

Revision 0

[*]

[PICTURE]

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-23

[*]

Revision 0

[*]

7.0 POWER CORD RETAINING CLAMP

[PICTURE]

- - - - -

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Date:
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Configuration
Specification

Page A2-24

[*]

Revision 0

[*]

8.0 INSTALLATION SHEET SHIPPED WITH PORT CARD

[PICTURE]

- -----

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Date:
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Configuration
Specification

Page A2-25

[*]

Revision 0

[*]

[PICTURE]

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-26

[*]

Revision 0

[*]

[PICTURE]

- - - - -

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Date:
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Configuration
Specification

Page A2-27

[*]

Revision 0

[*]

[PICTURE]

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-28

[*]

Revision 0

[*]

[PICTURE]

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-29

[*]

Revision 0

[*]

[HEWLETT PACKARD LOGO]

EXHIBIT A-2-1

Configuration Specification
for
Brocade's 3200 Network Switch

[PICTURE]

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-1

[*]

Revision 0

[*]

[HEWLETT PACKARD LOGO]

Brocade 3200 Configuration Specifications

Product, Model and Supplier Information

PRODUCT : hp fc switch 8B
 hp fc entry switch 8B

MODEL NUMBERS:

A7346A Field Racked 8 Port 2 Gb Entry Level Network Switch
A7346AZ Factory Racked 8 Port 2 Gb Entry Level Network Switch
A7347A Field Racked 8 Port 2Gb Network Switch.
A7347AZ Factory Racked 8 Port 2Gb Network Switch

SUPPLIER: Brocade

- - - - -

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Date: 5/15/2002	Configuration Specification	Page A2-1-2
[*]	Revision 0	[*]

DOCUMENT REVISION HISTORY

Revision #	Date	Description
01	11/29/01	Preliminary
02	1/2/02	updated labels, added bezel graphics., cd artwork
03	1/9/02	corrected accessory kit pn, firmware rev, added mylar label graphics for high end switch

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Table of Contents

Document Revision History	3
1. Scope of Document	5
2. Hewlett-Packard's Product Requirements	5
2.1 Sourcing Material as Logical Units	5
2.2 Bar Code Requirements	5
2.3 Power Cords	6
3.0 NSSO Purchased Parts	6
4.0 Label - Summary	7
5.0 Serial Number Details	8
6.0 Labels	9
6.1 Part Number - Serial Number Label	9
6.2 Agency Label	9
6.3 Model Label	10
6.4 Accessory Kit Label	10
6.5 Brocade Shipping Label	10
7.0 Front Mylar Label Graphics	11
8.0 FRUs	12
9.0 CD-ROM Artwork	12

- - - - -

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1. Scope of Document

This document describes the expectations of how HP expects to receive the 2Gb Network Switch and all parts, devices and components associated with the switch. Typical expectations described in this document are:

- Part Numbering and Cross Referencing
- Configuration and revision
- Labeling
- Packaging

This document supercedes any specification described in the Supplier's Product Specification Documentation.

2. Hewlett-Packard's Product Requirements

2.1 Sourcing Material as Logical Units

All material shall be sourced as individual logical units as defined in section 3. A logical unit is one that will be consumed as a single item within a single process area or not consumed within the process area and can be set aside without impacting the integrity of the end product. See section 3 for definition and declaration of consumable and non-consumable material.

All logical units must be labeled (human readable and 3x9 barcode for scanning) with a part number, serial number (if applicable) and quantity (if shipped in bulk). See bar code information for more details. Individual part labeling is applicable to all parts except when individual labeling is impractical (e.g. screws, nuts, bolts, etc.).

ESD sensitive parts and material are to be packaged and labeled per industry standards.

Shipping cartons shall not contain mixed logical units. Each shipping carton may contain a maximum of one purchase order line item or part number.

2.2 Bar Code Requirements

- - The bar code symbol bar shall be Code 39 (also known as "Code 3 of 9") as specified by the AIM Uniform Symbology Specification Code 39.
- - The symbol bar shall start with a minimum "Quiet Zone" of .25 inches and an asterisk "Start" character (* in Code 39) where applicable (no adjacent labels). The symbol shall end in the asterisk followed again by a minimum .25 inches of "Quiet Zone".
- - The bar code height shall be .125 inches (minimum).

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-1-5

[*]

Revision 0

[*]

2.3 Power Cords

Power cords have strict sourcing requirements. Power cords may only be sourced from HP specified vendors and only under the HP part number. No other power cord shall be considered. Because of these requirements, it is not necessary to include power cords with the 3200 switch.

3.0 NSSO Purchased Parts

```

-----
[*]
PART NUMBER: [*]
DESCRIPTION: ENTRY LEVEL
MODEL NUMBER: [*]
PART NUMBER: [*]
DESCRIPTION: ENTERPRISE LEVEL
-----

```

LICENSES

```

-----
Webtools                Installed at Foxconn                Installed at Foxconn
-----
Zoning                  Installed at Foxconn
-----
Quickloop              Installed at Foxconn                Installed at Foxconn
-----
Fabric Watch           Installed at Foxconn
-----
ISL Trunking
-----
Perf. Monitoring
-----
Extended Fabric
-----
Remote Switch
-----

```

HARDWARE

```

-----
Accessory Kit           Included.                            Included.
                        Labeled [*] (bar coded and human   Labeled [*] (bar coded and human
                        readable) which consists of:       readable) which consists of:
                        - - Documentation CD             - - Documentation CD
                        - - Serial Cable             - - Serial Cable
                        - - Rubber Feet             - - Rubber feet
-----

```

```

-----
Rails                   Not Included                         Not Included
-----
Power Cords             Not Included                         Not Included
-----
Manuals                 Not Included                         Not Included
-----

```

SWITCH CONFIGURATION

```

-----
Chassis Color           Brocade Standard (2 Blue)            Brocade Standard (2 Blue)
-----
Bezel Color             Brocade Standard (2 Blue)            Brocade Standard (2 Blue)
-----
Badge                   Not included                         Not included
-----
Firmware                3.0.1b                               3.0.1b
-----

```

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IP Address default	10.77.77.77	10.77.77.77
Subnetmask	255.255.255.0	255.255.255.0

4.0 Label - Summary

SWITCH LABEL	DESCRIPTION	LOCATION
Part Number- Serial Number Label	HP Part Number: [*] [PICTURE] HP Serial Number: [*] [PICTURE] HP Part Number: [*] [PICTURE] HP Serial Number: [*] [PICTURE]	Switch: top, media side, right
Agency Model Label	Details via email from Frank Sindelar [PICTURE]	Switch: bottom, centered. Switch: top, media side, left
IP address label	[PICTURE]	Right, front
Brocade Serial Number	No change	
Brocade Std Product Label		Bottom, indentation

- - - - -

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ACCESSORY KIT LABEL	DESCRIPTION	LOCATION
Accessory Kit label	Accessory Kit, 2Gb 8 Port Switch HP Part Number [*] [PICTURE]	Located on accessory kit box. Must contain: - - Description - - HP P/N - - Bar code of P/N.

PACKAGING LABELS	DESCRIPTION	LOCATION
Shipping label	Ship to Address Description HP Serial Number Country of Origin HP Purchase Order Brocade PN CE mark GOST mark See section 5.6	Packaging: 2 labels per switch placed in opposite sides of packing box in upper right corner.
Over pack label	No change	Upper right corner of pallet on top of shrink wrap

5.0 Serial Number Details

ENTRY LEVEL UNIT
 [*] SERIAL NUMBER FORMAT: USB0TXXXXX
 where US = Country of Manufacture
 B = Supplier ID, Brocade
 0 = Revision Number 0
 T = HP Product Name abbreviation
 XXXXX = sequential numeric counter to
 start with 00001 and not reset when
 revision number is changed.

PERFORMANCE UPGRADE
 [*] SERIAL NUMBER FORMAT: USB0SXXXXX
 where US = Country of Manufacture
 B = Supplier ID, Brocade
 0 = Revision Number 0
 U = HP Product Name abbreviation
 XXXXX = sequential numeric counter to
 start with 00001 and not reset when
 revision number is changed.

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[HEWLETT PACKARD LOGO]

6.0 Labels

6.1 Part Number - Serial Number Label

CONTENT:

HP Part Number and Serial Number with content bar coded in 3x9 format.

Examples:

HP Part Number: [*]
[PICTURE]

HP Serial Number: [*]
[PICTURE]

HP Part Number: [*]
[PICTURE]

HP Serial Number: [*]
[PICTURE]

LOCATION:

Switch: Top, media side of unit, to the right.

6.2 Agency Label

See email from Frank Sindelar.

AGENCY LABEL PLACEMENT:
Bottom of unit, centered.

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-1-9

[*]

Revision 0

[*]

[HEWLETT PACKARD LOGO]

6.3 Model Label

CONTENT

[PICTURE]

[PICTURE]

LOCATION

Switch: Top, media side, to left of unit.

6.4 Accessory Kit Label

Accessory kit box must be labeled with the following:

- - Description: Accessory Kit, 2Gb 8 Port Switch
- - Part Number: HP Part Number [*]
- - Bar Code of part number: [PICTURE]

6.5 Brocade Shipping Label

The shipping label for [*] must contain the following fields:

- - Ship to Address
- - Description
- - HP Serial Number
- - Country of Origin
- - Purchase Order
- - Brocade Part Number

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-1-10

[*]

Revision 0

[*]

[HEWLETT PACKARD LOGO]

- - CE mark

- - GOST mark

Shipping label location

[PICTURE]

7.0 Front Mylar Label Graphics

[*]

[PICTURE]

Magnified to see text detail.

[PICTURE]

- - - - -

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Date:
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Configuration
Specification

Page A2-1-11

[*]

Revision 0

[*]

[HEWLETT PACKARD LOGO]

[*]
[PICTURE]

Magnified to see detail
[PICTURE]

8.0 FRUs

Description	Supplier Part Number	HP Replacement Part Number	HP Exchange Part Number
Switch	tbd	[*]	N/A

9.0 CD-ROM Artwork

NOTE: NOT APPROVED AS OF 1/2/02. FOR REFERENCE ONLY!

- - - - -

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Date:
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Configuration
Specification

Page A2-1-12

[*]

Revision 0

[*]

[HEWLETT PACKARD LOGO]

[PICTURE]

- - - - -

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Date:
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Configuration
Specification

Page A2-1-13

[*]

Revision 0

[*]

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EXHIBIT A-2-2

Configuration Specification
for
Brocade's 3800 Network Switch

[PICTURE]

- - - - -

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Date: 5/15/2002	Configuration Specification	Page A2-2-1
[*]	Revision 0	[*]

[HEWLETT PACKARD LOGO]

Brocade 3800 Configuration Specification

Product Number: hp surestore fc 1Gb/2Gb switch 16B

Model Numbers:

A7340A Field Racked 16 Port 2 Gb Base Unit
Network Switch

A7340AZ Factory Racked 16 Port 2 Gb Base Unit
Network Switch

A7340A opt 001 Field Racked 16 Port 2Gb Performance
Upgrade Network Switch.

A7340AZ opt 001 Factory Racked 16 Port 2Gb
Performance Upgrade Network Switch

Supplier: Brocade

- - - - -

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Date: Configuration Specification Page A2-2-2
5/15/2002

[*] Revision 0 [*]

DOCUMENT REVISION HISTORY

Revision #	Date	Description
01	9/5	Added FRUs
02	9/6	Changed Serial Number format.
03	9/21	Single part number
04	10/4	Added label info, Updated FRUs
05	10/5	Correct Prod # on p.10 & Noted CD P/N is wrong
06	10/8	- Correct picture of CD-ROM artwork. Sec 8.0 - Add Hardware and Config sections on Sec 3.0 - Change Accessory kit description to: "Accessory Kit, 2Gb 16 Port Switch" from "Accessory Kit" - Removed sec 5.0 added content in 3.0 and 5.5 - Reworded 6.4
07	10/10	- added base unit & perf upgrade as descriptions - added section 6.0, bezel graphics. - not published on web yet.
08	10/18	- added model number A7345A/AZ for perf. upgrade - changed label/bezel colors to Brocade default.
09	10/24	- back to one model number and an option - added rubber feet to accessory kit - correct CD-Rom artwork
10	10/25	- added correct agency label. & picture on cover
11	11/5	- Section 6.0 Correct bezel drawing. - Section 5.4: Removed ratings label placement on top of bezel. - Sec 4.0 IP address label placement finalized. Added FRU part numbers
12	11/16	- fixed FRU part numbers
13	12/7	Updated Fw, bezel color and agency label

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Date: 5/15/2002 Configuration Specification

Page A2-2-3

[*] Revision 0

[*]

Table of Contents

	Document Revision History	3
1.	Scope of Document	5
2.	Hewlett-Packard's Product Requirements	5
2.1	Sourcing Material as Logical Units	5
2.2	Bar Code Requirements	5
2.3	Power Cords	6
3.0	NSSO Purchased Parts	6
4.0	Labels	7
5.0	Labels	9
5.1	HP Serial Number Label	9
5.2	Agency Label	10
5.3	3800 Product Label	11
5.4	Rating Label	13
5.5	Accessory Kit Label	13
5.6	Brocade Shipping Label	14
6.0	Bezel Graphics	15
7.0	FRUs	16
8.0	CD-ROM Artwork	16

- - - - -

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1. Scope of Document

This document describes the expectations of how HP expects to receive the 2Gb Network Switch and all parts, devices and components associated with the switch. Typical expectations described in this document are:

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- Configuration and revision
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This document supercedes any specification described in the Supplier's Product Specification Documentation.

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All material shall be sourced as individual logical units as defined in section 3. A logical unit is one that will be consumed as a single item within a single process area or not consumed within the process area and can be set aside without impacting the integrity of the end product. See section 3 for definition and declaration of consumable and non-consumable material.

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ESD sensitive parts and material are to be packaged and labeled per industry standards.

Shipping cartons shall not contain mixed logical units. Each shipping carton may contain a maximum of one purchase order line item or part number.

2.2 Bar Code Requirements

- - The bar code symbol bar shall be Code 39 (also known as "Code 3 of 9") as specified by the AIM Uniform Symbology Specification Code 39.
- - The symbol bar shall start with a minimum "Quiet Zone" of .25 inches and an asterisk "Start" character (* in Code 39) where applicable (no adjacent labels). The symbol shall end in the asterisk followed again by a minimum .25 inches of "Quiet Zone".
- - The bar code height shall be .125 inches (minimum).

- - - - -

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2.3 Power Cords

Power cords have strict sourcing requirements. Power cords may only be sourced from HP specified vendors and only under the HP part number. No other power cord shall be considered. Because of these requirements, it is not necessary to include power cords with the 3200 switch.

3.0 NSSO Purchased Parts

MODEL NUMBER: [*]	MODEL NUMBER: [*]
PART NUMBER: [*]	PART NUMBER: [*]
DESCRIPTION: BASE UNIT	DESCRIPTION: PERFORMANCE UPGRADE
	OPT 001

LICENSES

Webtools	Enabled	Enabled
Zoning	Enabled	Enabled
Quickloop	Enabled	Enabled
Fabric Watch	Enabled	Enabled
Trunking		Enabled
Perf. Monitoring		Enabled
Extended Fabric		Enabled
Remote Switch		Enabled

HARDWARE

Accessory Kit	Included with switch. Labeled [*] (bar coded and human readable) which consists of : Documentation CD (1) Serial Cable (1) Rubber Feet (4)	Included with switch Labeled [*] (bar coded and human readable) which consists of Documentation CD (1) Serial Cable (1) Rubber feet (4)
Rails	Not Included	Not Included
Power Cords	Not Included	Not Included
Manuals	Not Included	Not Included

SWITCH CONFIGURATION

Chassis Color	Brocade Standard (2 Blue)	Brocade Standard (2 Blue)
Bezel Color	Brocade Standard (2 Blue)	Brocade Standard (2 Blue)
Badge	Not included	Not included
Firmware	3.0.1b	3.0.1b
IP Address default	10.77.77.77	10.77.77.77
Subnetmask	255.255.255.0	255.255.255.0

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Label	Description	Location
Serial Number	HP Format (SN and bar code) Base Unit: USB0Rxxxxx for [*] Performance Upgrade: USB0Sxxxxx for [*] See section 5.1 for details	Switch: top, rear, right dimple; centered
Agency	HP customized See section 5.2	Switch: bottom, front in dimple; centered.
3800 Product label	HP Part Number and Bar code Base Unit: [PICTURE] Performance Upgrade [PICTURE] See section 5.3	Switch: top, rear, left dimple; centered.
Shipping label	Ship to Address Description HP Serial Number Revision HP Purchase Order Brocade PN CE mark GOST mark See section 5.6	Packaging: 2 labels per switch placed in opposite sides of packing box in upper right corner.
3800 P/S rating label	100-240 VAC 2.5A 47-63 Hz	Power Supply Left rim.
Over pack label	No change	Upper right corner of pallet on top of shrink wrap

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IP address label	[PICTURE]	Right front of bezel.
Front panel overlay label	Background: Brocade default Text: Brocade default [PICTURE]	Switch: Front of unit
Brocade Serial Number	No change [PICTURE]	Switch: Vertically placed to left of left power supply.
Top cover removal/insertion label	Background: Brocade default Text: Brocade default [PICTURE]	Switch: Centered in recessed area on top cover of enclosure
LED label	Background: Brocade default Text: Brocade default [PICTURE]	Switch: On back of enclosure between cooling trays
Warning label	[PICTURE]	Switch: Right side, towards front between screw thread holes.
Accessory Kit label	Accessory Kit, 2Gb 16 Port Switch HP Part Number [*] [PICTURE]	Located on accessory kit box. Must contain: - Description - HP P/N - Bar code of P/N.

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5.0 Labels

5.1 HP Serial Number Label

See 2.3 for more details.

BASE UNIT
A7340-63001 SERIAL NUMBER FORMAT: USB0RXXXXX
where US = Country of Manufacture
B = Supplier ID, Brocade
0 = Revision Number 0
R = HP Product Name abbreviation
XXXXX = sequential numeric counter to start with 00001 and not reset when revision number is changed.

PERFORMANCE UPGRADE
A7340-63004 SERIAL NUMBER FORMAT: USB0SXXXXX
where US = Country of Manufacture
B = Supplier ID, Brocade
0 = Revision Number 0
S = HP Product Name abbreviation
XXXXX = sequential numeric counter to start with 00001 and not reset when revision number is changed.

CONTENT:
HP Serial Number format
Bar code (3x9) of serial number

Base Unit
[PICTURE]

- - - - -

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[HEWLETT PACKARD LOGO]

Performance Upgrade

[PICTURE]

LOCATION:

Switch: Top, rear (power supply side) of unit, in dimple to right of unit.

FONT: Same as HP part number label. 11 font.

5.2 Agency Label

[PICTURE]

AGENCY LABEL PLACEMENT:

Bottom of unit, media side, centered in dimple.

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-2-10

[*]

Revision 0

[*]

[HEWLETT PACKARD LOGO]

[PICTURE]

5.3 3800 Product Label

HP's part number label will replace the 3800 Product Label. This label will not necessarily use the same label size and font and content of the 3800 label. The intent is to have a label which fits in the dimple on the top rear of the switch which fully fits in the depression and contains HP's part number and bar code of HP's part number.

CONTENT

HP Part Number Human Readable (either [*] or [*])
Bar code (3x9) of HP part Number

Examples:

Base
[PICTURE]

- - - - -

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Date: 5/15/2002	Configuration Specification	Page A2-2-11
[*]	Revision 0	[*]

[HEWLETT PACKARD LOGO]

Performance Upgrade
[PICTURE]

LOCATION

Switch: Top, rear (power supply slide) of unit in dimple to left of unit.

SIZE:

2.25"(h) x 2"(w) (maximum)

FONT: 11 or equivalent.

PLACEMENT:

[PICTURE]

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-2-12

[*]

Revision 0

[*]

[HEWLETT PACKARD LOGO]

5.4 Rating Label

[PICTURE]

Label is placed approximately where shown below.

[PICTURE]

5.5 Accessory Kit Label

Accessory kit box must be labeled with the following:

- Description: Accessory Kit, 2Gb 16 Port Switch
- Part Number: HP Part Number [*]
- Bar Code of part number: [PICTURE]

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-2-13

[*]

Revision 0

[*]

[HEWLETT PACKARD LOGO]

[PICTURE]

5.6 Brocade Shipping Label

The shipping label for [*] and [*] must contain the following fields:

- - Ship to Address
- - Description
- - HP Serial Number
- - Revision
- - Country of Origin
- - Purchase Order
- - Brocade Part Number
- - CE mark
- - GOST mark

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-2-14

[*]

Revision 0

[*]

[HEWLETT PACKARD LOGO]

[PICTURE]

[PICTURE]

[PICTURE] Label location

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-2-15

[*]

Revision 0

[*]

[HEWLETT PACKARD LOGO]

6.0 Bezel Graphics

[PICTURE]

Text detail:

[PICTURE]

Color: Pantone Cool Grey 2C

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-2-16

[*]

Revision 0

[*]

[HEWLETT PACKARD LOGO]

7.0 FRUs

Description	Supplier Part Number	HP Replacement Part Number	HP Exchange Part Number
Switch	tbd	[*]	[*]
Power Supply	XHP-3800-002	[*]	N/A
Fan Module	XHP-3800-003	[*]	N/A
Chassis	tbd	[*]	N/A
Motherboard	tbd		

8.0 CD-ROM Artwork

[PICTURE]

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page A2-2-17

[*]

Revision 0

[*]

EXHIBIT (A-3)

DELIVERY, PACKING, AND SHIPPING REQUIREMENTS

1.0 General Shipping Terms

1.1 Shipment Requirements. All Accepted Orders are to be shipped complete. Supplier will give HP [*] notice if it learns or has reason to believe that it cannot meet a Delivery Date or that only a portion of the Accepted Order will be available for Delivery to meet a Delivery Date. For partial shipments, Supplier will ship the available quantities unless directed by HP to reschedule Delivery. If Supplier ships by a method other than as specified in the corresponding Accepted Order, Supplier will pay any resulting increase in the cost of shipment. HP may utilize drop shipment options to any destination; provided that if HP drop ships outside the country in which the Accepted Order is placed, [*]. The failure of Supplier to comply with these shipping requirements will be considered a material breach of the Agreement.

1.2 Right to Accept Over Shipments. If Supplier ships more Product than is covered by the corresponding Accepted Order, the amount of the over shipment may be either retained by HP for application against future Orders or returned to Supplier [*], as HP may determine in its discretion.

1.3 Meeting Delivery Dates. If Supplier delivers Product more than [*] in advance of the Delivery Date, HP may, at its option, (i) return such Product to Supplier at Supplier's risk and expense including, but not limited to, any transportation, import, or export related expenses or duties, (in which case Supplier [*] will redeliver such Product to HP on the correct Delivery Date; or (ii) retain such Product and make payment on the date payment would have been due based on the correct Delivery Date. In the event that Product scheduled for delivery is anticipated to be delivered more than [*] later than the Delivery Date, HP may, at its discretion, require Supplier to ship and deliver such via a different mode of transportation [*] or pursue any other remedy available to HP, at law or in equity, consistent with the terms of this Agreement. If Delivery occurs more than [*] in advance of the Delivery Date, HP may either return the affected Product, or any portion thereof, or retain same with payment with respect thereto due as though received on the Delivery Date.

1.5 Freight Terms; Passage of Title; and Risk of Loss. Freight terms will be negotiated by the parties from time to time during the Term. Title to each item of Product passes from Supplier when same is [*] as defined in Section 2.1 of the Agreement. Risk of loss of, and damage to, each item of Product passes at Delivery.

1.6 Packing List. Each Delivery will include a packing list that satisfies the requirements, including as to country of origin, set forth in Article 16 and Exhibit B.

1.7 Packaging. Supplier will preserve, package, handle and pack all items of Product so as to protect same from loss, damage, electrostatic discharge or otherwise in conformance with good commercial practice, Exhibit B, Specifications, Applicable Law and other applicable standards as may be mutually agreed from time to time.

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- 1.8 Responsibility for Damage. Supplier will select the common carrier to be used for shipment of Product. Supplier is responsible and liable for any loss or damage due to its failure to properly preserve, package, handle or pack Product. Neither HP nor any Eligible Purchaser will be required to assert any claim for such loss or damage against the common carrier involved, nor will either be liable for any loss or damage due to a release of chemicals or other hazardous materials to the environment by reason of improper Delivery or Non-conforming Product.
- 1.9 Off-Premises Inspection. HP will have access, subject to Supplier's security and safety requirements, to [*] to pre-inspect Product on reasonable advance notice without prejudicing or affecting its rights of inspection and testing upon Delivery. HP will bear its expenses of pre-inspection, and will indemnify and hold Supplier harmless from any damage or injury caused by HP's personnel at such facility.
- 1.10 Inspection. HP will inspect Product upon Delivery to verify whether HP has received the number of boxes of Product shown on Supplier's packing list and to detect any visible damage or any apparent damage from transportation to the boxes or packaging of Product. HP will promptly notify Supplier of any such damage to the boxes or external packaging as delivered and will make a notation on the common carrier's waybill of such damage and/or of any shipment shortages. HP will also promptly notify Supplier of any shortage in the number of boxes delivered.
- 1.11 Changes to delivery dates may only be made by HP's authorized purchasing representatives, as specified by HP. HP may, without cost or liability, issue Change Orders for Product quantities and schedule dates. If any Change Order is made orally, Supplier will send HP a written confirmation thereof within [*] of Supplier's receipt of said Change Order and HP will provide Supplier with an Order confirming such change within [*] of receiving Supplier's confirmation.

If Supplier does not deliver Product in accordance with an Accepted Order or such Product does not meet the Specifications, then HP shall have the right to receive remedies specified herein. Supplier is not responsible for delays caused by a Delaying Cause as defined in Section 19.1. Supplier acknowledges the importance of HP receiving Product in a timely manner.

2.0 Outbound Logistics Operational Requirements

Supplier is required to meet the following outbound logistics requirements in order to ship products from their facility/shipping site to HP specified destinations. Destinations will include distribution centers, third party logistics hubs and customers (end users or resellers).

A. Customs & Legal Requirements

- 1. Customs Export/ Import Clearance - The Supplier will be required to be the exporter of record for shipments leaving the origin country or to assist HP in export clearance in the case that HP is the exporter of record. The Supplier will be required to assist HP in import clearance in the case that HP is the importer of record or to be the importer of record for shipments going into destination countries. Requirements will vary based on shipping origin, shipping destination, financial flow, customs regulations, and Supplier's legal registration within origin/ destinations countries.
- 2. Legal Registration - The Supplier will be responsible for obtaining appropriate registrations to legally conduct outbound logistics as [*].

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B. Physical Shipping Requirements

1. Documents and Labeling - The Supplier must be able to produce and support all required shipping documentation required to meet customs (export and import), transportation, and customer requirements. Specific requirements will vary based on shipping origin, shipping destination, transportation lane, delivery tracking, and customer. Supported documents include the following.
 - Commercial Invoice - multiple type
 - International Packing list
 - Bill of Lading/ Airway Bill
 - Shipping labels
2. Packing and Marking - The Supplier must prepare and pack all Products in a manner (i) that HP from time to time may reasonably specify or, in the absence of HP's specification, that is consistent with practices customary in the computer component industry, (ii) necessary to meet a designated carrier's requirements, and (iii) that conforms with the laws and regulations of any applicable country (including, but not limited to, the United States of America) and any applicable subdivision thereof.
3. Palletizing - The Supplier is required to palletize products for shipments when required based on transportation mode. The Supplier will need to provide documented pallet specifications for HP approval based on product dimensions. Palletizing of products will need to be sufficient to adequately protect the products during shipment, provide necessary security measures, support shipment load optimization, and meet customer requirements.
4. Carton Quality - The Supplier will be required to meet minimum carton quality requirements. This will include, but is not limited to, the cosmetic appearance and physical condition of the final shipping cartons.
5. Serial Number Scanning - The Supplier will need to support serial number scanning for product shipments requiring serial number tracking as defined by HP. Scanned product serial numbers will be required on shipping documentation and will need to be systemically provided to HP or other sites as defined within the IM requirements.
6. Additional Requirements - HP may request additional outbound logistics requirements of the Supplier either during implementation or post implementation. These requirements could include, but are not limited, to the following.
 - New customer requirements
 - Trade laws (customs)
 - Process integration and improvements

C. Security Requirements

The Supplier will be required to meet HP security requirements to effectively minimize product damages and losses from shipment point of origin to destination.

- - - - -

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D. Carrier/ Freight Forwarder Requirements

1. Delivery Service Level - The Supplier will need to support HP specified transportation modes and delivery service levels.
2. Use of HP Carriers - In the case that HP is responsible for the outbound transportation, the Supplier will be required to schedule shipments via specific HP carriers. Carrier assignments will vary based on shipping origin, shipping destination, customer, shipment size, product type, and other factors. In the case that HP carriers need to be used, HP will provide the Supplier a Routing Guide with routing parameters and specific carrier preferences.
3. Carrier Scheduling - The Supplier will be responsible for arranging carrier pick up and providing required shipment documentation.
4. Reporting - In some cases the Supplier will be required to support outbound logistics reporting needs beyond those established in the IM requirements.

E. IM System Requirements

The Supplier will [*] continue to support all IM system requirements that it supports as of the Effective Date directly related to meeting the outbound logistics requirements as defined in the IM system requirements ("IM Requirements"). Supplier will use reasonable efforts to support new IM Requirements generally implemented across HP's supply base. Outbound logistics operations processes will be required to be automated in the areas of producing shipping documentation and capturing and sending logistics required information.

The Supplier will [*] support all IM system requirements directly related to meeting the outbound logistics requirements as defined in the IM system requirements. Outbound logistics operations processes will be required to be automated in the areas of producing shipping documentation and capturing and sending logistics required information.

F. Compliance & Audits

The Supplier will be required to support logistics process and IM system audits related to the outbound logistics requirements. This will include hosting HP Logistics personnel and providing process details, sample documents, and [*] as requested by HP. Audit findings and observations will be shared with the Supplier as a means of improving logistics execution to ensure all customs and customer requirements are successfully supported.

3.0 Duties Minimization

- - - - -

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- a) Supplier will enclose a "Form A" document in every shipment to Europe or the United States of America to comply with "General System of Preferences" ("GSP") requirements each time this benefit can be applied to shipments.
- b) Supplier will also make [*] reasonable effort to minimize freight and duties and keep the Product eligible for the GSP by [*].

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Date: 5/15/2002	Configuration Specification	Page A3-5
[*]	Revision 0	[*]

EXHIBIT (A-4)

DOCUMENTATION

PRODUCT DOCUMENTATION: REPRODUCTION, MODIFICATION, AND DISTRIBUTION

Supplier will provide to HP an electronic master copy of Supplier's standard documentation made generally available for the Products, using the FrameMaker on an HP FTP site. It is an express condition to the timely release of the OEM Products that all applicable documentation be timely submitted by Supplier to HP in acceptable format and content. Such documentation will include, but is not limited to, planning, installation, operation, and service and user guides, as appropriate. Supplier retains ownership of all such customized documentation performed by Supplier. Any costs associated with the preparation of the Supplier-customized Product documentation are set forth in this Agreement.

Supplier shall provide HP with master copies of the documentation in both hard copy and electronic form. Except as otherwise provided and subject to the retention of all copyright notices and/or confidentiality legends, HP shall have the right to modify, copy any Supplier-supplied or Supplier-customized Product documentation for use internally by its employees [*]. HP shall have the right to reproduce such Product documentation from the masters supplied to it by Supplier. HP shall provide Supplier with a copy of such reproduced Product documentation for verification, and Supplier agrees to perform such verification on the first version of any release within [*] of receipt of such reproduction(s). Further, HP shall have the right to distribute such Product documentation and software media to its Resellers and End User Customers. Such license shall continue during the Term of this Agreement and for [*] after the date of last shipment by HP of the Products purchased under this Agreement. If HP introduces errors into the Documentation, then Supplier shall have no liability for such errors.

PRODUCT AND DOCUMENTATION

1. PRODUCT DOCUMENTATION. As stated in this Agreement, Supplier will prepare for HP and provide standard documentation made generally available for the Product(s)[*].
2. OTHER DOCUMENT REQUESTS.
 - 2.1 CD Manual Files. If requested, one set of Suppliers generally available CDs with manual text files will be supplied [*]. Please specify the manuals and indicate the preferred file format desired. (PDF and FrameMaker 6 source files) Only one CD copy of each manual may be ordered for each revision level.

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Date: 5/15/2002	Configuration Specification	Page A4-1
[*]	Revision 0	[*]

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2.2 Illustrations. Upon request, one master electronic copy of each graphic used in the Manual(s) will be provided [*] when text files of each manual are ordered. These files will be provided in both .cdr and .bmp formats.

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Date:
5/15/2002

Configuration
Specification

Page A4-2

[*]

Revision 0

[*]

EXHIBIT (A-5)

HP OPENVIEW STORAGE AREA MANAGER
DEVELOPERS' GUIDE - SDK

This Exhibit (A-65) incorporates by reference the publication issued by HP and generally known as "HP OpenView Storage Area Manager Developer's Guide, Edition 1200," a copy of which Supplier acknowledges receipt from HP prior to or on the Effective Date of the Agreement.

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Date: 5/15/2002	Configuration Specification	Page A5-1
[*]	Revision 0	[*]

EXHIBIT (A-6)

HETEROGENEOUS SWITCH INTEROPERABILITY

During the Term of this Agreement and any extension(s) thereto, Supplier shall use all [*] efforts to achieve switch fabric interoperability between Supplier's switch products and applicable [*] industry standards [*]. All new switches released by Supplier to HP intended for use as OEM HP-branded products [*]. Switches already released by Supplier before the Effective Date of this Agreement [*].

Supplier shall retain responsibility to provide OEM Products and firmware that comply with the [*] standards current as of the Effective Date of this Agreement including:

[*]
[*]
[*]

Future revisions will be reviewed and adopted by Supplier as needed to maintain competitive market viability. Supplier shall retain responsibility to provide OEM products and firmware that are certified by [*]:

[*]
[*]
[*]

HP and Supplier will mutually establish a test plan, to be recorded in writing, including equipment, resources required (people, etc.) and milestones/timelines for specific supported configurations. The test plan will be designed to support a "shift left" qualification program, where Supplier is responsible for performing the qualification testing of the OEM products and firmware under consideration. This qualification testing will be done at [*].

HP may verify Supplier's OEM Products and firmware as supplied for use in HP-branded products, for [*] capability. This evaluation will be done in one or more HP engineering laboratories, in the configurations set forth in Attachment (A) of this Exhibit (A-6) and in mutually defined configurations substantially derived from the baseline configurations set forth in Attachment (A) to this Exhibit (A-6), using the above listed interoperability standards [*].

Based on HP's evaluation of the Supplier's OEM products and firmware, [*] whether the OEM products or firmware [*]. Supplier shall use reasonable efforts to modify its OEM products or firmware as required to fix interoperability problems. Supplier and OEM will work together to get product to meet [*].

Supplier and HP will review current HP test results from the configurations set forth in Attachment (A) to this Exhibit (A-6), and will mutually establish defined configurations substantially derived from those baseline configurations designated in Attachment (A). For purposes of Attachment (A) to this Exhibit, "Test Equipment" shall mean "Fibre Channel Analyzer." Supplier will support agreed-upon configurations according to the provisions of Exhibit (D) of the Agreement.

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Date: Configuration Page A6-1
5/15/2002 Specification
[*] Revision 0 [*]

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HP and the Supplier will mutually establish a communication and program management plan to address operational issues and status updates in a timely manner. The first joint program team meeting shall occur within [*] of the Effective Date of this Agreement and shall include Vice President and Director level attendees from both Supplier and HP.

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Date: 5/15/2002	Configuration Specification	Page A6-2
[*]	Revision 0	[*]

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ATTACHMENT (A)

[PICTURE]

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Date:
5/15/2002

Configuration
Specification

Page 1 (Attachment)

[*]

Revision 0

[*]

EXHIBIT (B)

ELIGIBLE PURCHASERS & [*]

[*] [*]
[*] [*]

[*] [*]
[*] [*]
[*] [*]

[*] [*]
[*] [*]
[*] [*]

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EXHIBIT (C)

PRICING AND FEES

Subject to the terms and conditions of the Agreement, per-unit pricing and per-copy license fees for OEM Products and Parts made available by Supplier to HP, as set forth in this Agreement and more particularly described in Exhibit (A), are as set forth below.

All prices listed below are in United States Dollars (USD) and are for new OEM Product units only. Each periodic per-unit price listed herein shall be effective immediately upon the first day of the [*] and shall apply to all OEM Products or Parts [*] purchased by HP during the period to which such price applies.

NONCOMMERCIAL OEM PRODUCT UNIT COST ALLOCATION. HP and Supplier acknowledges that non-commercial OEM Product units may be required before the intended launch of each respective OEM Product by HP, such units to be necessary for the staging, production, testing, qualification, and certification of final customer-shippable OEM Product units. Such non-commercial units are to be considered as prototype units for HP-internal use only and not made available as commercial OEM Product units sold to end-user customers of HP.

During the term of this Agreement and upon HP's request, Supplier agrees to provide to HP [*] noncommercial edge switch (8- and 16-port configurations) units and [*] noncommercial core switch (32-port and higher configurations) units for each new OEM Product (e.g., Silkworm 3200, 3800, 12000), such units to be used by HP solely for non-commercial purposes. All such prototype units will be provided to HP from Supplier under an Equipment Loan Agreement as represented in Exhibit (E). The loan period for such units will have a term of [*] unless otherwise agreed between the parties.

In the event HP requires OEM Product prototype units exceeding the above-stated quantity to be provided by Supplier, or elects to keep loaned units past the applicable loan period, HP may purchase such units as available from Supplier at [*] listed below in this Exhibit (C) for the applicable OEM Product units or HP shall return the units to Supplier. In the event Supplier does not receive the units within the applicable loan period, Supplier may invoice HP for the [*] as set forth in this Exhibit (C), [*] pursuant to the purchase order issued with the order for the Non-Commercial OEM Product. Supplier will use commercially reasonable efforts to supply OEM Product prototype units required under this section, upon reasonable advance notice by HP of its requirement for such units.

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Date: 5/15/2002 Configuration Specification Page C-1
[*] Revision 0 [*]

BROCADE OEM SOFTWARE PRODUCTS TERMS AND CONDITIONS.

OEM Product Configurations. OEM Product pricing for each OEM Product unit purchased under this Agreement shall include licenses for all such Software as specifically described under the respective OEM Product description below at no additional charge.

Software License Fees. For the Term of this Agreement and any extension(s) thereof, Supplier will provide to HP [*] all commercially available and fully operable maintenance modifications, bug fixes, minor enhancements, and the like that Supplier generally provides to other customers, for use in conjunction with OEM Products provided by Supplier. Notwithstanding the foregoing, Brocade may offer and HP may choose to purchase paid Software upgrades at mutually agreed pricing.

Internal-use Copies. [*] per-license fees shall be due for copies of the Software used by HP for reasonable demonstration, testing, [*] purposes.

Software Delivery. All Software provided by Supplier under this Agreement shall be offered to HP [*] such Software is [*] made [*] to any other customer of Supplier.

Software Licenses. All Software license OEM Products listed in this Exhibit (C) shall include HP's right to reproduce and distribute any associated Documentation. [*] Per Copy Fee will be due for any package item subsequently [*].

OEM PRODUCT PRICING. Subject to the terms and conditions of the Agreement the per-unit pricing for each OEM Product (e.g., Silkworm 2802, Silkworm 12000, Silkworm 3900), including applicable pricing for Software and Parts made available by Supplier to HP under this Agreement is as set forth below, and may be amended from time to time by the Parties to provide for new OEM Products or pricing [*].

All Parts (e.g., FRU) pricing listed below shall be effective beginning on the Effective Date of the Agreement and shall be subject to the same [*] as for OEM Products under this Agreement, and as set forth below. The FRU's and pricing listed below are for purposes of servicing and supporting the OEM Products.

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Date: 5/15/2002	Configuration Specification	Page C-2
[*]	Revision 0	[*]

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SILKWORM 12000 FC CORE SWITCH OEM PRODUCT PRICING.

SILKWORM 12000 BASE SWITCH

HP PART NUMBERS: [*]

HP PART DESCRIPTION: SilkWorm 12000 32-port Base Fibre Channel Fabric Switch

SUPPLIER MODEL NO. / DESCRIPTION: SilkWorm 12000 Base Switch unit including [*].

TIME PERIOD	HP PURCHASE PRICE
[*]	[*]
[*]	[*]

SILKWORM 12000 16-PORT MODULES

HP PART NUMBERS: [*]

HP PART DESCRIPTION: Upgrade 16-port Auto-sensing 1-2 Gbit/second Module

SUPPLIER MODEL NO. / DESCRIPTION: SilkWorm 12000 Upgrade 16-port Auto-sensing 1-2 Gbit/second Module including all mutually agreed HP-customized documentation, and required internal cables

TIME PERIOD	HP PURCHASE PRICE
[*]	[*]

SILKWORM 12000 a la carte SOFTWARE LICENSE FEES

SOFTWARE / FIRMWARE TITLE	HP PURCHASE PRICE
Sw12000 Extended Fabrics	[*]
Sw12000 Remote Switch	[*]
ISL Trunking	[*]

SILKWORM 12000 FRU PRODUCTS

HP SERVICE FRU'S

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DESCRIPTION	REPAIR PRICING	[*]	[*]	[*]	[*]
SW12000 Chassis FRU, includes backplane, blower backplane & harness, AC harness (does not include blower assys, power supplies, WWN card, door, cable tray)	[*]	[*]	[*]	[*]	[*]
FRU, 16 Port Auto-Sensing 1-2 Gbit/Sec Module	[*]	[*]	[*]	[*]	[*]
FRU, SW12000 Control Processor	[*]	[*]	[*]	[*]	[*]
FRU, SW12000 Power Supply, 180-264VAC, 1000W	[*]	[*]	[*]	[*]	[*]
FRU, SW12000 rack mount kit. Includes front & rear brkts, bottom support rack rails	[*]	[*]	[*]	[*]	[*]
FRU, SW12000 Blower Assembly (single). Includes blower, control board, housing	[*]	[*]	[*]	[*]	[*]
FRU, SW12000 Rear WWN Bezel, LED Status Panel cosmetic trim	[*]	[*]	[*]	[*]	[*]
FRU, SW12000 WWN board assembly	[*]	[*]	[*]	[*]	[*]
FRU, SW12000 chassis door	[*]	[*]	[*]	[*]	[*]
FRU, SW12000 Switch card slot filler panel	[*]	[*]	[*]	[*]	[*]
FRU, SW12000 cable management tray	[*]	[*]	[*]	[*]	[*]
FRU, SW12000 cable management pillar (16)	[*]	[*]	[*]	[*]	[*]

SILKWORM 3900 FC SWITCH OEM PRODUCT PRICING.

SILKWORM 3900 BASE SWITCH
 HP PART NUMBERS: [*]
 HP PART DESCRIPTION: hp StorageWorks SAN switch 2/32 (Basic)
 SUPPLIER MODEL NO. / DESCRIPTION: SILKWORM 3900 Base Switch unit including [*].

TIME PERIOD	HP PURCHASE PRICE
[*]	[*]

SILKWORM 3800 FC FABRIC SWITCH OEM PRODUCT PRICING.

SILKWORM 3800 BASE SWITCH
 [*]
 HP PART DESCRIPTION: HP FC 1Gb / 2Gb Switch, 16B, Basic (16-Port Fibre Channel Fabric Switch)
 SUPPLIER MODEL NO. / DESCRIPTION: 3800 Base Switch unit including [*]

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TIME PERIOD	HP PURCHASE PRICE
[*]	[*]
[*]	[*]
[*]	[*]

SILKWORM 3800 EL BASE SWITCH
 HP PART NUMBER: 283056-B21, DS-DSGGD-AD
 HP PART DESCRIPTION: StorageWorks SAN Switch 2/16EL (16-Port Fibre Channel Fabric Switch)
 SUPPLIER MODEL NO. / DESCRIPTION: 3800 Base Switch unit including [*].

TIME PERIOD	HP PURCHASE PRICE
[*]	[*]

SILKWORM 3800 SWITCH ADVANCED BUNDLE
 [*]
 HP PART DESCRIPTION: HP FC 1Gb / 2Gb Switch, 16B, Advanced (16-Port Fibre Channel Fabric Switch)
 SUPPLIER MODEL NO. / DESCRIPTION: 16 Port 2Gb/s Switch, [*].

TIME PERIOD	HP PURCHASE PRICE
[*]	[*]
[*]	[*]
[*]	[*]

ADVANCED BUNDLE - SILKWORM 3800 SWITCH
 HP PART NUMBER: 287055-B21, DS-DSGGD-BA
 HP PART DESCRIPTION: StorageWorks SAN Switch 2/16 (16-Port Fibre Channel Fabric Switch)
 SUPPLIER MODEL NO. / DESCRIPTION: 16 Port 2Gb/s Switch, [*].

TIME PERIOD	HP PURCHASE PRICE
[*]	[*]

BROCADE 3800 FIBRE CHANNEL SOFTWARE OEM PRODUCT PER-COPY FEES
 HP PART DESCRIPTION:

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SUPPLIER MODEL NO. / DESCRIPTION:
Brocade Fabric Watch Software, including applicable Documentation, Software upgrades, technical support, and maintenance.

HP per-license fee: [*]

HP PART DESCRIPTION:
SUPPLIER MODEL NO. / DESCRIPTION: Brocade Extended Fabric Software, including applicable Documentation, Software upgrades, technical support, and maintenance.

HP per-license fee: [*]

HP PART DESCRIPTION:
SUPPLIER MODEL NO. / DESCRIPTION: Brocade Remote Switch Software, including applicable Documentation, Software upgrades, technical support, and maintenance.

HP per-license fee: [*]

HP PART DESCRIPTION:
SUPPLIER MODEL NO. / DESCRIPTION: Brocade ISL Trunking Software, including applicable Documentation, Software upgrades, technical support, and maintenance.

HP per-license fee: [*]

HP PART DESCRIPTION:
SUPPLIER MODEL NO. / DESCRIPTION: Brocade Advanced Performance Monitoring Software, including applicable Documentation, Software upgrades, technical support, and maintenance.

HP per-license fee: [*]

SILKWORM 3200 BASE FC SWITCH OEM PRODUCT PRICING.

SILKWORM 3200 BASE FC SWITCH
HP PART NUMBER: [*]
HP PART DESCRIPTION: HP FC 1Gb/2Gb Entry Switch, (8-Port Fibre Channel Fabric Switch)
SUPPLIER MODEL NO. / DESCRIPTION: 3200 Base Switch unit including [*].

TIME PERIOD	HP PURCHASE PRICE
[*]	[*]

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 [*] [*]

 [*] [*]

 [*] [*]

SILKWORM 3200 EL BASE FC SWITCH
 HP PART NUMBER: [*]
 HP PART DESCRIPTION: StorageWorks SAN Switch 2/8 EL (8-Port Fibre Channel Fabric Switch)
 SUPPLIER MODEL NO. / DESCRIPTION: 3200 Base Switch unit including [*].

 TIME PERIOD HP PURCHASE PRICE

 [*] [*]

SILKWORM 3200 ENTRY BASE SWITCH
 HP PART NUMBER: [*]
 HP PART DESCRIPTION: HPFC 1Gb/2Gb Entry Switch (8-Port Fibre Channel Fabric Switch)
 SUPPLIER MODEL NO. / DESCRIPTION: 3200 Entry Switch unit including [*]

 TIME PERIOD HP PURCHASE PRICE

 [*] [*]

 [*] [*]

 [*] [*]

 [*] [*]

BROCADE SILKWORM 3200 ENTRY SWITCH UPGRADE
 [*]
 HP PART DESCRIPTION: HP Entry Switch 8B Fabric Upg License
 SUPPLIER MODEL NO. / DESCRIPTION: Upgrade from Entry 3200 to Base Switch 3200
 [*].

 HP per-license fee: [*]

BROCADE FABRIC SOFTWARE OEM PRODUCT PER-COPY FEES.
 HP PART DESCRIPTION:
 SUPPLIER MODEL NO. / DESCRIPTION:
 Brocade Zoning Software, including applicable Documentation, Software upgrades, technical support, and maintenance.

 HP per-license fee: [*]

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BROCADE FABRIC MANAGER SOFTWARE OEM PRODUCT PRICING

BROCADE FABRIC MANAGER SOFTWARE

HP PART DESCRIPTION: [*]

SUPPLIER MODEL NO. / DESCRIPTION:

Brocade Fabric Manager Software, including applicable Documentation, Software upgrades, technical support, and maintenance.

SOFTWARE / FIRMWARE TITLE	HP PURCHASE PRICE
Fabric Manager 3.0	[*]

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Date: 5/15/2002	Configuration Specification	Page C-8
[*]	Revision 0	[*]

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GENERAL FRU OEM PRODUCT PRICING.
(SCHEDULE OF SPARES - PRE-MERGER HP)

PART NUM	DESCRIPTION	STD MGMT COST
[*]	Power Supply Module	[*]
[*]	Blower Assembly	[*]
[*]	WVN Assembly	[*]
[*]	Control Processor Card	[*]
[*]	Chassis	[*]
[*]	Control Processor Card	[*]
[*]	(out of warranty repair)	[*]
[*]	16 Port Card	[*]
[*]	16 Port Card	[*]
[*]	(out of warranty repair)	[*]
[*]	2GB 16 PT SW	[*]
[*]	BD 2GB 16PT SW	[*]
[*]	PS 2GB 16 PT SW	[*]
[*]	Fan 2GB 16 PT SW	[*]
[*]	CH 2GB 16 PT SW	[*]
[*]	2GB 16 PT SW	[*]
[*]	BD 2GB 16PT SW	[*]
[*]	License Key INSTR.	[*]
[*]	ISL CABLES	[*]
[*]	2250 SWITCH	[*]
[*]	2GB 8 PT SW	[*]
[*]	2GB 8 PT SW	[*]
[*]	BROCADE SERIAL CABLE	[*]
[*]	CHASSIS W/ MAINBOARD	[*]

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Date: Configuration
5/15/2002 Specification Page C-9
[*] Revision 0 [*]

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GENERAL FRU OEM PRODUCT PRICING.
(SCHEDULE OF SPARES - PRE-MERGER COMPAQ)

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THE OMITTED PORTIONS.

Date: 5/15/2002	Configuration Specification	Page C-10
[*]	Revision 0	[*]

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[PICTURE]

SCHEDULE OF SPARES
ATTACHMENT III

MFG P/N	BROCADE ORDERING P/N	HP 5-5 P/N	COMPAQ 2-5-2 P/N	COMPAQ 6-3 P/N	REV.	COMPAQ / HP PRODUCT NAME
CURRENT PURCHASED PRODUCT - SW2000						
80-0000363-05	CQ-2040-0000	N/A	DS-DSGGC-AA	176219-B21	B01	Storage Works SAN Switch 8-EL
80-0000466-07	CQ-2250-0000	N/A	DS-DSGGC-AB	212776-B21	B01	Storage Works SAN Switch 16-EL
80-0000308-06	CQ-2401-0002	N/A	DS-DSGGB-AA	158222-B21	B01	Storage Works SAN Switch 8
80-0000289-11	HP-2401-0000	A5625-62002	N/A	N/A		
80-0000453-05	CQ-2801-0002	N/A	DS-DSGGB-AB	158223-B21	B01	Storage Works SAN Switch 16
80-0000350-08	HP-2802-0001	A5624-60003	N/A	N/A		
80-0000556-03	CQ-6400-0000	N/A	DS-DSGGS-AB	230617-B21	B01	Storage Works SAN Switch Integrated/64
80-0000648-01	HP-6400-0000	A7326-62001	N/A	N/A		
80-0000478-04	CQ-6432-0000	N/A	DS-DSGGS-AA	230616-B21	B01	Storage Works SAN Switch Integrated/32
CURRENT PURCHASED PRODUCT - SW3000						
80-0000766-03	CQ-3200-0000	N/A	DS-DSGGD-AC	258707-B21	A01	Storage Works SAN Switch 2/8-EL
80-0000767-02	HP-3200-0000	A7346-63001	N/A	N/A		hp surestore fc 1Gb/2Gb Switch 8b
80-0000769-02	HP-3200-0001	A7347-63001	N/A	N/A		hp surestore fc 1Gb/2Gb Switch 8b Storage Works
80-0000821-02	CQ-3602-0000	N/A	DS-DSGGD-AD	283056-B21	A01	SAN Switch 2/16-EL Storage Works
80-0000858-02	CQ-3802-0000	N/A	DS-DSGGD-BA	287055-B21	A01	SAN Switch 2/16
80-0000599-04	HP-3802-0000	A7340-63001	N/A	N/A		hp surestore fc 1Gb/2Gb Switch 16b
80-0000611-04	HP-3802-0001	A7340-63004	N/A	N/A		hp surestore fc 1Gb/2Gb Switch 16b
CURRENT PURCHASED PRODUCT - SW12000						
80-0000989-01	HQ-12000-0001	A6509-63001	DS-DSGGE-AB	254508-B21	A01	Storage Works SAN Core Switch 2/64
80-0000992-01	HQ-12000-0002	A6510-60001	DS-DSGGE-AU	286352-B21	A01	Storage Works SAN Core Switch Blade 16-port, 2Gb
FRUs / OPTIONS - SW2000						
80-0000403-03	XCQ-000014	N/A	29-34646-01	159661-001	A02	8 PORT M/B
80-0000307-06	XHP-000021		N/A	N/A		
80-0000310-01	XCQ-000015	N/A	29-34647-01	159662-001	A01	8 PORT FAN TRAY
80-0000306-01	XHP-000008		N/A	N/A		
60-0000055-01	XCQ-000016	N/A	29-34648-01	159663-001	A01	PWRSPLY
80-0000771-01	XHP-000010		N/A	N/A		
80-0000309-01	XCQ-000017	N/A	29-34649-01	159664-001	A01	8 PORT CHASSIS
80-0000624-01	XHP-2400-0001	A5625-60001	N/A	N/A		
80-0000451-01	XCQ-000018	N/A	29-34651-01	159666-001	A01	16 PORT FAN TRAY
80-0000302-01	XHP-000013		N/A	N/A		
80-0000454-03	XCQ-000019	N/A	29-34650-01	159665-001	A02	16 PORT M/B
80-0000301-04	XHP-000012		N/A	N/A		

60-0000118-01	XCQ-000020	N/A	3X-H7603-AA	160407-B21	A01	PWRSPY OPTION
80-0000452-01	XCQ-000021	N/A	29-34652-01	159667-001	A01	16 PORT CHASSIS
80-0000303-03	XHP-000014		N/A	N/A		
80-0000625-01	XHP-2800-0001		N/A	N/A		
80-0000340-01	XCQ-000023	N/A	30-56154-01	188851-B21		SERIAL CABLE
80-0000340-01	XCQ-000023	N/A	29-34690-01	195401-001		SERIAL CABLE
80-0000470-01	XHP-000027		N/A	N/A		
80-0000364-05	XCQ-000024	N/A	29-34683-01	177615-001	A01	Storage Works SAN Switch 8-EL Storage Works
80-0000467-06	XCQ-000025	N/A	29-34823-01	222093-001	A01	SAN Switch 16-EL
80-0000555-01	XCQ-000026	N/A	29-34898-01	239018-001	A01	ISL CABLE
80-0000563-01	XCQ-000029	N/A	29-34899-01	239019-001	A01	ISL CABLE
80-0000620-01	XCQ-2040-0001	N/A	N/A	N/A		
80-0000623-01	XCQ-2250-0001	N/A	N/A	N/A		
80-0000621-01	XCQ-2400-0001	N/A	N/A	N/A		
80-0000622-01	XCQ-2800-0001	N/A	N/A	N/A		
80-0000652-01	XHP-6400-0002	A7326-70001	N/A	N/A		
80-0000649-01	XHP-6400-0006	A7345-67001	N/A	N/A		
80-0000653-01	XHP-6400-0003	A7345-67002	N/A	N/A		
80-0000651-01	XHP-6400-0001	A7326-87901	N/A	N/A		
80-0000655-01	XHP-6400-0005	A7326-44002	N/A	N/A		
80-0000654-01	XHP-6400-0004	A7326-67003	N/A	N/A		
FRUs / OPTIONS - SW3000						
80-0000908-02	XCQ-3200-0001	N/A	N/A	287700-001		SPS-SWITCH, FIBRE CHNL, 8-EL
80-0000779-02	XHP-3200-0000	A7346-67001	N/A	N/A		
80-0000877-01	XCQ-3200-0002	N/A	N/A	287900-001		
80-0000822-02	XCQ-3600-0001	N/A	N/A	287699-001		SPS-BD, SYSTEM, 16-EL
80-0000731-04	XHP-3800-0005	A7340-67001	N/A	N/A		
	XHP-3800-0006	A7340-67006	N/A	N/A		
80-0000672-04	XCQ-3800-0001	N/A	29-34922-01	257544-001		SPS-BD, SYSTEM
80-0000612-03	XHP-3800-0001	A7340-67002	N/A	N/A		
80-0000673-01	XCQ-3800-0002	N/A	29-34923-01	257545-001		SPS-FAN
80-0000633-02	XHP-3800-0003	A7340-67004	N/A	N/A		
80-0000674-01	XCQ-3800-0003	N/A	3X-H7604-AA	260255-B21		SPS-PWR-SPY OPTION
80-0000675-01	XCQ-3800-0004	N/A	29-34924-01	257546-001		SPS-PWR-SPY
80-0000632-02	XHP-3800-0002	A7340-67003	N/A	N/A		
80-0000852-01	XCQ-3800-0005	N/A	29-34931-01	278672-001		SPS-RACK MOUNT KIT, 1"
FRUs / OPTIONS - SW12000						
80-0000843-xx	XCQ-12000-0001	N/A	N/A	283802-001		SPS-BD, SWITCH12000 PORT
80-0000844-xx	XCQ-12000-0002	N/A	N/A	283803-001		SPS-BD, SWITCH12000 CP
80-0000845-xx	XCQ-12000-0003	N/A	N/A	283804-001		SPS-PWR SPLY, SW12000,1000W
80-0000846-xx	XCQ-12000-0004	N/A	N/A	283805-001		SPS-RACK MNT KIT, SW12000, 14U
80-0000847-xx	XCQ-12000-0005	N/A	N/A	283801-001		SPS-BLOWER, SW12000 CP
80-0000848-xx	XCQ-12000-0006	N/A	N/A	283806-001		SPS-PANEL, FILLER, PORT CARD
80-0000849-xx	XCQ-12000-0007	N/A	N/A	283807-001		SPS-CA, SW12000 CP PILLAR
OPTIONAL SOFTWARE / PAPER PACKS - SW2000						
53-0000013-01			BX-RKERA-XE			SAN Switch
60-0000142-01	CQ-200032-01	N/A	QB-65AAA-SA	166601-001	A01	Remote Switch
53-0000238-01			BX-RR78A-XE			SAN Switch

80-0000748-01	CQ-228001-01	N/A	QM-6SYAA-AA	257653-B21		Fabric Watch
53-0000237-01			BX-RR7CA-XE			SAN Switch
80-0000747-01	CQ-228002-01	N/A	QM-6SZAA-AA	257655-B21		Extended Fabric
53-0000056-01			BX-RNUSA-XE			SAN Switch
60-0000330-01	CQ-228005-01	N/A	QM-6KAAA-AB	207104-B21	A01	Multi E-port Upgrade
OPTIONAL SOFTWARE / PAPER PACKS - SW3000						
53-0000305-01			BX-RTABA-XE			SAN Switch 2/8-EL
80-0001036-01	CQ-3200FLF-01	N/A	QB-6XKAA-MA	288250-B21		Full Fabric Upgrade
53-0000264-01			BX-RTADA-XE			SAN Switch 2/16-EL
80-0000850-01	CQ-3600FLF-01	N/A	QB-6X3AA-MA	288162-B21		Full Fabric Upgrade
53-0000225-01			BX-RR7RA-XE			SAN Switch 2/16
80-0000688-01	CQ-3800EXF-01	N/A	QB-6SZAB-SA	262868-B21		Extended Fabric
	HP-3800EXF-01		N/A	N/A		
	HP-380REXF-01		N/A	N/A		
53-0000226-01			BX-RR7ZA-XE			SAN Switch 2/16
80-0000687-01	CQ-3800FWH-01	N/A	QB-6SYAB-SA	262864-B21		Fabric Watch
53-0000234-01			BX-RR7VA-XE			SAN Switch 2/16
80-0000746-01	CQ-3800PRF-01	N/A	QB-6TZAA-SA	262870-B21		Advanced Performance Monitoring
	HP-3800PRF-01		N/A	N/A		
	HP-380RPRF-01		N/A	N/A		
53-0000223-01			BX-RR8AA-XE			SAN Switch 2/16
80-0000722-01	CQ-3800PRM-01	N/A	QB-6U1AA-SA	262874-B21		Performance Bundle
53-0000236-01			BX-RR7MA-XE			SAN Switch 2/16
80-0000744-01	CQ-3800QLP-01	N/A	QB-6TYAA-SA	262866-B21		Quickloop Fabric Assist
53-0000235-01			BX-RR83A-XE			SAN Switch 2/16
80-0000745-01	CQ-3800TRK-01	N/A	QB-6U0AA-SA	262872-B21		ISL Trunking
	HP-3800TRK-01		N/A	N/A		
	HP-380RTRK-01		N/A	N/A		
80-0000758-01	HP-3800ENU-01		N/A	N/A		
	HP-3800RSW-01		N/A	N/A		
	HP-380RRSW-01		N/A	N/A		
OPTIONAL SOFTWARE / PAPER PACKS - SW12000						
			BX-RSWKA-XE			SAN Core Switch 2/64
53-0000288-01	CQ-1200EXF-01	N/A	QB-6X5AA-SA	288140-B21		Extended Fabric SAN Core Switch 2/64
53-0000289-01	CQ-1200RSW-01	N/A	QB-6X7AA-SA BX-RSWPA-XE	288148-B21		Remote Switch SAN Core Switch 2/64
53-0000287-01	CQ-1200TRK-01	N/A	QB-6X6AA-SA	288144-B21		ISL Trunking

MFG P/N	BROCADE ORDERING P/N	HP 5-5 P/N	BROCADE DESCRIPTION	FW LEVEL	BROCADE DOC KIT P/N	COMPAQ DOC KIT P/N	STANDARD COST
CURRENT PURCHASED PRODUCT - SW2000							
80-0000363-05	CQ-2040-0000	N/A	Eclipse2040 Entry Fabric, WT, Z, Docs, Serial Cable Midas 2250	2.6.0c	60-0000378-05	QB-6KAAA-SA, Rev. 2.0	
80-0000466-07	CQ-2250-0000	N/A	Full Fabric, WT,Z, Docs, Serial Cable, Rack Mount Kit SilkWorm2400	2.6.0c	60-0000436-04	QB-6MBAA-SA, Rev. 2.0	
			1PS, WT,Z,QL,F, Docs, Serial Cable	2.6.0c	60-0000122-06	QB-6F9AB-SA, Rev. 3.0	
80-0000308-06	CQ-2401-0002	N/A	SilkWorm2400 8 port, 1 G, WT, QL, Z, FW	2.4.1	N/A		

80-0000289-11	HP-2401-0000	A5625-62002	SilkWorm2800 1PS, WT,Z,QL,F, Docs, Fan Tray Handles	2.6.0c	60-0000123-06	QB-6F9AC-SA, Rev. 3.0	[*]
80-0000453-05	CQ-2801-0002	N/A	SilkWorm2800 2PS, 16 port, 1 G, WT, QL, Z, FW	2.4.1		N/A	
80-0000350-08	HP-2802-0001	A5624-60003	SilkWorm 6400 Fabric, WT, Z, (FW, v2.2 licenses)	2.6.0c	60-0000475-03	QB-6QKAA-SA, Rev. 2.0	
80-0000556-03	CQ-6400-0000	N/A	SilkWorm 6400 64 port, FOS, WT, Z, WL., FW Starbase 6432			N/A	
80-0000648-01	HP-6400-0000	A7326-62001	Fabric, WT, Z, (FW, v2.2 licenses)	2.6.0c	60-0000475-03	QB-6QKAA-SA, Rev. 2.0	
80-0000478-04	CQ-6432-0000	N/A	SilkWorm 3200 4-switch Fabric, AWT, AZ, Rack Mount Kit	3.0.2c	60-0000705-01	QB-6X3AA-SA, Rev. 1.0	
80-0000478-04	CQ-6432-0000	N/A	SilkWorm 3200 8 port, 2 G, WT, QL, Single E-port	3.0.1b		N/A	
CURRENT PURCHASED PRODUCT - SW3000			8 port, 2 G, WT, QL, Z, FW	3.0.1b		N/A	
80-0000766-03	CQ-3200-0000	N/A	SilkWorm 3200 8 port, 2 G, WT, QL, Z, FW	3.0.2c	60-0000701-01	QB-6XKAA-SA, Rev. 1.0	
80-0000767-02	HP-3200-0000	A7346-63001	SilkWorm 3600 4-switch Fabric, AWT, AZ, Rack Mount Kit				
80-0000769-02	HP-3200-0001	A7347-63001	SilkWorm 3800 (2 power supplies)	3.0.2a	60-0001635-01	QC-6U2AA-SA, Rev. 1.0	
80-0000821-02	CQ-3602-0000	N/A	Fabric, AWT, AZ Rack Mount Kit				
80-0000858-02	CQ-3802-0000	N/A	SilkWorm 3800 (2 power supplies) 16 port, 2 G, WT, QL, Z, FW	3.0.1b		N/A	
80-0000599-04	HP-3802-0000	A7340-63001	SilkWorm 3900 (2 power supplies) 32 port, 2 G, WT, QL, Z, FW	4.0.2		N/A	
80-0000611-04	HP-3802-0001	A7340-63004	SilkWorm 3800 (2 power supplies)	3.0.1b		N/A	
CURRENT PURCHASED PRODUCT - SW12000			16 port, 2 G, WT, QL, Z, FW, ISLT, PM, EXF, RSW				
80-0000989-01	HQ-12000-0001	A6509-63001	SilkWorm 12000, 32-port Config, Fabric, AWT, AZ, FW, PM, Rack Mount Kit	4.0.0a	72-0000014-02 53-0000278-02 53-0000277-01 53-0000285-01 53-0000284-01	QB-6X4AA-SA, Rev. 1.0	
80-0000992-01	HQ-12000-0002	A6510-60001	SilkWorm 12000, 16-port Blade, Fabric, AWT,AZ	4.0.0a	N/A	N/A	
FRUs / OPTIONS - SW2000							
80-0000403-03	XCQ-000014	N/A	2400 Mainboard Tray	2.1.9m	N/A	N/A	[*]
80-0000307-06	XHP-000021		HP, FRU, CHS, W/MB, NO FAN, SW2400T	2.4.1	N/A	N/A	
80-0000310-01	XCQ-000015	N/A	2400 Fan Tray	--	N/A	N/A	[*]
80-0000306-01	XHP-000008		HP, FRU, FAN TRAY, SW2400T	--	N/A	N/A	
60-0000055-01	XCQ-000016	N/A	Power Supply FRU	--	N/A	N/A	[*]
80-0000771-01	XHP-000010		HP, FRU, P/S ASM, SW2000	--	N/A	N/A	
80-0000309-01	XCQ-000017	N/A	2400 Chassis	--	N/A	N/A	[*]
80-0000624-01	XHP-2400-0001	A5625-60001	2400 Accessory Tray	--	N/A	N/A	
80-0000451-01	XCQ-000018	N/A	2800 Fan Tray	--	N/A	N/A	[*]
80-0000302-01	XHP-000013		HP, FRU, FAN TRAY, SW2800T	--	N/A	N/A	
80-0000454-03	XCQ-000019	N/A	2800 Mainboard Tray	2.1.9m	N/A	N/A	[*]
80-0000301-04	XHP-000012		HP, FRU, M/B W/TRAY SW2800T	2.4.1	N/A	N/A	
60-0000118-01	XCQ-000020	N/A	Power Supply Option	--	60-0000124-01	QC-6F9AC-GZ,	[*]

80-0000452-01	XCQ-000021	N/A	2800 Chassis/Dsply/ Touchpad	--	N/A	N/A	[*]
80-0000303-03	XHP-000014		HP, FRU, CHS, DSPLY, KYPD, SW2800T	--	N/A	N/A	
80-0000625-01	XHP-2800-0001		2800 Accessory Tray	--	N/A	N/A	
80-0000340-01	XCQ-000023	N/A	Serial Cable Option	--	N/A	N/A	
80-0000340-01	XCQ-000023	N/A	Serial Cable FRU	--	N/A	N/A	[*]
80-0000470-01	XHP-000027		HP, FRU, SERIAL, CABLE, RJ45 / ADPTR	--	N/A	N/A	
80-0000364-05	XCQ-000024	N/A	Eclipse 2040 FRU	2.1.9m	N/A	N/A	[*]
80-0000467-06	XCQ-000025	N/A	Midas 2250 FRU	2.1.9m	N/A	N/A	[*]
80-0000555-01	XCQ-000026	N/A	ISL FRU (1M)	--	N/A	N/A	[*]
80-0000563-01	XCQ-000029	N/A	ISL FRU (0.75M)	--	N/A	N/A	[*]
80-0000620-01	XCQ-2040-0001	N/A	FRU Accessory Kit, CQ-2040	--	N/A	N/A	
80-0000623-01	XCQ-2250-0001	N/A	FRU Accessory Kit, CQ-2250	--	N/A	N/A	
80-0000621-01	XCQ-2400-0001	N/A	FRU Accessory Kit, CQ-2401	--	N/A	N/A	
80-0000622-01	XCQ-2800-0001	N/A	FRU Accessory Kit, CQ-2801	--	N/A	N/A	
80-0000652-01	XHP-6400-0002	A7326-70001	6400 Accessory Door (MUST ship with 6400 switch)	--	N/A	N/A	
80-0000649-01	XHP-6400-0006	A7345-67001	6400 2250 Switch FRU	2.4.1	N/A	N/A	
80-0000653-01	XHP-6400-0003	A7345-67002	6400 ISL Cable Kit	--	N/A	N/A	
80-0000651-01	XHP-6400-0001	A7326-87901	6400 Rack Mount Kit	--	N/A	N/A	
80-0000655-01	XHP-6400-0005	A7326-44002	6400 Packaging FRU	--	N/A	N/A	
80-0000654-01	XHP-6400-0004	A7326-67003	6400 CD/Docs (\$ per 25)	--			
FRUs / OPTIONS - SW3000							
80-0000908-02	XCQ-3200-0001	N/A	3200 Switch FRU	3.0.2c	N/A	N/A	[*]
80-0000779-02	XHP-3200-0000	A7346-67001	8 port, single e port switch fru	3.0.1b	N/A	N/A	
80-0000877-01	XCQ-3200-0002	N/A	3200 Fixed Rack Mount Kit	--	N/A	N/A	
80-0000822-02	XCQ-3600-0001	N/A	3600 Mainboard FRU	3.0.2c	N/A	N/A	[*]
80-0000731-04	XHP-3800-0005	A7340-67001	3800 Switch FRU	3.0.1b	N/A	N/A	
	XHP-3800-0006	A7340-67006	3800 Chassis w/wiring harness - Special Order, Min 10	--	N/A	N/A	
80-0000672-04	XCQ-3800-0001	N/A	3800 Mainboard FRU	3.0.2a	N/A	N/A	[*]
80-0000612-03	XHP-3800-0001	A7340-67002	3800 Tray w/MB	3.0.1b	N/A	N/A	
80-0000673-01	XCQ-3800-0002	N/A	3x00 Fan FRU	--	N/A	N/A	[*]
80-0000633-02	XHP-3800-0003	A7340-67004	3800 Fan	--	N/A	N/A	
80-0000674-01	XCQ-3800-0003	N/A	3800 Power Supply Option	--	N/A	N/A	
80-0000675-01	XCQ-3800-0004	N/A	3x00 Power Supply FRU	--	N/A	N/A	[*]
80-0000632-02	XHP-3800-0002	A7340-67003	3800 Power Supply	--	N/A	N/A	
80-0000852-01	XCQ-3800-0005	N/A	3x00 Rack Mount Kit	--	N/A	N/A	[*]
FRUs / OPTIONS - SW12000							
80-0000843-xx	XCQ-12000-0001	N/A	12000 FRU, PORT CARD	4.0.0	N/A	N/A	[*]
80-0000844-xx	XCQ-12000-0002	N/A	12000 FRU, CP CARD	--	N/A	N/A	[*]
80-0000845-xx	XCQ-12000-0003	N/A	12000 FRU, P/S, 180-264VAC, 1000W	--	N/A	N/A	[*]
80-0000846-xx	XCQ-12000-0004	N/A	12000 FRU, RACK MOUNT KIT, 14U	--	N/A	N/A	[*]
80-0000847-xx	XCQ-12000-0005	N/A	12000 FRU, BLOWER ASSY	--	N/A	N/A	[*]
80-0000848-xx	XCQ-12000-0006	N/A	12000 FRU, PORT CARD SLOT FILLER PNL	--	N/A	N/A	[*]
80-0000849-xx	XCQ-12000-0007	N/A	12000 FRU, CABLE MGT PILLAR	--	N/A	N/A	[*]

OPTIONAL SOFTWARE / PAPER PACKS - SW2000

53-0000013-01						
60-0000142-01	CQ-200032-01	N/A	Remote Switch License Pak	2.1.x	N/A	N/A
53-0000238-01						
80-0000748-01	CQ-228001-01	N/A	Fabric Watch Pak (SW2000)	2.6	N/A	N/A
53-0000237-01						
80-0000747-01	CQ-228002-01	N/A	Extended Fabric Pak (SW2000)	2.6	N/A	N/A
53-0000056-01						
60-0000330-01	CQ-228005-01	N/A	Multi E-port Upgrade License Pak	2.6	N/A	N/A
OPTIONAL SOFTWARE / PAPER PACKS - SW3000						
53-0000305-01						
80-0001036-01	CQ-3200FLF-01	N/A	Full Fabric (eliminates 4-switch limit)	3.x	N/A	N/A
53-0000264-01						
80-0000850-01	CQ-3600FLF-01	N/A	Full Fabric (eliminates 4-switch limit)	3.x	N/A	N/A
53-0000225-01						
80-0000688-01	CQ-3800EXF-01	N/A	Extended Fabric Pak (SW3800)	3.x	N/A	N/A
	HP-3800EXF-01		SW, Extended Fabric	3.x	N/A	N/A
	HP-380REXF-01		SW, Repair key, Extended Fabric	3.x	N/A	N/A
53-0000226-01						
80-0000687-01	CQ-3800FWH-01	N/A	Fabric Watch Pak (SW3800)	3.x	N/A	N/A
53-0000234-01						
80-0000746-01	CQ-3800PRF-01	N/A	Advanced Performance Monitoring (SW3800)	3.x	N/A	N/A
	HP-3800PRF-01		SW, Performance Monitoring	3.x	N/A	N/A
	HP-380RPRF-01		SW, Repair key, Performance Monitoring	3.x	N/A	N/A
53-0000223-01			Performance Bundle (SW3800, includes FW, APM,T)			
80-0000722-01	CQ-3800PRM-01	N/A		3.x	N/A	N/A
53-0000236-01						
80-0000744-01	CQ-3800QLP-01	N/A	QuickLoop Fabric Assist (SW3800)	3.x	N/A	N/A
53-0000235-01						
80-0000745-01	CQ-3800TRK-01	N/A	ISL Trunking (SW3800)	3.x	N/A	N/A
	HP-3800TRK-01		SW, Trunking	3.x	N/A	N/A
	HP-380RTRK-01		SW, Repair key, Trunking	3.x	N/A	N/A
80-0000758-01	HP-3800ENU-01		SW, BASE to ADV. Upgrade	3.x	N/A	N/A
	HP-3800RSW-01		SW, Remote Switch	3.x	N/A	N/A
	HP-380RRSW-01		SW, Repair key, Remote Switch	3.x	N/A	N/A
OPTIONAL SOFTWARE / PAPER PACKS - SW12000						
53-0000288-01	CQ-1200EXF-01	N/A	Extended Fabric Pak (SW12000)	4.x	N/A	N/A
53-0000289-01	CQ-1200RSW-01	N/A	Remote Switch License Pak (SW12000)	4.x	N/A	N/A
53-0000287-01	CQ-1200TRK-01	N/A	ISL Trunking (SW12000)	4.x	N/A	N/A

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Date: Configuration

EXHIBIT (D)

MAINTENANCE AND SUPPORT

1. GENERAL TERMS.

- 1.1. SCOPE: Supplier will provide maintenance and support services to HP as specified in these Support Terms to allow HP to provide effective service to end-user customers ("Customers") of the Product. Unless otherwise agreed, HP will serve as the primary support contact with Customers, and Supplier shall have no direct end-user customer support obligations except as otherwise provided herein. The obligations of each party are specified below. In case of any conflict with the agreement which contains this Maintenance and Support Exhibit ("Agreement"), the terms of this Maintenance and Support Exhibit will take precedence for clarification of support obligations, but will not otherwise modify the Agreement.
- 1.2. DEFINITIONS: The following capitalized terms will have these meanings when used in these Support Terms:
 - 1.2.1. "ACTION PLAN" means the initial plan to be created and implemented by Supplier in response to an HP Problem Resolution or Escalation request. At a minimum, the Action Plan must contain the following:
 - 1. Problem Statement;
 - 2. List of all key HP and Supplier contacts and their managers;
 - 3. Actions to be taken;
 - 4. Purpose and desired result for each action;
 - 5. Expected completion time; and
 - 6. Contingencies or alternatives if desired results are not achieved.
 - 1.2.2. "ESCALATION" is the process described in ARTICLE 4 below through which HP declares that a Customer situation requires immediate action. Under this process, the nature and severity of the problem is raised in each party's organization and additional resources are allocated as specified in these Support Terms toward solving the problem.
 - 1.2.3. "FIX" means a change in a Product that removes a problem in that product. A Fix must be designed and tested so that it can be distributed to all Customers. A Fix may be temporary or permanent. A temporary Fix may be a patch or bug fix that temporarily modifies a Product or any software in the product without rebuilding that product. A permanent Fix provides a permanent solution to the problem, agreed upon by both HP and the Supplier.
 - 1.2.4. "PROBLEM RESOLUTION" is the process described in Article 3 below through which HP submits a Request for Technical Assistance to notify Supplier when a problem (such as a fault or defect) is suspected in a Product. Under this process, HP confirms the problem diagnosis with Supplier, and the parties cooperate to resolve the problem.

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- 1.2.5. "SUPPORT INFORMATION" means Product Service Information and a Knowledge Data Base of known problems related to Supplier's support of Products.
 - 1.2.6. "STATUS UPDATE" means Supplier's summary of the problem, describing the possible cause and the incremental work to be performed to reach resolution, including the Action Plan and the availability date of a Fix.
 - 1.2.7. "TECHNICAL ASSISTANCE" is the process described in Article 2 below through which HP obtains assistance from Supplier in the support of Customers. Technical Assistance includes the exchange of information, such as product configuration, product operation, or other necessary answers or assistance to support questions.
 - 1.2.8. "TRACKING SYSTEM" means an electronic database to be maintained by the parties for updating and communicating information pertaining to Service Requests, Technical Assistance, Problem Resolution and Escalation. The particular type of Tracking System will be mutually determined, as more particularly described in Section 1.7 below.
 - 1.2.9. "WORKAROUND" means a temporary solution or temporary Fix that restores operational capability for the Product, without severely compromising the performance of that product, until a permanent Fix is available. A Workaround can be a change in the configuration or a change in Customer documentation.
 - 1.2.10. "PRODUCTS" means the products listed in Exhibit (A) of the Agreement to which this Exhibit is attached, including all related Documentation, Software licenses and media, Parts, and other deliverables provided pursuant to the Agreement.
- 1.3. GENERAL OBLIGATIONS. Each party agrees to the following general terms:
- 1.3.1. For each Product, Supplier will provide a product support plan incorporating HP's support planning processes and support recommendations.
 - 1.3.2. Unless expressly authorized under these Support Terms, neither party will commit resources of the other to Customers.
 - 1.3.3. Both parties will provide such information to each other as is needed to implement these Support Terms, subject to the confidentiality and licensing provisions of this Agreement. Unless otherwise specified, all such information will be used by the other party solely for its internal use to fulfill its obligations under these Support Terms.
 - 1.3.4. When either party makes changes to its support policies and procedures that may affect its ability to support Customers or the other party under these terms, the party making the changes will inform the other party's Strategic Support Contact listed in Section 1.5 below of such changes in accordance with the procedures described in these Support Terms.
 - 1.3.5. HP may [*]. Nothing in these Support Terms prohibits either party from independently supporting the other party's products; provided that each party acknowledges that, except as expressly granted hereunder or in the Software License Agreement, no licenses are

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granted to the other to use that party's confidential technical information or other intellectual property.

1.3.6. HP requires verification of Supplier's replacement/repair process for FRUs and Products. Upon the Effective Date of this Agreement, Supplier will promptly provide a FRU replacement and repair plan of sufficient detail to HP's reasonable satisfaction. The number of times a FRU is repaired [*] [*] [*].

1.4. STRATEGIC AND TECHNICAL SUPPORT CONTACTS. Supplier and HP have each designated in Appendix I a Strategic Support Contact and a Technical Support Contact, which may be one and the same person. The Strategic Support Contacts will be the focal points for general relationship and process issues and will be responsible for managing the overall relationship of the parties. The Technical Support Contacts will be the focal points for Customer technical issues, including Technical Assistance, Problem Resolution and Escalation. Technical and Strategic Support Contacts may be changed at any time upon written notice to the other party.

1.5. STATUS REVIEW MEETINGS. Supplier and HP Strategic Support Contacts or their designees will meet on a regular basis for the purpose of reviewing the effectiveness of their support relationship, suggesting changes, implementing improvements and sharing technical information. Meetings will take place at least [*] in the [*] year of the Agreement, and at least [*] thereafter.

1.6. COMMUNICATIONS BETWEEN PARTIES. Any support-related communications required or permitted to be given under these Support Terms will be made by telephone, or by electronic mail ("e-mail") in a standard format agreed to by the parties, to the appropriate contact.

1.7. PROBLEM TRACKING SYSTEM. The parties agree to implement and maintain a problem tracking database (the "Tracking System") for inputting, accessing and updating information on Requests for Technical Assistance, Problem Resolution and Escalation. [*] prioritization of the Problem Tracking System.

1.8. RESPONSE TIMES. Supplier [*] respond to HP requests for Technical Assistance, Problem Resolution and Escalation as soon as possible after receipt of the request, but in no event later than the response times specified in Appendix II to these Support Terms, in accordance with the problem classification listings in that Appendix.

2. TECHNICAL ASSISTANCE.

2.1. HP REQUEST FOR TECHNICAL ASSISTANCE.

2.1.1. When making a request for Technical Assistance, HP will provide the following information to Supplier: (a) description of the situation; (b) the HP assigned call classification and the HP identification number; and (c) the call back phone number if different from the Technical Support Contact phone number listed in Appendix I.

1. COLLECT THE FOLLOWING INFORMATION FOR ANALYSIS:

- Switch trace, log file, or data dump using Brocade's SUPPORTSHOW and COREDUMP Utilities.
- Finisar trace (strongly recommended) Xyratec okay.

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2. PROVIDE INFORMATION FOR BROCADE TO BE ABLE TO REPRODUCE THE PROBLEM: Step-by-step procedure(s) used to recreate the problem, if possible.
3. SYSTEM CONFIGURATION INFORMATION:
 - HOST : All OS platforms and versions; HBA type and driver version
 - HOST Applications: List
 - Storage: Disk or tape subsystem type (i.e: RAID, JBOD, public, private, DLT, etc.), manufacturer and firmware version.
 - Storage management software and applications
 - Switch topology: Describe the network configuration. Provide SAN diagram if possible.
 - Is the switch in a cascaded or meshed environment?
 - How many switches are in the configuration? Of what types?
 - How are the switches zoned?
 - Are there parallel fabrics? Dual host, storage connections
 - Are there any third-party switches linked in the fabric?
 - Are there any arbitrated loop devices connected?
 - Are any bridges, gateways, or routers connected? To what?

2.1.2. Effective as of the date of first customer shipment of the Product, Supplier will make its Technical Support Contacts available to receive Technical Assistance requests from HP through the supplier's designated toll-free telephone number, _____, designated e-mail address, _____, or designated web site, _____. The supplier shall provide technical support to HP Support as set forth in this Agreement [*].

2.1.3. Supplier will take all necessary steps to resolve the Technical Assistance request and provide HP with the resolution and all available information as soon as it is available but no later than the response times specified in Appendix II.

2.1.4. HP agrees that the support engineers that contact Supplier for Technical Assistance have previously received a substantial level of training on the Product.

2.2. TECHNICAL ASSISTANCE RECORDS. Supplier will keep a record of all Technical Assistance requests in Supplier's Tracking System and update their current status. As soon as possible after final resolution, Supplier will input a detailed description of the Technical Assistance request and resolution in Supplier's Tracking System.

2.2.1. TECHNICAL ASSISTANCE RECORDS WILL INCLUDE, AT A MINIMUM, THE FOLLOWING INFORMATION:

1. HP call identification number and Supplier call tracking number.
2. Date of initial call to the supplier.
3. Names of call participants.
4. Times and dates of subsequent calls to HP.
5. Model, version and serial number of Product(s) involved; and version of operating system involved.
6. Problem Description (Symptoms) as provided by HP.
7. Root Cause(s) as provided by the supplier

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Date: 5/15/2002	Configuration Specification	Page D-4
[*]	Revision 0	[*]

8. Recommended Corrective Action(s) Alternatives and Priorities (Steps taken to diagnose and remedy the problem.) provided by the supplier.
9. Any Action Plan(s) required for follow-up or resolution.
10. Date of resolution.

2.3. CLOSING TECHNICAL ASSISTANCE REQUEST. After a Technical Assistance request is resolved and the resolution information is communicated to HP and documented in the Tracking System, HP will contact Supplier to close the request.

2.4. [*] TECHNICAL ASSISTANCE REPORT. The Supplier will provide a [*] technical report covering all problems received from HP during the current [*], all problems still open from previous [*] including the original date forwarded to the Supplier, current status of each problem, categorization of problems and resolutions, and problem metrics including average response time and number of escalations. Note: Problems include both Problem Resolution Requests (paragraph 3) and Escalations (paragraph 4).

3. PROBLEM RESOLUTION.

3.1. Requesting Problem Resolution Service

3.1.1. HP will receive defect reports, inquiries and problem calls about Products from HP's Customers. If HP is unable to resolve a problem after Technical Assistance and after reasonable efforts, HP may provide Supplier a Request for Technical Assistance.

3.1.2. When making a Request for Technical Assistance, HP will provide the following information in addition to the HP-provided information as identified and listed in Section 2.1.1 & 2.2.1 above:

1. Description of diagnostic work performed and data collected by HP.
2. Action being requested (e.g. remedying or assisting in isolating the fault)
3. Problem classification pursuant to the definitions in Appendix II.

3.2. PROBLEM RESOLUTION PROCESS

3.2.1. After Supplier receives a Request for Technical Assistance, it will acknowledge receipt and then acknowledge HP's diagnosis of the problem. When it is mutually deemed necessary, Supplier will make [*] contact may be established. Supplier will recommend appropriate corrective action(s) on the Request for Technical Assistance to resolve the problem as soon as possible, but in no event later than the response times specified in Appendix II, according to the classification of the problem.

3.2.2. In the event that neither HP nor Supplier is able to isolate and resolve a Critical or Serious situation, HP may request that Supplier assist HP in dialing into the Customer's system directly to assist HP in analyzing and troubleshooting the problem. Supplier will provide [*]. HP will provide Supplier access through telnet or web tools. If the problem is mutually deemed to require Supplier [*].

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- 3.2.3. Supplier will provide an Action Plan within the response times listed in Appendix II,; based on HP's classification of the problem. An Action Plan may require Supplier to: (a) reprioritize its other activities in order to meet the commitment to solve a Customer problem; (b) increase resources to address the problem; (c) assist HP with remote dial into a Customer system for direct observation; (d) assist HP with [*] analysis.
- 3.2.4. Supplier will notify HP upon resolution of the problem: or upon the availability of a Fix or Workaround. If a permanent resolution cannot be achieved within the response times specified in Appendix II, Supplier will notify HP of any modification to the original Action Plan and the anticipated availability of a permanent problem resolution.
- 3.2.5. Supplier will enter in the Supplier's Tracking System all Status Updates, Action Plans and other communications requested by HP's Technical Support Contact.. Supplier may request additional information from the HP Technical Support Contact in order to meet the response times specified in Appendix II.

3.3. PROBLEM RESOLUTION RECORDS

- 3.3.1. Supplier will keep records of all Requests for Technical Assistance in the Supplier's Tracking System and update their current status. Supplier will also be responsible for accessing, reviewing, and updating defect information related to the Products. The Supplier will provide a weekly report as referenced in paragraph 2.4.
- 3.3.2. Problem Resolution records will include, at a minimum, the items listed in Sections 2.1.1, 2.2.1, and 3.1.2 above along with the following information:
 - 1. Summary of the problem as finally diagnosed.
 - 2. Detailed description of the root causes and symptoms.
 - 3. Actions taken to resolve the situation.
 - 4. Date of Problem Resolution request and final resolution.
 - 5. Likelihood of problem recurring and recommended action in the event of a recurrence.
 - 6. Supplier and HP Service Request numbers for cross reference purposes.
 - 7. Fix or Workaround implemented and how and when available.
 - 8. Tests performed on the Fix or Workaround.
 - 9. If only temporary Fix or Workaround is available, the Action Plan for Permanent Fix.

3.4. PROBLEM RESOLUTION RESOURCES

- 3.4.1. Supplier will maintain technical resources (hardware, software, and personnel) adequate to [*]. These resources may be allocated on a provisional basis for the purpose of new product testing and qualification. If a problem resolution requires the assembly of a storage network configuration then [*] in order to optimize support of the problem resolution process. This reassignment shall be made without impact to the problem resolution schedule.
- 3.4.2. In the case where the technical resources needed to support the problem resolution process are also allocated to new product development, if these resources are needed for

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the purpose of problem resolution then this reassignment shall be made without impact to any product development schedules.

3.5. CLOSING PROBLEM RESOLUTION REQUEST:

3.5.1. After problem resolution has been communicated to HP and verified by agreement of HP and the Customer, HP will notify Supplier that HP is closing the Problem Resolution and Request for Technical Assistance.

4. ESCALATION.

4.1. REQUESTING AN ESCALATION

4.1.1. If HP determines that additional attention and extra resources from Supplier are needed to resolve a Customer situation or to assist an HP engineer on-site, HP may request an Escalation. Supplier will cooperate with HP by following the Escalation procedures set forth below.

4.1.2. WHEN REQUESTING ESCALATION, in addition to the HP-provided information required under Problem Resolution in Sections 2.1.1, 2.2.1, and 3.1.2 above, HP will provide:

1. Caller's location.
2. Any currently installed Fixes or Workarounds.
3. Reason for escalation.
4. Steps taken to resolve problem.
5. Any Requests for Problem Resolution issued with respect to the problem.

4.2. RESPONSE TO ESCALATIONS Supplier will continue to cooperate with HP until the Escalation is resolved, or until HP and Supplier mutually agree that all reasonable means of resolution have been exhausted. Effective as of the date of first customer shipment, Supplier will respond to an Escalation from HP [*].

4.3. ESCALATION PROCESS HP's Technical Support Contact may contact Supplier's Technical Support Contact to request Escalation. HP will follow-up by e-mail with any additional information available at the time. Supplier will have primary responsibility to resolve the Escalation, and when mutually deemed necessary, Supplier will make Supplier's [*] may be established. If Problem Resolution Service Requests are produced as a result of the Escalation, the procedure defined above for Problem Resolution must be followed.

4.4. [*] EXECUTIVE SUPPORT FOR ESCALATION PROCESS

4.4.1. Supplier shall make available an executive representative for participation in Escalation cases. The supplier's executive shall be prepared to support HP in any customer discussions related to the Escalation. This support shall include communication to the customer of the supplier's plans and schedule for resolution of the problem.

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4.4.2. This support may include, [*], one or more [*] for the purpose of meeting with customer technical and executive personnel. [*].

4.5. ESCALATION RECORDS

4.5.1. Supplier will keep a record of all Escalation requests in the Supplier's Tracking System and update their current status.

4.5.2. ESCALATION RECORDS WILL INCLUDE, AT A MINIMUM, THE ITEMS LISTED IN SECTION 3.3.2 ABOVE ALONG WITH THE FOLLOWING INFORMATION:

1. Date of initial call for Escalation.
2. Names of individuals participating in the call.
3. Dates of subsequent calls to HP technical support.
4. Steps taken to diagnose and remedy the problem.
5. Any Action Plan(s) required for follow-up or resolution.
6. Date of final resolution.

4.6. THE ROLE OF TECHNICAL SUPPORT CONTACT DURING ESCALATIONS The Supplier's Technical Support Contact will prepare an Action Plan as quickly as possible but not to exceed [*] after initial request for Escalation. This Action Plan may be modified by mutual agreement of the parties.

4.7. MONITOR PHASE. A Monitor Phase may be implemented by HP to evaluate the situation over a period of time to verify that the problem has been resolved to the Customer's satisfaction. The Monitor Phase starts after a resolution is provided to the Customer. When the problem has been resolved to the Customer's satisfaction, the Monitor Phase is terminated and the Escalation is closed by HP. Both HP and Supplier will coordinate monitoring activities. HP will determine the length of the Monitor Phase.

CLOSING AN ESCALATION. When HP and the Customer agree that the problem has been resolved satisfactorily or the situation no longer requires Escalation, the Escalation will be closed by HP at the end of the Monitor Phase. The Tracking System will then be updated as necessary by Supplier to record the results of the Monitor Phase, including any actions taken, results of those actions, likelihood of problem reoccurrence and recommended future actions.

5. OPERATIONAL PROVISIONS

5.1. Delivery. Supplier will ship FRU Parts ("Spares") from, and accept returns shipped to locations agreed by HP and Supplier as specified on RMA. Supplier will promptly ship Spares and repair materials returned from HP. Unless HP requests a later date, lead-time for Spares will not exceed [*] and lead-time to repair returned Spares will not exceed [*] from receipt of materials. If any returned materials are damaged and not repairable, Supplier will notify HP within [*] of receipt for disposition such as scrap at Supplier's location or return to HP.

5.2. Priority Delivery. If HP is experiencing a critical support situation, Supplier will use its [*] efforts to ship [*].

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- 5.3. RMA Procedure. HP will request an RMA# prior to return of any material to Supplier. HP will provide quantity, serial numbers and the HP part numbers of materials to be returned. Supplier will provide the RMA# within [*]. HP will continue with prescreen process already in place and make reasonable efforts to implement this process world wide. Where the prescreen process is not in place HP will not have to [*] or take any actions other than those expressly provided for in this Support Exhibit D prior to return of product. HP will provide on returned material RMA#'s on shipping cartons . Supplier will promptly advise HP the quantities of in warranty and out of warranty materials returned. Supplier will provide a website for RMA requests.
- 5.4. Term of Availability. Supplier will provide repair Services during the "Term of Availability". The Term of Availability, for each Spare, is a period of time continuing for (i) a minimum of [*] after the date of the last Shipment Date by supplier to [*] [*] of each OEM product unit from the date the product, which is the Spare supports, has an EOL date announced by Supplier and (ii) (ii) which ends upon written notification from Supplier. Supplier's notification, discontinuing support, must provide at least [*] notice to HP and identify the Spares affected. Supplier will support HP's order for "last buy" quantities made during the Term of Availability. Unless expressly agreed to in this Service and = Support Exhibit, HP will provide [*]. Supplier is responsible, based on its knowledge of the Product, to meet its obligations under the Term of Availability, unless HP assistance or obligation is expressly agreed to in this Support Agreement.
- 5.5. Pricing. Purchase prices for Spares and repair Services are identified in the Schedule of Spares as set forth in Exhibit (C) (Pricing). Pricing will be negotiated to reflect changes in prices Supplier charges HP for the Products that the Spares support. Pricing will be reviewed with Supplier on [*] intervals and may participate in pricing reviews as specified in the attached Exhibit. Pricing changes are subject to mutual agreement and must be documented in writing. [*] will be added for out of warranty products. Supplier is responsible to pay, and all prices include, [*] on in warranty products. [*].
- 5.6. Non-Repairable Spares Warranty Recovery. Supplier will provide a Spare, or provide a similar Spare on a newer product that meets all HP system requirement parameters, and is backward and forward compatible as a replacement (actual part replaced will be mutually agreed upon)
- 5.7. [*] Pricing. Supplier will maintain [*] pricing for HP as per the terms and conditions agreed to in section 4, and exhibit C of the agreement. At any time during the Term of Availability, HP may notify Supplier that HP has received [*] [*] [*] [*] [*]. If within [*] of the date of such notice Supplier does not [*] to be [*] than the [*], [*].
- 5.8. Rights and Assistance to Repair. In the event of an uncured breach by Supplier of this Agreement as defined in Sections 20.2 (3), (4), and (5) that causes a cessation in the supply of Spares or repair services to HP (and such cessation is not due to a force majeure event as described in Article (19)), Supplier [*] Products for HP customers. [*] Supplier will provide HP, within [*] of HP's request: [*] reasonable assistance as HP may require. [*] materials as required to effect the purposes of this section. This [*] commercially available third party software and HP must purchase any such third party software.
- 5.9. Quality. Supplier agrees to maintain the ability to track multiple returns associated with the same product and provide HP with reports as requested. Spares will be new or be refurbished to the latest mandatory revision to meet all applicable electrical, mechanical, firmware and cosmetic specifications and engineering documentation, including the replacement of damaged or missing non-functioning parts. Upon request by HP, Supplier will provide information reasonably needed by HP to understand quality

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and reliability issues such as failure analysis data, reliability testing data, inspection histories, and specifications as well as provide access to facilities and repair processes.

- 5.10. Third Party Repair Services. HP may use a third party to manage aspects of its repair processes. Upon HP's request and subject to satisfactory credit approval by Supplier, Supplier will provide HP's third party repair center with the same support, under substantially the same business terms, it provides to HP (with certain terms excluded as appropriate[*] [*]). Supplier understands the repair center purchases are for HP's benefit and agrees HP may work directly with Supplier to take advantage of [*] rights that Supplier provides HP in this Agreement including this Support Exhibit.
- 5.11. Supplier Management Program. Supplier agrees to participate in HP's Supplier Management Program and meet with HP at HP's offices, as requested up to [*], in order to review Supplier's performance, establish performance metrics to drive continuous improvements, and discuss other areas of mutual concern.
- 5.12. Spares (FRU) Return / Sellback. In accordance with section 6 of the agreement HP may [*] Spares purchased in the previous [*] [*] to Supplier. Spares subject to this [*] [*] provision will be [*] product package.
- 5.13. Survival. In the event the Agreement terminates for any reason except for HP's breach which is [*] and remains uncured after [*] written notice, then, this Maintenance and Support Exhibit along with all referenced exhibits and articles will continue as a standalone contract through the end of the Term of Availability and Agreement terms, that may be applicable to service and support, will be incorporated into and made a part of this surviving Maintenance and Support Exhibit. Agreement terms applicable to support include, without limitation: [*] and general terms. In case of conflict, the original Maintenance and Support Exhibit terms will take precedence over the incorporated terms.

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Date: 5/15/2002	Configuration Specification	Page D-10
[*]	Revision 0	[*]

APPENDIX I

STRATEGIC AND TECHNICAL SUPPORT CONTACTS

INITIAL CALLS FOR BROCADE'S TECHNICAL ASSISTANCE NEED TO GO THROUGH:

PHONE:
EMAIL:

THE FOLLOWING PERSONS ARE DESIGNATED TO SERVE AS STRATEGIC SUPPORT CONTACTS:

SUPPLIER: HP:
NAME: NAME: Frank Patrone
NSS Switch Engineering Group

[*]

[*]

[*]

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Date:
5/15/2002

Configuration
Specification

Page 1 Appendix I

[*]

Revision 0

[*]

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LOW: Noticeable situation in which the use of the Product is affected in some way that is correctable by a temporary documentation change or Workaround to be permanently corrected in the next scheduled release.

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Date:
5/15/2002

Configuration
Specification

Page 2 (Appendix) II

[*]

Revision 0

[*]

EXHIBIT (E)

HP EQUIPMENT LOAN AGREEMENT

THIS HP EQUIPMENT LOAN AGREEMENT ("Equipment Loan Agreement") is made [date], (the "Effective Date") by and between Hewlett-Packard Company ("HP") and [SUPPLIER NAME HERE] (SUPPLIER) as follows:

1. LOAN. HP hereby loans to SUPPLIER, for the applicable Term, the HP-owned equipment, which may consist of hardware and software (collectively, "HP Equipment") described in the HP Equipment Schedule attached as Attachment (A). HP may, from time to time, add, upgrade, or remove HP Equipment from SUPPLIER's site during the Term. All HP Equipment received by SUPPLIER during the Term shall be described in an amended HP Equipment Schedule signed by SUPPLIER and appended to this Equipment Loan Agreement. SUPPLIER agrees, by its receipt of HP Equipment, that all HP Equipment is subject to the provisions of this Equipment Loan Agreement.
2. TERM. This Equipment Loan Agreement shall be for a Term of twelve (12) months after the Effective Date (the "Term") of this Agreement, unless earlier terminated by HP or SUPPLIER upon thirty (30) days written notice to the other. HP may in writing extend the Term, or establish a separate Term with respect to particular items of HP Equipment.
3. USE. SUPPLIER may use the HP Equipment solely for testing and developing OEM Products under this Agreement. SUPPLIER shall not move any HP Equipment from the location set forth in the HP Equipment Schedule without the prior written consent of HP. SUPPLIER's right to use the HP Equipment is non-transferable. SUPPLIER assumes all risk for the use of the HP Equipment.
4. SOFTWARE. All software provided with the HP Equipment or for test and development of the OEM Products shall be licensed under the then current HP Software License Terms, the current form of which is attached as Attachment (B). The type of license to use for any particular software is stated in the HP Equipment Schedule.
5. OWNERSHIP. HP retains all right, title, and ownership to the HP Equipment, unless any such HP Equipment is purchased by SUPPLIER. SUPPLIER hereby nominates and appoints HP as its attorney-in-fact for the sole purpose of executing on SUPPLIER's behalf UCC-1 financing statements (and any appropriate amendments thereto) under the provisions of the Uniform Commercial Code for the HP Equipment loaned to SUPPLIER hereunder. If requested by HP, SUPPLIER shall affix any label or marking supplied by HP evidencing HP's ownership of the HP Equipment. HP may, from time to time, inspect the HP Equipment. SUPPLIER shall not encumber the HP Equipment in any manner.
6. WARRANTY DISCLAIMER. ALL HP EQUIPMENT IS FURNISHED "AS IS", WITHOUT WARRANTY OF ANY KIND, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUPPLIER understands that some newly manufactured HP Equipment may contain remanufactured parts equivalent to new in performance.
7. MAINTENANCE. During the Term, SUPPLIER will maintain all HP Equipment in good operating order and condition. All maintenance must be provided by personnel authorized by HP. HP will provide standard support and maintenance for the HP Equipment [*] to SUPPLIER during the Term; however, all [*] costs and [*] due to

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[*] shall be borne by [*]. SUPPLIER shall be responsible for providing HP personnel ready and safe access to the HP Equipment for such maintenance and support.

- 8. RISK OF LOSS. SUPPLIER shall bear all risk of loss with respect to the HP Equipment from receipt thereof until such HP Equipment is returned to HP. All HP Equipment returned to HP must include the same components as received by SUPPLIER, and must be in good operating order and condition. Charges may be imposed by HP if SUPPLIER fails to return the HP Equipment in such condition or within the return timeframe set forth herein.
- 9. SHIPPING COSTS. Unless otherwise agreed in writing by [*] shall be responsible for and pay all [*] and [*] charges, all [*] and [*], and all other [*] costs and expenses with respect to the delivery or return of any HP Equipment hereunder.
- 10. LIMITATION OF LIABILITY. HP SHALL NOT BE LIABLE FOR ANY [*] OR [*] DAMAGES, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, ARISING OUT OF THIS EQUIPMENT LOAN AGREEMENT OR SUPPLIER'S USE OF THE HP EQUIPMENT.
- 11. TERMINATION. Upon expiration or earlier termination of the Term, SUPPLIER shall (i) return to HP all HP Equipment within [*], or (ii) purchase the HP Equipment pursuant to Section 12 below. In the event that SUPPLIER fails to return the HP Equipment to HP upon expiration of the Term within such [*] period, SUPPLIER shall be deemed to have elected to purchase the HP Equipment, and HP will invoice SUPPLIER accordingly.
- 12. PURCHASE OPTION. Upon expiration of the Term, SUPPLIER may elect to purchase the HP Equipment from HP under HP's then current standard terms and conditions, provided that such HP Equipment shall not be purchased for resale. Upon purchase, such HP Equipment will be provided with HP's then current standard warranty provisions for used equipment. The purchase price for HP Equipment purchased under this Section 12 will be [*]. No other [*] or [*] will apply. Such purchase will not qualify for any [*] or [*] under any other agreement which SUPPLIER may have with HP.
- 13. GENERAL PROVISIONS.
 - (i) This Equipment Loan Agreement may not be assigned by SUPPLIER.
 - (ii) This Equipment Loan Agreement and any attachments constitute the entire agreement between the parties relating to transactions hereunder and will supersede any previous communication, representation or agreement by either party, whether oral or written. Any modifications or amendments must be in writing and signed by both parties
 - (iii) This Equipment Loan Agreement shall be governed by and construed in accordance with the laws of the State of California, exclusive of its choice-of-law provisions.

[SUPPLIER]	HEWLETT-PACKARD COMPANY
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

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[HEWLETT PACKARD LOGO]

ATTACHMENT (A)

HP EQUIPMENT SCHEDULE

EQUIPMENT LOANED TO :

Description	Model Number	HP Part #	Qty	List Price	Total	Date Shipped	Serial Number
-------------	-----------------	-----------	-----	---------------	-------	-----------------	---------------

Total value for above equipment less discount: \$

SOFTWARE:

LICENSE TYPE:

LOCATION(S):

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Date:
5/15/2002

Configuration
Specification

Page 1 Attachment A

[*]

Revision 0

[*]

[HEWLETT PACKARD LOGO]

ACKNOWLEDGED:

[SUPPLIER]

HEWLETT-PACKARD COMPANY

By: _____

By: _____

Print: _____

Print: _____

Title: _____

Title: _____

- - - - -

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Date:
5/15/2002

Configuration
Specification

Page 2 Attachment A

[*]

Revision 0

[*]

EXHIBIT (F)

CONFIDENTIAL DISCLOSURE AGREEMENT

This page is intentionally left blank, with a copy of all current HP / Supplier Confidential Disclosure Agreements appropriately captioned and inserted immediately following this page.

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Date:
5/15/2002

Configuration
Specification

Page F-1

[*]

Revision 0

[*]

EXHIBIT (G)

RECIPIENTS FOR RECEIPT OF NOTICES

FOR HP:

BUSINESS CONTACT:

8000 Foothills Blvd.
MS 5597
Roseville, CA 95747
Telephone:
email:

TECHNICAL CONTACT:

8000 Foothills Blvd.
MS 5601
Roseville, CA 95747
Telephone:
email:

ESCALATION CONTACT:

FOR SUPPLIER:

BUSINESS CONTACT:

[Brocade contact info here]
1745 Technology Drive
San Jose, CA 95110
Telephone:
email:

TECHNICAL CONTACT:

[Brocade contact info here]
1745 Technology Drive
San Jose, CA 95110
Telephone:
email:

ESCALATION CONTACT:

[Brocade contact info here]

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THE OMITTED PORTIONS.

Date:
5/15/2002

Configuration
Specification

Page G-1

[*]

Revision 0

[*]

EXHIBIT (H)

HP SUPPLIER QUALITY ASSURANCE REQUIREMENTS
AND ADDITIONAL WARRANTIES

-----HEWLETT-PACKARD CO.-----

This page provides a running history of changes for a multi-page drawing. List all changes below, referencing page number and section number, if applicable. Be concise when describing changes. If extensive revisions have been made, a general statement that the document has been "revised and redrawn" is permissible.

LTR.	REVISIONS	DATE	INITIALS OEM ENGINEER
A	Preliminary Draft	10/28/02	

[HP PROPRIETARY LOGO]

This document is the property of Hewlett-Packard Company (HP) and contains confidential and proprietary information of HP. Neither it, nor the information contained herein shall be disclosed to others, or duplicated, or used by other except as authorized by HP writing.

1.0 PURPOSE

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Date: 5/15/2002	Configuration Specification	Page H-1
[*]	Revision 0	[*]

The purpose of this Quality/Reliability Requirements Document is to establish an understanding and agreement between Hewlett-Packard (HP) and Seller with regard to quality and reliability expectations and responsibilities. The terms Supplier and Seller are used interchangeably in this Quality/Reliability Requirements Document.

It is HP's objective to receive Product of the highest possible quality and reliability with the lowest cost of ownership. The Product must consistently meet or exceed the requirements of this document and the individual specifications applicable to each Product. It is HP's expectation that Supplier shall strive to ship defect-free, fully tested Product as measured at the first operational test at HP. Repaired units are subject to the same Product Specifications as when originally shipped.

HP's objective is to work in close cooperation with Supplier to resolve any quality issue, and expects the Supplier to work diligently to resolve any quality issue.

2.0 GENERAL

This exhibit specifies quality and reliability requirements for Switch products and components and modules attached or included there in.

3.0 DEFECTIVE PRODUCT

HP shall inform Supplier of any units or lots that fail, and provide Supplier with yield percentages. Defective units or lots will be shipped to Supplier's facility as instructed by Supplier. Supplier shall test and verify all failed units, and provide the data of failure symptoms observed or NTF (No Trouble Found), on all units returned from HP worldwide manufacturing sites.

3.1 REJECTION CRITERIA:

A unit will be rejected if it violates Product Specification, or for any one of the following reasons:

1. Functional failure

a. Integrity Test.

Power-on Self Test (POST) is an integrity test that is performed at boot. POST determines whether each component (memory, power supply, motherboard, LEDs, etc.) is present, connected properly and responding to a signal sent to it.

b. Firmware check.

-Correct Firmware revision (see configuration specifications document for firmware revision), will be checked. -Check License key installed if applicable.

2. Incorrect Product Revision

a) HP revision

b) Brocade Revision

3. Part and Product Labeling Discrepancies

a) Incorrect, illegible or non-permanent part number (HP or BROCADE)

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- b) Exterior labels: missing, misprinted, damaged or loose regulatory, dual power supply warning, product number and front bezel labels.
 - c) Interior Labels: missing, misprinted, damaged or loose FRU and Supplier specific labels.
4. Cosmetic Damage
- a. Exterior - front bezel, top cover and chassis scratches, nicks, marks, raw edges, and rough finishes.
 - b. Interior - loose grommets, misalignments, wire cuts, and improper wire harness routing
5. Incorrect Jumper Configurations
6. Packaging Discrepancies
- a) Check for damage during shipment and determine if it is carrier related
 - b) Missing, misprinted or loose packaging labels.
 - c) ESD protection or labels missing
 - d) Failure to meet the HP Packaging Specifications
7. Mechanical dimensions not met
8. Broken or damaged connectors as received from the Supplier

4.0 AUDIT/INSPECTION TEST PROCESS

4.1 FIRST ARTICLE INSPECTION

First production shipment to HP will be inspected at Brocade to verify that product meets all conditions listed in the Configuration Specification. The first article inspection will include a review of the following items:

- a) Packaging (check for damage during shipment)
- b) Identification (labeling of product and package)
- c) Content (proper components in the package)
- d) Configuration (correct revisions, jumper settings, etc)

4.2 HP INCOMING INSPECTION AUDIT

All new suppliers must demonstrate relevant process control through a quality system audit. HP shall thoroughly inspect the [*] units received from the Supplier. If there are any functional failures or cosmetic failures HP has the right to [*] immediately.

Incoming inspection will include a review of the following items:

- a) Packaging (check for damage during shipment)
- b) Identification (labeling of product and package)
- c) Content (proper components in the package)
- d) Configuration (correct revisions, jumper settings, etc)
- e) Operation (HP manufacturing test)
- f) Firmware level and license key.

All failures (first article and incoming inspection) require a corrective action report completed by the Supplier Per the attached chart If the Supplier needs the defective unit to determine the root cause, the Supplier shall complete a corrective action report per the attached chart. The report shall contain detailed explanation of the root cause and corrective action(s) performed. HP shall verify the report during the audit.

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ITEM	LOWER BOUNDARY	UPPER BOUNDARY	COMMENTS
Reproduced Failures	[*]	[*]	Notify if longer than stated
I.D. Root Cause	[*]	[*]	Notify if longer than stated
Short Term Containment	[*]	[*]	Notify if longer than stated
Implement CLCA	[*]	[*]	Notify if longer than stated

Note: Cumulative, From receipt at Service Center

4.3 DOCK-TO-STOCK

Product will move to Dock-To-Stock status after successful completion of Incoming Inspection Audit as listed in Section 3.2. Upon successful completion of First Article Inspection and Incoming Inspection Audit, subsequent shipments will not be inspected as they are received by HP-NSSO.

4.4 OOBA INSPECTION

OOBA is performed after a [*] Final Inspection on the BROCADE manufacturing line. The focus of OOBA is to screen for failures, rectify any lots with problems, and implement corrective actions based on the observed failures.

The In-Process Acceptance Limit has been established and specified in the following chart.

The In-Process Lot Sample Inspection shall be used when determining the Q1 score for the TQRDC/E review.

DPM added as a column in Table in 5.1

If the DPM goal is not met, Brocade will provide [*] conference calls until quality meets the stated goal.

Lot Sample Inspection Criteria 1) unit packaging; 2) cosmetic issues; 3) part and product labeling; 4) integrity test & firmware check.

5.0 QUALITY / RELIABILITY

5.1 AFR (ANNUAL FAILURE RATE) / MTBF (MEAN TIME BETWEEN FAILURES)

The AFR Limits are defined in the following AFR Chart. The Field Failure Rate (AFR) Limit shall be used when determining the Quarterly score for the TQRDC/E review. Limits will be reviewed periodically to determine appropriate rates.

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Date:
5/15/2002

Configuration
Specification

Page H-4

[*]

Revision 0

[*]

PART DESCRIPTION	HP	FIELD FAILURE		MTBF (HRS)	DPM
	PART NUMBER	RATE (AFR)	LIMIT		
3800	[*]	[*]	[*]	[*]	[*]
3600	[*]	[*]	[*]	[*]	[*]
3200	[*]	[*]	[*]	[*]	[*]
SW12000	[*]	[*]	[*]	[*]	[*]
Blades	[*]	[*]	[*]	[*]	[*]
3800 Base EL	[*]	[*]	[*]	[*]	[*]
3800 Full Performance	[*]	[*]	[*]	[*]	[*]
3200 Base EL	[*]	[*]	[*]	[*]	[*]
3200 Full Performance	[*]	[*]	[*]	[*]	[*]
3900	[*]	[*]	[*]	[*]	[*]

These numbers do not include NTFs and Handling damages.

[*]

5.3 [*] FAILURE CALCULATION

AFR is calculated by dividing the number of supplier-caused field returns in the past month by the number of products installed in the field, and then multiplying the result by 12 (to annualize) and by [*]. Only products that were shipped within the past [*] are included in the calculation.

5.4 PRODUCT TRACE ABILITY

Supplier shall maintain trace ability records for all regulatory-controlled products listed in agency reports. Such products must be traceable from the source of manufacture by lot or date code, through the manufacturing process, and to their final destination via serialization. Trace ability information shall be provided to HP upon request.

5.5 FAILURE ANALYSIS EXPECTATIONS

Supplier shall test and verify all unit failures returned by HP worldwide manufacturing organizations and HP field. The supplier shall promptly institute the root cause/failure analysis report and corrective action that may be required to prevent any further rejects for such cause.

Failure analysis first evaluation shall be completed to the component level (Root cause) per the attached chart. of the unit at Brocade. If problem cannot be detected with typical diagnostic tests

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Date:
5/15/2002

Configuration
Specification

Page H-5

[*]

Revision 0

[*]

and burn-in/stress testing is required, then an evaluation report will be sent within [*] of receipt of unit. Complete Failure Analysis report will be completed in [*] (average) and sent to OEM Engineering at HP.

Item	Lower boundary	Upper Boundary	Comments
Reproduced Failures	[*]	[*]	Notify if longer than stated
I.D. Root Cause	[*]	[*]	Notify if longer than stated
Short Term Containment	[*]	[*]	Notify if longer than stated
Implement CLCA	[*]	[*]	Notify if longer than stated

Note: Cumulative, From receipt at Service Center

6.0 QUALITY DATA EXPECTATIONS

Quality data supplied by Supplier shall include, but not be limited to, process yield information and corresponding corrective actions regarding failures.

6.1 SUPPLIER'S RESPONSIBILITY

Supplier shall provide the following reports to HP- OEM Engineer on a monthly basis:

Quarterly summary of all reports contained in following monthly report section.

6.1.1 MONTHLY REPORTS

Supplier shall provide the following reports to HP- OEM Engineers on a monthly basis:

- Failure Analysis Status Report
- [*]
- [*]
- [*]
- [*]
- [*]
- [*]
- [*]
- [*]

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OTHER REPORTS

Supplier shall provide the following additional information to the HP Fibre Channel OEM Engineer.

- (i) Failure Analysis (FA) Report upon completion.

7.0 COMMUNICATION EXPECTATIONS

7.1 PRODUCT CHANGES REQUIRING HP APPROVAL

The evaluation period for changes is covered in the HP/Brocade Purchase Agreement. The intent is to allow HP sufficient time to review the proposed change and Supplier qualification data and to perform additional testing, if necessary. Supplier must notify HP within as specified in the agreement of upcoming changes in order to assure a smooth implementation. Changes must be communicated in writing in the form of an Engineering Change Request (ECR) document and sent to the OEM Engineer. Changes that must be communicated in writing are:

- (i) Form, fit or function
- (ii) [*]
 - a. [*]
- (iii) [*].

7.2 PROCESS CHANGES REQUIRING HP APPROVAL

Supplier shall notify HP of any major changes to the manufacturing process in writing 30 days prior to proposed implementation. These include:

- 1. [*]
- 2. [*]
- 3. [*]
- 4. [*]

7.3 SHIPMENT HOLD NOTIFICATION

Supplier shall notify HP verbally of any line-down or ship hold situations that will adversely affect HP shipments or HP's installed base within [*] of such situation occurring. A written analysis of HP's inventory exposure and a recovery plan, if applicable, shall be provided within [*] of such situation occurring.

7.4 WEEKLY PHONE CONFERENCE

Supplier will maintain a weekly conference call with HP to address all open issues and will maintain a weekly HP-BROCADE CPE Action Log .

8.0 SUPPLIER QUALITY SYSTEM

- i) Supplier is expected to have a quality system in place [*].
- ii) Supplier shall control every critical point in the manufacturing/test process and maintain documentation as evidence of such process controls (e.g. control charts).
- iii) Supplier shall provide details of its test process. [*].

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EXHIBIT (I)

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Date:
5/15/2002

Configuration
Specification

Page I-1

[*]

Revision 0

[*]

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Date:
5/15/2002

Configuration
Specification

Page I-2

[*]

Revision 0

[*]

EXHIBIT (J-1)

[*] REQUIREMENTS

This Exhibit further sets forth the terms and conditions for [*] for shipping, receiving, monitoring, and transfer of OEM Products within the designated pre-merger HP [*] to be used under this Agreement.

1.0 [*] REQUIREMENTS - NORTH AMERICAN REGION

- 1.1 [*] OPERATION. During the Term of this Agreement, HP will provide the warehouse space and associated process support (including warehouse functions) for the North American [*] as listed in Exhibit (B).
- 1.2 [*] INSURANCE COVERAGE. HP will maintain Commercial General Liability Insurance (including broad form property damage) for loss or property damage that may occur [*] [*] caused by HP or its agents, employees, or subcontractors.
- 1.3 [*] ACTIVITY. HP shall have the sole right [*] [*] [*]. Supplier shall have daily visibility to the [*] [*] [*] by reviewing the reports contained in the [*] folder and the Activity folder that will be available via the E-Room.
- 1.4 FREIGHT MANAGEMENT. Terms for Supplier freight shipments to the North American [*] shall be:
 - FOB, named port of shipment or Supplier domestic dock ("Shipping Point") for ocean or surface mode, or;
 - FCA, named port of shipment or Supplier domestic dock ("Shipping Point") for air mode.

Product will be transferred to the HP-designated common carrier at the Shipping Point. Management and payment of freight will thereafter be the responsibility of HP. The following diagram illustrates the key relevant points:

- 1.5 TITLE AND RISK OF LOSS. Title to OEM Product hardware and media ordered under this Agreement for shipment to the North American [*] will pass from Supplier to HP upon [*] of such unit(s). Risk of loss or damage for each OEM Product unit shipped to the North American [*] will pass from Supplier to HP

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upon Supplier's delivery of the OEM Products to the common carrier specified by HP, subject to the provisions of this Exhibit (J) and Article (3) of this Agreement.

- 1.6 WAREHOUSE PROCESS. All activity of OEM Products shipped to the [*] will be regularly monitored against performance expectations as set forth in a Business Fundamental Metrics review and will be inspected for obvious in-transit damage and verified against the Supplier's packing list for proper piece count. Typical cycle time to receive goods on SAP after arrival at the dock will normally range between [*] depending on dock activity and truck load size. Physical receipts will be systematically received on SAP the same day. All [*] [*] is tracked by receipt date. All [*] HP are transacted on a [*].
- 1.7 E-ROOM COSTS. HP will assume [*] costs associated with the [*], excluding [*]. Costs paid by HP will include [*]. Any information contained within the E-Room shall be considered and treated as HP Confidential.
- 1.8 SETTLEMENT DOCUMENTATION. HP [*] make reasonable efforts to provide Supplier [*] [*] via the E-Room confirming [*][*]. Supplier must place a unique settlement reference number in the body of their invoice as well as make reference to the blanket PO number in the PO reference field of their invoice form. Settlement documentation shall consist of the following:
 - (a) Settlement Summary Report - a weekldaily report available at the opening of each Day, containing summary information for the weeklydaily settlement process and the unique settlement number.
 - (b) Settlement Summary Detail Report - a weekly report available at the opening of each Day, containing detailed transaction information for the weekldaily settlement process.
- 2.0 [*] REQUIREMENTS - EUROPEAN REGION
- 2.1 [*] OPERATION. After the Effective Date of this Agreement, HP will provide Supplier reasonable assistance in [*] associated process support (including [*] functions) for the [*] for the European Region as listed in Exhibit (B) [*]. Such assistance from HP is intended to [*] service provider; however, [*].
- 2.2 [*] INSURANCE COVERAGE. [*] will be responsible for maintaining Commercial General Liability Insurance (including broad form property damage) for loss or property damage that may occur to the OEM Product [*] [*] for the European Region.

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Date:
5/15/2002

Configuration
Specification

Page J-1-2

[*]

Revision 0

[*]

- 2.3 [*] ACTIVITY. HP shall have the sole right [*] [*] [*]. Supplier shall have daily visibility of [*] by reviewing the reports published [*]. These reports will either be e-mailed to Supplier on a daily basis or placed in the E-Room on a daily basis in separate appropriately labeled folders.
- 2.4 INBOUND FREIGHT MANAGEMENT. Terms for Supplier freight shipments to the [*] for the European Region shall be F.O.B. [*] [*]. [*] shall be responsible for [*].
- 2.5 OUTBOUND FREIGHT MANAGEMENT. Upon [*], OEM Products will be transferred to the HP selected carrier at the [*]. Management and payment of freight will thereafter be the responsibility of HP. The following diagram illustrates the key relevant points:
- 2.6 TITLE AND RISK OF LOSS. Title to OEM Product hardware and media ordered under this Agreement for shipment to the European [*] will pass from Supplier to HP upon [*] of such unit(s). Risk of loss or damage for each OEM Product unit shipped to the European [*] will pass from Supplier to HP upon Supplier's delivery of the OEM Products to the common carrier specified by HP, subject to the provisions of this Exhibit (J) and Article (3) of the Agreement.
- 2.7 WAREHOUSE PROCESS. [*] shall ensure that the warehouse service provider [*] will regularly monitor all [*] activity within the [*] against performance expectations as set forth in a Business Fundamental Metrics review and inspect all OEM Products for obvious in-transit damage and verify against the Supplier's packing list for proper piece count. Supplier will also ensure that typical cycle time to receive goods on [*] systems after arrival at the dock will normally range between [*] depending on dock activity and truck load size and that physical receipts will be systematically received on [*] systems the same day. All [*] [*] shall be tracked by receipt date, with all [*].
- 2.8 E-ROOM COSTS. HP will assume [*] costs associated with the [*], excluding [*]. Costs paid by HP will include [*]. Any information contained within the E-Room shall be considered and treated as HP Confidential.
- 2.9 SETTLEMENT DOCUMENTATION. Supplier will invoice HP [*]. Supplier will invoice HP using HP's standard invoicing process. The blanket PO number must be referenced on the invoice.

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Date:
5/15/2002

Configuration
Specification

Page J-1-3

[*]

Revision 0

[*]

3.0 ASSURANCE OF SUPPLY

3.1 SUPPLIER REQUIREMENTS. Supplier has the responsibility to drive their procurement, production, and shipping functions in part by utilizing the tools/data available in the E-Room and report [*] to deliver quality stock to the [*] [*].

3.2 BUSINESS FUNDAMENTAL METRICS REVIEW. Upon Supplier's request, HP will make reasonable efforts to meet as necessary to address with Supplier the following topics:

(a) Finished goods and WIP inventory levels at each party's location(s);

(b) Increases or decreases in the rolling Forecast;

(c) Current Supplier lead times;

(d) Buffer stock inventory levels;

(e) Other related topics as mutually agreed

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Date:
5/15/2002

Configuration
Specification

Page J-1-4

[*]

Revision 0

[*]

EXHIBIT (J-2)

[*] REQUIREMENTS

This Exhibit further sets forth the terms and conditions for [*] [*] for shipping, receiving, monitoring, and transfer of OEM Products [*] designated pre-merger [*] to be used under this Agreement.

Note: For purposes of this Attachment (A) only, all references to "Compaq" or "Buyer" will mean the "HP" and all references to "Seller" shall mean "Supplier" or "Brocade".

Subject to the terms and conditions of the Amendment above, this Attachment (A) shall continue to apply as the optimized delivery and flexibility model specifically for pre-merger CompaqHP [*] carrying OEM Products, and shall be incorporated by reference to the Amendment.

PERIOD OF THE EXHIBIT

This Exhibit will become effective on [*] and the duration of the Exhibit will be coterminous with the Agreement.

DEMAND PULL EXHIBIT

[*]Brocade (hereinafter "Seller") hereby agrees to provide Director Products identified in this Optimized Delivery Model Director Demand Pull (hereinafter "Product") pursuant to the terms and conditions identified herein. Tables 1 and 2 below define the terms and conditions under which CompaqHP and Seller will operate. CompaqHP (hereinafter "Buyer") and Seller agree to negotiate and update in writing the Products included in Table 1 below as needed.

Buyer utilizes [*] programs at designated [*] for its Optimized Delivery Model. At the initial signing of this Exhibit, the two authorized [*]. Additional [*] may be added in the future upon agreement of the Buyer and Seller.

CompaqHP Sites are those Buyer individual locations authorized by Buyer to perform the obligations of the Agreement and purchase Products in accordance with this Optimized Delivery Model Exhibit.

DEMAND PULL FLEXIBILITY TERMS

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Date:
5/15/2002

Configuration
Specification

Page J-2-1

[*]

Revision 0

[*]

Buyer will provide a forecast to Seller on a weekly basis. Such forecasts should be used [*]. Initial Buffer quantities as well as Minimum/Maximum quantities by Product will be established by Buyer's Sites and Seller at time of [*] implementation and will be adjusted accordingly as required. Buyer and Seller may hold [*] conference calls in order to monitor the pull activity, forecast accuracy, and inventory levels.

OPTIMIZED DELIVERY MODEL - BUFFER STOCK SUPPORT

TABLE 1 - BUFFER STOCK	BUYER	SELLER	[*]	[*]
DESCRIPTION	PART NUMBER	PART NUMBER	[*]	[*]
SAN Director and Product Manager Software SW SAN CORE SWITCH/64 ALL	254508-B21254512-B21 A6509-63001DS-DMGGD-AA	DS-DSGGE-AB32-Port ED-6064	[*]	[*]
SW SAN SWITCH 2/8 EL ALL Laptop and EFCM Software	258707-B21254514-B21 DS-DMGG0-AA	DS-DSGGD-ACEFCM	[*]	[*]
SW SAN SWITCH 2/16-EL ALLLong Wave Port Card	283056-B21254515-B21 DS-DMGGD-AC	DS-DSGGD-ADLong Wave Port Card	[*]	[*]
CORE SWITCH BLADE 16P ALLShort Wave Port Card	254516-B21 286352-B21 A6510-60001DS-DMGGD-AD	DS-DSGGE-AUShort Wave Port Card	[*]	[*]
SAN SWITCH 2/16 2 PWR ALLCombo Card	287055-B21254517-B21 DS-DMGGD-AE	DS-DSGGD-BACombo Card	[*]	[*]

Buffer Stock is defined as the amount of Product available in the [*] to allow Buyer the ability to pull-in existing demand.

The Buffer Stock quantities defined in Table 1 in general should equate to [*] of Product minimum and [*] maximum based on each Buyer's Site forecast. Buyer reserves the right to amend these quantities at any time to correspond to Buyer's latest production requirements. A request by Buyer or Seller to draw down Buffer Stock shall be made in writing.

TABLE 2	[*]	[*]
ODM BUFFER STOCK		
Buffer Implementation	November, 2001	DATE OF THIS [*]

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AGREEMENT

Buffer Location	[*]	[*]
Deliverable	[*]	[*]
Pull Authorization / Pull Confirmation	Trader WEB Site	Trader WEB Site
Compaq HP Liability	Buffer Stock in [*] (Refer to Material Liability)	Buffer Stock in [*] (Refer to Material Liability)

MATERIAL OWNERSHIP

Seller agrees to deliver Products to the [*] as agreed to by Buyer and Seller. Seller and Buyer agree to negotiate in good faith adding other [*] locations to meet Buyer's distribution requirements. These Products shall remain as [*] designated site by the Buyer. Payment terms are per the Agreement.

BUFFER REPLENISHMENT

Buyer's manufacturing sites operate [*]. Seller is expected to maintain the Buffer Stock quantities as identified in Table 1 at each of the [*] as specified in Table 2. Product which is pulled [*] by Buyer should be replenished by Seller as required, based on the Compaq Site specific established Minimum/Maximum requirements.

CALCULATING BUFFER STOCK

Once a week, each CompaqHP Site ([*] and such sites as may be agreed to by the parties) will provide Seller with updated information regarding Buyer's forecast manufacturing volumes for the ODM part numbers identified in Table 1 via the Trader Web Site. Seller will respond via the Trader Web Site with their supply response covering the forecast period and to confirm that Buffer Stock quantities are in place at the respective [*].

The Trader Web Site forecast is a planning tool. Therefore, it is important that the Seller and the Compaq Site buyer and/or Site Commodity Manager review the Buffer Stock and minimum/maximum Product requirements on a weekly basis or as frequently as required.

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Should Seller be unable to support maximum volumes, as listed on the Trader Web Site, a Seller representative will notify the appropriate CompaqHP site Commodity Site Buyer to review and adjust as required. Buffer stock quantities are determined by the CompaqHP Site Buyer but are typically equal to two weeks average inventory based on an eight week forecast.

FORECAST CONFIRMATION

By [*] central time on [*], Seller is required to provide a supply response to the Trader Web Site forecast.

BUFFER STOCK CONFIRMATION

In addition to the confirmation, by [*], Seller is required to provide current Buffer Stock confirmation to each of the Buyer's sites.

PROCEDURE FOR RELEASING MATERIAL

Scheduling Agreements, transmitted electronically via email and/or Blanket Orders, shall be used by Buyer for ease of order administration by both parties. The use of scheduling agreements and/or blanket orders across multiple pricing periods does not preclude Buyer from paying the price in effect on the date of each receipt. Confirmation of the Scheduling Agreements shall be returned in the form of an email, within [*] after receipt.

Buyer may make adjustments to scheduling agreements and/or blanket order duration, volume per line item and price(s) [*] pending notice to Seller of such changes. Buyer reserves the right to amend scheduling agreements and/or blanket order(s) [*] to correspond to Buyer's latest production requirements over any specified period of time.

DELAYS IN USAGE

In the event any Product unit(s) shall remain [*] for greater than [*], then, upon written notification from Seller to Buyer of Seller's request [*], Buyer shall elect to either purchase such inactive units through [*]. In the event Buyer does not confirm [*].

MATERIAL LIABILITY FOR TERMINATION

Except as otherwise agreed by the parties, material liability for Product supplied in support of Buyer's published production plans and/or forecasts is limited to two weeks Buffer Stock and any unique material. Seller agrees to use commercially reasonable efforts to mitigate the liability to Buyer.

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Date: 5/15/2002	Configuration Specification	Page J-2-4
[*]	Revision 0	[*]

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Product (s) are unique in terms of firmware, labeling, manuals and packaging. To mitigate Buyer's liability Seller may be able to rework these Product (s) to Seller's standard product and make such Product available to Seller's other customers. Buyer and Seller agree to negotiate rework and any other restocking charges.

ADDITIONAL TERMS

Buyer and Seller agree that Buyer only has the right [*], whereas Seller reserves the right to add (replenish) or remove (recycle) Product as Seller sees fit, so long as other provisions of this agreement are maintained.

END OF PROGRAM LIFE

As soon as commercially reasonable, CompaqHP will notify Supplier of the anticipated end of life for each program. Upon such notification, or determination that the Program(s) have reached end of life, CompaqHP and Supplier agree to jointly develop a formal detailed EOL Plan.

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Date:
5/15/2002

Configuration
Specification

Page J-2-5

[*]

Revision 0

[*]

EXHIBIT (K)

HP REGIONAL TRADE GUIDELINES

SECTION 1 HP TRADE BASICS

1.1 TRADE COMPLIANCE

Each Supplier shipping location bears [*] for ensuring its own import/export compliance; however, HP is responsible for setting baseline policies and guidelines for Supplier operations. The following is distributed in order to clearly convey HP's minimum trade compliance expectations and to provide an operations reference tool for Supplier locations; responsibility for developing and implementing procedures to comply with the following belongs solely to the Supplier .

1.2 TERMS OF SALE

Supplier is responsible for implementing the sales term (eg. FOB, FCA, DDP, etc.) negotiated with HP. Supplier's responsibilities may include, but are not limited to, the following:

- Warehouse storage at point of origin
- Warehouse labor at point of origin
- Export packing
- Loading at point of origin
- Inland freight to origin port
- Port receiving
- Loading on vessel
- International freight/transport
- Customs clearance at destination port
- Delivery to final destination

1.3 COUNTRY OF ORIGIN

Each Supplier site is responsible for determining the appropriate country of origin ("COO") for the product(s) it manufactures/assembles and for marking the products accordingly. Further, each site must ensure that shipping documentation and EDI confirmation signals accurately convey shipment-level COO data; Country of Origin is a mandatory line-item data element for all HP EDI shipping confirmation (eg. 856/4010) signals. Finally, each site must cooperate fully with HP in supplying data to facilitate HP's origin reporting requirements and qualification for preferential origin programs such as NAFTA, IFTA, FIM, EXIM and the like including, but not limited to, all requested origin analysis, certificates of origin, manufacturer's affidavits, data transmissions, and special reporting.

Additional HP COO marking/labeling guidelines are set out in SECTION 2 of this Exhibit.

1.4 VALUATION

For each and every transaction where HP is to be importer of record into the US, the Supplier site is responsible for ensuring that commercial documentation accurately reflects the actual price paid or payable

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between HP and the site. It is Supplier's responsibility to reconcile its financial records against commercial documentation in order to validate HP's use of Transaction Value for declarations to US Customs under Section 402(b)(1) of the Trade Agreements Act of 1979 (TAA; 19 U.S.C. 1401a); no alternate valuation methodologies are used or approved for HP transactions.

Zero dollar values are unacceptable for US Customs purposes. Where items are provided "free of charge," the commercial invoice must reflect fair market value for the products; the nomenclature "Value for Customs Purposes Only," may be used in these instances.

1.5 SHIPPING DOCUMENTATION

All Supplier sites must be capable of producing accurate and complete shipping documentation for each shipment. Supplier is responsible for knowing and understanding shipping standards applied in the normal course of international business and for knowing and understanding additional HP requirements outlined in this Exhibit.

1.6 RECORDKEEPING/REPORTING

Each Supplier site must comply with record-keeping, data-transmission, incident-reporting, and audit requirements set out in Section 4 of this Exhibit.

SECTION 2 LABELING/ MARKING

2.1 COUNTRY OF ORIGIN

A Product's country of origin is where the Product is wholly manufactured or the final location where a substantial transformation occurs. A Product is substantially transformed if the end product functions in a significantly different manner than the individual components. As a practical matter, Customs looks to whether the final assembly has a new "name, character, and use" from the component level parts. Further clarification regarding HP country of origin standards is provided in Trade Policy CP020-27.

2.2 MARKING

Every article of foreign origin entering the United States must be marked with the English name of the country of origin preceded by the HP standard nomenclature: "PRODUCT OF." This marking must appear in a conspicuous, legible, indelible and permanent form on the outermost packaging (e.g. pallet), on the consumer packaging (box in which the item will arrive to the ultimate consumer), and on the Product itself.

For the human readable portion of HP's standard label, COO must be indicated by the complete country name; abbreviations are unacceptable. For the barcode scan area, COO should be represented by the 2-digit ISO COUNTRY CODE; one digit codes (eg. A = US) are NO LONGER ACCEPTABLE nor supported by HP. Material with multiple COOs must be segregated, separately palletized (if applicable) and separately scanned so as to be represented on the commercial invoice as individual invoice line items with individual COOs.

COO Product markings/labels must ALWAYS match COO indicated on the commercial invoice and reported to HP via the shipping confirmation signal. Supplier is responsible for implementing procedures

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to ensure that labels are checked for accuracy and audited against shipping documentation/data transmissions.

Further clarification regarding HP marking standards is provided in HP's COO Marking Policy, as well as HP's Country of Origin Encoding spec (EDB Drawing # 137169).

2.3.1 COO CHECKLIST

Supplier must adhere to the following COO requirements:

- MUST implement processes to determine correct COO for Products.
- MUST ensure that COO is labeled on outermost packaging conspicuously, legibly, indelibly, and permanently.
- MUST ensure that COO is labeled on consumer packaging (box in which the item will arrive to the last person in the US who will receive it in its imported form) conspicuously, legibly, indelibly, and permanently.
- MUST ensure that COO is labeled directly on the Product conspicuously, legibly, indelibly, and permanently.
- MUST ensure that the accurate COO prints in the designated field on the commercial invoice.
- MUST ensure that COO designated for a particular Product to be shipped is consistent across all labels and documentation.

SECTION 3 SHIPPING DOCUMENTATION

3.1 DOCUMENTATION REQUIREMENTS

Supplier must adhere to the following trade requirements:

- MUST produce accurate and complete shipping documentation for each and every shipment. All text must be in English; all monetary amounts must be represented in US dollars.
- MUST be able to reproduce shipping document on demand (with or without requested modifications and/or corrections) for a minimum of 60 days after shipment.
- MUST have internal audit procedures in place for verification/correction of all outbound documentation issues including, but not limited to, proper print alignment. Where data is printed more than 1/16" off assigned documentation fields, the documentation MUST be discarded and reprinted before shipment release.

3.2 COMMERCIAL INVOICE

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Date:
5/15/2002

Configuration
Specification

Page K-3

[*]

Revision 0

[*]

The following fields are required for each an every commercial invoice:

- SHIP TO ADDRESS Address to which the Goods are being shipped.
PROVIDED BY EDI FEED FROM HP.*
- BILL TO ADDRESS Address to which billing information will be
sent.
PROVIDED BY EDI FEED FROM HP.*
- SHIP TO ID # Specific ID # assigned to each Ship To
address.
PROVIDED BY EDI FEED FROM HP.*
- BILL TO ID # Specific ID # assigned to each Bill To
address.
PROVIDED BY EDI FEED FROM HP.*
- SHIP ID/INVOICE NO. Unique number assigned at the time of
shipment to each outbound shipment. This
number should never be repeated and should
appear on the shipping label tying the
freight to the commercial invoice for a given
shipment.
ASSIGNED BY THE SUPPLIER SITE.
- DATE Actual shipment date.
ASSIGNED BY THE SUPPLIER SITE.
- PAGE Commercial invoice page number. Multi-page
invoices will follow the format eg. 1/4, 2/4,
etc.
ASSIGNED BY THE SUPPLIER SITE.
- BILL OF LADING NO. Air waybill number utilized for transport.
ASSIGNED BY THE SUPPLIER SITE.
- SHIPPED VIA HP-approved courier/freight forwarder
handling the transport.
PROVIDED BY EDI FEED FROM HP.*
- FREIGHT TERMS Party responsible for freight charges. (Eg.
"Pre-paid," "collect")
PROVIDED BY EDI FEED FROM HP.*
- TERMS OF SALE Incoterm designating responsibilities of the
parties. (Eg. EXW, FCA, DDP)
PROVIDED BY EDI FEED FROM HP.*
- TERMS OF PAYMENT Agreed-upon payment terms. (Eg. "Net 45
days")
PROVIDED BY EDI FEED FROM HP.*
- CUSTOMER P.O. NO. Purchase order number assigned to the
transaction
PROVIDED BY EDI FEED FROM HP.*

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[HEWLETT PACKARD LOGO]

- SALES ORDER NO. Sales Order number under which the shipment is placed.
PROVIDED BY EDI FEED FROM HP.*
- LINE ITEM Sales Order line item fulfilled by the item shipped.
PROVIDED BY EDI FEED FROM HP.*
- PRODUCT NO. HP part number assigned to the Product.
PROVIDED BY EDI FEED FROM HP.*
- DESCRIPTION Description of the Good(s).
PROVIDED BY EDI FEED FROM HP.*
- QUANTITY Number of units of the particular part shipped.
PROVIDED BY EDI FEED FROM HP.*
- UNIT PRICE Actual dollar value to be paid to the Supplier shipper for one unit of the particular part number.
PROVIDED BY EDI FEED FROM HP.*
- EXTENDED PRICE Sum of quantity field multiplied by unit price.
PROVIDED BY EDI FEED FROM HP.*
- TOTAL VALUE Sum of extended values for all line items.
PROVIDED BY EDI FEED FROM HP.*
- COUNTRY OF ORIGIN The country in which the Goods were manufactured.
DETERMINED AND APPLIED BY THE SUPPLIER SITE.
- LICENSE Export License exception determined by HP trade.
PROVIDED BY EDI FEED FROM HP.*
- ECCN Export Commodity Control # determined by HP trade.
PROVIDED BY EDI FEED FROM HP.*
- HTS Harmonized tariff schedule classification determined by HP trade
PROVIDED BY EDI FEED FROM HP.*
- DESTINATION CONTROL Statement required to be printed on all commercial invoices per the US Export Administration Regulations.
PROVIDED BY EDI FEED FROM HP.*

In accordance with controlling customs requirements, HP also requires line level itemization of the following:

- - Desktop computers necessitate separate itemization of the CPU, mouse, and keyboard.

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- All items shipped with "dropped-in-the-box" (uninstalled) software necessitate separate software itemization. Software country of origin is the location where programming/recording is installed on the media. Software value is to be indicated per the media (unrecorded CD, diskette, or tape) value only.

* All data transmitted from HP must be verified for accuracy. Supplier is responsible for implementing procedures demonstrating reasonable care in the verification of all data received from HP.

SECTION 4 Reporting/ Recordkeeping

4.1 REPORTING/DATA TRANSMISSIONS

The following trade data elements must be printed on each commercial invoice and must be returned to HP via the standard electronic/EDI Shipping Confirmation signal:

- Country of Origin (line item level)
- HTS Classification (line item level)
- ECCN (line item level)
- License (line item level)
- Destination Control Statement

These are HP-required data elements for the Shipping Confirmation signal. Failure to transmit these items will result in signal rejection.

4.2 RECORDS

Each Supplier site must maintain a system for retention, retrieval and reproduction (for a period of not less than six calendar years from the date of each shipment) of original shipping, export, customs, import and other trade-related documentation ("Trade Control Records"), pertaining to the international transport of HP Goods. Such record keeping system will comport with the legal requirements of the U.S. and other nations including, but not limited to, requirements set out in Parts 762 and 772, U.S. Department of Commerce, Export Administration Regulations and the U.S. Customs Record-Keeping Regulations, 19 C.F.R. 163.

Supplier, upon receipt of written notice from HP, will collect, reproduce if required, and provide to HP (at Supplier's expense) originals and/or satisfactory copies of 100% of the Trade Control Records as HP may request from time to time. All HP requests for Trade Control Records must be fulfilled within 15 business days of HP's written request, or the response date required by an official government record production request or subpoena, whichever is the lesser time for response. Supplier will not destroy or render inaccessible any of the Trade Control Records relating to HP transactions, without having first obtained the express written permission from HP.

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Date:
5/15/2002

Configuration
Specification

Page K-6

[*]

Revision 0

[*]

4.3 TRADE INCIDENTS

Supplier will provide immediate notice to HP in the event of an action by U.S. or other national government customs/export authorities which relates specifically to Goods or Services provided to HP by Supplier. Such government communications and actions may include, but are not limited to, cargo detentions, cargo seizures, subpoenas, record production requests and search warrants. Issues, questions, or incidents arising pursuant to this section should be escalated to HP via the Supplier's designated HP representative (see TRADE website: <http://inline.HP.com/legal/trade/> for appropriate contacts).

4.4 AUDIT

Supplier will afford HP, and HP's duly appointed agents, reasonable access to Supplier's premises for trade compliance audit purposes. Supplier further agrees to fully cooperate with HP in this regard, to respond in a timely manner to HP's requests for production of Trade Control Records, and to comply with all remedial or corrective actions that HP may specify.

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Date: 5/15/2002	Configuration Specification	Page K-7
[*]	Revision 0	[*]

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Exhibit 12.1

Statement of Computation of Ratio of Earnings to Fixed Charges
(in thousands, except ratios)

	Fiscal Quarter Ended	
	January 25, 2003	January 26, 2002
Earnings (loss) from continuing operations before taxes	\$ (9,704)	\$ 16,448
Fixed charges from continuing operations		
Interest expense and amortization of debt discount and and issuance costs on all indebtedness	3,350	1,310
Interest included in rent	1,810	1,564
Total fixed charges from continuing operations	5,160	2,874
Earnings (loss) before taxes and fixed charges	\$ (4,544)	\$ 19,322
Ratio of earnings to fixed charges (1)	(0.9x) (2)	6.7x
Coverage deficiency	\$ 9,704	\$ --

(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 quarter ended January 25, 2003, the Company needed additional earnings of \$9.7 million 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 January 25, 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

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 January 25, 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