



**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 August 1, 2009

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 000-25601

**Brocade Communications Systems, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**77-0409517**

(I.R.S. Employer Identification No.)

**1745 Technology Drive**

**San Jose, CA 95110**

**(408) 333-8000**

(Address, including zip code, of registrant's principal executive offices and registrant's 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 has submitted electronically and posted on its corporate website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer       Accelerated filer       Non-accelerated filer       Smaller reporting company  
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

The number of shares outstanding of the registrant's common stock as of August 24, 2009 was 418,813,605 shares.

**BROCADE COMMUNICATIONS SYSTEMS, INC.**

**FORM 10-Q**

**QUARTER ENDED AUGUST 1, 2009**

**INDEX**

	<u>Page</u>
<b><u>PART I — FINANCIAL INFORMATION</u></b>	
<b><u>Item 1. Financial Statements</u></b>	
<u>Condensed Consolidated Statements of Operations for the Three and Nine Months Ended August 1, 2009 and July 26, 2008</u>	4
<u>Condensed Consolidated Balance Sheets as of August 1, 2009 and October 25, 2008</u>	5
<u>Condensed Consolidated Statements of Cash Flows for the Nine Months Ended August 1, 2009 and July 26, 2008</u>	6
<u>Notes to Condensed Consolidated Financial Statements</u>	7
<b><u>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</u></b>	33
<b><u>Item 3. Quantitative and Qualitative Disclosures About Market Risk</u></b>	50
<b><u>Item 4. Controls and Procedures</u></b>	51
<b><u>PART II — OTHER INFORMATION</u></b>	
<b><u>Item 1. Legal Proceedings</u></b>	52
<b><u>Item 1A. Risk Factors</u></b>	52
<b><u>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</u></b>	66
<b><u>Item 6. Exhibits</u></b>	67
<b><u>SIGNATURES</u></b>	69
<u>EX-10.1</u>	
<u>EX-10.2</u>	
<u>EX-10.3</u>	
<u>EX-10.4</u>	
<u>EX-10.5</u>	
<u>EX-31.1</u>	
<u>EX-31.2</u>	
<u>EX-32.1</u>	

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## **Forward-Looking Statements**

This Quarterly Report on Form 10-Q contains forward-looking statements regarding future events and our future results. All statements other than statements of historical fact are statements that could be deemed forward-looking statements, including, but not limited to, statements regarding future revenues, margins, expenses, tax provisions, earnings, cash flows, benefit obligations, debt repayments or other financial items; any statements of the plans, strategies and objectives of management for future operations; any statements concerning expected development, performance or market share relating to products or services; any statements regarding future economic conditions or performance; any statements regarding pending litigation, including claims or disputes; any statements of expectation or belief; and any statements of assumptions underlying any of the foregoing. Words such as “expects,” “anticipates,” “assumes,” “targets,” “goals,” “projects,” “intends,” “plans,” “believes,” “seeks,” “estimates,” “continues,” “may,” variations of such words and similar expressions are intended to identify such forward-looking statements. These statements are based on current expectations, estimates, forecasts and projections about the industries in which we operate, and the beliefs and assumptions of our management. Readers are cautioned that these forward-looking statements are only predictions and are subject to risks, uncertainties and assumptions that are difficult to predict, including those identified below under “Part II — Other Information, Item 1A. Risk Factors” and elsewhere herein. Therefore, actual results may differ materially and adversely from those expressed in any forward-looking statements. Further, we undertake no obligation to revise or update any forward-looking statements for any reason.

## PART I — FINANCIAL INFORMATION

## Item 1. Financial Statements

**BROCADE COMMUNICATIONS SYSTEMS, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(Unaudited)**

	Three Months Ended		Nine Months Ended	
	August 1, 2009	July 26, 2008	August 1, 2009	July 26, 2008
	(In thousands, except per share amounts)			
Net revenues				
Product	\$ 402,483	\$ 301,804	\$ 1,183,117	\$ 895,333
Service	90,797	63,892	248,054	173,107
Total net revenues	<u>493,280</u>	<u>365,696</u>	<u>1,431,171</u>	<u>1,068,440</u>
Cost of revenues				
Product	185,347	111,072	535,912	345,476
Service	47,488	41,419	132,606	107,728
Total cost of revenues	<u>232,835</u>	<u>152,491</u>	<u>668,518</u>	<u>453,204</u>
Gross margin				
Product	217,136	190,732	647,205	549,857
Service	43,309	22,473	115,448	65,379
Total gross margin	<u>260,445</u>	<u>213,205</u>	<u>762,653</u>	<u>615,236</u>
Operating expenses:				
Research and development	94,718	65,368	259,464	184,704
Sales and marketing	103,640	70,039	281,703	203,200
General and administrative	23,070	17,577	62,753	43,260
Legal fees associated with indemnification obligations and other related costs, net	(561)	7,951	38,553	22,399
Provision for class action lawsuit	—	—	—	160,000
Amortization of intangible assets	17,052	7,846	51,666	23,664
Acquisition and integration costs	1,450	—	4,794	—
Restructuring costs and facilities lease loss benefits, net	—	—	2,329	(477)
In-process research and development	—	—	26,900	—
Goodwill and acquisition-related intangible assets impairment	—	—	53,306	—
Total operating expenses	<u>239,369</u>	<u>168,781</u>	<u>781,468</u>	<u>636,750</u>
Income (loss) from operations	21,076	44,424	(18,815)	(21,514)
Interest and other income (loss), net	809	8,872	(2,912)	27,663
Interest expense	(22,845)	(1,103)	(70,600)	(4,384)
Loss on sale of investments, net	(52)	(36)	(576)	(6,985)
Income (loss) before provision for (benefit from) income taxes	(1,012)	52,157	(92,903)	(5,220)
Income tax provision (benefit)	20,021	31,891	17,280	(136,709)
Net income (loss)	<u>\$ (21,033)</u>	<u>\$ 20,266</u>	<u>\$ (110,183)</u>	<u>\$ 131,489</u>
Net income (loss) per share — basic	<u>\$ (0.05)</u>	<u>\$ 0.05</u>	<u>\$ (0.28)</u>	<u>\$ 0.35</u>
Net income (loss) per share — diluted	<u>\$ (0.05)</u>	<u>\$ 0.05</u>	<u>\$ (0.28)</u>	<u>\$ 0.34</u>
Shares used in per share calculation — basic	<u>406,916</u>	<u>371,345</u>	<u>390,087</u>	<u>376,455</u>
Shares used in per share calculation — diluted	<u>406,916</u>	<u>392,586</u>	<u>390,087</u>	<u>396,445</u>

See accompanying notes to condensed consolidated financial statements.

**BROCADE COMMUNICATIONS SYSTEMS, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(Unaudited)

	<u>August 1, 2009</u>	<u>October 25, 2008</u>
<u>(In thousands, except par value)</u>		
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 244,179	\$ 453,884
Short-term investments	5,731	152,741
Total cash, cash equivalents and short-term investments	249,910	606,625
Accounts receivable, net of allowances of \$12,816 and \$5,044 at August 1, 2009 and October 25, 2008, respectively	301,787	158,935
Inventories	55,674	21,362
Deferred tax assets	86,690	104,705
Prepaid expenses and other current assets	75,723	49,931
Total current assets	769,784	941,558
Long-term marketable equity securities	—	177,380
Long-term investments	—	36,120
Restricted cash	—	1,075,079
Property and equipment, net	409,914	313,379
Goodwill	1,668,102	268,977
Intangible assets, net	505,822	220,567
Non-current deferred tax assets	179,792	227,795
Other assets	29,790	37,793
Total assets	<u>\$ 3,563,204</u>	<u>\$ 3,298,648</u>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 150,616	\$ 167,660
Accrued employee compensation	112,193	107,994
Deferred revenue	170,695	103,372
Current liabilities associated with facilities lease losses	13,435	13,422
Liability associated with class action lawsuit	—	160,000
Revolving credit facility	14,050	—
Current portion of long-term debt	41,545	43,606
Convertible subordinated debt	171,282	—
Other accrued liabilities	99,054	105,804
Total current liabilities	772,870	701,858
Long-term debt, net of current portion	912,568	1,011,399
Non-current convertible subordinated debt	—	169,660
Non-current liabilities associated with facilities lease losses	13,319	15,007
Non-current deferred revenue	59,374	37,869
Non-current income tax liability	108,746	67,497
Other non-current liabilities	10,112	13,118
Total liabilities	<u>1,876,989</u>	<u>2,016,408</u>
Commitments and contingencies (Note 10)		
Stockholders' equity:		
Preferred stock, \$0.001 par value, 5,000 shares authorized, no shares issued and outstanding	—	—
Common stock, \$0.001 par value, 800,000 shares authorized:		
Issued and outstanding: 417,655 and 371,858 shares at August 1, 2009 and October 25, 2008, respectively	418	372
Additional paid-in capital	1,827,744	1,392,927
Accumulated other comprehensive loss	(6,585)	(85,877)
Accumulated deficit	(135,362)	(25,182)
Total stockholders' equity	<u>1,686,215</u>	<u>1,282,240</u>
Total liabilities and stockholders' equity	<u>\$ 3,563,204</u>	<u>\$ 3,298,648</u>

See accompanying notes to condensed consolidated financial statements.

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

	<b>Nine Months Ended</b>	
	<b>August 1, 2009</b>	<b>July 26, 2008</b>
	<b>(In thousands)</b>	
<b>Cash flows from operating activities:</b>		
Net income (loss)	\$ (110,183)	\$ 131,489
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Release of valuation allowance	—	(185,176)
Excess tax benefit from employee stock plans	986	(2,505)
Depreciation and amortization	145,087	89,645
Loss on disposal of property and equipment	1,369	1,328
Amortization of debt issuance costs and original issue discount	11,856	—
Net losses on investments and marketable equity securities	570	6,488
Provision for doubtful accounts receivable and sales allowances	9,533	4,914
Non-cash compensation expense	101,505	31,521
Non-cash facilities lease loss benefit	(339)	(477)
Capitalization of interest cost	(6,356)	—
Asset impairment charge	53,306	—
In-process research and development	26,900	—
Changes in assets and liabilities, net of acquired assets and assumed liabilities:		
Accounts receivable	(75,786)	3,758
Inventories	43,898	3,648
Prepaid expenses and other assets	6,929	(19,032)
Deferred tax assets	651	(9,808)
Accounts payable	(41,867)	1,196
Accrued employee compensation	(56,110)	(3,526)
Deferred revenue	21,078	17,671
Other accrued liabilities	(5,426)	46,003
Liabilities associated with facilities lease losses	(7,391)	(7,213)
Liability associated with class action lawsuit	(160,000)	160,000
Net cash provided by (used in) operating activities	<u>(39,790)</u>	<u>269,924</u>
<b>Cash flows from investing activities:</b>		
Purchases of short-term investments	(116)	(166,963)
Purchases of long-term investments	—	(37,731)
Proceeds from maturities and sale of short-term investments	154,931	340,838
Proceeds from maturities and sale of long-term investments	30,173	22,483
Proceeds from sale of marketable equity securities and equity investments	—	9,926
Purchases of property and equipment	(118,278)	(125,468)
Decrease in restricted cash	1,075,079	—
Net cash paid in connection with acquisitions	<u>(1,297,482)</u>	<u>(43,554)</u>
Net cash used in investing activities	<u>(155,693)</u>	<u>(469)</u>
<b>Cash flows from financing activities:</b>		
Payment of senior underwriting fees related to the term loan	(30,525)	—
Payment of principal related to the term loan	(108,141)	—
Common stock repurchases	—	(168,293)
Proceeds from issuance of common stock, net	110,280	41,803
Proceeds from revolving credit facility	14,050	—
Excess tax benefit from employee stock plans	(986)	2,505
Net cash used in financing activities	<u>(15,322)</u>	<u>(123,985)</u>
Effect of exchange rate fluctuations on cash and cash equivalents	1,100	(1,826)
Net increase (decrease) in cash and cash equivalents	<u>(209,705)</u>	<u>143,644</u>
Cash and cash equivalents, beginning of period	453,884	315,755
Cash and cash equivalents, end of period	<u>\$ 244,179</u>	<u>\$ 459,399</u>
<b>Supplemental schedule of non-cash investing activities:</b>		
Fair value of stock options and unvested awards assumed in exchange for acquired Foundry assets	<u>\$ 255,596</u>	<u>\$ —</u>

See accompanying notes to 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”) is a leading supplier of end-to-end data and storage area networking solutions for enterprises and service providers. The Company offers a comprehensive line of high-performance networking hardware and software products and services that enable businesses to make their networks and data centers more efficient, reliable and adaptable.

Brocade’s products, services and solutions simplify information technology (“IT”) infrastructure, increase resource utilization, ensure availability of mission critical applications, and support advanced data, voice and video applications.

As a result of the acquisition of Foundry Networks, Inc. (“Foundry”) in the first fiscal quarter of 2009, Brocade now operates in four operating segments. The objective of this new organization is to enable the Company to more effectively focus on growth opportunities, while being well-positioned to more rapidly scale and accommodate new business opportunities, including potential future acquisitions. The four operating segments are as follows:

- The Data Storage operating segment encompasses the Storage Area Network (“SAN”) business, which includes infrastructure products and solutions including directors, switches, routers, fabric-based software applications, distance/extension products, as well as management applications and utilities to centralize data management. Data Storage also includes the server portfolio, which is comprised of host bus adapters (“HBAs”), converged network adapters (“CNAs”), mezzanine cards, as well as the SAN switch modules for bladed servers. Prior to fiscal year 2009, the SAN business was referred to as Data Center Infrastructure and the server portfolio that is now included in Data Storage was referred to as Server Edge and Storage.
- The IP Layer 2-3 operating segment includes Open Systems Interconnection Reference Model (“OSI”) Layer 2-3 switches and routers which enable efficient use of bandwidth-intensive network business applications and digital entertainment on both local area networks (“LANs”) and wide area networks (“WANs”).
- The Application Delivery Controller (“ADC”) operating segment includes OSI Layer 4–7 switches which allow enterprises and service providers to build highly available network infrastructures that efficiently direct the flow of traffic. ADC also includes the File Area Network solutions (“Files”) (see Note 4, “Goodwill and Intangible Assets,” of the Notes to Condensed Consolidated Financial Statements).
- The Global Services operating segment includes consulting and support services that assist customers in designing, implementing, deploying and managing advanced networking solutions, as well as post-contract customer support (“PCS”) and customer support services. Prior to fiscal year 2009, the Global Services operating segment was referred to as Services, Support and Solutions (“S3”).

Brocade products and services are marketed, sold and supported worldwide to end-user customers through distribution partners, including original equipment manufacturers (“OEMs”), distributors, systems integrators, value-added resellers and by the Brocade direct sales force.

**2. Summary of Significant Accounting Policies**

*Basis of Presentation*

Brocade has prepared the accompanying financial data as of August 1, 2009 and for the three and nine months ended August 1, 2009 and July 26, 2008, 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 United States (“U.S.”) generally accepted accounting principles (“GAAP”) have been condensed or omitted pursuant to such rules and regulations. The October 25, 2008 Condensed Consolidated Balance Sheet was derived from audited consolidated financial statements, but does not include all disclosures required by U.S. generally accepted accounting principles. 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 25, 2008.

## Table of Contents

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 August 1, 2009, results of operations for the three and nine months ended August 1, 2009 and July 26, 2008, and cash flows for the nine months ended August 1, 2009 and July 26, 2008 have been made. The results of operations for the three and nine months ended August 1, 2009 are not necessarily indicative of the operating results for the full fiscal year or any future period.

The Company has evaluated subsequent events, as defined by Statement of Financial Accounting Standards No. 165, “*Subsequent Events*” (“SFAS 165”), through the date that the financial statements were issued on August 31, 2009.

### *Fiscal Year*

The Company’s fiscal year is the 52 or 53 weeks ending on the last Saturday in October. As is customary for companies that use the 52/53-week convention, every fifth year contains a 53-week year. Fiscal year 2009 is a 53-week fiscal year and fiscal year 2008 is a 52-week fiscal year. The second quarter of fiscal year 2009 consists of fourteen weeks, which is one week longer than a typical quarter. The Company’s next 14-week quarter will be in the second quarter of fiscal year 2014.

### *Fair Value of Financial Instruments*

The fair value of the Company’s financial instruments, including cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities, approximate cost because of their short maturities. The fair value of the Company’s investments is determined using quoted market prices for those securities or similar financial instruments. The fair value of the Company’s term loan approximates the carrying value due to the variable based interest on such debt. The fair value of the Company’s convertible subordinated debt is determined using the high and low prices on the market for the convertible debt.

### *Fair Value Measurements*

The Company adopted the provisions of Statement of Financial Accounting Standards No. 157, “*Fair Value Measurements*” (“SFAS 157”), effective at the beginning of fiscal year 2009, for financial assets and liabilities. SFAS 157 defines fair value, establishes a framework for measuring fair value and enhances fair value measurement disclosure. In February 2008, the Financial Accounting Standards Board (“FASB”) issued FSP FAS 157-2, “*Effective Date of FASB Statement No. 157*” (“FSP 157-2”). FSP 157-2 delays the effective date of SFAS 157 for nonfinancial assets and nonfinancial liabilities until the beginning of fiscal year 2010, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). The Company is currently assessing the impact that the application of SFAS 157 to nonfinancial assets and nonfinancial liabilities may have on its financial position and results of operations.

In October 2008, the FASB issued FSP FAS 157-3, “*Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active*” (“FSP 157-3”). FSP 157-3 clarifies the application of SFAS 157 in a market that is not active and provides guidance on the key considerations in determining the fair value of a financial asset when the market for that financial asset is not active. Upon its adoption of SFAS 157 and FSP FAS 157-3, the Company applied the disclosure requirements related to financial assets and financial liabilities. The adoption of SFAS 157 for financial assets and financial liabilities was prospective and did not have an impact on the Company’s results of operations or the fair values of its financial assets and financial liabilities (see Note 7, “Fair Value Measurements,” of the Notes to Condensed Consolidated Financial Statements).

The Company adopted the provisions of FSP FAS 157-4, “*Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly*” (“FSP 157-4”), effective at the beginning of the third quarter of fiscal year 2009. FSP 157-4 provides additional guidance for estimating the fair value of assets and liabilities when the volume and level of activity for the asset or liability have significantly decreased. FSP 157-4 also provides guidance on identifying circumstances that indicate a transaction is not orderly. In addition, FSP 157-4 requires disclosure in interim and annual periods of the inputs and valuation techniques used to measure fair value and a discussion of changes in valuation techniques and related inputs, if any, during the period. The adoption of FSP 157-4 did not have an impact on the Company’s financial position and results of operations.

The Company adopted the provisions of Statement of Financial Accounting Standards No. 159, “*The Fair Value Option for Financial Assets and Financial Liabilities — Including an amendment of FASB Statement No. 115*” (“SFAS 159”), effective at the beginning of fiscal year 2009. Under SFAS 159, a company may choose, at specified election dates, to measure eligible items at fair value and report unrealized gains and losses on items for which the fair value option has been elected in earnings at each subsequent reporting date. Upon its adoption of SFAS 159, the Company did not elect the fair value option for any eligible financial instruments.

The Company adopted the provisions of FSP FAS 107-1 and APB 28-1, “*Interim Disclosures about Fair Value of Financial Instruments*” (“FSP 107-1/APB 28-1”), effective at the beginning of the third quarter of fiscal year 2009. FSP 107-1/APB 28-1 requires interim disclosure regarding the fair value of financial instruments that are within the scope of Statement of Financial Accounting Standards No. 107, “*Disclosures about Fair Value of Financial Instruments*,” as amended. Additionally, FSP 107-1/APB 28-1 requires interim disclosure of the methods and significant assumptions used to estimate the fair value of financial instruments as

## [Table of Contents](#)

well as changes in methods and significant assumptions, if any, during the period. FSP 107-1/APB 28-1 does not change the accounting treatment for these financial instruments. Because FSP 107-1/APB 28-1 only requires additional disclosure, the adoption of FSP 107-1/APB 28-1 did not impact the Company's financial position and results of operations.

### *Derivative Instruments and Hedging Activities*

The Company adopted the provisions of Statement of Financial Accounting Standards No. 161, "*Disclosures about Derivative Instruments and Hedging Activities — an amendment of FASB Statement No. 133*" ("SFAS 161"), effective at the beginning of the second quarter of fiscal year 2009. SFAS 161 expands financial reporting about derivative instruments and hedging activities by requiring enhanced disclosures to enable investors to better understand their effects on an entity's financial position, results of operations and cash flows. SFAS 161 also requires qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about fair value amounts of and gains and losses on derivative instruments, and disclosures about credit-risk-related contingent features in derivative agreements. Because SFAS 161 only requires additional disclosure, the adoption of SFAS 161 did not impact the Company's financial position, results of operations, and cash flows (see Note 11, "Derivative Instruments and Hedging Activities," of the Notes to Condensed Consolidated Financial Statements).

### *Recognition and Presentation of Other-Than-Temporary Impairments*

The Company adopted the provisions of FSP FAS 115-2 and FAS 124-2, "*Recognition and Presentation of Other-Than-Temporary Impairments*" ("FSP 115-2/124-2"), effective at the beginning of the third quarter of fiscal year 2009. FSP 115-2/124-2 amends the requirements for the recognition and measurement of other-than-temporary impairments for debt securities by modifying the pre-existing "intent and ability" indicator. Under FSP 115-2/124-2, an other-than-temporary impairment is triggered when there is an intent to sell the security, it is more likely than not that the security will be required to be sold before recovery, or the security is not expected to recover the entire amortized cost basis of the security. Additionally, FSP 115-2/124-2 changes the presentation of an other-than-temporary impairment in the income statement for those impairments involving credit losses. The credit loss component will be recognized in earnings and the remainder of the impairment will be recorded in other comprehensive income. The adoption of FSP 115-2/124-2 did not have a significant impact on its financial position and results of operations.

### *Nonrefundable Advance Payments for Goods or Services Received for Use in Future Research and Development Activities*

The Company adopted the provisions of EITF Issue No. 07-3, "*Accounting for Nonrefundable Advance Payments for Goods or Services Received for Use in Future Research and Development Activities*" ("EITF 07-3"), effective at the beginning of fiscal year 2009. EITF 07-3 requires that nonrefundable advance payments for goods or services that will be used or rendered for future research and development activities be deferred and capitalized, and recognized as expense as the related goods are delivered or the related services are performed. The adoption of EITF 07-3 did not have a material impact on the Company's financial position and results of operations.

### *Subsequent Events*

The Company adopted the provisions of SFAS 165 effective at the beginning of the third quarter of fiscal year 2009. SFAS 165 requires disclosure of the date through which an entity has evaluated subsequent events, as well as whether that date represents the date the financial statements were issued or were available to be issued. The adoption of SFAS 165 did not have a significant impact on the subsequent events that the Company reports, either through recognition or disclosure, in its consolidated financial statements.

### *Concentrations*

A majority of the Company's accounts receivable balance is derived from sales to OEM partners in the computer storage and server industry. As of August 1, 2009, three customers accounted for 15%, 13% and 11%, respectively, of total accounts receivable. As of October 25, 2008, three customers accounted for 30%, 17% and 14%, respectively, of total accounts receivable. 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, sales allowances, and other allowances. While the Company has not experienced material credit losses in any of the periods presented, there can be no assurance that the Company will not experience material credit losses in the future, particularly in light of the current economic environment.

For the three months ended August 1, 2009 and July 26, 2008, three customers each represented 10% or more of the Company's total net revenues for a combined total of 46% and 62% of total net revenues, respectively. The Company's future success depends

## Table of Contents

upon the buying patterns of significant customers, such as companies within the financial services sector, the U.S. government or individual agencies within the U.S. government, their response to current and future IT investment trends and the continued demand by such customers for the Company's products. Delays in or a reduction in IT spending, domestically and/or internationally, could harm the Company's business, results of operations and financial condition in a number of ways, including longer sales cycles, increased inventory provisions, increased production costs, lowered prices for Brocade's products and reduced sales volumes. In addition, the loss of any one significant OEM partner, or a decrease in the level of sales to any one significant OEM partner, or unsuccessful quarterly negotiation on key terms, conditions or timing of purchase orders placed during a quarter, would likely cause serious harm to Brocade's business and financial results.

The Company currently relies on single and limited sources for multiple key components used in the manufacture of its products. Additionally, the Company relies on multiple contract manufacturers for the production of its products. The inability of any single or limited source supplier to fulfill supply, or the inability of a contract manufacturer to fulfill production requirements, could have a material adverse effect on the Company's future operating results. Further, if the Company's suppliers face challenges in obtaining credit or otherwise for operating their businesses, they may become unable to continue to offer the materials the Company uses to manufacture its products.

### *Revenue Recognition*

*Product revenue.* Certain of the Company's products are integrated with software that is essential to the functionality of the equipment. Additionally, the Company provides unspecified software upgrades and enhancements related to the equipment through its maintenance contracts for most of its products. Accordingly, the Company accounts for revenue from these products in accordance with Statement of Position 97-2, "*Software Revenue Recognition*," as amended ("*SOP 97-2*"), and all related interpretations. For sales of products where software is incidental to the equipment, including certain products acquired from Foundry, the Company applies the provisions of Staff Accounting Bulletin No. 104, "*Revenue Recognition*" ("*SAB 104*"), and all related interpretations. Product revenue is generally recognized when all of the following criteria have been met:

- Persuasive evidence of an arrangement exists;
- Delivery has occurred;
- The fee is fixed or determinable; and
- Collectability is reasonably assured or collection is probable.

Products related to the Company's acquisition of Foundry are generally accounted for under SAB 104. As the Company introduces products based on Foundry's technology, which are determined to include software that is essential to the functionality of the equipment, then such new products will be accounted for using SOP 97-2 and all related interpretations.

For newly introduced SAN products, many of the Company's large OEM customers require a product qualification period during which the Company's products are tested and approved by the OEM customers for sale to their customers. Revenue recognition and related cost are deferred for shipments to new OEM customers and for shipments of newly introduced products to existing OEM customers until satisfactory evidence of completion of the product qualification has been received from the OEM customer. In addition, revenue from sales to the Company's master reseller customers is recognized in the same period in which the product is actually sold by the master reseller (sell-through).

The Company reduces revenue for estimated sales allowances, sales programs, and other allowances at the time of shipment. Sales allowances, sales programs, and other allowances are estimated based upon historical experience, current trends and the Company's expectations regarding future experience. In addition, the Company maintains an allowance for doubtful accounts, which is also accounted for as a reduction in revenue. The allowance for doubtful accounts is estimated based upon the analysis of accounts receivable, historical collection patterns, customer concentrations, customer creditworthiness, current economic trends, changes in customer payment terms and practices, and customer communication.

*Multiple-element arrangements.* The Company's multiple-element product offerings include computer hardware and software products and support services. The Company also sells certain software products and support services separately. For certain of the Company's products, software is generally essential to the functionality of its hardware products and, therefore, are accounted for in accordance with SOP 97-2. The Company allocates revenue to each element in a multiple-element arrangement based upon

## Table of Contents

vendor-specific objective evidence (“VSOE”) of the fair value of the element, or if VSOE is not available for the delivered element, by application of the residual method. In the application of the residual method, the Company allocates revenue to the undelivered elements based on VSOE of fair value for those elements and allocates the residual revenue to the delivered elements. VSOE of the fair value for an element is based upon the price charged when the element is sold separately. Revenue allocated to each element is then recognized when the basic revenue recognition criteria is met for each element. For sales of products that contain multiple elements and where software is incidental, the Company applies the provisions of EITF Issue No. 00-21, “*Revenue Arrangements with Multiple Deliverables*” (“EITF 00-21”), to determine the separate units of accounting that exist within the arrangement. If more than one unit of accounting exists, the arrangement consideration is allocated to each unit of accounting using either the relative fair value method or the residual fair value method as prescribed by EITF 00-21. Revenue is recognized for each unit of accounting when all the revenue recognition criteria has been met for that unit of accounting.

*Service revenue.* Service revenue consists of training and maintenance arrangements, including PCS, customer support services and other professional services. PCS services are offered under renewable, annual fee-based contracts or as part of multiple-element arrangements, and typically include telephone support and upgrades and enhancements to the Company’s operating system software. Revenue related to PCS elements is deferred and recognized ratably over the contractual period. PCS contracts are typically one to three years in length.

For those products not under SOP 97-2, customer support services are offered under renewable, fee-based contracts which provide customers with hardware repair and replacement parts, access to technical assistance, and unspecified software updates and upgrades on a when-and-if available basis. Revenue from customer support services contracts is deferred and recognized ratably over the contractual support period, in accordance with FASB Technical Bulletin 90-1, “*Accounting for Separately Priced Extended Warranty and Product Maintenance Contracts*” (“FTB 90-1”). Customer support services contracts are typically one to five years in length.

Professional services are offered under hourly or fixed fee-based contracts or as part of multiple-element arrangements. Professional services revenue is recognized when services are completed. Training revenue is recognized upon completion of the training.

### *Recent Accounting Pronouncements*

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 141 (revised 2007), “*Business Combinations*”, which was subsequently amended in April 2009 by FSP FAS 141(R)-1, “*Accounting for Assets Acquired and Liabilities Assumed in a Business Combination That Arise from Contingencies*,” (collectively “SFAS 141R”). SFAS 141R requires the acquirer in a business combination to recognize assets and liabilities assumed at their fair values and to recognize acquisition-related costs separately from the acquisition. In circumstances where the acquisition-date fair value for a contingency cannot be determined during the measurement period and it is concluded that it is probable that an asset or liability exists as of the acquisition date and the amount can be reasonably estimated, a contingency is recognized as of the acquisition date based on the estimated amount. SFAS141R will be effective for the Company in fiscal year 2010, with early adoption prohibited. The Company expects the implementation of SFAS 141R will have an impact on its financial position and results of operations, but the nature and magnitude of the specific effects will depend upon the nature, terms and size of the acquisitions the Company consummates after the effective date of November 1, 2009.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 160, “*Noncontrolling Interests in Consolidated Financial Statements — an amendment of ARB No. 51*” (“SFAS 160”). SFAS 160 will change the accounting and reporting for minority interests which will be recharacterized as noncontrolling interests and classified as a component of equity. SFAS 160 is effective for financial statements issued for fiscal years beginning on or after December 15, 2008, and interim periods within those fiscal years. SFAS 160 requires retroactive adoption of the presentation and disclosure requirements for existing minority interests. The Company is currently assessing the impact of SFAS 160, but does not expect the adoption to have a material impact on its financial position, results of operations, and cash flows.

In May 2008, the FASB issued FSP APB 14-1, “*Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)*” (“FSP APB 14-1”). FSP APB 14-1 requires issuers of convertible debt instruments that may be settled in cash upon conversion to account separately for the liability and equity components in a manner that will reflect the entity’s nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. FSP APB 14-1 is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years, and will be adopted by the Company in the first quarter of fiscal year 2010 as it applies to its convertible subordinated debt. The Company is currently evaluating the impact that FSP APB 14-1 will have on the accounting for its convertible subordinated debt.

## Table of Contents

In June 2008, the FASB issued EITF Issue No. 07-5, “*Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity’s Own Stock*” (“EITF 07-5”). EITF 07-5 provides guidance on determining whether an equity-linked financial instrument, or embedded feature, is indexed to an entity’s own stock. EITF 07-5 is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years, and will be adopted by the Company in the first quarter of fiscal year 2010. The Company has not yet adopted EITF 07-5, but it is currently assessing the impact that EITF 07-5 may have on its financial position, results of operations, and cash flows.

In November 2008, the FASB ratified EITF Issue No. 08-7, “*Accounting for Defensive Intangible Assets*” (“EITF 08-7”). EITF 08-7 applies to defensive intangible assets, which are acquired intangible assets that the acquirer does not intend to actively use but intends to hold to prevent its competitors from obtaining access to them. As these assets are separately identifiable, EITF 08-7 requires an acquiring entity to account for defensive intangible assets as a separate unit of accounting. Defensive intangible assets must be recognized at fair value in accordance with SFAS 141R and SFAS 157. EITF 08-7 is effective for defensive intangible assets acquired in fiscal years beginning on or after December 15, 2008, and will be adopted by the Company in the first quarter of fiscal year 2010. The Company expects EITF 08-7 will have an impact on its consolidated financial statements when effective, but the nature and magnitude of the specific effects will depend upon the nature, terms and size of the intangible assets purchased after the effective date of November 1, 2009.

In June 2009, the FASB issued Statement of Financial Accounting Standards No. 168, “*The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles*” (“SFAS 168”). SFAS 168 will become the source of authoritative U.S. GAAP recognized by the FASB to be applied by nongovernment entities. SFAS 168 also modifies the GAAP hierarchy to include only two levels of GAAP: authoritative and non-authoritative. SFAS 168 is effective for financial statements issued for interim and annual periods ending after September 15, 2009, and will be adopted by the Company in the fourth quarter of fiscal year 2009. The Company does not expect the adoption of SFAS 168 to have a significant impact on its financial position, results of operations, and cash flows.

### **3. Acquisitions**

#### ***Foundry Networks, Inc.***

On December 18, 2008, the Company completed its acquisition of Foundry in accordance with the Agreement and Plan of Merger, which the Company entered into on July 21, 2008, as well as with Amendment No. 1 to the Agreement and Plan of Merger, which the Company entered into on November 7, 2008 (as amended, the “Foundry Merger Agreement”). As a result of the merger, Foundry is now a wholly-owned subsidiary of the Company.

The Company recorded the acquisition using the purchase method of accounting and, accordingly, has included the results of operations of Foundry in the accompanying Condensed Consolidated Statements of Operations from December 18, 2008, the date the acquisition was completed.

Pursuant to the terms of the Foundry Merger Agreement, each issued and outstanding share of Foundry common stock, other than the shares held by the Company, was canceled and converted into the right to receive \$16.50 in cash, without interest. Approximately 137,061,501 shares of Foundry common stock were converted into the right to receive approximately \$2.26 billion, which excluded 14,000,000 shares of Foundry common stock held by Brocade that were canceled upon effectiveness of the merger without consideration. In addition, upon the effectiveness of the merger, Brocade: (i) terminated certain outstanding unvested stock options; (ii) in certain circumstances, terminated Foundry’s outstanding vested options and granted, in lieu thereof, a right to be issued shares of fully-vested Brocade common stock upon settlement thereof based on the excess of the per-share merger consideration set forth in the Foundry Merger Agreement over the applicable exercise price of such options; and (iii) (a) assumed certain outstanding equity awards or (b) replaced certain of Foundry’s outstanding equity awards with reasonably equivalent Brocade equity awards based on a conversion ratio derived from the per-share merger consideration as set forth in the Foundry Merger Agreement, in certain cases offsetting the number of shares (on a post-conversion basis) against Brocade’s existing share reserve under its stockholder-approved equity incentive plans.

## [Table of Contents](#)

The total purchase price of the Foundry acquisition was \$2.8 billion and is comprised of the following (in thousands):

	<u>Amount</u>
Cash tendered for shares of outstanding common stock of Foundry (1)	\$ 2,506,474
Fair value of stock options and awards assumed and accelerated in connection with acquisition	255,596
Direct transaction costs	27,395
Total purchase price	<u>\$ 2,789,465</u>

(1) This amount includes \$248.4 million paid by the Company to acquire 14.0 million shares of Foundry common stock in the open market before the consummation of the acquisition, net of \$3.5 million in dividends received.

In connection with this acquisition, the Company assumed options to purchase approximately 18.3 million shares of Foundry common stock which became exercisable for approximately 93.5 million shares of Brocade's common stock at a weighted-average exercise price of approximately \$3.23 per share. The Company also assumed approximately 34.7 million restricted stock units with a weighted-average grant date fair value of \$3.52.

Direct transaction costs include investment banking, legal and accounting fees and other external costs directly related to the acquisition.

The Company allocated the total purchase consideration to the net assets acquired and liabilities assumed, including identifiable intangible assets, based on their respective fair values at the acquisition date, resulting in initial goodwill of approximately \$1,475.6 million, which is not expected to be deductible for income tax purposes. Goodwill represents the excess of the purchase price over the fair value of the underlying acquired net tangible and intangible assets. The factors that contributed to the recognition of goodwill included securing buyer-specific synergies that increase revenue and profits and are not otherwise available to a marketplace participant, acquiring a talented workforce, and significant cost-saving opportunities. The allocation of the purchase price reflects various preliminary estimates and analyses and is subject to change during the purchase price allocation period.

The following table summarizes the initial allocation of the purchase price based on the estimated fair values of the assets acquired and liabilities assumed (in thousands):

	<u>Amount</u>
<b>Assets acquired:</b>	
Cash and cash equivalents and short-term investments	\$ 987,956
Accounts receivable	89,831
Inventories	70,633
Identifiable intangible assets	
Developed products technology	191,300
Customer relationships	194,500
In-process research and development (1)	26,900
Order backlog	6,500
Deferred tax assets	27,174
Goodwill	1,475,603
Other assets	202,804
Total assets acquired	<u>3,273,201</u>
<b>Liabilities assumed:</b>	
Deferred tax liabilities	134,822
Other liabilities	350,959
Total liabilities assumed	<u>485,781</u>
Net assets acquired	<u>\$ 2,787,420</u>

(1) In connection with the acquisition of Foundry, the Company recorded a \$26.9 million in-process research and development charge during the three months ended January 24, 2009.

During the three months ended May 2, 2009, the Company determined it was appropriate to record certain adjustments to the fair value of assets and liabilities acquired from Foundry (see Note 4, "Goodwill and Intangible Assets," of the Notes to Condensed Consolidated Financial Statements).

## Table of Contents

Of the total purchase price, approximately \$392.3 million has been allocated to amortizable intangible assets acquired. The amortizable intangible assets are being amortized on a straight-line basis over their estimated useful lives as follows:

	Amount (in thousands)	Weighted- Average Useful Life (in years)
Developed products technology	\$191,300	5.00
Customer relationships	\$194,500	5.00
Order backlog	\$ 6,500	0.25

The following unaudited pro forma financial information for the three and nine months ended August 1, 2009 and July 26, 2008 presents a summary of the results of operations of the Company assuming the acquisition of Foundry occurred at the beginning of each of the periods presented. The unaudited pro forma financial information is presented for informational purposes only and is not indicative of the results of operations that would have been achieved if the merger had taken place at the beginning of each of the periods presented, nor is it indicative of future operating results:

In thousands, except per share amounts	Three Months Ended		Nine Months Ended	
	August 1, 2009	July 26, 2008 (1)	August 1, 2009 (2)	July 26, 2008 (3)
Total net revenues	\$493,280	\$531,598	\$1,508,218	\$1,553,052
Pretax income (loss)	(1,012)	23,262	(79,780)	(59,824)
Net income (loss)	(21,033)	7,642	(83,868)	123,291
Basic net income (loss) per share	(0.05)	0.02	(0.21)	0.33
Diluted net income (loss) per share	\$ (0.05)	\$ 0.02	\$ (0.21)	\$ 0.31

- (1) The unaudited pro forma financial results for the three months ended July 26, 2008 include Brocade's historical results for the three months ended July 26, 2008 and Foundry's historical results for the three months ended June 30, 2008, including amortization for acquired intangible assets, adjustment to interest expense, and related tax effects.
- (2) The unaudited pro forma financial results for the nine months ended August 1, 2009 include Brocade's historical results for the nine months ended August 1, 2009, which include Foundry's results subsequent to December 18, 2008, and Foundry's historical results for the period October 26, 2008 to December 18, 2008, including amortization for acquired intangible assets, elimination of in-process research and development charge and acquisition-related fees, and related tax effects. Included in the net loss for the nine months ended August 1, 2009 is the impact of the \$45.8 million goodwill impairment charge, the \$7.5 million intangible assets impairment charge and the \$26.9 million in-process research and development charge.
- (3) The unaudited pro forma financial results for the nine months ended July 26, 2008 include Brocade's historical results for the nine months ended July 26, 2008 and Foundry's historical results for the three months ended December 31, 2007 and six months ended June 30, 2008, including amortization for acquired intangible assets, adjustment to interest expense, and related tax effects.

#### 4. Goodwill and Intangible Assets

During the first quarter of fiscal year 2009, Brocade reorganized its four operating segments, of which two are individually reportable segments: Data Storage and Global Services; and two, IP Layer 2-3 and ADC, are combined into one reportable segment: IP Products. Prior period allocation of goodwill activity by reportable segment has been conformed to the new measurements of segment financial reporting implemented in the first quarter of fiscal year 2009.

In accordance with Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets," as amended ("SFAS 142"), Brocade conducts a goodwill impairment analysis annually and as necessary if changes in facts and circumstances indicate that the fair value of the reporting unit may be less than its carrying amount. Consistent with prior years, the Company performed its annual goodwill impairment test using measurement data as of the first day of the second fiscal quarter.

SFAS 142 requires a two-step approach in testing goodwill for impairment for each reporting unit. The Company's reporting units are determined by the components of their operating segments that constitute a business for which both (i) discrete financial information is available and (ii) segment management regularly reviews the operating results of that component. Data Storage, IP Layer 2-3 and Global Services are individual reporting units, while ADC includes two reporting units, ADC and Files.

The first step measures for impairment by applying fair value-based tests at the reporting unit level. The second step, if necessary, measures the amount of impairment by applying fair value-based tests to individual assets and liabilities within each reporting unit.

## [Table of Contents](#)

To determine the reporting unit's fair values, the Company uses the income approach, the market approach, or a combination thereof. The income approach provides an estimate of fair value based on discounted expected future cash flows ("DCF"). Estimates and assumptions with respect to the determination of the fair value of the Company's reporting units using the income approach include:

- The Company's operating forecasts;
- Revenue growth rates; and
- Risk-commensurate discount rates and costs of capital.

The Company's estimates of revenues and costs are based on historical data, various internal estimates and a variety of external sources, and are developed by the Company's routine long-range planning process.

The market approach provides an estimate of the fair value of the Company's five reporting units using various price or market multiples applied to the reporting unit's operating results and then applying an appropriate control premium. The control premium is determined by considering control premiums offered as part of the acquisition in both the Company's segment and comparable market segments.

Determining the fair value of a reporting unit is judgmental in nature and involves the use of significant estimates and assumptions. As the Company's market capitalization declined and as the technology sector volatility increased, the Company focused on methods that were more representative of a market participant's view of fair value given the current market conditions. As a result, in fiscal year 2009, the Company relied primarily on the DCF method, using management projections for each reporting unit and risk-adjusted discount rates.

The Company determined based on its completion of the first step of the goodwill impairment test that no indicators of impairment existed for the Data Storage, IP Layer 2-3, ADC and Global Services reporting units. During the second quarter of fiscal year 2009, the Company made a decision to no longer offer its suite of Files products and concluded that fair value of the Files reporting unit was less than its carrying amount. The fair value of the Files business was determined using comparable companies' data. The Company conducted the second step of the goodwill impairment test and determined that all of the Files goodwill was impaired. Accordingly, the Company recorded a goodwill impairment charge of \$45.8 million for the three months ended May 2, 2009.

The following table summarizes the goodwill activity by reportable segment during the nine months ended August 1, 2009 (in thousands):

	<u>Data Storage</u>	<u>IP Products</u>	<u>Global Services</u>	<u>Total</u>
Balance at October 25, 2008	\$ 183,331	\$ 45,832	\$ 39,814	\$ 268,977
Acquisition of Foundry	—	1,357,855	117,748	1,475,603
Balance at January 24, 2009	\$ 183,331	\$ 1,403,687	\$ 157,562	\$ 1,744,580
Goodwill impairment	—	(45,832)	—	(45,832)
Tax and other adjustments (1)	(1,399)	(3,773)	(473)	(5,645)
Balance at May 2, 2009	\$ 181,932	\$ 1,354,082	\$ 157,089	\$ 1,693,103
Tax adjustments (2)	(15,647)	(9,354)	—	(25,001)
Balance at August 1, 2009	<u>\$ 166,285</u>	<u>\$ 1,344,728</u>	<u>\$ 157,089</u>	<u>\$ 1,668,102</u>

(1) The goodwill adjustment of \$5.6 million was primarily a result of the realization of deferred tax assets of acquired companies and includes \$1.7 million of Foundry purchase accounting adjustments.

(2) The goodwill adjustment of \$25.0 million was primarily a result of the realization of deferred tax assets of acquired companies.

Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," ("SFAS 144") requires impairment losses to be recorded on long-lived assets used in operations when indications of impairment are present and the undiscounted cash flows estimated to be generated by those assets are less than the assets' carrying amounts. If such assets are considered to be impaired, the impairment charge recognized is the amount by which the carrying amount of the assets exceeds the fair value of the assets. As a result of the impairment indicator described above, the Company performed an impairment analysis for its long-lived assets, including its intangible assets subject to amortization. The analysis indicated that all of the intangible assets associated with the Files business are not recoverable. As a result, the Company recorded an acquisition-related intangible assets impairment charge associated with the Files business of \$7.5 million for the three months ended May 2, 2009.

## [Table of Contents](#)

Intangible assets other than goodwill are amortized over the following estimated remaining useful lives, unless the Company has determined these lives to be indefinite. Intangible assets as of August 1, 2009 consisted of the following (in thousands, except for useful life):

	<u>Gross Carrying Value</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Value</u>	<u>Useful Life (in years)</u>
Tradename	\$ 13,941	\$ 9,041	\$ 4,900	6.96
Core/developed technology	338,158	113,211	224,947	3.82
Customer relationships	364,981	89,062	275,919	4.36
Non-compete agreements	970	914	56	0.13
Total intangible assets	<u>\$ 718,050</u>	<u>\$ 212,228</u>	<u>\$ 505,822</u>	<u>4.15</u>

Intangible assets as of October 25, 2008 consisted of the following (in thousands):

	<u>Gross Carrying Value</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Value</u>
Tradename	\$ 14,873	\$ 6,971	\$ 7,902
Core/developed technology	154,754	71,202	83,552
Customer relationships	179,412	50,654	128,758
Non-compete agreements	970	615	355
Total intangible assets	<u>\$ 350,009</u>	<u>\$ 129,442</u>	<u>\$ 220,567</u>

For the three and nine months ended August 1, 2009, amortization expense related to intangible assets of \$18.0 million and \$47.9 million, respectively, was included in cost of revenues, and \$17.1 million and \$51.7 million, respectively, was included in operating expenses in the Condensed Consolidated Statement of Operations. For the three and nine months ended July 26, 2008, amortization expense related to intangible assets of \$8.8 million and \$28.6 million, respectively, was included in cost of revenues, and \$7.8 million and \$23.7 million, respectively, was included in operating expenses in the Condensed Consolidated Statement of Operations.

The following table presents the estimated future amortization of intangible assets as of August 1, 2009 (in thousands):

<u>Fiscal Year</u>	<u>Estimated Future Amortization</u>
2009 (remaining three months)	\$ 34,921
2010	126,873
2011	119,770
2012	107,062
2013	94,057
Thereafter	23,139
Total	<u>\$ 505,822</u>

## 5. Balance Sheet Details

The following table provides details of selected balance sheet items (in thousands):

	<u>August 1, 2009</u>	<u>October 25, 2008</u>
<b>Accounts Receivable:</b>		
Accounts receivable	\$ 314,602	\$ 163,979
Allowance for doubtful accounts	(4,412)	(675)
Sales allowances	(8,403)	(4,369)
Total	<u>\$ 301,787</u>	<u>\$ 158,935</u>
<b>Inventories:</b>		
Raw materials	\$ 5,188	\$ 5,596
Finished goods	50,486	15,766
Total	<u>\$ 55,674</u>	<u>\$ 21,362</u>

[Table of Contents](#)

	August 1, 2009	October 25, 2008
<b>Property and equipment, net:</b>		
Computer equipment and software	\$ 123,722	\$ 117,167
Engineering and other equipment	246,763	208,613
Furniture and fixtures	14,278	12,066
Leasehold improvements	62,988	58,651
Land and building	81,247	80,882
Company campus (1)	190,018	103,007
Subtotal	<u>719,016</u>	<u>580,386</u>
Less: Accumulated depreciation and amortization	(309,102)	(267,007)
Total	<u>\$ 409,914</u>	<u>\$ 313,379</u>
<b>Other accrued liabilities:</b>		
Income taxes payable	\$ 6,411	\$ 6,749
Accrued warranty	6,007	5,051
Inventory purchase commitments	23,447	17,332
Accrued sales programs	16,699	13,438
Other	46,490	63,234
Total	<u>\$ 99,054</u>	<u>\$ 105,804</u>

(1) In connection with the purchase of the property located in San Jose, California, the Company engaged a third party as development manager to manage the development and construction of improvements on the property, which are still in progress. Included in the \$190.0 million in Company campus as of August 1, 2009 is \$8.0 million that the Company has agreed to pay the developer on May 22, 2011 or earlier if Brocade decides to transfer any part of the Company campus project before such date.

**6. Investments and Equity Securities**

The following table summarizes the Company's investments and equity securities (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
<b>August 1, 2009</b>				
Corporate bonds and notes	\$ 6,362	\$ —	\$ (631)	\$ 5,731
Total	<u>\$ 6,362</u>	<u>\$ —</u>	<u>\$ (631)</u>	<u>\$ 5,731</u>
Reported as:				
Short-term investments				\$ 5,731
Long-term investments				—
Total				<u>\$ 5,731</u>
<b>October 25, 2008</b>				
Debt securities issued by U.S. government and its agencies and municipal obligations	\$ 40,504	\$ 44	\$ (22)	\$ 40,526
Corporate bonds and notes	146,457	206	(3,274)	143,389
Marketable equity securities	253,378	—	(71,052)	182,326
Total	<u>\$ 440,339</u>	<u>\$ 250</u>	<u>\$ (74,348)</u>	<u>\$ 366,241</u>
Reported as:				
Short-term investments				\$ 152,741
Long-term investments and marketable equity securities				213,500
Total				<u>\$ 366,241</u>

At August 1, 2009, net unrealized holding losses on investments were immaterial. At October 25, 2008, net unrealized holding losses on investments were \$73.6 million. Net unrealized holding losses on investments are included in accumulated other comprehensive (income) loss in the accompanying Condensed Consolidated Balance Sheets.

As of October 25, 2008, the Company had \$71.1 million in gross unrealized losses in connection with the 14.0 million shares of Foundry common stock held by Brocade. Effective upon the consummation of the merger with Foundry, the Company reversed the gross unrealized losses of \$71.1 million and increased its investment in Foundry to its historical cost, which is reflected in the total purchase price of the acquisition, pursuant to Statement of Financial Accounting Standards No. 141, "Business Combinations." As such, the Company did not have any realized gains (losses) in connection with these marketable equity securities for the nine months ended August 1, 2009.

## 7. Fair Value Measurements

SFAS 157 defines fair value as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In determining fair value for assets and liabilities required or permitted to be recorded at fair value, the Company considers the principal or most advantageous market in which it would transact and it considers assumptions that market participants would use when pricing the asset or liability.

### Fair Value Hierarchy

SFAS 157 establishes a fair value hierarchy that requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. A financial instrument's categorization within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. SFAS 157 establishes three levels of inputs that may be used to measure fair value:

#### Level 1

Level 1 applies to assets and liabilities for which there are quoted prices in active markets for identical assets or liabilities. Valuations are based on quoted prices that are readily and regularly available in an active market and do not entail a significant degree of judgment. Brocade's assets utilizing Level 1 inputs include money market funds and certain of the Company's corporate bonds and notes that are traded in an active market with sufficient volume and frequency of transactions.

#### Level 2

Level 2 applies to assets and liabilities for which there are other than Level 1 observable inputs such as quoted prices for similar assets or liabilities in active markets, quoted prices for identical assets or liabilities in markets with insufficient volume or infrequent transactions (less active markets), or model-derived valuations in which significant inputs are observable or can be derived principally from, or corroborated by, observable market data. Brocade's assets utilizing Level 2 inputs include derivative instruments.

Level 2 instruments require more management judgment and subjectivity as compared to Level 1 instruments. For instance:

- Determining which instruments are most similar to the instrument being priced requires management to identify a sample of similar securities based on the coupon rates, maturity, issuer, credit rating and instrument type, and subjectively select an individual security or multiple securities that are deemed most similar to the security being priced; and
- Determining whether a market is considered active requires management judgment.

#### Level 3

Level 3 applies to assets and liabilities for which there are unobservable inputs to the valuation methodology that are significant to the measurement of the fair value of the assets or liabilities. The determination of fair value for Level 3 instruments requires the most management judgment and subjectivity. Brocade has no assets or liabilities utilizing Level 3 inputs.

### Assets Measured at Fair Value on a Recurring Basis

Assets measured at fair value on a recurring basis as of August 1, 2009 were as follows (in thousands):

	Balance as of August 1, 2009	Fair Value Measurements Using		
		Quoted Prices in Active Markets For Identical Instruments (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>Assets:</b>				
Money market funds	\$ 148,145	\$ 148,145	\$ —	\$ —
Corporate bonds and notes	5,731	5,731	—	—
Derivative assets	\$ 1,559	\$ —	\$ 1,559	\$ —
<b>Total assets measured at fair value</b>	<b>\$ 155,435</b>	<b>\$ 153,876</b>	<b>\$ 1,559</b>	<b>\$ —</b>

## [Table of Contents](#)

The Company uses observable market prices for comparable instruments to value its derivative instruments. As of August 1, 2009, approximately \$1.6 million of its derivative instruments that were measured at fair value on a recurring basis were classified as Level 2.

### **8. Liabilities Associated with Facilities Lease Losses**

During the nine months ended August 1, 2009, the Company recorded a purchase accounting adjustment of \$6.1 million related to estimated facilities lease losses as a result of the acquisition of Foundry, net of expected sublease income. As of August 1, 2009, the Company had \$26.8 million in facilities lease loss reserve related to future lease commitments, net of expected sublease income. The Company reevaluates its estimates and assumptions on a quarterly basis and makes adjustments to the reserve balance if necessary.

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

	<u>Lease Loss Reserve</u>
Reserve balance at October 25, 2008	\$ 28,429
Additional reserve related to acquisition of Foundry	6,055
Cash payments on facilities leases	(8,004)
Non-cash charges and other adjustments, net	274
Reserve balance at August 1, 2009	<u>\$ 26,754</u>

Cash payments for facilities leases related to the above noted facilities lease losses will be paid over the respective lease terms through fiscal year 2017.

### **9. Borrowings**

#### *Senior Secured Credit Facility*

On October 7, 2008, the Company entered into a credit agreement with the following lenders, Bank of America, N.A., Morgan Stanley Senior Funding, Inc., HSBC Bank USA National Association and Keybank National Association. The credit agreement provides for (i) a five-year \$1,100.0 million term loan facility and (ii) a five-year \$125.0 million revolving credit facility, which includes a \$25.0 million swing line loan subfacility and a \$25.0 million letter of credit subfacility.

The net proceeds of the term loan facility were used to finance a portion of the Company's acquisition of Foundry. In addition to the term loan facility, during the nine months ended August 1, 2009, the Company drew \$14.1 million from the \$125.0 million revolving credit facility to finance a small portion of the merger. The Company may draw additional proceeds from the revolving credit facility in the future for ongoing working capital and other general corporate purposes. The term loan facility and revolving credit facility are referred to together as the "Senior Secured Credit Facility." As of August 1, 2009, \$14.1 million was outstanding under the revolving credit facility. No amount was outstanding under the revolving credit facility as of October 25, 2008.

Loans under the Senior Secured Credit Facility bear interest, at the Company's option, at a rate equal to either the London Interbank Offered Rate ("LIBOR") rate, plus an applicable margin equal to 4.0% per annum or the prime lending rate, plus an applicable margin equal to 3.0% per annum. The applicable margin with respect to revolving loans is subject to adjustment based on the Company's consolidated senior secured leverage ratio, as defined in the credit agreement. The LIBOR rate floor is 3.0% per annum and the prime lending rate floor is 4.0% per annum, in each case, for the life of the Senior Secured Credit Facility.

The proceeds of the term loan were deposited in a restricted securities account pending the closing of the merger and other release conditions, and are reported as long-term restricted cash on the Condensed Consolidated Balance Sheet as of October 25, 2008. On December 19, 2008, the proceeds of the term loan were released from the restricted securities account to fund the merger. As of August 1, 2009, the current portion of the liability associated with the term loan of \$41.5 million, net of the debt discount of \$10.0 million, is reported as "Current portion of long-term debt," and the long-term portion of the liability associated with the term loan of \$912.6 million, net of the debt discount of \$27.1 million, is reported as "Long-term debt, net of current portion" on the Condensed Consolidated Balance Sheet. As of October 25, 2008, the current portion of the liability associated with the term loan of \$43.6 million, net of the debt discount of \$11.4 million, is reported as "Current portion of long-term debt," and the long-term portion of the liability associated with the term loan of \$1,011.4 million, net of the debt discount of \$34.2 million, is reported as "Long-term debt, net of current portion" on the Condensed Consolidated Balance Sheet.

## Table of Contents

The Company is permitted to make voluntary prepayments at any time (without payment of a premium, other than in the case of a repricing transaction in respect of the term loan facility), and is required to make mandatory prepayments on the term loan (without payment of a premium) with (i) net cash proceeds from non-ordinary course asset sales (subject to reinvestment rights and other exceptions), (ii) net cash proceeds from issuances of debt (other than certain permitted debt), (iii) a percentage of 50% or 0% of Brocade's excess cash flow, based on Brocade's consolidated senior secured leverage ratio, beginning with the fiscal year ending October 27, 2009, and (iv) casualty proceeds and condemnation awards (subject to reinvestment rights and other exceptions). The Company is required to pay quarterly installments on the term loan equal to an aggregate annual amount of 5% of the original principal amount thereof in the first and second year, 10% in the third year, 20% in the fourth year and 60% in the fifth year, with any remaining balance payable on the final maturity date of the term loan. Upon a repricing of the term loan (including through a refinancing) that results in the weighted-average yield or applicable rate of such term loan immediately after such repricing to be lower than such yield or rate immediately prior to such repricing, a 2.0% premium is payable during the first year following the closing and a 1.0% premium is payable during the second year following the closing.

Debt fees totaling \$28.5 million associated with the acquisition have been capitalized as deferred financing costs, with \$5.9 million amortized as of August 1, 2009. As of August 1, 2009 and October 25, 2008, the short-term portion of the deferred financing costs was \$6.3 million and \$7.9 million, respectively, and is reported within "Prepaid expenses and other current assets" on the Condensed Consolidated Balance Sheet. As of August 1, 2009 and October 25, 2008, the long-term portion of the deferred financing costs was \$16.3 million and \$23.2 million, respectively, and is reported within "Other assets" on the Condensed Consolidated Balance Sheet. All debt fees capitalized are related to the term loan facility. The deferred financing costs are being amortized using the effective interest method over the five-year term of the debt. During the nine months ended August 1, 2009, the Company paid \$108.1 million towards the principal of the term loan.

The obligations of the Company and its subsidiary guarantors under the Senior Secured Credit Facility and the related guarantees thereunder are secured, subject to customary permitted liens and other agreed upon exceptions, by (i) a first priority pledge of all of the equity interests of each of the Company's direct and indirect subsidiaries and (ii) a perfected first priority interest in and mortgages on all tangible and intangible assets of the Company and each subsidiary guarantor, except, in the case of a foreign subsidiary, to the extent such pledge would be prohibited by applicable law or would result in materially adverse tax consequences (limited, in the case of a first-tier foreign subsidiary, to 65% of the voting stock and 100% of non-voting stock of such first-tier foreign subsidiary). In addition, the term loan has not been registered with the SEC as of August 1, 2009.

The credit agreement contains financial covenants that require the Company to maintain a minimum consolidated fixed charge coverage ratio, a maximum consolidated leverage ratio and a maximum consolidated senior secured leverage ratio, each as defined in the credit agreement. The credit agreement also includes customary events of default, including cross-defaults on the Company's material indebtedness and change of control. The Company was in compliance with all applicable covenants as of August 1, 2009 and October 25, 2008. The financial and other covenants agreed to by Brocade in connection with such indebtedness and the increased indebtedness and higher debt-to-equity ratio of Brocade in comparison to that of Brocade on a recent historical basis will have the effect, among other things, of reducing Brocade's flexibility to respond to changing business and economic conditions and increasing borrowing costs, and may adversely affect Brocade's operations and financial results. In addition, the Company's failure to comply with these covenants could result in a default under the Senior Secured Credit Facility and its other debt, which could permit the holders to accelerate such debt or demand payment in exchange for a waiver of such default. If any of the Company's debt is accelerated, the Company may not have sufficient funds available to repay such debt.

### *Convertible Subordinated Debt*

On January 29, 2007, effective upon the consummation of the merger with McDATA Corporation ("McDATA"), the Company fully and unconditionally guaranteed and became a co-obligor on the 2.25% Notes of McDATA ("2.25% Notes"). The 2.25% Notes were convertible into McDATA's Class A common stock at a conversion rate of 93.3986 shares per \$1,000 principal amount of notes (aggregate of approximately 16.1 million shares) at any time prior to February 15, 2010, subject to adjustments. Pursuant to Brocade's merger agreement with McDATA, at the effective time of the merger, each outstanding share of McDATA's Class A common stock, \$0.01 par value per share, was converted into the right to receive 0.75 of a share of Brocade's common stock, \$0.001 par value per share, together with cash in lieu of fractional shares. As a result, an approximate aggregate of 12.1 million shares of Brocade's common stock are issuable upon conversion of the 2.25% Notes at any time prior to February 15, 2010, subject to adjustments. For the three and nine months ended August 1, 2009, 12.1 million shares were antidilutive and therefore not included in the calculation of diluted net loss per share. For the three and nine months ended July 26, 2008, 12.1 million shares were dilutive and therefore included in the calculation of diluted net income per share.

## Table of Contents

The gross principal amount of the outstanding convertible subordinated debt is \$172.5 million. As of August 1, 2009, the carrying value of the convertible subordinated debt was \$171.3 million, net of \$1.2 million debt discount.

As of August 1, 2009, the approximate aggregate fair value of the outstanding convertible subordinated debt was between \$165.6 million and \$163.9 million. The Company estimated the fair value of the outstanding convertible subordinated debt as of August 1, 2009 by using the high and low prices per \$100 of the Company's 2.25% Notes as of the last day of trading for the third fiscal 2009 quarter, which were \$96.00 and \$95.00, respectively.

Concurrent with the issuance of the 2.25% Notes, McDATA entered into share option transactions using approximately \$20.5 million of net proceeds. As part of these share option transactions, McDATA purchased options that cover approximately 12.1 million shares of common stock, at a strike price of \$14.28. McDATA also sold options that cover approximately 12.7 million shares of common stock, at a strike price of \$20.11. The net cost of the share option transactions was recorded against additional paid-in capital in accordance with EITF Issue No. 00-19, "Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock."

## **10. Commitments and Contingencies**

### *Operating and Capital Leases*

The Company leases certain facilities and certain equipment under various operating and capital lease agreements expiring through January 2018. In connection with its facilities lease agreements, the Company has signed unconditional, irrevocable letters of credit totaling \$2.0 million as security for the leases.

Future minimum lease payments under all non-cancelable operating leases as of August 1, 2009 total \$71.8 million, net of contractual sublease income of \$31.9 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.

### *Product Warranties*

The Company provides standard warranties on its products ranging from one to five years. Estimated future warranty costs are accrued at the time of shipment and charged to cost of revenues based upon historical experience, current trends and the Company's expectations regarding future experience. The Company's accrued liability for estimated future warranty costs is included in other accrued liabilities in 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 nine months ended August 1, 2009 and July 26, 2008 (in thousands):

	<u>Accrued Warranty</u>	
	<u>Nine Months Ended</u>	
	<u>August 1,</u>	<u>July 26,</u>
	<u>2009</u>	<u>2008</u>
Beginning balance	\$ 5,051	\$ 5,923
Liabilities accrued for warranties issued during the period (1)	3,848	3,414
Warranty claims paid and uses during the period	(1,590)	(2,610)
Changes in liability for pre-existing warranties during the period	(1,302)	(750)
Ending balance	<u>\$ 6,007</u>	<u>\$ 5,977</u>

(1) Included in the \$3.8 million in liabilities accrued for warranties issued during the nine months ended August 1, 2009 is \$1.9 million in warranty liabilities resulting from the Foundry acquisition.

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 August 1, 2009, there have been no known material events or circumstances that have resulted in a customer contract-related indemnification liability to the Company.

## [Table of Contents](#)

### *Manufacturing and Purchase Commitments*

The Company has manufacturing arrangements with Hon Hai Precision Industry Co., Ltd. (“Foxconn”), Sanmina-SCI Corporation (“Sanmina”), Flextronics International Ltd. (“Flextronics”) and Celestica, Inc. (“Celestica”) (collectively, the “CMs”) under which the Company provides twelve-month product forecasts and places purchase orders in advance of the scheduled delivery of products to the Company’s customers. The required lead time for placing orders with the CMs depends on the specific product. As of August 1, 2009, the Company’s aggregate commitment to the CMs for inventory components used in the manufacture of Brocade products was \$279.9 million, which components the Company expects to utilize during future normal ongoing operations, net of a purchase commitments reserve of \$23.4 million. The Company’s purchase orders placed with the CMs are cancelable, however if canceled, the agreements require the Company to purchase all inventory components not returnable, usable by, or sold to other customers of the CMs. The Company’s purchase commitments reserve reflects the Company’s estimate of purchase commitments it does not expect to consume in normal operations within the next twelve months.

### *Income Taxes*

The Company is subject to several ongoing audits. For additional discussion, see Note 14, “Income Taxes,” of the Notes to Condensed Consolidated Financial Statements. The Company believes it has adequate reserves for all open tax years.

### *Integration Costs*

In connection with the acquisition of Foundry, the Company recorded acquisition and integration costs of \$1.5 million and \$4.8 million for the three and nine months ended August 1, 2009, respectively, which consisted primarily of costs incurred for consulting services and other professional fees. There were no acquisition and integration costs for the three and nine months ended July 26, 2008.

### *Legal Proceedings*

#### *Initial Public Offering Litigation*

On July 20, 2001, the first of a number of putative class actions for violations of the federal securities laws 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 Brocade’s initial public offering (“IPO”) of securities. A consolidated amended class action captioned, *In Re Brocade Communications Systems, Inc. Initial Public Offering Securities Litigation*, No. 01 Civ. 6613, was filed on April 19, 2002. The complaint generally alleges that various underwriters engaged in improper and undisclosed activities related to the allocation of shares in Brocade’s initial public offering and seeks unspecified damages for claims under the Exchange Act on behalf of a purported class of purchasers of common stock from May 24, 1999 to December 6, 2000. The lawsuit against Brocade is coordinated for pretrial proceedings with a number of other pending litigations challenging underwriter practices in over 300 cases as *In Re Initial Public Offering Securities Litigation*, 21 MC 92 (SAS), including actions against McDATA Corporation, Inrange Technologies Corporation (“Inrange”) (which was first acquired by Computer Network Technology Corporation (“CNT”) and subsequently acquired by McDATA as part of the CNT acquisition), and Foundry, and certain of each entity’s respective officers and directors, and initial public offering underwriters.

The parties have reached a global preliminary settlement of the litigation with the insurers paying the full amount of settlement share allocated to the Brocade entities, and the Brocade entities would bear no financial liability. On June 9, 2009, the Court granted preliminary approval of the settlement. The preliminary settlement is pending final Court approval.

#### *Securities Litigation*

Beginning on or about May 24, 2005, several derivative actions were filed against certain of Brocade’s current and former officers and directors relating to Brocade’s historical stock option practices. These actions were filed in the United States District Court for the Northern District of California (“Federal Court”) and in the California Superior Court in Santa Clara County (“State Court”). The derivative actions pending in Federal Court were consolidated under the caption *In re Brocade Communications Systems, Inc. Derivative Litigation*, Case No. C 05-02233 CRB (the “Federal Action”), and the derivative actions pending in State Court were also consolidated under the caption *In re Brocade Communications Systems, Inc. Derivative Litigation*, Case No. 1:05cv041683 (the “State Action”).

On February 22, 2008, Brocade’s Board of Directors appointed a Special Litigation Committee of the Board (“SLC”) with plenary authority to, among other things, evaluate and resolve the claims asserted in the federal and state derivative actions.

## Table of Contents

On August 1, 2008, Brocade, acting through the SLC, filed a Second Amended Complaint (the “SLC’s Complaint”) in the Federal Action against ten former officers or directors of Brocade, asserting claims for breach of fiduciary duty and violations of federal and state laws in connection with Brocade’s historical stock option practices. In August 2008, the State Court and Federal Court realigned Brocade as the plaintiff and dismissed the shareholder plaintiffs in the State Action and Federal Action, respectively.

On December 12, 2008, the Federal Court dismissed all claims against five of the Federal Action defendants and some, but not all, of the claims against the remaining five Federal Action defendants. In April 2009, the unconsolidated federal derivative action was dismissed without prejudice and the claims asserted in the State Action against the defendants who had not also been named in the Federal Action were also dismissed without prejudice.

As of August 14, 2009, the SLC had reached settlement agreements with each of the five defendants remaining in the Federal Action and four of the five defendants remaining in the State Action. The terms of the settlements differ in each case, and the settlements are at different stages of finality. Terms contained in some, but not all, of the agreements include the payment of money to Brocade, the surrender of certain shares of Brocade stock to Brocade, the contribution of specified amounts to reduce the legal fees and expenses that Brocade otherwise might be obligated to pay, and releases. The agreements with four of the five Federal Action defendants have been approved by the Federal Court. The other agreements remain subject to review by the Federal Court or State Court, as applicable.

On October 23, 2007, a class action complaint was filed against Brocade and certain of its former officers and current and former directors. This action was filed in the California Superior Court in Santa Clara County on behalf of individuals who owned Brocade stock between February 21, 2001 and May 16, 2005. On October 15, 2008, plaintiffs filed a second amended complaint alleging that Brocade and the individual defendants violated or conspired to violate the Racketeering Influenced and Corrupt Organizations Act and seeking unspecified monetary damages. On March 3, 2009, the Court dismissed the complaint with prejudice. On May 14, 2009, Plaintiffs filed a notice of appeal.

On July 23, 2008, an action, *Doug Edrington v. Bobby R. Johnson, Jr., et al* (Case No. 1:08-CV-118013), was filed in the Superior Court of the State of California for the County of Santa Clara. The complaint alleges that the members of Foundry’s board of directors have breached their fiduciary duties to Foundry’s stockholders in connection with the acquisition of Foundry by Brocade (the “Merger”) and engaged in self-dealing in connection with approval of the Merger, allegedly resulting in an unfair process and unfair price to Foundry’s stockholders. On July 27, 2009, the Court approved a settlement among the parties, which included nominal payments to the plaintiff for certain attorneys’ fees and expenses. The Company previously accrued for this payment in accordance with Statement of Financial Accounting Standards No. 5, “*Accounting for Contingencies*” (“SFAS 5”).

### *Intellectual Property Litigation*

On June 21, 2005, Enterasys Networks, Inc. (“Enterasys”) filed a lawsuit against Foundry (and Extreme Networks, Inc.) in the United States District Court for the District of Massachusetts alleging that certain of Foundry’s products infringe six of Enterasys’ patents and seeking injunctive relief, as well as unspecified damages. On August 28, 2007, the Court granted Foundry’s motion to stay the case based on petitions that Foundry filed with the USPTO for reexamination of five of the six Enterasys patents. On July 14, 2009, the USPTO issued reexamination certificates for two of the patents undergoing reexamination indicating that the patents were valid over the references that Foundry had submitted. On August 7, 2009, Brocade filed a new petition for reexamination of one of the patents that received a reexamination certificate, but the USPTO has not yet acted on the new petition. To date, the USPTO has issued final Office Actions (which are published on the USPTO website) concerning the three remaining Enterasys patents that were submitted for reexamination. In the final Office Actions for two of these three remaining patents, some claims were deemed allowable, but other claims were rejected. In the final Office Action for the third of the remaining patents, all claims were rejected. Enterasys has challenged two of the final Office Actions and may seek to challenge the other final Office Action.

On September 6, 2006, Chrimar Systems, Inc. (“Chrimar”) filed a lawsuit against Foundry in the United States District Court for the Eastern District of Michigan alleging that certain of Foundry’s products infringe Chrimar’s U.S. Patent 5,406,260 and seeking injunctive relief, as well as unspecified damages. No trial date has been set.

On February 7, 2008, Network-1 Security Solutions, Inc. (“Network-1”) filed a lawsuit against Foundry and other networking companies, namely, Cisco Systems, Inc. (“Cisco”), Cisco-Linksys, LLC, Adtran, Inc., Enterasys, Extreme Networks, Inc., NetGear, Inc., and 3Com Corporation in the United States District Court for the Eastern District of Texas, Tyler Division, alleging that certain of Foundry’s products infringe Network-1’s U.S. Patent No 6,218,930 and seeking injunctive relief, as well as unspecified damages. On June 17, 2008, the Court issued a scheduling order for the case and scheduled a Markman claim construction hearing for December 3, 2009 and trial for July 12, 2010.

## General

From time to time, the Company is subject to other legal proceedings and claims in the ordinary course of business, including claims of alleged infringement of trademarks, copyrights, patents and/or other intellectual property rights. Third parties assert patent infringement claims against the Company from time to time in the form of letters, lawsuits and other forms of communication. In addition, from time to time, the Company receives notification from customers claiming that they are entitled to indemnification or other obligations from the Company related to infringement claims made against them by third parties. Litigation, even if the Company is ultimately successful, can be costly and divert management's attention away from the day-to-day operations of the Company. In the event of a result adverse to the Company, the Company could incur substantial monetary liability and/or be required to change its business practices. Any unfavorable determination could have a material adverse effect on the Company's financial position, results of operations, cash flows or business.

In accordance with SFAS 5, the Company records a liability when it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated. The Company reviews the need for any such liability on a quarterly basis. As of August 1, 2009, the Company has not recorded any such liabilities in accordance with SFAS 5, except as noted above with respect to the Edrington Memorandum of Understanding.

## 11. Derivative Instruments and Hedging Activities

In the normal course of business, the Company is exposed to fluctuations in interest rates and the exchange rates associated with foreign currencies. The Company's primary objective for holding derivative financial instruments is to manage foreign currency exchange rate risk. The Company currently does not enter into derivative instruments to manage credit risk. However, the Company manages its exposure to credit risk through its investment policies. The Company generally enters into derivative transactions with high-credit quality counterparties and, by policy, limits the amount of credit exposure to any one counterparty based on its analysis of that counterparty's relative credit standing. The amounts subject to credit risk related to derivative instruments are generally limited to the amounts, if any, by which a counterparty's obligations exceed the Company's obligations with that counterparty.

### Foreign Currency Exchange Rate Risk

A majority of the Company's revenue, expense and capital purchasing activities is transacted in U.S. dollars. However, the Company is exposed to foreign currency exchange rate risk inherent in conducting business globally in numerous currencies, of which the most significant to its operations for the nine months ended August 1, 2009 were the Euro, the Japanese Yen, the British Pound and the Singapore Dollar. The Company is primarily exposed to foreign currency fluctuations related to operating expenses denominated in currencies other than the U.S. dollar. The Company has established a foreign currency risk management program to protect against fluctuations in the volatility of future cash flows caused by changes in foreign currency exchange rates. This program reduces, but does not always entirely eliminate, the impact of foreign currency exchange rate movements. The Company's foreign currency risk management program includes foreign currency derivatives with cash flow hedge accounting designation that utilizes foreign currency forward contracts to hedge exposures to the variability in the U.S. dollar equivalent of anticipated non-U.S. dollar-denominated cash flows. These instruments generally have a maturity of less than one year. For these derivatives, the Company reports the after-tax gain or loss from the effective portion of the hedge as a component of accumulated other comprehensive income (loss) in stockholders' equity and reclassifies it into earnings in the same period in which the hedged transaction affects earnings, and within the same line item on the condensed consolidated statements of operations as the impact of the hedged transaction.

### Volume of Derivative Activity

Total gross notional amounts for foreign currency forward contracts, presented by currency, are as follows (in thousands):

In United States Dollars	August 1, 2009	October 25, 2008
Euro	\$ 17,053	\$ 9,710
Japanese Yen	2,261	2,036
British Pound	8,066	4,168
Singapore Dollar	4,320	2,420
Other	—	173
Total	<u>\$ 31,700</u>	<u>\$ 18,507</u>

## [Table of Contents](#)

The Company utilizes a rolling hedge strategy for the majority of its foreign currency forward contracts with cash flow hedge accounting designation that hedges exposures to the variability in the U.S. dollar equivalent of anticipated non-U.S. dollar-denominated cash flows. All of the Company's foreign currency forward contracts are single delivery, which are settled at maturity involving one cash payment exchange.

As of August 1, 2009, the Company had a gross unrealized gain of \$1.6 million, offset by a gross unrealized loss of \$0.1 million, both of which are included in Other Accrued Liabilities. The net amount of \$1.5 million represents effective hedges and is reported as a component of accumulated other comprehensive loss. Hedge ineffectiveness, which is reported in the Condensed Consolidated Statements of Operations, was not significant.

### 12. Comprehensive Income (Loss)

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

	Three Months Ended		Nine Months Ended	
	August 1, 2009	July 26, 2008	August 1, 2009	July 26, 2008
Net income (loss)	<u>\$ (21,033)</u>	<u>\$ 20,266</u>	<u>\$ (110,183)</u>	<u>\$ 131,489</u>
Other comprehensive income (loss):				
Change in net unrealized gains (losses) on marketable equity securities, cash flow hedges and investments	1,823	(969)	78,353	292
Change in cumulative translation adjustments	1,747	(256)	939	(1,986)
Total comprehensive income (loss)	<u>\$ (17,463)</u>	<u>\$ 19,041</u>	<u>\$ (30,891)</u>	<u>\$ 129,795</u>

As of October 25, 2008, the Company had \$71.1 million in gross unrealized losses in connection with the 14.0 million shares of Foundry common stock held by Brocade. Effective upon the consummation of the merger with Foundry, the Company reversed the gross unrealized losses of \$71.1 million, thereby resulting in gross unrealized gains of \$71.1 million for the nine months ended August 1, 2009 (see Note 6, "Investments and Equity Securities," of the Notes to Condensed Consolidated Financial Statements).

### 13. Equity Compensation Plans and Stock-Based Compensation

In April 2009, the stockholders of Brocade approved the Company's 2009 Stock Plan, 2009 Director Plan and 2009 Employee Stock Purchase Plan ("2009 ESPP"), and such plans are now part of the Company's equity compensation plans along with those described in the Company's Annual Report on Form 10-K for the fiscal year ended October 25, 2008 (the "Plans"). Further, the Company's 1999 Stock Plan, 1999 Director Option Plan and 1999 Employee Stock Purchase Plan, as described in the Company's Annual Report on Form 10-K for the fiscal year ended October 25, 2008, each expired in March 2009 by its terms.

#### 2009 Stock Plan

The 2009 Stock Plan provides for the grant of stock options, restricted stock, restricted stock units, stock appreciation rights, performance units and performance shares, and other stock or cash awards to employees, directors and consultants. Per the terms of the 2009 Stock Plan, 48.0 million shares of the Company's common stock are reserved for issuance under the plan, plus the following:

- Any shares subject to stock options or similar awards granted under the Company's 1999 Stock Plan, 1999 Nonstatutory Stock Option Plan ("NSO Plan") and 2001 McDATA Equity Incentive Plan that expire or otherwise terminate without having been exercised in full; and
- Shares issued pursuant to awards granted under the Company's 1999 Stock Plan, NSO Plan and 2001 McDATA Equity Incentive Plan that are forfeited to or repurchased by the Company, with the maximum number of shares to be added to the 2009 Stock Plan pursuant to this clause equal to 40,335,624 shares.

### **2009 Director Plan**

The 2009 Director Plan provides for the grant of stock options and restricted stock units to non-employee directors of the Company. The Board of Directors has reserved 2.0 million shares of the Company's common stock for issuance under the 2009 Director Plan, plus any shares subject to stock options or similar awards granted under the Company's 1999 Director Option Plan that expire or otherwise terminate without having been exercised in full, and shares issued pursuant to awards granted under the Company's 1999 Director Option Plan that are forfeited to or repurchased by the Company, with the maximum number of shares to be added to the 2009 Director Plan pursuant to this clause equal to 870,000 shares.

### **2009 Employee Stock Purchase Plan**

The 2009 ESPP permits eligible employees to purchase shares of the Company's common stock through payroll deductions for up to 15% of qualified compensation during the offering period. The purchase price is 85% of the lesser of the fair market value of the Company's common stock on (i) the first trading day of the offering period, or (ii) the last day of each six-month purchase period; provided, however, that the purchase price for subsequent offering periods may be determined by the administrator, subject to compliance with the terms of the 2009 ESPP. A total of 35.0 million shares of the Company's common stock are reserved for issuance under the 2009 ESPP. The 2009 ESPP is implemented through consecutive, overlapping offering periods of up to approximately twenty-four months. The offering periods generally start with the first trading day on or after June 1 and December 1 each year and end on the last trading day in the periods ending twenty-four months later, unless the fair market value of the Company's common stock on the last day of a purchase period is lower than the fair market value of the Company's common stock on the first trading day of the offering period, in which case the offering period will end early, immediately after the purchase period, and a new offering period will commence on or about such date. Each offering period will be divided into four purchase periods of approximately six months in length. The initial offering period for the 2009 ESPP beginning on June 1, 2009 is twenty-four months. Eligible employees may purchase no more than 3,750 shares of the Company's common stock during each six-month purchase period.

### **Equity Compensation Plans**

The Company grants stock options for shares of the Company's common stock and other types of equity compensation awards to its employees and directors under the various equity compensation plans described above. In accordance with the terms of the 2009 Stock Plan and the 2009 Director Plan, each award granted with an exercise price that is less than fair market value, which includes all grants of restricted stock awards, restricted stock units, performance shares and performance units, will count against the applicable plan's share reserve as 1.56 shares for every one share subject to such award. In addition, the exercise price of stock options and stock appreciation rights granted under the 2009 Stock Plan must be at least equal to the fair market value of the Company's common stock on the date of grant and the exercise price of incentive stock options granted to any participant who owns more than 10% of the total voting power of all classes of the Company's outstanding stock must be at least 110% of the fair market value of the Company's common stock on the date of grant. The term of a stock option and a stock appreciation right may not exceed seven years, except that, with respect to any participant who owns 10% of the voting power of all classes of the Company's outstanding capital stock, the term of an incentive stock option may not exceed five years.

The Company also grants restricted stock awards and restricted stock units under the 2009 Stock Plan. The majority of the stock options, restricted stock awards and restricted stock units granted under the Plans vest over a period of four years. Certain options and awards granted under the 2009 Stock Plan vest over shorter or longer periods.

At August 1, 2009, approximately 211.5 million shares were authorized for future issuance under the Plans, which include stock options, shares to be issued pursuant to the 2009 ESPP, restricted stock units and other awards, and shares of Brocade common stock that became issuable in connection with the assumption or substitution of Foundry equity awards. A total of 67.8 million shares of common stock were available for grant under the Plans as of August 1, 2009. Awards that expire, or are canceled without delivery of shares, generally become available for issuance under the Plans.

### **Stock Options**

When the measurement date is certain, the fair value of each option granted during the respective period is estimated on the date of grant using the Black-Scholes valuation model and the assumptions noted in the following table. The dividend yield reflects that Brocade has not paid any cash dividends since inception and does not anticipate paying cash dividends in the foreseeable future. The risk-free interest rate is based on the implied yield on a U.S. Treasury zero-coupon issue with a remaining term equal to the expected term of the option. The expected volatility is based on an equal weighted-average of implied volatilities from traded options of the Company's common stock and historical volatility of the Company's common stock. The expected term is based on historical exercise behavior.

## [Table of Contents](#)

	Three Months Ended		Nine Months Ended	
	August 1, 2009	July 26, 2008	August 1, 2009	July 26, 2008
<b>Stock Options</b>				
Expected dividend yield	—	0.0%	0.0%	0.0%
Risk-free interest rate	—	2.4 - 4.1%	0.5 - 2.8%	1.5 - 4.1%
Expected volatility	—	46.3%	61.8 - 65.3%	44.2 - 46.3%
Expected term (in years)	—	4.0	4.0	4.0

The Company recorded \$5.5 million and \$3.9 million of compensation expense related to stock options for the three months ended August 1, 2009 and July 26, 2008, respectively, in accordance with Statement of Financial Accounting Standards No. 123(R), “Share-Based Payment” (“SFAS 123R”). The Company recorded \$18.0 million and \$13.7 million of compensation expense related to stock options for the nine months ended August 1, 2009 and July 26, 2008, respectively, in accordance with SFAS 123R. Compensation expense computed under the fair value method for stock options issued is being amortized under a graded vesting method over the options’ vesting period. A summary of stock option activity under the Plans for the nine months ended August 1, 2009 is presented as follows:

	Shares (in thousands)	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding at October 25, 2008	35,036	\$ 8.05	4.17	\$ 701
Assumed under the Foundry acquisition	93,509	\$ 3.23		
Granted	5,018	\$ 4.22		
Exercised	(25,322)	\$ 2.98		
Forfeited or expired	(5,564)	\$ 5.93		
Outstanding at August 1, 2009	102,677	\$ 4.84	3.37	\$ 376,405
Vested and expected to vest at August 1, 2009	96,837	\$ 4.89	3.36	\$ 353,903
Exercisable and vested at August 1, 2009	76,478	\$ 5.08	3.17	\$ 276,376

No stock options were granted during the three months ended August 1, 2009. The weighted-average grant date fair value of stock options granted during the three months ended July 26, 2008 was \$2.27. The total intrinsic value of stock options exercised for the three months ended August 1, 2009 and July 26, 2008 was \$71.4 million and \$7.9 million, respectively.

As of August 1, 2009, there was \$21.4 million of unrecognized compensation expense related to stock options that is expected to be recognized over a weighted-average period of 1.21 years.

From May 1999 through July 2003, the Company granted 98.8 million options subject to variable accounting as the measurement date of the options granted was not certain. As of August 1, 2009, 1.1 million options with a weighted-average exercise price of \$21.54 and a weighted-average contractual life of 1.40 years remain outstanding and continue to be accounted for under variable accounting.

### *Employee Stock Purchase Plan*

Under Brocade’s employee stock purchase plans, including the 2009 ESPP and the 1999 Employee Stock Purchase Plan, (together, the “Brocade ESPP”), eligible employees can participate and purchase shares semi-annually at the lower of 85% of the fair market value of the Company’s common stock on (i) the first trading day of the offering period, or (ii) the last day of each six-month purchase period. The Brocade ESPP permits eligible employees to purchase common stock through payroll deductions for up to 15% of qualified compensation. The Company accounts for the Brocade ESPP as a compensatory plan and recorded compensation expense of \$10.7 million and \$2.1 million for the three months ended August 1, 2009 and July 26, 2008, respectively, and \$15.5 million and \$5.0 million for the nine months ended August 1, 2009 and July 26, 2008, respectively, in accordance with SFAS 123R. Compensation expense computed under the fair value method for ESPP shares issued is being amortized under a graded vesting method over the twenty-four month offering period.

## [Table of Contents](#)

The fair value of the option component of Brocade ESPP shares was estimated using the Black-Scholes option pricing model using the following weighted-average assumptions:

	Three Months Ended		Nine Months Ended	
	August 1, 2009	July 26, 2008	August 1, 2009	July 26, 2008
Employee Stock Purchase Plan				
Expected dividend yield	0.0%	0.0%	0.0%	0.0%
Risk-free interest rate	0.7%	1.6%	0.8%	2.6%
Expected volatility	77.9%	45.3%	76.4%	43.0%
Expected term (in years) (1)	1.2	0.5	1.2	0.5

(1) The ESPP shares valued for the three and nine months ended July 26, 2008 fall under the 1999 Employee Stock Purchase Plan, which is based on a six-month offering period.

As of August 1, 2009, there was \$51.1 million of unrecognized compensation expense related to employee stock purchases under the Brocade ESPP. This expense is expected to be recognized over a weighted-average period of 1.2 years.

In addition, as part of its acquisition of Foundry, the Company became the administrator of Foundry's 1999 Employee Stock Purchase Plan ("Foundry ESPP"), which expired on May 31, 2009. As a result of Brocade's assumption of rights under the Foundry ESPP, Foundry employees who became Brocade employees were granted the right to purchase shares of the Company's common stock at the lower of 85% of the fair market value of the Company's common stock, as adjusted in accordance with the Foundry Merger Agreement at (i) the beginning of a rolling two-year offering period or (ii) the end of each semi-annual offering period, subject to a plan limit on the number of shares that may be purchased in an offering period. During the nine months ended August 1, 2009, the Company issued 4.9 million shares under the Foundry ESPP. The Company accounts for the Foundry ESPP as a compensatory plan and recorded compensation expense of \$0.6 million and \$2.5 million for the three and nine months ended August 1, 2009, respectively, in accordance with SFAS 123R.

### *Restricted Stock Awards*

No restricted stock awards were issued for the nine months ended August 1, 2009 and July 26, 2008. When and if granted, restricted stock awards are not transferable until fully vested, and all unvested shares upon termination are subject to repurchase. The fair value of each award is based on the Company's closing stock price on the date of grant.

A summary of the nonvested restricted stock awards for the nine months ended August 1, 2009 is presented as follows:

	Shares (in thousands)	Weighted-Average Grant Date Fair Value
Nonvested at October 25, 2008	14	\$ 0.01
Granted	—	\$ —
Vested	(14)	\$ 0.01
Forfeited	—	\$ —
Nonvested at August 1, 2009	—	\$ —
Expected to vest at August 1, 2009	—	\$ —

### *Restricted Stock Units*

For the nine months ended August 1, 2009 and July 26, 2008, Brocade issued 12.4 million and 5.6 million restricted stock units, respectively. Typically, vesting of restricted stock units occurs over one to four years and is subject to the employee's continuing service to Brocade. The compensation expense related to these awards of \$25.8 million and \$5.7 million for the three months ended August 1, 2009 and July 26, 2008, respectively, and \$63.2 million and \$12.8 million for the nine months ended August 1, 2009 and July 26, 2008, respectively, was determined using the fair market value of Brocade's common stock on the date of the grant and is recognized under a graded vesting method over the awards' vesting period.

## Table of Contents

A summary of the changes in restricted stock units outstanding under Brocade's equity compensation plans during the nine months ended August 1, 2009 is presented as follows:

	Shares (in thousands)	Weighted-Average Grant Date Fair Value
Nonvested at October 25, 2008	8,306	\$ 7.87
Assumed under the Foundry acquisition	26,050	\$ 3.54
Granted	12,431	\$ 6.84
Vested	(2,526)	\$ 5.90
Forfeited	(3,008)	\$ 6.83
Nonvested at August 1, 2009	<u>41,253</u>	\$ 5.02
Vested and expected to vest at August 1, 2009	<u>33,245</u>	\$ 5.02

The aggregate intrinsic value of restricted stock units outstanding at August 1, 2009 was \$324.3 million.

On July 30, 2007, the Board of Directors approved a long-term, performance-based equity incentive plan ("Incentive Plan") under the Company's then applicable 1999 Stock Plan. The Incentive Plan provides for the grant of restricted stock units to certain Company executive officers and other selected employees. For each restricted stock unit that vests, the plan participant will be entitled to receive one share of the Company's common stock. The restricted stock units that vest are subject to the Company's performance compared to the NASDAQ-100 Index over an initial twenty-seven-month performance period, which is from August 1, 2007 to October 31, 2009. The Incentive Plan participants must also remain a service provider to the Company during the performance period. 2.4 million restricted stock units would have been earned as of August 1, 2009.

Under the principal terms of the Incentive Plan, the Incentive Plan participants are entitled to receive restricted stock units representing up to an aggregate of 2.0% of the amount the Company's market capitalization growth rate exceeds the growth rate of the NASDAQ-100 Index for the performance period, subject to certain adjustments. The ultimate amount that vests is subject to the discretion of the Board of Directors. The restricted stock units are expected to vest simultaneously with the end of the performance period.

As of August 1, 2009, Brocade had \$111.1 million of unrecognized compensation expense, net of estimated forfeitures, related to restricted stock unit grants that is equity classified and \$1.5 million of unrecognized compensation expense related to the Incentive Plan that is liability classified. These expenses are expected to be recognized over a weighted-average period of 1.87 years. As of August 1, 2009, \$11.9 million in compensation expense related to the Incentive Plan has been recognized to date.

## **14. Income Taxes**

The Company adopted FASB Interpretation No. 48, "*Accounting for Uncertainty in Income Taxes - an interpretation of FASB Statement No. 109*" ("FIN 48"), effective at the beginning of fiscal year 2008. As a result, the cumulative effect of applying FIN 48 was a \$3.1 million decrease to accumulated deficit at the beginning of fiscal year 2008. Historically, the Company classified unrecognized tax benefits as current income taxes payable. Under FIN 48, the Company now classifies unrecognized tax benefits as non-current income tax liability except to the extent it anticipates cash payment within the following year. The amount of gross unrecognized tax benefits at the beginning of fiscal year 2008 was \$88.1 million. The amount of gross unrecognized tax benefits at the end of fiscal year 2008 was \$118.3 million. The total gross unrecognized tax benefits of \$118.3 million at October 25, 2008 include \$85.7 million that, if recognized, would affect the Company's effective tax rate.

During the three months ended August 1, 2009, the Company recorded a net increase of approximately \$17.2 million in its total unrecognized tax benefits. The total amount of gross unrecognized tax benefits on August 1, 2009 was \$171.3 million, which included \$108.5 million that, if recognized, would affect the Company's effective tax rate. During the three months ended August 1, 2009, the Company did not expense any material amount for net interest and penalties related to income tax liabilities through income tax expense.

During the nine months ended August 1, 2009, the Company expensed an additional amount of \$0.5 million for net interest and penalties related to income tax liabilities through income tax expense.

During the three and nine months ended July 26, 2008, the Company expensed an additional amount of \$0.3 million and \$0.8 million, respectively, for net interest and penalties related to income tax liabilities through income tax expense. The total net interest and penalties as of August 1, 2009 was \$4.8 million.

As of April 26, 2008, the Company believed that sufficient positive evidence existed from historical operations and projections of taxable income in future years to conclude that it was more likely than not that the Company would realize its deferred tax assets. Accordingly, the Company released the valuation allowance of its deferred tax assets during the three months ended April 26, 2008. The Company continues to apply a valuation allowance on the deferred tax assets relating to capital loss carryforwards, investments and foreign operating loss carryforwards due to limited carryforward periods and the character of such tax attributes. The release of the valuation allowance for the year ended October 25, 2008 resulted in a tax benefit of \$174.4 million and a reduction of goodwill of \$134.6 million.

## [Table of Contents](#)

In November 2005, the Company was notified by the IRS that the Company's domestic federal income tax return for the year ended October 25, 2003 was subject to audit. In May 2008, the Internal Revenue Service ("IRS") completed its field examination of the Company's federal income tax return for the year ended October 25, 2003 and issued a Revenue Agent's Report ("RAR"). The IRS is contesting the Company's transfer pricing for the cost sharing and buy-in arrangements with its foreign subsidiaries. The Company appealed the RAR to the Appeals Office of the IRS in June 2008 and the Company is currently negotiating a settlement. In July 2009, the IRS also completed its field examination of the Company's federal income tax returns for the three tax years ended October 28, 2006 and issued an RAR. The IRS is contesting the transfer pricing associated with transfers of acquired technologies between subsidiaries. The Company is considering appealing these adjustments. The IRS may make similar claims against the Company's transfer pricing arrangements in future examinations. In May 2006, the Franchise Tax Board notified the Company that its California income tax returns for the years ended October 25, 2003 and October 30, 2004 were subject to audit. The IRS and Franchise Tax Board audits are still ongoing and the Company believes its reserves are adequate to cover any potential assessments that may result from these examinations.

In February 2009, the IRS commenced an examination of Foundry's federal income tax returns for the years ended December 31, 2006 and 2007. The Company is not aware of any proposed adjustments, but the audit is still ongoing. The Company believes its reserves are adequate to cover any potential assessments that may result from the examination.

For the three and nine months ended August 1, 2009, the Company recorded income tax expense of \$20.0 million and \$17.3 million, respectively, primarily as a result in a change in the allocation of income between the U.S. and foreign operations, and a change in judgment concerning the ongoing IRS examination. For the three and nine months ended July 26, 2008, the Company recorded income tax expense (benefit) of \$31.9 million and \$(136.7) million, respectively.

### **15. Segment Information**

Statement of Financial Accounting Standards No. 131, "*Disclosures about Segments of an Enterprise and Related Information*," as amended ("SFAS 131"), establishes standards for reporting information about operating segments. Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated regularly by the Chief Operating Decision Maker ("CODM"), or decision-making group, in deciding how to allocate resources and in assessing performance. Currently, the CODM is the Chief Executive Officer.

As a result of the Foundry acquisition during the first quarter of fiscal year 2009, Brocade reorganized its four operating segments, of which two are individually reportable segments: Data Storage and Global Services; and two, IP Layer 2-3 and ADC, are combined into one reportable segment: IP Products. These segments are organized principally by product category. The types of products and services from which each reportable segment derives its revenues are as follows:

- Data Storage includes a majority of the Company's storage area network products and software, HBAs, CNAs, and mezzanine cards;
- IP Products include Layer 2-3 switches and routers, Layer 4-7 application delivery controllers, file area network products and associated management solutions; and
- Global Services include break/fix maintenance, extended warranty, installation, consulting, network management, related software maintenance and support revenue, and telecommunications services.

Financial decisions and the allocation of resources are based on the information from the Company's internal management reporting system. At this point in time, the Company does not track any of its assets by operating segments. Consequently, it is not practical to show assets by operating segments. The majority of the Company's assets as of August 1, 2009 were attributable to its United States operations.

## [Table of Contents](#)

Fiscal year 2008 segment results have been conformed to the new measurements of segment financial reporting implemented in the first quarter of fiscal year 2009. Summarized financial information by reportable segment for the three and nine months ended August 1, 2009 and July 26, 2008, based on the internal management reporting system, is as follows (in thousands):

	<u>Data Storage</u>	<u>IP Products</u>	<u>Global Services</u>	<u>Total</u>
<b>Three months ended August 1, 2009</b>				
Net revenues	\$ 283,773	\$ 118,710	\$ 90,797	\$ 493,280
Cost of revenues	113,604	71,743	47,488	232,835
Gross margin	<u>\$ 170,169</u>	<u>\$ 46,967</u>	<u>\$ 43,309</u>	<u>\$ 260,445</u>
<b>Three months ended July 26, 2008</b>				
Net revenues	\$ 300,376	\$ 1,428	\$ 63,892	\$ 365,696
Cost of revenues	108,352	2,720	41,419	152,491
Gross margin (loss)	<u>\$ 192,024</u>	<u>\$ (1,292)</u>	<u>\$ 22,473</u>	<u>\$ 213,205</u>
<b>Nine months ended August 1, 2009</b>				
Net revenues	\$ 887,096	\$ 296,021	\$ 248,054	\$ 1,431,171
Cost of revenues	337,021	198,891	132,606	668,518
Gross margin	<u>\$ 550,075</u>	<u>\$ 97,130</u>	<u>\$ 115,448</u>	<u>\$ 762,653</u>
<b>Nine months ended July 26, 2008</b>				
Net revenues	\$ 890,163	\$ 5,170	\$ 173,107	\$ 1,068,440
Cost of revenues	336,954	8,522	107,728	453,204
Gross margin (loss)	<u>\$ 553,209</u>	<u>\$ (3,352)</u>	<u>\$ 65,379</u>	<u>\$ 615,236</u>

### 16. Net Income (Loss) per Share

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

	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>August 1, 2009</u>	<u>July 26, 2008</u>	<u>August 1, 2009</u>	<u>July 26, 2008</u>
<b>Basic net income (loss) per share</b>				
Net income (loss)	\$ (21,033)	\$ 20,266	\$ (110,183)	\$ 131,489
Weighted-average shares of common stock outstanding	406,916	371,626	390,087	376,742
Less: Weighted-average shares of common stock subject to repurchase	—	(281)	—	(287)
Weighted-average shares used in computing basic net income (loss) per share	406,916	371,345	390,087	376,455
Basic net income (loss) per share	<u>\$ (0.05)</u>	<u>\$ 0.05</u>	<u>\$ (0.28)</u>	<u>\$ 0.35</u>
<b>Diluted net income (loss) per share</b>				
Net income (loss)	\$ (21,033)	\$ 20,266	\$ (110,183)	\$ 131,489
Interest on convertible subordinated debt, net of income tax effect	—	429	—	2,056
Net income (loss), as adjusted	(21,033)	20,695	(110,183)	133,545
Weighted-average shares used in computing basic net income (loss) per share	406,916	371,345	390,087	376,455
Dilutive potential common shares	—	21,241	—	19,990
Weighted-average shares used in computing diluted net income (loss) per share	406,916	392,586	390,097	396,445
Diluted net income (loss) per share	<u>\$ (0.05)</u>	<u>\$ 0.05</u>	<u>\$ (0.28)</u>	<u>\$ 0.34</u>

For the three months ended August 1, 2009 and July 26, 2008, potential common shares in the form of stock options to purchase 51.4 million and 13.5 million weighted-average shares of common stock, respectively, were antidilutive and, therefore, not included in the computation of diluted net income (loss) per share. For the nine months ended August 1, 2009 and July 26, 2008, potential common shares in the form of stock options to purchase 76.3 million and 15.0 million weighted-average shares of common stock, respectively, were antidilutive and, therefore, not included in the computation of diluted net income (loss) per share. For the three and nine months ended August 1, 2009, potential common shares in the form of stock awards to purchase 21.1 million and 17.3 million weighted-average shares of common stock, respectively, were antidilutive and, therefore, not included in the computation of diluted net loss per share.

## [Table of Contents](#)

As the Company was in a net loss position for the three and nine months ended August 1, 2009, there was no dilutive impact of potential common shares associated with stock options, by application of the treasury stock method. The dilutive impact of potential common shares associated with stock options, by application of the treasury stock method, for the three and nine months ended July 26, 2008 was 6.7 million and 6.0 million, respectively. In addition, for both the three and nine months ended August 1, 2009, potential common shares resulting from the potential conversion, on a weighted-average basis, of the Company's convertible subordinated debt of 12.1 million common shares were antidilutive and therefore not included in the computation of diluted net loss per share. However, for both the three and nine months ended July 26, 2008, potential common shares resulting from the potential conversion, on a weighted-average basis, of the Company's convertible subordinated debt of 12.1 million common shares were dilutive and therefore included in the computation of diluted net income per share.

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

*You should read the following discussion and analysis in conjunction with the condensed consolidated financial statements and notes thereto included in Item 1 of this Quarterly Report and with Management's Discussion and Analysis of Financial Condition and Results of Operations contained in our Annual Report filed on Form 10-K with the Securities and Exchange Commission on December 15, 2008.*

### Overview

Our goal is to be the preeminent provider of storage area and IP networking equipment and services, and the leading provider of data center networking solutions that help enterprises connect and manage their information.

In the first fiscal quarter of 2009, we completed our acquisition of Foundry. As a result of this acquisition in the first fiscal quarter of 2009, we reorganized our four operating segments: Data Storage, IP Layer 2-3, Application Delivery Controller and Global Services. The objective of this new organization is to enable us to more effectively focus on growth opportunities, while being well-positioned to more rapidly scale and accommodate new business opportunities, including potential future acquisitions.

Our primary focus for this year has been on the following markets:

- Enterprise Data Center Solutions, which includes directors, switches, HBAs, top-of-rack switches, end-of-row and backbones, file management solutions, application delivery, converged network products and server virtualization solutions;
- Enterprise LAN Campus, where we deliver lower cost, higher performance solutions including modular and stackable 1 Gigabit Ethernet ("GbE") and 10GbE solutions, Enhanced Power Over Ethernet plus, as well as security and wireless solutions; and
- Service Providers, where we offer metro Edge, high-availability aggregation and Ethernet Backbone solutions.

When considering the current economically challenging IT spending environment, our planning assumption is that it will remain unchanged through the balance of calendar year. In light of this environment, we are also focused on managing our expenses. We expect IT spending in general, and the Storage and IP markets specifically, to improve during 2010.

**Results of Operations**

We report our fiscal year on a 52/53-week period ending on the last Saturday in October. As is customary for companies that use the 52/53-week convention, every fifth year contains a 53-week year. As a result, our fiscal year 2009 is a 53-week fiscal year, with our second quarter of fiscal year 2009 consisting of fourteen weeks, which is one week longer than a typical quarter. Fiscal year 2008 was a 52-week fiscal year. Our next 14-week quarter will be in the second quarter of fiscal year 2014.

Our results of operations for the three and nine months ended August 1, 2009 and July 26, 2008 are reported in this discussion and analysis as a percentage of total net revenues, except for cost of revenues and gross margin (loss) with respect to each segment, which are indicated as a percentage of the respective segment net revenues. Prior period segment results have been conformed to the new measurements of segment financial reporting implemented in the first quarter of fiscal year 2009.

*Revenues.* Our data networking solutions enable network convergence and end-to-end networking from the edge to the core of our customers' networking infrastructures. Our revenues are derived primarily from sales of our Data Storage family of SAN products, sales of our IP products, and our service and support offerings related to those products. Our fabric switches and directors connect our customers' servers and storage devices creating a SAN.

Our total net revenues are summarized as follows (in thousands, except percentages):

	<b>Three Months Ended</b>					
	<b>August 1, 2009</b>	<b>% of Net Revenues</b>	<b>July 26, 2008</b>	<b>% of Net Revenues</b>	<b>Increase/ (Decrease)</b>	<b>% Change</b>
Data Storage	\$ 283,773	57.5%	\$ 300,376	82.1%	\$ (16,603)	(5.5)%
IP Products	118,710	24.1%	1,428	0.4%	117,282	8,215.9%
Global Services	90,797	18.4%	63,892	17.5%	26,905	42.1%
Total net revenues	\$ 493,280	100.0%	\$ 365,696	100.0%	\$ 127,584	34.9%

  

	<b>Nine Months Ended</b>					
	<b>August 1, 2009</b>	<b>% of Net Revenues</b>	<b>July 26, 2008</b>	<b>% of Net Revenues</b>	<b>Increase/ (Decrease)</b>	<b>% Change</b>
Data Storage	\$ 887,096	62.0%	\$ 890,163	83.3%	\$ (3,067)	(0.3)%
IP Products	296,021	20.7%	5,170	0.5%	290,851	5,625.2%
Global Services	248,054	17.3%	173,107	16.2%	74,947	43.3%
Total net revenues	\$ 1,431,171	100.0%	\$ 1,068,440	100.0%	\$ 362,731	33.9%

The increase in total net revenues for the three months ended August 1, 2009 as compared to total net revenues for the three months ended July 26, 2008 reflects growth in sales of IP Products and Global Services offerings, offset by a decrease in Data Storage sales.

- The decrease in Data Storage product revenues for this period reflects a 9.6% decrease in the number of ports shipped from our switch and embedded switch products and a decrease in average selling price per port of 12.8%, offset by a mix shift from 4 Gigabit ("Gb") director and switch products to 8 Gb director products, which carry a higher price per port;
- The increase in revenues from IP Products was due to sales of network switching and router products which began with our acquisition of Foundry in December 2008; and
- The increase in Global Services revenues was a result of the acquisition of Foundry in December 2008 and the continued expansion of our installed base.

The increase in total net revenues for the nine months ended August 1, 2009 as compared to total net revenues for the nine months ended July 26, 2008 reflects growth in sales of IP Products and Global Services offerings.

- Data Storage product revenues for the period were flat and reflect a 1.0% decrease in the number of ports shipped from our director and switch products and a decrease in average selling price per port of 9.9%, offset by a mix shift from 4 Gb director and switch products to 8 Gb director products, which carry a higher price per port;
- The increase in revenues from IP Products was due to sales of network switching and router products as a result of our acquisition of Foundry in December 2008; and
- The increase in Global Services revenues was a result of the acquisition of Foundry in December 2008 and the inclusion of Strategic Business Systems, Inc. ("SBS"), which was acquired in March 2008, for the full nine-month period in fiscal year 2009, as well as the continued expansion of our installed base.

## [Table of Contents](#)

For the three and nine months ended August 1, 2009, the declines in average selling prices were the result of a continuing competitive pricing environment, offset by a mix shift to higher port density and price per port products. We believe that the IT spending environment remains cautious due to the uncertain macroeconomic environment and therefore, our business is being affected by a decrease in overall market demand, partially offset by an increase in our market share in the SAN market. The increase in the number of IP Products ports shipped primarily reflects the Foundry acquisition.

Going forward, we expect the number of ports shipped to fluctuate depending on the demand for our existing and recently introduced IP Products and Data Storage products, as well as the timing of product transitions by our OEM customers. We currently expect that average selling prices per port will likely decline at rates consistent with historical rates of low single digits per quarter, however, there are risks that pricing pressure could accelerate due to macroeconomic issues, new product introductions by us or our competitors, or other factors. Historically, our first and fourth fiscal quarters are seasonally stronger quarters from a revenue perspective than our second and third fiscal quarters.

Our total net revenues by geographical area are summarized as follows (in thousands, except percentages):

	Three Months Ended					
	August 1, 2009	% of Net Revenues	July 26, 2008	% of Net Revenues	Increase/ (Decrease)	% Change
Domestic	\$ 314,159	63.7%	\$ 237,216	64.9%	\$ 76,943	32.4%
International	179,121	36.3%	128,480	35.1%	50,641	39.4%
Total net revenues	\$ 493,280	100.0%	\$ 365,696	100.0%	\$ 127,584	34.9%

  

	Nine Months Ended					
	August 1, 2009	% of Net Revenues	July 26, 2008	% of Net Revenues	Increase/ (Decrease)	% Change
Domestic	\$ 940,245	65.7%	\$ 675,113	63.2%	\$ 265,132	39.3%
International	490,926	34.3%	393,327	36.8%	97,599	24.8%
Total net revenues	\$ 1,431,171	100.0%	\$ 1,068,440	100.0%	\$ 362,731	33.9%

Historically, domestic revenues have accounted for between 56% and 69% of total net revenues. International revenues primarily consist of sales to customers in Western Europe, the greater Asia Pacific region and Japan. International revenues were flat as a percentage of total net revenues for the three months ended August 1, 2009 compared with the corresponding period in fiscal year 2008 and they decreased as a percentage of total net revenues for the nine months ended August 1, 2009 compared with the corresponding period in fiscal year 2008 primarily as a result of the shift to North America due to the Foundry acquisition. Revenues are attributed to geographic areas based on where our products are shipped. However, certain OEM customers take possession of our products domestically and then distribute these products to their international customers. Because we account for all of those OEM revenues as domestic revenues, we cannot be certain of the extent to which our domestic and international revenue mix is impacted by the practices of our OEM customers, but we believe that international revenues comprise a larger percentage of our total net revenues than the attributed revenues may indicate.

A significant portion of our revenue is concentrated among a relatively small number of OEM customers. For the three months ended August 1, 2009, three customers each represented 10% or more of our total net revenues for a combined total of 46% of our total net revenues. For the three months ended July 26, 2008, the same three customers each represented 10% or more of our total net revenues for a combined total of 62% of our total net revenues. The decrease in the percentage reflects the acquisition of Foundry and its dispersion of revenue among a non-OEM customer base. We expect that a significant portion of our future revenues will continue to come from sales of products to a relatively small number of OEM customers and, as a result of the Foundry acquisition, to the U.S. government or individual agencies within the U.S. government. Therefore, the loss of, or a decrease in the level of sales to, or a change in the ordering pattern of any one of these customers could seriously harm our financial condition and results of operations.

A majority of our accounts receivable balance is derived from sales to OEM partners in the computer storage and server industry. As of August 1, 2009, three customers accounted for 15%, 13% and 11%, respectively, of total accounts receivable. As of October 25, 2008, three customers accounted for 30%, 17% and 14%, respectively, of total accounts receivable. We perform ongoing credit evaluations of our customers and generally do not require collateral on accounts receivable balances. We have established reserves for

## [Table of Contents](#)

credit losses, sales allowances, and other allowances. While we have not experienced material credit losses in any of the periods presented, there can be no assurance that we will not experience material credit losses in the future.

*Gross margin (loss).* Gross margin (loss) as stated below is indicated as a percentage of the respective segment net revenues, except for total gross margin, which is stated as a percentage of total net revenues. Gross margin (loss) is summarized as follows (in thousands, except percentages):

	Three Months Ended					
	August 1, 2009	% of Net Revenues	July 26, 2008	% of Net Revenues	Increase/ (Decrease)	% Points Change
Data Storage	\$ 170,169	60.0%	\$ 192,024	63.9%	\$ (21,855)	(3.9)%
IP Products	46,967	39.6%	(1,292)	(90.5)%	48,259	130.1%
Global Services	43,309	47.7%	22,473	35.2%	20,836	12.5%
Total gross margin	\$ 260,445	52.8%	\$ 213,205	58.3%	\$ 47,240	(5.5)%

  

	Nine Months Ended					
	August 1, 2009	% of Net Revenues	July 26, 2008	% of Net Revenues	Increase/ (Decrease)	% Points Change
Data Storage	\$ 550,075	62.0%	\$ 553,209	62.1%	\$ (3,134)	(0.1)%
IP Products	97,130	32.8%	(3,352)	(64.8)%	100,482	97.6%
Global Services	115,448	46.5%	65,379	37.8%	50,069	8.7%
Total gross margin	\$ 762,653	53.3%	\$ 615,236	57.6%	\$ 147,417	(4.3)%

For the three months ended August 1, 2009 as compared to the three months ended July 26, 2008, total gross margin increased in absolute dollars, but total gross margin percentage decreased primarily due to increased mix of IP Products revenue, which carries a lower overall gross margin, increased stock-based compensation expense and increased amortization of intangible assets acquired under the Foundry acquisition.

In addition, gross margin percentage by reportable segment increased or decreased for the three months ended August 1, 2009 compared with the corresponding period in fiscal year 2008 primarily due to the following factors:

- Data Storage product costs relative to net revenues increased primarily due to a 2.1% increase in manufacturing costs as a result of an increase in sales engineering headcount, a 1.9% increase in product costs and a 0.6% increase in stock-based compensation;
- IP Products costs relative to net revenues decreased primarily due to an increase in revenue as a result of the Foundry acquisition. The gross loss in IP Products for the three months ended July 26, 2008 reflects the former Files operating segment, which has been included within the IP Products reportable segment for the three months ended August 1, 2009; and
- Global Services operating costs relative to net revenues decreased primarily due to a 14.7% decrease in service and support spending relative to net revenues due to additional revenue generated as a result of the Foundry and SBS acquisitions, partially offset by a 2.4% increase in stock-based compensation as a result of the Foundry acquisition.

For the nine months ended August 1, 2009 as compared to the nine months ended July 26, 2008, total gross margin increased in absolute dollars, but total gross margin percentage decreased primarily due to increased mix of IP Products revenue, which carries a lower overall gross margin, increased stock-based compensation expense and increased amortization of intangible assets acquired under the Foundry acquisition.

In addition, gross margin percentage by reportable segment increased or decreased for the nine months ended August 1, 2009 compared with the corresponding period in fiscal year 2008 primarily due to the following factors:

- Data Storage product costs relative to net revenues were flat primarily due to a 0.7% decrease in amortization of intangible assets related to the McDATA acquisition, offset by a 0.3% increase in product costs and a 0.4% increase in stock-based compensation;
- IP Products costs relative to net revenues decreased primarily due to an increase in revenue as a result of the Foundry acquisition. The gross loss in IP Products for the nine months ended July 26, 2008 reflects the former Files operating segment, which has been included within the IP Products reportable segment for the nine months ended August 1, 2009; and
- Global Services operating costs relative to net revenues decreased primarily due to a 10.5% decrease in service and support spending relative to net revenues as a result of additional revenue generated from the Foundry and SBS acquisitions, partially offset by a 1.4% increase in stock-based compensation and a 0.3% increase in amortization of intangible assets as a result of the SBS acquisition.

## [Table of Contents](#)

Gross margin is primarily affected by average selling price per port, number of ports shipped and cost of revenues. As described above, we expect that average selling prices per port for our products will continue to decline at rates consistent with historical rates of low single digits per quarter, unless they are further affected by accelerated pricing pressures, new product introductions by us or our competitors, or other factors that may be beyond our control. We believe that we have the ability to partially mitigate the effect of declines in average selling price per port on gross margins by reducing our product and manufacturing operations costs. However, the average selling price per port could decline at a faster pace than we anticipate. If this dynamic occurs, we may not be able to reduce our costs fast enough to prevent a decline in our gross margins. In addition, we must continue to increase the current volume of ports shipped to maintain our current gross margins. If we are unable to offset future reductions in average selling price per port with reductions in product and manufacturing operations costs, or if as a result of future reductions in average selling price per port, our revenues do not grow, our gross margins would be negatively affected.

We recently introduced several new products and expect to introduce additional new products in the near future. 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 provide sufficient supplies of new products to meet customer demands. Our gross margins would likely be adversely affected if we fail to successfully manage the introductions of these new products.

*Research and development expenses.* Research and development ("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 test equipment, and related IT and facilities expenses.

R&D expenses are summarized as follows (in thousands, except percentages):

	<u>August 1, 2009</u>	<u>% of Net Revenues</u>	<u>July 26, 2008</u>	<u>% of Net Revenues</u>	<u>Increase/ (Decrease)</u>	<u>% Change</u>
Three months ended	\$ 94,718	19.2%	\$ 65,368	17.9%	\$29,350	44.9%
Nine months ended	\$259,464	18.1%	\$184,704	17.3%	\$74,760	40.5%

The increase in R&D expenses for the three and nine months ended August 1, 2009 compared with the corresponding periods in fiscal year 2008 was primarily due to an increase in salaries and wages, nonrecurring engineering expenses, expenses related to IT, facilities and other shared functions, and stock-based compensation. The increase in salaries and wages and stock-based compensation was primarily the result of headcount growth from the Foundry acquisition. In addition, salaries and wages and stock-based compensation were higher for the nine months ended August 1, 2009 compared with the corresponding period in fiscal year 2008 due to the extra week during the second quarter of our fiscal year 2009, partially offset by the implementation of a Company-wide 5-day unpaid time off program during the first half of fiscal year 2009.

*Sales and marketing expenses.* Sales and marketing expenses consist primarily of salaries, commissions and related expenses for personnel engaged in sales, marketing and customer service functions, costs associated with promotional and marketing programs, travel expenses, and related IT and facilities expenses.

Sales and marketing expenses are summarized as follows (in thousands, except percentages):

	<u>August 1, 2009</u>	<u>% of Net Revenues</u>	<u>July 26, 2008</u>	<u>% of Net Revenues</u>	<u>Increase/ (Decrease)</u>	<u>% Change</u>
Three months ended	\$103,640	21.0%	\$ 70,039	19.2%	\$33,601	48.0%
Nine months ended	\$281,703	19.7%	\$203,200	19.0%	\$78,503	38.6%

The increase in sales and marketing expenses for the three and nine months ended August 1, 2009 compared with the corresponding periods in fiscal year 2008 was primarily due to an increase in salaries and wages, expenses related to IT, facilities and other shared functions, and stock-based compensation, offset by a decrease in advertising and conference expense. The increase in salaries and wages and stock-based compensation was primarily the result of headcount growth from the Foundry acquisition. In

## [Table of Contents](#)

addition, salaries and wages and stock-based compensation were higher for the nine months ended August 1, 2009 compared with the corresponding period in fiscal year 2008 due to the extra week during the second quarter of our fiscal year 2009, partially offset by the Company-wide 5-day unpaid time off program during the first half of fiscal year 2009.

*General and administrative expenses.* General and administrative (“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, other corporate expenses, and related IT and facilities expenses.

G&A expenses are summarized as follows (in thousands, except percentages):

	<u>August 1, 2009</u>	<u>% of Net Revenues</u>	<u>July 26, 2008</u>	<u>% of Net Revenues</u>	<u>Increase/ (Decrease)</u>	<u>% Change</u>
Three months ended	\$23,070	4.7%	\$17,577	4.8%	\$ 5,493	31.3%
Nine months ended	\$62,753	4.4%	\$43,260	4.0%	\$19,493	45.1%

The increase in G&A expenses for the three and nine months ended August 1, 2009 compared with the corresponding periods in fiscal year 2008 was primarily due to an increase in salaries and wages, stock-based compensation and depreciation and amortization, partially offset by an increase in IT and facilities expenses as a result of the Foundry acquisition, which are allocated to other functional groups. The increase in salaries and wages and stock-based compensation was primarily the result of headcount growth from the Foundry acquisition. In addition, salaries and wages and stock-based compensation were higher for the nine months ended August 1, 2009 compared with the corresponding period in fiscal year 2008 due to the extra week during the second quarter of our fiscal year 2009, partially offset by the Company-wide 5-day unpaid time off program during the first half of fiscal year 2009. In addition, outside services were higher for the nine months ended August 1, 2009 compared with the corresponding period in fiscal year 2008.

*Legal fees associated with indemnification obligations and other related costs, net.* These expenses consist of professional legal fees for various matters, including applicable indemnification obligations, defense of the Company in legal proceedings, and actions to pursue claims by the Special Litigation Committee of the Board of Directors. Pursuant to the Company’s charter documents and indemnification agreements, we have certain indemnification obligations to our directors, officers and employees, as well as certain former directors, officers and employees. Pursuant to such obligations and claims filed by the Special Litigation Committee of the Board of Directors, we incurred expenses related to amounts paid to certain former directors, officers and employees of the Company who have been either convicted in criminal proceedings and/or are subject to ongoing SEC and civil actions in connection with Brocade’s historical stock option granting practices. We expect such expenses to decrease through the remainder of fiscal year 2009 from historical trends.

Legal fees associated with indemnification obligations and other related costs, net, are summarized as follows (in thousands, except percentages):

	<u>August 1, 2009</u>	<u>% of Net Revenues</u>	<u>July 26, 2008</u>	<u>% of Net Revenues</u>	<u>Increase/ (Decrease)</u>	<u>% Change</u>
Three months ended	\$ (561)	(0.1)%	\$ 7,951	2.2%	\$ (8,512)	(107.1)%
Nine months ended	\$38,553	2.7%	\$22,399	2.1%	\$16,154	72.1%

Legal fees decreased for the three months ended August 1, 2009 compared with the corresponding period in fiscal year 2008 primarily due to resolution of multiple legal proceedings related to the Special Litigation Committee’s litigation and certain settlements received in connection with that litigation.

Legal fees increased for the nine months ended August 1, 2009 compared with the corresponding period in fiscal year 2008 primarily due to an increase in legal expenses in connection with the litigation filed on behalf of the Company by the Special Litigation Committee of the Board of Directors.

*Provision for class action lawsuit.* This expense is in connection with the resolution of our class action lawsuit. We did not record any provision for class action lawsuit for the three months ended August 1, 2009 and July 26, 2008. Provision for class action lawsuit for the nine months ended August 1, 2009 and July 26, 2008 is summarized as follows (in thousands, except percentages):

	<u>August 1, 2009</u>	<u>% of Net Revenues</u>	<u>July 26, 2008</u>	<u>% of Net Revenues</u>	<u>Increase/ (Decrease)</u>	<u>% Change</u>
Nine months ended	\$—	—%	\$160,000	15.0%	\$(160,000)	(100.0)%

## [Table of Contents](#)

Provision for class action lawsuit decreased for the nine months ended August 1, 2009 compared with the corresponding period in fiscal year 2008. The \$160.0 million in provision for class action lawsuit was based on the preliminary settlement reached on May 30, 2008 between Brocade and the lead plaintiffs for the federal securities class action. In December 2008, we deposited \$160.0 million into an escrow account on behalf of the plaintiff class to be released upon final approval of the proposed settlement by the Federal District Court. On January 26, 2009, the Federal District Court granted final approval of the settlement and the amount was released from escrow.

*Amortization of intangible assets.* Amortization of intangible assets is summarized as follows (in thousands, except percentages):

	<u>August 1, 2009</u>	<u>% of Net Revenues</u>	<u>July 26, 2008</u>	<u>% of Net Revenues</u>	<u>Increase/ (Decrease)</u>	<u>% Change</u>
Three months ended	\$17,052	3.5%	\$ 7,846	2.1%	\$ 9,206	117.3%
Nine months ended	\$51,666	3.6%	\$23,664	2.2%	\$28,002	118.3%

During the three and nine months ended August 1, 2009, we recorded amortization of intangible assets related to the acquisitions of McDATA, Silverback Systems, Inc., SBS and Foundry. The increase in amortization of intangible assets for the three months ended August 1, 2009 compared with the corresponding period in fiscal year 2008 was primarily due to the acquisition of Foundry in December 2008. The increase in amortization of intangible assets for the nine months ended August 1, 2009 compared with the corresponding period in fiscal year 2008 was primarily due to the acquisition of Foundry and the acquisition of SBS in March 2008.

We account for intangible assets in accordance with SFAS 142. Intangible assets are recorded based on estimates of fair value at the time of the acquisition and identifiable intangible assets are amortized on a straight-line basis over their estimated useful lives (see Note 4, "Goodwill and Intangible Assets," of the Notes to Condensed Consolidated Financial Statements).

*Acquisition and integration costs.* Acquisition and integration costs are summarized as follows (in thousands, except percentages):

	<u>August 1, 2009</u>	<u>% of Net Revenues</u>	<u>July 26, 2008</u>	<u>% of Net Revenues</u>	<u>Increase/ (Decrease)</u>	<u>% Change</u>
Three months ended	\$1,450	0.3%	\$—	—%	\$1,450	100.0%
Nine months ended	\$4,794	0.3%	\$—	—%	\$4,794	100.0%

For the three and nine months ended August 1, 2009, we recorded acquisition and integration costs primarily for consulting services and other professional fees in connection with our integration of Foundry.

*Restructuring costs and facilities lease loss benefits, net.* We did not record any restructuring costs and facilities lease loss benefits, net, for the three months ended August 1, 2009 and July 26, 2008. Restructuring costs and facilities lease loss benefits, net, for the nine months ended August 1, 2009 and July 26, 2008 are summarized as follows (in thousands, except percentages):

	<u>August 1, 2009</u>	<u>% of Net Revenues</u>	<u>July 26, 2008</u>	<u>% of Net Revenues</u>	<u>Increase/ (Decrease)</u>	<u>% Change</u>
Nine months ended	\$2,329	0.2%	\$(477)	—%	\$2,806	588.7%

Restructuring costs and facilities lease loss benefits, net, increased for the nine months ended August 1, 2009 compared with the corresponding period in fiscal year 2008. This increase was primarily due to \$2.7 million in restructuring costs primarily related to severance payments in connection with the decision to no longer offer our suite of Files products, partially offset by a benefit of \$0.3 million related to estimated facilities lease losses, net of expected sublease income, recorded during the nine months ended August 1, 2009. This benefit represented a change in estimate. 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.

*In-process research and development.* We did not record any in-process research and development ("IPR&D") charge for the three months ended August 1, 2009 and July 26, 2008. IPR&D for the nine months ended August 1, 2009 and July 26, 2008 is summarized as follows (in thousands, except percentages):

	<u>August 1, 2009</u>	<u>% of Net Revenues</u>	<u>July 26, 2008</u>	<u>% of Net Revenues</u>	<u>Increase/ (Decrease)</u>	<u>% Change</u>
Nine months ended	\$26,900	1.9%	\$—	—%	\$26,900	100.0%

## [Table of Contents](#)

On December 18, 2008, we completed our acquisition of Foundry, a performance and total solutions provider of network switching and routing. In connection with this acquisition, we recorded a \$26.9 million IPR&D charge (see Note 3, "Acquisitions," of the Notes to Condensed Consolidated Financial Statements).

The IPR&D was written off because the acquired technologies had not reached technological feasibility and had no alternative uses. Technological feasibility is defined as being equivalent to completion of a beta-phase working prototype in which there is no remaining risk relating to the development. At the time of the acquisition in December 2008, Foundry was developing new products in multiple product areas that qualify as IPR&D. These efforts included FastIron SuperX Family, FastIron CX, NetIron CER, TurboIron and various other projects. At the time of the acquisition, it was estimated that these development efforts would be completed over the following three to seven months at an estimated total cost of \$3.9 million.

The value assigned to the Foundry IPR&D was determined by estimating costs to develop the purchased IPR&D into commercially viable products, estimating the resulting net cash flows from the projects when completed, and discounting the net cash flows to their present values. The revenue estimates used in the net cash flow forecasts were based on estimates of relevant market sizes and growth factors, expected trends in technology, and the nature and expected timing of new product introductions by Foundry and its competitors.

The rate utilized to discount the net cash flows to their present values was based on Foundry's weighted-average cost of capital. The weighted-average cost of capital was adjusted to reflect the difficulties and uncertainties in completing each project and thereby achieving technological feasibility, the percentage of completion of each project, anticipated market acceptance and penetration, market growth rates, and risks related to the impact of potential changes in future target markets. Based on these factors, a discount rate of 12.5% was deemed appropriate for valuing the IPR&D.

The estimates used in valuing IPR&D were based upon assumptions believed to be reasonable but which are inherently uncertain and unpredictable. Assumptions may be incomplete or inaccurate, and unanticipated events and circumstances may occur.

*Goodwill and acquisition-related intangible assets impairment.* We did not record any goodwill and acquisition-related intangible assets impairment for the three months ended August 1, 2009 and July 26, 2008. Goodwill and acquisition-related intangible assets impairment for the nine months ended August 1, 2009 and July 26, 2008 is summarized as follows (in thousands, except percentages):

	<u>August 1, 2009</u>	<u>% of Net Revenues</u>	<u>July 26, 2008</u>	<u>% of Net Revenues</u>	<u>Increase/ (Decrease)</u>	<u>% Change</u>
Nine months ended	\$53,306	3.7%	\$—	—%	\$53,306	100.0%

Consistent with prior years, we selected the second fiscal quarter as the period in which the annual goodwill impairment test was to be completed. We completed the first step of the goodwill impairment test and determined that the fair value of the Files business fell below its carrying value. During the second quarter of fiscal year 2009, we made a decision to no longer offer our suite of Files products. After the acquisition of Foundry, Files was combined with ADC to create the ADC operating segment. The integration of Files into the ADC operating segment was at a preliminary stage when the decision was made to cease development of the Files business. Accordingly, we assessed the potential impairment of the goodwill and long-lived assets relating to the Files business on a standalone basis.

As a result of the goodwill impairment analysis, we determined that all of the goodwill and acquisition-related intangible assets associated with the Files business were impaired. During the three months ended May 2, 2009, we recorded a \$53.3 million impairment charge, which is comprised of a non-cash goodwill impairment charge of \$45.8 million and a non-cash acquisition-related intangible assets impairment charge of \$7.5 million (see Note 4, "Goodwill and Intangible Assets," of the Notes to Condensed Consolidated Financial Statements).

The excess of the fair value of a reporting unit is determined in the same manner as the amount of goodwill recognized in a business combination, which is the excess of the fair value of the reporting unit, as determined in the first step, over the aggregate fair values of the individual assets, liabilities, and identifiable intangibles as if the business were being acquired in a business combination. If the implied fair value in the "pro forma" business combination accounting as described above exceeds the goodwill assigned to the reporting unit, then there is no impairment. If the goodwill assigned to a reporting unit exceeds the implied fair value of the goodwill, an impairment charge is recorded for the excess. An impairment loss recognized cannot exceed the amount of goodwill assigned to a

## [Table of Contents](#)

reporting unit, and the loss establishes a new basis in the goodwill. Subsequent reversal of goodwill impairment losses is not permitted under the applicable accounting standards.

Prior to fiscal year 2009, we used the income approach, which utilizes the DCF method, and the market approach for estimating the fair values of reporting units. As our market capitalization declined and as the technology sector volatility increased, we focused on methods that were more representative of a market participant's view of fair value given the current market conditions. As a result, in fiscal year 2009, we relied primarily on the DCF method, using management projections for each reporting unit and risk-adjusted discount rates. The DCF method used at each period-end utilized discount rates that we believe adequately reflect the risk and uncertainty in the technology markets generally and specifically in our internally developed earnings projections.

*Interest and other income (loss), net.* Interest and other income (loss), net, are summarized as follows (in thousands, except percentages):

	<u>August 1, 2009</u>	<u>% of Net Revenues</u>	<u>July 26, 2008</u>	<u>% of Net Revenues</u>	<u>Increase/ (Decrease)</u>	<u>% Change</u>
Three months ended	\$ 809	0.2%	\$ 8,872	2.4%	\$ (8,063)	(90.9)%
Nine months ended	\$(2,912)	(0.2)%	\$27,663	2.6%	\$(30,575)	(110.5)%

For the three and nine months ended August 1, 2009 compared with the corresponding periods in fiscal year 2008, the decrease in interest and other income, net, was primarily related to a decrease in investment balances due to the Foundry acquisition. The decrease in interest and other income, net, for the nine months ended August 1, 2009 compared with the corresponding period in fiscal year 2008 was also due to a \$4.4 million increase in acquisition-related financing charges.

*Interest expense.* Interest expense primarily represents the interest cost associated with our term loan and convertible subordinated debt (see Note 9, "Borrowings," of the Notes to Condensed Consolidated Financial Statements). Interest expense is summarized as follows (in thousands, except percentages):

	<u>August 1, 2009</u>	<u>% of Net Revenues</u>	<u>July 26, 2008</u>	<u>% of Net Revenues</u>	<u>Increase/ (Decrease)</u>	<u>% Change</u>
Three months ended	\$(22,845)	(4.6)%	\$(1,103)	(0.3)%	\$21,742	1,971.3%
Nine months ended	\$(70,600)	(4.9)%	\$(4,384)	(0.4)%	\$66,216	1,510.3%

Interest expense increased for the three months ended August 1, 2009 compared with the corresponding period in fiscal year 2008 primarily as a result of \$23.3 million in interest expense incurred on the term loan and the revolving credit facility which were obtained to finance the Foundry acquisition, partially offset by \$2.3 million in capitalization of interest cost in connection with the development of our campus during the three months ended August 1, 2009.

Interest expense increased for the nine months ended August 1, 2009 compared with the corresponding period in fiscal year 2008 primarily as a result of \$70.9 million in interest expense incurred on the term loan and the revolving credit facility which were obtained to finance the Foundry acquisition, partially offset by \$6.4 million in capitalization of interest cost in connection with the development of our campus during the nine months ended August 1, 2009.

We obtained the term loan during the fourth fiscal quarter of 2008. As of August 1, 2009, the carrying value of the outstanding balance of our term loan was \$954.1 million. As of August 1, 2009 and July 26, 2008, the carrying value of the outstanding balance of our convertible subordinated debt assumed from the McDATA acquisition was \$171.3 million and \$169.1 million, respectively.

*Loss on sale of investments, net.* Loss on sale of investments, net, is summarized as follows (in thousands, except percentages):

	<u>August 1, 2009</u>	<u>% of Net Revenues</u>	<u>July 26, 2008</u>	<u>% of Net Revenues</u>	<u>Increase/ (Decrease)</u>	<u>% Change</u>
Three months ended	\$ (52)	—%	\$ (36)	—%	\$ 16	45.0%
Nine months ended	\$(576)	—%	\$(6,985)	(0.7)%	\$(6,409)	(91.8)%

We had an immaterial loss on sale of investments for both the three months ended August 1, 2009 and July 26, 2008.

Loss on sale of investments, net, decreased for the nine months ended August 1, 2009 compared with the corresponding period in fiscal year 2008. The \$0.6 million in loss on sale of investments for the nine months ended August 1, 2009 was due to a loss of \$0.6 million on the disposition of portfolio investments at amounts below the carrying value. The \$7.0 million in loss on sale of

## [Table of Contents](#)

investments for the nine months ended July 26, 2008 was due to a loss of \$6.0 million on the sale of our equity investment in a publicly traded company and a loss of \$1.0 million on the disposition of portfolio investments at amounts below the carrying value.

The carrying value of our equity investments in non-publicly traded companies at August 1, 2009 and July 26, 2008 was \$6.8 million and \$5.4 million, respectively.

*Provision for (benefit from) income taxes.* Provision for (benefit from) income taxes and the effective tax rates are summarized as follows (in thousands, except effective tax rates):

	Three Months Ended		Nine Months Ended	
	August 1, 2009	July 26, 2008	August 1, 2009	July 26, 2008
Provision for (benefit from) income taxes	\$ 20,021	\$31,891	\$17,280	\$(136,709)
Effective tax rate	(1,977.5)%	61.1%	(18.6)%	2,619.1%

Our effective tax rate increased for the three and nine months ended August 1, 2009 compared with the corresponding periods in fiscal year 2008 primarily due to the following:

- Release of the valuation allowance during the three months ended April 26, 2008;
- A change in the allocation of income between the U.S. and foreign operations; and
- A change in judgment concerning the ongoing IRS examination for the three and nine months ended August 1, 2009.

We currently expect the effective tax rate for fiscal year 2009 to be higher than fiscal year 2008. This is a result of the valuation allowance release that created a large benefit in fiscal year 2008, while the Foundry buy-in prepayment created a large provision in fiscal year 2009. Factors such as the successful integration of Foundry's international operations and associated structuring could affect the level of our foreign revenues and earnings. As estimates and judgments are used to project such international earnings, the impact to our tax provision could vary if the current planning or assumptions change. Given that the tax rate is driven by several different factors, it is not possible to estimate our future tax rate with a high degree of certainty.

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 by unfavorable prospective and retrospective effects of changing tax laws and regulations, our income tax provision could change.

Estimates and judgments are required in the calculation of certain tax liabilities and in the determination of the recoverability of certain deferred tax assets, which arise from variable stock option expense, net operating losses, tax carryforwards and temporary differences between the tax and financial statement recognition of revenues and expenses.

We adopted FIN 48 effective at the beginning of fiscal year 2008. FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of an income tax position taken or expected to be taken on a tax return. Under FIN 48, recognition of a tax position is determined when it is more likely than not that a tax position will be sustained upon examination, including resolution of any related appeals or litigation processes. A tax position that meets the more-likely-than-not recognition threshold is measured at the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement with a taxing authority.

The calculation of tax liabilities involves significant judgment in estimating the impact of uncertainties in the application of complex tax laws. Although FIN 48 provides further clarification on the accounting for uncertainty in income taxes recognized in the financial statements, the threshold and measurement attribute prescribed by the pronouncement will continue to require significant judgment by management. Resolution of these uncertainties in a manner inconsistent with our expectations could have a material impact on our results of operations.

The IRS and other tax authorities regularly examine our income tax returns. For additional discussion, see Note 14, "Income Taxes," of the Notes to Condensed Consolidated Financial Statements. We do not expect resolution of the IRS audit during the next twelve months and accordingly do not expect a material increase or decrease to our unrecognized tax benefits. We believe that our reserves for unrecognized tax benefits are adequate for open tax years.

## Table of Contents

*Stock-based compensation expense.* Stock-based compensation expense is summarized as follows (in thousands, except percentages):

	<u>August 1, 2009</u>	<u>% of Net Revenues</u>	<u>July 26, 2008</u>	<u>% of Net Revenues</u>	<u>Increase/ (Decrease)</u>	<u>% Change</u>
Three months ended	\$ 43,313	8.8%	\$11,874	3.2%	\$31,439	264.8%
Nine months ended	\$101,505	7.1%	\$31,522	3.0%	\$69,983	222.0%

The increase in stock-based compensation expense for the three and nine months ended August 1, 2009 compared with the corresponding periods in fiscal year 2008 was primarily due to increased headcount related to the acquisition of Foundry in December 2008, as well as the 2009 ESPP for which compensation expense is recognized using the graded vesting method over the twenty-four month offering period.

Stock-based compensation expense was included in the following line items on our Condensed Consolidated Statements of Operations as follows (in thousands):

	<u>Three Months Ended August 1, 2009</u>	<u>Three Months Ended July 26, 2008</u>	<u>Nine Months Ended August 1, 2009</u>	<u>Nine Months Ended July 26, 2008</u>
Cost of revenues	\$ 8,459	\$ 2,638	\$ 18,593	\$ 7,501
Research and development	12,444	2,788	30,115	7,939
Sales and marketing	15,013	3,195	35,886	8,327
General and administrative	7,397	3,253	16,911	7,755
Total stock-based compensation	<u>\$ 43,313</u>	<u>\$ 11,874</u>	<u>\$ 101,505</u>	<u>\$ 31,522</u>

## Liquidity and Capital Resources

	<u>August 1, 2009</u>	<u>October 25, 2008</u> <small>(in thousands)</small>	<u>Increase/ (Decrease)</u>
Cash and cash equivalents	\$ 244,179	\$ 453,884	\$ (209,705)
Short-term investments	5,731	152,741	(147,010)
Marketable equity securities	—	177,380	(177,380)
Long-term investments	—	36,120	(36,120)
Restricted cash	—	1,075,079	(1,075,079)
Total	<u>\$ 249,910</u>	<u>\$ 1,895,204</u>	<u>\$ (1,645,294)</u>
Percentage of total assets	7%	57%	

We use cash generated by operations as our primary source of liquidity. We expect that cash provided by operating activities may fluctuate in future periods as a result of a number of factors, including fluctuations in our operating results, the rate at which products are shipped during the quarter, accounts receivable collections, inventory and supply chain management, and the timing and amount of tax and other payments. For additional discussion, see “Part II — Other Information, Item 1A. Risk Factors.”

Based on past performance and current expectations, we believe that internally generated cash flows are generally sufficient to support business operations, capital expenditures, contractual obligations, and other liquidity requirements associated with our operations for at least the next twelve months. We expect to repay our convertible subordinated debt due on February 15, 2010 through cash from operations, by drawing on the revolving credit facility or through debt refinancing made available by various foreign and domestic financial institutions, although we cannot be certain whether such financing would be available on commercially reasonable or Company-favorable terms or such financing may not be available at all. In addition to access to capital markets, we could also monetize certain assets, including our real estate holdings, or slow down the development of our campus. There are no other transactions, arrangements, or other relationships with unconsolidated entities or other persons that are reasonably likely to materially affect our liquidity and the availability of and our requirements for capital resources.

## Financial Condition

Cash and cash equivalents, short-term investments, marketable equity securities, long-term investments and restricted cash as of August 1, 2009 decreased by \$1,645.3 million over the balance as of October 25, 2008. For the nine months ended August 1, 2009, we used \$39.8 million in cash from operating activities, which was lower than our net loss for the same period as a result of adjustments

## [Table of Contents](#)

to net loss for non-cash items related to depreciation and amortization, stock-based compensation expense, asset impairment and IPR&D, as well as a decrease in inventory, partially offset by the \$160.0 million payment of the liability associated with the settlement of the class action lawsuit, an increase in accounts receivable and a decrease in accounts payable and accrued employee compensation. Days sales outstanding in receivables for the nine months ended August 1, 2009 was 59 days, compared with 44 days for the nine months ended July 26, 2008.

Net cash used in investing activities for the nine months ended August 1, 2009 totaled \$155.7 million and was primarily the result of \$1,297.5 million in cash paid in connection with the Foundry acquisition and \$118.3 million in purchases of property and equipment, offset by \$1,075.1 million in restricted cash released to finance a portion of the Foundry acquisition and \$185.1 million in proceeds resulting from maturities and sales of short-term and long-term investments.

Net cash used in financing activities for the nine months ended August 1, 2009 totaled \$15.3 million and was primarily the result of payment of principal related to the term loan of \$108.1 million and payment of senior underwriting fees related to the term loan of \$30.5 million, offset by proceeds from the issuance of common stock from ESPP and stock option exercises of \$110.3 million and proceeds from the revolving credit facility of \$14.1 million.

Net proceeds from the issuance of common stock in connection with employee participation in our equity compensation plans 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 flow resulting from the issuance of common stock in connection with employee participation in equity compensation plans will vary.

### **Nine Months Ended August 1, 2009 Compared to the Nine Months Ended July 26, 2008**

*Operating Activities.* Net cash provided by operating activities decreased for the nine months ended August 1, 2009 compared with the corresponding period in fiscal year 2008. The decrease was primarily due to net loss, the \$160.0 million payment of the liability associated with the settlement of the class action lawsuit, decreased accounts receivable collections and increased payments with respect to accounts payable, accrued employee compensation and other accrued liabilities during the nine months ended August 1, 2009, partially offset by a decrease in inventory purchases.

*Investing Activities.* Net cash used in investing activities increased for the nine months ended August 1, 2009 compared with the corresponding period in fiscal year 2008. The increase was primarily due to cash paid in connection with the Foundry acquisition and decreased proceeds from the maturities and sales of investments and marketable equity securities. This increase was partially offset by a decrease in restricted cash which was released to finance a portion of the Foundry acquisition, as well as decreased purchases of property and equipment and short-term and long-term investments as we continue to prioritize our use of cash for debt repayment.

*Financing Activities.* Net cash used in financing activities decreased for the nine months ended August 1, 2009 compared with the corresponding period in fiscal year 2008. The decrease was primarily due to decreased common stock repurchases and increased proceeds from the issuance of common stock from ESPP and stock option exercises and proceeds from the revolving credit facility, partially offset by the payment of principal and senior underwriting fees related to the term loan.

### **Liquidity**

*Manufacturing and Purchase Commitments.* We have manufacturing arrangements with Foxconn, Sanmina, Flextronics and Celestica (collectively, the "CMs") under which we provide twelve-month product forecasts and place purchase orders in advance of the scheduled delivery of products to our customers. The required lead time for placing orders with the CMs depends on the specific product. As of August 1, 2009, our aggregate commitment for inventory components used in the manufacture of our products was \$279.9 million, which components we expect to utilize during future normal ongoing operations, net of a purchase commitments reserve of \$23.4 million, as reflected on the Condensed Consolidated Balance Sheet. Although the purchase orders we place with the CMs are cancelable, the terms of the agreements require us to purchase all inventory components not returnable, usable by, or sold to other customers of the CMs. Our purchase commitments reserve reflects our estimate of purchase commitments we do not expect to consume in normal operations within the next twelve months, in accordance with our policy.

*Guarantee.* On November 18, 2003, we purchased a previously leased building located near our San Jose headquarters and issued a \$1.0 million guarantee as part of the purchase agreements.

## Table of Contents

*Company Campus Contractual Obligations.* On May 23, 2008, we purchased property located in San Jose, California, which consists of three unimproved building parcels that are entitled for approximately 562,000 square feet of space in three buildings. The total purchase price for the property was \$50.9 million. In connection with the purchase, we also engaged a third party as development manager to manage the development and construction of improvements on the property. Our obligation for development and construction of three buildings and a parking garage on the purchased property is approximately \$173.0 million (in addition to the purchase price for the property), payable in various installments through approximately June 2010. In connection with the purchase, we also obtained a four-year option, exercisable at our sole discretion, to purchase a fourth unimproved approximate four acre parcel for a fixed price of approximately \$26.0 million. We plan to develop the land through June 2010 and finance the purchase and the development through operating cash flows.

*Income Taxes.* We accrue U.S. income taxes on the earnings of our foreign subsidiaries unless the earnings are considered indefinitely reinvested outside of the United States. We intend to reinvest current and accumulated earnings of our foreign subsidiaries for expansion of our business operations outside the United States for an indefinite period of time.

The IRS and other tax authorities regularly examine our income tax returns (see Note 14, "Income Taxes," of the Notes to Condensed Consolidated Financial Statements). We believe we have adequate reserves for all open tax years.

### *Senior Secured Credit Facility.*

#### *General*

On October 7, 2008, we entered into a credit agreement with the following lenders, Bank of America, N.A., Morgan Stanley Senior Funding, Inc., HSBC Bank USA National Association and Keybank National Association. The credit agreement provides for (i) a five-year \$1,100.0 million term loan facility and (ii) a five-year \$125.0 million revolving credit facility, which includes a \$25.0 million swing line loan subfacility and a \$25.0 million letter of credit subfacility.

The net proceeds of the term loan facility were used to finance a portion of our acquisition of Foundry. In addition to the term loan facility, during the nine months ended August 1, 2009, we drew \$14.1 million from the \$125.0 million revolving credit facility to finance a small portion of the merger. We may draw additional proceeds from the revolving credit facility in the future for ongoing working capital and other general corporate purposes. As of August 1, 2009, \$14.1 million was outstanding under the revolving credit facility.

Loans under the Senior Secured Credit Facility bear interest, at our option, at a rate equal to either the LIBOR rate, plus an applicable margin equal to 4.0% per annum, or the prime lending rate, plus an applicable margin equal to 3.0% per annum. The applicable margin with respect to revolving loans is subject to adjustment based on our consolidated senior secured leverage ratio, as defined in the credit agreement. The LIBOR rate floor is 3.0% per annum and the prime lending rate floor is 4.0% per annum, in each case, for the life of the Senior Secured Credit Facility. For the nine months ended August 1, 2009, the weighted-average interest rate on the term loan was 7.0%.

The proceeds of the term loan were deposited in a restricted securities account pending the closing of the merger and other release conditions, and are reported as long-term restricted cash on the Condensed Consolidated Balance Sheet as of October 25, 2008. On December 19, 2008, the proceeds of the term loan were released from the restricted securities account to fund the merger. As of August 1, 2009, the current portion of the liability associated with the term loan of \$41.5 million, net of the debt discount of \$10.0 million, is reported as "Current portion of long-term debt," and the long-term portion of the liability associated with the term loan of \$912.6 million, net of the debt discount of \$27.1 million, is reported as "Long-term debt, net of current portion" on the Condensed Consolidated Balance Sheet.

We are permitted to make voluntary prepayments at any time (without payment of a premium, other than in the case of a repricing transaction in respect of the term loan facility), and are required to make mandatory prepayments on the term loan (without payment of a premium) with (i) net cash proceeds from non-ordinary course asset sales (subject to reinvestment rights and other exceptions), (ii) net cash proceeds from issuances of debt (other than certain permitted debt), (iii) a percentage of 50% or 0% of our excess cash flow, based on our consolidated senior secured leverage ratio, beginning with the fiscal year ending October 27, 2009, and (iv) casualty proceeds and condemnation awards (subject to reinvestment rights and other exceptions). We are required to pay quarterly installments on the term loan equal to an aggregate annual amount of 5% of the original principal amount thereof in the first and second year, 10% in the third year, 20% in the fourth year and 60% in the fifth year, with any remaining balance payable on the final maturity date of the term loan. Upon a repricing of the term loan (including through a refinancing) that results in the weighted-

## [Table of Contents](#)

average yield or applicable rate of such term loan immediately after such repricing to be lower than such yield or rate immediately prior to such repricing, a 2.0% premium is payable during the first year following the closing and a 1.0% premium is payable during the second year following the closing.

Debt fees totaling \$28.5 million associated with the acquisition have been capitalized as deferred financing costs, with \$5.9 million amortized as of August 1, 2009. As of August 1, 2009, the short-term portion of the deferred financing costs was \$6.3 million and is reported within "Prepaid expenses and other current assets" on the Condensed Consolidated Balance Sheet. As of August 1, 2009, the long-term portion of the deferred financing costs was \$16.3 million and is reported within "Other assets" on the Condensed Consolidated Balance Sheet. All debt fees capitalized are related to the term loan facility. The deferred financing costs are being amortized using the effective interest method over the five-year term of the debt.

### *Guarantees and Collateral*

The obligations of the Company and its subsidiary guarantors under the Senior Secured Credit Facility and the related guarantees thereunder are secured, subject to customary permitted liens and other agreed upon exceptions, by (i) a first priority pledge of all of the equity interests of each of the Company's direct and indirect subsidiaries and (ii) a perfected first priority interest in and mortgages on all tangible and intangible assets of the Company and each subsidiary guarantor, except, in the case of a foreign subsidiary, to the extent such pledge would be prohibited by applicable law or would result in materially adverse tax consequences (limited, in the case of a first-tier foreign subsidiary, to 65% of the voting stock and 100% of non-voting stock of such first-tier foreign subsidiary). In addition, the term loan has not been registered with the SEC as of August 1, 2009.

### *Covenants*

The credit agreement contains customary representations and warranties and customary affirmative and negative covenants applicable to the Company and its subsidiaries, including, among other things, restrictions on liens, indebtedness, investments, fundamental changes, dispositions, capital expenditures, prepayment of other indebtedness, redemption or repurchase of subordinated indebtedness, dividends and other distributions. The credit agreement contains financial covenants that require us to maintain a minimum consolidated fixed charge coverage ratio, a maximum consolidated leverage ratio and a maximum consolidated senior secured leverage ratio, each as defined in the credit agreement. The credit agreement also includes customary events of default, including cross-defaults on our material indebtedness and change of control. We were in compliance with all applicable covenants as of August 1, 2009.

The majority of our outstanding debt is related to the financing of the Foundry acquisition, the costs and expenses related to the merger, and the ongoing working capital and other general corporate purposes of the combined organization after consummation of the merger. We have the following resources available to obtain short-term or long-term financing, if we need additional liquidity, as of August 1, 2009 (in thousands):

	Original Amount	August 1, 2009		October 25, 2008	
	Available	Used	Available	Used	Available
Revolving credit facility	\$ 125,000	\$ 14,050	\$ 110,950	\$ —	\$ 125,000
Total	\$ 125,000	\$ 14,050	\$ 110,950	\$ —	\$ 125,000

## **Contractual Obligations**

The following table summarizes our contractual obligations, including interest expense, and commitments as of August 1, 2009 (in thousands):

	Total	Less than 1 Year	1—3 Years	3—5 Years	More than 5 Years
<b>Contractual Obligations:</b>					
Term loan (1)	\$ 1,218,308	\$ 119,953	\$ 389,755	\$ 708,600	\$ —
Convertible subordinated debt (1)	176,381	176,381	—	—	—
Revolving credit facility (1)	14,053	14,053	—	—	—
Non-cancelable operating leases (2)	103,708	41,232	26,050	17,070	19,356
Purchase commitments, gross (3)	279,889	279,889	—	—	—
Company campus capital expenditures (4)	69,713	69,713	—	—	—
Total contractual obligations	\$ 1,862,052	\$ 701,221	\$ 415,805	\$ 725,670	\$ 19,356

## [Table of Contents](#)

	<u>Total</u>	<u>Less than 1 Year</u>	<u>1—3 Years</u>	<u>3—5 Years</u>	<u>More than 5 Years</u>
<b>Other Commitments:</b>					
Standby letters of credit	<u>\$ 2,001</u>	<u>\$ n/a</u>	<u>\$ n/a</u>	<u>\$ n/a</u>	<u>\$ n/a</u>
Guarantee	<u>\$ 1,015</u>	<u>\$ n/a</u>	<u>\$ n/a</u>	<u>\$ n/a</u>	<u>\$ n/a</u>
Unrecognized tax benefits and related accrued interest (5)	<u>\$ 171,273</u>	<u>\$ n/a</u>	<u>\$ n/a</u>	<u>\$ n/a</u>	<u>\$ n/a</u>

- (1) Amount reflects total anticipated cash payments, including anticipated interest payments, but does not include any fair value adjustments or discount.
- (2) Amount excludes contractual sublease income of \$31.9 million, which consists of \$5.1 million to be received in less than 1 year, \$7.8 million to be received in 1 to 3 years, \$8.5 million to be received in 3 to 5 years and \$10.5 million to be received in more than 5 years.
- (3) Amount reflects total gross purchase commitments under our manufacturing arrangements with third-party contract manufacturers. Of this amount, we have accrued \$23.4 million for estimated purchase commitments that we do not expect to consume in normal operations within the next twelve months, in accordance with our policy.
- (4) Amount reflects \$69.7 million in capital expenditures in connection with the development of the corporate campus. Including the costs incurred to date of \$162.2 million, the total contractual obligation on the Company campus is approximately \$231.9 million.
- (5) As of August 1, 2009, we had a liability for gross unrecognized tax benefits of \$166.5 million and a net accrual for the payment of related interest and penalties of \$4.8 million, none of which is expected to be paid within one year. We are unable to make a reasonably reliable estimate of when cash settlement with a taxing authority will occur.

*Share Repurchase Program.* As of November 29, 2007, our Board of Directors authorized a total of \$800.0 million for the repurchase of our common stock. Purchases have been made, from time to time, in the open market or by privately negotiated transactions and have been funded from available working capital. The number of shares purchased and the timing of purchases have been based on the level of our cash balances, general business and market conditions, and other factors, including alternative investment opportunities. During the third fiscal quarter of 2008, we suspended our share repurchase program due to the then pending Foundry acquisition. We are prioritizing our use of cash for debt repayment following the close of the Foundry acquisition. As such, we made no share repurchases for the three months ended August 1, 2009. Approximately \$414.1 million remains authorized for future repurchases under this program as of August 1, 2009.

### **Off-Balance Sheet Arrangements**

As part of our ongoing business, we do not participate in transactions that generate material relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities (“SPEs”), which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. As of August 1, 2009, we were not involved in any material unconsolidated SPEs.

### **Critical Accounting Policies and Estimates**

Our discussion and analysis of financial condition and results of operations are based upon our condensed consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles. 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 ongoing basis, our estimates and judgments, including, but not limited to, those related to sales allowances, bad debts, stock-based compensation, warranty obligations, excess inventory and purchase commitments, restructuring costs, facilities lease losses, contingencies, litigation, income taxes and investments. 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 accounting policies to be those policies that are both most important to the portrayal of a company’s financial condition and results of operations,

## Table of Contents

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.

Our management believes that there have been no material changes to our critical accounting policies and estimates during the nine months ended August 1, 2009 as compared to those disclosed in our Annual Report on Form 10-K for the fiscal year ended October 25, 2008, with the exception of our accounting policy for fair value measurement as described in Note 2, "Summary of Significant Accounting Policies" and Note 7, "Fair Value Measurements," and our accounting policy for revenue recognition as described below.

*Revenue recognition and allowances for sales allowances, sales programs and doubtful accounts.* Certain of our products are integrated with software that is essential to the functionality of the equipment. Additionally, we provide unspecified software upgrades and enhancements related to the equipment through our maintenance contracts for most of our products. Accordingly, we account for revenue from these products in accordance with SOP 97-2 and all related interpretations. For sales of products where software is incidental to the equipment, including certain products acquired from Foundry, we apply the provisions of SAB 104 and all related interpretations. Product revenue is generally recognized when all of the following criteria have been met:

- Persuasive evidence of an arrangement exists;
- Delivery has occurred;
- The fee is fixed or determinable; and
- Collectability is reasonably assured or collection is probable.

Products related to our acquisition of Foundry are generally accounted for under SAB 104. As we introduce products based on Foundry's technology, which are determined to include software that is essential to the functionality of the equipment, then such new products will be accounted for using SOP 97-2 and all related interpretations.

For newly introduced SAN products, many of our large OEM customers require a product qualification period during which our products are tested and approved by the OEM customers for sale to their customers. Revenue recognition and related cost are deferred for shipments to new OEM customers and for shipments of newly introduced products to existing OEM customers until satisfactory evidence of completion of the product qualification has been received from the OEM customer. In addition, revenue from sales to our master reseller customers is recognized in the same period in which the product is actually sold by the master reseller (sell-through).

We reduce revenue for estimated sales allowances, sales programs, and other allowances at the time of shipment. Sales allowances, sales programs, and other allowances are estimated based on historical sales levels, the timing and magnitude of historical sales returns, claims under sales programs and other allowances, and a projection of this experience into the future. In addition, we maintain an allowance for doubtful accounts, which is also accounted for as a reduction in revenue, for estimated losses resulting from the inability of our customers to make required payments. We analyze accounts receivable, historical collection patterns, customer concentrations, customer creditworthiness, current economic trends, changes in customer payment terms and practices, and customer communication when evaluating the adequacy of the allowance for doubtful accounts. If actual sales returns, sales programs, and other allowances exceed our estimates, or if the financial condition of our customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances and charges may be required.

Our multiple-element product offerings include computer hardware and software products and support services. We also sell certain software products and support services separately. For certain of our products, software is generally essential to the functionality of our hardware products and, therefore, are accounted for in accordance with SOP 97-2. We allocate revenue to each element in a multiple-element arrangement based upon vendor-specific objective evidence ("VSOE") of the fair value of the element, or if VSOE is not available for the delivered element, by application of the residual method. In the application of the residual method, we allocate revenue to the undelivered elements based on VSOE of fair value for those elements and allocate the residual revenue to the delivered elements. VSOE of the fair value for an element is based upon the price charged when the element is sold separately. Revenue allocated to each element is then recognized when the basic revenue recognition criteria is met for each element. Changes in the inability to determine VSOE for an undelivered element in a multiple-element arrangement may affect the timing of revenue recognition. For sales of products that contain multiple elements and where software is incidental, we apply the provisions of EITF 00-21 to determine the separate units of accounting that exist within the arrangement. If more than one unit of accounting exists, the arrangement consideration is allocated to each unit of accounting using either the relative fair value method or the residual fair value

## [Table of Contents](#)

method as prescribed by EITF 00-21. Revenue is recognized for each unit of accounting when all the revenue recognition criteria has been met for that unit of accounting.

Service revenue consists of training and maintenance arrangements, including PCS, customer support services and other professional services. PCS services are offered under renewable, annual fee-based contracts or as part of multiple-element arrangements, and typically include telephone support and upgrades and enhancements to our operating system software. Revenue related to PCS elements is deferred and recognized ratably over the contractual period. PCS contracts are typically one to three years in length.

For those products not under SOP 97-2, customer support services are offered under renewable, fee-based contracts which provide customers with hardware repair and replacement parts, access to technical assistance, and unspecified software updates and upgrades on a when-and-if available basis. Revenue from customer support services contracts is deferred and recognized ratably over the contractual support period, in accordance with FTB 90-1. Customer support services contracts are typically one to five years in length.

Professional services are offered under hourly or fixed fee-based contracts or as part of multiple-element arrangements. Professional services revenue is recognized when services are completed. Training revenue is recognized upon completion of the training.

### **Recent Accounting Pronouncements**

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 141 (revised 2007), "*Business Combinations*," which was subsequently amended in April 2009 by FSP FAS 141(R)-1, "*Accounting for Assets Acquired and Liabilities Assumed in a Business Combination That Arise from Contingencies*." SFAS 141R requires the acquirer in a business combination to recognize assets and liabilities assumed at their fair values and to recognize acquisition-related costs separately from the acquisition. In circumstances where the acquisition-date fair value for a contingency cannot be determined during the measurement period and it is concluded that it is probable that an asset or liability exists as of the acquisition date and the amount can be reasonably estimated, a contingency is recognized as of the acquisition date based on the estimated amount. SFAS 141R will be effective for us in fiscal year 2010, with early adoption prohibited. We expect the implementation of SFAS 141R will have an impact on our financial position and results of operations, but the nature and magnitude of the specific effects will depend upon the nature, terms and size of the acquisitions we consummate after the effective date of November 1, 2009.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 160, "*Noncontrolling Interests in Consolidated Financial Statements — an amendment of ARB No. 51*." SFAS 160 will change the accounting and reporting for minority interests which will be recharacterized as noncontrolling interests and classified as a component of equity. SFAS 160 is effective for financial statements issued for fiscal years beginning on or after December 15, 2008, and interim periods within those fiscal years. SFAS 160 requires retroactive adoption of the presentation and disclosure requirements for existing minority interests. We are currently assessing the impact of SFAS 160, but do not expect the adoption to have a material impact on our financial position, results of operations, and cash flows.

In May 2008, the FASB issued FSP APB 14-1, "*Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)*." FSP APB 14-1 requires issuers of convertible debt instruments that may be settled in cash upon conversion to account separately for the liability and equity components in a manner that will reflect the entity's nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. FSP APB 14-1 is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years, and will be adopted by us in the first quarter of fiscal year 2010 as it applies to our convertible subordinated debt. We are currently evaluating the impact that FSP APB 14-1 will have on the accounting for our convertible subordinated debt.

In June 2008, the FASB issued EITF Issue No. 07-5, "*Determining Whether an Instrument (or Embedded Feature) Is Indexed to an Entity's Own Stock*." EITF 07-5 provides guidance on determining whether an equity-linked financial instrument, or embedded feature, is indexed to an entity's own stock. EITF 07-5 is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years, and will be adopted by us in the first quarter of fiscal year 2010. We have not yet adopted EITF 07-5, but we are currently assessing the impact that EITF 07-5 may have on our financial position, results of operations, and cash flows.

In November 2008, the FASB ratified EITF Issue No. 08-7, "*Accounting for Defensive Intangible Assets*." EITF 08-7 applies to defensive intangible assets, which are acquired intangible assets that the acquirer does not intend to actively use but intends to hold to

## [Table of Contents](#)

prevent its competitors from obtaining access to them. As these assets are separately identifiable, EITF 08-7 requires an acquiring entity to account for defensive intangible assets as a separate unit of accounting. Defensive intangible assets must be recognized at fair value in accordance with SFAS 141R and SFAS 157. EITF 08-7 is effective for defensive intangible assets acquired in fiscal years beginning on or after December 15, 2008, and will be adopted by us in the first quarter of fiscal year 2010. We expect EITF 08-7 will have an impact on our consolidated financial statements when effective, but the nature and magnitude of the specific effects will depend upon the nature, terms and size of the intangible assets purchased after the effective date of November 1, 2009.

In June 2009, the FASB issued Statement of Financial Accounting Standards No. 168, "*The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles*" ("SFAS 168"). SFAS 168 will become the source of authoritative U.S. GAAP recognized by the FASB to be applied by nongovernment entities. SFAS 168 also modifies the GAAP hierarchy to include only two levels of GAAP: authoritative and non-authoritative. SFAS 168 is effective for financial statements issued for interim and annual periods ending after September 15, 2009, and will be adopted by us in the fourth quarter of fiscal year 2009. We do not expect the adoption of SFAS 168 to have a significant impact on our financial position, results of operations, and cash flows.

### Item 3. Quantitative and Qualitative Disclosures About Market Risk

In the normal course of business, we are exposed to market risks related to changes in interest rates, foreign currency exchange rates and equity prices that could impact our financial position and results of operations. Our risk management strategy with respect to these three market risks may include the use of derivative financial instruments. We use derivative contracts only to manage existing underlying exposures of the Company. Accordingly, we do not use derivative contracts for speculative purposes. Our risks and risk management strategy are outlined below. Actual gains and losses in the future may differ materially from the sensitivity analyses presented below based on changes in the timing and amount of interest rates and our actual exposures and hedges.

#### Interest Rate Risk

Our exposure to market risk due to changes in the general level of United States interest rates relates primarily to our debt, cash equivalents and short-term and long-term investment portfolios.

We are exposed to changes in interest rates as a result of our borrowings under our term loan. As of August 1, 2009, the weighted-average interest rate on the term loan was 7.0%, which represents the minimum interest rate under the credit agreement. The current market rates are such that a 1% increase would still result in a 7.0% interest rate floor. However, based on outstanding indebtedness of \$954.1 million under our term loan as of August 1, 2009, if market rates average 1% above the interest rate floor over the remaining term of the debt, our interest expense would increase by approximately \$30.0 million.

Our convertible subordinated debt is subject to a fixed interest rate and may be converted into common stock based on a fixed conversion ratio. As of August 1, 2009, the approximate aggregate fair value of the outstanding convertible subordinated debt was between \$165.6 million and \$163.9 million. We estimated the fair value of the outstanding convertible subordinated debt as of August 1, 2009 by using the high and low prices per \$100 of the Company's 2.25% Notes as of the last day of trading for the third quarter of fiscal year 2009, which were \$96.00 and \$95.00, respectively.

Our cash, cash equivalents, and short-term and long-term investments are primarily maintained at five major financial institutions in the United States. 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 as of August 1, 2009 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 August 1, 2009	Valuation of Securities Given an Interest Rate Increase of X Basis Points		
	(150 BPS)	(100 BPS)	(50 BPS)		50 BPS	100 BPS	150 BPS
Corporate bonds and notes	\$ 5,732	\$ 5,732	\$ 5,732	\$ 5,731	\$ 5,732	\$ 5,732	\$ 5,731
Total	\$ 5,732	\$ 5,732	\$ 5,732	\$ 5,731	\$ 5,732	\$ 5,732	\$ 5,731

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

## Table of Contents

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 investments subject to interest rate risk and their related weighted-average interest rates as of August 1, 2009. Carrying value approximates fair value.

	<u>Amount</u>	<u>Weighted-Average Interest Rate</u>
Cash and cash equivalents	\$ 244,179	0.22%
Short-term investments	5,731	2.67%
Total	\$ 249,910	0.28%

### ***Foreign Currency Exchange Rate Risk***

We are exposed to foreign currency exchange rate risk inherent in conducting business globally in numerous currencies, of which the most significant to our operations for the nine months ended August 1, 2009 were the Euro, the Japanese Yen, the British Pound and the Singapore Dollar. We are primarily exposed to foreign currency fluctuations related to operating expenses denominated in currencies other than the U.S. dollar. As such, we benefit from a stronger U.S. dollar and may be adversely affected by a weaker U.S. dollar relative to the foreign currency. We use foreign currency forward contracts designated as cash flow hedges to protect against the foreign currency exchange rate risks inherent in our forecasted operating expenses denominated in currencies other than the U.S. dollar. We recognize the gains and losses on foreign currency forward contracts in the same period as the remeasurement losses and gains of the related foreign currency denominated exposures. Alternatively, we may choose not to hedge the foreign currency risk associated with our foreign currency exposures if such exposure acts as a natural foreign currency hedge for other offsetting amounts denominated in the same currency or if the currency is difficult or too expensive to hedge.

As of August 1, 2009, we held \$31.7 million in cash flow derivative instruments. The maximum length of time over which we are hedged as of August 1, 2009 is through May 7, 2010.

### ***Equity Price Risk***

As of August 1, 2009, we had no publicly traded equity securities. We monitor our equity investments for impairment on a periodic basis. In the event that the carrying value of the equity investment exceeds its fair value, and we determine the decline in value to be other-than-temporary, we reduce the carrying value to its current fair value. Generally, we do not attempt to reduce or eliminate our market exposure on these equity securities. We do not purchase our equity securities with the intent to use them for speculative purposes. The aggregate cost of our equity investments in non-publicly traded companies was \$6.8 million at August 1, 2009.

Our common stock is quoted on the NASDAQ Global Select Market under the symbol “BRCD.” On July 31, 2009, the last business day of our third fiscal quarter of 2009, the last reported sale price of our common stock on the NASDAQ Global Select Market was \$7.86 per share.

## **Item 4. Controls and Procedures**

(a) *Evaluation of Disclosure Controls and Procedures.* Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, as of the end of the period covered by this Quarterly Report on Form 10-Q (the “Evaluation Date”).

The purpose of this evaluation is to determine if, as of the Evaluation Date, our disclosure controls and procedures are operating effectively such that the information required to be disclosed in our SEC reports (i) is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and (ii) is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of the Evaluation Date, our disclosure controls and procedures were operating effectively.

## [Table of Contents](#)

(b) *Changes in Internal Control over Financial Reporting.* There were no changes in our internal control over financial reporting that occurred during the quarter ended August 1, 2009 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

### *Limitations on the Effectiveness of Disclosure Controls and Procedures.*

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well designed and implemented, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues within a company are detected. The inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple errors or mistakes. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and may not be detected.

## **PART II — OTHER INFORMATION**

### **Item 1. Legal Proceedings**

The information set forth in Note 10 (see "Legal Proceedings" of Note 10) of the Notes to Condensed Consolidated Financial Statements in Part 1, Item 1 of this Form 10-Q is incorporated herein by reference.

### **Item 1A. Risk Factors**

#### ***The slowdown in the domestic and global economies may increasingly adversely affect Brocade's operating results and financial condition.***

The domestic and global economies are undergoing a period of significant uncertainty and slowdown, which has resulted in reduced demand for information technology, including high-performance data networking solutions, and may continue to reduce demand further. Information technology spending has historically declined as general economic and market conditions have worsened. As the domestic or global economy continues to undergo a significant downturn, or if our customers believe such a downturn will continue for a sustained period, our customers may likely further reduce their information technology spending and future budgets. We are particularly susceptible to reductions in information technology spending because the purchase of our products is often discretionary and may involve a significant commitment of capital and other resources. Different geographic regions (e.g. North America, Western Europe, Asia Pacific region) may experience greater economic slowdown and/or a longer recovery period. Future delays or reductions in information technology spending, domestically and/or internationally, could harm our business, results of operations and financial condition in a number of ways, including longer sales cycles, increased inventory provisions, increased production costs, lowered prices for our products and reduced sales volumes. Similarly, as our suppliers face challenges in obtaining credit or otherwise in operating their businesses, they may become unable to continue to offer the materials we use to manufacture our products or may offer the materials at higher prices. These events have caused, and may cause further, reductions in our revenue, profitability and cash flows, increased price competition, increased operating costs and longer fulfillment cycles and exacerbate many other risks noted in this Form 10-Q, which adversely affect our business, results of operations and financial condition.

Given the current uncertainty about the extent and duration of the global financial slowdown, it is increasingly difficult for us, our customers and our suppliers to accurately forecast future product demand. The reduced visibility could cause us to produce excess products that would increase our inventory carrying costs and result in obsolete inventory. Alternatively, this forecasting difficulty could cause a shortage of products or materials used in our products that would result in our inability to satisfy demand for our products and a loss of market share.

The recent economic downturn has also significantly affected financing markets, the availability of capital and the terms and conditions of financing arrangements, including the overall cost of financing. Circumstances may arise in which Brocade needs, or desires, to raise additional capital. Such capital may not be available on commercially reasonable terms, or at all, which in turn could adversely affect Brocade's financial condition and could increase shareholder dilution.

***Intense competition in the market for networking solutions could prevent Brocade from maintaining or increasing revenue, profitability and cash flows with respect to its networking solutions.***

The market for data and storage networking solutions is intensely competitive. In particular, Cisco maintains a dominant position in the data networking market and several of its products compete directly with Brocade's products. Purchasers of networking solutions may choose Cisco's products because of its longer operating history, broader product line and strong reputation in the networking market. In addition, Cisco may develop new technologies that directly compete with the combined company's products or render its products obsolete.

Brocade also competes with other companies, such as 3Com Corporation, Alcatel-Lucent, Enterasys Networks, Inc., Extreme Networks, Inc., F5 Networks, Inc., Force10 Networks, Inc., Hewlett-Packard Company, Huawei Technologies Co. Ltd., Juniper Networks, Inc. ("Juniper") and Nortel Networks Corporation. Some of Brocade's current and potential competitors have greater market leverage, longer operating histories, greater financial, technical, sales, marketing and other resources, more name recognition and larger installed customer bases.

Brocade also faces significant competition from providers of Fibre Channel switching products for interconnecting servers and storage. These principal competitors include Cisco and QLogic Corporation. Brocade also faces other competitors in markets adjacent to the SAN market, such as QLogic and Emulex Corporation in the Server Connectivity or HBA market.

Particularly as Brocade enters new adjacent markets, Brocade may face competitors with well-established market share and customer relationships. Brocade's competitors could adopt more aggressive pricing policies than Brocade. Brocade believes that competition based on price may become more aggressive than it has traditionally experienced. Brocade's competitors could also devote greater resources to the development, promotion and sale of their products than Brocade may be able to support and, as a result, be able to respond more quickly to changes in customer or market requirements. Brocade's failure to successfully compete in the market would harm Brocade's business and financial results.

New competitors are likely to emerge from the existing Ethernet networking companies in the market as the Fibre Channel over Ethernet standard becomes finalized and is introduced to the market. These competitors are likely to use emerging technologies and alternate routes-to-market (outside of Brocade's traditional OEM channels) to compete with Brocade. In addition, Brocade's OEM partners, who also have relationships with some of Brocade's current competitors, could become new competitors by developing and introducing products that compete with Brocade's product offerings, by choosing to sell Brocade's competitors' products instead of Brocade's products, or by offering preferred pricing or promotions on Brocade's competitors' products. For example, even though Brocade and International Business Machines Corporation ("IBM") announced an agreement in April 2009 for IBM to sell certain Brocade enterprise IP networking products, Juniper and IBM announced a similar agreement in July 2009 with respect to certain of Juniper's Ethernet switches and enterprise IP routers. Competitive pressure will also likely intensify as Brocade's industry experiences further consolidation in connection with acquisitions by Brocade, its competitors and its OEM partners.

***The prices of Brocade's products have declined in the past and Brocade expects the price of Brocade's products to continue to decline, which could reduce Brocade's revenues, gross margins and profitability.***

The average selling price for Brocade's products has declined in the past, and Brocade expects it to continue to decline in the future as a result of changes in competitive pricing pressure, broader macroeconomic factors, product mix, increased sales discounts, new product introductions by Brocade or Brocade's competitors, the entrance of new competitors and other factors. Price declines may also increase as competitors ramp up product releases that compete with Brocade's products. Furthermore, as a result of cautious capital spending in the technology sector, coupled with broader macroeconomic factors, both we and our competitors may pursue more aggressive pricing strategies in an effort to maintain, or seek to increase, sales levels. If Brocade is unable to offset any negative impact that changes in competitive pricing pressures, broader macroeconomic factors, product mix, increased sales discounts, enhanced marketing programs, new product introductions by Brocade or Brocade's competitors, or other factors may have on its average selling price by increasing the volume of products shipped or reducing product manufacturing cost, Brocade's total revenues and gross margins will be negatively impacted.

In addition, to maintain Brocade's gross margins, Brocade must maintain or increase the number of products shipped, develop and introduce new products and product enhancements, and continue to reduce the manufacturing cost of Brocade's products. While Brocade has successfully reduced the cost of manufacturing Brocade's products in the past, Brocade may not be able to continue to reduce cost of production at historical rates. Moreover, most of Brocade's expenses are fixed in the short-term or incurred in advance of receipt of corresponding revenue. As a result, Brocade may not be able to decrease its spending quickly enough or in sufficient

## Table of Contents

amounts to offset any unexpected shortfall in revenues. If this occurs, Brocade could incur losses and Brocade's operating results and gross margins could be below expectations. Additionally, Brocade's gross margins may be negatively affected by fluctuations in manufacturing volumes, component costs, the mix of product configurations sold and the mix of distribution channels through which its products are sold. For example, on a historical basis, Brocade's IP networking products generally realized higher gross margins on direct sales to an end-user than on sales through its resellers or to its OEMs. As a result, any significant shift in revenue through resellers or to OEMs could harm our gross margins. In addition, if product or related warranty costs associated with Brocade's products are greater than we have experienced, Brocade's gross margins may also be adversely affected. Finally, increased costs resulting from higher than anticipated oil prices and the volatility of the value of the U.S. dollar may affect the costs of components used in Brocade's products and negatively affect Brocade's gross margins.

### ***Brocade's future revenue growth depends on the Company's ability to introduce new products and services on a timely basis and achieve market acceptance of these new products and services.***

The market for networking solutions is characterized by rapidly changing technology, accelerating product introduction cycles, changes in customer requirements and evolving industry standards. Brocade's future success depends largely upon its ability to address the rapidly changing needs of its customers by developing and supplying high-quality, cost-effective products, product enhancements and services on a timely basis and by keeping pace with technological developments and emerging industry standards. This risk will likely become more pronounced as the networking markets become more competitive and as demand for new and improved technologies increases.

Brocade has introduced a significant number of new products in recent history, including products across its family of Data Center Infrastructure solutions, which accounts for a substantial portion of Brocade's revenues. Recent product introductions include the Brocade DCX™ Backbone, the first in a new class of high-performance data center networking products designed to address the demanding requirements of the evolving data center. Recent product introductions by Foundry include the FastIron WS compact edge switch, a solution for secure and unified campus-wide convergence, and the NetIron CES 2000 Series, a compact one-rack unit edge/aggregation switch. Brocade also announced its HBAs, product offerings in the Server Connectivity market, in fiscal year 2008. Market adoption of Brocade's HBA product offerings is still early in the acceptance process and remains to be determined.

Developing new offerings requires significant upfront investments that may not result in revenue for an extended period of time, if at all. Brocade must achieve widespread market acceptance of Brocade's new product and service offerings on a timely basis in order to realize the benefits of Brocade's investments. In addition, Brocade's plans to sell its offerings through new channels also requires market acceptance to be successful. For example, in April 2009 Brocade announced an expanded relationship with IBM whereby IBM will rebrand and sell a set of Brocade enterprise IP networking products through the IBM global sales force and authorized IBM business partners, extending the existing relationship between Brocade and IBM for storage area networking products. This expanded relationship also requires Brocade to make certain significant upfront investments, which costs may not be recovered or provide the desired return on investment if the anticipated benefits of the expanded relationship are not ultimately successful.

The success of Brocade's product and service offerings depends on numerous factors, including its ability to:

- Properly define the new products and services;
- Timely develop and introduce the new products and services;
- Differentiate Brocade's new products and services from its competitors' technology and product offerings;
- Address the complexities of interoperability of Brocade's products with its installed base, OEM partners' server and storage products and its competitors' products; and
- Maintain high levels of product quality and reliability.

Various factors impacting market acceptance are outside of Brocade's control, including the following:

- The availability and price of competing products and alternative technologies;
- The cost of certain product subcomponents, which could reduce Brocade's gross margins;

## Table of Contents

- Product qualification requirements by Brocade's OEM partners, which can cause delays in the market acceptance;
- The timing of the adoption of new industry standards relative to Brocade's development of new technology and products;
- The ability of its OEM partners to successfully distribute, support and provide training for its products; and
- Customer acceptance of Brocade products in light of the Foundry acquisition.

If Brocade is not able to successfully develop and market new and enhanced products and services on a timely basis, its business and results of operations will likely be harmed.

### ***Brocade incurred substantial indebtedness to finance the acquisition of Foundry that decreases Brocade's business flexibility and access to capital, and increases its borrowing costs, which may adversely affect Brocade's operations and financial results.***

Upon completion of the acquisition of Foundry, Brocade increased its indebtedness by approximately \$1.1 billion, which is substantially greater than its indebtedness prior to the acquisition. The financial and other covenants agreed to by Brocade in connection with such indebtedness and the increased indebtedness and higher debt-to-equity ratio of Brocade in comparison to that of Brocade on a recent historical basis will have the effect, among other things, of reducing Brocade's flexibility to respond to changing business and economic conditions and increasing borrowing costs, and may adversely affect Brocade's operations and financial results. The increased indebtedness may also adversely affect Brocade's ability to access sources of capital, incur certain liens or engage in certain types of sale and leaseback transactions. Certain types of financing or other transactions may also require Brocade to seek an amendment or waiver under its Senior Secured Credit Facility. Any such amendment or waiver may require a demand payment to our debt holders or may not be available on commercially reasonable terms, if at all. In addition, our failure to comply with these covenants could result in a default under the Senior Secured Credit Facility and our other debt, which could permit the holders to accelerate such debt or demand payment in exchange for a waiver of such default. If any of our debt is accelerated, we may not have sufficient funds available to repay such debt. The current debt under the Senior Secured Credit Facility has a floating interest rate and an increase in interest rates may negatively impact Brocade's financial results. The mandatory debt repayment schedule on the Senior Secured Credit Facility and the maturity of the existing convertible subordinated debt in fiscal year 2010 may negatively impact Brocade's cash position and reduce Brocade's financial flexibility. In addition, any changes by rating agencies to Brocade's credit rating in connection with such indebtedness may negatively impact the value and liquidity of Brocade's debt and equity securities and Brocade's ability to access sources of capital.

### ***Technological convergence and industry consolidation may adversely affect Brocade's market opportunities and operating results.***

Convergence and consolidation trends within the information technology industry are beginning to blur the silos that have historically existed between computing, networking and storage markets and technologies. These trends are shifting long-standing industry partnerships/alliances, go-to-market routes, technology models and represent risks for Brocade. For example, the ongoing development of new networking protocols known as Fibre Channel over Ethernet ("FCoE") and Converged Enhanced Ethernet ("CEE") are designed to merge storage and IP network traffic inside of data centers. Brocade recently introduced new products that support FCoE/CEE. Earlier and wider adoption of FCoE/CEE than is currently projected by Brocade and other industry experts, however, may negatively impact Brocade's core businesses, namely its Fibre Channel-based hardware and software. Another example is Cisco's recent announcement of its entry into the blade server market, which could impact how next-generation data centers and data center networks are architected.

The industry is also experiencing a significant amount of consolidation that poses various risks to Brocade. For example, Oracle has announced its acquisition of Sun Microsystems, which may threaten or eliminate a route-to-market through an OEM. In addition, our partners and competitors could also combine or enter into strategic partnerships. For example, in July 2009, Juniper and IBM entered into an agreement pursuant to which IBM would sell certain of Juniper's Ethernet switches and enterprise IP routers. The above examples and additional industry consolidation may severely impact key existing Brocade partnerships and disrupt go-to-market routes and market opportunities.

***The failure to accurately forecast demand for Brocade's products or the failure to successfully manage the production of Brocade's products could negatively affect the supply of key components for Brocade's products and Brocade's ability to manufacture and sell Brocade's products.***

Brocade provides product forecasts to its contract manufacturers and places purchase orders with them in advance of the scheduled delivery of products to Brocade's customers. Moreover, in preparing sales and demand forecasts, Brocade relies largely on input from its OEM partners while Foundry historically relied on input from its resellers and end-user customers. Therefore, if Brocade or its OEM partners are unable to accurately forecast demand, or if Brocade fails to effectively communicate with its distribution partners about end-user demand or other time-sensitive information, the sales and demand forecasts may not reflect the most accurate, up-to-date information. If these forecasts are inaccurate, Brocade may be unable to obtain adequate manufacturing capacity from its contract manufacturers to meet customers' delivery requirements or Brocade may accumulate excess inventories. Furthermore, Brocade may not be able to identify forecast discrepancies until late in its fiscal quarter. Consequently, Brocade may not be able to make adjustments to its business model. If Brocade is unable to obtain adequate manufacturing capacity from its contract manufacturers, if Brocade accumulates excess inventories, or if Brocade is unable to make necessary adjustments to Brocade's business model, revenue may be delayed or even lost to Brocade's competitors and Brocade's business and financial results may be harmed. In addition, Brocade may experience higher fixed costs as it expands its contract manufacturer capabilities and thus be less able to react quickly if demand suddenly decreases.

Brocade's ability to accurately forecast demand also may become increasingly more difficult as Brocade enters new or adjacent markets, begins phasing out certain products, or acquires other companies or businesses. Forecasting demand for new or adjacent markets, particularly where the markets are not yet well-established, may be highly speculative and uncertain. For products that are nearing end of life or are being replaced by new versions, it may be difficult to forecast how quickly to decrease production on the older products and ramp up production on the new products. Acquired companies or businesses may offer less visibility into demand than Brocade typically has experienced, may cause customer uncertainty regarding purchasing decisions, and may use different measures to evaluate demand that are less familiar to Brocade and thus more difficult to accurately predict.

In addition, although the purchase orders placed with Brocade's contract manufacturers are cancelable, in certain circumstances Brocade could be required to purchase certain unused material not returnable, usable by, or sold to other customers if Brocade cancels any of Brocade's orders. This purchase commitment exposure is particularly high in periods of new product introductions and product transitions. If Brocade is required to purchase unused material from Brocade's contract manufacturers, Brocade would incur unanticipated expenses and Brocade's business and financial results could be negatively affected.

In the past, Brocade's IP networking products have experienced delays in product shipments from its contract manufacturers and OEMs, which in turn delayed product shipments to its customers. In addition, certain of Brocade's IP networking product families require a long manufacturing lead time, which may result in delayed shipments. Brocade may in the future experience similar delays or other problems, such as inferior quality, insufficient quantity of product, or acquisition by a competitor or business failure of any of our OEMs, any of which could harm Brocade's business and operating results.

***Brocade may be subject to intellectual property infringement claims and litigation that are costly to defend and/or settle, and that could result in significant damage and cost awards against Brocade and limit Brocade's ability to use certain technologies in the future.***

Companies in the data and networking industries in which Brocade competes are frequently subject to claims and related litigation regarding patent and other intellectual property rights. As a result of the existence of a large number of patents and the rate of issuance of new patents in the networking industry, and the movement of engineers and other employees between various companies, it is practically impossible for a company to determine in advance whether a product or any of its components may infringe upon intellectual property rights that may be claimed by others. From time to time, third-parties have asserted patent, copyright and trade secret rights to technologies and standards that are important to us. Additionally, third-parties may in the future assert claims or initiate litigation against Brocade or its manufacturers, suppliers or customers alleging infringement of their intellectual property rights with respect to Brocade's existing or future products, or with respect to components therein or customer use thereof. Brocade and Brocade's IP networking products have in the past incurred, are currently incurring and will in the future incur, substantial expenses in defending against such third-party claims. Due to its acquisition of Foundry, Brocade is involved in additional intellectual property-related disputes, including lawsuits with Enterasys Networks, Inc., Network-1 Security Solutions, Inc., and Chrimar Systems, Inc. Brocade may also inherit intellectual property-related disputes from acquisitions of other companies, products or technologies in the future. In addition, Brocade may be subject to indemnification obligations with respect to infringement of third-party intellectual property rights pursuant to Brocade's agreements, or Foundry or other acquired company agreements, with suppliers, OEM partners or customers. In the event of an adverse determination, Brocade could incur substantial monetary liability and be prohibited from shipping certain products or incorporating necessary components into Brocade's products. Suppliers of components or OEM systems to Brocade may be unwilling to, or not be able to, defend or indemnify Brocade against third-party assertions directed at the components or systems they supply to Brocade, and may be unwilling to take licenses that would assure Brocade's supply of such

components or OEM systems. Any of the above scenarios could have a material adverse effect on Brocade's financial position, results of operations, or cash flows.

Litigation in general, and intellectual property and securities litigation in particular, can be expensive, lengthy and disruptive to normal business operations. Moreover, the results of complex legal proceedings are difficult to predict. Responding to the allegations has been, and will likely continue to be, expensive and time-consuming for Brocade. Unfavorable outcomes from these claims and/or lawsuits could adversely affect Brocade's business, results of operations, or financial condition.

A number of companies have developed a licensing program in an attempt to realize revenue from their patent portfolios. Some of these companies have contacted Brocade or certain of Brocade's subsidiaries regarding a license, and others may be expected to contact Brocade or its subsidiaries in the future. Any asserted license demand can require considerable effort and expense to review and respond. Moreover, a refusal by Brocade or its subsidiaries to a license request could result in threats of litigation or actual litigation, which, if or when initiated, could harm Brocade's business.

Brocade relies on a combination of patent, copyright, trademark and trade secret laws and contractual restrictions on disclosure to protect our intellectual property rights in these proprietary technologies. Brocade attempts to identify its technological developments for assessment of whether to file patent applications, but this is a subjective area with many unknowns, such as the content of the prior art, hence there can be no assurance that all patentable technological developments will be captured in patent applications. Further, although Brocade has patent applications pending, there can be no assurance that patents will be issued from pending applications, or that claims allowed on any future patents will be sufficiently broad to protect our technology. The value, validity, and enforceability of intellectual property rights obtained from acquired companies, or purchased from third-parties, such as in the case of a patent or patent application purchase, are subject to many unknowns, and hence may not ultimately have the value originally anticipated.

***Brocade is dependent on sole source and limited source suppliers for certain key components, the loss of which may significantly impact results of operations.***

Brocade purchases certain key components used in the manufacture of its products from single or limited sources. Brocade purchases certain application-specific integrated circuits ("ASICs") from a single source, and Brocade purchases microprocessors, certain connectors, small form-factor pluggable transceivers, logic chips, power supplies and programmable logic devices from limited sources. Our principal limited or sole-sourced components for our classic IP networking products include high-speed dynamic and static random access memories, commonly known as DRAMs and SRAMs, ASICs, printed circuit boards, optical components, packet processors, switching fabrics, microprocessors and power supplies. Proprietary ASICs used in the manufacture of our products are purchased from sole sources and may not be readily available from other suppliers as the development period required to fabricate these ASICs can be lengthy. In addition, more recent IP networking product families integrate customizable network processors from sole source suppliers such as Marvell Technology Group Ltd. We acquire these components through purchase orders and have no long-term commitments regarding supply or pricing from these suppliers. From time to time, Brocade's IP networking product families had experienced shortages in allocations of components, resulting in delays in filling orders. Brocade may encounter shortages and delays in obtaining components in the future, which could impede Brocade's ability to meet customer orders. Brocade's proprietary ASICs, which provide key functionality in certain IP networking products, are fabricated in foundries operated by, or subcontracted by, Texas Instruments Inc., Fujitsu Ltd., and Broadcom Corporation. An alternative supply for these ASICs would require an extensive development period. Brocade also licenses certain third-party software that is incorporated into Brocade's operating system software and other software products. If Brocade is unable to obtain these and other components when required or if Brocade experiences significant component defects, Brocade may not be able to deliver Brocade's products to Brocade's customers in a timely manner. As a result, Brocade's business and financial results could be harmed. The recent global recession and challenging economic climate may cause some of our sole source or limited source suppliers to delay production or go out of business and could result in a disruption to our supply chain.

We depend on anticipated product orders to determine our material requirements. Lead times for limited-sourced materials and components for Brocade's IP networking product families can be as long as six months, vary significantly and depend on factors such as the specific supplier, contract terms and demand for a component at a given time. Inventory management remains an area of focus as we balance the need to maintain strategic inventory levels to ensure competitive lead times with the risk of inventory obsolescence due to rapidly changing technology and customer requirements. If orders do not match forecasts, or if we do not manage inventory effectively, we may have either excess or insufficient inventory of materials and components, which could negatively affect our operating results and financial condition.

## [Table of Contents](#)

In addition, the loss of any of Brocade's major third-party contract manufacturers could significantly impact Brocade's ability to produce its products for an indefinite period of time. Qualifying a new contract manufacturer and commencing volume production is typically a lengthy and expensive process. If Brocade is required to change its contract manufacturer or if its contract manufacturer experiences delays, disruptions, capacity constraints, component parts shortages or quality control problems in its manufacturing operations, shipment of Brocade's products to Brocade's customers could be delayed and result in loss of revenues and Brocade's competitive position and relationship with customers could be harmed.

***The failure to successfully integrate Foundry's business and operations in the expected time frame may adversely affect the combined company's future results.***

Brocade believes that the acquisition of Foundry will result in certain benefits, including broader addressable market opportunities, product innovations, and operational efficiencies. However, Brocade's ability to realize these anticipated benefits depends on successfully combining the businesses of Brocade and Foundry. The combined company may fail to realize the anticipated benefits of the merger for a variety of reasons, including the following:

- Failure of customers to accept new products or to continue as customers of the combined company;
- Failure to successfully manage relationships with original equipment manufacturers, end-users, distributors and suppliers;
- Failure to successfully streamline Brocade's IP networking reseller channel;
- Failure to retain key employees;
- Failure to effectively coordinate sales and marketing efforts to communicate the capabilities of the combined company;
- Failure to successfully develop new products and services on a timely basis that address the market opportunities of the combined company;
- Failure to compete effectively against companies already serving the broader market opportunities expected to be available to the combined company;
- Failure to qualify the combined company's products with OEM customers on a timely basis, or at all;
- Failure to successfully consolidate its third-party contract manufacturing, streamline its supply chain, and reduce product costs while maintaining the ability to sell qualified SAN and IP Networking products to its combined customer base, including United States government customers;
- Failure to consolidate the combined company's professional services and customer support organizations;
- Failure to successfully integrate and harmonize financial reporting and information technology systems of Brocade and Foundry; and
- The integration of Foundry into Brocade may result in significant expenses and accounting charges that adversely affect Brocade's operating results and financial condition.

The challenges of integrating Foundry could disrupt the combined company's ongoing business, distract its management's focus from other opportunities and challenges, and increase the combined company's expenses and working capital requirements. The actual integration may also result in unforeseen expenses or delays. If Brocade is not able to successfully integrate Foundry's business and operations, or if there are delays or greater costs than expected in combining the businesses, the anticipated benefits of the merger may not be realized fully, or at all, or may take longer to realize than expected.

***Brocade has a high concentration of customers, including a limited number of OEM partners, which it relies on for a substantial portion of its revenues. The loss of any of these customers or OEM partners or a decrease in their purchases could significantly reduce Brocade's revenues and negatively affect Brocade's financial results.***

Brocade depends on recurring purchases from a limited number of large OEM partners for a substantial portion of its revenues. As a result, these large OEM partners have a significant influence on Brocade's quarterly and annual financial results. For fiscal years 2008, 2007 and 2006, the same three customers each represented 10% or more of Brocade's total net revenues for a combined total of 65%, 68% and 73%, respectively. Brocade's agreements with its OEM partners are typically cancelable, non-exclusive, have no minimum purchase requirements and have no specific timing requirements for purchases. Brocade's OEM partners could also elect to reduce, or rebalance, the amount they purchase from Brocade and increase the amount purchased from Brocade's competitors. Also, one or more of Brocade's OEM partners could elect to consolidate or enter into a strategic partnership with one of its competitors, which could have the effect of reducing or eliminating Brocade's future revenue opportunities with that OEM partner. Brocade anticipates that its revenues and operating results will continue to depend on sales to a relatively small number of OEM partners. The loss of any one significant OEM partner, or a decrease in the level of sales to any one significant OEM partner, or unsuccessful quarterly negotiation on key terms, conditions or timing of purchase orders placed during a quarter, would likely cause serious harm to Brocade's business and financial results.

Brocade's OEM partners evaluate and qualify Brocade's products for a limited time period before they begin to market and sell them. Assisting Brocade's OEM partners through the evaluation process requires significant sales, marketing and engineering management efforts on Brocade's part, particularly if Brocade's products are being qualified with multiple distribution partners at the same time. In addition, once Brocade's products have been qualified, its customer agreements have no minimum purchase commitments. Brocade may not be able to effectively maintain or expand its distribution channels, manage distribution relationships successfully, or market its products through distribution partners. Brocade must continually assess, anticipate and respond to the needs of its distribution partners and their customers, and ensure that its products integrate with their solutions. Brocade's failure to successfully manage its distribution relationships or the failure of its distribution partners to sell Brocade's products could reduce Brocade's revenues significantly. In addition, Brocade's ability to respond to the needs of its distribution partners in the future may depend on third-parties producing complementary products and applications for Brocade's products. If Brocade fails to respond successfully to the needs of these groups, its business and financial results could be harmed.

The loss of continued orders from any of Brocade's more significant customers, such as the U.S. government or individual agencies within the U.S. government, or companies within the financial services sector, could also cause our revenue and profitability to suffer. For example, if we are unable to offer qualified products to such government customers due to governmental procurement regulations and requirements with respect to country of origin designation, our government orders could decrease, which would negatively impact our revenue and operating results. In addition, our ability to attract new customers will depend on a variety of factors, including the cost-effectiveness, reliability, scalability, breadth and depth of our products. In addition, a change in the mix of our customers, or a change in the mix of direct and indirect sales, could adversely affect our revenue and gross margins.

***Brocade's failure to successfully manage the transition between its new products and its older products may adversely affect Brocade's financial results.***

As Brocade introduces new or enhanced products, Brocade must successfully manage the transition from older products to minimize disruption in customers' ordering patterns, avoid excessive levels of older product inventories and provide sufficient supplies of new products to meet customer demands. When Brocade introduces new or enhanced products, such as new products based on the recently introduced 8 Gb Fibre Channel or 20 GbE technology, Brocade faces numerous risks relating to product transitions, including the inability to accurately forecast demand, address new or higher product cost structures, and manage different sales and support requirements due to the type or complexity of the new products. In addition, any customer uncertainty regarding the timeline for rolling out new products or Brocade's plans for future support of existing products, may negatively impact customer purchase decisions.

***Changes in industry structure and market conditions could lead to charges related to discontinuances of certain of Brocade's products or businesses and asset impairments.***

Brocade carries a substantial amount of acquired intangible assets and goodwill on its balance sheet. Our determination of fair value of long-lived assets relies on management's assumptions of our future revenues, operating costs, and other relevant factors. In response to changes in industry and market conditions, Brocade may be required to realign its resources strategically and consider restructuring, disposing of, or otherwise exiting businesses. Any decision to limit investment in, or dispose of, or otherwise exit businesses may result in the recording of special charges, such as inventory and technology-related write-offs, workforce reduction costs, charges relating to consolidation of excess facilities, or claims from third-parties who were resellers or users of discontinued products. Similarly, if management's estimates of future operating results change or if there are changes to other assumptions such as the discount rate applied to future cash flows, the estimate of the fair value of our reporting units could change significantly, which

## Table of Contents

could result in goodwill impairment charges. Brocade's estimates with respect to the useful life or ultimate recoverability of Brocade's carrying basis of assets, including purchased intangible assets, could change as a result of such assessments and decisions. For example, during the three months ended May 2, 2009, Brocade recorded a non-cash \$53.3 million impairment charge in connection with the decision to no longer offer Brocade's suite of Files products.

Brocade's estimates relating to the liabilities for excess facilities are also affected by changes in real estate market conditions. In addition, we have made investments in certain private companies which could become impaired if the operating results of those companies change adversely. Brocade is required to perform goodwill impairment tests on an annual basis and between annual tests in certain circumstances, and future goodwill impairment tests may result in a charge to earnings.

### ***Brocade has extensive international operations, which subjects it to additional business risks.***

A significant portion of Brocade's sales occur in international jurisdictions. In addition, Brocade's contract manufacturer has significant operations in China. Brocade plans to continue to expand its international operations and sales activities in addition to the establishment of its new limited manufacturing facility in Eastern Europe. Brocade's international sales of its IP networking products have primarily depended on its resellers, including Pan Dacom GmbH in Europe, Stark Technology Inc. in Taiwan and Samsung Corporation in Korea. The failure by international resellers to sell our products could limit our ability to sustain and grow our revenue. Expansion of international operations will involve inherent risks that Brocade may not be able to control, including:

- Supporting multiple languages;
- Recruiting sales and technical support personnel with the skills to design, manufacture, sell and support Brocade's products;
- Complying with governmental regulation of encryption technology and regulation of imports and exports, including obtaining required import or export approval for our products;
- Increased complexity and costs of managing international operations;
- Increased exposure to foreign currency exchange rate fluctuations;
- Commercial laws and business practices that favor local competition;
- Multiple, potentially conflicting, and changing governmental laws, regulations and practices, including differing export, import, tax, labor, anti-bribery and employment laws;
- Longer sales cycles and manufacturing lead times;
- Difficulties in collecting accounts receivable;
- Reduced or limited protection of intellectual property rights;
- Managing a development team in geographically disparate locations, including China and India;
- More complicated logistics and distribution arrangements; and
- Failure to manage expansion effectively could seriously harm Brocade's business, financial condition and prospects.

In addition, international political instability may halt or hinder Brocade's ability to do business and may increase Brocade's costs. Various events, including the occurrence or threat of terrorist attacks, increased national security measures in the United States and other countries, and military action and armed conflicts, may suddenly increase international tensions. In addition, concerns about other international crises, including potential pandemics such as the H1N1 flu (swine flu) virus, may have an adverse effect on the world economy and could adversely affect Brocade's business operations or the operations of Brocade's OEM partners, contract manufacturers and suppliers.

To date, no material amount of Brocade's international revenues and cost of revenues have been denominated in foreign currencies. As a result, an increase in the value of the U.S. dollar relative to foreign currencies could make Brocade's products more

expensive and, thus, not competitively priced in foreign markets. Additionally, a decrease in the value of the U.S. dollar relative to foreign currencies could increase Brocade's operating costs in foreign locations. In the future, a larger portion of Brocade's international revenues may be denominated in foreign currencies, which will subject Brocade to additional risks associated with fluctuations in those foreign currencies. In addition, Brocade may be unable to successfully hedge against any such fluctuations.

***Business interruptions could adversely affect Brocade's business.***

Brocade's operations and the operations of its suppliers, contract manufacturers and customers are vulnerable to interruptions by fire, earthquake, hurricane, power loss, telecommunications failure and other events beyond Brocade's control. For example, a substantial portion of Brocade's facilities, including its corporate headquarters, is located near major earthquake faults. We do not have multiple site capacity for all of our services in the event of any such occurrence. In the event of a major earthquake, Brocade could experience business interruption, destruction of facilities and loss of life. Brocade does not carry earthquake insurance and has not set aside funds or reserves to cover such potential earthquake-related losses. Additionally, health issues such as an outbreak of a pandemic or epidemic, including the H1N1 flu (swine flu) virus, may interrupt business operations in those geographic regions affected by the disease. In addition, Brocade's contract manufacturer has a major facility located in an area that is subject to hurricanes. In the event that a material business interruption occurs that affects Brocade, its suppliers, contract manufacturers or customers, shipments could be delayed and Brocade's business and financial results could be harmed. Despite our implementation of network security measures, our servers may be vulnerable to computer viruses, break-ins, and similar disruptions from unauthorized tampering with our computer systems. We may not carry sufficient insurance to compensate us for losses that may occur as a result of any of these events.

***Brocade's business is subject to cyclical fluctuations and uneven sales patterns, which make predicting results of operations difficult.***

Many of Brocade's OEM partners experience uneven sales patterns in their businesses due to the cyclical nature of information technology spending. For example, some of Brocade's partners close a disproportionate percentage of their sales transactions in the last month, weeks and days of each fiscal quarter, and other partners experience spikes in sales during the fourth calendar quarter of each year. Because the majority of Brocade's sales are derived from a small number of OEM partners, when they experience seasonality, Brocade typically experiences similar seasonality. Historically, Brocade's first and fourth fiscal quarters are seasonally stronger quarters than its second and third fiscal quarters. These OEM partners make decisions to purchase inventory based on a variety of factors, including their product qualification cycles and their expectations of end customer demand, which may be affected by seasonality and their internal supply management objectives. Others require that Brocade maintain inventories of Brocade's products in hubs adjacent to their manufacturing facilities and purchase Brocade's products only as necessary to fulfill immediate customer demand. In addition, Brocade has experienced quarters where uneven sales patterns of Brocade's OEM partners have resulted in a significant portion of Brocade's revenue occurring in the last month of Brocade's fiscal quarter. Foundry typically experienced significantly higher levels of sales towards the end of a period as a result of customers submitting their orders late in the period or as a result of manufacturing issues or component shortages which may delay shipments. Such non-linearity in shipments can increase costs, as irregular shipment patterns result in periods of underutilized capacity and additional costs associated with higher inventory levels and inventory planning. Furthermore, orders received towards the end of the period may not ship within the period due to our manufacturing lead times. This exposes Brocade to additional inventory risk as it has to order products in anticipation of expected future orders and additional sales risk if Brocade is unable to fulfill unanticipated demand. Brocade is not able to predict the degree to which the seasonality and uneven sales patterns of Brocade's OEM partners or other customers will affect Brocade's business in the future, particularly as Brocade releases new products.

***Undetected software or hardware errors could increase Brocade's costs, reduce Brocade's revenues and delay market acceptance of Brocade's products.***

Networking products frequently contain undetected software or hardware errors, or bugs, when first introduced or as new versions are released. Brocade's products are becoming increasingly complex and, particularly as Brocade continues to expand Brocade's product portfolio to include software-centric products, including software licensed from third-parties, errors may be found from time to time in Brocade's products. In addition, through its acquisitions, Brocade has assumed, and may in the future assume, products previously developed by an acquired company that may not have been through the same product development, testing and quality control processes typically used for products developed internally by Brocade, and may have known or undetected errors. Some types of errors also may not be detected until the product is installed in a heavy production or user environment. In addition, Brocade's products are often combined with other products, including software, from other vendors, and these products often need to interface with existing networks, each of which have different specifications and utilize multiple protocol standards and products from other

## Table of Contents

vendors. As a result, when problems occur, it may be difficult to identify the source of the problem. These problems may cause Brocade to incur significant warranty and repair costs, divert the attention of engineering personnel from product development efforts, and cause significant customer relations problems. Moreover, the occurrence of hardware and software errors, whether caused by another vendor's storage or Ethernet network and data management products or Brocade's, could delay market acceptance of Brocade's new products.

***Brocade may not realize the anticipated benefits in connection with its recent purchase of real estate and plans to develop and construct office buildings, which could disrupt its business and negatively impact its financial performance.***

Brocade's recent purchase of real estate in San Jose, California and its commitment to build a new campus of several buildings on that real estate constitute a substantial investment. Brocade may not realize the anticipated benefits with respect to the purchase and development of such property. Brocade is devoting significant capital resources to developing the campus, which will reduce Brocade's liquidity and financial flexibility. Additionally, the development, construction and maintenance of the new campus may result in unexpected costs or delays, which could negatively impact its financial position. Moreover, any delays in the development or construction of the new campus could also suspend Brocade's ability to move into the new campus on a timely basis and, as a result, disrupt Brocade's business.

***Brocade's quarterly and annual revenues and operating results may fluctuate in future periods due to a number of factors, which could adversely affect the trading price of Brocade's stock.***

Brocade's quarterly and annual revenues and operating results may vary significantly in the future due to a number of factors, any of which may cause Brocade's stock price to fluctuate. Factors that may affect the predictability of Brocade's annual and quarterly results include, but are not limited to, the following:

- Disruptions or a continued decline in general economic conditions, particularly in the information technology industry;
- Announcements of pending or completed acquisitions or other strategic transactions by Brocade or its competitors;
- Announcements, introductions and transitions of new products by Brocade and its competitors or its OEM partners;
- The timing of customer orders, product qualifications and product introductions of Brocade's OEM partners;
- Seasonal fluctuations;
- Long and complex sales cycles;
- Declines in average selling prices for Brocade's products as a result of competitive pricing pressures or new product introductions by Brocade or its competitors;
- The emergence of new competitors and new technologies in the storage network and data management markets;
- Deferrals of customer orders in anticipation of new products, services, or product enhancements introduced by Brocade or its competitors;
- Brocade's ability to timely produce products that comply with new environmental restrictions or related requirements of its OEM customers;
- Brocade's 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 Brocade's products;
- Brocade's ability to attain and maintain production volumes and quality levels;
- Variations in the mix of Brocade's products sold and the mix of distribution channels and geographies through which they are sold;

## Table of Contents

- Pending or threatened litigation;
- Stock-based compensation expense that is affected by Brocade's stock price;
- New legislation and regulatory developments; and
- Other risk factors detailed in this section.

Accordingly, the results of any prior periods should not be relied upon as an indication of future performance. Brocade cannot assure you that in some future quarter Brocade's revenues or operating results will not be below Brocade's projections or the expectations of stock market analysts or investors, which could cause Brocade's stock price to decline.

### ***Brocade's business is subject to increasingly complex corporate governance, public disclosure, accounting and tax requirements that could adversely affect Brocade's business and financial results.***

Brocade is subject to changing rules and regulations of federal and state government as well as the stock exchange on which Brocade's common stock is listed. These entities, including the Public Company Accounting Oversight Board, the SEC, the IRS and NASDAQ, have issued a significant number of new and increasingly complex requirements and regulations over the course of the last several years and continue to develop additional regulations and requirements in response to laws enacted by Congress, most notably the Sarbanes-Oxley Act of 2002. In addition, the Department of Treasury, the SEC and various Congressional representatives have recently proposed additional rules and regulations that may go into effect in the near future. Brocade is also subject to various rules and regulations of certain foreign jurisdictions, including applicable tax regulations. Brocade's efforts to comply with these requirements have resulted in, and are likely to continue to result in, increased expenses and a diversion of management time and attention from revenue-generating activities to compliance activities. A change in the tax law in the jurisdictions in which we do business, including an increase in tax rates or an adverse change in the treatment of an item of income or expense, could result in a material increase in our tax expense. For example, in May 5, 2009, the President of the United States and the U.S. Treasury Department proposed changing certain of the U.S. tax rules for U.S. corporations doing business outside the United States. Specific legislation has not yet been proposed or enacted, but it is possible that these or other changes in the U.S. tax laws could increase our U.S. income tax liability in the future.

Brocade is subject to periodic audits or other reviews by such governmental agencies. For example, in November 2005, Brocade was notified by the IRS that Brocade's domestic federal income tax return for the year ended October 25, 2003 was subject to audit. In addition, in August 2008, the IRS commenced examination of the federal income tax returns for the three tax years ended 2004 through 2006. In May 2006, the Franchise Tax Board notified Brocade that its California income tax returns for the years ended October 25, 2003 and October 30, 2004 were subject to audit. In February 2009, the IRS commenced an examination of Foundry's federal income tax returns for the years ended December 31, 2006 and 2007. All these examination cycles remain open as of August 1, 2009. The SEC also periodically reviews Brocade's public company filings. Any such examination or review frequently requires management's time and diversion of internal resources and, in the event of an unfavorable outcome, may result in additional liabilities or adjustments to Brocade's historical financial results.

In May 2008, the IRS completed its field examination of Brocade's federal income tax return for the year ended October 25, 2003 and issued a Revenue Agent's Report. The IRS is contesting the Company's transfer pricing for the cost sharing and buy-in arrangements with its foreign subsidiaries. The Company appealed the RAR to the Appeals Office of the IRS in June 2008 and the Company is currently negotiating a settlement. In July 2009, the IRS also completed its field examination of the Company's federal income tax returns for the three tax years ended October 28, 2006 and issued an RAR. The IRS is contesting the transfer pricing of certain acquisitions with the Company's foreign subsidiaries. The Company is considering appealing these adjustments. The IRS may make similar claims against the Company's transfer pricing arrangements in future examinations. Audits by the IRS are subject to inherent uncertainties and an unfavorable outcome could occur, such as fines or penalties. The occurrence of an unfavorable outcome in any specific period could have a material adverse effect on Brocade's results of operations for that period or future periods. The expense of defending and resolving such an audit may be significant. The amount of time to resolve an audit is unpredictable and defending Brocade may divert management's attention from the day-to-day operations of Brocade's business, which could adversely affect Brocade's business.

***Brocade may not realize the anticipated benefits of past or future acquisitions and strategic investments, and integration of acquired companies or technologies may negatively impact Brocade's business.***

Brocade has in the past acquired, or made strategic investments in, other companies, products or technologies, and Brocade expects to make additional acquisitions and strategic investments in the future. Examples of recent acquisitions include Foundry in December 2008, Strategic Business Systems, Inc. in March 2008, McDATA Corporation in January 2007 and NuView, Inc. in March 2006. In addition to the risks related to the acquisition of Foundry that are described above, Brocade may not realize the anticipated benefits of the acquisition of Foundry or any other acquisitions or strategic investments, which involve numerous risks, including:

- Difficulties in successfully integrating the acquired businesses;
- Revenue attrition in excess of anticipated levels if existing customers alter or reduce their historical buying patterns;
- Unanticipated costs, litigation and other contingent liabilities;
- Diversion of management's attention from Brocade's daily operations and business;
- Adverse effects on existing business relationships with suppliers and customers;
- Risks associated with entering into markets in which Brocade has limited or no prior experience;
- Potential loss of key employees;
- Inability to retain key customers, distributors, vendors and other business partners of the acquired business;
- Failure to successfully manage additional remote locations, including the additional infrastructure and resources necessary to support and integrate such locations;
- Assumption or incurrence of debt and contingent liabilities and related obligations to service such liabilities and Brocade's ability to satisfy financial and other negative operating covenants;
- Additional costs such as increased costs of manufacturing and service costs, costs associated with excess or obsolete inventory, costs of employee redeployment, relocation and retention, including salary increases or bonuses, accelerated amortization of deferred equity compensation and severance payments, reorganization or closure of facilities, taxes, advisor and professional fees, and termination of contracts that provide redundant or conflicting services;
- Incurrence of significant exit charges if products acquired in business combinations are unsuccessful;
- Incurrence of acquisition-related costs or amortization costs for acquired intangible assets that could impact Brocade's operating results;
- Potential write-down of goodwill and/or acquired intangible assets, which are subject to impairment testing on an annual basis, and could significantly impact Brocade's operating results; and
- Dilution of the percentage of Brocade's stockholders to the extent equity is used as consideration or option plans are assumed, such as in the case of the Foundry acquisition, in which approximately 125.1 million additional shares of Brocade common stock became issuable in connection with the assumption or substitution of Foundry equity awards.

If Brocade is not able to successfully integrate businesses, products, technologies or personnel that Brocade acquires, or to realize expected benefits of Brocade's acquisitions or strategic investments, Brocade's business and financial results would be adversely affected.

***Brocade is subject to environmental regulations that could have a material adverse effect on Brocade's business.***

Brocade is subject to various environmental and other regulations governing product safety, materials usage, packaging and other environmental impacts in the various countries where Brocade's products are sold. For example, many of Brocade's products are subject to laws and regulations that restrict the use of lead, mercury, hexavalent chromium, cadmium and other substances, and require producers of electrical and electronic equipment to assume responsibility for collecting, treating, recycling and disposing of Brocade's products when they have reached the end of their useful life. For example, in Europe, substance restrictions apply to products sold,

## Table of Contents

and certain of Brocade's OEM partners require compliance with these or more stringent requirements. In addition, recycling, labeling, financing and related requirements apply to products Brocade sells in Europe. China has also enacted similar legislation with similar requirements for Brocade's products or its OEM partners. Despite Brocade's efforts to ensure that Brocade's products comply with new and emerging requirements, Brocade cannot provide absolute assurance that its products will, in all cases, comply with such requirements. If Brocade's products do not comply with the substance restrictions under local environmental laws, Brocade could become subject to fines, civil or criminal sanctions and contract damage claims. In addition, Brocade could be prohibited from shipping non-compliant products into one or more jurisdictions and required to recall and replace any non-compliant products already shipped, which would disrupt Brocade's ability to ship products and result in reduced revenue, increased obsolete or excess inventories, and harm to Brocade's business and customer relationships. Brocade's suppliers may also fail to provide it with compliant materials, parts and components despite Brocade's requirement to them to provide compliant materials, parts and components, which could impact Brocade's ability to timely produce compliant products and, accordingly, could disrupt Brocade's business.

### ***Brocade relies on licenses from third-parties and the loss or inability to obtain any such license could harm Brocade's business.***

Many of Brocade's products are designed to include software or other intellectual property licensed from third-parties. While it may be necessary in the future to seek or renew licenses relating to various aspects of Brocade's products, Brocade believes that, based upon past experience and standard industry practice, such licenses generally could be obtained on commercially reasonable terms. Nonetheless, there can be no assurance that the necessary licenses would be available on acceptable terms, if at all. Brocade's inability to obtain certain licenses or other rights on favorable terms could have a material adverse effect on Brocade's business, operating results and financial condition. In addition, if Brocade fails to carefully manage the use of "open source" software in Brocade's products, Brocade may be required to license key portions of Brocade's products on a royalty-free basis or expose key parts of source code.

### ***Certain former officers and directors of Brocade are subject to ongoing actions by the SEC, the Department of Justice ("DOJ"), Brocade and others, which have required, and may continue to require, a significant amount of legal expense pursuant to indemnification obligations of Brocade, which could adversely affect Brocade's results of operations and cash flows.***

The SEC, DOJ and various other third-parties are continuing to investigate and pursue actions against certain former executive officers of Brocade in connection with Brocade's historical stock option granting practices and other related matters. In addition, in August 2008, the Special Litigation Committee of Brocade's Board of Directors filed a complaint against certain former officers and directors on behalf of Brocade, asserting claims arising from Brocade's 2005 internal reviews and restatements relating to historical stock option granting practices and other related matters. While those actions are targeted against certain former officers and directors and not Brocade, Brocade has certain indemnification obligations to such former officers and directors for, among other things, the advancement of legal expenses incurred in connection with such actions, which have required, and may continue to require, a significant amount of expense to Brocade. Whether Brocade may be entitled to recoup all or a portion of the expenses advanced by Brocade on behalf of such former officers and directors or recover any losses resulting from certain actions of such former officers and directors is complex and may be affected by, among other things, various state laws, the interpretation of indemnification agreements and the collectability of any such amounts.

### ***If Brocade loses key personnel or is unable to hire additional qualified personnel, Brocade's business may be harmed.***

Brocade's success depends, to a significant degree, upon the continued contributions of key management, engineering, sales and other personnel, many of whom would be difficult to replace. Brocade believes its future success will also depend, in large part, upon Brocade's ability to attract and retain highly skilled managerial, engineering, sales and other personnel, and on the ability of management to operate effectively, both individually and as a group, in geographically disparate locations. There is only a limited number of qualified personnel in the applicable market and competition for such employees is fierce. In the past, Brocade has experienced difficulty in hiring qualified personnel in areas such as application-specific integrated circuits, software, system and test, sales, marketing, service, key management and customer support. Although Brocade's stock price generally increased during the six months ended August 1, 2009, any future declines in Brocade's stock price could result in additional "underwater" stock options held by our employees. If such a decline in Brocade's stock price were to occur, any resulting underwater options could decrease Brocade's ability to incentivize or retain qualified personnel. Brocade's ability to retain qualified personnel may also be affected by future and recent acquisitions, which may cause uncertainty and loss of key personnel. The loss of the services of any of Brocade's key employees, the inability to attract or retain qualified personnel in the future, or delays in hiring required personnel, particularly engineers and sales personnel, could delay the development and introduction of Brocade's products or services, and negatively affect Brocade's ability to sell its products or services.

## [Table of Contents](#)

In addition, companies in the computer storage, networking and server industries whose employees accept positions with competitors may claim that their competitors have engaged in unfair hiring practices or that there will be inappropriate disclosure of confidential or proprietary information. Brocade may be subject to such claims in the future as Brocade seeks to hire additional qualified personnel. Such claims could result in material litigation. As a result, Brocade could incur substantial costs in defending against these claims, regardless of their merits, and be subject to additional restrictions if any such litigation is resolved against Brocade.

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

Provisions of Brocade's certificate of incorporation and bylaws may discourage, delay or prevent a merger or mergers 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 supermajority voting to effect amendments to the foregoing provisions of Brocade's certificate of incorporation and bylaws.

Certain provisions of Delaware law also may discourage, delay or prevent someone from acquiring or merging with Brocade and Brocade's agreements with certain of Brocade's customers require that Brocade give prior notice of a change of control and grant certain manufacturing rights following a change of control. Brocade's various anti-takeover provisions could prevent or delay a change in control of Brocade, which could hinder stockholders' ability to receive a premium for Brocade's stock.

### **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

There were no unregistered sales of equity securities during the three months ended August 1, 2009.

**Item 6. Exhibits****EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description of Document</b>
3.1	Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 from Brocade's quarterly report on Form 10-Q for the quarter ended July 28, 2007)
3.2	Amended and Restated Bylaws of the Registrant effective as of February 10, 2009 (incorporated by reference to Exhibit 3.2 from Brocade's Form 8-K filed on February 10, 2009)
3.3	Certificate of Designation of Rights, Preferences and Privileges of Series A Participating Preferred Stock of Brocade Communications Systems, Inc. (incorporated by reference to Exhibit 4.1 from Brocade's Registration Statement on Form 8-A filed on February 11, 2002)
3.4	Certificate of Elimination of Series A Participating Preferred Stock of Brocade (incorporated by reference to Exhibit 3.1 from Brocade's Form 8-K filed on February 16, 2007)
3.5	Certificates of Correction and Corrected Amended and Restated Certificate of Incorporation effective as of June 1, 2009 (incorporated by reference to Exhibit 3.5 from Brocade's quarterly report on Form 10-Q for the quarter ended May 2, 2009)
4.1	Form of Registrant's Common Stock certificate (incorporated by reference to Exhibit 4.1 from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended)
4.2	First Supplemental Indenture dated as of January 29, 2007 by and among McDATA Corporation, Brocade, and Wells Fargo Bank, National Association, as successor in interest to Wells Fargo Bank Minnesota, National Association (incorporated by reference to Exhibit 4.2 from Brocade's Form 10-Q for the quarter ended April 28, 2007)
4.3	Second Supplemental Indenture dated as of January 29, 2007 by and among McDATA Corporation, McDATA Services Corporation, a Minnesota corporation f/k/a Computer Network Technology Corporation, Brocade, and U.S. Bank National Association (incorporated by reference to Exhibit 4.3 from Brocade's Form 10-Q for the quarter ended April 28, 2007)
4.4	Indenture dated February 7, 2003 by and among McDATA Corporation and Wells Fargo Bank Minnesota, National Association (incorporated by reference to Exhibit 4.4 from Brocade's Form 10-Q for the quarter ended April 28, 2007)
4.5	Indenture dated February 20, 2002 by and among Computer Network Technology Corporation and U.S. Bank National Association (incorporated by reference to Exhibit 4.5 from Brocade's Form 10-Q for the quarter ended April 28, 2007)
10.1*/**	Amendment Number 15 dated May 11, 2009, with an effective date of February 1, 2009, to the Product Purchase Agreement between Hewlett-Packard Company and Brocade
10.2*/**	Amendment Number 37 dated June 22, 2009, with an effective date of June 19, 2008 [sic], to Statement of Work Number 1 of the Goods Agreement between IBM and Brocade
10.3*/**	Amendment Number 14 dated June 10, 2009 to Statement of Work Number 3 of the Goods Agreement between IBM and Brocade
10.4*/**	Amendment Number 15 dated June 23, 2009 to Statement of Work Number 3 of the Goods Agreement between IBM and Brocade
10.5*/**	Amendment Number 3 dated June 8, 2009, with an effective date of June 5, 2009, to Statement of Work Number 7 of the Goods Agreement between IBM and Brocade
31.1*	Rule 13a-14(a)/15d-14(a) Certification by the Chief Executive Officer

## Table of Contents

<u>Exhibit Number</u>	<u>Description of Document</u>
31.2*	Rule 13a-14(a)/15d-14(a) Certification by the Chief Financial Officer
32.1*	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

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\* Filed herewith.

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

**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: August 31, 2009

By: /s/ Richard Deranleau

Richard Deranleau  
Chief Financial Officer

**AMENDMENT 15 TO PRODUCT PURCHASE AGREEMENT**

This AMENDMENT 15 (the "Amendment") supplements that certain Product Purchase Agreement No.1526-0331701 (the "Agreement") which has an effective date of December 16, 2002 and which is by and between Hewlett-Packard Company (herein "HP") and Brocade Communications Systems, Inc. and Brocade Communications Switzerland SARL (collectively referred to herein as "Supplier").

**RECITALS**

WHEREAS, HP and Supplier have previously entered into the Agreement stated above;

WHEREAS, the purpose of this Amendment is to set forth commercial and other terms and conditions for OEM Product sold by Supplier and purchased by HP pursuant to the Agreement; and

WHEREAS, HP and Supplier desire to supplement the Agreement as herein provided.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HP and Supplier hereby agree as follows:

1. The effective date ("Effective Date") of this Amendment is February 1, 2009.
2. Capitalized terms used herein, unless otherwise defined, will have the meanings given in the Agreement.
3. This Amendment is subject to the Agreement, and in the event of any conflict between a provision of the Agreement and a provision in this Amendment, then the provision of the Agreement will govern, unless this Amendment expressly states otherwise with specific reference to those provisions in this Amendment that will supersede conflicting provisions in the Agreement.
4. This Amendment may be signed in original or emailed counterparts, and each counterpart will be considered an original, but all of which together will constitute one and the same instrument.
5. This Amendment adds Supplier's HP branded [\*\*] products (referred to herein as "[\*\*] Product") and Supplier's HP branded [\*\*] products (referred to herein as "[\*\*] Product") as OEM Products purchased under the Agreement.
6. In addition to the terms and conditions of the Agreement, the following terms, contained herein, apply to HP's purchase of the [\*\*] Product.
7. Definitions:
  - a. "Gross Spend" means the [\*\*] of all [\*\*] for all CPL listed OEM Products issued by Supplier to HP in an HP fiscal quarter.
  - b. "HP SAN Environment" means a set of equipment including but not limited to servers, storage and switches specified by HP to support HP OEM [\*\*] Testing.
  - c. "Shift-Left Testing" means testing performed by Supplier for Qualification of the [\*\*] Product and [\*\*] Product specific to the criteria outlined in Exit Criteria.
  - d. "Converged Network Adaptors" or "CNAs" means Supplier's HP branded [\*\*] that support [\*\*].
  - e. "Qualification" means conformance by the [\*\*] Product and [\*\*] Product to the provisions specified in the Exit Criteria. The [\*\*] Product requirements will be amended into Exit Criteria within 30 days after the signing by both parties of this Amendment.

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

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- f. "CPL" means HP's Corporate Price List including a listing of all OEM Products available for sale through HP sales channels.
- g. "[\*\*] Product Qualification Start" means February 1, 2009.
- h. "[\*\*] Product Qualification Start" means the commencement date that qualification starts for the [\*\*] Product with a formal technical kick-off meeting between HP and Supplier. The actual date will be determined within thirty (30) days after signing of this Amendment.
- i. "Qualification Completion" means the [\*\*] Product and [\*\*] Product has successfully met all the requirements set forth in Exit Criteria.
- j. "Exit Criteria" is defined in Section 20 of this Amendment.
- k. "General Availability" is defined as the date when HP makes the [\*\*] Product and [\*\*] Products orderable and available to be shipped from HP to HP's customers.
- l. "OEM Product Forecast" refers to HP's interlock forecast delivered to Supplier in the month immediately preceding a fiscal quarter forecasting all OEM Products. This report is targeted to be delivered two weeks prior to the commencement of HP's next fiscal quarter.

**8. Qualification Expenses; Provision of Product and Equipment.**

- a. Qualification Expenses. HP and Supplier will perform all Qualification of the [\*\*] Product and [\*\*] Product and Supplier will [\*\*] HP for HP's [\*\*] incurred during the Qualification of the Product. [\*\*] HP will be made as follows: [\*\*] per calendar month during the time period the [\*\*] Product is undergoing Qualification and an additional [\*\*] per calendar month during the time period the [\*\*] Product is undergoing Qualification period up to a maximum [\*\*] (for the qualification [\*\*] for both the [\*\*] Product and the [\*\*] Product) of [\*\*], however, the final [\*\*] of these [\*\*] are not due until HP places the respective [\*\*] Product or [\*\*] Product on HP's Corporate Price List ("CPL"). If the Qualification of the individual products is completed prior to the calendar end of a month, the Supplier will [\*\*] HP a [\*\*] for each product equivalent to the ratio of days Qualification was taking place in the last month.
- b. The Qualification period begins upon the [\*\*] Product Qualification Start and/or the [\*\*] Product Qualification Start, as applicable. The first [\*\*] of the qualification [\*\*] the fifteenth (15<sup>th</sup>) of the month following qualification start and subsequent [\*\*] on the fifteenth (15<sup>th</sup>) of each month until the Qualification Completion of the [\*\*] Product and [\*\*] Product or the maximum [\*\*] is met, whichever occurs first. HP will not place the [\*\*] Products or the [\*\*] Product on HP's CPL until said products meet the Exit Criteria in Section 20. The parties acknowledge that the placement of the [\*\*] Product and the placement of the [\*\*] Products onto HP's CPL may occur at different dates.
- c. Provision of Product and Equipment. Supplier will, upon HP's request, provide HP [\*\*] at [\*\*], for qualification purposes. In addition, Supplier will provide HP with a [\*\*] HP's standard [\*\*] Product and [\*\*] Products that HP elects to purchase from Supplier for Qualification.

9. **[\*\*] Volume Purchases.** For HP purchases of [\*\*] Product and [\*\*] Product from Supplier for resale during the time period starting from when HP includes the [\*\*] Product on the CPL and provided the [\*\*] Product has completed or is in qualification mode, through April 30, 2011 Supplier will provide the following [\*\*] to HP for [\*\*] by HP. As noted in the [\*\*] table below, the [\*\*] will be [\*\*] a percentage of HP's [\*\*] with Supplier per HP fiscal quarter. [\*\*] If HP chooses to qualify and add to HP's CPL [\*\*] products from Supplier, the incremental [\*\*] product volume will go towards the volume thresholds specified in the [\*\*] table below. HP will pull volume from the hubs as required to meet customer demand and support regional inventory strategies unless mutually agreed otherwise in writing by the parties.

[\*\*] Table: Once the [\*\*] Product is on the CPL and provided the [\*\*] Product has completed or has achieved [\*\*] Product Qualification Start, the following [\*\*] apply:

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

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- a. If HP and/or Eligible Purchasers take receipt of a combined unit volume of [\*\*] Product and/or [\*\*] Product and/or [\*\*] between [\*\*] in an HP fiscal quarter, Supplier will [\*\*] to HP [\*\*] of HP's and Eligible Purchasers' [\*\*] with Supplier for all OEM Products purchased by HP and HP Eligible Purchasers during the same HP fiscal quarter.
- b. If HP and/or Eligible Purchasers take receipt of a combined unit volume of [\*\*] Product and/or [\*\*] Product and/or [\*\*] between [\*\*] in an HP fiscal quarter, Supplier will [\*\*] to HP [\*\*] of HP's and Eligible Purchasers' [\*\*] with Supplier for all OEM Products purchased by HP and HP Eligible Purchasers during the same HP fiscal quarter.
- c. If HP and/or Eligible Purchasers take receipt of a combined unit volume of [\*\*] Product and/or [\*\*] Product and/or [\*\*] between [\*\*] in an HP fiscal quarter, Supplier will [\*\*] to HP [\*\*] of HP's and Eligible Purchasers' [\*\*] with Supplier for all OEM Products purchased by HP and HP Eligible Purchasers during the same HP fiscal quarter.
- d. If HP and/or Eligible Purchasers take receipt of a combined unit volume of [\*\*] Product and/or [\*\*] Product and/or [\*\*] between [\*\*] in an HP fiscal quarter, Supplier will [\*\*] to HP [\*\*] of HP's and Eligible Purchasers' [\*\*] with Supplier for all OEM Products purchased by HP and HP Eligible Purchasers during the same HP fiscal quarter.
- e. If HP and/or Eligible Purchasers take receipt of a combined unit volume of [\*\*] Product and/or [\*\*] Product and/or [\*\*] between [\*\*] in an HP fiscal quarter, Supplier will [\*\*] to HP [\*\*] of HP's and Eligible Purchasers' [\*\*] with Supplier for all OEM Products purchased by HP and HP Eligible Purchasers during the same HP fiscal quarter.
- f. If HP and/or Eligible Purchasers take receipt of a combined unit volume of [\*\*] Product and/or [\*\*] Product and/or [\*\*] of [\*\*] or more in an HP fiscal quarter, Supplier will [\*\*] to HP [\*\*] of HP's and Eligible Purchasers' [\*\*] with Supplier for all OEM Products purchased by HP and HP Eligible Purchasers during the same HP fiscal quarter.

10. **Marketing [\*\*].**

- a. Supplier will provide [\*\*] marketing [\*\*] per HP fiscal quarter to be used by either HP or Supplier to market the [\*\*] Product and/or [\*\*] Product commencing with the General Availability (GA) of the [\*\*] Product and continuing through Supplier's second fiscal quarter in 2011 (FQ2'), provided that the [\*\*] Product has completed or is in qualification. HP will [\*\*] Supplier for mutually approved Marketing [\*\*] during the period in which [\*\*] have been incurred. These [\*\*] will be used for marketing activities associated with Supplier's HP branded [\*\*] Products and/or [\*\*] Products. These [\*\*] will not be used for marketing of [\*\*] Products and/or [\*\*] Products.
- b. Supplier will provide [\*\*] to be used by either HP or Supplier, for [\*\*] Product and/or [\*\*] Product launch activities. HP will collaborate with Supplier on launch activities. [\*\*] will be available prior to the [\*\*] Product being listed on the CPL, provided that the [\*\*] Product has completed or is in qualification. These incremental [\*\*] and [\*\*] launch [\*\*] will be planned for jointly by the parties. HP will [\*\*] Supplier for mutually approved Product launch [\*\*] during the period in which [\*\*] have been incurred. These [\*\*] will be used for marketing activities associated with Supplier's HP branded [\*\*] Products and/or [\*\*] Products. These [\*\*] will not be used for marketing of [\*\*] Products and/or [\*\*] Products.
- c. Supplier and HP agree to review the Marketing [\*\*] on a bi-annual basis and upon mutual agreement modify the terms of the Marketing [\*\*] (Section 10) if the minimum volume thresholds identified in section 9a are not met after the fourth quarter of HP adding the [\*\*] Product on the CPL.
- d. Supplier and HP will collaborate on a management process relating to the marketing [\*\*] for the Products before HP has placed the [\*\*] Product on the CPL.

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11. **Product Customization.** Any joint development, if any, to create unique differentiation and/or HP unique solutions pertaining to the [\*\*] Product or [\*\*] Product will be addressed and governed by a Project Statement to the Master Development Agreement dated October 24, 2008. Such Project Statement will outline intellectual property rights, if any.

12. **Audit Rights.**

a. HP, at its expense, may engage an independent third party auditing firm (“Auditor”), to perform an annual audit of Supplier’s books and records relating to Supplier’s performance of its obligations under the Agreement (with the exception of Section 4.5 of the Agreement which has a different audit process as described in subsection a.2 below) and that are reasonably required to determine Supplier’s compliance with Supplier’s obligations under the Agreement during the previous twelve (12) months. HP will provide Supplier reasonable written notice, not less than thirty (30) days in advance, of such audit. Supplier will refund the amount of any overcharge or other discrepancy as may be determined by such audit within 30 days of the auditor’s findings. If the final report of such audit reveals a [\*\*] or more overcharge or other discrepancy of a material nature (either, a “Discrepancy”), Supplier will also reimburse HP for all reasonable costs of the audit. Supplier will cooperate fully with such audit requests; provided that (i) in no event will material containing any information that is protected under court order or the written directions of regulatory authorities be required to be disclosed; and (ii) in no event will the confidential information of any third party that would require Supplier to breach its confidential obligations to such third party be disclosed.

a.1. Any such Auditor will execute Supplier’s standard non-disclosure agreement prior to receipt of any of the information referenced above. The Auditor may disclose such information only to HP and Supplier. The identity of Supplier’s other customers, details of specific customer transactions and any actual costs incurred by Supplier, along with any provision covered by non-disclosure, will not be disclosed to HP. HP’s audit rights under this provision will continue and survive for three (3) years after expiration or any termination of the Agreement.

a.2. Notwithstanding the provisions of Section (a) above, upon HP’s request, and no more than once per calendar year, Supplier will conduct an internal audit and within 60 days of HP’s request for the audit either: (1) issue a letter signed by Supplier’s then Chief Financial Officer to HP representing and warranting that Supplier has conducted an internal audit regarding Supplier’s compliance over the previous twelve (12) months with Section 4.5 (Most Favored Purchaser Warranty) and is in compliance with Section 4.5 (Most Favored Purchaser Warranty) of the Agreement; or (2) reimburse HP for any overcharge pursuant to Section 4.5 (Most Favored Purchase Warranty) of the Agreement. Supplier will cover all expenses of the internal audit.

13. [\*\*].

a. Commencing with the HP fiscal quarter of the [\*\*] Product General Availability through HP’s second fiscal quarter in 2011 (FQ2’11) section 4.1 (OEM Product Pricing and Discounts) shall not be in effect. Instead, during said time period, Supplier will [\*\*] OEM Product [\*\*] by [\*\*] on a quarterly basis commencing with the HP fiscal quarter of the [\*\*] Product General Availability through HP’s second fiscal quarter in 2011 (FQ2’11), provided that the [\*\*] Product has achieved [\*\*] Product Qualification Start. The [\*\*] will be [\*\*] for the initial HP fiscal quarter based on the General Availability date within the HP fiscal quarter; [\*\*] for month(s) prior to General Availability will have a basis of the historical [\*\*].

b. The Supplier shall [\*\*] on all of the OEM Products or only a portion of the OEM Products as long as the result is [\*\*] for each HP fiscal quarter, based on the definitions outlined in this Amendment. Supplier agrees to consider HP’s direction around which OEM Products to target [\*\*]. All special [\*\*] negotiated outside of this normal quarterly [\*\*] activity including but not limited to [\*\*] to drive more aggressive product lifecycle transitions, will be incremental and not included in the [\*\*]. Supplier’s [\*\*] for the OEM Products are listed in Amendment 14 (as may be revised by the parties from time to time), [\*\*] in U.S. [\*\*] unless otherwise agreed, and may not be [\*\*] without HP’s consent.

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c. If the [\*\*] Product does not achieve General Availability in HP's FY09 then both parties agree to reevaluate the [\*\*] as specified in Sections 13.a and 13.b.

Definitions: As used in this Amendment, and in addition to other terms elsewhere defined in this Agreement, each of the following terms have the indicated meanings:

"New [\*\*]" means Supplier [\*\*] to HP for an OEM Product during an HP fiscal quarter prior to any special deals including but not limited to [\*\*] to drive more aggressive product lifecycle transitions.

"Old [\*\*]" means Supplier's [\*\*] to HP for an OEM Product in the quarter, directly preceding the quarter Supplier has offered the "[\*\*]".

"Volume" means the total number of units forecasted in HP's OEM Product Forecast of a particular OEM Product for the following HP fiscal quarter.

"All OEM Products" means all products being purchased by HP and/or Eligible Purchasers from Supplier in a particular HP fiscal quarter.

"Forecasted [\*\*]" means the [\*\*] of all of HP's [\*\*] with Supplier for the following HP fiscal quarter. This is calculated by multiplying the forecast for an OEM Product shown in the OEM Product Forecast by the [\*\*] of the OEM Product and totaling this for all OEM Products.

"OEM Product [\*\*]" means the [\*\*] to HP from Supplier on a particular OEM Product and is calculated using the following formula:

- [\*\*]

"Total [\*\*]" means the cumulative OEM Product [\*\*] to HP from Supplier for All OEM Products in an HP Fiscal Quarter.

"Percent [\*\*]" means the ratio of Total [\*\*] to the Forecasted [\*\*] plus the Total [\*\*] in an HP Fiscal Quarter.

- [\*\*]

d. [\*\*] Feature Implementation. As a condition for implementation of the above [\*\*] terms, HP agrees to work in good faith to launch the [\*\*] functionality packaged with the current [\*\*] + solutions as well as stand alone SKUs, provided that both parties can agree on mutually acceptable business terms. The targeted launch date is [\*\*].

#### 14. Pricing.

- a. The HP [\*\*] Product and [\*\*] Product Pricing is attached as Exhibit B:

#### 15. Qualification.

- a. Supplier agrees to create a HP SAN Environment for Shift-Left Testing allowing HP OEM [\*\*] Product and [\*\*] Product Shift-Left Test asynchronous qualification cycles to be completed. Supplier agrees that such HP SAN Environment will include [\*\*] to test the [\*\*] Products and [\*\*] Products independent of Supplier's switch product testing.
- b. Supplier agrees to work with HP to develop a mutually agreed upon shift left test plan, including specific equipment, drivers, software, and test cases required for [\*\*] Product and [\*\*] Product qualification. This [\*\*] Products and [\*\*] Product qualification testing will be executed as a part of [\*\*] Product and [\*\*] Product test and/or Shift-Left Testing, as agreed upon by both Supplier and HP.

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c. Supplier agrees to provide weekly quality reports as outlined in the Exit Criteria to HP.

**16. Quality.** Exhibit H, Section 5.1 of the Agreement, titled “AFR (Annual Failure Rate) / MTBF (Mean Time Between Failures)” is amended to include the [\*\*] Products and [\*\*] Products and said products shall meet an Annualized Failure Rate (AFR) of no greater than [\*\*] and an Annualized Return Rate (ARR) of no greater than [\*\*].

**17. Interoperability**

a. [\*\*]. The [\*\*] Product will function with HP-branded [\*\*] manufactured by [\*\*] as specified on an HP approved vendor list (AVL) including manufacturers’ part numbers. HP agrees that only [\*\*] approved by Supplier will be supported for use with Supplier’s [\*\*] Products. Supplier agrees to acknowledge support of all Supplier approved [\*\*] in field facing support documentation. The [\*\*] Product will function with HP’s [\*\*] strings and Supplier’s [\*\*] strings. HP will launch the [\*\*] Products with [\*\*]. Supplier will work with HP in good faith to approve [\*\*] for use with Supplier’s [\*\*] products pending successful technical qualification. Supplier’s qualification testing of the [\*\*] is to be completed within 120 days of the first [\*\*] Product or [\*\*] Product being placed on HP’s CPL. If qualification testing of the [\*\*] meets the mutually agreed to acceptance criteria; Supplier will agree to approve and support [\*\*], HP will add [\*\*] to the AVL for use with Supplier’s [\*\*] products, and HP will; begin shipping the [\*\*] Products with the HP-branded generic [\*\*]. HP will provide 90 days notice to Supplier for any proposed changes to approved [\*\*] or additions to the AVL. All changes to the AVL are subject to approval by Supplier. HP will provide a letter of agreement (LOA) for Supplier to purchase any [\*\*] listed on the AVL directly from the [\*\*] manufacturer at Supplier’s [\*\*] for the purpose of testing and qualification with the [\*\*] Products. HP will purchase and manage the supply of all [\*\*] on all current and future [\*\*] products.

b. [\*\*]. The Supplier’s [\*\*] Product and [\*\*] Product will interoperate with switches that HP productizes from current suppliers, as defined by the then current Shift Left Test matrix.

c. **Switches.** Supplier switches that HP purchases from Supplier will interoperate with HP [\*\*] that HP productizes from current suppliers [\*\*] and not limited to operability with Supplier’s [\*\*], as defined by the then current Shift Left Test matrix.

**18. Termination.** This Amendment is coterminous with the Agreement and governed by the terms of Section 1.3 and 20 contained therein.

**19. Warranties.** The warranties for the [\*\*] Product and [\*\*] Product are those contained in the Section 9 (“Warranties”) and Amendment 3 of the Agreement, with the following exceptions: 1) The referenced “the then-current product Specifications” is the specification in Exhibit A, HP PCI Express Product Requirements Document. For any non-complying Products, HP may exercise the Return of Products provisions contained in Section 6 of the Agreement; and 2) The [\*\*] Product and [\*\*] Product are warranted for a period of [\*\*] months from the date of HP Extraction.

**20. Exit Criteria.** The Exit Criteria are defined below as P0’s and P1’s. P0s are an ‘absolute must’ to be able to ship the product as per mutually agreed to schedule. P1s are ‘high wants’ and every effort must be made to meet these criteria before being ship ready, however if these criteria are not met then both teams can mutually agree to defer them to a later date with a documented deviation plan. P2’s are post-launch items and are targeted for shipment +60 days after initial launch.

**P0 Criteria**

- Meet or exceed all hardware & software technical specifications and requirements for the [\*\*] as outlined in the mutually agreed Product Requirements Document (PRD) for Phase under execution of the program
- Zero open severity 0 (showstopper/critical) & severity 1 (high) issues. Severity 2/3 (Medium/Low) issues must have an action plan for closure defined.

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- Needs to pass Continuous Hours of Operation (CHO) tests listed below
  - o Hazard C8 (72 hours continuous I/O) on Windows & Linux or Medusa or any other I/O stress tool
  - o Hazard C16 (24 hours continuous I/O) on Windows & Linux or Medusa or any other I/O stress tool
- [\*\*] test execution across all functional areas as per the mutually agreed to shift left test plan
- [\*\*] test pass across all functional areas as per the shift left test plan. [\*\*] test fail cannot contain any severity 1 and severity 2 issues.
- [\*\*] test execution across all functional areas of HP's Audit test plan
- [\*\*] test pass across all functional areas of HP's Audit test plan
- All P0 (MUST) requirements as per the Product Requirements for the phase under execution must be met
- Any P1 (HIGH WANT) requirements as per the Product Requirements Document (PRD), Support Matrices and (Qualification Request Forms) QRFs for the phase under execution that are mutually agreed to be deferred have to be properly documented, reviewed & approved
- Performance criteria with respect to parameters such as throughput and IOPS across different I/O sizes must meet mutually agreed to benchmarks, performance requirements that are defined within the Product Requirements for the phase under execution
- Scaling criteria with respect to parameters such as capacity, number of LUNs per host, number of paths from a host etc must be met across all functional areas. Scaling requirements will be identified within the Product Requirements document for the phase under execution
- Must meet detailed IOP (interoperability) requirements as identified within the Product Requirements Document (PRD) and the Support Matrices and Qualification Request Forms (QRFs) that HP will provide Brocade for each qualification effort.

#### **P1 Criteria**

- Any P1 (HIGH WANT) requirements as per the Product Requirements Document (PRD), Support Matrices and (Qualification Request Forms) QRFs for the phase under execution that are mutually agreed to be deferred have to be properly documented, reviewed & approved
- [\*\*] open severity 2/3 (Medium/Low) and severity 4 (enhancement request) issues.
- Must meet detailed P1 IOP (interoperability) requirements as identified within the Product Requirements Document (PRD) and the Support Matrices and Qualification Request Forms (QRFs) that HP will provide Brocade for each qualification effort.

#### **Test Execution and Logging**

- HP will provide a Shift Left Test plan that Brocade will need to execute and provide test logs and results to HP to verify that the tests have been executed and met pass/fail criteria.
- All defects found during execution of a test case must be documented in accordance with HP requirements as specified in the Shift Left Test plan.
- All defects found during test have been resolved in accordance with the criteria stated above.
- HP and Brocade will mutually agree on a process to generate and review test logs and metrics as required by HP.

21. [\*\*]. Notwithstanding Section 13.2 in the Agreement, Supplier hereby agrees to [\*\*] to HP (and Eligible Purchasers) the HP branded versions of the [\*\*] Product and [\*\*] Products.

The Agreement continues in full force and effect, and except as may be expressly set forth in this Amendment, the Agreement is unchanged.

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IN WITNESS WHEREOF, the parties, intending to be legally bound hereby, have executed this Agreement as of the Effective Date.

**BROCADE COMMUNICATIONS SYSTEMS INC.**

/s/ Ian Whiting  
\_\_\_\_\_  
Authorized Representative  
30 April 2009  
\_\_\_\_\_  
Date  
Ian Whiting  
\_\_\_\_\_  
Printed Name  
SVP, WW Sales  
\_\_\_\_\_  
Title

**HEWLETT-PACKARD COMPANY**

/s/ Richard Gentilini  
\_\_\_\_\_  
Authorized Representative  
5-11-09  
\_\_\_\_\_  
Date  
Richard Gentilini  
\_\_\_\_\_  
Printed Name  
Director, SWD Global Procurement  
\_\_\_\_\_  
Title

**BROCADE COMMUNICATIONS SWITZERLAND, SARL.**

/s/ Kevin L. Mckenna  
\_\_\_\_\_  
Authorized Representative  
Apr/30/2009  
\_\_\_\_\_  
Date  
Kevin L. Mckenna  
\_\_\_\_\_  
Printed Name  
Director  
\_\_\_\_\_  
Title

---

**EXHIBIT A**

**HP PCI Express (8Gb Fibre Channel HBA) Product Requirements  
Document – Phase 1 Delivery**

**[\*\*]**

Version 1.0

**[\*\*]**

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EXHIBIT B

PRICING

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3039 E CORNWALLIS RD  
RESEARCH TRIANGLE PARK NC 27709-2195

June 19, 2008

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

Subject: Amendment 37 to SOW#1 of the IBM/Brocade Goods Agreement ROC-P-68

This letter (the "Amendment") serves as Amendment Number 37 to SOW#1, including all amendments thereto ("SOW#1") of the Goods Agreement ROC-P-68 (the "Agreement"), which the parties hereto do mutually agree to amend as follows

1. Add Section 9.7, Software Maintenance and Support, to the SOW#1.

**9.7 Software Maintenance and Support Program**

All Products purchased under this SOW shall be eligible for coverage under Seller's annual Software Maintenance and Support Program. Under the terms of this support program, Supplier shall provide for a fee, Software Maintenance and Support for Products. Software Maintenance and Support is defined as the inclusion of software upgrades and enhancements for the Products together with the Software Technical Support provided in section 9.4.

Included as part of the transfer price for the Products added to the Agreement with this Amendment 37, and any Products added thereafter in Exhibit B, is provision of [\*\*] of product defect support (including, but is not limited to, bug fixes) ("Product Defect Support") only (the "Product Defect Support Period") and [\*\*] of Software Maintenance and Support, both commencing on Product shipment. After the expiration of the initial [\*\*] coverage period for Software Maintenance and Support (the "Initial Support Period"), subsequent Software Maintenance and Support shall be referenced as "Post-contract Customer Support" or "PCS." Supplier will make PCS available for a [\*\*] period following Product End of Life.

PCS will be sold to Buyer's customer base as a part option or Feature Code. A Supplier part number will be linked to each of the Buyer's Feature Codes. Buyer may order for its customers PCS at the prices listed on Exhibit B. Customers will have the option to purchase incremental PCS at either the time of initial purchase of the Product, or as a renewal agreement after the Initial Period. [\*\*]

Buyer and Seller will meet on a quarterly basis to review the purchase of PCS Feature Codes. If the number of such PCS Feature Code purchase during such quarter are [\*\*], the parties agree to meet to determine ways to [\*\*].

2. Exhibit A of the SOW#1 is hereby deleted in its entirety and replaced with Exhibit A attached hereto.

3. Add Exhibit B, Pricing, attached hereto.

4. 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

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Amendment 37 to SOW 1  
Confidential Information

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: /s/ Michelle B. Wright                      6/19/09  
Authorized Signature      Date

Michelle B. Wright  
Type or Print Name

GCM - Storage OEM Proc.  
Title & Organization

Address: 10692 E. Marquette St.  
Tucson, AZ 85747

**Accepted and Agreed To:  
Brocade Communications Systems, Inc.**

By: /s/ Matt Taylor                                      6/19/09  
Authorized Signature      Date

Matt Taylor  
Type or Print Name

Sr. Director OEM Sales  
Title & Organization

Address: 1745 Technology Drive  
San Jose, CA 95110

**Accepted and Agreed To:  
Brocade Communications Switzerland, SarL**

By: /s/ Ulrich Plechschmidt  
Authorized Signature      Date 22- June 2009

Ulrich Plechschmidt  
Type or Print Name

Vice President EMEA  
Title & Organization

[\*\*]

**AMENDMENT 37 TO SOW-1  
EXHIBIT A**

<u>Supplier Part Number</u>		<u>Buyer Part Number</u>						
<u>Brocade Model</u>	<u>Brocade P/N</u>	<u>IBM Model or FC #</u>	<u>IBM PN / NUMA-Q PN</u>	<u>Description</u>	<u>Unit Price</u>	<u>**[**] months Software Maintenance (included in unit price of product)</u>	<u>Out of Warranty Pricing</u>	
[**]	[**]	[**]	[**]	<b>1Gbit/sec Switch Products and Software</b>	[**]	[**]	[**]	[**]

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Amendment 37 to SOW 1  
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Supplier Part Number		Buyer Part Number					**[**] months Software Maintenance (included in unit price of product)	Out of Warranty Pricing
Brocade Model	Brocade P/N	IBM Model or FC #	IBM PN / NUMA-Q PN	Description	Unit Price			
[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
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**8Gbit/sec Switch Products and Software**

**BROCADE 300**

[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
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Supplier Part Number		Buyer Part Number					**[**] months Software Maintenance (included in unit price of product)	Out of Warranty Pricing
Brocade Model	Brocade P/N	IBM Model or FC #	IBM PN / NUMA-Q PN	Description	Unit Price			
[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
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<b>BROCADE 300 SFP'S</b>								
NOTE: For SFP pricing, reference Director Section - BROCADE DCX (DATA CENTER BACKBONE)								
<b>BROCADE 300 OPTIONAL SOFTWARE</b>								
[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
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<b>BROCADE 5100</b>								
[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
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<b>BROCADE 5100 BUNDLED WITH SFP'S</b>								
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Supplier Part Number		Buyer Part Number					**[**] months Software Maintenance (included in unit price of product)	Out of Warranty Pricing
Brocade Model	Brocade P/N	IBM Model or FC #	IBM PN / NUMA-Q PN	Description	Unit Price			
	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
<b>BROCADE 5100 FRU's</b>								
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<b>BROCADE 5100 SFP's</b>								
NOTE: For SFP pricing, reference Director Section - BROCADE DCX (DATA CENTER BACKBONE)								
<b>BROCADE 5100 OPTIONAL SOFTWARE</b>								
	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
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<b>BROCADE 5300</b>								
	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]

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Amendment 37 to SOW 1  
Confidential Information

Supplier Part Number		Buyer Part Number					**[**] months Software Maintenance (included in unit price of product)	Out of Warranty Pricing
Brocade Model	Brocade P/N	IBM Model or FC #	IBM PN / NUMA-Q PN	Description	Unit Price			
<b>BROCADE 5300 BUNDLED WITH SFP'S</b>								
	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
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<b>BROCADE 5300 FRU's</b>								
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<b>BROCADE 5300 SFP'S</b>								
NOTE: For SFP pricing, reference Director Section - BROCADE DCX (DATA CENTER BACKBONE)								
<b>BROCADE 5300 OPTIONAL SOFTWARE</b>								
	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
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Supplier Part Number		Buyer Part Number				*** months Software Maintenance (included in unit price of product)	Out of Warranty Pricing
Brocade Model	Brocade P/N	IBM Model or FC #	IBM PN / NUMA-Q PN	Description	Unit Price		
	[**]	[**]	[**]	[**]	[**]	[**]	
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	[**]	[**]	[**]	[**]	[**]	[**]	
<b>BROCADE 8000 OPTIONAL SOFTWARE</b>							
<b>(NOTE: Using 2 p/n's already released with Brocade 5100)</b>							
<b>MULTI-PROTOCOL ROUTER</b>							
	[**]	[**]	[**]	[**]	[**]	[**]	[**]
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Brocade Model	Brocade P/N	IBM Model or FC #	IBM PN / NUMA-Q PN	Description	Unit Price				
<b>DIRECTOR PRODUCTS AND SOFTWARE</b>									
[**]		[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
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Supplier Part Number		Buyer Part Number					***] months Software Maintenance (included in unit price of product)	Out of Warranty Pricing
Brocade Model	Brocade P/N	IBM Model or FC #	IBM PN / NUMA-Q PN	Description	Unit Price			
[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
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Amendment 37 to SOW 1  
Confidential Information

Supplier Part Number

Buyer Part Number

<u>Brocade Model</u>	<u>Brocade P/N</u>	<u>IBM Model or FC #</u>	<u>IBM PN / NUMA-Q PN</u>	<u>Description</u>	<u>Unit Price</u>	<u>***] months Software Maintenance (included in unit price of product)</u>	<u>Out of Warranty Pricing</u>
[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
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Supplier Part Number		Buyer Part Number					***] months Software Maintenance (included in unit price of product)	Out of Warranty Pricing
Brocade Model	Brocade P/N	IBM Model or FC #	IBM PN / NUMA-Q PN	Description	Unit Price			
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Amendment 37 to SOW 1  
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Supplier Part Number		Buyer Part Number					***] months Software Maintenance (included in unit price of product)	Out of Warranty Pricing
Brocade Model	Brocade P/N	IBM Model or FC #	IBM P/N / NUMA-Q P/N	Description	Unit Price			
<b>FABRIC MANAGER</b>								
	[**]	[**]	[**]	[**]	[**]		[**]	
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Supplier Part Number		Buyer Part Number					
Brocade Model	Brocade P/N	IBM Model or FC #	IBM P/N	Description	Unit Price		Out of Warranty
<b>DIRECTOR PRODUCTS (part numbers for DCX RMA purposes only)</b>							
	[**]	[**]	[**]	[**]	[**]		[**]
	[**]	[**]	[**]	[**]	[**]		[**]
	[**]	[**]	[**]	[**]	[**]		[**]
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Amendment 37 to SOW 1  
Confidential Information

\*\* For purpose of calculating the fees for the [\*\*] Software Maintenance Support Program as described in Section 9.4, the annual Software Maintenance Fee per Unit for each part number where it is applicable as follows:

Supplier Part Number		Buyer Part Number			Product Description	[**] Software Maintenance Fee per Unit
Brocade Model	Brocade P/N	IBM Model or FC #	IBM P/N			
[**]	[**]	[**]	[**]	[**]	[**]	
[**]	[**]	[**]	[**]	[**]	[**]	
[**]	[**]	[**]	[**]	[**]	[**]	
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Amendment 37 to SOW 1  
Confidential Information

**Supplier Part Number**

**Buyer Part Number**

<b>Brocade Model</b>	<b>Brocade P/N</b>	<b>IBM Model or FC #</b>	<b>IBM P/N</b>	<b>Product Description</b>	<b>[**] Software Maintenance Fee per Unit</b>
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
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Amendment 37 to SOW 1  
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**Supplier Part Number**

**Buyer Part Number**

<b>Brocade Model</b>	<b>Brocade P/N</b>	<b>IBM Model or FC #</b>	<b>IBM P/N</b>	<b>Product Description</b>	<b>[**] Software Maintenance Fee per Unit</b>
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
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Amendment 37 to SOW 1  
Confidential Information

**Supplier Part Number**

**Buyer Part Number**

<b>Brocade Model</b>	<b>Brocade P/N</b>	<b>IBM Model or FC #</b>	<b>IBM P/N</b>	<b>Product Description</b>	<b>[**] Software Maintenance Fee per Unit</b>
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
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Amendment 37 to SOW 1  
Confidential Information

**Supplier Part Number**

**Buyer Part Number**

<b>Brocade Model</b>	<b>Brocade P/N</b>	<b>IBM Model or FC #</b>	<b>IBM P/N</b>	<b>Product Description</b>	<b>[**] Software Maintenance Fee per Unit</b>
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
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Amendment 37 to SOW 1  
Confidential Information

AMENDMENT 37 TO SOW-1  
EXHIBIT B

Supplier Part Number		Buyer Part Number							
Brocade Model	Brocade P/N	IBM Model or FC #	IBM P/N	Description	Unit Price	[**] SW Support - [**]	[**] SW Technical Support & SW Upgrades - [**]	Out of Warranty Pricing	
<b>BROCADE DCX-4S</b>									
[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
<b>BROCADE DCX-4S [**] MAINTENANCE RENEWALS</b>									
	[**]	[**]	[**]	[**]	[**]				
	[**]	[**]	[**]	[**]	[**]				

Supplier Part Number		Buyer Part Number							
Brocade Model	Brocade P/N	IBM Model or FC #	IBM P/N	Description	Unit Price	[**] SW Support - [**] (included in unit price of product)	[**] SW Technical Support & SW Upgrades - [**] (included in unit price of product)	Out of Warranty Pricing	
<b>BROCADE 8000</b>									
	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
<b>BROCADE 8000 (IBM [**]) - MAINTENANCE RENEWALS</b>									
	[**]	[**]	[**]	[**]	[**]				
	[**]	[**]	[**]	[**]	[**]				

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## Integrated Statement of Work for Production Procurement Goods Agreement

Goods Agreement # ROC-P-68 Master Agreement Number

SOW # 4903RL112SOW Number

SOW #3  
Amendment 14**PURPOSE:**

The purpose of this amendment is to:

- 1) Consolidate all previous amendments to this SOW and create an amended SOW that includes all changes made by such amendments;
- 2) Create individual Product Unique Attachments for each Product Family
- 3) Add Product Unique Attachment for HBA's

**NOW, THEREFORE**, IBM and Brocade agree to delete the current SOW # 4093RL112 in its entirety and replace with the following consolidated SOW #4093RL112.

=====

This Statement of Work ("SOW") No. # 4903RL112 adopts and incorporates by reference the terms and conditions of Goods Agreement # ROC-P-68 ("GA") between International Business Machines Corporation "Buyer" or "IBM") and Brocade Communications Systems, Inc with offices at 1745 Technology Drive, San Jose, CA 95110 and Brocade Communications Switzerland SarL (together, "Supplier" or "Brocade"). This SOW is effective beginning on December 15, 2003 ("Effective Date") and will remain in effect until December 14, 2011[\*\*]Transactions performed under this SOW will be conducted in accordance with and be subject to the terms and conditions of this SOW, the GA and any applicable Work Authorizations ("WAs"). This SOW is not a WA. Product Unique Attachments and any changes thereto must be in a writing signed by both parties, and the terms of a Product Unique Attachment will apply only to the Products identified in such Product Unique Attachment. The initial Product Unique Attachment is attached hereto and incorporated herein by reference as "Product Unique Attachment # 1", and the additional Attachments 2 through 5 are attached hereto and incorporated herein by reference. Subsequent Product Unique Attachments or changes to existing Product Unique Attachments will take effect on the effective date provided therein and will be incorporated herein upon execution by the parties.

**1.0 DEFINITIONS**

All capitalized terms shall have the meaning provided in the Goods Agreement unless otherwise defined in this SOW.

**"Affiliate"** means an entity(ies) that control, is/are controlled by, or are under common control with, a party to this Agreement.

**"APAR"** means the form used to report suspected Problems to Supplier, and to request their resolution.

**"APAR Closing Codes"** means the established set of codes used to denote the final resolution of an APAR.

**"APAR Correction Times"** means the objectives that Supplier will achieve for resolution of Problems.

• **"Severity 1"** Problems will be resolved by Supplier within [\*\*] of its receipt of the APAR, and Supplier will use best efforts to provide relief to affected Customers within [\*\*]of Supplier's receipt of the APAR.

• **"Severity 2"** Problem will be resolved by Supplier within[\*\*] of its receipt of the APAR;

• **"Severity 3"** Problem will be resolved by Supplier within [\*\*] of its receipt of the APAR; and

• **"Severity 4"** Problem will be resolved by Supplier within[\*\*] of its receipt of the APAR.

**"Authorized Third Party"** A party authorized to procure Product pursuant to a Letter of Authorization by Buyer and mutually agreed to by Supplier and the Authorized Third Party.

**"Certified Service Product"** or **"CSP"** means Repaired Products. Notwithstanding the relevant "Ongoing Warranties" provision in the GA, CSP may contain used or reconditioned part(s), provided that such part(s) are properly marked as **"Serviceable Used Part(S)"** as further described in this SOW. "CSP" does not apply to Replacement Products.

**"Consigned Material"** means materials that Buyer owns and continues to own that are entrusted to Supplier.

**"Customer(s)"** mean Buyer's customer(s).

**"Developer Test Systems"** means a configuration of installed hardware and software that Supplier maintains which is representative of typical Customer installations for the Product and, at a minimum, contains current and current minus 1 level of the Product and any prerequisite and co-requisite hardware and software specified by Buyer.

**"Development Phase"** shall be defined as the period of time starting from the effective date of this Agreement up to and including the date of first delivery of production units of the Product.

**"DiscreteWA"** means a Purchase Order issued from Buyer to Supplier that is not pursuant to the hub warehouse order fulfillment.

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Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number  
SOW # 4903RL1112SOW Number**

**“Emergency Order” or “EO”** means a WA placed by Buyer for FRUs with a Lead Time not to exceed[\*\*].

**“End of Life” or “EOL”** means the date and process by which Supplier discontinues the manufacture of a product.

**“End of Service” or “EOS”** means date when Buyer officially discontinues Customer service and support for a Product. EOS dates are only addressed for the purposes of defining the date through which Supplier will make Repair Services available for Products.

**“Engineering Change” or “EC”** means any change(s) to Product.

**“Field Replaceable Unit” or “FRU”** means a Product, Product component, Product subassembly, Product documentation, Product code, or other Product part used to service a Customer system as described in the Product Unique Attachment 1.

**“General Availability”** shall mean, with respect to a particular Product, the date on which such Product is available for purchase by members of the general public by Buyer and or by Buyer’s Authorized Third Party.

**“Harmful Code”** means any computer code, programming instruction, or set of instructions (including without limitation, self-replicating and self propagating programming instructions commonly called viruses and worms) that is constructed with the ability to damage, interfere with, or otherwise adversely affect computer programs, data files, or hardware, without the consent or intent of the computer user.

**“Integrated Products”** means products which contain one or more Supplier products and or one or more Buyer products. Integrated Products may include both hardware and software.

**“Lead Time”** means the minimum length of time prior to a specific delivery date that Supplier must receive a WA from Buyer to ensure delivery by such date. For direct purchase orders that are within IBM’s forecast, the Lead-time for delivery FCA Brocade’s dock is[\*\*]from the date that Brocade receives IBM’s purchase order. For direct purchase orders that are beyond IBM’s forecast, the Lead-time for delivery FCA Brocade’s dock is [\*\*] from the date that Brocade receives IBM’s purchase order. Refer to Amendment 1/Attachment 5 for terms and conditions relating to the fulfillment of Product by Supplier under hubbing arrangements.

**“Maintenance Level Service”** means the service provided, as set forth below, when a Customer identifies a Problem:

- **“Level 1”** is initial service in response to Customer’s request for support in connection with a suspected Problem;
- **“Level 2”** is service provided to diagnose and resolve or assist Level 3 in resolving Problems identified by Level 1; and,
- **“Level 3”** is service provided to develop final resolutions for Problems not resolved by Level 1 and Level 2.

**“Maintenance Release”** means an incremental software releases that provides maintenance fixes and may provide additional; features. Maintenance releases are designated by Supplier as a change in the digits(s) to the right of the tenths digit of the software version number [X.X.(X)] or an alphabetic digit to the right of that digit [X.X.X.(a)].

**“Major Release”** means a software release that provides additional software features and/or functions. Major Releases are designated by Supplier as a change in the ones digit of the Software version number [(X).X.X.].

**“Minor Release”** means an incremental software release that provides maintenance fixes and additional features. Minor releases include all Maintenance Releases issued from last minor release and are designated by Supplier as a change in the tenths digit(s) of the software version number [X.(X).X].

**“Problem”** means any Product defect, including, without limitation, any defects arising as a result of the failure of the Products to function in accordance with the written specifications and other requirements, or other failures or errors or other defects arising as a result of the failure of the Products to function in accordance with the written specifications and other requirements.

**“Problem Management Record” or “PMR”** means a record documenting support actions taken in response to a Customer’s request for support in connection with a suspected Problem.

**[\*\*]“Repair” or “Repaired”** means all required repair activity including, disassembly, failure analysis, testing, component recovery, rework, warranty process, packaging, final testing, and all other processes necessary to ensure Products, which are sent to Supplier for repair within or outside of the relevant Product warranty, meet all the functional performance requirements applicable to newly manufactured Products in accordance with this SOW or relevant WA.

**“Replacement” or “Replaced”** Product means those products for which Repair is not available. Products will be designated as Replacement only on the applicable PUA for such products and will not follow the CSP process.

**“Software Maintenance”** refers to the provision to Buyer by Supplier of certain software updates at no additional charge during the Software Maintenance period. Maintenance Releases and Minor Releases are generally included with Software Maintenance. Major Releases generally are not included with Software Maintenance.

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Revision: 05/02

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## Integrated Statement of Work for Production Procurement Goods Agreement

Goods Agreement # ROC-P-68 Master Agreement Number

SOW # 4903RL112SOW Number

“**Taxes**” means any and all applicable taxes, charges, fees, levies or other assessments imposed or collected by any governmental entity worldwide or any political subdivision thereof and however designated or levied on sales of Products or Services, or sales, use, transfer, goods and services or value added tax or any other duties or fees related to any payment made by Buyer to Supplier for Product and/or Service provided by Supplier to Buyer under or pursuant to this Agreement; exclusive, however, of taxes imposed upon the net income or capital of Supplier or taxes in lieu of such net income taxes or such other taxes which are to be borne by the Supplier under law. Supplier shall also bear sole responsibility for all taxes, assessments, or other levies on its own leased or purchased property, equipment or software.

“**Turn Around Time**” or “**TAT**” means the elapsed time from the date of receipt acknowledgment of a Product arriving at Supplier’s location for Repair until shipment notice of Repaired Product back to Buyer.

“**Yield**” means the relationship between Product sent to Supplier for Repair and the CSP returned to Buyer.

### [\*\*]2.0 PRODUCT DEFINITION

#### 2.1 Product Description.

The Products are described in the Product Unique Attachment #1. Products also include all FRUs, CSPs, Product code, and Product documentation as applicable and described in the Attachment #1.

#### 2.2 Product Specifications & Certifications.

Products will comply with all the requirements set forth below:

- CS1-1121-015, IBM Corporate Standard “Automatic Identification (AI) for Packaging, Distribution and Manufacturing — Bar Coded Labels”
- GA21-9261-11a, “Packaging and Handling — Supplier and Interplant Requirements”
- Product/Process Quality Plan, Quality Assurance Instruction 1057, QAI-1057
- ISO 2859, Sampling Procedures for Inspection by Attributes
- ISO 3951, Sampling Procedures for Inspection by Variables
- EIA - 599 - A, Continuous Improvement
- EIA - 659 - A, Failure, Mechanism, Driven Reliability Monitoring
- EIA - 670, Quality System Assessment
- EIA - 671- A, Problem Analysis and Corrective Actions
- EIA - JESD - 38, Standard for Failure Analysis Report Format
- EIA - JESD - 46, Product Change Notice
- EIA - JESD - 50, Maverick Product Elimination
- Supplier’s published specifications, catalogs, marketing materials, and other documentation, including references in such materials to future upgrades or performance
- FAA Certification, Supplier certifies that Products and their packages do not contain explosives, hazardous materials, incendiaries and/or destructive devices as defined by the FAA
- All Product claims, descriptions, specifications, and other requirements described in the Product bill of material, elsewhere in this Agreement, and via other written or electronic communications sent from or approved by Buyer.
- IBM Environmental Engineering Specifications 46G3772, and 53P6233 (“Environmental Specifications”) found in the Environmental Requirements section of IBM’s Information for Suppliers website: (<http://www-03.ibm.com/procurement/proweb.nsf/ContentDocsByTitle/United+States~Information+for+suppliers>) to be effective July 1, 2006. The foregoing does not apply to Products that will end of life as of June 30, 2006 or their associated FRUs. Any Product that does not comply with the above specifications shall be deemed end of life as of June 30, 2006.

#### 2.3 COO Product Certification.

Supplier will provide Buyer with certification that the Products have the country(ies) of origin. A sample of the certification is attached hereto as Attachment 4.. If there are any changes to this information, Supplier will notify Buyer by providing a new country of origin certification signed by an authorized Supplier representative before shipping any affected Products. If any part number has more than one country of origin, Supplier certifies that each country of origin is specified in the Product Unique Attachment(s), and Supplier will deliver to Buyer, instructions regarding how Buyer can distinguish each country of origin for part numbers with more than one country of origin [\*\*]to shipping the affected Products.

#### 2.4 Engineering Changes.

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Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL112SOW Number**

Engineering Changes shall not be applied to any Product under this Agreement unless implementation is conducted in accordance with the following engineering process:

**Supplier Changes:** Supplier will not make any changes to the Products that affect the form, fit or function, which have been certified by Buyer without Buyer's prior written consent. Supplier will notify Buyer (through the Technical Coordinator) of any engineering change proposed to be made by Supplier to the Product and will supply Buyer with a written description of the anticipated effect the engineering change will have on the Product, including price (savings), performance, reliability, serviceability, manufacturability and any cost impact to Buyer as a result of the implementation of the engineering change. Buyer has the right to approve or disapprove of such engineering change, which approval shall not be unreasonably withheld. Buyer may elect to evaluate and test the prototype, parts and/or designs specified as part of the proposed change and Supplier shall provide such parts to Buyer at no charge for such evaluation and testing. Buyer (through the Technical Coordinator) shall approve or disapprove Supplier proposed changes within [\*\*], unless otherwise agreed to by both parties, of receipt of a written request, except for changes required to satisfy governmental standards or safety for which Buyer shall respond within [\*\*], unless extended by mutual consent. Failure to respond shall be deemed to be Buyer's acceptance of such proposed change. If such change affects price, the Buyer Business Coordinator must also provide approval. If Buyer approves the engineering change, the product specification and unit pricing will be amended as required. Buyer will not unreasonably refuse to approve Supplier's engineering changes to the Product. In the event that Supplier makes such changes to form, fit or function, that affect the Product without Buyer's consent, at Buyer's discretion Supplier will either: (i)[\*\*] mutually agreed upon by Supplier and Buyer,[\*\*] that are associated with such Products' [\*\*]the price of the Products.

**Buyer Changes:** Buyer may request in writing (through the Technical Coordinator) that Supplier incorporate an engineering change into the Product. Such request will include a description of the proposed change sufficient to permit Supplier to evaluate its feasibility. Within [\*\*] of such request (or extended by mutual consent), Supplier will advise Buyer of the conditions under which it would make the engineering change. Supplier's evaluation will be in writing and will state the increase or decrease price adjustment (if any) and the effect on the performance, reliability, safety, appearance, dimensions, tolerances, manufacturability and serviceability of the Product. Buyer's Technical Coordinator shall approve or disapprove the engineering change based on Supplier's written evaluation. If such change affects price, the Buyer's Business Coordinator must provide approval prior to implementation. If Buyer approves the engineering change, the product specification and unit pricing will be amended as required. Supplier will not unreasonably refuse to incorporate Buyer's engineering changes into the Product.

**2.5 Product Software and Documentation.**

Supplier will deliver, at the earlier of a date requested by Buyer or prior to its first shipment of Product, (i) a fully completed and signed certificate of originality (in form specified in Attachment 3) for all Product code and documentation, and (ii) all Product code (as may be mutually agreed upon and described in the Attachment 1 for the Product), publications, and documentation in a format and media as specified by Buyer. Additionally, Supplier will deliver to Buyer any Minor and Maintenance Releases (including bug fixes) without an additional charge. Some software releases are considered a Major Release and may be offered to Buyer for an additional fee as Supplier offers such enhancements to other customers.

"Documentation" shall mean all documents that Supplier generally makes available to its customers containing descriptive, operating, installation, engineering, Marketing and maintenance information for Products, as such documents may be amended from time to time and any updates, modifications and enhancements made to them, during the term of this SOW.

Supplier shall provide Buyer with a master copy and one copy of all Documentation for each Product, in both hardcopy format and electronic format, suitable for dissemination by Buyer. Solely in conjunction with Buyer's sale, installation, service and support of Products purchased under this Agreement, Supplier grants Buyer and its Affiliates, subsidiaries, distributors, agents and resellers that market and sell the Products a nonexclusive, royalty-free right and license to copy, use, modify, translate [\*\*]of the Documentation and distribute the Documentation and derivative works to its customers, provided that Buyer keep Supplier's copyright and other proprietary notices as may appear on such Documentation and refrain from doing anything that would jeopardize Supplier's proprietary and other rights in the Documentation. Should Buyer require Supplier to make modifications to said Documentation, the cost will be at Buyer's expense.

Products purchased under this SOW may be subject to an annual Software Maintenance Support Program. If applicable, Annual Software Maintenance will be listed on the PUA. Under the terms of this support program Supplier shall provide Software Maintenance, which includes Maintenance Level Service, for a period of [\*\*]commencing on the Effective Date of the Agreement. Thereafter, the annual Software Maintenance Support Program shall be automatically renewed for additional

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Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

[\*\*] periods commencing on the anniversary of the Effective Date of the Agreement, unless cancelled by Buyer with [\*\*] prior written notice to Supplier. The fees for this annual Software Maintenance Support Program shall be calculated as [\*\*] during the annual Software Maintenance Support period. For the convenience of the Buyer, Software Maintenance shall be billed to Buyer with each Product purchased as described in Attachment 1, Section 4.1 “Product Price List and Descriptions” and will be used to determine the total billings. The amounts for the Annual Software Maintenance Fee per Unit and the Software Maintenance billed to Buyer with each Product purchased shall be [\*\*] by the Supplier and the Buyer. If total billings for Software Maintenance during an annual period [\*\*] as determined per the calculation as described in this section, [\*\*], or may be used as an adjustment to amounts due to Supplier as mutually agreed upon. If total billings for Software Maintenance during an annual period are [\*\*] as determined per the calculation as described in this section, Buyer at Buyer’s option may elect to [\*\*] based on mutual agreement between the parties. When initiating a technical support request with Supplier, Buyer may provide only if it is reasonably available to Buyer either the serial number or worldwide name of the Product. Supplier shall have the right to assign support obligations to the appropriate local Supplier subsidiary.

**2.6 Tamper Evident Protection.**

To the extent that Supplier ships new Product in its final Customer ready form, Supplier shall apply tamper evident protection on the finished Product packaging in a form agreeable to both parties and in such a manner that if removed or tampered with, it would be evident that the finished Product packaging has been opened. Supplier will have controls to prevent unauthorized use or dissemination of such tamper evident protection used on Product purchased by Buyer and to limit the access to such materials to only those responsible for the tamper evident sealing on the Products.

**3.0 PURCHASING**

**3.1 WA Issuance.**

Buyer is under no obligation to purchase any Products and/or Services, except as ordered in WAs and within the liability limits addressed elsewhere in the Agreement, including those addressed in the Product Unique Attachment(s) to this SOW. Supplier will comply with Buyer’s requested changes to delivery of Products specified in a WA as described in the Product Unique Attachment(s) to this SOW. If Buyer decreases Product quantities specified in a WA outside of allowances described in the Product Unique Attachment(s) to this SOW, Supplier will use all efforts to mitigate Buyer’s liability. The parties acknowledge that WA’s may be placed on Supplier under this SOW by entities other than the Buyer, or its Affiliates, but only to the extent preauthorized by Buyer in writing and mutually agreed to by Supplier.

**3.2 Price Modifications**

The parties agree to review in good faith price changes, based on market conditions including but not limited to changes in Product cost, support variances, and the business relationship. Such reviews shall occur as mutually agreed upon between the parties. . Any pricing changes which, may result of such reviews and activities shall become effective on the first day of the following month or as otherwise agreed to by the parties.

**[\*\*]3.3 Field Replaceable Unit (FRU) Availability.**

Supplier will maintain the capability to supply and shall provide Product FRU(s) to Buyer’s along with access to technical support from Supplier in accordance with pricing as provided in this SOW for a term of five (5) years commencing upon the earlier of either the Product End of Life (EOL) in accordance with the earlier of Section 3.4 (Notice of Product Withdraw), or the termination of this SOW (Section 3.0 Goods Agreement).

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## Integrated Statement of Work for Production Procurement Goods Agreement

Goods Agreement # ROC-P-68 Master Agreement Number

SOW # 4903RL1112SOW Number

### 3.4 Notice of Product Withdraw

#### 3.4.1 Buyer's Product Withdraw Notice.

Product may be withdrawn from production and end of life at Buyer's sole option. Buyer shall notify Supplier of withdrawal of any Product(s).<sup>\*\*\*</sup>Product withdrawals will not affect spare parts. Upon Buyer's notice to Supplier of withdrawal of Product, Buyer must make any last time buys for such Product <sup>\*\*\*</sup>of the withdrawal notice, and must take delivery of all last time buys within <sup>\*\*\*</sup> from the date of the withdrawal notice. Orders made subsequent to withdrawal notice under this section shall be non-cancelable and non-returnable.

#### 3.4.2 Supplier Product Withdraw.

The terms and conditions for Supplier Product Withdraw are listed in the Product Unique Attachment for each product family.

### 3.5 Use of Subcontractors.

Supplier's use of subcontractors will not relieve Supplier of the responsibility for the subcontractor's performance, and Supplier's responsibilities assumed under this SOW will be equally applicable to such subcontractors, as must be agreed upon between Supplier and such subcontractors. <sup>\*\*\*</sup>

#### 3.5.1 Diversity Enterprises Spending

Supplier agrees to join and support Buyer's efforts to utilize Minority and Women Owned Businesses (M/WBE), Disabled Business Enterprises (DBE), and Small Business Enterprises (SBE) for a target percentage of <sup>\*\*\*</sup> of Suppliers total enterprise spend. The parties recognize that Supplier does not participate in a M/WBE formal program at the time of this SOW execution, however Supplier will use reasonable efforts to establish such a formal program and provide status as requested to Buyer. Supplier's failure to achieve this goal may be considered non-compliance with Buyer's MWBE initiative and shall be considered a factor by Buyer for future business with Supplier however; it shall not be considered a material breach of this Agreement.

As part of the parties' obligations under this Section, the parties will perform the following:

- (i) Supplier shall identify M/WBE Direct Opportunities: Identify procurement opportunities that may exist relating to this SOW that include, or may include, M/WBE participation in the production or distribution of the Supplier's Products and Services.
- (ii) If Buyer has a list of potential M/WBE suppliers who can perform under this SOW, Buyer will provide that list to Supplier, so long as Supplier identifies the opportunity and specifies the product or service to Buyer

### 3.6 Taxes and Duties.

Supplier will ensure that the Prices do not include any sales, use or other similar taxes that do not apply to Buyer as a reseller of Products and/or Services. The parties agree to negotiate in good faith to establish the terms and conditions for all legal, regulatory and administrative requirements, in addition to all associated duties and fees, associated with importation of Products into the country where the Product is received by Buyer, no later than February 15, 2004 which will be incorporated into this Agreement when signed by both parties.

Supplier's invoices shall state applicable taxes owed by the Buyer, if any, by tax jurisdiction and with a proper breakdown between taxable and non-taxable Products and Services. Supplier shall remit such tax payments to the appropriate jurisdiction. Supplier agrees to use its commercially reasonable efforts to properly calculate any applicable Taxes at the time of invoice. Supplier and Buyer agree to cooperate to minimize any applicable Taxes, including reasonable notice and cooperation in connection with any audit. Any incremental taxes shall be Supplier's responsibility. If Buyer provides certification of an exemption from Tax or reduced rate of Tax imposed by an applicable taxing authority, then Supplier shall not invoice for nor pay over any such Tax unless and until the applicable taxing authority assesses such Tax, at which time Supplier shall invoice and Buyer shall pay any such Tax that is legally owed.

Buyer shall withhold taxes, if required under the law to be withheld on payments made to Supplier hereunder and shall be required to remit to Supplier only the net proceeds thereof. Buyer shall remit the taxes withheld to the appropriate government authority and agrees to provide Supplier in a timely manner with properly executed documentation or other information or receipts or certificates evidencing Buyers payment of any such withholding tax.

### 3.7 Invoices.

Terms for payment on all Supplier invoices will be net <sup>\*\*\*</sup> from: 1) receipt of an acceptable invoice for a Discrete WA's purchases; or 2) as described in order fulfillment models (see Attachment 5). <sup>\*\*\*</sup> Invoices to Buyer must include, at a

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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## Integrated Statement of Work for Production Procurement Goods Agreement

Goods Agreement # ROC-P-68 Master Agreement Number

SOW # 4903RL112SOW Number

minimum, the following: (i) applicable WA line item numbers; (ii) SOW and WA numbers; (iii) terms of payment as provided herein; (iv) billing date (v) applicable Product unit Prices; (vi) total amount invoiced; (vii) the Harmonized Tariff Code of the importing country for every Product; and, (viii) Product descriptions with sufficient detail to enable verification of associated Product categorical classifications.

### 3.8 *Electronic Commerce.*

Buyer may issue scheduling documents ("Blanket Purchase Orders") which may have the appearance of a normal WA, but do not include a delivery date. Such Blanket Purchase Orders are issued only as a logistical processing document to enable the use of electronic purchase order communications and are not binding in any manner and shall not be considered as WA's by the parties, regardless of quantities or prices that may be included in such Blanket Purchase Orders. Unless previously submitted by Supplier, in order to initiate electronic transfer of payments associated with this SOW, Supplier will complete the form entitled "Authorization for Electronic Funds Transfer" as provided to Supplier by Buyer and fax the completed form to Accounts Payable at the number included on the form.

### 4.0 MAINTENANCE LEVEL SERVICE

Maintenance Level Services includes the Level 1, Level 2, and Level 3 responsibilities defined below, for Product, documentation and Maintenance and Minor Releases arising out of technical support responsibilities, and all such releases created or made available by Supplier.

#### 4.1 *Level 1.*

Supplier will assist Buyer as required by Buyer, in performing the following Level 1 support responsibilities:

- create the PMR;
- obtain from Customer a description of the Problem;
- search for any known resolution(s) relevant to the Problem;
- if a resolution to the Problem is known, specify such resolution to Customer;
- if no resolution to Problem is known, generate APAR, assign APAR Correction Time, forward APAR to Level 2; and
- pass the PMR to Level 2, and update the PMR documenting Level 1 actions.

#### 4.2 *Level 2.*

Supplier will assist Buyer, as required by Buyer, in performing the following Level 2 support responsibilities:

- receive the PMR/APAR from Level 1;
- analyze Problem symptoms and gather additional data from Customer as required;
- recreate Problem on the Developer Test System;
- determine if Problem is due to improper installation of the Product by Customer;
- determine if Problem is due to operationally related hardware or software at the Customer location;
- attempt a bypass or circumvention for high impact Problems (i.e., Severity 1 and 2);
- create APAR record if no resolution to Problem is attained; and
- update the PMR documenting Level 2 actions.

#### 4.3 *Level 3.*

Supplier will perform the following Level 3 support responsibilities:

- receive the APAR/PMR and supporting documentation and materials from Level 2;
- analyze Problem symptoms and diagnose Problem;
- notify Level 2 if additional information, materials or documentation are required;
- attempt to recreate Problem on the Developer Test System;
- assist Level 2 in developing a bypass or circumvention for high impact Problem (i.e., Severity 1 and 2);
- deliver corrections to the Product and/or Product code (as defined in Attachment 1) to Buyer within the applicable APAR Correction Times to fix Problems identified by Buyer;
- return all APARs to Buyer with an APAR Closing Code assigned, including text describing the resolution of Problem
- confirm resolution of Problem with Customer, and update PMR documenting Level 3 actions; and
- answer any questions from Buyer and/or Customer concerning the operation and use of Products.

#### 4.4 *Other Technical Support Responsibilities.*

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

## Integrated Statement of Work for Production Procurement Goods Agreement

Goods Agreement # ROC-P-68 Master Agreement Number

SOW # 4903RL112SOW Number

Supplier will provide to Buyer the name and phone numbers of Supplier Personnel to contact for all technical support matters related to the Product. Supplier will provide agreed-to training required by Buyer to enable Buyer to perform technical support functions for the Product and will keep Buyer informed of any known Problems and their associated solutions. Supplier shall contact IBM directly in the event IBM Customers contact Supplier for Product support services. No other support shall be provided unless directed by IBM for these Products.

### 4.5 Technical Support Training.

Supplier shall make available to Buyer technical training for support of end user implementation of the Product. Buyer shall not use any training materials in a manner that provides revenue solely from the use of these materials to IBM. Technical training requested by Buyer will be made available by Supplier to Buyer as mutually agreed upon. Buyer acknowledges that the materials distributed by the Supplier during the technical training are protected by copyright, and that Buyer shall have no rights to reproduce such materials without the prior written consent of Supplier, such consent shall not be unreasonably withheld.

## 5.0 QUALITY

### 5.1 Quality Requirements.

Supplier shall provide to Buyer applicable standard data and calculations that support the Products' ability to meet the quality standards set forth as Attachment 2.

### 5.2 Acceptance Criteria.

Buyer may inspect and test all Product at Buyer's facility prior to acceptance or rejection, and may refuse to accept Product which does not conform to the specifications, certifications, and other requirements referenced in the Agreement. If Buyer rejects Product and requests a replacement Product, Supplier shall replace the rejected Product within **[\*\*]** of Buyer's request, and shall pay for the airfreight, if required by Buyer, and all other expenses associated with the return of the rejected Product.

### 5.3 Product Modifications.

Supplier will not make any changes to the Products affecting form, fit or function of the Products that have been certified by Buyer, without Buyer's prior written consent, such consent not to be withheld unreasonably. In the event of such form, fit or function changes without Buyer's prior written consent, Supplier will, at Buyer's discretion, either: (i) **[\*\*]**; or (ii) **[\*\*]** If Supplier improves the safety, function, cost, or reliability of products that it builds for itself or for its other customers by changing a design, component, part, supplier, or production process that may also be used in or in connection with a Product that Supplier builds for Buyer, then Supplier will inform Buyer of such improvement and implement changes to Product as approved by Buyer to incorporate such improvement in Products.

### 5.4 ISO Requirements.

For ISO compliance, the Supplier represents and warrants that the Supplier's contract manufacturers are ISO 9001 compliant. Compliance hereunder may be either by means of external accreditation or self-declaration. For external accreditation, Supplier will provide to Buyer, upon Buyer's request, a copy of Supplier's current registration, including the scope, Standard Industrial Classification code or equivalent, all locations involved, and any restrictions or exclusions. For self-declaration, Supplier will provide to Buyer, upon Buyer's request, a letter from Supplier's chief executive officer, chief operating officer, or other executive assuring that self-declaration was performed with due diligence based upon a previously executed internal audit report, and that such self-declaration has had executive management review and approval.

### 5.5 Periodic Quality Reviews.

Supplier shall develop and implement a process for continuous Product improvement. Buyer may conduct reviews and/or hold meetings related to Supplier's performance under the SOW, including but not limited to the following respects, and may compare Supplier's performance with that of similarly situated suppliers:

- Supplier's compliance with delivery dates in support of WAs issued by Buyer;
- Supplier's compliance with Emergency Orders issued by Buyer hereunder;
- Supplier's compliance with the targeted Shipped Product Quality Level (SPQL) as set by the parties on a monthly basis;
- Supplier's compliance with the targeted Field Replace Action Level (FRAL) as set by parties on a monthly basis;
- Supplier's compliance with the targeted Incoming Product Quality Level (IPQL) as set by the parties on a monthly basis;
- Supplier's compliance with the targeted Cumulative Failure Rate (CFR) as set by the parties on a monthly basis;
- Percentage of Products failing to function properly upon delivery (also known as the Product DOA rate);

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

- Supplier’s speed in taking corrective actions for any problems with Product identified by Buyer;
- Supplier’s implementation of lessons learned in previous periodic quality reviews.

In any calendar month in which Supplier shows poor performance with respect to the criteria set forth above, Buyer may notify Supplier of such poor performance. In such case, Supplier will respond to Buyer with an agreed upon action plan within [\*\*] of notification by Buyer demonstrating its ability to achieve the required measurements. Supplier’s failure to successfully execute an action plan within an agreed upon time frame shall be a material breach of the Agreement. Satisfying any or all criteria of this section shall not relieve Supplier of its warranties or other obligations of the Agreement.

**6.0 RESERVED.**

**7.0 EMERGENCY ORDERS**

**7.1 Code A-Alert Emergency Order Placement**

This provision 7.0 (Emergency Orders) and its subsections shall apply solely to FRU purchases pursuant to a discrete WA. Supplier will accept and respond to EO from Buyer [\*\*]Order confirmation time period begins at the time Order is received by Supplier. Supplier will provide a telephone service number for EO coverage. Supplier will use commercially reasonable efforts to respond to all EO within the time periods designated below. Buyer will place and Supplier will respond to all EO with Supplier via fax, EDI (or other electronic commerce approach) and/or telephone, such EO to be confirmed by Buyer with a written WA mailed or electronically transmitted to Supplier within [\*\*] of EO placement. Supplier will acknowledge EO back to Buyer via fax or telephone within the specified order confirmation time periods stated below.

**7.2 Code A-Alert Emergency Order Work Authorizations**

WAs will include Buyer’s Purchase Order number, Buyer’s part number, part number description, quantity, unit Price, order type (short lead time, in the event a short lead time order is placed, are orders with requested Delivery Dates in less than the agreed to Lead Time), Delivery Date and ship to address.

**7.3 Code A-Alert Emergency Order Shipments**

Supplier will use commercially reasonable efforts to ship Code A-Alert Emergency Orders within [\*\*]of receipt of WA, unless specifically designated otherwise by Buyer, to arrive at the Buyer specified receiving location. If requested by Buyer in writing, Supplier will use commercially reasonable efforts to ship EOs via “Next Flight Out” and “Air Charter” to arrive at Buyer’s specified receiving location on the same day of the WA. Buyer to pay for all expedited freight/duty /insurance costs.

**7.4 Code A-Alert Emergency Order Delivery and Cancellation**

Supplier will deliver EOs directly to the address specified in the WA and in accordance with this SOW. Code A-Alert Emergency Order(s) are non-cancelable, however Buyer may contact Supplier prior to time of shipment to make changes to the specified receiving location.

**8.0 WARRANTY SUPPORT**

**[\*\*]8.1 Epidemic Defects**

“Epidemic Defects” shall mean Products and their associated Engineering Changes that experience one or more of the following: (a) a similar defect at a rate of [\*\*] or more in any given [\*\*]rolling period over the life of the Products, (b) a similar defect at a rate of [\*\*] or more (or other rate that may be specified in the Product Unique Attachment) of total purchases over the life of the Products, (c) recalls, or (d) safety defects.

**8.2 Warranty Period.**

The warranty redemption set forth in the section of the GA entitled, “Warranty Redemption” as it applies to the relevant subsection of the section of the GA entitled, “Ongoing Warranties” will be available to Buyer for all Products hereunder for the warranty period of [\*\*] and as set forth in the applicable Product Unique Attachment (as calculated from the date Buyer takes title of Product). Supplier will be responsible for its warranty redemption responsibilities under the Agreement for all Products returned to Supplier, regardless of the reason why such Products fail to meet the requirements in the Agreement. When initiating a technical support request with Supplier, Buyer shall use commercially reasonable efforts to provide the serial number or worldwide name of the Product unit. Such warranty redemption for Repaired Product shall be the longer of

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL112SOW Number**

the above period for the original Product or<sup>\*\*\*</sup> after the Buyer's receipt of the Repaired Product. Nothing in this section shall be deemed to affect or amend the ongoing duration of the remaining ongoing warranties.

**8.3 No Trouble Found**

Buyer shall use commercially reasonable efforts to provide a description on the RMA field return form of the failure. If the quantity of No Trouble Found (NTF) Product returned to Supplier exceeds <sup>\*\*\*</sup> then any additional NTF units returned above and beyond the <sup>\*\*\*</sup>of Product may be subject to Supplier's cost recovery if <sup>\*\*\*</sup>of the Product returned for failure or defects are found to be NTF during any <sup>\*\*\*</sup> consecutive rolling quarters. The cost recovery to Supplier will be limited to the quantities exceeding the <sup>\*\*\*</sup> and shall be through an increase in Product price as mutually agreed to by the parties.

**8.4 Limitations**

The foregoing warranty provided in the Goods Agreement and Section 8.0 shall not apply to Product(s) that has been (i) damaged by accident, Act of God, shipment, improper installation, inadequate maintenance, abnormal physical or electrical stress, misuse or misapplication, or (ii) modified without Seller's express written acceptance of such modification for warranty purposes, so long as such occurrence has taken place after Product(s) has been received by Buyer or in accordance with the shipping terms mutually agreed upon.

**8.5 Warranty Redemption Logistics.**

Supplier will label Products as specified by Buyer to enable Buyer to determine Product warranty entitlement. Where Supplier is required to ship Product pursuant to its warranty redemption responsibilities under the Agreement, Supplier will ship such Product to Buyer's designated "ship to" location via Buyer's designated carrier.

**8.6 Additional Warranties.**

Supplier represents and warrants that, on an ongoing basis:

- (a) Products, Parts, EDI transmissions, and other deliverables shall not contain any Harmful Code upon shipment;
- (b) Supplier and Buyer shall comply with all applicable laws, regulations, orders and policies relating to identification of country of origin, including Chinese regulations regarding the identification of country of origin (i.e., Taiwan cannot be referred to as "R.O.C." or "Republic of China"; Hong Kong must be referred to as "China (Hong Kong S.A.R.)"; and Macau must be referred to as "China (Macau S.A.R.)");
- (c) Supplier shall secure and maintain all certifications (governmental, agency, or otherwise) required for performance of Services or that are required for the performance of such Services for Buyer, Buyer subsidiaries, and others authorized by Buyer and agreed to by Supplier to sell the Products worldwide;
- (d) Supplier shall maintain comprehensive general liability insurance sufficient to cover all claims that might arise from Supplier's activities under this Agreement;
- (e) If Supplier refers to performance and/or upgradeability features in the Product or in marketing deliverables (e.g., advertisements, Internet pages, brochures, bids, user guides) for similar products which Supplier offers to its other customers, then Supplier represents that all such performance and/or upgradeability claims are true, and Buyer may rely on such claims in creating its own marketing deliverables for Products. Supplier will provide upgrades within a reasonable period of time, but in no event later than the earliest availability date suggested by the reference. Supplier will include in the Products and upgrades all of the performance functions and features suggested by the reference;
- (f) Should Products and Services provided herein ever interact in any capacity with monetary data, Supplier will make Product euro-ready such that they will correctly process, send, receive, present, store, and convert monetary data in the euro denomination, respecting the euro currency formatting conventions (including the euro symbol).

**9.0 REPAIR**

**9.1 Required Replacement.**

All components of Products sent to Supplier for Repair that exhibit unsafe conditions (including but not limited to cracking, chafing, and/or other unsafe conditions) will be replaced with an identical (same manufacturer, part or model number,

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

electrical/thermal rating, physical dimensions and agency approval) or an approved alternate component (identical mechanical, electrical/thermal, physical, compositional and performance characteristics but different manufacturer). Compliance with this section will not relieve Supplier of its other obligations under the Agreement and this SOW.

**9.2 Scope of Repair Services.**

Supplier will make Repair and/or Replacement Services available to Buyer up through and including the relevant EOS date, as specified by Buyer in writing. Products sent to Supplier for warranted Repair or Replacement during the applicable warranty period will be Repaired or Replaced at no cost to Buyer and returned to Buyer at Supplier's cost. Products sent to Supplier for Repair outside of the applicable warranty period shall be subject to the out of warranty fees as applicable in Attachment 1. Inbound freight to be paid by Buyer and outbound to be paid by Supplier in accordance with the delivery date specified by Buyer in the WA for such Repair as mutually agreed upon between the parties. All Repaired Products must meet the requirements regarding CSPs set forth in this SOW. Repair Services **[\*\*]** with the exception of Product that**[\*\*]**. In such event, Supplier will, at Buyer's discretion, provide Buyer a replacement Product. Supplier must maintain a history of Repair activities and provide a monthly report to Buyer in the format of the attachment to this SOW that is entitled "Monthly Warranty Analysis Report." The "Monthly Warranty Analysis Report" will not be provided for Replaced Product.

**9.3 CSP Requirements.**

Products will only be classified as CSP with Buyer's written approval. Products classified as CSP may be used for field service only and may not be used in the manufacturing of a new Product. CSPs will meet the following criteria: (i) the functional performance of such Products will comply with all current and applicable engineering drawings, written specifications, and other Product requirements; (ii) the appearance of such Products will be equivalent to that of a new counterpart; (iii) manufacturer warning labels will remain intact and legible or will be replaced, and protective covers (e.g., guards or shields) will be securely mounted as originally designed or will be replaced; and (iv) the Repair of such Products (including EC related Repairs) will be in compliance with all agreed upon listings and certifications issued by National Certification Body (NCB). If Supplier is not able to meet specified criteria, then Product will be deemed non-repairable and Buyer will be notified accordingly. Suppliers will place on all CSPs, a "SERVICEABLE USED PART(S)" label meeting the following criteria: (i) printed using high quality paper with a shelf life of ten (10) years; (ii) using permanent pressure sensitive and tamper evident adhesive (black printing on orange background); (iii) which do not contain any voids, ink specks, ink fill-ins or edge-roughness; (iv) which are applied in a manner that provides durable and wrinkle free labels that permanently and securely bonds to the Product and container under variable environmental conditions; (v) which are clearly visible; and (vi) which will not adversely affect the functionality or aesthetics of the Product. The original manufacture date will be preserved or restored as needed at the time of Repair. Product labels (labels applied directly to the Product) will comply with the following dimensions: (i) large labels will measure 3.0448 cm x 0.9615 cm (1.1875 in x 0.3750 in); (ii) small labels will measure 2.2435 cm x 0.6410 cm (0.8750 in x 0.2500 in). Container labels (labels applied to the container) will comply with the following dimensions: (i) 9.2948 cm x 4.4871 cm (3.6250 in x 1.7500 in).

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number  
SOW # 4903RL1112SOW Number**

**10.0 CONSIGNED MATERIALS**

**10.1 Handling of Consigned Materials.**

In instances where Buyer sends Product to Supplier for Repair, and/or provides to Supplier tooling and/or other items, Buyer may, but is not obligated to, entrust such Products, tooling, and/or other items to Supplier as Consigned Materials. Buyer will retain title to Consigned Material at all times. Supplier will: (i) use Consigned Materials only in the performance of this SOW and will not reuse or resell nor allow to be reused or resold any Consigned Material without Buyer's prior written authorization; (ii) acknowledge receipt of Consigned Materials within [\*\*] of receipt to the Buyer's Business Coordinator via email or fax, and such acknowledgment will include a detailed report of any quantity shortages or overages (any shortages not reported to Buyer's Coordinator in such acknowledgment will be deemed received by Supplier), all relevant part numbers, and the relevant WA (if applicable) and quantity; (iii) immediately notify carrier and Buyer's Business Coordinator of any Consigned Materials that exhibit external damage at the time of delivery from Buyer to Supplier, document on carrier's freight bill such damage, and receive either an inspection report or a letter from carrier stating that such inspection has been waived; (iv) ensure that Consigned Materials are not pledged, mortgaged, assigned, borrowed or encumbered by security interests or otherwise and are not be removed from Supplier's location without Buyer's prior written authorization, unless provided to Buyer in accordance with the terms and conditions of this SOW; (v) provide monthly reports of all transactions made by Supplier involving Consigned Materials, together with the quantities remaining in Supplier's custody as of the date of such report, and will make due settlement and payment on a monthly basis, if not already made, for any and all Consigned Materials in accordance with this SOW; (vi) maintain account books and records providing complete information as to all such transactions involving Consigned Materials, and such books and records will be available to Buyer during normal business hours, upon forty eight (48) hours prior notice to Supplier; (vii) permit Buyer to inspect Consigned Materials at any time during normal business hours, at Supplier's location and to remove any or all of the same if Buyer so desires; (viii) maintain replacement cost insurance on Consigned Materials; (ix) upon Buyer's written request, or upon termination or expiration of this SOW, return Consigned Materials to Buyer pursuant to Buyer's instructions and in the same condition as received by Supplier; (x) upon Buyer request, mark Consigned Material in a manner acceptable to Buyer to indicate Buyer's ownership; (xi) control Consigned Materials in a secure and separate area so as to not commingle Consigned Materials with other materials, parts, or other assets of Supplier or of any third party; and (xii) notify Buyer immediately in writing of any personal property taxes or assessments that may be levied on Consigned Materials. Supplier shall not charge inventory fees or any other costs to Buyer regarding Consigned Materials.

**10.2 Return of Consigned Materials.**

Supplier will provide a packing slip with all return shipments of Consigned Materials to Buyer, which specifies Supplier's name, Buyer part number(s) of Consigned Materials being returned, quantity of Consigned Materials, by Buyer part number being returned, and the relevant WA number. Consigned Materials which Supplier is unable to Repair will be returned to Buyer with a packing slip which additionally references a return authorization number, obtained from Buyer, and provide a reason why Supplier is unable to Repair such Consigned Materials. Supplier will reimburse Buyer for Consigned Materials that are not returned to Buyer in accordance with the terms of this SOW, including, without limitation, any Consigned Materials that have been stripped, stolen, lost, damaged, or unaccounted for. The calculations for reimbursement of Consigned Materials [\*\*] is as follows: (i) for new Consigned Materials, Supplier will reimburse Buyer an amount equal to Buyer's then current price for the Consigned Materials; or (ii) for used Consigned Materials, Supplier will reimburse Buyer an amount equal to [\*\*] of Buyer's [\*\*] cost per piece.

**11.0 RESERVED.**

**12.0 PURCHASES THROUGH BUYER OR BUYER'S AUTHORIZED THIRD PARTIES**

In the event Buyer wishes to authorize a third party ("Authorized Third Parties") to purchase Products, Buyer shall issue and negotiate in good faith with Supplier a Letter of Authorization ("LOA") which shall serve as "Written Authorization" pursuant to the [\*\*] (dated August 5, 2003) as executed between the parties.

**13.0 GRANTS OF RIGHTS AND LICENSES**

**13.1 Authorization to Purchase, Integrate, and Resell**

As provided herein, Seller authorizes Buyer to purchase Products, integrate them with Buyer's products to create Integrated Products, and redistribute Products (either independently, as components of Integrated Products, as upgrades and/or spare parts) to End Users (both directly, and indirectly through Buyer's Resellers). [\*\*]

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

**13.2 Pictorial, Graphic and Audio/Visual Works**

**The grant of rights and licenses with respect to Documentation includes a grant of all such rights and licenses in and to pictorial, graphic or audio/visual works, including icons, screens, characters, with other programming or through other means. [\*\*]****13.3 Supplier Product Names and Trademarks**

Supplier grants Buyer, and its Affiliates, subsidiaries, distributors and agents that market or sell the Products, a worldwide, non-exclusive, royalty free and irrevocable (except for Buyer's non-compliance with Supplier's Trademark Usage Guidelines as set forth in more detail below) right and license in Supplier's trademarks, service marks and trade names that Supplier uses in association with products similar to Products ("Supplier Marks") for the sole purpose of advertising, marketing, distributing, selling, or leasing the Product identified in Attachment 1, Section 1.0. All goodwill resulting from Buyer's use of Supplier Marks shall inure to the benefit of Supplier. Buyer's use of Supplier Marks shall comply with Supplier's Trademark Usage Guidelines, which are attached hereto as Exhibit X. Supplier's Trademark Usage Guidelines shall be limited to reasonable and objective guidelines for proper usage of the Supplier Marks, and may neither expand nor limit any other right of either party. This Agreement shall take precedence over any inconsistent term or condition of Supplier's Trademark Usage Guidelines. Supplier may amend its Trademark Usage Guidelines on thirty- (30) days advance written notice to Buyer. However, Buyer may continue to use any advertising, marketing, sales, manuals and other documents that were prepared prior to the end of any such thirty- (30) day period. In the event that Supplier notifies Buyer that its use of the Supplier Marks under this agreement is not in compliance with Supplier's Trademark Usage Guidelines, Buyer shall have sixty- (60) days to correct such non-compliance. If Buyer fails to correct any material non-compliance with Supplier's trademark Usage Guidelines within such sixty- (60) day period, then Supplier may revoke these rights and licenses to use Supplier Marks; however, notwithstanding such revocation, Buyer may continue to use Supplier Marks until its inventory of Products have been depleted.

**14.0 [\*\*]**

**14.1 Trigger Events:**

If during the term of this Agreement:

- A) Supplier (or its contracted manufacturer) ceases engineering, manufacturing or assembling services (except as expressly provided in Section 3.4.2 of this Agreement) contracted for hereunder; or
- B) An[\*\*]; or
- C) A [\*\*]; or
- D) A [\*\*] or
- E) [\*\*] or
- F) [\*\*]

(each such event shall hereafter referred to as a "Trigger Event").

Buyer shall notify Supplier in writing if Buyer is aware or becomes aware of the occurrence of such a Trigger Event or Supplier shall notify Buyer in writing if Supplier is aware or becomes aware of the occurrence of such a Trigger Event, and Supplier shall have[\*\*]after the date of such written notification or from the date of the occurrence of such a Trigger Event in which to remedy such condition or conditions, or such longer period as is mutually agreed to by the parties in writing (hereafter referred to as the "Cure Period").

**14.2 Election of Remedies by Buyer.**

If Supplier is unable to remedy the Trigger Event during the Cure Period, within [\*\*] after the end of the Cure Period, Buyer shall select one of the following options to ensure an adequate supply of comparable Product: (i) [\*\*], or (ii) [\*\*] If Buyer fails to provide Supplier with written notice of such election within such[\*\*]period, the parties agree that Buyer will be deemed to have selection option (ii) of this section 14.2.

**14.3 [\*\*]**

If Buyer selects the [\*\*]pursuant to option (i) in Section 14.2 above, Supplier will promptly deliver to Buyer the following[\*\*] In addition, Supplier shall, upon Buyer's request and payment by Buyer of Supplier's then-current standard rates therefore, provide such technical assistance as may be reasonably requested to enable Buyer to[\*\*], subject to the reasonable availability of Supplier personnel. Nothing contained herein shall obligate Supplier to disclose to Buyer any

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

confidential information of a third party, the disclosure of which requires permission of such third party, provided that Supplier agrees to use commercially reasonable efforts to obtain such permission if such confidential information is necessary for Buyer to make or have made Products and/or Spare Parts. All [\*\*] and non-public information of any kind that is required to [\*\*] whether in written or oral form (“Supplier Confidential Information”) shall be deemed to be confidential to Supplier and shall not be disclosed to any employee or agent without a need to know such information to [\*\*] the Products and Spare Parts as authorized in Section 14.4 below, both during the term of this SOW and thereafter. Buyer shall ensure that it has obtained or will obtain from its employees and agents, and the employees and agents of its Subsidiaries and authorized third parties, who will receive Supplier Confidential Information a written agreement to hold such Supplier Confidential Information in confidence and to use the same care and discretion to avoid disclosure of such information as Buyer uses with its own similar information which it does not wish to disclose, but in no event less than commercially reasonable measure to protect such information. All such Supplier Confidential Information shall be maintained in a locked facility accessible only by authorized personnel.

**14.4 [\*\*]**

If Buyer selects [\*\*] pursuant to option (i) in Section 14.2 above, Supplier will [\*\*] Notwithstanding the foregoing, [\*\*] Supplier agrees that provided Buyer has used commercially reasonable efforts [\*\*] from the date that Buyer provides Supplier with written notice of its intention to exercise the [\*\*] [\*\*] as described in Section 14.2 (i) above [\*\*] In the event after Buyer has exercised its right [\*\*] and Trigger Events(s) as described in Section 14.1 has been remedied [\*\*].

[\*\*]

**14.5 [\*\*]**

Upon any termination of the [\*\*], Buyer shall use commercially reasonable efforts to return to Supplier or destroy all Supplier Confidential Information to Supplier, retaining no copies in any tangible form or medium, and provide to Supplier a certificate from a Buyer executive attesting to their reasonable knowledge [\*\*] that all Supplier Confidential Information has been returned or destroyed.

**14.6 Cancellation of Purchase Order(s) (WAs).**

Upon the [\*\*] under Subsection 14.3 above, any WAs of Buyer for Products issued by Buyer on or after the date of any of the Trigger Events, may be canceled by Buyer, by a written notice to Supplier, and Buyer will have no further obligations there under except Buyer’s obligations in connection with acceptable Products already delivered prior to such cancellation, including but not limited to, payment obligations for such delivered Products, unless otherwise agreed to by the parties.

**15.0 SURVIVAL**

Any provisions of this Agreement which by their nature extend beyond its termination (including, without limitation, Sections 1, 8, 12, 13 and 15 of this SOW and Product Unique Attachment #1 hereto) and remain in effect until fulfilled, and apply to respective successors and assignees. In addition, the parties’ obligations under Attachment 6 (reference CDA) hereto shall survive for a period of [\*\*] following Buyer’s last purchase of Product prior to the termination or expiration of this SOW.

**16.0 HAZARDOUS SUBSTANCE AND ENVIRONMENTAL LAW REQUIREMENTS**

“Supplier is responsible for understanding and complying with: (a) all applicable Buyer specifications, whether referenced on the plans, in the Agreement or otherwise in a contract document between Buyer and Supplier, and (b) all Environmental Laws applicable to Supplier that restrict, regulate or otherwise govern Buyer’s direct or indirect import, export, sale or other distribution of Supplier’s Products or Deliverables on a stand-alone basis, or as part of a buyer server, storage, or retail store solution. “Environmental Laws” means those laws, rules and regulations (local, state, provincial or federal) of the nations of the European Union, United States, Canada, Brazil, Venezuela, Switzerland, Norway, South Africa, Israel, Egypt, Hong Kong, Russia, China, Singapore, Taiwan, India, Korea and Australia that relate to environmental matters, including without limitation material restrictions, material bans, product labeling, availability of product environmental information, energy efficiency, end-of-life product take back, packaging, batteries and other similar requirements. For example, Environmental Laws include without limitation those laws of the European Union member states that implement Directive 2002/95/EC regarding restriction of the use of certain hazardous substances in electrical and electronic equipment. As requested by Buyer, Supplier shall provide evidence of compliance with the legal requirements resulting from its obligations above by suitable

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

means, and shall assist Buyer with any reporting obligations related to Supplier's Products or Deliverables on a stand-alone basis, or as part of a buyer server, storage, or retail store solution. Supplier certifies that the information and data provided in accordance with the foregoing, as well as any other information or data provided in accordance with the applicable specifications is accurate, true, and complete. Should supplier become aware of any conflict between the requirements of a Buyer specification applicable to the Product or Deliverable and the Environmental Laws, Supplier shall notify Buyer in writing of the conflict and Buyer shall inform Supplier which restriction controls. Notwithstanding the foregoing, where Buyer is deemed the producer of supplier's products or deliverables under a European Union member state's implementation of Directive 2002/96/EC on waste electrical and electronic equipment, buyer shall have responsibility as the producer under this law unless it contracts with supplier to perform some or all of the producer responsibilities.

16.1. Based on evaluation of the Environmental Specifications, Supplier takes exception to the following provisions.

16.1.1 Specification 46G3772

- Sec 2.2: Supplier will comply with the Maximum Concentration Value (MCV) limits specified per the RoHS directive
- Sections 2.3.1 supplier will report the approximate weight in grams for the substance present in the part supplied to IBM to be reported to IBM".
- Section 2.3.2 remove the requirement to report the approximate weight in grams for the substance present in the part supplied to IBM to be reported to IBM.
- Section 2.4 Plastic Components Marking in accordance with ISO 11469-05. Supplier does not use any of the listed "Commonly Used Resins.

16.1.2 Specification 53P6233

- Section 2.3.2 Requirement for Printed Circuit Boards. Supplier will use Sn/Pb HASL coated boards for all the products until conversion to a Pb-Free process.
- Section 2.3.4 Acceptable Uses of Leaded Solder. Supplier will continue to use components with Sn/Pb solder — solder includes all materials that become part of the final solder joint, including solder finishes on component leads or PCBs until such time Sn/Pb solder can be eliminated from the suppliers products.

**Accepted and Agreed To:  
International Business Machines Corporation**

By: /s/ Timothy B. Nolan                      5/26/2009  
Authorized Signature                      Date

Timothy B. Nolan  
Type or Print Name

Networking Commun. Mgr.  
Title & Organization  
Address:

**Accepted and Agreed To:  
Brocade Communications Systems, Inc.**

By: /s/ Charles Leeming                      6/5/09  
Authorized Signature                      Date

Charles Leeming  
Type or Print Name

VP, OEM Sales  
Title & Organization  
Address: 1745 Technology Drive  
San Jose, CA 95110

**Accepted and Agreed To:  
Brocade Communications Switzerland, SarL**

By: /s/ U. Plechschmidt                      \_\_\_\_\_  
Authorized Signature                      Date

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

Ulrich Plechschmidt

Type or Print Name

Vice President EMEA

Title & Organization

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

**ATTACHMENT 1**

**PRODUCT UNIQUE ATTACHMENT #1 EFFECTIVE BEGINNING December 15, 2003**

**1.0 PRODUCT DESCRIPTION**

The Product is a Fibre Channel Switch Module family of products, to be used in the BladeCenter server. The Fibre Channel (FC) Switch Module will provide 14 separate internal F ports to service each Blade Center processor slot plus 2 external ports that support FL\_Port, F\_Port, and E\_Port; self-discovery based on switch type (U\_Port) peripherals running at 1Gbps or 2Gbps rates. Incorporated with the Fibre Channel Switch Module is Fabric OS, Web Tools, Zoning and Fabric Watch and documentation will be available in the following languages: English.

**1.1 Additional Description of Products**

Products must conform to the following specifications (including any subsequent revisions, as mutually agreed to between the parties), which are hereby incorporated by reference, and sold exclusively to IBM including providing supporting Services:

- “Brocade BladeCenter Fibre Channel Switch Module”, Product Requirements Document (“PRD”) Version 1.60, December, 2003, Owner, Patrick Caporale, IBM.
- IBM/Intel BladeServer Base Specification for Switch Module Subsystems, Version 1.02, August 25,2003, Owner: Intel /IBM Collaboration Architecture Review Board, provided to Supplier under the terms of the Technical Information License Agreement. (“TILA”) dated August 5, 2003 between the parties.

**2.0 [\*\*]DEVELOPMENT REQUIREMENTS**

**2.1 Product Testing**

Product Qualification and Test Plans shall be performed as documented in the PRD and agreed to by both parties.

**2.2 Deliverables**

Seller shall, at its cost, use commercially reasonable efforts during the Development Phase to provide deliverables requested by Buyer in conformance with the development schedule that has been documented and mutually agreed to by both parties.

**2.3 Development modules**

Buyer will provide WA’s to Supplier for [\*\*] each P0.1 development modules (SDV) and for [\*\*]each P.1 development modules (SIT) at a price not to exceed those identified in the table below. P0.1 and P1 development modules will comply with the PRD specification agreed to in writing by the parties. and will incorporate all of the design change requests mutually agreed to by the parties in writing. No later than [\*\*] following Supplier’s delivery of P1 development modules to Buyer, Supplier shall at its sole expense modify, replace or otherwise upgrade all P0.1 level switches previously provided to be functionally equivalent to a P1 Product. For the upgrade, Buyer shall pay all freight, duties, and bare the risk of loss for the shipment of the Products to Supplier for upgrade and Supplier shall pay all freight, duties, and bare risk of loss for the shipment of the Products back to Buyer. The parties agree that those software features included in this Product Attachment will be available for the P0.1 and P1 switches at the currently available level of code and will be included as part of the prices listed below.

<b>Product</b>	<b>Quantity</b>	<b>Not to Exceed Expense per Unit(USD)</b>
P0.1 Level Switches (SDV Switches)	[**]	[**]
P1 Level Switches (SIT Switches)	[**]	[**]

**[\*\*]2.4 Product Number Unique Terms.**

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL112SOW Number**

The parties agree that part numbers, relevant descriptions, Prices, delivery terms, Lead Times and other Product specific terms not specifically addressed by this Agreement shall be determined pursuant to the following process: (i) Buyer will issue a RFQ and/or an EC request to Supplier for the affected Products, including relevant specifications and other requirements; (ii) Supplier shall respond to such RFQs and EC requests with a quote; (iii) If Buyer agrees to the Supplier quote, then Buyer will notify Supplier of its acceptance of such Supplier quote in writing or by the issuance of a revised WA and updates to Buyer's procurement internet portal. Such part numbers, relevant descriptions, Prices, delivery terms, Lead Times and other terms are incorporated herein by reference, and will not affect any of the other Products (not subject to change pursuant to this process) in any manner, unless a specific Product is identified in the RFQ and/or the EC as a replacement or change to an existing Product.

**3.0 PROPRIETARY OWNERSHIP**

**3.1 Buyer Proprietary Ownership.**

Buyer will own rights to the following technology contained in the Blade Center Fibre Channel Switch Module:

- Molex Connector is Buyer proprietary as long as Buyer controls the design of this connector, and the connector is not publicly available as an off the shelf item [\*\*]
- Buyer Mechanicals:
  - [\*\*] **Assembly Module, top mechanical assembly to include the following:**[\*\*] Filler, Switch, Management Module
  - [\*\*] Guide, Latch
  - [\*\*] Cover Module
  - [\*\*] Assemble Lever Bottom
  - [\*\*] Insulator Base
  - [\*\*] Safety Label
- xxxxxx EMC Blank Template Design (Brocade to modify and own customized design for product)
- [\*\*]Buyer's Midplane Connector mechanical Part and Pin Assignments
- Buyer's Cosmetic Customization, which includes Buyer logo, Buyer name and Buyer product names.
- Buyer's two unique signals (I2C Bus Reset signal and I2C Interrupt signal) added to the I2C industry standard protocol, and the contents specified by Buyer for the I2C Register interfaces and Vital Product Data (VPD) table.
- Buyer's Standard BladeCenter and eServer Documentation and CD Contents
- Common BladeCenter Labeling and Artwork
- IBM Director SDK Interface Requirements

The I2C signal protocol is an industry standard and not proprietary to Buyer or Supplier. Nothing in this Agreement should be construed as: (1) prohibiting or restricting either party from independently developing, having independently developed, acquiring, licensing, marketing, or distributing products, services, or other materials which compete with products or services offered by the other party. Each party is free to enter into similar agreements with third parties.

**3.2 Seller's Proprietary Ownership**

Seller Proprietary Ownership.

Except for the proprietary information provided by Buyer under the TILA, the items listed in Section 3.1 above and Buyer patents that read on the implementation, Buyer makes no further claims of ownership.

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

**4.0 PART NUMBER UNIQUE TERMS**

**4.1 Product Price List And Description**

See Attachment 6 to SOW #3, Consolidated Price List

**4.2 Product Unit Terms & Repair Pricing**

See Attachment 6 to SOW #3, Consolidated Price List

**5.0 WA FLEXIBILITY**

Number of Days prior to a WA Scheduled Delivery Date	Increase of Product Quantity to a WA Scheduled Delivery Date (% of WA Quantity)	Cancellation of Product Quantity to a WA Scheduled Delivery Date (% of WA Quantity)	Rescheduling of Product Quantity to a WA Scheduled Delivery Date (% of WA Quantity)
Less than [**] days	As mutually agreed upon	[**]	[**]
From [**] days to [**] days	[**]	[**]	[**]
From [**] days to [**] days	[**]	[**]	[**]
More than [**] days	[**]	[**]	[**]

While the above flexibility terms also apply to Pull Products, in the event the relevant Pull Profile has more favorable terms, then such more favorable terms shall take precedence.

**6.0 SUPPLIER PRODUCT WITHDRAW**

Supplier will provide Buyer with [\*\*]written notice of its intent to withdraw any Product (“End of Life” or “EOL”) prior to the last date of manufacture of a Product. Buyer shall provide to Supplier a non-binding forecast for Products and FRUs[\*\*]from the receipt of Supplier’s notice of End of Life. Buyer shall provide to Supplier a non-cancelable last-time buy WA for forecasted Products no later than [\*\*]prior to the End of Life date (last date of manufacture or sales/distribution date). Such Product purchases must be scheduled to ship no later than the End of Life date. However, Buyer shall provide to Supplier last-time buy purchase FRU forecast ninety (90) days prior to the End of Life date (last date of manufacture or sales/distribution date) and shall provide a non-cancelable WA for [\*\*]of the total last time buy FRU forecast. Such purchases which may be rescheduled will be delivered upon Buyer’s request during the [\*\*] term. For delivery requests outside of the Notice Period or order requests after Buyer’s last-time buy purchase has been placed, Supplier will review on a case-by-case basis Buyer’s request(s).

**7.0 SUPPLY OF PRODUCTS**

In the event that materials or capacity is in such short supply, Supplier will notify Buyer immediately upon knowledge of such supply deficiencies. If Supplier is unable to fill Buyer’s WAs in full (“Scarce Resources”), at a minimum Brocade agrees to allocate Scarce Resources to Buyer and to utilize any materials in short supply to manufacture Supplier Products under Supplier’s then-current standard allocation formula, which as of the Effective Date, is as follows:

- (a) In proportion to Buyer’s percentage of all of Supplier’s customer orders for Scarce Resources during the previous two (2) full months;
- (b) If additional Scarce Resources remain, Supplier then allocates proportionally based on open POs;
- (c) If additional Scarce Resources remain, supplier then allocates proportionally based on customer forecasts. In no event will Supplier implement a standard allocation formula that would treat Buyer unfairly vis-à-vis any of Supplier’s other customers.

In addition, Supplier will provide in writing to Buyer a supply strategy along with timeline to correct such Scarce Resources within[\*\*] after such notification to Buyer.

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

**8.0 COMMUNICATIONS**

All communications between parties will be carried out through the following designated coordinators. All notices required in writing under this Agreement will be made to the appropriate contact listed below at the following addresses and will be effective upon actual receipt. Notices may be transmitted electronically, by registered or certified mail, or courier. All notices, with the exception of legal notices, may also be provided by facsimile.

**8.1 Business Coordinators.**

<u>SUPPLIER</u>		<u>BUYER</u>	
Name	***	Name	***
Title	***	Title	***
Address	***	Address	***
Phone	***	Phone	***
Fax		Fax	***
E-mail		E-mail	***

**8.2 Technical Coordinators.**

<u>SUPPLIER</u>		<u>BUYER</u>	
Name	***	Name	***
Title	***	Title	***
Address	***	Address	***
Phone	***	Phone	***
Fax		Fax	***
E-mail		E-mail	***

All legal notices will be sent to the following addresses and will be deemed received (a) two (2) days after mailing if sent by certified mail, return receipt requested or (b) on the date confirmation is received if sent by facsimile transmittal, to the party set forth below.

<u>SUPPLIER</u>		<u>BUYER</u>	
Name	***	Name	***
Title		Title	***
Address	***	Address	***
Phone		Phone	***
Fax		Fax (Fax	***
		notice shall	
		be valid only	
		when verbal	
		confirmation	
		of receipt is	
		obtained.)	
E-mail		E-mail	***

**MONTHLY WARRANTY ANALYSIS REPORT**\*\*\*Supplier Name: \_\_\_\_\_

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

**Month:** \_\_\_\_\_ **[\*\*]**

<u>Buyer P/N</u>	<u>Description</u>	<u>Barcode</u>	<u>Symptoms</u>	<u>Actual Finding</u>	<u>Explanation Code</u>	<u>Root Cause Analysis</u>	<u>Action Taken to Fix</u>

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**SUMMARY REPORT**

Total Units Repaired in Current Month o

Total Warranty Claims Received

Actual Warranty Accepted

Warranty %

High Flyers (more than \_\_\_%)

High Flyers Require a Corrective Action Plan and Date of Implementation.

<u>EXPLANATION CODE</u>	<u>DESCRIPTION</u>
Code 03	Warranty Expired
Code 04	Missort
Code 07	Cannibalized or Missing Parts
Code 08	Warranty Product Received
Code 09	Physical Damage
Code 10	No Defect Found
Code 11	Other

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Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

**ATTACHMENT #1**

**PRODUCT UNIQUE ATTACHMENT #2, EFFECTIVE BEGINNING SEPTEMBER 13, 2005**

**1.0 PRODUCT DESCRIPTION**

The Product is a Fibre Channel Switch Module, to be used in the BladeCenter server. The Fibre Channel (FC) Switch Module will provide 14 separate internal F ports to service each Blade Center processor slot plus 6 external ports that support FL\_Port, F\_Port, and E\_Port; self-discovery based on switch type (U\_Port) peripherals running at 1Gbps, 2Gbps or 4Gbps rates. Incorporated with the Fibre Channel Switch Module is Fabric OS, Web Tools, Zoning and documentation will be available in the following languages: English.

**1.1 Additional Description of Products**

Products must conform to the following specifications (including any subsequent revisions, as mutually agreed to between the parties), which are hereby incorporated by reference, and sold exclusively to IBM including providing supporting Services:

- “[\*\*] [\*\*]”, Product Requirements Document (“PRD”) Version 1.0, May, 2005, Owner, Patrick Caporale, IBM.
- IBM/Intel BladeServer Base Specification for Switch Module Subsystems, Version 1.02, August 25, 2003, Owner: Intel /IBM Collaboration Architecture Review Board, provided to Supplier under the terms of the Technical Information License Agreement. (“TILA”) dated August 5, 2003 between the parties.

**[\*\*]2.0[\*\*]DEVELOPMENT REQUIREMENTS**

**2.1 Product Testing**

Product Qualification and Test Plans shall be performed as documented in the PRD and agreed to by both parties.

**2.2 Deliverables**

Seller shall, at its cost, use commercially reasonable efforts during the Development Phase to provide deliverables requested by Buyer in conformance with the development schedule that has been documented and mutually agreed to by both parties.

**2.3 Development**

Buyer will provide WA’s to Supplier for [\*\*]each P0.1 development modules (SDV) and for [\*\*]each P.1 development modules (SIT) at a price not to exceed those identified in the table below. P0.1 and P1 development modules will comply with the PRD specification agreed to in writing by the parties and will incorporate all of the design change requests mutually agreed to by the parties in writing. No later than [\*\*] following Supplier’s delivery of P1 development modules to Buyer, Supplier shall at its sole expense modify, replace or otherwise upgrade all P0.1 level switches previously provided to be functionally equivalent to a P1 Product. For the upgrade, Buyer shall pay all freight, duties, and bare the risk of loss for the shipment of the Products to Supplier for upgrade and Supplier shall pay all freight, duties, and bare risk of loss for the shipment of the Products back to Buyer. The parties agree that those software features included in this Product Attachment will be available for the P0.1 and P1 switches at the currently available level of code and will be included as part of the prices listed below.

<b>Product</b>	<b>Quantity</b>	<b>Not to Exceed Expense per Unit(USD)</b>
P0.1 Level Switches (SDV Switches)	[**]*Note: 30-IBM/ 1-Intel	[**]
P1 Level Switches (SIT Switches)	[**]*Note: 92-IBM/ 24-Intel	[**]

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Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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## Integrated Statement of Work for Production Procurement Goods Agreement

Goods Agreement # ROC-P-68 Master Agreement Number

SOW # 4903RL1112SOW Number

### 2.4 Product Number Unique Terms

The parties agree that part numbers, relevant descriptions, Prices, delivery terms, Lead Times and other Product specific terms not specifically addressed by this Agreement shall be determined pursuant to the following process: (i) Buyer will issue a RFQ and/or an EC request to Supplier for the affected Products, including relevant specifications and other requirements; (ii) Supplier shall respond to such RFQs and EC requests with a quote; (iii) If Buyer agrees to the Supplier quote, then Buyer will notify Supplier of its acceptance of such Supplier quote in writing or by the issuance of a revised WA and updates to Buyer's procurement internet portal. Such part numbers, relevant descriptions, Prices, delivery terms, Lead Times and other terms are incorporated herein by reference, and will not affect any of the other Products (not subject to change pursuant to this process) in any manner, unless a specific Product is identified in the RFQ and/or the EC as a replacement or change to an existing Product.

## 3.0 PROPRIETARY OWNERSHIP

### 3.1 Buyer Proprietary Ownership.

Buyer will own rights to the following technology contained in the Blade Center Fibre Channel Switch Module:

- Molex Connector is Buyer proprietary as long as Buyer controls the design of this connector, and the connector is not publicly available as an off the shelf item [\*\*]
- Buyer Mechanicals:
  - [\*\*]Blade Switch Mechanical Assembly
  - [\*\*] OEM Generic Switch Module Cover
  - [\*\*] OEM Generic Switch Module Blade Opening
  - [\*\*] OEM Generic Switch Module Cover
  - [\*\*] OEM Generic Switch Module Enclosure Assembly Drawing
  - [\*\*] OEM Generic Switch Module Shield
- [\*\*]Buyer's Cosmetic Customization, which includes Buyer logo, Buyer name and Buyer product names.
- Buyer's two unique signals (I2C Bus Reset signal and I2C Interrupt signal) added to the I2C industry standard protocol, and the contents specified by Buyer for the I2C Register interfaces and Vital Product Data (VPD) table.
- Buyer's Standard BladeCenter and eServer Documentation and CD Contents
- Common BladeCenter Labeling and Artwork
- IBM Director SDK Interface Requirements

The I2C signal protocol is an industry standard and not proprietary to Buyer or Supplier. Nothing in this Agreement should be construed as: (1) prohibiting or restricting either party from independently developing, having independently developed, acquiring, licensing, marketing, or distributing products, services, or other materials which compete with products or services offered by the other party. Each party is free to enter into similar agreements with third parties.

### 4.1 Seller's Proprietary Ownership

Except for the proprietary information provided by Buyer under the TILA, the items listed in Section 3.1 above and Buyer patents that read on the implementation, Buyer makes no further claims of ownership.

## 4.0 PART NUMBER UNIQUE TERMS

### 4.1 Product Price List And Description

See Attachment 6 to SOW #3, Consolidated Price List

### 4.2 Product Unit Terms & Repair Pricing

See Attachment 6 to SOW #3, Consolidated Price List

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Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

**5.0 WA FLEXIBILITY**

Number of Days prior to a WA Scheduled Delivery Date	Increase of Product Quantity to a WA Scheduled Delivery Date (% of WA Quantity)	Cancellation of Product Quantity to a WA Scheduled Delivery Date (% of WA Quantity)	Rescheduling of Product Quantity to a WA Scheduled Delivery Date (% of WA Quantity)
Less than [**]days	As mutually agreed upon	[**]	[**]
From[**] days to [**] days	[**]	[**]	[**]
From [**]days to [**]days	[**]	[**]	[**]
More than[**]days	[**]	[**]	[**]

While the above flexibility terms also apply to Pull Products, in the event the relevant Pull Profile has more favorable terms, then such more favorable terms shall take precedence.

**6.0 SUPPLIER PRODUCT WITHDRAW**

Supplier will provide Buyer with [\*\*]' written notice of its intent to withdraw any Product ("End of Life" or "EOL") prior to the last date of manufacture of a Product. Buyer shall provide to Supplier a non-binding forecast for Products and FRUs [\*\*] from the receipt of Supplier's notice of End of Life. Buyer shall provide to Supplier a non-cancelable last-time buy WA for forecasted Products no later than[\*\*] prior to the End of Life date (last date of manufacture or sales/distribution date). Such Product purchases must be scheduled to ship no later than the End of Life date. However, Buyer shall provide to Supplier last-time buy purchase FRU forecast[\*\*] prior to the End of Life date (last date of manufacture or sales/distribution date) and shall provide a non-cancelable WA for [\*\*] of the total last time buy FRU forecast. Such purchases which may be rescheduled will be delivered upon Buyer's request during the **five (5) year** term. For delivery requests outside of the Notice Period or order requests after Buyer's last-time buy purchase has been placed, Supplier will review on a case-by-case basis Buyer's request(s).

**7.0 SUPPLY OF PRODUCTS**

In the event that materials or capacity is in such short supply, Supplier will notify Buyer immediately upon knowledge of such supply deficiencies. If Supplier is unable to fill Buyer's WAs in full ("Scarce Resources"), at a minimum Brocade agrees to allocate Scarce Resources to Buyer and to utilize any materials in short supply to manufacture Supplier Products under Supplier's then-current standard allocation formula, which as of the Effective Date, is as follows:

- (d) In proportion to Buyer's percentage of all of Supplier's customer orders for Scarce Resources during the previous [\*\*];
- (e) If additional Scarce Resources remain, Supplier than allocates proportionally based on open POs;
- (f) If additional Scarce Resources remain, supplier then allocates proportionally based on customer forecasts. In no event will Supplier implement a standard allocation formula that would treat Buyer unfairly vis-à-vis any of Supplier's other customers.

In addition, Supplier will provide in writing to Buyer a supply strategy along with timeline to correct such Scarce Resources within[\*\*] after such notification to Buyer.

**8.0 COMMUNICATIONS**

All communications between parties will be carried out through the following designated coordinators. All notices required in writing under this Agreement will be made to the appropriate contact listed below at the following addresses and will be effective upon actual receipt. Notices may be transmitted electronically, by registered or certified mail, or courier. All notices, with the exception of legal notices, may also be provided by facsimile.

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

**8.1 Business Coordinators.**

<u>SUPPLIER</u>		<u>BUYER</u>	
Name	[**]	Name	[**]
Title	[**]	Title	[**]
Address	[**]	Address	[**]
Phone	[**]	Phone	[**]
Fax	[**]	Fax	[**]
E-mail	[**]	E-mail	[**]

**8.2 Technical Coordinators.**

<u>SUPPLIER</u>		<u>BUYER</u>	
Name	[**]	Name	[**]
Title	[**]	Title	[**]
Address	[**]	Address	[**]
Phone	[**]	Phone	[**]
Fax	[**]	Fax	[**]
E-mail	[**]	E-mail	[**]

All legal notices will be sent to the following addresses and will be deemed received (a) two (2) days after mailing if sent by certified mail, return receipt requested or (b) on the date confirmation is received if sent by facsimile transmittal, to the party set forth below.

<u>SUPPLIER</u>		<u>BUYER</u>	
Name	[**]	Name	[**]
Title	[**]	Title	[**]
Address	[**]	Address	[**]
Phone	[**]	Phone	[**]
Fax	[**]	Fax (Fax	[**]
		notice shall	
		be valid only	
		when verbal	
		confirmation	
		of receipt is	
		obtained.)	
E-mail	[**]	E-mail	[**]

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

**ATTACHMENT #1**

**[\*\*]PRODUCT UNIQUE ATTACHMENT #3, EFFECTIVE BEGINNING FEBRUARY 17, 2009**

**1.0 PRODUCT DESCRIPTION**

The Products are single and dual-port 8Gb Fibre Channel host bus adapters (HBA) for IBM System x. Each HBA includes management software that the user uses to configure, monitor and perform any necessary maintenance, including updating firmware.

**1.1 Additional Description of Products.**

Products must conform to the following specifications (including any subsequent revisions, as mutually agreed to between the parties), which are hereby incorporated by reference:

Brocade Fibre Channel HBA, Installation and Reference Manual, Publication Number 53-1000884-02, December 19, 2008, Owner, Brocade Communications Systems, Inc.”

**2.0[\*\*]DEVELOPMENT REQUIREMENTS**

**2.1 Product Testing**

Product Qualification and Test Plans shall be performed to the following test plans as agreed to by both parties:

§ Brocade FCHBA v1.1.0 Test Plan, dated November 6, 2008

§ Hedingham\_testplan\_v1.0.doc dated October 8, 2008

§ Brocade HBA Adapter XCSA Test.doc, dated January 14, 2009

**2.2 Deliverables**

Seller shall, at its cost, use commercially reasonable efforts during the Test Phases to provide deliverables requested by Buyer in conformance with the test schedule that has been documented in “**Brocade 8Gb FC Single-port and Dual-port HBA’s for IBM System x, IBM Product Requirements Document, Ver. 1.1**” as mutually agreed to by both parties.

[\*\*]

**2.3 Development**

Buyer will provide WA’s to Supplier for[\*\*]adapters for test phases [\*\*]. The adapters will comply with the Brocade’s specification agreed to in writing by the parties and will incorporate all of the design change requests mutually agreed to by the parties in “**Brocade 8Gb FC Single-port and Dual-port HBA’s for IBM System x, IBM Product Requirements Document, Ver. 1.1.**”

**2.4 Product Number Unique Terms.**

The parties agree that part numbers, relevant descriptions, Prices, delivery terms, Lead Times and other Product specific terms not specifically addressed by this Agreement shall be determined pursuant to the following process: (i) Buyer will issue a RFQ and/or an EC request to Supplier for the affected Products, including relevant specifications and other requirements; (ii) Supplier shall respond to such RFQs and EC requests with a quote; (iii) If Buyer agrees to the Supplier quote, then Buyer will notify Supplier of its acceptance of such Supplier quote in writing or by the issuance of a revised WA and updates to Buyer’s procurement internet portal. Such part numbers, relevant descriptions, Prices, delivery terms, Lead Times and other terms are incorporated herein by reference, and will not affect any of the other Products (not subject to change pursuant to this process) in any manner, unless a specific Product is identified in the RFQ and/or the EC as a replacement or change to an existing Product.

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

**3.0 PROPRIETARY OWNERSHIP**

**3.1 Buyer Proprietary Ownership.**

Buyer will own rights to the following technology contained in the Brocade 8Gb FC Single-port and Dual-port HBA's for IBM System x — Software packaging and testing for Update Express Support Packages (USXP) as specified in Modular and Blade Systems Building Block Software Integration Guide is under Buyer Proprietary ownership. [\*\*]

**3.2 Seller's Proprietary Ownership**

Seller Proprietary Ownership.

Except for the proprietary information provided by Buyer, the items listed in Section 3.1 above and Buyer patents that read on the implementation, Buyer makes no further claims of ownership.

**4.0 PART NUMBER UNIQUE TERMS**

**4.1 Product Price List And Description**

See Attachment 6 to SOW #3, Consolidated Price List

**4.2 Product Unit Terms And Repair Pricing**

HBA's are not repairable.

**5.0 WA FLEXIBILITY**

Number of Days prior to a WA Scheduled Delivery Date	Increase of Product Quantity to a WA Scheduled Delivery Date (% of WA Quantity)	Cancellation of Product Quantity to a WA Scheduled Delivery Date (% of WA Quantity)	Rescheduling of Product Quantity to a WA Scheduled Delivery Date (% of WA Quantity)
Less than [**]days	As mutually agreed upon	[**]	[**]
From[**]days to [**] days	[**]	[**]	[**]
From [**] days to [**] days	[**]	[**]	[**]
More than [**] days	[**]	[**]	[**]

While the above flexibility terms also apply to Pull Products, in the event the relevant Pull Profile has more favorable terms, then such more favorable terms shall take precedence.

**6.0 SUPPLIER PRODUCT WITHDRAW**

Supplier will provide Buyer with [\*\*] written notice of its intent to withdraw any Product (“End of Life” or “EOL”) prior to the last date of manufacture of a Product. Buyer shall provide to Supplier a non-binding forecast for Products and FRUs [\*\*] from the receipt of Supplier’s notice of End of Life. Buyer will provide a revised EOL FRU forecast in each year during the [\*\*]EOL period, as requested by Supplier. Buyer shall provide to Supplier a non-cancelable last-time buy WA for forecasted Products no later than [\*\*] prior to the End of Life date (last date of manufacture or sales/distribution date). Such Product purchases must be scheduled to ship no later than the End of Life date. For delivery requests outside of the Notice Period or order requests after Buyer’s last-time buy purchase has been placed, Supplier will review on a case-by-case basis Buyer’s request(s).

**7.0 SUPPLY OF PRODUCTS**

Supplier shall deliver products as specified in WA/PO for forecasted orders. Notwithstanding any other provision of this Agreement (except force majeure), if due to a shortage Supplier is unable to deliver Products as specified, Supplier will notify Buyer of such inability to deliver Products along with an estimate of the duration of such shortage. If Supplier fails to correct such inability to supply Product or fails to develop a plan acceptable to Buyer, Buyer will have the right to cancel such POs or portions thereof by written notice. If Buyer cancels WA/PO, Buyer’s only obligation is to pay for Products already delivered at the time of Buyer’s cancellation notice.

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

**8.0 COMMUNICATIONS**

All communications between parties will be carried out through the following designated coordinators. All notices required in writing under this Agreement will be made to the appropriate contact listed below at the following addresses and will be effective upon actual receipt. Notices may be transmitted electronically, by registered or certified mail, or courier. All notices, with the exception of legal notices, may also be provided by facsimile.

**8.1 Business Coordinators.**

<u>SUPPLIER</u>	<u>Brocade Communications Systems Inc.</u>	<u>BUYER</u>	
Name	[**]	Name	[**]
Title	[**]	Title	[**]
Address	[**]	Address	[**]
Phone	[**]	Phone	[**]
E-mail	[**]	E-mail	[**]

**8.2 Technical Coordinators.**

<u>SUPPLIER</u>	<u>Brocade Communications Systems Inc.</u>	<u>BUYER</u>	
Name	[**]	Name	[**]
Title	[**]	Title	[**]
Address	[**]	Address	[**]
Phone	[**]	Phone	[**]
E-mail	[**]	E-mail	[**]

All legal notices will be sent to the following addresses and will be deemed received (a) two (2) days after mailing if sent by certified mail, return receipt requested or (b) on the date confirmation is received if sent by facsimile transmittal, to the party set forth below.

<u>SUPPLIER</u>	<u>Brocade Communications Systems Inc.</u>	<u>BUYER</u>	
Name	[**]	Name	[**]
Title	[**]	Title	[**]
Address	[**]	Address	[**]
Phone	[**]	Phone	
Fax	[**]	Fax (Fax notice shall be valid only when verbal confirmation of receipt is obtained.)	
E-mail	[**]	E-mail	

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112 SOW Number**

**ATTACHMENT 2  
SUPPLIER QUALITY ATTACHMENT**

This Supplier Quality Attachment ("SQA") adopts and incorporates by reference the terms and conditions of SOW # ("SOW") and Goods Agreement # ROC-P-68 ("Agreement") between Buyer and Supplier.

**1.0 INCORPORATION OF SQA DOCUMENTS**

The SQA consists of this document, and applicable product specification documents and specifications as referenced in Section 2.0 of SOW# 4903RL1112 and Section 1.0 of Attachment 1, SOW# 4903RL1112, which were in effect upon execution of this SQA.

**2.0 QUALITY REQUIREMENTS**

The requirements of this SQA shall constitute Supplier's quality program which must be implemented and maintained during the term of the SOW.

Supplier will set forth the yearly quality and reliability performance commitments for the current year and through the remainder of the initial term of the SOW in a product quality report ("PQR"). The PQR shall include the mutually agreed product monitoring plan to be used to validate the effectiveness of process control limits and the Product meets<sup>[\*\*]</sup>the quality and reliability defined in such PQR. It is Buyer's expectation that Supplier will use e-business platforms (Web based applications) for ongoing real time quality management, including but not limited to information associated with Supplier Quality Management Systems ("SQMS") and Product Change Notification ("PCN"), etc. or as specified in the PQR.

**3.0 ISO REQUIREMENTS**

For ISO compliance, Supplier's contracted manufacturer is ISO 9001\* compliant ("Compliant").

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\* Note: ISO 9001 & 9004 have been developed as a consistent pair of quality management system standards. ISO 9001 is considered the standard by which the Supplier is expected to be compliant with; it is understood ISO 9004 provides a wider range of guidelines of objectives than ISO 9001, particularly for the continuous improvement of an organization's overall performance and efficiency. ISO 9004 is recommended as a guide to assist those suppliers who wish to move beyond the basic requirements of ISO 9001.

**4.0 AUDITS**

**On a periodic basis, upon reasonable prior written notice, the Buyer or Buyer's quality representative shall conduct audits/visits at the Supplier's and Supplier's contract manufacturer's manufacturing locations. The Supplier shall, at Buyer's request, permit access to the auditors to manufacturing operations and/or inspection of Products for Buyer, including access to the contract manufacturer's facilities. Any such audit is subject to the contract manufacturer's security requirements and shall not allow access to contract manufacturer's proprietary or confidential information. Periodic audits shall include process control, quality inspection test data, internal audit reports, and other information solely related to Products to verify compliance to the terms of this SQA. Under normal circumstances, Supplier shall be given at least a two weeks advance written notice by Buyer's representatives of their intent to visit. Buyer's inspection of Product at the Supplier or contract manufacturer shall not relieve the Supplier's responsibility to furnish Product compliant with the applicable written specifications as set forth in the SOW. Any Confidential Information exchanged in connection with the audit shall be handled in accordance with Section 14.6 of the Goods Agreement (ROC-P-68, dated April 15, 1999).**<sup>[\*\*]</sup>**5.0 DOCUMENT CONTROL**

Supplier shall use commercially reasonable efforts to ensure that all documents such as software/firmware, engineering drawings, specifications, contracts, policies, procedures, manufacturing process flow chart, and work instructions (including test procedures) to be under revision control and available to all necessary Supplier personnel in Supplier's manufacturing environment. Supplier shall have a system for the effective updating/removal of any obsolete documentation from all manufacturing areas.

**6.0 RECORDS**

Supplier shall establish and maintain procedures for identification, collection, indexing, filing, storage, maintenance, and disposition of all quality records including, but not limited to: Statistical Process Control ("SPC") data. This includes raw data or control charts, Cp and Cpk for critical/identified process parameters, and all records which provide evidence of sub-tier supplier activity, such as source inspections and First Article inspections, and records of all inspection and test activity to provide objective evidence that Products have passed acceptance criteria. Records shall be maintained for the life of the SOW

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Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

plus the entire warranty period, as set forth in the SOW. All records shall be maintained in a central location and shall upon request be made available to Buyer's quality representative for review only. All such documents shall be deemed to be the Confidential Information of Supplier.

**7.0 CONTINUOUS IMPROVEMENT PROCESS**

Supplier shall develop and implement a continuous improvement process that will provide for a cost-effective reduction in process-related excursions. The program, at a minimum, shall include: the supplier management strategy; manufacturing process controls (i.e., Maverick Product Elimination); a documented, systematic approach for identifying focus areas for continuous improvement for the current year, through the end of the term of the SOW, or for three years from the start of the SOW, whichever is shorter; and Early Failure Rate, Intrinsic Failure Rate, Shipped Product Quality Level and Failure Rate commitment and reduction plans to achieve Buyer goals. Supplier shall provide, at Buyer's request, status of the continuous improvement process and results.

**8.0 QUALITY PROBLEM NOTIFICATION TO BUYER**

Supplier must notify Buyer of any quality or reliability problem which may affect Products, that have been identified by Supplier's internal testing (i.e., process control data, internal test data, burn-in data, etc.), by contract manufacturers which produce Products on behalf of Supplier, or by another customer (see ISO 9001). In case of problems, Supplier shall provide Buyer with the requested traceability data (p/n, lot number, date code, volumes, ship to locations, etc.) **[\*\*]** The notification should include an immediate containment plan and a schedule for definition and implementation of permanent corrective actions. **[\*\*]**

**9.0 PRODUCT RE-QUALIFICATION COSTS**

Following Buyer qualification of the Product, Buyer reserves the right to re-qualify any product if the Supplier changes the manufacturing process or product (form, fit or function), or; raw materials or specifications which may affect performance, function, quality or reliability. Supplier shall bear the reasonable costs of any re-qualifications required for changes made without Buyer's approval in accordance with Section 6.0 of the SOW.

**10. PART HISTORY**

Supplier shall maintain a history file for each Product part number manufactured that tracks: materials and/or design changes controlled by the supplier; design changes controlled by Buyer (engineering changes, etc.), and; and purchased part manufacturer source changes.

**11. PART QUALITY**

Unless otherwise specifically agreed upon within the SOW, Supplier shall be responsible for the quality levels of each of Supplier's components that comprise the Product or final assembly.

**12. CORRECTIVE ACTION PROCESS**

Following a lot rejection by Buyer under Section 6.0 of the Goods Agreement, or a quality problem notification under Section 8 of this SQA, Supplier shall implement a corrective action process which shall provide documentation to identify the following: a) Specific defect description and failure mechanism; b) Containment of affected Product; c) Technical investigation/root cause analysis; d) Corrective action plan and preventive actions to preclude a recurrence, and; e) Verification of effectiveness of actions. With the exception of safety defects which Supplier shall provide a complete failure analysis not to exceed **[\*\*]**from notification, failure analysis response times from Supplier will be within **[\*\*]** of Buyer's lot rejection or the quality problem notification for preliminary analysis and **[\*\*]**for detailed analysis. The corrective action process shall include a checkpoint to determine if additional Products are exposed and the corrective action process and documentation specified within this Section.

**13. EXCEPTION APPROVAL PROCESS**

Supplier shall not knowingly ship nonconforming Product to Buyer without written approval from Buyer's quality representative. In certain cases, Buyer's quality representative may approve shipment of suspected nonconforming Product if an evaluation plan pre-approved by the quality representative is executed with results acceptable to the representative.

**14. REVIEW AND DISPOSITION OF NONCONFORMING PRODUCTS**

If Supplier intends to ship nonconforming Product to Buyer, then Supplier shall implement a Material Review Board ("MRB") to review and determine the disposition of nonconforming materials. At a minimum, the MRB shall consist of representatives from Manufacturing, Engineering and Quality Engineering. The Supplier's process shall include the following dispositions: a) Rework — Product reworked to meet specified requirements; b) Use As Is — No actions taken on Product, Product does not meet specified requirements but is functional; c) Repaired — Product has been reworked to be

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Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

functional but does not meet specified requirements; d) Scrap — Product not useable and does not meet specified requirements, or; e) Screen — Additional product test/inspection to meet specification. Any plans to rework or repair nonconforming materials shall be subject to final approval by Buyer's quality representative, such approval not to be unreasonably withheld. Any plans to use as-is must be pre-approved by Buyer's quality representative. All MRB records shall be maintained by Supplier and upon request, made available to Buyer for review. All MRB records shall be deemed the Confidential Information of Supplier.

**15. PRODUCT IDENTIFICATION AND LOT TRACEABILITY**

Supplier shall establish and maintain procedures and processes for the identification and lot traceability of critical components during all stages of production, delivery, and installation per applicable ISO standards. Identification must be traceable through to the finished Product by serial numbers or equivalent methods. Both forward and backward traceability shall be available. Response time for traceability requests shall not exceed [\*\*].

**16. QUALITY REPORTING**

Monthly executive summary reports in a format mutually agreed upon format shall be forwarded to Buyer at a mutually agreeable time or as specified in specific PQRs. Continuous quality reporting real time will be via SQMS or as specified in specific PQRs.

**17. SUPPLIER QUALITY & RELIABILITY ("SQR") REVIEW MEETINGS**

Buyer requires regular Supplier quality/reliability meetings determined by a mutually agreeable schedule, to increase visibility into product and field performance. The intent is to conduct timely meetings in preparation for future business reviews/contractual negotiations. The agenda for the meeting shall be as set forth in exhibit 1 unless otherwise mutually agreed by the parties.

**18. APPLICABLE PRODUCT SPECIFICATIONS & TESTS**

- a. *ISO 2859-1 (Sampling Procedures for Inspection by Attributes)*
- b. *ISO 3951 (Sampling Procedures for Inspection by Variables)*

[\*\*]

**SUPPLIER QUALITY ATTACHMENT (Cont.)**

**Exhibit 1. Quality Review Meeting Agenda**

The following typical meeting agenda has been formulated to address all the pertinent quality/reliability topics, as applicable for each product under the Agreement.

- a) Supplier facility and subcontractor locations where BUYER product is fabricated, assembled and tested  
Physical addresses and line id's  
Review Group A, B, C test results
- b) Average Outgoing Quality (AOQ) fallout for SUPPLIER and total customer database  
Defect and root cause analysis  
Pareto distribution of fails  
Corrective action and data verification  
Point of origin and incidence contributions associated with internal, assembly and final test operations.
- c) Field Return data for BUYER and total customer database  
EFR/IFR estimates  
Defect and root cause analysis  
Pareto distribution of fails and associated POH distribution for Buyer and total customer database  
Failure mechanism driven corrective actions
- d) In-Process monitoring data  
Defect monitoring, elimination and analysis results

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

Modeling techniques — Experimental, Analytical Analysis  
SPC parameter and control limits — data review  
Maverick Product Elimination occurrences (if applicable) and related data  
Yield cut limit compliance

**e) Internal Audit Results**

Last internal audit findings and corrective action of one manufacturing location & future audit plans

**f) PCN activity since last BUYER meeting**

Product, process, materials or specifications affecting form, fit or function  
Traceability history for date code inception

**g) Continuous Improvement Program for entire fab, assembly, test and field performance**

AOQ and Failure Rate Improvement targets for next 3 years

**h) Specification Compliance/Commitment to “BUYER Specifications”**

Any deviations/exceptions? If so, provide details and traceability information.

**i) Joint discussion followed by a summary wrap-up and activities**

Form Title: Agreement Title

Form Owner: Global Procurement

Form Release: 8/98

Revision: 05/02

**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

**ATTACHMENT 3  
Certificate of Originality**

The **Certificate of Originality** questionnaire may be used to cover one complete Developed Works, even if that Developed Works includes multiple modules. Write "not applicable" or "N/A" if a question is not relevant to the furnished software material.

- **The following Certificate of Originality applies to all Developed Works described in this Statement of Work.**
- **Was any portion of the software material written by anyone other than you or your employees within the scope of their employment? YES \_\_\_ NO \_\_\_ If YES, identify the author and the circumstances:**

**1) Indicate if the whole software material or only a portion thereof was written by such party, and identify such portion:**

- Specify for each involved party the name, address, and citizenship:**
- If the party is a company, how did it acquire title to the software material (e.g., software material was written by company's employees within the scope of their employment)?**
- If the party is an individual, did he/she create the software material while employed by or under contractual relationship with another party? YES \_\_\_ NO \_\_\_ If YES, provide name and address of the other party and explain the nature of the contractual relationship:**

**2) How did you acquire title to the software material written by the other party?**

- **Are any copyright, confidentiality, or proprietary notice(s) present on the software material(s)? YES \_\_\_ NO \_\_\_ If YES, please describe such notice(s).**
- **Was any portion of the software material (e.g., Code, associated documentation or Externals) derived from preexisting works (either yours or a third party's), including any code from freeware, shareware, electronic bulletin boards, or the Internet? YES \_\_\_ NO \_\_\_ If YES, please identify the material, author, owner and copyright notice, if any, for each of the preexisting materials.**
- **Does any of the software materials (e.g., Code, associated documentation or Externals) include recognizable voices, pictures or other likenesses? YES \_\_\_ NO \_\_\_ If YES, how did you acquire rights to use such recognizable voices, pictures or other likenesses?**
- **Provide an explanation of any other circumstance which might affect Buyer's ability to reproduce, distribute and market this software material, including whether your software material was prepared from any preexisting materials which have any: a) confidentiality or trade secret restrictions to others; b) known or possible royalty obligations to others; and c) used other preexisting materials developed for another party or customer (including government) where you may not have retained full rights to such other preexisting materials.**

Although the answers above are correct to the best of our knowledge, they are provided for informational purposes only. Any warranties on the software and associated hardware products shall be as provided in the Goods Agreement between Supplier and Buyer. Accordingly, provision by Supplier of the information in this document shall create no additional warranties of any kind beyond those in the Goods Agreement, and Supplier shall have no liability, unless otherwise expressly provided in the Goods Agreement, related to the provision of this information.

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

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

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

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

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

Attachment 4

Brocade Communications Systems, Inc.  
1745 Technology Drive  
San Jose CA 95110  
408-487-8000

CERTIFICATE OF COUNTRY OF ORIGIN — USA  
AFFIDAVIT OF MANUFACTURER

I declare that the following products are manufactured by Brocade Communications Systems, Inc. or a sub-contractor of Brocade, at one the following locations:

Manufacturing Location  
Address

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(date)

Form Title: Agreement Title  
Form Owner: Global Procurement

Form Release: 8/98  
Revision: 05/02

**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL112SOW Number**

**ATTACHMENT 5  
FULFILLMENT**

**1.0 Product Hubbing/Consignment**

**1.1 Hub Arrangement** The parties hereby agree that “Hub Product” is defined as any Supplier Product for which a portion of sales of such Product are subject to a hubbing arrangement. The following terms and conditions will apply to any Hub Product(s) for which an agreement has been executed between and among Supplier, Buyer, and/or third party (“Hub Provider”) to allow such Hub Product to be shipped to and held in a third party’s warehouse (or warehouses) (“Hub(s)”). The parties agree that, as of the Effective Date of Amendment Number 1 (effective date May 12, 2004) to the Agreement, the Brocade SAN Switch Module for IBM BladeCenter will be a Hub Product.

Hubs will be established for IBM’s third party fulfillment partners [\*\*] in [\*\*] and [\*\*] in [\*\*]. The parties reserve the right to discuss the addition of a Hub in other location(s), subject to the mutual written agreement of the parties.

The parties will mutually agree to any [\*\*] associated with the hubbing arrangement, such as [\*\*] to hub destinations and [\*\*] prior to any performance, which Supplier may include in the Product price and update in SOW3 PUA Section 4.1 Product Price List and Description, and for other products will be added to the applicable price list. The parties agree to periodically review a breakdown of such [\*\*] to determine if changes in the logistics will change this cost.

**1.2 Hub Stocking** On a [\*\*] basis Buyer, or Hub Provider, will provide a [\*\*] rolling forecast to Supplier showing the demand for the Hub Products to be sent to the Hub(s), such quantities shall be identified by the specific geographic locations of the Hubs (“Hub Forecast”). Supplier agrees to ship quantities of such Product to the Hubs sufficient to meet at least [\*\*] of demand, and at most [\*\*] of demand, both of which are based on the forward-looking [\*\*] period forecast (“Minimum Stock Level”). Should Buyer pull more than the Hub Forecast amount, Supplier will have [\*\*] to restock the Hub to the Minimum Stock Level. The Minimum Stock Level will include the balance of the material physically in the hub location available for immediate sale (“On-Hand Balance”) plus the material en route to the hub location scheduled for arrival within the transit lead time for that hub (“In-Transit Balance”). Supplier may reduce Hub inventory to [\*\*] only when there is no demand reflected in each week of the Hub Forecast for the forward-looking [\*\*] period.

**1.3 Ship Performance** Supplier’s goal will be to satisfy a [\*\*] product availability rate at each Hub location. Product Availability is defined as Hub Products being available for pull by Hub Provider at a time a valid pull notification is received. At the beginning of each [\*\*], Buyer and Supplier may discuss the above Product Availability rate goal. Should the parties agree that the Product Availability rate goal was not achieved, Supplier will immediately acknowledge the deficiency. Within [\*\*] of such acknowledgement, Supplier will begin the Corrective/Preventive Action Process to determine the root cause, and will develop an appropriate corrective action. Hub Product pull requests in excess of Hub Forecast will not be used in the calculation of the product availability rate, nor in the determination of root cause. In addition, should Supplier experience an allocation situation, the allocation provisions of SOW3 PUA Section 7.0 “Supply of Products” shall apply.

**1.4 Shipping** Supplier will be responsible for [\*\*] of the Hub Product from Supplier’s [\*\*]. Pursuant to Section 1.0 of this Attachment 5 these costs may be included in the Product price. All shipments from the Hub will be [\*\*] the Hub, and Buyer is responsible for all [\*\*] thereafter. Buyer will act as the importer of record for all Hub Product shipped from the Hub and will be responsible for

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

associated customs, duty, and Value Add Tax (VAT) administration. Title to and risk of loss of the Hub Product will pass to Buyer upon physical removal of such Hub Product from Brocade's designated area within the applicable Hub.

- 1.5 Product Discontinuance for Products Held in Hub** Discontinuance of any Hub Product shall be in accordance with the terms set forth in the SOW. The parties agree to work together to minimize the liability of each party upon end-of-life notice of a Hub Product.

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Revision: 05/02

Integrated Statement of Work for Production Procurement Goods Agreement

Goods Agreement # ROC-P-68 Master Agreement Number

SOW # 4903RL1112SOW Number

Attachment 6  
PRODUCT PART NUMBERS AND PRICING

Buyer Part Number	Supplier Part Number *	Fulfillment locations (if required) *	Product Description	Unit Price of Product	Ship group adder	Freight - DDU for hub locs FCA for non-hub loc	**Software Maintenance	Total Price
			2GBit/sec Products					
[**]	[**]	[**]	Option, FC Switch Module, includes Fabric OS, Fabric Watch, Advance Zoning, Web Tools and ship group	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Option, FC Switch Module, includes Fabric OS, Fabric Watch, Advance Zoning, Web Tools, and Ship Group	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	CRU, Value line FC Switch Module	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Asm, FC Switch Module, includes Fabric OS, Fabric Watch, Advance Zoning, and Web Tools	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Option, Value Line Module	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Option, Value Line Module	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Asm, Value Line Module	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Performance Bundle (Performance Monitor and Trunking)	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	ISL Trunking	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Advance Performance Monitor	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Extended Fabrics	[**]	[**]	[**]	[**]	[**]

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

<u>Buyer Part Number</u>	<u>Supplier Part Number *</u>	<u>Fulfillment locations (if required) *</u>	<u>Product Description</u>	<u>Unit Price of Product</u>	<u>Ship group adder</u>	<u>Freight - DDU for hub locs FCA for non-hub loc</u>	<u>**Software Maintenance</u>	<u>Total Price</u>
[**]	[**]	[**]	Fabric Manager v4.x	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Remote Switch Activation	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Advanced Security Activation	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Full SAN Scaling	[**]	[**]	[**]	[**]	[**]

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**Integrated Statement of Work for Production Procurement Goods Agreement**

Goods Agreement # ROC-P-68 Master Agreement Number

SOW # 4903RL1112SOW Number

<u>Intel Part Number</u>	<u>Supplier Part Number *</u>	<u>Fulfillment hub locations (if required) *</u>	<u>Product Description</u>	<u>Unit Price of Product</u>	<u>Ship group adder</u>	<u>Freight - DDU for hub locs FCA for non-hub loc</u>	<u>**Software Maintenance</u>	<u>Total Price</u>
[**]	[**]	[**]	2Gbit/sec Products (Intel) Option, FC Switch Module, includes Fabric OS, Fabric Watch, Advance Zoning, Web Tools and ship group	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	CRU, Value line FC Switch Module	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Option, Value Line Module	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Performance Bundle (Performance Monitor and Trunking)	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	ISL Trunking	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Advance Performance Monitor	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Extended Fabrics	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Fabric Manager v4.x	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Remote Switch Activation	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Advanced Security Activation	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Full SAN Scaling	[**]	[**]	[**]	[**]	[**]

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**Integrated Statement of Work for Production Procurement Goods Agreement**

Goods Agreement # ROC-P-68 Master Agreement Number

SOW # 4903RL1112SOW Number

<u>Buyer Part Number</u>	<u>Supplier Part Number *</u>	<u>Fulfillment hub locations (if required) *</u>	<u>Product Description</u>	<u>Unit Price of Product</u>	<u>Ship group adder</u>	<u>Freight - DDU for hub locs FCA for non-hub loc</u>	<u>**Software Maintenance</u>	<u>Total Price</u>
[**]	[**]	[**]	4GBit/sec Products Option, FC Switch Module (20 port), includes Fabric OS, Advance Zoning, Web Tools and ship group	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Option, FC Switch Module (20 port), includes Fabric OS, Advance Zoning, Web Tools and ship group	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Option, FC Switch Module (20 port), includes Fabric OS, Advance Zoning, Web Tools and ship group	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	CRU, FC Switch Module (20 port)	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Option, FC Switch Module (10 port), includes Fabric OS, Advance Zoning, Web Tools and ship group	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Option, FC Switch Module (10 port), includes Fabric OS, Advance Zoning, Web Tools and ship group	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Option, FC Switch Module (10 port), includes Fabric OS, Advance Zoning, Web Tools and ship group	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	CRU, FC Switch Module (10 port), includes Fabric OS, Advance Zoning, Web Tools and ship group	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	10 Port POD (SW4020)	[**]	[**]	[**]	[**]	[**]

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Revision: 05/02

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Goods Agreement # ROC-P-68 Master Agreement Number

SOW # 4903RL1112SOW Number

Buyer Part Number	Supplier Part Number *	Fulfillment hub locations (if required) *	Product Description	Unit Price of Product	Ship group adder	Freight - DDU for hub locs FCA for non-hub loc	**Software Maintenance	Total Price
[**]	[**]	[**]	Fabric Watch	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Performance Bundle (Performance Monitor and Trunking)			[**]		
[**]	[**]	[**]	ISL Trunking			[**]		
[**]	[**]	[**]	Advance Performance Monitor			[**]		
[**]	[**]	[**]	Extended Fabrics			[**]		
[**]	[**]	[**]	Fabric Manager v5.x	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Advanced Security Activation			[**]		
[**]	[**]	[**]	Multi-pack of FC Switch Module (20 port), includes Fabric OS, Advance Zoning, Web Tools; NO ship group; MUST be ordered in quantity of 10	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Multi-pack of FC Switch Module (20 port), includes Fabric OS, Advance Zoning, Web Tools; NO ship group; MUST be ordered in quantity of 10	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Multi-pack of FC Switch Module (10 port), includes Fabric OS, Advance Zoning, Web Tools, NO ship group; MUST be ordered in quantity of 10	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Multi-pack of FC Switch Module (10 port), includes Fabric OS, Advance Zoning, Web Tools, NO ship group; MUST be ordered in quantity of 10	[**]	[**]	[**]	[**]	[**]

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**Integrated Statement of Work for Production Procurement Goods Agreement**

**Goods Agreement # ROC-P-68 Master Agreement Number**

**SOW # 4903RL1112SOW Number**

<u>Buyer Part Number</u>	<u>Supplier Part Number *</u>	<u>Fulfillment locations (if required) *</u>	<u>Product Description</u>	<u>Unit Price of Product</u>	<u>Ship group adder</u>	<u>Freight - DDU for hub locs FCA for non-hub loc</u>	<u>Total Price (Software Maintenance is not applicable for these products)</u>
			<b>Brocade 8Gb FC Single &amp; Dual port HBA for System x</b>				
***	***	***	Single port, PCI Express 2.0 adapter, 3U bracket, 1 x 8G SWL SFP installed; no documentation <b>MUST</b> be ordered in quantity of 20 units	***	***	***	***
***	***	***	Dual port, PCI Express 2.0 adapter, 3U bracket, 2 x 8G SWL SFP installed; no documentation <b>MUST</b> be ordered in quantity of 20 units	***	***	***	***
***	***	***	FRU Single port, PCI Express 2.0 adapter, 3U bracket, 1 x 8G SWL SFP installed; 1 x 2U bracket in clamshell <b>MUST</b> be ordered in quantity of 5 units	***	***	***	***
***	***	***	FRU Dual port, PCI Express 2.0 adapter, 3U bracket, 2 x 8G SWL SFP installed; 1 x 2U bracket in clamshell <b>MUST</b> be ordered in quantity of 5 units	***	***	***	***
***	***	***	Single port 2U bracket <b>MUST</b> be ordered in quantity of 140 units	***	***	***	***
***	***	***	Dual port 2U bracket <b>MUST</b> be ordered in quantity of 140 units	***	***	***	***
***	***	***	FRU, 8G SWL SFP (single pack) Brocade 8Gb Shortwave length SFP module, 1-pack	***	***	***	***

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Form Release: 8/98  
Revision: 05/02

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**Integrated Statement of Work for Production Procurement Goods Agreement**

Goods Agreement # ROC-P-68 Master Agreement Number

SOW # 4903RL1112SOW Number

**Section 4.2: PRODUCT UNIT TERMS & REPAIR PRICING**

<u>Buyer P/N</u>	<u>Supplier P/N</u>	<u>Description</u>	<u>TAT</u>	<u>Repair Price (USD)*</u>
		<b>2GBit/sec Products</b>		
[**]	[**]	Option, FC Switch Module	[**]	[**]
[**]	[**]	CRU, Value Line Switch Module	[**]	[**]
[**]	[**]	Asm, FC Switch Module	[**]	[**]
[**]	[**]	Option, Value Line Module	[**]	[**]
[**]	[**]	Asm, Value Line Module	[**]	[**]

\* Repair Price applies only to Products sent to Supplier for Repair, which are not covered by the warranties in the Agreement.

<u>Intel P/N</u>	<u>Supplier P/N</u>	<u>Description</u>	<u>TAT</u>	<u>Repair Price (USD)*</u>
		<b>2GBit/sec Products</b>		
[**]	[**]	Option, FC Switch Module	[**]	[**]
[**]	[**]	CRU, Value Line Switch Module	[**]	[**]
[**]	[**]	Option, Value Line Module	[**]	[**]

\* Repair Price applies only to Products sent to Supplier for Repair, which are not covered by the warranties in the Agreement.

<u>Buyer P/N</u>	<u>Supplier P/N</u>	<u>Description</u>	<u>TAT</u>	<u>Repair Price (USD)*</u>
		<b>4GBit/sec Products</b>		
[**]	[**]	Option, FC Switch Module (20 port), includes Fabric OS, Advance Zoning, Web Tools and ship group	[**]	[**]
[**]	[**]	CRU, FC Switch Module (20 port)	[**]	[**]
[**]	[**]	Option, FC Switch Module (10 port), includes Fabric OS, Advance Zoning, Web Tools and ship group	[**]	[**]
[**]	[**]	CRU, FC Switch Module (10 port), includes Fabric OS, Advance Zoning, Web Tools and ship group	[**]	[**]

\* Repair Price applies only to Products sent to Supplier for Repair, which are not covered by the warranties in the Agreement.

<u>Buyer P/N</u>	<u>Supplier P/N</u>	<u>Description</u>	<u>TAT</u>	<u>Repair Price (USD)*</u>
		<b>Brocade 8Gb FC Single &amp; Dual port HBA for System x</b>		
[**]	[**]	FRU Single port, PCI Express 2.0 adapter, 3U bracket, 1 x 8G SWL SFP installed; 1 x 2U bracket in clamshell	[**]	[**]
[**]	[**]	FRU Dual port, PCI Express 2.0 adapter, 3U bracket, 2 x 8G SWL SFP installed; 1 x 2U bracket in clamshell	[**]	[**]
[**]	[**]	FRU, 8G SWL SFP (single pack) Brocade 8Gb Shortwave length SFP module, 1-pack	[**]	[**]

\* Products listed in Section 4.1 are replacement only as covered by the warranties in the agreement.

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June 19, 2008

Brocade Communications Systems, Inc.  
1745 Technology Drive  
San Jose, CA 95119

**Subject: Amendment #15 to Statement of Work #4903RL1112 (“SOW”) dated December 15, 2003**

This Amendment #15 (“Amendment”) to Statement of Work # 4903RL1112 (“SOW”) adopts and incorporates by reference the terms and conditions of Goods Agreement # 4999RO0015 (“Agreement”) by and between Brocade Communications Systems, Inc. (“Brocade”) and International Business Machines Corporation (“IBM”). The parties agree to amend the SOW as follows. All other terms and conditions in the Base Agreement and SOW shall remain in full force and effect.

This amendment will be effective when signed by both parties.

**1. Add “Attachment 1, Product Unique Attachment 5 for “Brocade 10Gb CNA for IBM System x” effective June 19, 2009” (attached hereto)**

**2. Replace “Attachment 6, Product Part Numbers and Pricing” in its entirety with the attached “Attachment 6, Product Part Numbers and Pricing”.**

The parties acknowledge that they have read this Amendment, understand it, and agree to be bound by its terms and conditions. Further, they agree that this Amendment and the subject Agreement are the complete and exclusive statement of the agreement between the parties, superseding all proposals or other prior agreements, oral or written, and all other communications between the parties relating to this subject.

Except as specifically provided for in the foregoing provisions of this Amendment, the SOW shall continue in full force and effect. All capitalized terms defined in the Agreement which are used in this Amendment without further definition shall have the meanings ascribed to them in the Agreement.

---

Please have your authorized representative indicate acceptance thereof by signing both copies of the Amendment and returning one copy to the attention of [\*\*].

**ACCEPTED AND AGREED TO:**

International Business Machines Corporation

By: /s/ Tim Nolan 6/22/09

IBM Signature Date  
Tim Nolan

Printed Name  
GCM Mgr

Title & Organization  
Communications Council

Address:  
3039 Cornwallis Rd  
RTP, NC 27709  
USA

**ACCEPTED AND AGREED TO:**

Brocade Communications

By: /s/ Charles Leeming 6/22/09

Brocade Communications Date  
Charles Leeming

Printed Name  
VP, OEM Sales

Title & Organization

Address  
1745 Technology Drive  
San Jose, CA 95110

**ACCEPTED AND AGREED TO:**

Brocade Communications Switzerland, SarL

By: /s/ Kevin L. Mckenna

Authorized Signature Date  
Kevin L. Mckenna 23-June-2009

Type or Print Name  
Director

Title & Organization



**BROCADE**

R. Borders *rb*  
Legal Approved on: 6/16/2009

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ATTACHMENT #1

PRODUCT UNIQUE ATTACHMENT #4, EFFECTIVE BEGINNING JULY 19, 2009

1.0 PRODUCT DESCRIPTION

The Products is dual-port 10GbE Converged Network Adapter (CNA) that supports Enhanced Ethernet (CEE) and Fibre Channel over Ethernet (FCoE) protocols for IBM System x. The adapter is shipped without any optical or copper media (SFP+). Each HBA includes management software that the user uses to configure, monitor and perform any necessary maintenance, including updating firmware.

1.1 Additional Description of Products.

Products must conform to the following specifications (including any subsequent revisions, as mutually agreed to between the parties), which are hereby incorporated by reference:

“Brocade 10Gb CNA for IBM System x Based on Brocade PCIe 2.0 Dual Port CNA (Tomcat)” Product Requirements Document (“PRD”) Version 1.1 June 20, 2009

2.0 DEVELOPMENT REQUIREMENTS

2.1 Product Testing

Product Qualification and Test Plans shall be performed to the following test plans as agreed to by both parties:

§ IBM Beckley System Compatibility Test Plan — Brocade 10Gb Dual-port CNA, v 1.4, dated May 2009

§ IBM Beckley XCSA Test Plan, dated May 2009

2.2 Deliverables

Seller shall, at its cost, use commercially reasonable efforts during the Test Phases to provide deliverables requested by Buyer in conformance with the test schedule that has been documented in “Brocade 10Gb CNA for IBM System x Based on Brocade PCIe 2.0 Dual Port CNA (Tomcat)” Product Requirements Document (“PRD”) Version 1.1 June 20, 2009” as mutually agreed to by both parties.

2.3 Development

Buyer will provide WA’s to Supplier for [\*\*] adapters for test phases [\*\*]. The adapters will comply with the Brocade’s specification agreed to in writing by the parties and will incorporate all of the design change requests mutually agreed to by the parties in “Brocade 10Gb CNA for IBM System x Based on Brocade PCIe 2.0 Dual Port CNA (Tomcat)” Product Requirements Document (“PRD”) Version 1.1 June 20, 2009”

Product	Quantity
A2B Level Switches (BBFV CNA)	[**]
P0.1 Level Switches (SDV CNA)	[**]
P1 Level Switches (SIT CNA)	[**]

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**2.4 Product Number Unique Terms.**

The parties agree that part numbers, relevant descriptions, Prices, delivery terms, Lead Times and other Product specific terms not specifically addressed by this Agreement shall be determined pursuant to the following process: (i) Buyer will issue a RFQ and/or an EC request to Supplier for the affected Products, including relevant specifications and other requirements; (ii) Supplier shall respond to such RFQs and EC requests with a quote; (iii) If Buyer agrees to the Supplier quote, then Buyer will notify Supplier of its acceptance of such Supplier quote in writing or by the issuance of a revised WA and updates to Buyer’s procurement internet portal. Such part numbers, relevant descriptions, Prices, delivery terms, Lead Times and other terms are incorporated herein by reference, and will not affect any of the other Products (not subject to change pursuant to this process) in any manner, unless a specific Product is identified in the RFQ and/or the EC as a replacement or change to an existing Product.

**3.0 PROPRIETARY OWNERSHIP**

**3.1 Buyer Proprietary Ownership.**

Buyer will own rights to the following technology contained in the Brocade 10Gb CNA’s for IBM System x — Software packaging and testing for Update Express Support Packages (USXP) as specified in Modular and Blade Systems Building Block Software Integration Guide is under Buyer Proprietary ownership.

**3.2 Seller’s Proprietary Ownership**

Except for the proprietary information provided by Buyer, the items listed in Section 3.1 above and Buyer patents that read on the implementation, Buyer makes no further claims of ownership.

**4.0 PART NUMBER UNIQUE TERMS**

**4.1 Product Price List And Description**

See Attachment 6 to SOW #3, Consolidated Price List

**4.2 Product Unit Terms And Repair Pricing**

HBA’s are not repairable.

**4.3 Warranty Period.**

The warranty period for the Brocade **10Gb CNA for IBM System x** equipment is [\*\*] from the date of shipment. For this Product, SFP’s are shipped separate from the equipment. The SFP warranty period is [\*\*] from the date of shipment (see table below). All other terms and conditions of Section 8.2 of SOW#3 for warranty period apply to this PUA.

<u>PRODUCT &amp; HW Warranty</u>	<u>SFP Shipped Installed (Warranty)</u>	<u>SFP Shipped separately (Warranty)</u>	<u>SFP FRU - Shipped installed (Warranty)</u>	<u>SFP FRU – Shipped separately (Warranty)</u>
<b>10 Gb CNA for IBM System x</b> [**]	(SFP’s are NOT shipped installed)	[**]	(SFP’s are NOT shipped installed)	[**] or balance of original SFP warranty

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

## 5.0 WA FLEXIBILITY

Number of Days prior to a WA Scheduled Delivery Date	Increase of Product Quantity to a WA Scheduled Delivery Date (% of WA Quantity)	Cancellation of Product Quantity to a WA Scheduled Delivery Date (% of WA Quantity)	Rescheduling of Product Quantity to a WA Scheduled Delivery Date (% of WA Quantity)
Less than [**] days	As mutually agreed upon	[**]	[**]
From [**] days to [**] days	[**]	[**]	[**]
From [**] days to [**] days	[**]	[**]	[**]
More than [**] days	[**]	[**]	

While the above flexibility terms also apply to Pull Products, in the event the relevant Pull Profile has more favorable terms, then such more favorable terms shall take precedence.

## 6.0 SUPPLIER PRODUCT WITHDRAW

Supplier will provide Buyer with [\*\*] written notice of its intent to withdraw any Product (“End of Life” or “EOL”) prior to the last date of manufacture of a Product. Buyer shall provide to Supplier a non-binding forecast for Products and FRUs [\*\*] from the receipt of Supplier’s notice of End of Life. Buyer will provide a revised EOL FRU forecast in each year during the [\*\*] EOL period, as requested by Supplier. Buyer shall provide to Supplier a non-cancelable last-time buy WA for forecasted Products no later than [\*\*] prior to the End of Life date (last date of manufacture or sales/distribution date). Such Product purchases must be scheduled to ship no later than the End of Life date. For delivery requests outside of the Notice Period or order requests after Buyer’s last-time buy purchase has been placed, Supplier will review on a case-by-case basis Buyer’s request(s).

## 7.0 SUPPLY OF PRODUCTS

Supplier shall deliver products as specified in WA/PO for forecasted orders. Notwithstanding any other provision of this Agreement (except force majeure), if due to a shortage Supplier is unable to deliver Products as specified, Supplier will notify Buyer of such inability to deliver Products along with an estimate of the duration of such shortage. If Supplier fails to correct such inability to supply Product or fails to develop a plan acceptable to Buyer, Buyer will have the right to cancel such POs or portions thereof by written notice. If Buyer cancels WA/PO, Buyer’s only obligation is to pay for Products already delivered at the time of Buyer’s cancellation notice.

## 8.0 COMMUNICATIONS

All communications between parties will be carried out through the following designated coordinators. All notices required in writing under this Agreement will be made to the appropriate contact listed below at the following addresses and will be effective upon actual receipt. Notices may be transmitted electronically, by registered or certified mail, or courier. All notices, with the exception of legal notices, may also be provided by facsimile.

### 8.1 Business Coordinators.

SUPPLIER	Brocade Communications Systems Inc.	BUYER	International Business Machines
Name	[**]	Name	[**]
Title	[**]	Title	[**]
Address	[**]	Address	[**]
Phone	[**]	Phone	[**]
Fax		Fax	
E-mail	[**]	E-mail	[**]

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

**8.2 Technical Coordinators.**

SUPPLIER	Brocade Communications Systems Inc.	BUYER	International Business Machines
Name	[**]	Name	[**]
Title	[**]	Title	[**]
Address	[**]	Address	[**]
Phone	[**]	Phone	[**]
Fax		Fax	
E-mail	[**]	E-mail	[**]

All legal notices will be sent to the following addresses and will be deemed received (a) two (2) days after mailing if sent by certified mail, return receipt requested or (b) on the date confirmation is received if sent by facsimile transmittal, to the party set forth below.

SUPPLIER	Brocade Communications Systems Inc.	BUYER	International Business Machines
Name	[**]	Name	[**]
Title	[**]	Title	[**]
Address	[**]	Address	[**]
Phone	[**]	Phone	[**]
Fax	[**]	Fax (Fax notice shall be valid only when verbal confirmation of receipt is obtained.)	
E-mail	[**]	E-mail	[**]

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

**Attachment 6  
PRODUCT PART NUMBERS AND PRICING**

Buyer Part Number	Supplier Part Number *	Fulfillment locations (if required) *	Product Description	Unit Price of Product	Ship group adder	Freight - DDU for hub locs FCA for non-hub loc	**Software Maintenance	Total Price
<b>2GBit/sec Products</b>								
[**]	[**]	[**]	Option, FC Switch Module, includes Fabric OS, Fabric Watch, Advance Zoning, Web Tools and ship group	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Option, FC Switch Module, includes Fabric OS, Fabric Watch, Advance Zoning, Web Tools, and Ship Group	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	CRU, Value line FC Switch Module	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Asm, FC Switch Module, includes Fabric OS, Fabric Watch, Advance Zoning, and Web Tools	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Option, Value Line Module	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Option, Value Line Module	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Asm, Value Line Module	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Performance Bundle (Performance Monitor and Trunking)	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	ISL Trunking	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Advance Performance Monitor	[**]	[**]	[**]	[**]	[**]

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

Buyer Part Number	Supplier Part Number *	Fulfillment hub locations (if required) *	Product Description	Unit Price of Product	Ship group adder	Freight - DDU for hub locs FCA for non-hub loc	**Software Maintenance	Total Price
[**]	[**]	[**]	Extended Fabrics	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Fabric Manager v4.x	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Remote Switch Activation	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Advanced Security Activation	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Full SAN Scaling	[**]	[**]	[**]	[**]	[**]

Intel Part Number	Supplier Part Number *	Fulfillment hub locations (if required) *	Product Description	Unit Price of Product	Ship group adder	Freight - DDU for hub locs FCA for non-hub loc	**Software Maintenance	Total Price
<b>2GBit/sec Products (Intel)</b>								
[**]	[**]	[**]	Option, FC Switch Module, includes Fabric OS, Fabric Watch, Advance Zoning, Web Tools and ship group	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	CRU, Value line FC Switch Module	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Option, Value Line Module	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Performance Bundle (Performance Monitor and Trunking)	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	ISL Trunking	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Advance Performance Monitor	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Extended Fabrics	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Fabric Manager v4.x	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Remote Switch Activation	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Advanced Security Activation	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Full SAN Scaling	[**]	[**]	[**]	[**]	[**]

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

Buyer Part Number	Supplier Part Number *	Fulfillment hub locations (if required) *	Product Description	Unit Price of Product	Ship group adder	Freight - DDU for hub locs FCA for non-hub loc	**Software Maintenance	Total Price
<b>4GBit/sec Products</b>								
[**]	[**]	[**]	<b>Option, FC Switch Module (20 port), includes Fabric OS, Advance Zoning, Web Tools and ship group</b>	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	<b>Option, FC Switch Module (20 port), includes Fabric OS, Advance Zoning, Web Tools and ship group</b>	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	<b>Option, FC Switch Module (20 port), includes Fabric OS, Advance Zoning, Web Tools and ship group</b>	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	<b>CRU, FC Switch Module (20 port)</b>	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	<b>Option, FC Switch Module (10 port), includes Fabric OS, Advance Zoning, Web Tools and ship group</b>	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	<b>Option, FC Switch Module (10 port), includes Fabric OS, Advance Zoning, Web Tools and ship group</b>	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	<b>Option, FC Switch Module (10 port), includes Fabric OS, Advance Zoning, Web Tools and ship group</b>	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	<b>CRU, FC Switch Module (10 port), includes Fabric OS, Advance Zoning, Web Tools and ship group</b>	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	<b>10 Port POD (SW4020)</b>	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	<b>Fabric Watch</b>	[**]	[**]	[**]	[**]	[**]

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Buyer Part Number	Supplier Part Number *	Fulfillment hub locations (if required) *	Product Description	Unit Price of Product	Ship group adder	Freight - DDU for hub locs FCA for non-hub loc	**Software Maintenance	Total Price
[**]	[**]	[**]	Performance Bundle (Performance Monitor and Trunking)			[**]		
[**]	[**]	[**]	ISL Trunking			[**]		
[**]	[**]	[**]	Advance Performance Monitor			[**]		
[**]	[**]	[**]	Extended Fabrics			[**]		
[**]	[**]	[**]	Fabric Manager v5.x	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Advanced Security Activation			[**]		
[**]	[**]	[**]	Multi-pack of FC Switch Module (20 port), includes Fabric OS, Advance Zoning, Web Tools; NO ship group; MUST be ordered in quantity of 10	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Multi-pack of FC Switch Module (20 port), includes Fabric OS, Advance Zoning, Web Tools; NO ship group; MUST be ordered in quantity of 10	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Multi-pack of FC Switch Module (10 port), includes Fabric OS, Advance Zoning, Web Tools, NO ship group; MUST be ordered in quantity of 10	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	Multi-pack of FC Switch Module (10 port), includes Fabric OS, Advance Zoning, Web Tools, NO ship group; MUST be ordered in quantity of 10	[**]	[**]	[**]	[**]	[**]

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

Buyer Part Number	Buyer Assembly Number	Supplier Part Number *	Fulfillment locations (if required) *	Product Description	Unit Price of Product	Ship group adder	Freight - DDU for hub locs FCA for non-hub loc	Total Price (Software Maintenance is not applicable for these products)
<b>Brocade 8Gb FC Single &amp; Dual port HBA for System x</b>								
[**]	[**]	[**]	[**]	Single port, PCI Express 2.0 adapter, 3U bracket, 1 x 8G SWL SFP installed; no documentation <b>MUST</b> be ordered in quantity of 20 units	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	Dual port, PCI Express 2.0 adapter, 3U bracket, 2 x 8G SWL SFP installed; no documentation <b>MUST</b> be ordered in quantity of 20 units	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	FRU Single port, PCI Express 2.0 adapter, 3U bracket, 1 x 8G SWL SFP installed; 1 x 2U bracket in clamshell <b>MUST</b> be ordered in quantity of 5 units	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	FRU Dual port, PCI Express 2.0 adapter, 3U bracket, 2 x 8G SWL SFP installed; 1 x 2U bracket in clamshell <b>MUST</b> be ordered in quantity of 5 units	[**]	[**]	[**]	[**]

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

Buyer Part Number	Buyer Assembly Number	Supplier Part Number *	Fulfillment locations (if required) *	Product Description	Unit Price of Product	Ship group adder	Freight - DDU for hub locs FCA for non-hub loc	Total Price (Software Maintenance is not applicable for these products)
[**]	[**]	[**]	[**]	Single port 2U bracket <b>MUST</b> be ordered in quantity of 140 units	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	Dual port 2U bracket <b>MUST</b> be ordered in quantity of 140 units	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	FRU, 8G SWL SFP (single pack) Brocade 8Gb Shortwave length SFP module, 1-pack	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	<b>Brocade 10Gb CNA for IBM System x Brocade 10Gb FCoCEE Dual port CNA, 3U bracket, NO SFPs installed; no documentation MUST be ordered in quantity of 20 units</b>	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	FRU, 10Gb Dual-Port CNA with 3u bracket attached, NO SFPs installed, 2u bracket in clamshell; single FRU pack overpacked in multipack. <b>MUST be ordered in quantity of 5 units.</b>	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	Dual port 2u bracket (140pc bulk package) <b>MUST be ordered in quantity of 140 units</b>	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	<b>Brocade 10G SR SFP+ (1-pack)</b>	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	FRU, Brocade 10G SR SFP+ (1-pack)	[**]	[**]	[**]	[**]

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

**PRODUCT UNIT TERMS & REPAIR PRICING:**

Buyer P/N	Supplier P/N	Description	TAT	Repair Price (USD)*
<b>2GBit/sec Products</b>				
[**]	[**]	Option, FC Switch Module	[**]	[**]
[**]	[**]	CRU, Value Line Switch Module	[**]	[**]
[**]	[**]	Asm, FC Switch Module	[**]	[**]
[**]	[**]	Option, Value Line Module	[**]	[**]
[**]	[**]	Asm, Value Line Module	[**]	[**]

\* Repair Price applies only to Products sent to Supplier for Repair, which are not covered by the warranties in the Agreement.

Intel P/N	Supplier P/N	Description	TAT	Repair Price (USD)*
<b>2GBit/sec Products</b>				
[**]	[**]	Option, FC Switch Module	[**]	[**]
[**]	[**]	CRU, Value Line Switch Module	[**]	[**]
[**]	[**]	Option, Value Line Module	[**]	[**]

\* Repair Price applies only to Products sent to Supplier for Repair, which are not covered by the warranties in the Agreement.

Buyer P/N	Supplier P/N	Description	TAT	Repair Price (USD)*
<b>4GBit/sec Products</b>				
[**]	[**]	Option, FC Switch Module (20 port), includes Fabric OS, Advance Zoning, Web Tools and ship group	[**]	[**]
[**]	[**]	CRU, FC Switch Module (20 port)	[**]	[**]
[**]	[**]	Option, FC Switch Module (10 port), includes Fabric OS, Advance Zoning, Web Tools and ship group	[**]	[**]
[**]	[**]	CRU, FC Switch Module (10 port), includes Fabric OS, Advance Zoning, Web Tools and ship group	[**]	[**]

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

\* **Repair Price applies only to Products sent to Supplier for Repair, which are not covered by the warranties in the Agreement.**

Buyer Part Number	Buyer Assembly Number	Supplier Part Number *	Product Description	TAT	Repair Price (USD)*
			<b>Brocade 8Gb FC Single &amp; Dual port HBA for System x *</b>		
[**]	[**]	[**]	FRU Single port, PCI Express 2.0 adapter, 3U bracket, 1 x 8G SWL SFP installed; 1 x 2U bracket in clamshell	[**]	[**]
[**]	[**]	[**]	FRU Dual port, PCI Express 2.0 adapter, 3U bracket, 2 x 8G SWL SFP installed; 1 x 2U bracket in clamshell	[**]	[**]
[**]	[**]	[**]	FRU, 8G SWL SFP (single pack) Brocade 8Gb Shortwave length SFP module, 1-pack	[**]	[**]

\* **Products listed are replacement only as covered by the warranties in the agreement.**

Buyer Part Number	Buyer Assembly Number	Supplier Part Number *	Product Description	TAT	Repair Price (USD)*
			<b>Brocade 10Gb CNA for IBM System x*</b>		
[**]	[**]	[**]	FRU, 10Gb Dual-Port CNA with 3u bracket attached, No SFP installed, 2u bracket in clamshell; single FRU pack overpacked in multipack. <b>MUST be ordered in quantity of 5 units.</b>	[**]	[**]
[**]	[**]	[**]	FRU, Brocade 10G SR SFP+ (1-pack)	[**]	[**]

\* **Products listed are replacement only as covered by the warranties in the agreement.**

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June 5, 2009  
 Mr. Mike Harrison  
 Brocade Communications Systems, Inc.  
 1745 Technology Drive  
 San Jose, CA 95110

Subject: Amendment Number 3 to SOW#7 of the IBM/Brocade Goods Agreement ROC-P-68

This letter (the "Amendment") serves as Amendment Number 3 to SOW#7, including all amendments thereto ("SOW#7") of the Goods Agreement ROC-P-68 (the "Agreement"), which the parties hereto do mutually agree to amend as follows

1. Attachment A, "Pricing", is hereby deleted in its entirety and replaced with Attachment A, "Pricing", attached hereto.
2. Attachment F-2, "Branding, Description of Licensed Work, and Milestone Schedules for DCFM" is hereby deleted in its entirety and replaced with Attachment F-2, "Branding, Description of Licensed Work, and Milestone Schedules for DCFM", attached hereto.

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 #7. All other terms and conditions of the Goods Agreement and SOW#7 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#7 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: /s/ Michelle B. Wright 6/19/09  
 Authorized Signature Date  
 Michelle B. Wright  
 \_\_\_\_\_  
 Type or Print Name  
 GCM-Storage OEM Proc  
 \_\_\_\_\_  
 Title & Organization

Address: 10692 E. Marquette st.  
 Tucson, AZ 85747

**Accepted and Agreed To:  
 Brocade Communications Systems, Inc.**

By: /s/ Matt Taylor 6/19/09  
 Authorized Signature Date  
 Matt Taylor  
 \_\_\_\_\_  
 Type or Print Name  
 Sr. Director, OEM Sales  
 \_\_\_\_\_  
 Title & Organization

Address: 1745 Technology Drive  
 San Jose, CA 95110

**Accepted and Agreed To:  
 Brocade Communications Switzerland, SarL**

By: /s/ U. Plechschmidt  
 Authorized Signature Date 22-June 2009  
 Ulrich Plechschmidt  
 \_\_\_\_\_  
 Type or Print Name  
 Vice President EMEA  
 \_\_\_\_\_  
 Title & Organization

  
**BROCADE**  
R. Borders   
Legal Approved on: 6/5/2008













**Table 3 — IBM SYSTEM STORAGE DATA CENTER FABRIC MANAGER V10[\*\*] PRICING**

BROCADE	IBM	IBM (End-Customer P/N)			IBM SYSTEM STORAGE DATA CENTER FABRIC MANAGER	
		US Feature Code	LA/EMEA Feature Code	AP/Canada Feature Code	Feature Description	UNIT PRICE
Brocade p/n	IBM Hub Stock P/N					
<b>IBM Machine Type / Model: [**]</b>					<b>IBM System Storage Data Center Fabric Manager V10.[**]</b>	<b>UNIT PRICE</b>
[**]		[**]	[**]	[**]	[**]	[**]
[**]		[**]	[**]	[**]	[**]	[**]
[**]		[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]			[**]	[**]
[**]	[**]	[**]			[**]	[**]
<b>IBM Machine Type / Model: [**]</b>					<b>IBM System Storage Data Center Fabric Manager [**] Renewal</b>	<b>UNIT PRICE</b>
[**]		[**]	[**]	[**]	[**]	[**]
[**]		[**]	[**]	[**]	[**]	[**]
[**]		[**]	[**]	[**]	[**]	[**]
[**]		[**]	[**]	[**]	[**]	[**]
[**]		[**]	[**]	[**]	[**]	[**]
[**]		[**]	[**]	[**]	[**]	[**]
[**]		[**]	[**]	[**]	[**]	[**]
[**]		[**]	[**]	[**]	[**]	[**]
<b>IBM Machine Type / Model: [**]</b>					<b>IBM System Storage Data Center Fabric Manager [**] After License</b>	<b>UNIT PRICE</b>
[**]		[**]	[**]	[**]	[**]	[**]

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**Attachment F-2**

**Branding, Description of Licensed Work, and Milestone Schedules  
For DCFM**

**1.0 Buyer Branded Version of Supplier's OEM Software Product**

The Licensed Work will be comprised of a Buyer-branded version of Supplier's DCFM software product. The Buyer branded version will be called "IBM System Storage Data Center Fabric Manager." Supplier consents to the use by Buyer the name "IBM System Storage Data Center Fabric Manager", "Data Center Fabric Manager", "IBM DCFM", and "DCFm". The Licensed Work will be provided by Supplier to Buyer in Object Code format.

**2.0 Description of Licensed Work**

<u>Code Name</u>	<u>Version</u>	<u>Description</u>	<u>Documentation</u>	<u>Format</u>	<u>Delivery Requirements</u>
DCFm	[**]	IBM System Storage Data Center Fabric Manager	Online	Object Code	CD, License key documentation

**2.1 Product/Operating Systems Supported:**

<u>Operating System</u>	<u>Installation Type</u>	<u>1 to 2000 Ports (1 to 20 domains)</u>	<u>2001 to 5000 Ports (21 to 60 domains)</u>	<u>5001 to 9000 Ports (61 to 120 domains)</u>
Windows, Linux & SUSE Linux	Server/Client	2 GHz CPU 2 GB RAM	Dual Processor 3 GHz CPU 2GB RAM	Dual Processor Dual Core 2.4 GHz CPU 2GB RAM
Solaris	Server	Fire [**] Server 1 1.34 GHz CPU 1GB RAM	Fire [**] Server 2 1.34 GHz CPU 2GB RAM	Fire [**] Server 2 1.5 GHz CPU 2GB RAM
	Client	Ultra 25 Workstation 1 1.34 GHz CPU 1GB RAM	Ultra 45 Workstation 1 1.34 GHz CPU 1GM RAM	Ultra 45 Workstation 1 1.5 GHz 2 GB RAM
VMware*	Server/Client	Requirements same as Guest OS above	Requirements same as Guest OS above	Requirements same as Guest OS above

\* Modem needs to be provisioned on target physical hardware to utilize modem-based call home.

**Systems Requirements**

**a) Supported Client/Server Operating Systems [\*\*]**

- Microsoft Windows 2003 Server, XP, Vista and 2008 Server
- Red Hat Linux AS 4.0, Red Hat Enterprise Linux 5 Advanced, and SuSE Linux Enterprise Server 10 SP1
- Sun Solaris 10
- VMware ESX Server 3.5

Guest OS supported: Windows 2003 Server, Linux Red Hat AS5 and SuSE Linux ES10

**b) National Language Support Version: English only**

**2.2 Documentation : Supplier will provide Buyer with IBM branded customer documentation.**

- a) Internal (standard Supplier documentation)
- b) External (on-line documentation)
- c) No other related written materials

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

**2.3 Other Materials:**

- a) Quality Plan: Supplier will provide Buyer with quality plan upon Buyer's request
- b) Test Results: Supplier will provide Buyer with available test results upon Buyer's request
- c) Test Cases: Supplier will provide Buyer with available test cases upon Buyer's request.
- d) Maintenance and Support Reports (including information required and format)
- e) Promotional Materials: Buyer and Supplier will mutually determine what promotional materials are needed for the Licensed Works.
- f) Education/Training material: Buyer and Supplier will mutually determine what Education and Training materials are needed for the Licensed Works.

**2.4 Code deposited on CD media and shipped to Buyer as directed on Buyer's purchase order.**

**3. Identification of Tools**

No tools are provided for the Licensed Works.

**4. Schedule**

The relevant milestones, completion dates, and terms associated with DCFM software.

<i>Milestone</i>	<i>Completion Date</i>
Delivery of the Licensed Work which substantially complies with its Specifications	[**]
Delivery of the other Deliverables (other than the Licensed Work, Tools, etc.)	[**]
Successful completion of Buyer's testing of the Licensed Work	[**]
Receipt of the completed Certificate of Originality for the Licensed Work	[**]
Other	[**]

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## CERTIFICATION

I, Michael Klayko, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended August 1, 2009 of Brocade Communications Systems, Inc.;
2. Based on my knowledge, this 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 report;
3. Based on my knowledge, the financial statements, and other financial information included in this 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 report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 31, 2009

/s/ Michael Klayko  
Michael Klayko  
Chief Executive Officer  
(Principal Executive Officer)

## CERTIFICATION

I, Richard Deranleau, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended August 1, 2009 of Brocade Communications Systems, Inc.;
2. Based on my knowledge, this 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 report;
3. Based on my knowledge, the financial statements, and other financial information included in this 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 report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 31, 2009

/s/ Richard Deranleau  
\_\_\_\_\_  
Richard Deranleau  
Chief Financial Officer  
(Principal Accounting Officer)

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, Michael Klayko, 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 on Form 10-Q of Brocade Communications Systems, Inc. for the fiscal quarter ended August 1, 2009 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.

Date: August 31, 2009

By: /s/ Michael Klayko

Michael Klayko  
Chief Executive Officer

I, Richard Deranleau, 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 on Form 10-Q of Brocade Communications Systems, Inc. for the fiscal quarter ended August 1, 2009 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.

Date: August 31, 2009

By: /s/ Richard Deranleau

Richard Deranleau  
Chief Financial Officer