

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

FORM 10-K

(MARK ONE)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934.
FOR THE FISCAL YEAR ENDED OCTOBER 30, 1999

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.)

1901 GUADALUPE PARKWAY
SAN JOSE, CA 95131
(408) 542-1500
(ADDRESS, INCLUDING ZIP CODE, OF REGISTRANT'S PRINCIPAL EXECUTIVE OFFICES AND
TELEPHONE NUMBER, INCLUDING AREA CODE)

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT: NONE

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT: COMMON STOCK, \$.001
PAR VALUE

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

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

The aggregate market value of voting stock held by non-affiliates of the
Registrant was approximately \$8,845,632,997 as of December 30, 1999, based upon
the closing price on the Nasdaq National Market reported for such date. This
calculation does not reflect a determination that certain persons are affiliates
of the Registrant for any other purpose.

The number of shares outstanding of the Registrant's Common Stock on
December 30, 1999 was 53,854,691 shares.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's Proxy Statement for its 2000 Annual Meeting of
Stockholders (the "Proxy Statement"), to be filed with the Securities and
Exchange Commission, are incorporated by reference to Part III of this Form 10-K
Report.

BROCADE COMMUNICATIONS SYSTEMS, INC.
FORM 10-K

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PART I

ITEM 1. BUSINESS

NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report contains forward-looking statements that relate to future events or future financial performance. In some cases, forward-looking statements can be identified by terminology such as "may," "will," "should," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "intend," "potential" or "continue" or the negative of such terms or other comparable terminology. These statements are only predictions. Although Brocade believes that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. Actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including the risks outlined under "Management's Discussion and Analysis of Financial Condition and Results of Operations -- Risk Factors" and elsewhere in this Annual Report. All forward-looking statements included in this document are based on information available to Brocade on the date hereof. Brocade assumes no obligation to update any such forward-looking statements.

OVERVIEW

Brocade is the leading provider, based on revenue and the number of ports shipped, of Fibre Channel switching solutions for Storage Area Networks ("SANs"), which apply the benefits of a networked approach to the connection of computer storage systems and servers. Our family of SilkWorm switches enables companies to cost-effectively manage growth in their storage capacity requirements, improve the performance between their servers and storage systems and increase the size and scope of their SAN, while allowing them to operate data-intensive applications, such as data backup and restore, and disaster recovery, on the SAN. We sell our SAN switching solutions through leading storage systems and server original equipment manufacturers, including Amdhal, Compaq Computer, CNT, Data General (a division of EMC Corporation), Dell Computer, IBM, Groupe Bull, McDATA Corporation (a division of EMC Corporation), NEC, Network Appliance, Sequent Computer Systems, SGI, Fujitsu/Siemens Computer Systems and StorageTek and through system integrators. These original equipment manufacturers and system integrators combine our switching solutions with other system elements and services for companies' data processing centers.

INDUSTRY BACKGROUND

Business-Critical Data Storage Requirements

The last decade has seen an explosion in the volume of business-critical data that is being captured, processed, stored and manipulated in business environments. This has fueled an increase in demand for data storage capacity. Efficient data storage and management is becoming one of the most important aspects of business-critical decision making. Increased reliance on applications ranging from business intelligence and decision support, data warehousing and data mining of large databases, disaster tolerance and recovery, enterprise software, and imaging and graphics have all contributed to this trend. In addition, the development of Web-based business operations and e-commerce in particular, has intensified the demand placed on data centers. Customer interactions over the Web have increased operational focus on the performance, scalability, management and flexibility of systems that use business-critical data. This dependence on data for fundamental business processes by employees, customers and suppliers has greatly increased the number of input and output transactions, or I/Os, required of computer storage systems and servers. In addition, the complexity of enterprise computing and storage is further compounded by the use of multiple incompatible server operating systems, such as the proliferation of Windows NT in traditional UNIX environments. As a result, organizations are being forced to dedicate substantial financial and personnel resources to manage and maintain the distributed storage capabilities of their networks.

Bottleneck In Storage and Server Connections

Despite the increased attention and resources which have been devoted to data storage requirements, the technical capabilities of data storage systems have not kept pace with increasing data management demands and with the advancements in other networking technologies. In the 1980s, the near ubiquity of PCs, workstations and servers required broader connectivity, resulting in the development of local and wide area networks to support messaging between computer systems. The data used by computers and servers connected to local and wide area networks are typically located on computer storage systems and servers, which store, process and manipulate data. The adoption of high speed messaging technologies such as gigabit Ethernet and asynchronous transfer mode, or ATM, increased local and wide area network transmission speeds by more than 1,000 times during the 1990s. However, storage-to-server data transmission speeds increased by less than ten times during this period, creating a bottleneck between the local or wide area network and business-critical storage systems and servers.

Traditionally, distributed systems have linked a single server with a limited number of storage systems in close proximity. The Small Computer Systems Interface, or SCSI, standard was adopted as the I/O interface standard for storage-to-server and server-to-server connections in the 1980s. SCSI is a parallel interface that permits throughput of 20 to 40 megabytes per second. SCSI's throughput limitations have become much more pronounced as local and wide area network transmission technologies have migrated from Ethernet, which transfers data at 10 megabits per second, to gigabit Ethernet, which transfers data at 1,000 megabits per second. In addition, SCSI allows a maximum transmission distance of only 12 meters and supports just 32 devices on a single bus. As a result, SCSI does not adequately support the increasing requirements for speed, scalability and flexibility of today's data-intensive enterprises.

Introduction and Standardization of Fibre Channel

In response to the demand for high-speed and high-performance storage-to-server and server-to-server connectivity, the Fibre Channel interconnect protocol, an industry networking standard, was developed in the early 1990s. The Fibre Channel interconnect standard received American National Standards Institute, or ANSI, approval in 1994 and has subsequently earned broad support from industry and independent testing laboratories. Fibre Channel supports large data block transfers at gigabit speeds and is therefore well suited for data transfers between storage systems and servers. It also supports multiple protocols such as SCSI and Internet Protocol, or IP. Furthermore, it provides transmission reliability with guaranteed delivery and transmission distances of up to 10 kilometers. Fibre Channel complements and supports advancements in local and wide area network technologies, such as gigabit Ethernet and ATM, which are not effective for large block data-intensive transfers.

Advent of the Storage Area Network

Fibre Channel has enabled the development of a storage area network, or SAN, to meet the requirements of data centers and other data-intensive, distributed computing environments. Similar to local and wide area networks, the SAN applies the distributed computing model to computer storage systems and servers and takes advantage of the inherent benefits of a networked approach. These benefits include the decoupling of computer storage systems and servers, increasing scalability and a higher level of connectivity than currently exists in the SCSI environment. Additionally, the SAN provides high-speed connectivity for data-intensive applications across multiple operating systems, including UNIX and Windows NT. By bringing networking technology into the data processing center, a SAN also provides increased flexibility, fault tolerance, ease of management and lower total cost of ownership. The SAN market is expected to grow substantially as organizations embrace this emerging solution. According to the Gartner Group, an independent industry research company, more than 70% of shared storage in networked environments is projected to be reorganized into SANs by the year 2002. According to Dataquest, an independent research company, the SAN market is currently growing at a compound annual growth rate of 200%.

The simplest SAN configuration is a loop topology, which is similar to traditional SCSI-based distributed systems and interconnects multiple nodes over a shared Fibre Channel networking device, such as a hub. A

Fibre Channel hub can support up to 126 devices, but the available bandwidth is shared among all the devices, resulting in signal and performance degradation as the number of devices in the loop increases. In addition, loop topologies suffer from limited network management and fault isolation capabilities. For example, when a single device is added to the loop, it will cause the loop to reset, resulting in application disruption. The limitations of shared networks have been addressed in local and wide area network environments by the development of switching technologies that have yielded advancements in performance, scalability, flexibility and management at competitive costs. In order for the SAN model to become more widely adopted in data centers, today's enterprises must be able to connect any device on the network to any other device on the network, or any-to-any connectivity, without performance degradation in order to effectively leverage distributed computer storage systems, servers, workstations and other resources. Guaranteed reliability and availability are vital to the storage, processing and manipulation of business-critical data. Networks require dedicated connections operating at high performance levels to support large data transfer demands. Finally, data processing centers are characterized by a high degree of change that must be supported by a flexible network infrastructure.

THE BROCADE SOLUTION

Brocade is the leading provider of Fibre Channel SAN switching solutions. We combine advanced switching technologies with our Fibre Channel technology leadership and systems expertise to provide the Brocade Fabric, comprised of Fibre Channel switches, a proprietary switch operating system, management tools, management services and ready-to-deploy configurations. Our products provide an infrastructure backbone that allows our customers to concurrently run multiple applications across the SAN, reducing congestion of local and wide area networks. Our Brocade Fabric helps enterprises cost-effectively manage the growth in storage capacity, improve server-to-storage and server-to-server performance, and increase the size and scope of their SANs, while enabling data-intensive applications, such as reliable backup and restore and disaster recovery. Our solutions have the following key benefits:

Address the input/output bottleneck. Deployment of SANs based on our Brocade Fabric not only enhances point-to-point bandwidth with Fibre Channel connections, but helps solve the I/O bottleneck between data storage systems and servers. Our SilkWorm family of Fibre Channel switches delivers full-duplex 1 gigabit per second performance at every port. In addition, unlike hubs or other shared devices, our switches are designed to provide any-to-any connectivity and to maintain 1 gigabit per second performance per port as additional devices are added to the SAN. Our superior frame-forwarding capability provides end-users with rapid data retrieval and allows a greater number of user transactions.

Provide SAN scalability. Our modular Fibre Channel switches, supporting from two to 16 ports per switch, enable incremental growth by interconnecting or cascading multiple switches for hundreds of connections in a fully meshed configuration. Our Brocade Fabric enables companies to grow clusters of high performance servers or provide multiple servers with high bandwidth connections to multiple storage systems. Additionally, Fibre Channel allows connections up to 10 kilometers, enabling companies to interconnect separate SAN clusters or islands into a single SAN.

Enable SAN applications. The Brocade Fabric creates a SAN backbone for data-intensive applications, enabling organizations to solve complex problems in data processing centers. Our products allow all departments within an organization to share data storage resources despite operating within a computing environment that includes incompatible operating systems sharing storage resources. The Brocade Fabric allows highly flexible configurations and supports a wide range of data traffic, including high throughput and low latency processing. For example, high throughput applications, such as data backup and restore, and disaster recovery can be performed on the SAN, freeing up valuable bandwidth on the local and wide area network and eliminating the need for expensive backup servers. Additionally, companies utilizing the Brocade Fabric for their e-commerce and other low latency transaction processing applications can leverage hundreds of computer storage devices and servers.

Support a mission-critical data processing center. We have designed our solutions to provide high levels of resiliency and availability with maximum up time for business-critical, data-intensive applications. Our

switches have auto-configuration and reconfiguration capabilities that incorporate redundant and alternate data paths for frame forwarding, which enable our Brocade Fabric to be self-healing. They also support up to eight parallel links to other switches. As a result, any cable, port, switch or link failure can be isolated, providing a resilient solution. This increases the availability and up time of the data processing center.

Enhance SAN management. Our Brocade Fabric Operating System and our network management tools enable our customers to centrally manage storage systems and servers handling business-critical data. Our products deliver a rich set of SAN management information that can be accessed both locally and remotely. Data-intensive connections in the organization can be centrally managed to share resources with other points on the network. All of these factors combine to help organizations reduce the overall costs and increase the efficiency of their data network.

THE BROCADE STRATEGY

Our objective is to maintain our position as the leading provider of SAN switching solutions. The key elements of our strategy include the following:

Leverage our SAN switching market leadership. We believe we were the first company to provide a comprehensive Fibre Channel fabric solution and that we are the market leader based upon the number of switch ports shipped. We intend to capitalize on our first mover advantage and in-depth customer and product knowledge. We believe we are well positioned to anticipate the future requirements of the SAN marketplace.

Capitalize on leadership in Fibre Channel technologies and standards. We have been a leader in the development of Fibre Channel technologies and the implementation of ANSI Fibre Channel standards. Our technology efforts are led by some of the most widely recognized members of the Fibre Channel industry. In addition, our technical personnel have substantial expertise in storage, file system, routing algorithms and network management technologies. We have also provided major contributions to many of the ANSI Fibre Channel standards that have been developed to date. We believe that taking a continued proactive role in this expanding market will enable us to extend our leading market position.

Leverage core architecture. We are leveraging our core switching expertise, ASIC architectures, Brocade Fabric Operating System and Fibre Channel technology to expand our family of Silkworm products to address the expanding SAN market. We have been focusing on the workgroup, midrange, and enterprise segments of the SAN market, and intend to leverage our leadership position in these segments to broaden our reach into other segments of the SAN switch market as they emerge. We expect that the demand for SAN switching solutions in entry level applications will increase, particularly as Windows NT-based servers are increasingly used in data processing centers. We have recently introduced products designed to address the specific needs of organizations that use Windows NT-based servers in anticipation of this growth.

Continue to expand network of original equipment manufacturers and system integrators. We intend to continue to expand our relationships with key computer storage system and server original equipment manufacturers and system integrators, both domestically and abroad. Currently, our major original equipment manufacturer customers include Amdhal, Compaq Computer, CNT, Data General (a division of EMC Corporation), Dell Computer, IBM, Groupe Bull, McDATA Corporation (a division of EMC Corporation), NEC, Network Appliance, Sequent Computer Systems, SGI, Fujitsu/Siemens Computer Systems and StorageTek. These relationships allow us to leverage the systems and services capabilities of these industry-leading original equipment manufacturers. We have also recently entered into relationships with system integrators including Advanced Systems Group, Inc., Berkshire Computer Products, Inc., Ciprico, Comsat Technology, Inc., Cranel, dcVAST, DataDirect Networks, Hitachi Data Systems Canada, Integrated Systems Technologies, Inc., Kanatek Technologies Inc., Kingswell Computer Company, LSI Logic's MetaStor(R) Storage Solutions, Leitch Technology, Midrange Computer Solutions, Open Systems Solutions, Inc., PCC, RAID Power, Rorke, Stonebridge Technologies, StorNet Inc, Sysix Technologies, Tokyo Electron Ltd., Unique Digital, and XI0tech. We expect that our relationships with leading system integrators will allow us to penetrate the market opportunities by leveraging the reach of these distribution channels.

Develop strategic partnerships. We are building strategic relationships with Fibre Channel component and device vendors and storage management software companies. For example, in November 1999, we entered into a strategic relationship with Veritas Software Corporation to jointly develop technology for centralized management of SANs. By partnering with these organizations, we believe we can enhance SAN applications and interoperability, thereby accelerating the time to market and overall deployment and functionality of our products.

PRODUCTS

Brocade provides the SilkWorm family of Fibre Channel switches, which creates a switch interconnect, enabling any-to-any connectivity between storage devices and servers. SilkWorm switches can be used individually for server clustering or storage consolidation, or cascaded with other switches to form a powerful networking infrastructure, the Brocade Fabric. Brocade's software solutions provide network administrators with tools to manage the switches and the SAN. Brocade also provides extensive Fabric services, in order to optimize the Brocade Fabric for an enterprise's particular needs. Moreover, Brocade SOLUTIONware provides instructions to enterprises on implementing SANs.

SilkWorm Family of Switches

In March 1997, Brocade introduced the SilkWorm 1000 family of products, beginning with a configurable 16-port switch, used to connect servers to storage devices to create a SAN. In April 1998, Brocade introduced SilkWorm Express, an eight-port Fibre Channel switch.

In June 1999, Brocade introduced the SilkWorm 2000 product line that delivers improved reliability, availability, and serviceability. The three products introduced were the SilkWorm 2800, a 16-port fabric switch, the SilkWorm 2400, an 8-port fabric switch, and the SilkWorm 2100, an 8-port loop switch.

In November 1999, we announced the SilkWorm 2000 entry-level product line. This product line includes the SilkWorm 2010, a managed hub alternative and the SilkWorm 2040 and 2050.

The SilkWorm family of switches share a common platform designed to provide the following features and benefits:

- High throughput. Each port delivers a 1-gigabit per second, full-duplex data rate regardless of network connectivity.
- Hardware-based data path. SilkWorm reduces latency by eliminating software processing from the path of data frames.
- Management. SilkWorm supports customers' existing management solutions, such as local and wide area networks, SCSI tools and web tools.
- In-order delivery of data frames. SilkWorm guarantees that frames are delivered to a destination in the same order as received by the switch from the originator.
- Cut-through frame routing. Frames are sent without waiting for the entire frame or for a response back from its destination, thereby improving bandwidth utilization and minimizing transmission delays.
- Cascading. SilkWorm may be connected to as many other SilkWorm switches as there are available ports creating in a meshed topology, enabling hundreds of connections and large SANs.
- Flexible switch buffering. If the destination is busy, data frames are stored by a SilkWorm switch for only as long as is necessary, thereby moving data faster through the switch.
- Path selection. SilkWorm identifies failures automatically and immediately, and reroutes data to alternate paths, creating a highly resilient network.
- Registered state change notification. SilkWorm automatically detects changes in configuration and port status to enable quick corrective action.

- Quickloop software. Software that emulates a loop environment with the benefits of switching.
- Translative mode. Software that allows the intermixing of loop and fabric devices on the same SAN.
- Media independent. SilkWorm enables the SAN to support diverse media, including fiber optic connections up to 10 kilometers and copper connections.
- Auto-configuration. SilkWorm enhances scalability by automatically expanding the SAN as new devices are added or removed without interrupting the operation of the rest of the network. SilkWorm seamlessly incorporates more Brocade switches into the network, thereby increasing aggregate bandwidth as connectivity increases; network services automatically expand without additional system resources.

Brocade Fabric Operating System

The SilkWorm family of switches is supported by the Brocade Fabric Operating System. The Brocade Fabric Operating System provides the intelligence for the Brocade Fabric, provides services for the switch hardware, runs the value-added Brocade Fabric services such as name service, which is used to assist discovery of connected devices, monitors the status of the hardware and fabric and notifies the host operating system as devices are added to or removed from the Brocade Fabric.

The Brocade Fabric Operating System provides a common platform upon which system services can be built. The Brocade Fabric Operating System is layered with well-defined application interfaces, or APIs, that allow third parties, such as data storage and data backup software vendors, to write applications that leverage Brocade's Fabric Operating System. By incorporating API technology, these third party vendors can develop applications, thereby increasing the capabilities of the overall switch fabric solution.

Fabric Services

Fabric services are product features that increase the functionality of the SAN. Our current Brocade Fabric Services include zoning and multicasting.

Brocade Zoning is an add-on software product that allows the creation of multiple logical connectivity groups within a single SAN. By creating a zone, the SAN provides the network with benefits that would otherwise only be possible using multiple SANs. Through zoning, systems that have different operating environments, such as UNIX and Window NT, can be isolated from each other allowing both operating systems to co-exist on a single SAN. Zoning can be used to create functional areas in the fabric and designate closed user groups for greater security and control. Also, zoning facilitates time-sensitive functions, such as creating a temporary zone used to backup storage devices that are members of other zones. Brocade Zoning offers dynamic configuration and an unlimited number of zones. Finally, Brocade Zoning allows devices to be a member of more than one zone thereby increasing flexibility.

Brocade Multicasting enables up to 32 groups of devices to replicate data in a one-to-one method or in a one-to-many method. By accomplishing this replication through hardware, Brocade is able to maintain high throughput.

SOLUTIONware

Brocade's SOLUTIONware is a set of application notes that facilitates the implementation of SAN solutions incorporating products and applications from multiple vendors, including Brocade. These application notes include specific details including equipment requirements, software specifics, detailed installation instructions and tested application software. This enables original equipment manufacturers and system integrators to replicate high performance solutions. We have delivered over 15 SOLUTIONware application notes covering Brocade Tape Backup and Restore, storage consolidation and business continuance applications for heterogeneous environments.

Management Tools

Brocade Web Tools is an add-on software product that helps to remotely manage a SAN of our SilkWorm family of switches via the Internet or intranet. The information technology administrator can log onto a switch from a host with a java-based Web browser. From that switch, the administrator can monitor the status and performance of any switch in the SAN.

SALES AND MARKETING

Our sales and marketing strategy is focused on an indirect sales model executed through original equipment manufacturers and system integrators. Our distribution channels are supported by a sales and marketing organization comprised of managers, sales representatives and technical and administrative support personnel. Our marketing effort is focused on developing strategic partnerships and relationships with industry analysts, providing customer sales support, managing new product planning and supporting industry standard initiatives.

Original equipment manufacturers. We have established key relationships with storage systems and server original equipment manufacturers. Each original equipment manufacturer provides installation, service and technical support to its customers while we focus on high-level back-up support. In addition to maintaining and enhancing our relationships with our existing original equipment manufacturer customers, we intend to pursue relationships with additional original equipment manufacturers that may offer products or distribution channels that complement ours. We believe that these relationships allow us to leverage the systems and services capabilities of our original equipment manufacturers.

System integrators. We continue to develop our system integrator program and have established several relationships within this channel. Revenues from this channel have grown in excess of 10% in the fourth quarter of fiscal 1999 and we believe revenues from this channel may continue to increase significantly in the future. Each system integrator provides installation, service and technical support to its customers, while we focus on integration and technical back-up support. We intend to continue to develop relationships with system integrators who may offer products or distribution channels that complement ours.

We have entered into relationships with international distributors and integrators and plan to expand our international sales activities significantly. In fiscal 2000, we intend to focus on expanding our international sales activities in Western Europe and Japan.

CUSTOMERS

Our primary customers are original equipment manufacturers and system integrators. Currently, our major original equipment manufacturer customers include Amdhal, Compaq Computer, CNT, Data General (a division of EMC Corporation), Dell Computer, IBM, Groupe Bull, McDATA Corporation (a division of EMC Corporation), NEC, Network Appliance, Sequent Computer Systems, SGI, Fujitsu/Siemens Computer Systems and StorageTek. Our major system integrators including Advanced Systems Group, Inc., Berkshire Computer Products, Inc., Ciprico, Comsat Technology, Inc., Cranel, dcVAST, DataDirect Networks, Hitachi Data Systems Canada, Integrated Systems Technologies, Inc., Kanatek Technologies Inc., Kingswell Computer Company, LSI Logic's MetaStor(R) Storage Solutions, Leitch Technology, Midrange Computer Solutions, Open Systems Solutions, Inc., PCC, RAID Power, Rorke, Stonebridge Technologies, StorNet Inc, Sysix Technologies, Tokyo Electron Ltd., Unique Digital, and XI0tech.

Our revenue is derived primarily from sales of our SilkWorm family of products. In fiscal 1997, McData and Sequent each contributed over 10% of our total revenues for a combined total of 94% of total revenues. In fiscal 1998, these same two customers each contributed over 10% of total revenues for a combined total of 83% of total revenues. In fiscal 1999, Compaq, Data General, McData, and Sequent each accounted for 10% or more of total revenues for a combined total of 70%. The level of sales to any customer may vary from quarter to quarter. However, we expect that significant customer concentration will continue for the foreseeable future. The loss of any one of these customers, or a decrease in the level of sales to any one of these customers, could have a material adverse impact on Brocade's financial condition or results of operations.

CUSTOMER SERVICE AND SUPPORT

Our customer service and support organization provides technical support to our original equipment manufacturers and system integrators, enabling them to provide technical support to their end-users. We prepare our original equipment manufacturer and system integrator customers for product launch through a comprehensive training program. In addition, we employ systems engineers for pre- and post-sales support and technical support engineers for field support. Our original equipment manufacturers and system integrator customers provide primary technical support.

We have developed an extensive training course for our original equipment manufacturer and system integrator customers. The curriculum includes Fibre Channel architecture, SAN implementation and Brocade product training.

MANUFACTURING

We currently use a third-party contract manufacturer, Solectron, to manufacture our products. Solectron invoices Brocade based on prices and payment terms agreed to by both parties and set forth in purchase orders issued by Brocade. The pricing takes into account component costs, Solectron's manufacturing costs and margin requirements. Although we use Solectron for final turnkey product assembly, we maintain key component expertise internally. We design and develop the key components of our products, including ASICs and software, as well as certain details in the fabrication and enclosure of our products. In addition, we determine the components that are incorporated in our products and select the appropriate suppliers of the components.

Although we use standard parts and components for our products where possible, we currently purchase several key components used in the manufacture of our products from single or limited sources. Our principal single source components include ASICs, power supplies and chassis, and our principal limited source components include printed circuit boards and GBICs. In addition, we license certain software from Wind River Systems, Inc. that is incorporated into our Brocade Fabric Operating System.

TECHNOLOGY

Fibre Channel

Fibre Channel is an industry-standard, open protocol for server-to-storage and server-to-server connectivity and data-intensive transfers. Fibre Channel combines the high-speed I/O capabilities of a channel technology with the increased functionality of a networking technology to seamlessly connect and transfer data from one device to another.

Fibre Channel was designed for storage systems and is well suited for SANs. It offers a single network for both server clustering and shared storage. It accommodates both high throughput and low latency dependent traffic required for large block data transfers and inter-processor communication messages. We believe the following characteristics of Fibre Channel make it more suitable for data-intensive and storage related applications than either gigabit Ethernet or ATM, two widely used networking protocols:

- Fibre Channel has an industry standard interconnect rate of 1 gigabit per second per port that is expected to increase to 2 gigabits per second in 2000 as compared to gigabit Ethernet's, 1 gigabit per second and ATM's 622 megabits per second speeds;
- Fibre Channel is designed to transmit large packets of information and is therefore well-suited for data-intensive applications as compared to gigabit Ethernet and ATM, which use smaller packets and are designed for smaller but more frequent data transfers;
- Fibre Channel relies more on hardware than software during data transfers and therefore, is better suited to handle the higher speeds and low latency required during data transfers;
- In addition to supporting networking protocols including IP, Fibre Channel also supports I/O storage protocols like SCSI;

- Unlike gigabit Ethernet and ATM, which can lose or drop packets due to congestion, Fibre Channel manages packet flow to ensure delivery; and
- Fibre Channel relieves each port from the responsibility of station management and instead delegates that responsibility to the interconnect device. Therefore, each Fibre Channel port only has to manage a single point-to-point connection between itself and an interconnect device.

Silkworm Architecture

Brocade is focused on implementing Fibre Channel standards in the Brocade Fabric. We utilize a layered architecture to provide a high performance, flexible, and extensible solution. This architecture is comprised of media interfaces, a switching platform, the Brocade Fabric Operating System and value-added services.

- Media interfaces. Media interfaces comprise the lowest layer of our architecture. Fibre Channel standards specify numerous media interfaces. The Silkworm architecture supports removable gigabit copper interfaces up to 13 meters, short wavelength laser interfaces up to 500 meters and long wavelength laser interfaces up to 10 kilometers. Removable media interfaces provide flexible product configurations and simple product maintenance.
- Switching platform. Our Silkworm products are based on a central memory time multiplexed switching architecture. The architecture is implemented through the use of highly integrated ASICs. The use of ASIC technology is required to provide the high bandwidth and low latency necessary for Fibre Channel switching to cater to both high throughput and low latency data transfer. The switching architecture is non-blocking and utilizes cut through routing techniques to achieve low latency. The data path of the architecture is completely implemented in hardware and the CPU and operating system are not in the data path.
- Brocade Fabric Operating System. The architecture of the Brocade Fabric Operating System is highly structured, modular, hardware independent and layered with well-defined interfaces. This extensible architecture is easy to maintain and upgrade with new features. The base operating system is a UNIX-like realtime operating system with extensive libraries and services. The layers of the Brocade Fabric Operating System include hardware drivers, a board level support package, a Fibre Channel layer, services and application program interfaces.
- Value added services. Value-added services comprise the top layer of our architecture. Brocade value-added services include Brocade Zoning, and multicasting. The Brocade value-added services run on top of the Brocade Fabric Operating System through well-defined application program interfaces.

RESEARCH AND DEVELOPMENT

We believe that our future success depends on our ability to continue to enhance our existing products and to develop new products that maintain technological competitiveness. We focus our product development activities on solving the needs of SAN users. We work closely with our original equipment manufacturers and system integrators to monitor changes in the market place. We design our products around current industry standards and will continue to support emerging standards that are consistent with our product strategy. During fiscal 1997, 1998 and 1999 our research and development expenses were \$7.7 million, \$14.7 million and \$15.3 million, respectively.

Our products have been designed around a core system architecture, which facilitates a relatively short product design and development cycle and reduces the time to market for new products and features. We intend to continue to leverage our architecture to develop and introduce additional products and enhancements in the future.

COMPETITION

Although the competitive environment in the Fibre Channel switching market has yet to develop fully, we anticipate that the current and potential market for our products will be highly competitive, continually

evolving and subject to rapid technological change. New SAN products are being introduced by major server and storage providers, and existing products will be continually enhanced. We currently face competition from other manufacturers of SAN switches, including Ancor Communications, Inc. We also face competition from manufacturers of hubs, including Gadzoox Networks, Inc. and Vixel Corporation. In addition, as the market for SAN products grows, we may face competition from traditional networking companies and other manufacturers of networking equipment who may enter the SAN market with their own switching products. It is also possible that customers could develop and introduce products competitive with our product offerings. We believe the competitive factors in this market segment include product performance and features, product reliability, price, ability to meet delivery schedules, customer service and technical support.

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

INTELLECTUAL PROPERTY

We rely on a combination of patents, copyrights, trademarks, and trade secrets, as well as confidentiality agreements and other contractual restrictions with employees and third parties, to establish and protect our proprietary rights. Despite these precautions, there can be no assurance that the measures we undertake will be adequate to protect our proprietary technology, or that they will preclude competitors from independently developing products with functionality or features similar to our products. There can be no assurance that the precautions we take will prevent misappropriation or infringement of our technology. We currently have 2 design patents and 8 pending patent applications in the United States, 5 utility applications and 3 provisional applications, with respect to our technology. However, it is possible that patents may not be issued for these applications. Our issued patents may not adequately protect our technology from infringement or prevent others from claiming that our technology infringes that of third parties. Failure to protect our intellectual property could materially harm our business. In addition, our competitors may independently develop similar or superior technology. It is possible that litigation may be necessary in the future to enforce our intellectual property rights, to protect our trade secrets or to determine the validity and scope of the proprietary rights of others. Litigation could result in substantial costs and diversion of our resources and could materially harm our business.

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

BACKLOG

Brocade's order backlog as of October 30, 1999 was approximately \$44 million. Sales of Brocade's products are generally made pursuant to standard purchase orders that are cancelable without significant penalties. In addition, purchase orders are subject to price renegotiations and to changes in quantities of products and delivery schedules in order to reflect changes in customers' requirements and manufacturing availability. As a result, a portion of backlog at any given time may never be realized by Brocade. Brocade's business is characterized by short lead time orders and quick delivery schedules. In addition, Brocade's actual shipments depend on the manufacturing capacity of Brocade's suppliers and the availability of products from such suppliers. As a result of the foregoing factors, Brocade does not believe that backlog at any given time is a meaningful indicator of future sales.

EMPLOYEES

As of October 30, 1999, we had 182 full-time employees. None of our employees are represented by a labor union. We have not experienced any work stoppages and consider our relations with our employees to be good.

ITEM 2. PROPERTIES

Our principal administrative, sales and marketing, education, customer support and research and development facilities are located in a single office building in San Jose, California. We currently occupy approximately 35,000 square feet of office space in the San Jose facility under the terms of a lease that expires in November 2000. We also lease office space for sales and marketing in Nashua, New Hampshire.

In December 1999, Brocade entered into an agreement to lease approximately 210,000 square feet of office, laboratory, and administrative space in San Jose, California for its corporate headquarters. The term of the lease agreement is September 1, 2000 through August 31, 2010, and represents a lease commitment of \$6.2 million per year to Brocade. Brocade intends to occupy the space in September 2000 and sub-lease any excess space.

ITEM 3. LEGAL PROCEEDINGS

Brocade's former contract manufacturer filed a suit against Brocade, alleging that Brocade is liable for breaching certain contracts with the contract manufacturer. The suit claimed damages in excess of \$3.0 million plus interest, an unspecified amount of consequential and incidental damages, costs and attorneys' fees. Brocade filed a cross complaint against the contract manufacturer for various credits Brocade claimed on its account with the contract manufacturer. The suit was settled in December 1999. The settlement of this litigation did not have a material impact on Brocade's financial statements.

Brocade is subject to various claims that arise in the normal course of business. In the opinion of management, the ultimate disposition of these claims will not have a material adverse effect on the financial position of Brocade.

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

Not Applicable

EXECUTIVE OFFICERS AND DIRECTORS

The following table sets forth certain information regarding our executive officers and directors as of December 30, 1999:

NAME	AGE	POSITION
-----	---	-----
Gregory L. Reyes.....	37	President, Chief Executive Officer and Director
Paul R. Bonderson, Jr.	47	Vice President, Engineering
Michael J. Byrd.....	39	Vice President, Finance and Chief Financial Officer
Kumar Malavalli.....	56	Vice President, Technology
Victor M. Rinkle.....	46	Vice President, Operations
Charles W. Smith.....	38	Vice President, Worldwide Sales
Peter J. Tarrant.....	39	Vice President, Marketing and Business Development
Jean Zorzy.....	47	Vice President, Program Management
Seth D. Neiman(1).....	45	Chairman of the Board
Neal Dempsey(1)(2).....	58	Director
Mark Leslie(2).....	53	Director
Larry W. Sonsini.....	58	Director

(1) Member of audit committee.

(2) Member of compensation committee.

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

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

Michael J. Byrd joined Brocade in April 1999 and became our Vice President, Finance and Chief Financial Officer effective May 3, 1999. From February 1994 to April 1999, Mr. Byrd served as Vice President, Finance and Chief Financial Officer of Maxim Integrated Products, Inc., a designer, developer and manufacturer of linear and mixed-signal integrated circuits. From 1982 to 1994, Mr. Byrd held various positions at Ernst & Young, most recently as Partner. Mr. Byrd received a B.S. in Business Administration from California Polytechnic State University, San Luis Obispo.

Kumar Malavalli co-founded Brocade in August 1995 and has served as our Vice President, Technology since October 1995. From July 1993 to October 1995, Mr. Malavalli served as Manager of Architecture and Standards in the Canadian Network Operation at Hewlett-Packard Company. Mr. Malavalli was a member of the industry team that originated the Fibre Channel architecture, has helped guide the technology through the industry standards committees and currently chairs the ANSI T11 Technical Committee, which oversees all standards related to the development of Fibre Channel. From 1993 to 1999, Mr. Malavalli was the chairman of the Fibre Channel Association Technical Committee. Mr. Malavalli received both a B.S. in Physics and Mathematics and a B.S. in Electrical Engineering from the University of Mysore, India.

Victor M. Rinkle has served as our Vice President, Operations since January 1998. From April 1989 to December 1997, Mr. Rinkle held several managerial positions at Apple Computer, Inc., most recently as Vice

President, Global Supply Base Management. Mr. Rinkle received a B.B.A. in Marketing and Production Logistics from the University of Houston.

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

Peter J. Tarrant has served as our Vice President, Marketing and Business Development since December 1997. From October 1994 to December 1997, Mr. Tarrant served as Vice President, Product Management and Vice President, Business Development at Bay Networks, Inc., a computer networking company. From April 1990 to October 1994, Mr. Tarrant held several product management positions at SynOptics, a predecessor of Bay Networks, Inc. most recently as Director, Product Management. Mr. Tarrant received a B.Sc. in Electronic Engineering from the University of Southampton, United Kingdom.

Jean E. Zorzy has served as our Vice President, Program Management since May 1999. From February 1998 to May 1999, Ms. Zorzy served as our Director of Supplier Management. From July 1986 to February 1998, Ms. Zorzy held several positions at Apple Computer, most recently as Director, External Operations. Ms. Zorzy received a B.A. in Psychology from American University in Washington, D.C. and an M.B.A. from San Jose State University.

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

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

Mark Leslie has served as a director of Brocade since January 1999. Mr. Leslie has served as the Chief Executive Officer and a member of the board of directors of VERITAS Software Corporation, a storage management software company, since February 1990. Mr. Leslie also serves on the board of directors of Versant Object Technology, as well as on the board of directors of a private company. Mr. Leslie received a B.A. in Physics and Mathematics from New York University.

Larry W. Sonsini has served as a director of Brocade since January 1999. Mr. Sonsini has been a partner of the law firm of Wilson Sonsini Goodrich & Rosati, P.C., since 1973 and is currently the Chairman of the Executive Committee of the firm. Mr. Sonsini serves on numerous advisory boards and committees, including the SEC's Advisory Committee on Capital Formation and Regulatory Processes, the ABA Committee on Federal Regulation of Securities and the Legal Advisory Committee to the Board of Governors, New York Stock Exchange. Mr. Sonsini serves on the boards of directors of Novell, Inc., Lattice Semiconductor Corporation and Pixar Animation Studios, as well as on the boards of directors of several private companies. Mr. Sonsini received an A.B. from the University of California, Berkeley and an L.L.B. from Boalt Hall School of Law, University of California, Berkeley.

PART II

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

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

We currently expect to retain future earnings, if any, for use in the operation and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future. At October 30, 1999, there were approximately 292 stockholders of record of Brocade's common stock.

ITEM 6. SELECTED FINANCIAL DATA

The following selected financial data should be read in conjunction with our financial statements and related notes, "Management's Discussion and Analysis of Financial Condition and Results of Operations," and other financial information appearing elsewhere in this Annual Report. The statement of operations data set forth below for each of the years in the three-year period ended October 31, 1999 and the balance sheet data as of October 31, 1998 and 1999 are derived from, and qualified by reference to, our audited financial statements appearing elsewhere in this Annual Report. The statement of operations data for the period from inception on August 24, 1995 to October 31, 1995 and for the year ended October 31, 1996 and the balance sheet data as of October 31, 1995, 1996 and 1997 are derived from audited financial statements not included herein.

	YEAR ENDED OCTOBER 31,				
	1995	1996	1997	1998	1999
	(IN THOUSANDS, EXCEPT PER SHARE DATA)				
STATEMENT OF OPERATIONS DATA:					
Net revenues.....	\$ --	\$ --	\$ 8,482	\$ 24,246	\$68,692
Cost of revenues.....	--	--	6,682	15,759	33,497
Gross margin.....	--	--	1,800	8,487	35,195
Operating expenses:					
Research and development.....	124	3,091	7,666	14,744	15,267
Sales and marketing.....	--	152	2,112	5,154	13,288
General and administrative.....	52	575	1,464	3,813	3,849
Amortization of deferred compensation.....	--	--	--	7	1,937
Total operating expenses.....	176	3,818	11,242	23,718	34,341
Income (loss) from operations.....	(176)	(3,818)	(9,442)	(15,231)	854
Interest income (expense), net.....	10	(116)	(177)	120	1,737
Income (loss) before provision for income taxes.....	(166)	(3,934)	(9,619)	(15,111)	2,591
Provision for income taxes.....	--	--	--	--	106
Net income (loss).....	\$(166)	\$(3,934)	\$(9,619)	\$(15,111)	\$ 2,485
Basic net income (loss) per share.....	\$ --	\$ (4.75)	\$ (2.41)	\$ (2.22)	\$ 0.10
Diluted net income (loss) per share.....	\$ --	\$ (4.75)	\$ (2.41)	\$ (2.22)	\$ 0.05
Shares used in computing basic net income (loss) per share.....	--	828	3,994	6,800	26,094
Shares used in computing diluted net income (loss) per share.....	--	828	3,994	6,800	51,146
Pro forma basic net income (loss) per share (unaudited).....				\$ (0.42)	\$ 0.06
Pro forma diluted net income (loss) per share (unaudited).....				\$ (0.42)	\$ 0.05
Shares used in computing pro forma basic net income (loss) per share (unaudited).....				35,830	43,074
Shares used in computing pro forma diluted net income (loss) per share (unaudited).....				35,830	51,146

AS OF OCTOBER 31,

	1995	1996	1997	1998	1999
(IN THOUSANDS)					
BALANCE SHEET DATA:					
Cash, cash equivalents and short-term investments.....	\$1,168	\$ 700	\$ 18,472	\$ 10,420	\$ 89,305
Working capital.....	922	104	15,334	5,276	79,295
Total assets.....	1,549	2,605	26,100	21,301	117,280
Long-term portion of debt and capital lease obligations.....	--	874	1,954	2,209	42
Redeemable convertible preferred stock.....	1,411	4,613	30,359	35,261	--
Total stockholders' equity (deficit).....	(166)	(3,957)	(13,458)	(27,355)	84,206

Note: all references to earnings per share and the number of common shares have been retroactively restated to reflect a two-for-one stock split, effected on December 3, 1999.

Note: Brocade changed its fiscal year end to the last Saturday in October beginning with the fiscal year ended October 30, 1999. For presentation purposes, our fiscal year end is referred to as October 31, 1999. This change did not have a material impact on Brocade's financial statements.

	FIRST QUARTER	SECOND QUARTER	THIRD QUARTER	FOURTH QUARTER
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)				
QUARTERLY DATA:				
YEAR ENDED OCTOBER 31, 1998				
Net revenues.....	\$ 7,850	\$ 6,420	\$ 4,569	\$ 5,407
Gross margin.....	3,153	2,748	218	2,368
Loss from operations.....	(1,398)	(2,635)	(8,221)	(2,977)
Net loss.....	\$(1,355)	\$(2,515)	\$(8,107)	\$(3,134)
Per share amounts:				
Basic.....	\$ (0.26)	\$ (0.40)	\$ (1.23)	\$ (0.43)
Diluted.....	\$ (0.26)	\$ (0.40)	\$ (1.23)	\$ (0.43)
Shares used in computing per share amounts:				
Basic.....	5,140	6,284	6,616	7,284
Diluted.....	5,140	6,284	6,616	7,284
Stock prices:				
High.....	N/A	N/A	N/A	N/A
Low.....	N/A	N/A	N/A	N/A
YEAR ENDED OCTOBER 31, 1999				
Net revenues.....	\$ 8,007	\$10,540	\$20,051	\$30,094
Gross margin.....	4,686	5,103	10,130	15,276
Income (loss) from operations.....	(1,846)	(877)	1,011	2,566
Net income (loss).....	(1,839)	(848)	1,611	3,561
Per share amounts:				
Basic.....	\$ (0.21)	\$ (0.08)	\$ 0.05	\$ 0.07
Diluted.....	\$ (0.21)	\$ (0.08)	\$ 0.03	\$ 0.06
Shares used in computing per share amounts:				
Basic.....	8,698	10,330	35,672	49,672
Diluted.....	8,698	10,330	55,014	58,282
Stock prices:				
High.....	N/A	N/A	\$ 64.50	\$142.50
Low.....	N/A	N/A	\$ 22.63	49.09

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

The following discussion should be read in conjunction with the selected financial data in Item 6 of this Annual Report and Brocade's financial statements and notes thereto in Item 8 of this annual report.

NOTE REGARDING FORWARD-LOOKING STATEMENTS

This discussion contains forward-looking statements that relate to future events or our future financial performance. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "intend," "potential" or "continue" or the negative of such terms or other comparable terminology. These statements are only predictions. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including the risks outlined under "Risk Factors" and elsewhere in this annual report. All forward-looking statements included in this document are based on information available to Brocade on the date hereof. Brocade assumes no obligation to update any such forward-looking statements.

OVERVIEW

Brocade is a leading provider of switching solutions for Storage Area Networks ("SANs"). We sell our SAN switching solutions through leading storage systems and server original equipment manufacturers, including Amdhal, Compaq Computer, CNT, Data General (a division of EMC Corporation), Dell Computer, IBM, Groupe Bull, McDATA Corporation (a division of EMC Corporation), NEC, Network Appliance, Sequent Computer Systems, SGI, Fujitsu/Siemens Computer Systems and StorageTek and through system integrators. These original equipment manufacturers and our system integrator customers combine our switching solutions with other system elements and services for enterprise data centers.

Our revenue is derived primarily from sales of our SilkWorm family of products. In fiscal 1997, McData and Sequent each contributed over 10% of our total revenues for a combined total of 94% of total revenues. In fiscal 1998, these same two customers each contributed over 10% of total revenues for a combined total of 83% of total revenues. In fiscal 1999, Compaq, Data General, McData, and Sequent each accounted for 10% or more of total revenues for a combined total of 70%. The level of sales to any customer may vary from quarter to quarter. However, we expect that significant customer concentration will continue for the foreseeable future. The loss of any one of these customers, or a decrease in the level of sales to any one of these customers, could have a material adverse impact on Brocade's financial condition or results of operations.

As noted above, we currently sell a large percentage of our products through several major original equipment manufacturers. The initial evaluation and product qualification cycle with original equipment manufacturers typically takes six to twelve months and includes technical evaluation, integration, testing, product launch planning and execution. Our sales strategy also includes recruiting system integrators with a Fortune 500 data center presence and the technical resources to design, implement and support SANs. To date, substantially all of our sales have been in the United States. However, we have launched sales and marketing efforts in Western Europe and Japan.

Revenue is recognized when products are shipped to customers, unless at the time of shipment product returns cannot be estimated or significant support services are required to successfully launch the customer's products. As of October 31, 1999, several of our customers were implementing SAN solutions, including our product, for their end-users for the first time. In addition, several customers were implementing our new SilkWorm 2000 family of products for the first time. Given the recent adoption of the SAN model and Brocade's solution and because substantial Brocade services are required to support the customer's product launches, the revenue related to shipments to these customers has been deferred pending successful customer product launches. The deferred revenue will be recognized on a customer-by-customer basis as each customer successfully completes its product launch. Similarly, revenue is deferred for new products that have not

completed the beta test phase. As of October 31, 1999, \$7.7 million of revenue was deferred and consisted principally of revenue associated with shipments of our new SilkWorm 2000 family of products made in the fourth quarter of fiscal 1999. It is expected that this deferred revenue will be recognized in the first and second quarters of fiscal year 2000 as customers begin volume shipments of these solutions that incorporate the Brocade SilkWorm 2000 family of products. We believe that, as the SAN market matures, this revenue deferral method for new customers may not be necessary.

Between fiscal 1998 and fiscal 1999 our average unit-selling price decreased. We expect continued declines in our average unit selling price due to anticipated increases in per customer sales volume, the impact of competitive pricing pressures and new product introductions. However, in the near future, we do not anticipate that our gross margins will be affected by declines in average unit selling prices due to anticipated product cost reductions.

In July 1998, we outsourced our manufacturing and the majority of our supply chain management operations. Accordingly, a significant portion of our cost of revenues consists of payments to our contract manufacturer, Soletron Corporation. We conduct quality assurance, manufacturing engineering, documentation control and repairs at our facility in San Jose, California.

Research and development expenses consist primarily of salaries and related personnel expenses, fees paid to consultants and outside service providers, prototyping expenses related to the design, development, testing and enhancements of our ASICs and software and the costs of computer support services. We believe that continued investment in research and development is critical to our strategic product and cost-reduction objectives. As a result, we expect these expenses to increase in absolute dollars in the future.

Selling and marketing expenses consist primarily of salaries, commissions and related expenses for personnel engaged in marketing, sales and customer engineering support functions, as well as costs associated with promotional and travel expenses. We believe that continued investment in sales and marketing is critical to the success of our strategy to expand our relationships with leading original equipment manufacturers, to expand our presence in the system integration channel, and to maintaining our leadership position in the SAN market. As a result, we expect these expenses to increase in absolute dollars in the future.

General and administrative expenses consist primarily of salaries and related expenses for executive, finance and human resources personnel, recruiting expenses, professional fees and other corporate expenses. We expect general and administrative expenses to increase in absolute dollars as we add personnel and incur additional costs related to the growth of our business.

In connection with the grant of certain stock options to employees, we recorded deferred compensation of \$307,000 and \$5.1 million during fiscal 1998 and 1999, respectively, representing the difference between the deemed value of our common stock for accounting purposes and the option exercise price of these options at the date of grant. Deferred compensation is presented as a reduction of stockholders' equity and amortized ratably over the vesting period of the applicable options. We amortized \$1.9 million of deferred compensation during the year ended October 31, 1999. We will expense the balance ratably over the remainder of the vesting period of the options. See note 7 to our financial statements.

As of October 31, 1999, we had operating loss carryforwards of approximately \$44.0 million for federal income tax purposes and \$14.7 million for state tax purposes. The federal net operating loss carryforwards expire on various dates between 2010 and 2019, and the state net operating loss carryforwards will begin to expire in 2003. We have provided a full valuation allowance against our deferred tax assets, consisting primarily of net operating loss carryforwards, because of the uncertainty regarding their realization.

RESULTS OF OPERATIONS

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

	YEAR ENDED OCTOBER 31,		
	1997	1998	1999
Net revenues.....	100%	100%	100%
Cost of revenues.....	79	65	49
Gross margin.....	21	35	51
Operating expenses:			
Research and development.....	90	61	22
Sales and marketing.....	25	21	19
General and administrative.....	17	16	6
Amortization of deferred compensation.....	--	--	3
Total operating expenses.....	132	98	50
Income (loss) from operations.....	(111)	(63)	1
Interest income (expense), net.....	(2)	1	3
Income (loss) before provision for income taxes.....	(113)	(62)	4
Provision for income taxes.....	--	--	--
Net income (loss).....	(113)%	(62)%	4%

Revenues. We shipped our first commercial product in the second quarter of fiscal 1997, generating revenues of \$8.5 million for the year ended October 31, 1997. Net revenues increased by 185% to \$24.2 million in fiscal 1998 and by 183% to \$68.7 million in fiscal 1999. The increase in net revenues from fiscal 1997 to fiscal 1998 reflects an increase in sales to a significant original equipment manufacturer customer and the introduction of the SilkWorm Express product. The increase in net revenues from fiscal 1998 to fiscal 1999 was due to increased unit shipments of our SilkWorm 1000 family of products to an increasing customer base, an increase in sales to several significant original equipment manufacturer customers and increased sales in the system integrator channel. Net revenues for the year ended October 31, 1999 exclude \$7.7 million in deferred revenue associated with shipments to new customers and shipments of our new SilkWorm 2000 family of products. In fiscal 1999, revenues from four customers accounted for 70% of total net revenues. The level of sales to any customer may vary from quarter to quarter; however, we expect that significant customer concentration will continue for the foreseeable future.

Gross margin. Gross margin increased from \$1.8 million or 21.3% of net revenues in fiscal 1997, to \$8.5 million or 35.0% in fiscal 1998, and to \$35.2 million or 51.2% in fiscal 1999. The increase from fiscal 1997 to fiscal 1998 was due to lower component and manufacturing costs, and the allocation of fixed manufacturing costs over a greater revenue base. In addition, beginning in fiscal 1998, gross margins increased as a result of the decision to outsource all manufacturing activities during the year. The increase in gross margin from fiscal 1998 to fiscal 1999 was due to lower component and manufacturing costs and the allocation of fixed manufacturing costs over a greater revenue base. In addition, for fiscal 1998, gross margin was adversely affected by the write-off of obsolete inventory and the write-off of certain inventory and equipment related to a change in contract manufacturers.

Research and development expenses. Research and development expenses increased from \$7.7 million in fiscal 1997, to \$14.7 million in fiscal 1998 and to \$15.3 million in fiscal 1999. These increases reflect significant research and development efforts required to bring the SilkWorm family of products to the marketplace. The increase in fiscal 1998 expenses also reflects restructuring costs associated with the cancellation of new product development and simulation projects.

Sales and marketing expenses. Sales and marketing expenses increased from \$2.1 million in fiscal 1997, to \$5.2 million in fiscal 1998, and to \$13.3 million in fiscal 1999. The increases reflect the hiring of additional sales and marketing personnel and increased direct selling expenses associated with increased revenues.

General and administrative expenses. General and administrative expenses increased from \$1.5 million for fiscal 1997, to \$3.8 million for fiscal 1998 and fiscal 1999. The increase from fiscal 1997 to fiscal 1998 was primarily due to increased staffing and associated expenses necessary to manage and support our increased scale of operations. Fiscal 1998 expenses were also affected by costs related to a business restructuring which totaled \$1.2 million, primarily related to the termination of employees. Fiscal 1999 expenses reflect costs associated with increased staffing and other expenses necessary to manage and support our increased scale of operations.

Amortization of deferred compensation. During fiscal 1998 and 1999 we recorded deferred compensation of \$307,000 and \$5.1 million, respectively, in connection with stock option grants. Deferred compensation is amortized over vesting periods of the applicable options, resulting in amortization expense of \$7,000 and \$1.9 million in fiscal 1998 and 1999, respectively.

Interest income, net. Net interest income increased from \$120,000 in fiscal year 1998 to \$1.7 million in fiscal 1999 due to interest earned on the funds associated with the closing of our initial public offering in May 1999.

LIQUIDITY AND CAPITAL RESOURCES

We have funded our operations to date primarily through the sale of preferred stock, capital equipment lease lines, bank debt and, in May 1999, we raised \$66.0 million in our initial public offering. Our principal sources of liquidity as of October 31, 1999 consisted of \$89.3 million in cash, cash equivalents and short-term investments.

During fiscal 1997, cash used in operating activities was \$7.3 million compared to \$11.6 million in fiscal 1998. In fiscal 1999, we generated \$16.5 million in cash from operations. The increase in cash used in operations in fiscal 1998 reflects the increased working capital required to fund expanding operations and increases in inventories and accounts receivable. The cash provided by operating activities in fiscal 1999 reflects net income of \$2.5 million in fiscal 1999 compared to a net loss of \$15.1 million in fiscal 1998, plus favorable changes in the balances of operating assets and liabilities.

Net cash provided by investing activities for fiscal 1998 was \$12.1 million compared to net cash used in investing activities of \$19.3 million for fiscal 1997. The period to period change was due mainly to sales of short-term investments during fiscal 1998. Net cash used in investing activities for fiscal 1999 was \$67.1 million compared to net cash provided by investing activities of \$12.1 million for fiscal 1998. The period to period change was due mainly to the purchases of short-term investments during fiscal 1999.

Net cash provided by financing activities was \$28.5 million, \$7.3 million and \$65.7 million for fiscal 1997, 1998 and 1999, respectively. The primary source of cash generated from financing for fiscal 1997 related to the issuance of redeemable convertible preferred stock and warrants. For fiscal 1998, the primary source of cash generation from financing related to the issuance of redeemable convertible preferred stock and warrants, proceeds from the issuance of notes payable, and borrowings under a credit facility. During fiscal 1999, the primary source of cash generation from financing activities was the sale of common stock in our initial public offering.

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

In December 1999, Brocade entered into an agreement to lease approximately 210,000 square feet of office, laboratory, and administrative space in San Jose, California. The term of the lease agreement is September 1, 2000 through August 31, 2010, and represents a lease commitment of \$6.2 million per year to Brocade. Brocade intends to occupy the space in September 2000 and sub-lease any excess space. In conjunction with entering into the lease agreement, Brocade signed an unconditional, irrevocable letter of credit for \$6.2 million as security for the lease. In connection with our occupation of this building, Brocade intends to make significant tenant improvement. Brocade intends to finance these tenant improvements and the lease commitment with internally generated funds.

YEAR 2000 COMPLIANCE

Impact of the year 2000 computer problem. The year 2000 computer problem refers to the potential for system and processing failures of date-related data as a result of computer-controlled systems using two digits rather than four to define the applicable year. For example, computer programs that have time-sensitive software may recognize a date represented as "00" as the year 1900 rather than the year 2000. This could result in a system failure or miscalculations causing disruptions of operations, including among other things, a temporary inability to process transactions, send invoices, or engage in similar normal business activities.

To date, we have not experienced any year 2000 issues with any of our internal systems or our products, and we do not expect to experience any in the future. To date, we have not experienced any year 2000 issues related to any of our key third party suppliers and customers nor do we expect to experience any in the future. Costs associated with remediating our internal systems were not material.

RECENT ACCOUNTING PRONOUNCEMENTS

In December 1998, the AICPA issued Statement of Position 98-9, "Modification of SOP 97-2, Software Revenue Recognition, With Respect to Certain Transactions," ("SOP 98-9"). SOP 98-9 amends SOP 97-2 and SOP 98-4 by extending the deferral of the application of certain provisions of SOP 97-2 amended by SOP 98-4 through fiscal years beginning on or before March 15, 1999. All other provisions of SOP 98-9 are effective for transactions entered into in fiscal years beginning after March 15, 1999. Brocade has not had significant software sales to date and management does not expect the adoption of SOP 98-9 to have a significant effect on the financial condition or results of operations.

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

RISK FACTORS

WE HAVE AN ACCUMULATED DEFICIT OF \$26.3 MILLION AND MAY NOT MAINTAIN PROFITABILITY

We have incurred significant losses since our inception. As a result, as of October 31, 1999, we had an accumulated deficit of \$26.3 million. Although our revenues have grown in recent quarters, and we achieved profitability in our third and fourth quarters of fiscal 1999, we cannot be certain that we will be able to sustain these growth rates or that we will realize sufficient revenues to maintain profitability. We expect to incur significant product development, sales and marketing and administrative expenses and, as a result, we will need to generate significant revenues to achieve and maintain profitability.

In addition, we have a limited operating history. Therefore, we cannot forecast future operating results based on our historical results. We plan our operating expenses based in part on future revenue projections. Our ability to accurately forecast our quarterly revenue is limited for the reasons discussed below in "-- We Expect Our Quarterly Revenues and Operating Results to Fluctuate for a Number of Reasons Which Could Cause Our Stock Price to Fluctuate." Moreover, most of our expenses are fixed in the short-term or incurred in advance of receipt of corresponding revenue. As a result, we may not be able to decrease our spending to

offset any unexpected shortfall in our revenues. If this were to occur, we would expect to incur significant losses.

WE EXPECT OUR QUARTERLY REVENUES AND OPERATING RESULTS TO FLUCTUATE FOR A NUMBER OF REASONS WHICH COULD CAUSE OUR STOCK PRICE TO FLUCTUATE

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

- fluctuations in demand for our SilkWorm family of products and services;
- the timing of customer orders and product implementations, particularly large orders from and product implementations of our original equipment manufacturer customers;
- our ability to develop, introduce, ship and support new products and product enhancements;
- announcements and new product introductions by our competitors;
- the expected decline in the prices at which we can sell our SilkWorm family of products to our customers;
- our ability to obtain sufficient supplies of sole or limited sourced components, including application specific integrated circuits, or ASICs, gigabit interface converters, or GBICs, and power supplies, for our SilkWorm family of products;
- increases in the prices of the components we purchase;
- our ability to attain and maintain production volumes and quality levels for our SilkWorm family of products;
- the mix of our SilkWorm and SilkWorm Express switches sold and the mix of distribution channels through which they are sold;
- increased expenses, particularly in connection with our strategy to continue to expand our relationships with key original equipment manufacturers and system integrators;
- widespread adoption of SANs as an alternative to existing data storage and management systems;
- decisions by end-users to reallocate their information resources to other purposes, including year 2000 preparedness; and
- deferrals of customer orders in anticipation of new products, services or product enhancements introduced by us or our competitors.

Accordingly, you should not rely on the results of any past periods as an indication of our future performance. It is likely that in some future period, our operating results may be below expectations of public market analysts or investors. If this occurs, our stock price may drop.

OUR SUCCESS IS DEPENDENT UPON THE DEVELOPMENT OF THE EMERGING MARKET FOR SANs AND SAN SWITCHING PRODUCTS

Our SilkWorm family of Fibre Channel switching products is used exclusively in storage area networks, or SANs. Accordingly, widespread adoption of SANs as an integral part of data-intensive enterprise computing environments is critical to our future success. In addition, our success depends upon market acceptance of our SAN switching solutions as an alternative to the use of hubs or other interconnect devices in SANs. The markets for SANs and SAN switching products have only recently begun to develop and are rapidly evolving. Because these markets are new, it is difficult to predict their potential size or future growth rate. In addition, SANs are often implemented in connection with deployment of new storage systems and servers and we are therefore dependent to some extent on this market. Potential end-user customers who have invested substantial resources in their existing data storage and management systems may be reluctant or slow

to adopt a new approach, like SANs. Our success in generating revenue in these emerging markets will depend, among other things, on our ability to educate potential original equipment manufacturers and system integrator customers, as well as potential end-users, about the benefits of SANs and SAN switching technology and our ability to maintain and enhance our relationships with leading original equipment manufacturers and system integrators. In addition, our products are designed to conform to the Fibre Channel interconnect protocol and certain other industry standards. Some of these standards may not be widely adopted, and competing standards may emerge that will be preferred by original equipment manufacturers or end-users.

WE CURRENTLY ONLY OFFER OUR SILKWORM PRODUCT FAMILY AND MUST DEVELOP NEW AND ENHANCED PRODUCTS THAT ACHIEVE WIDESPREAD MARKET ACCEPTANCE

We currently derive substantially all of our revenues from sales of our SilkWorm family of products. We expect that revenue from this product family will continue to account for a substantial portion of our revenues for the foreseeable future. Therefore, widespread market acceptance of these products is critical to our future success. Some of our products have been only recently introduced and therefore, the demand and market acceptance of our products is uncertain. Factors that may affect the market acceptance of our products include market acceptance of SAN switching products, the performance, price and total cost of ownership of our products, the availability and price of competing products and technologies, and the success and development of our original equipment manufacturers and system integrators. Many of these factors are beyond our control.

Our future success depends upon our ability to address the rapidly changing needs of our customers by developing and introducing high-quality, cost-effective products, product enhancements and services on a timely basis and by keeping pace with technological developments and emerging industry standards. We have new product launches and upgrades to our existing products planned for fiscal year 2000. Our future revenue growth will be dependent on the success of these new product launches. We have in the past experienced delays in product development and such delays may occur in the future. In addition, as we introduce new or enhanced products, we will have to manage successfully the transition from older products in order to minimize disruption in our customers' ordering patterns, avoid excessive levels of older product inventories and ensure that enough supplies of new products can be delivered to meet our customers' demands. Our failure to develop and introduce successfully new products and product enhancements, which are not broadly accepted, would reduce our revenues.

WE DEPEND ON A FEW KEY ORIGINAL EQUIPMENT MANUFACTURER CUSTOMERS AND THE LOSS OF ANY OF THEM COULD SIGNIFICANTLY REDUCE OUR REVENUES

We depend on a few key original equipment manufacturer customers. For example, in the year ended October 31, 1999, sales to four customers accounted for 70% of our total revenues. We anticipate that our operating results will continue to depend on sales to a relatively small number of original equipment manufacturers. Therefore, the loss of any of our key original equipment manufacturers, or a significant reduction in sales to these original equipment manufacturers could significantly reduce our revenues.

FAILURE TO EXPAND OUR DISTRIBUTION CHANNELS AND MANAGE OUR DISTRIBUTION RELATIONSHIPS COULD SIGNIFICANTLY REDUCE OUR REVENUES

Our success will depend on our continuing ability to develop and manage relationships with significant original equipment manufacturers and system integrators, as well as on the sales efforts and success of these customers. Our customers may evaluate our products for up to a year before they begin to market and sell them and assisting these customers through the evaluation process may require significant sales and marketing and management efforts on our part, particularly if we have to qualify our products with multiple customers at the same time. In addition, once our products have been qualified, our agreements with our customers have no minimum purchase commitments. We cannot assure you that we will be able to expand our distribution channels, manage our distribution relationships successfully or that our customers will market our products effectively. Our failure to manage successfully our distribution relationships or the failure of our customers to sell our products could reduce our revenues.

THE LOSS OF SOLECTRON CORPORATION, OUR SOLE MANUFACTURER, OR THE FAILURE TO FORECAST ACCURATELY DEMAND FOR OUR PRODUCTS OR MANAGE SUCCESSFULLY OUR RELATIONSHIP WITH SOLECTRON, WOULD NEGATIVELY IMPACT OUR ABILITY TO MANUFACTURE AND SELL OUR PRODUCTS

Solectron, a third party manufacturer for numerous companies, manufactures all of our products at its Milpitas, California facility on a purchase order basis. We have entered into a three-year manufacturing agreement with Solectron under which we provide to Solectron a twelve-month product forecast and place purchase orders with Solectron sixty calendar days in advance of the scheduled delivery of products to our customers. Accordingly, if we inaccurately forecast demand for our products, we may be unable to obtain adequate manufacturing capacity from Solectron to meet our customers' delivery requirements or we may accumulate excess inventories.

We plan to regularly introduce new products and product enhancements, which will require that we coordinate our efforts with those of our suppliers and Solectron to rapidly achieve volume production. While we have not, to date, experienced supply problems with Solectron, we have experienced delays in product deliveries from one of our former contract manufacturers. If we should fail to effectively manage our relationships with our suppliers and Solectron, or if Solectron experiences delays, disruptions, capacity constraints or quality control problems in its manufacturing operations, our ability to ship products to our customers could be delayed and our competitive position and reputation could be harmed. Qualifying a new contract manufacturer and commencing volume production is expensive and time consuming. If we are required or choose to change contract manufacturers, we may lose revenue and damage our customer relationships.

WE ARE DEPENDENT ON SOLE SOURCE AND LIMITED SOURCE SUPPLIERS FOR CERTAIN KEY COMPONENTS INCLUDING ASICS AND POWER SUPPLIES

We currently purchase several key components from single or limited sources. We purchase ASICs and power supplies from single sources, and printed circuit boards and GBICs from limited sources. In addition, we license certain software that is incorporated into our Brocade Fabric Operating System from Wind River Systems, Inc. If we are unable to buy these components on a timely basis, we will not be able to manufacture our products. We use a rolling six-month forecast based on anticipated product orders to determine our component requirements. If we overestimate our component requirements, we may have excess inventory, which would increase our costs. If we underestimate our component requirements, we may have inadequate inventory, which could interrupt our manufacturing. In addition, lead times for materials and components we order vary significantly and depend on factors such as the specific supplier, contract terms and demand for a component at a given time. We also may experience shortages of certain components from time to time, which also could delay our manufacturing.

THE COMPETITION IN OUR MARKETS MAY LEAD TO REDUCED SALES OF OUR PRODUCTS, REDUCED PROFITS AND REDUCED MARKET SHARE

The markets for our SAN switching products are competitive, and are likely to become even more competitive. Increased competition could result in pricing pressures, reduced sales, reduced margins, reduced profits, reduced market share or the failure of our products to achieve or maintain market acceptance. Our products face competition from multiple sources. Some of our competitors and potential competitors have longer operating histories, greater name recognition, access to larger customer bases, or substantially greater resources than we have. As a result, they may be able to respond more quickly than we can to new or changing opportunities, technologies, standards or customer requirements. For all of the foregoing reasons, we may not be able to compete successfully against our current and future competitors.

THE PRICES OF OUR PRODUCTS ARE DECLINING WHICH COULD REDUCE OUR REVENUES AND GROSS MARGINS

The average unit price of our products continued to decrease in fiscal 1999. We anticipate that the average unit price of our products may continue to decrease in the future in response to changes in product mix, competitive pricing pressures, increased sales discounts, new product introductions by us or our

competitors or other factors. If we are unable to offset these factors by increasing our sales volumes, our revenues will decline. In addition, to maintain our gross margins, we must develop and introduce new products and product enhancements, and we must continue to reduce the manufacturing cost of our products.

UNDETECTED SOFTWARE OR HARDWARE ERRORS COULD INCREASE OUR COSTS AND REDUCE OUR REVENUES

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

IF WE LOSE KEY PERSONNEL OR ARE UNABLE TO HIRE ADDITIONAL QUALIFIED PERSONNEL, WE MAY NOT BE SUCCESSFUL

Our success depends to a significant degree upon the continued contributions of our key management, engineering and sales and marketing personnel, many of whom would be difficult to replace. In particular, we believe that our future success is highly dependent on Gregory L. Reyes, our President and Chief Executive Officer, Kumar Malavalli, our Vice President, Technology and Paul R. Bonderson, Jr., our Vice President, Engineering. We do not have employment contracts with, or key person life insurance on, any of our key personnel. We also believe that our success depends to a significant extent on the ability of our management to operate effectively, both individually and as a group. In April 1999, we hired a new Chief Financial Officer, and certain other members of our management team, including Mr. Reyes, have only recently joined us.

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

WE MUST CONTINUE TO IMPROVE OUR OPERATIONAL SYSTEMS AND CONTROLS TO MANAGE FUTURE GROWTH

We plan to continue to expand our operations significantly to pursue existing and potential market opportunities. This growth places a significant demand on our management and our operational resources. In order to manage growth effectively, we must implement and improve our operational systems, procedures and controls on a timely basis.

WE PLAN TO INCREASE OUR INTERNATIONAL SALES ACTIVITIES SIGNIFICANTLY, WHICH WILL SUBJECT US TO ADDITIONAL BUSINESS RISKS

We plan to expand our international sales activities significantly. In fiscal 2000, we intend to focus on expanding our international sales activities in Western Europe and Japan. Our international sales growth in these countries will be limited if we are unable to establish relationships with international distributors, establish additional foreign operations, expand international sales channel management, hire additional personnel and develop relationships with international service providers. Even if we are able to successfully

expand international operations, we cannot be certain that we will be able to maintain or increase international market demand for our products. Our international operations, including our sales activities in Western Europe and Japan, are subject to a number of risks, including:

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

To date, none of our international revenues and costs 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 our products more expensive and thus less competitive in foreign markets. A portion of our international revenues may be denominated in foreign currencies in the future, including the Euro, which will subject us to risks associated with fluctuations in those foreign currencies.

WE MAY BE UNABLE TO PROTECT OUR INTELLECTUAL PROPERTY WHICH WOULD NEGATIVELY AFFECT OUR ABILITY TO COMPETE

We rely on a combination of patent, copyright, trademark and trade secret laws and restrictions on disclosure to protect our intellectual property rights. We also enter into confidentiality or license agreements with our employees, consultants and corporate partners, and control access to and distribution of our software, documentation and other proprietary information. Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy or otherwise obtain and use our products or technology. Monitoring unauthorized use of our products is difficult, and we cannot be certain that the steps we have taken will prevent unauthorized use of our technology, particularly in foreign countries where the laws may not protect our proprietary rights as fully as in the United States. See "Business -- Intellectual Property."

OTHERS MAY BRING INFRINGEMENT CLAIMS AGAINST US WHICH COULD BE TIME-CONSUMING AND EXPENSIVE TO DEFEND

In recent years, there has been significant litigation in the United States involving patents and other intellectual property rights. We were previously the subject of a lawsuit alleging infringement of intellectual property rights. Although this dispute was resolved and the lawsuit dismissed, and we are not currently involved in any other intellectual property litigation, we may be a party to litigation in the future to protect our intellectual property or as a result of an alleged infringement of others' intellectual property. These claims and any resulting lawsuit could subject us to significant liability for damages and invalidation of our proprietary rights. These lawsuits, regardless of their success, would likely be time-consuming and expensive to resolve and would divert management time and attention. Any potential intellectual property litigation also could force us to do one or more of the following:

- stop selling, incorporating or using our products or services that use the challenged intellectual property;

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

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

WE MAY ENGAGE IN FUTURE ACQUISITIONS THAT DILUTE OUR STOCKHOLDERS AND CAUSE US TO INCUR DEBT OR ASSUME CONTINGENT LIABILITIES

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

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

These purchases also involve numerous risks, including:

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

We cannot assure you that we will be able to successfully integrate any businesses, products, technologies or personnel that we might purchase in the future.

YEAR 2000 COMPLIANCE

Impact of the year 2000 computer problem. The year 2000 computer problem refers to the potential for system and processing failures of date-related data as a result of computer-controlled systems using two digits rather than four to define the applicable year. For example, computer programs that have time-sensitive software may recognize a date represented as "00" as the year 1900 rather than the year 2000. This could result in a system failure or miscalculations causing disruptions of operations, including among other things, a temporary inability to process transactions, send invoices, or engage in similar normal business activities.

To date, we have not experienced any year 2000 issues with any of our internal systems or our products, and we do not expect to experience any in the future. To date, we have not experienced any year 2000 issues related to any of our key third party suppliers and customers nor do we expect to experience any in the future. Costs associated with remediating our internal systems were not material.

OUR PRODUCTS MUST COMPLY WITH EVOLVING INDUSTRY STANDARDS AND GOVERNMENT REGULATIONS

The market for SAN products is characterized by the need to support industry standards as they emerge, evolve and achieve acceptance. To remain competitive, we must continue to introduce new products and product enhancements that meet these industry standards. All components of the SAN must utilize the same standards in order to operate together. Our products comprise only a part of the entire SAN and we depend on

the companies that provide other components of the SAN, many of whom are significantly larger than we are, to support the industry standards as they evolve. The failure of these providers to support these industry standards could adversely affect the market acceptance of our products. In addition, in the United States, our products must comply with various regulations and standards defined by the Federal Communications Commission and Underwriters Laboratories. Internationally, products that we develop will also be required to comply with standards established by authorities in various countries. Failure to comply with existing or evolving industry standards or to obtain timely domestic or foreign regulatory approvals or certificates could materially harm our business.

PROVISIONS IN OUR CHARTER DOCUMENTS, CUSTOMER AGREEMENTS AND DELAWARE LAW COULD PREVENT OR DELAY A CHANGE IN CONTROL OF BROCADE AND MAY REDUCE THE MARKET PRICE OF OUR COMMON STOCK

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

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

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

WE EXPECT TO EXPERIENCE VOLATILITY IN OUR STOCK PRICE WHICH COULD NEGATIVELY AFFECT YOUR INVESTMENT

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

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

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

OUR BUSINESS MAY BE HARMED BY CLASS ACTION LITIGATION DUE TO STOCK PRICE VOLATILITY

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

WE MAY BE UNABLE TO MEET OUR FUTURE CAPITAL REQUIREMENTS WHICH WOULD LIMIT OUR ABILITY TO GROW

We believe that the net proceeds of this offering, together with our existing cash balances, credit facilities and cash flow expected to be generated from future operations, will be sufficient to meet our capital requirements at least through the next 12 months. However, we may need, or could elect, to seek additional funding prior to that time. In the event we need to raise additional funds we may not be able to do so on favorable terms, if at all. Further, if we issue equity securities, stockholders may experience additional dilution or the new equity securities may have rights, preferences or privileges senior to those of existing holders of common stock. If we cannot raise funds on acceptable terms, we may not be able to develop or enhance our products, take advantage of future opportunities or respond to competitive pressures or unanticipated requirements.

ITEM 7A. QUALITATIVE AND QUANTITATIVE DISCLOSURE ABOUT MARKET RISK

Our interest income is sensitive to changes in the general level of U.S. interest rates, particularly since the majority of our investments are in short-term instruments. Due to the nature of our short-term investments, we have concluded that there is no material market risk exposure. Therefore, no quantitative tabular disclosures are required.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

BROCADE COMMUNICATIONS SYSTEMS, INC.

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REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

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

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

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

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

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

ARTHUR ANDERSEN LLP

San Jose, California
November 24, 1999

BROCADE COMMUNICATIONS SYSTEMS, INC.

BALANCE SHEETS

	OCTOBER 31,	
	1998	1999
	(IN THOUSANDS, EXCEPT SHARE DATA)	
ASSETS		
Current assets:		
Cash and cash equivalents.....	\$ 10,420	\$ 25,536
Short-term investments.....	--	63,769
	-----	-----
Total cash, cash equivalents and short-term investments.....	10,420	89,305
Accounts receivable, net of allowance for doubtful accounts of \$285 and \$2,447, respectively.....	3,430	17,139
Inventories.....	1,744	3,686
Prepaid expenses and other current assets.....	220	2,197
	-----	-----
Total current assets.....	15,814	112,327
Property and equipment, net.....	5,323	4,947
Other assets.....	164	6
	-----	-----
Total assets.....	\$ 21,301	\$117,280
	=====	=====
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities:		
Accounts payable.....	\$ 3,247	\$ 10,664
Accrued employee compensation.....	628	4,414
Other accrued liabilities.....	2,433	9,830
Deferred revenue.....	543	7,688
Current portion of capital lease obligations.....	784	436
Current portion of debt.....	1,231	--
Borrowings under line of credit.....	1,672	--
	-----	-----
Total current liabilities.....	10,538	33,032
	-----	-----
Long-term liabilities:		
Long-term portion of capital lease obligations.....	478	42
Long-term portion of debt.....	1,731	--
Commitments and contingencies (Note 4)		
Redeemable convertible preferred stock, no par value:		
Authorized -- 9,791,280 and no shares at October 31, 1998 and 1999, respectively.		
Issued and outstanding (Series A, B, C and D) -- 9,235,483 shares at October 31, 1998; no shares at October 31, 1999.....	35,261	--
Warrants to purchase redeemable convertible preferred stock.....	648	--
	-----	-----
Total long-term liabilities.....	38,118	42
	-----	-----
Stockholders' equity (deficit):		
Common stock, \$.001 par value:		
Authorized -- 200,000,000 shares at October 31, 1999		
Issued and outstanding -- 10,389,530 shares at October 31, 1998 and 53,520,040 shares at October 31, 1999.....	10	53
Additional paid-in capital.....	2,215	119,598
Deferred stock compensation.....	(300)	(3,440)
Notes receivable from stockholders.....	(450)	(5,660)
Accumulated deficit.....	(28,830)	(26,345)
	-----	-----
Total stockholders' equity (deficit).....	(27,355)	84,206
	-----	-----
Total liabilities and stockholders' equity (deficit).....	\$ 21,301	\$117,280
	=====	=====

See accompanying notes to financial statements.

BROCADE COMMUNICATIONS SYSTEMS, INC.

STATEMENTS OF OPERATIONS

	YEAR ENDED OCTOBER 31,		
	1997	1998	1999
	(IN THOUSANDS, EXCEPT PER SHARE DATA)		
Net revenues.....	\$ 8,482	\$ 24,246	\$68,692
Cost of revenues.....	6,682	15,759	33,497
Gross margin.....	1,800	8,487	35,195
Operating expenses:			
Research and development.....	7,666	14,744	15,267
Sales and marketing.....	2,112	5,154	13,288
General and administrative.....	1,464	3,813	3,849
Amortization of deferred compensation.....	--	7	1,937
Total operating expenses.....	11,242	23,718	34,341
Income (loss) from operations.....	(9,442)	(15,231)	854
Interest income (expense), net.....	(177)	120	1,737
Income (loss) before provision for income taxes.....	(9,619)	(15,111)	2,591
Provision for income taxes.....	--	--	106
Net income (loss).....	\$(9,619)	\$(15,111)	\$ 2,485
Basic net income (loss) per share.....	\$ (2.41)	\$ (2.22)	\$ 0.10
Diluted net income (loss) per share.....	\$ (2.41)	\$ (2.22)	\$ 0.05
Shares used in computing basic net income (loss) per share.....	3,994	6,800	26,094
Shares used in computing diluted net income (loss) per share.....	3,994	6,800	51,146
Pro forma basic net income (loss) per share (unaudited)....		\$ (0.42)	\$ 0.06
Pro forma diluted net income (loss) per share (unaudited)...		\$ (0.42)	\$ 0.05
Shares used in computing pro forma basic net income (loss) per share (unaudited).....		35,830	43,074
Shares used in computing pro forma diluted net income (loss) per share (unaudited).....		35,830	51,146

See accompanying notes to financial statements.

BROCADE COMMUNICATIONS SYSTEMS, INC.

STATEMENTS OF REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)

	REDEEMABLE CONVERTIBLE PREFERRED STOCK			COMMON STOCK		ADDITIONAL PAID-IN CAPITAL	WARRANTS FOR COMMON STOCK	DEFERRED STOCK COMPENSATION
	SHARES	AMOUNT	WARRANTS	SHARES	AMOUNT			
	(IN THOUSANDS)							
Balances at October 31, 1996.....	2,241	\$ 4,613	\$ 188	8,988	\$ 9	\$ 255	\$ --	\$ (121)
Exercise of options.....	--	--	--	768	1	89	--	--
Issuance of stock for notes receivable from stockholders....	--	--	--	500	--	75	--	--
Repurchase of common stock.....	--	--	--	(430)	--	(5)	--	--
Issuance of Series C Redeemable Convertible Preferred Stock, net of issuance costs of \$49.....	3,333	9,952	--	--	--	--	--	--
Issuance of Series D Redeemable Convertible Preferred Stock, net of issuance costs of \$42.....	2,796	15,794	--	--	--	--	--	--
Issuance of warrants related to leases and notes payable.....	--	--	135	--	--	--	--	--
Issuance of warrants.....	--	--	325	--	--	--	--	--
Deferred compensation.....	--	--	--	--	--	--	--	33
Net loss.....	--	--	--	--	--	--	--	--
Balances at October 31, 1997.....	8,370	30,359	648	9,826	10	414	--	(88)
Exercise of options.....	--	--	--	402	--	55	--	--
Compensation charges.....	--	--	--	--	--	1,067	--	88
Deferred compensation.....	--	--	--	--	--	307	--	(307)
Amortization of deferred compensation.....	--	--	--	--	--	--	--	7
Issuance of Series D Redeemable Convertible Preferred Stock, net of issuance costs of \$98.....	865	4,902	--	--	--	--	--	--
Issuance of stock for notes receivable from stockholders....	--	--	--	450	--	375	--	--
Stock in exchange for services....	--	--	--	36	--	41	--	--
Repurchase of common stock.....	--	--	--	(324)	--	(44)	--	--
Net loss.....	--	--	--	--	--	--	--	--
Balances at October 31, 1998.....	9,235	35,261	648	10,390	10	2,215	--	(300)
Issuance of Series D Redeemable Convertible Preferred Stock, net.....	299	2,322	(326)	--	--	--	--	--
Conversion of Redeemable Convertible Preferred Stock to common stock.....	(9,534)	(37,583)	(322)	29,250	29	37,554	322	--
Issuance of common stock.....	--	--	--	8,920	8	67,977	--	--
Issuance of stock for notes receivable from stockholders....	--	--	--	4,704	5	6,407	--	--
Repayments on notes receivable from stockholders.....	--	--	--	--	--	--	--	--
Exercise of warrants for common stock.....	--	--	--	568	1	381	(322)	--
Compensation charges.....	--	--	--	--	--	80	--	--
Deferred compensation.....	--	--	--	--	--	5,077	--	(5,077)
Amortization of deferred compensation.....	--	--	--	--	--	--	--	1,937
Repurchase of common stock.....	--	--	--	(312)	--	(93)	--	--
Net income.....	--	--	--	--	--	--	--	--
Balances at October 31, 1999.....	--	\$ --	\$ --	53,520	\$53	\$119,598	\$ --	\$(3,440)

	NOTES RECEIVABLE FROM STOCKHOLDERS	ACCUMULATED DEFICIT	TOTAL STOCKHOLDERS EQUITY (DEFICIT)
	(IN THOUSANDS)		
Balances at October 31, 1996.....	\$ --	\$ (4,100)	\$ (3,957)
Exercise of options.....	--	--	90
Issuance of stock for notes receivable from stockholders....	(75)	--	--
Repurchase of common stock.....	--	--	(5)
Issuance of Series C Redeemable Convertible Preferred Stock, net of issuance costs of \$49.....	--	--	--
Issuance of Series D Redeemable Convertible Preferred Stock, net of issuance costs of \$42.....	--	--	--
Issuance of warrants related to leases and notes payable.....	--	--	--
Issuance of warrants.....	--	--	--
Deferred compensation.....	--	--	33
Net loss.....	--	(9,619)	(9,619)
Balances at October 31, 1997.....	(75)	(13,719)	(13,458)

Exercise of options.....	--	--	55
Compensation charges.....	--	--	1,155
Deferred compensation.....	--	--	--
Amortization of deferred compensation.....	--	--	7
Issuance of Series D Redeemable Convertible Preferred Stock, net of issuance costs of \$98.....	--	--	--
Issuance of stock for notes receivable from stockholders....	(375)	--	--
Stock in exchange for services....	--	--	41
Repurchase of common stock.....	--	--	(44)
Net loss.....	--	(15,111)	(15,111)
	-----	-----	-----
Balances at October 31, 1998.....	(450)	(28,830)	(27,355)
Issuance of Series D Redeemable Convertible Preferred Stock, net.....	--	--	--
Conversion of Redeemable Convertible Preferred Stock to common stock.....	--	--	37,905
Issuance of common stock.....	--	--	67,985
Issuance of stock for notes receivable from stockholders....	(6,412)	--	--
Repayments on notes receivable from stockholders.....	1,202	--	1,202
Exercise of warrants for common stock.....	--	--	60
Compensation charges.....	--	--	80
Deferred compensation.....	--	--	--
Amortization of deferred compensation.....	--	--	1,937
Repurchase of common stock.....	--	--	(93)
Net income.....	--	2,485	2,485
	-----	-----	-----
Balances at October 31, 1999.....	<u>\$(5,660)</u>	<u>\$(26,345)</u>	<u>\$ 84,206</u>

See accompanying notes to financial statements.

BROCADE COMMUNICATIONS SYSTEMS, INC.

STATEMENTS OF CASH FLOWS

	YEAR ENDED OCTOBER 31,		
	1997	1998	1999
	(IN THOUSANDS)		
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income (loss).....	\$ (9,619)	\$(15,111)	\$ 2,485
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization.....	1,093	2,374	3,693
Provision for doubtful accounts receivable.....	100	185	536
Noncash compensation expense.....	33	1,202	2,017
Changes in assets and liabilities:			
Accounts receivable.....	(2,746)	(969)	(14,245)
Inventories.....	(471)	(1,273)	(1,942)
Prepaid expenses and other assets.....	(140)	205	(1,819)
Accounts payable.....	3,023	(45)	7,417
Accrued employee compensation.....	474	154	3,786
Other accrued liabilities.....	693	1,682	7,397
Deferred revenue.....	285	9	7,145
Net cash provided by (used in) operating activities.....	(7,275)	(11,587)	16,470
CASH FLOWS FROM INVESTING ACTIVITIES:			
Purchases of property and equipment.....	(3,423)	(3,775)	(3,317)
Purchases of short-term investments.....	(15,920)	--	(75,769)
Proceeds from disposition of short-term investments.....	--	15,920	12,000
Net cash provided by (used in) investing activities.....	(19,343)	12,145	(67,086)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from issuance of redeemable convertible preferred stock and warrants.....	26,070	4,902	1,996
Proceeds from issuance of common stock.....	90	56	67,985
Exercise of warrants for common stock.....	--	--	60
Payments received on loans to stockholders.....	--	--	1,202
Repurchase of common stock.....	(5)	(44)	(93)
Line of credit borrowings.....	500	1,672	--
Line of credit repayments.....	--	(500)	(1,672)
Proceeds from capital lease financing.....	1,258	--	--
Payments on capital lease obligations.....	(504)	(677)	(784)
Proceeds from notes payable.....	1,091	2,594	247
Repayments of notes payable.....	(30)	(693)	(3,209)
Net cash provided by financing activities.....	28,470	7,310	65,732
Net increase in cash and cash equivalents.....	1,852	7,868	15,116
Cash and cash equivalents, beginning of period.....	700	2,552	10,420
Cash and cash equivalents, end of period.....	\$ 2,552	\$ 10,420	\$ 25,536
Supplemental disclosure of cash flow information:			
Cash paid for interest.....	\$ 351	\$ 557	\$ 359
Conversion of redeemable convertible preferred stock upon initial public offering.....	\$ --	\$ --	\$ 37,905
Issuance of stock for notes receivable from stockholders.....	\$ 75	\$ 375	\$ 6,412

See accompanying notes to financial statements.

BROCADE COMMUNICATIONS SYSTEMS, INC.

NOTES TO FINANCIAL STATEMENTS

1. ORGANIZATION AND OPERATIONS OF BROCADE

Brocade Communications Systems, Inc. (Brocade) was incorporated on August 24, 1995. Effective May 14, 1999, Brocade reincorporated in the State of Delaware. In connection with the reincorporation, Brocade was authorized to issue 50,000,000 shares of common stock with a par value of \$.001 per share and 5,000,000 shares of undesignated preferred stock with a par value of \$.001 per share. On October 5, 1999, the board of directors approved an increase in the authorized shares of common stock to 200,000,000 shares. Subsequent to October 31, 1999, Brocade effected a two-for-one split of its common stock. All share and per share information have been retroactively adjusted to reflect this split.

Brocade provides Fibre Channel switching solutions for deployment in storage area networks ("SANs"). Brocade's SilkWorm family of Fibre Channel switches operate at gigabit speeds and create a switch interconnect enabling any-to-any connectivity between storage devices and servers. Brocade sells its products and services primarily to leading storage system and server original equipment manufacturers and system integrators.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Fiscal Year

Brocade changed its fiscal year end to the last Saturday in October, beginning with the fiscal year ended October 30, 1999. For presentation purposes, the fiscal year end is referred to as October 31, 1999 throughout these financial statements. This change did not have a material impact on Brocade's financial statements.

Use of Estimates in Preparation of Financial Statements

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

Cash, Cash Equivalents and Short-term Investments

All highly liquid investment securities with original maturities of three months or less are considered cash equivalents, while investment securities with original maturities of more than three months but less than one year are considered short-term investments.

Brocade's short-term investments consist of U.S. Treasuries and Federal Agency debt securities with original maturity dates between 90 days and one year. The carrying value of short-term investments approximate fair value.

All of Brocade's investments are classified as available-for-sale. Unrealized holding gains and losses are reported as a separate component of other comprehensive income. At October 31, 1999, unrealized holding gains and losses were not material. Realized gains and losses are included in interest income in the statement of operations. The cost of securities sold is based on the specific identification method.

Concentrations of Credit Risk

Financial instruments that potentially subject Brocade to concentrations of credit risk consist primarily of cash equivalents and short-term investments and accounts receivable. Brocade invests only in high credit quality short-term debt instruments and limits the amount of credit exposure to any one entity. A majority of

NOTES TO FINANCIAL STATEMENTS -- (CONTINUED)

Brocade's trade receivable balance is derived from sales to original equipment manufacturers in the computer storage and server industry. At October 31, 1998 approximately 76% of accounts receivable was concentrated with four customers. At October 31, 1999 approximately 74% of accounts receivable was concentrated with four customers. Brocade performs on going credit evaluations of its customers and generally does not require collateral on accounts receivable. Brocade provides reserves for credit losses and product sales returns.

Inventories

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

	OCTOBER 31,	
	1998	1999
Raw materials.....	\$1,203	\$ 878
Work-in-process.....	6	173
Finished goods, including deferred charges.....	535	2,635
	-----	-----
	\$1,744	\$3,686
	=====	=====

Property and Equipment

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

	OCTOBER 31,	
	1998	1999
Computers and equipment.....	\$ 8,186	\$10,530
Furniture and fixtures and leasehold improvements.....	779	711
Less: Accumulated depreciation and amortization.....	(3,642)	(6,294)
	-----	-----
	\$ 5,323	\$ 4,947
	=====	=====

Included in property and equipment are assets acquired under capital lease obligations with a cost and related accumulated amortization of approximately \$2.6 million and \$2.5 million, respectively, at October 31, 1999.

Software Development Costs

In accordance with Statement of Financial Accounting Standards ("SFAS") No. 86, "Accounting for the Costs of Computer Software to be Sold, Leased, or Otherwise Marketed," Brocade capitalizes eligible computer software development costs upon the establishment of technological feasibility, which it has defined as completion of designing, coding and testing activities. For the years ended October 31, 1997, 1998 and 1999, the amount of costs eligible for capitalization, after consideration of factors such as realizable value, were not material and, accordingly, all software development costs have been charged to research and development expense in the accompanying statements of operations for all periods presented.

NOTES TO FINANCIAL STATEMENTS -- (CONTINUED)

Accrued Employee Compensation

Accrued employee compensation consist of accrued wages, commissions and payroll taxes, vacation payable, performance bonuses yet to be paid, payroll deductions for the employee stock purchase plan and other benefit payroll deductions.

Other Accrued Liabilities

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

	OCTOBER 31,	
	1998	1999
Accrued warranty.....	\$1,350	\$1,856
Purchase commitments reserve.....	--	3,629
Other.....	1,083	4,345
	<u>\$2,433</u>	<u>\$9,830</u>

Stock-Based Compensation

Brocade accounts for its stock option plans and its Employee Stock Purchase Plan in accordance with the provisions of Accounting Principles Board Opinion 25, "Accounting for Stock Issued to Employees" ("APB 25"). In 1995, the Financial Accounting Standards Board issued SFAS No. 123, "Accounting for Stock-Based Compensation", which establishes a fair value based method of accounting for stock-based plans. Companies that elect to account for stock-based compensation plans in accordance with APB 25 are required to disclose the pro forma net income (loss) that would have resulted from the use of the fair value based method. Accordingly, pro forma disclosures that are required under SFAS No. 123 are included in Note 7.

Stock Split

On November 8, 1999, Brocade's board of directors approved a two-for-one split of Brocade's common stock. The stock began trading on a split-adjusted basis on December 3, 1999. All references in the accompanying financial statements to earnings per share and the number of common shares have been retroactively restated to reflect the common stock split and the increase in authorized common and preferred stock.

Revenue Recognition

Product revenue is generally recognized when products are shipped. Revenue recognition is deferred for shipments to new customers where product returns cannot be reasonably estimated or significant support services are required to successfully launch the customer's product. These revenues are recognized when the customer has successfully integrated and launched its products and Brocade has met its support obligations. Allowances for warranty costs, credit losses and estimated future returns are provided for upon shipment. Deferred revenues as of October 31, 1998 and 1999 were approximately \$543,000 and \$7.7 million, respectively.

In fiscal 1997, two customers contributed 67% and 27%, respectively of our total revenues. In fiscal 1998, these same two customers accounted for 72% and 11%, respectively of our total revenues. In fiscal 1999, four customers accounted for 34%, 14%, 12%, and 10%, respectively of total revenues. The level of sales to any customer may vary from quarter to quarter. However, we expect that significant customer concentration will continue for the foreseeable future. The loss of any one of these customers, or a decrease in the level of sales to

NOTES TO FINANCIAL STATEMENTS -- (CONTINUED)

any one of these customers, could have a material adverse impact on Brocade's financial condition or results of operations.

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

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

In accordance with SFAS No. 128, basic net income (loss) per common share has been computed using the weighted average number of shares of common stock outstanding during the period; less shares subject to repurchase. Diluted net income (loss) per share is computed on the basis of the weighted average number of common shares and common equivalent shares outstanding during the period. Common equivalent shares result from the assumed exercise of outstanding stock options that have a dilutive effect when applying the treasury stock method. Brocade has excluded all convertible preferred stock, warrants for convertible preferred stock, outstanding stock options and shares subject to repurchase from the calculation of diluted net loss per common share for the years ended October 31, 1997 and 1998, because all such securities are antidilutive. The total number of shares excluded from the calculations of diluted net loss per common share were 35,123,546 and 39,012,626 for the years ended October 31, 1997 and 1998, respectively. See Notes 6 and 7 for further information on these securities. Basic and diluted pro forma net income (loss) per common share have been computed as described above and also give effect, under Securities and Exchange Commission guidance, to the conversion of the convertible preferred stock (using the if-converted method) from the original date of issuance.

BROCADE COMMUNICATIONS SYSTEMS, INC.

NOTES TO FINANCIAL STATEMENTS -- (CONTINUED)

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

	YEAR ENDED OCTOBER 31,		
	1997	1998	1999
Net income (loss).....	<u>\$(9,619)</u>	<u>\$(15,111)</u>	<u>\$ 2,485</u>
Basic and diluted net income (loss) per share:			
Weighted average shares of common stock outstanding.....	9,188	10,348	30,264
Less: Weighted average shares subject to repurchase.....	(5,194)	(3,548)	(4,170)
Weighted average shares used in computing basic net income (loss) per share.....	3,994	6,800	26,094
Dilutive effect of common share equivalents.....	--	--	25,052
Weighted average shares used in computing diluted net income (loss) per share.....	<u>3,944</u>	<u>6,800</u>	<u>51,146</u>
Basic net income (loss) per common share.....	<u>\$ (2.41)</u>	<u>\$ (2.22)</u>	<u>\$ 0.10</u>
Diluted net income (loss) per share.....	<u>\$ (2.41)</u>	<u>\$ (2.22)</u>	<u>\$ 0.05</u>
Pro forma net income (loss) per share:			
Net income (loss).....		<u>\$(15,111)</u>	<u>\$ 2,485</u>
Weighted average shares used in computing basic net income (loss) per share.....		6,800	26,094
Pro forma adjustment to reflect weighted effect of assumed conversion of convertible preferred stock (unaudited).....		28,436	16,794
Pro forma adjustment to reflect assumed exercise and conversion of preferred stock warrants to purchase 593,762 common shares in 1998 and 1999 at an exercise price of \$6.78 per share (unaudited).....		594	186
Weighted average shares used in computing pro forma basic net income (loss) per share (unaudited).....		35,830	43,074
Dilutive effect of common share equivalents (unaudited)...		--	8,072
Weighted average shares used in computing pro forma diluted net income (loss) per share (unaudited).....		<u>35,830</u>	<u>51,146</u>
Pro forma basic net income (loss) per share (unaudited)...		<u>\$ (0.42)</u>	<u>\$ 0.06</u>
Pro forma diluted net income (loss) per share (unaudited).....		<u>\$ (0.42)</u>	<u>\$ 0.05</u>

Comprehensive Income

In June 1997, the Financial Accounting Standards Board issued SFAS No. 130, "Reporting Comprehensive Income," ("SFAS No. 130"). SFAS No. 130 was adopted by Brocade beginning on November 1, 1997. This standard defines comprehensive income as the changes in equity of an enterprise except those resulting from stockholder transactions. Accordingly, comprehensive income (loss) includes certain changes in equity that are excluded from net income (loss). Specifically, SFAS No. 130 requires unrealized holding gains and losses on available-for-sale securities to be included in accumulated other comprehensive income (loss). Unrealized holding gains (losses) on available-for-sale securities for all periods presented are not significant and accordingly, comprehensive income (loss) for all periods presented approximated net income (loss).

NOTES TO FINANCIAL STATEMENTS -- (CONTINUED)

Reportable Segments

In June 1997, the Financial Accounting Standards Board issued SFAS No. 131 "Disclosures About Segments of an Enterprise and Related Information." ("SFAS No. 131"). SFAS No. 131 was adopted by Brocade beginning on November 1, 1997. SFAS No. 131 establishes standards for disclosures about operating segments, products and services, geographic areas and major customers. Brocade is organized and operates as one operating segment, the design, development, manufacturing, marketing and selling of Fiber Channel switching solutions for SAN's. Service revenues to date have not been significant. Brocade operates principally in one geographic area, the United States. Major customers are discussed above.

Capitalization of Internally Used Software

In March 1998, the AICPA issued Statement of Position No. 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use," ("SOP No. 98-1"). SOP No. 98-1 requires entities to capitalize certain costs related to internal-use software once certain criteria have been met. Brocade adopted SOP 98-1 beginning on November 1, 1998. The adoption did not have a material impact on Brocade's financial position or results of operations.

Recent Accounting Pronouncements

In December 1998, the AICPA issued Statement of Position 98-9, "Modification of SOP 97-2, Software Revenue Recognition, With Respect to Certain Transactions," ("SOP 98-9"). SOP 98-9 amends SOP 97-2 and SOP 98-4 by extending the deferral of the application of certain provisions of SOP 97-2 amended by SOP 98-4 through fiscal years beginning on or before March 15, 1999. All other provisions of SOP 98-9 are effective for transactions entered into in fiscal years beginning after March 15, 1999. Brocade has not had significant software sales to date and management does not expect the adoption of SOP 98-9 to have a significant effect on the financial condition or results of operations.

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

3. LINE OF CREDIT AND DEBT

In June 1997, Brocade entered into a revolving line of credit agreement with a bank under which it could borrow up to \$4,000,000. The line of credit bore interest at the bank's prime rate and was repaid upon expiration in August 1999.

As of October 31, 1998, Brocade had approximately \$3.0 million payable to the same bank under an equipment loan agreement. The equipment loan agreement provided for borrowings of up to \$5,000,000. Borrowings were secured by the related capital equipment, bore interest at the bank's prime rate plus 1.0% and were payable through June 30, 2002. As of October 31, 1999, all borrowings under this loan agreement were repaid.

BROCADE COMMUNICATIONS SYSTEMS, INC.

NOTES TO FINANCIAL STATEMENTS -- (CONTINUED)

Notes payable as of October 31, 1998 and 1999 consisted of the following, (in thousands):

	OCTOBER 31,	
	1998	1999
Note payable to bank.....	\$ 2,962	\$ --
Less: current portion.....	(1,231)	--
Long-term portion.....	\$ 1,731	\$ --
	=====	=====

4. COMMITMENTS AND CONTINGENCIES

Brocade leases its facilities under operating lease agreements expiring through November 2000. The leases require that Brocade pay all costs of maintenance, utilities, insurance and taxes. Rent expense for the years ended October 31, 1997, 1998 and 1999 was \$495,475, \$804,057 and \$1,284,178, respectively.

Brocade leases computers, office equipment and furniture under long-term lease agreements that are classified as capital leases. The leases expire through January 2001 and require a final buyout payment at the end of the lease term.

Future minimum lease payments, including the buyout payments, under all lease arrangements at October 31, 1999 were as follows (in thousands):

YEAR ENDED OCTOBER 31,	OPERATING LEASES	CAPITAL LEASES
Fiscal year 2000.....	\$847	\$ 476
Fiscal year 2001.....	--	42
Total minimum lease payments.....	\$847	518
	====	=====
Less: imputed interest (15.27% -- 17.65%).....		(40)
Present value of payments under capital leases.....		478
Less: current portion.....		(436)
Long-term capital lease obligations.....		\$ 42
		=====

Subsequent to year end, Brocade entered into a lease for new office space (See Note 10).

Brocade's former contract manufacturer filed a suit against Brocade, alleging that Brocade is liable for breaching certain contracts with the contract manufacturer. The suit claimed damages in excess of \$3.0 million plus interest, an unspecified amount of consequential and incidental damages, and costs and attorneys' fees. Brocade filed a cross complaint against the contract manufacturer for various credits Brocade claimed on its account with the contract manufacturer. The suit was settled in December 1999. The settlement of this litigation did not have a material impact on Brocade's financial statements.

Brocade is subject to various claims which arise in the normal course of business. In the opinion of management, the ultimate disposition of these claims will not have a material adverse effect on the financial position of Brocade.

5. RESTRUCTURING OF OPERATIONS

In the third quarter of fiscal 1998, Brocade initiated a plan to restructure its operations to reduce its break even revenue level. The plan was developed by management and approved by the Board of Directors with the expectation that changes in certain programs and arrangements, with related head count reductions, would immediately reduce operating expenses and improve cash flows. The restructuring plan included the termination of the former Chief Executive Officer for \$1.1 million, the cancellation and abandonment of two

NOTES TO FINANCIAL STATEMENTS -- (CONTINUED)

research and development projects, one to develop a 64-port fibre channel switch and another to develop storage area network simulation for a total of \$300,000, a change in contract manufacturer arrangements for \$1.2 million, and a reduction in labor force. In connection with this plan, Brocade recorded a \$3.2 million charge to operating expenses as follows: \$1.3 million is included in cost of revenues, \$700,000 is included in research and development expense and \$1.2 million is included in general and administrative expense in the 1998 statement of operations. The restructuring charge includes \$1.7 million of employee related expenses for 20 employee terminations (8 manufacturing employees, 4 research and development employees and 8 employees from other departments), including severance for Brocade's former Chief Executive Officer, \$1.2 million for the write-off of excess or abandoned equipment (specifically tooling and fixtures) and inventories related to discontinued and newly established contract manufacturer arrangements, and \$300,000 for write-offs of other abandoned tangible and intangible assets and facilities in Southern California related to cancelled new product development and simulation projects. Employees were formally notified of their termination beginning on July 31, 1998 and continuing through August 4, 1998. The termination of 17 employees was immediate. The remainder of the terminations occurred through January 31, 1999. As of October 31, 1999, Brocade had incurred all costs related to the restructuring.

6. PREFERRED STOCK

Brocade is authorized to issue, from time to time, in one or more series, 5,000,000 shares of preferred stock at a \$.001 par value. The board of directors may determine the rights, preferences, privileges and restrictions granted or imposed upon any series of preferred stock. As of October 31, 1999, no preferred stock is outstanding.

Redeemable Convertible Preferred Stock

In August 1995, Brocade issued 1,425,000 shares of its Series A Redeemable Convertible Preferred Stock ("Series A"). In June 1996, Brocade issued 816,250 shares of its Series B Redeemable Convertible Preferred Stock ("Series B"). In December 1996, Brocade issued 3,333,333 shares of its Series C Redeemable Convertible Preferred Stock ("Series C"). In fiscal years 1997, 1998 and 1999 Brocade issued 2,795,848 shares, 865,052 shares and 298,522 shares, respectively, of its Series D Redeemable Convertible Preferred Stock ("Series D"). Effective May 24, 1999, the Series A, Series B, Series C and Series D shares automatically converted into common stock upon the closing of Brocade's initial public offering. Prior to the conversion into common stock, the rights with respect to Series A, Series B, Series C and Series D were as follows:

Redemption. At the request of the holders of the majority of voting power of the then outstanding preferred stock any time after August 28, 2002, Brocade shall, to the extent funds are legally available, redeem the preferred stock in increments over a three-year period. In such event, Brocade shall pay \$1.00 per share for Series A, \$4.00 per share for Series B, \$3.00 per share for Series C and \$5.78 for Series D plus any declared but unpaid dividends.

Voting. Each share of Series A, Series B, Series C and Series D has voting rights equal to an equivalent number of shares of common stock into which it is convertible.

Dividends. Holders of Series A, Series B, Series C and Series D are entitled to receive noncumulative dividends when and as declared by the Board of Directors at a rate of \$0.08, \$0.32, \$0.24 and \$0.46 per share, respectively, per annum. After payment of such dividends, any additional dividends declared will be paid to the holders of common stock and preferred stock in such amount as they would be entitled to receive if their shares had been converted into shares of common stock. No dividends have been declared.

Liquidation. In the event of any liquidation, dissolution or winding up of Brocade, including a merger or sale of all or substantially all of the assets, the holders of Series A, Series B, Series C and Series D are entitled

NOTES TO FINANCIAL STATEMENTS -- (CONTINUED)

to receive pari passu a distribution of \$1.00, \$4.00, \$3.00 and \$5.78 per share, respectively, plus any declared but unpaid dividends prior to and in preference to any distribution to the holders of common stock. The remaining assets, if any, shall be distributed ratably among the holders of the common stock, Series A, Series B, Series C and Series D, based on the number of shares held (assuming conversion of the Series A, Series B, Series C and Series D).

Conversion. Each share of Series A, Series B, Series C and Series D is convertible into common stock, at the holder's option or upon the consent of the holders of a majority of the then outstanding Series A, Series B, Series C and Series D shares voting as a single class. The Series A, Series B, Series C and Series D shares are initially convertible into common stock at a ratio of eight for one, four for one, two for one and two for one, respectively. The conversion rates are protected by certain anti-dilution provisions. No adjustment in the future conversion price of Series A, Series B, Series C or Series D shall be made for the issuance of additional shares of common stock other than for a common stock split, dividend, or distribution unless at the time of issuance of the common stock the price per share for additional shares of common stock issued is less than the conversion price in effect for the Series A, Series B, Series C and Series D, respectively.

Warrants

Since inception, Brocade has issued warrants to purchase an aggregate of 51,197, 17,500 and 48,000 shares of Series A, Series B and Series C, respectively. These warrants were issued in connection with equipment and facilities lease agreements. Exercise prices range from \$1.00 to \$4.50 per share. As of October 31, 1999, all these warrants have been exercised.

In connection with the initial sale and issuance of Series D, investors were issued warrants to purchase 10% of the number of Series D shares purchased by each investor at an exercise price of \$6.78 per share. The total number of shares of Series D purchasable upon exercise of these warrants was 296,881. As of October 31, 1999, all these warrants have been exercised.

7. COMMON STOCK

Brocade completed an initial public offering on the Nasdaq National Market on May 28, 1999 whereby 7,475,000 shares of common stock, including the exercise of the underwriters over-allotment option, were sold with proceeds to Brocade of \$66.0 million.

At October 31, 1999, Brocade had reserved 7,938,180 shares related to stock option plans of authorized but unissued shares of common stock for future issuance.

Deferred Compensation

In connection with the grant of certain stock options to employees during the years ended October 31, 1998 and 1999, Brocade recorded deferred compensation of approximately \$307,000 and \$5.1 million, respectively, representing the difference between the deemed value of the common stock for accounting purposes and the option exercise price of such options at the date of grant. Such amount is presented as a reduction of stockholders' equity and amortized ratably over the vesting period of the applicable options.

Approximately \$7,000 and \$1.9 million was expensed during the years ended October 31, 1998 and 1999, respectively, and the balance will be expensed ratably over the period the options vest. Deferred compensation expense is decreased in the period of forfeiture for any accrued but unvested compensation arising from the early termination of an option holder's services. No compensation expense related to any other periods presented has been recorded.

NOTES TO FINANCIAL STATEMENTS -- (CONTINUED)

1999 Employee Stock Purchase Plan

In March 1999, the Board of Directors approved the adoption of Brocade's 1999 Employee Stock Purchase Plan (the "Purchase Plan"), and Brocade's shareholders approved the Purchase Plan in April 1999. Per the terms of the Purchase Plan, the maximum number of shares of Brocade's common stock available for sale under the Purchase Plan is 400,000 shares, plus an annual increase to be added on the first day of Brocade's fiscal year, equal to the lesser of 2,500,000 shares, or 2.5% of the outstanding shares at such date. Accordingly, on November 1, 1999, 1,338,001 additional shares were made available for sale under the Purchase Plan. The Purchase Plan permits eligible employees to purchase shares of common stock through payroll deductions at 85% of the fair market value of the common stock, as defined in the Purchase Plan.

1999 Stock Plan

In March 1999, the Board of Directors approved Brocade's 1999 Stock Plan (the "1999 Plan") and Brocade's shareholders approved the 1999 Plan in April 1999. The 1999 Plan provides for the grant of incentive stock options to employees. Per the terms of the 1999 Plan, the maximum number of shares of Brocade's common stock available for sale under the 1999 Plan is 15,214,000 shares, plus an annual increase to be added on the first day of Brocade's fiscal year, equal to the lesser of 5,000,000 shares, or 5% of the outstanding shares at such date. Accordingly, on November 1, 1999, 2,676,002 additional shares were made available for sale under the 1999 Plan.

1999 Director Option Plan

In March 1999, the Board of Directors approved the 1999 Director Option Plan (the "Director Plan") and Brocade's shareholders approved the Director Plan in April 1999. The Director Plan provides for the grant of common stock to non-employee directors. A total of 400,000 shares of common stock have been reserved for issuance under the Director Plan.

1999 Nonstatutory Stock Option Plan

In September 1999, the Board of Directors approved Brocade's 1999 Nonstatutory Stock Option Plan (the "NSO Plan"). The NSO Plan provides for the grant of nonstatutory stock options to employees and consultants. A total of 2,000,000 shares of common stock have been reserved for issuance under the NSO Plan.

Stock Options

Brocade, under various stock option plans (the "Plans"), grants stock options for shares of common stock to employees, directors and consultants of Brocade. In accordance with the Plans, the stated exercise price shall not be less than 85% of the estimated fair market value of common stock on the date of grant. Incentive Stock Options ("ISOs") may not be granted at less than 100% of the estimated fair market value of the common stock and stock options granted to a person owning more than 10% of the combined voting power of all classes of stock of Brocade must be issued at 110% of the fair market value of the stock on the date of grant. The Plans provide that the options shall be exercisable over a period not to exceed ten years, and the options generally vest over a period of four years. The options typically vest 25% one year after the date of grant and the remaining shares vest in equal monthly amounts over the following 36 months.

At October 31, 1999, an aggregate of 2,072,568 shares were available for future option grants under all of the Plans.

Brocade accounts for the Plans and the Purchase Plan in accordance with APB No. 25 whereby the difference between the exercise price and the fair value at the date of grant is recognized as compensation expense. Had compensation expense for the stock option plans been determined under the provisions of SFAS

BROCADE COMMUNICATIONS SYSTEMS, INC.

NOTES TO FINANCIAL STATEMENTS -- (CONTINUED)

No. 123, net income (loss) would have decreased or increased, respectively, to the following pro forma amounts, (in thousands except per share data):

	YEAR ENDED OCTOBER 31,		
	1997	1998	1999
Net income (loss) as reported.....	\$(9,619)	\$(15,111)	\$ 2,485
Net loss Pro Forma.....	\$(9,666)	\$(15,522)	\$(1,933)
Net income (loss) per share as reported.....		\$ (2.22)	\$ 0.10
Net loss per share Pro Forma.....		\$ (2.29)	\$ (0.07)

The fair value of each option grant was estimated on the date of grant using the Black-Scholes option pricing model with the following weighted average assumptions used for grants in 1997, 1998 and 1999, respectively: risk-free interest rate of 5.71% to 6.63%, 5.58% to 5.86% and 5.02% to 5.26%; expected dividend yields of zero percent for all three periods; expected life of .5 years beyond vesting for all three periods; and expected volatility of .0001% for all periods except the year ended October 31, 1999, for which a volatility factor of 60% was used.

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

	YEAR ENDED OCTOBER 31, 1997		YEAR ENDED OCTOBER 31, 1998	
	SHARES	WEIGHTED AVERAGE EXERCISE PRICE	SHARES	WEIGHTED AVERAGE EXERCISE PRICE
Outstanding at beginning of year.....	1,168,000	\$.10	2,110,334	\$.16
Granted.....	2,631,000	\$.17	6,309,824	\$1.10
Exercised.....	(1,261,332)	\$.13	(851,140)	\$.52
Cancelled.....	(427,334)	\$.11	(523,190)	\$.53
Outstanding at end of year.....	2,110,334	\$.16	7,045,828	\$.92
Exercisable at end of year.....	72,468	\$.11	931,614	\$.76
Weighted fair value per share.....	\$.0261		\$.1512	

	YEAR ENDED OCTOBER 31, 1999	
	SHARES	WEIGHTED AVERAGE EXERCISE PRICE
Outstanding at beginning of period.....	7,045,828	\$.92
Granted.....	5,356,024	\$20.87
Exercised.....	(6,151,368)	\$ 1.27
Cancelled.....	(384,872)	\$.94
Outstanding at end of period.....	5,865,612	\$18.78
Exercisable at end of period.....	449,754	
Weighted fair value per share.....	\$ 9.6708	

BROCADE COMMUNICATIONS SYSTEMS, INC.

NOTES TO FINANCIAL STATEMENTS -- (CONTINUED)

OPTIONS OUTSTANDING				OPTIONS EXERCISABLE	
OCTOBER 31, 1999 RANGE OF EXERCISE PRICES	NUMBER	WEIGHTED AVERAGE REMAINING YEARS	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER	WEIGHTED AVERAGE EXERCISE PRICE
\$ 0.100 - \$ 0.900.....	911,364	7.07	\$ 0.36	153,674	\$0.33
\$ 1.125 - \$ 4.000.....	3,545,448	9.07	\$ 1.90	296,080	\$1.15
\$49.063 - \$109.938.....	1,408,800	9.81	\$72.31	--	--
\$ 0.100 - \$109.938.....	5,865,612	8.93	\$18.78	449,754	\$0.87
	=====	=====	=====	=====	=====

At October 31, 1999, 3,621,806 shares issued upon exercise of stock options with a weighted average exercise price of \$.3524 were subject to repurchase by Brocade.

8. INCOME TAXES

Brocade accounts for income taxes pursuant to SFAS No. 109, "Accounting for Income Taxes" ("SFAS No. 109"). A valuation allowance has been recorded for the total deferred tax assets as a result of uncertainties regarding realization of the assets based upon the limited operating history of Brocade, the lack of profitability to date and the uncertainty of future profitability. The components of net deferred tax assets are as follows (in thousands):

	OCTOBER 31,	
	1998	1999
Net operating loss carryforwards.....	\$ 8,100	\$ 16,300
Tax credit carryforwards.....	1,400	2,000
Capitalized startup costs.....	300	200
Reserves and accruals.....	2,200	7,900
Capitalized research expenditures.....	700	1,400
Total deferred tax assets.....	12,700	27,800
Less: Valuation allowance.....	(12,700)	(27,800)
Net deferred tax assets.....	\$ --	\$ --
	=====	=====

As of October 31, 1999, Brocade had federal net operating loss carryforwards of approximately \$44.0 million and state net operating loss carryforwards of approximately \$14.7 million. The federal net operating loss and other tax credit carryforwards expire on various dates between 2010 through 2019. The state net operating loss carryforwards will expire beginning in 2003.

Under current tax law, net operating loss and credit carryforwards available to offset future income in any given year may be limited upon the occurrence of certain events, including significant changes in ownership interests.

NOTES TO FINANCIAL STATEMENTS -- (CONTINUED)

The following table summarizes the difference between the U.S. Federal statutory rate and Brocade's income tax provision for financial statement purposes (in thousands):

	OCTOBER 31, 1999

Provision for income taxes at statutory rate.....	\$ 907
State taxes, net of federal benefit.....	149
Losses for which no tax benefit recognized.....	(1,912)
Stock compensation not deductible for tax.....	822
Other.....	140

Provision for income taxes.....	\$ 106
	=====

9. RELATED PARTY TRANSACTIONS

During fiscal 1997, 1998, and 1999, Brocade sold 500,000, 450,000 and 4.7 million shares, respectively, of its common stock to officers and a director of Brocade in consideration for full recourse promissory notes in the aggregate amount of \$6.9 million. Should the officers terminate employment, these shares are subject to a right of repurchase by Brocade. The right of repurchase lapses over a four-year period. The notes bear interest at various rates ranging from 4.47% to 6.5% per annum and mature at various dates through May 2006.

10. SUBSEQUENT EVENTS (UNAUDITED)

In December 1999, Brocade entered into an agreement to lease approximately 210,000 square feet of office, laboratory, and administrative space in San Jose, California. The term of the lease agreement is September 1, 2000 through August 31, 2010, and represents a lease commitment of \$6.2 million per year to Brocade. Brocade intends to occupy the space in September 2000 and sub-lease any excess space to offset the rental expense. In conjunction with entering into the lease agreement, Brocade signed an unconditional, irrevocable letter of credit for \$6.2 million as security for the lease.

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

Not Applicable

PART III

Certain information required by Part III is incorporated by reference from Brocade's definitive Proxy Statement to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies for Brocade's fiscal 2000 Annual Meeting of Stockholders (the "Proxy Statement").

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information required by this section is incorporated by reference from the information in the section entitled "Election of Directors" in the Proxy Statement. The required information concerning executive officers of the Company is contained in the section entitled "Executive Officers and Directors of the Registrant" in Part I of this Form 10-K.

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

For a listing of officers and directors of Brocade, please see Item 4 or page 12.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this section is incorporated by reference from the information in the sections entitled "Election of Directors -- Directors' Compensation", "Executive Compensation" and "Stock Price Performance Graph" in the Proxy Statement.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

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

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

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

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

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

(1) Financial Statements:

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

(2) Financial Statement Schedules:

The following financial statement schedule of Brocade Communications Systems, Inc. for the years ended October 31, 1997, October 31, 1998, and October 30, 1999 is filed as part of this Annual Report and should be read in conjunction with the Financial Statements of Brocade Communications Systems, Inc.

Schedule II -- Valuation and Qualifying Accounts..... Page 53

(3) Exhibits:

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

EXHIBIT NUMBER	DESCRIPTION OF DOCUMENT
3.2(1)	Amended and Restated Certificate of Incorporation.
3.4(2)	Bylaws of the Registrant.
4.1(3)	Form of Registrant's Common Stock certificate.
10.1(4)	Form of Indemnification Agreement entered into between Brocade with each of its directors and executive officers.
10.2(5)	1995 Equity Incentive Plan and forms of agreements thereunder.
10.3(6)	1998 Equity Incentive Plan and forms of agreements thereunder.
10.4(7)	1998 Executive Equity Incentive Plan and forms of agreements thereunder.
10.5(8)	1999 Employee Stock Purchase Plan.
10.6(9)	1999 Director Option Plan and form of agreement thereunder.
10.7(10)	1999 Stock Plan and forms of agreements thereunder.
10.8(11)	Sublease between Symmetricom, Inc. and Brocade dated May 6, 1997.
10.9(12)	Security and Loan Agreement between Brocade and Imperial Bank dated June 19, 1997.
10.10(13)	Amendment to Loan Documents between Brocade and Imperial Bank dated January 30, 1998.
10.11(14)	Second Amendment to Loan Documents between Brocade and Imperial Bank dated August 17, 1998.
10.12(15)	Third Amendment to Loan Documents between Brocade and Imperial Bank dated December 15, 1998.
10.13(16)	Master Equipment Lease Agreement between Venture Lending & Leasing, Inc. and the Registrant dated September 5, 1996.
10.14(17)+	Master Purchase Agreement between Dell Products L.P. and Brocade dated November 1, 1998.
10.15(18)+	Purchase Agreement between Sequent Computer Systems, Inc. and Brocade.
10.16(19)+	Supplement No. 1 to Purchase Agreement between Sequent Computer Systems, Inc. and Brocade dated September 26, 1997.
10.17(20)+	OEM Agreement between Storage Technology Corporation and Brocade dated May 1, 1998.
10.18(21)	Acknowledgment between Wind River Systems, Inc. and Brocade, dated April 22, 1999.
10.19(22)	Confidential Agreement and General Release of Claims between Bruce J. Bergman, The Bergman Family Trust and Brocade dated September 23, 1998.
10.20(23)	Letter Agreement with Michael J. Byrd dated April 5, 1999.
10.21(24)+	OEM and License Agreement between Brocade and McDATA Corporation, dated April 27, 1999.
10.22(25)	1999 Nonstatutory Stock Option Plan and form of Agreements thereunder.
10.23+	Volume Pricing Agreement between Brocade and Data General Corporation dated October 1, 1998.
10.24+	Manufacturing Agreement between Brocade and Solelectron California Corporation dated July 30, 1999.
10.25	Master Lease Agreement between Brocade and Spieker Properties dated .
23.1	Consent of Arthur Andersen LLP, Independent Public Accountants.

EXHIBIT NUMBER	DESCRIPTION OF DOCUMENT
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27.1	Financial Data Schedule.
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- | | |
|------|---|
| (1) | Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended. |
| (2) | Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended. |
| (3) | Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended. |
| (4) | Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended. |
| (5) | Incorporated by reference from Brocade's Registration Statement on Form S-8 (Reg. No. 333-). |
| (6) | Incorporated by reference from Brocade's Registration Statement on Form S-8 (Reg. No. 333-). |
| (7) | Incorporated by reference from Brocade's Registration Statement on Form S-8 (Reg. No. 333-). |
| (8) | Incorporated by reference from Brocade's Registration Statement on Form S-8 (Reg. No. 333-). |
| (9) | Incorporated by reference from Brocade's Registration Statement on Form S-8 (Reg. No. 333-). |
| (10) | Incorporated by reference from Brocade's Registration Statement on Form S-8 (Reg. No. 333-). |
| (11) | Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended. |
| (12) | Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended. |
| (13) | Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended. |
| (14) | Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended. |
| (15) | Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended. |
| (16) | Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended. |
| (17) | Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended. |
| (18) | Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended. |
| (19) | Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended. |
| (20) | Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended. |
| (21) | Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended. |

- (22) Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended.
 - (23) Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended.
 - (24) Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended.
 - (25) Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended.
- + Confidential treatment requested as to certain portions, which portions are omitted and filed separately with the Securities and Exchange Commission.
- (b) Reports on Form 8-K

None

SCHEDULE II

VALUATION AND QUALIFYING ACCOUNTS
 YEARS ENDED DECEMBER 31, 1997, 1998, AND 1999

DESCRIPTION	BALANCE AT BEGINNING OF PERIOD	CHARGED TO COSTS AND EXPENSES	REVERSALS TO COSTS AND EXPENSES	(DEDUCTIONS)	BALANCE AT END OF PERIOD
			(IN THOUSANDS)		
Allowance for doubtful accounts:					
1997.....	\$ --	\$ 100	\$--	\$ --	\$ 100
1998.....	100	178	--	--	278
1999.....	278	596	(4)	(52)	818
Sales returns and allowances:					
1997.....	\$ --	\$ --	\$--	\$ --	\$ --
1998.....	--	7	--	--	7
1999.....	7	1,622	--	--	1,629

SIGNATURES

Pursuant to the requirements of Section 13 or 15 (d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on January 28, 2000.

Brocade Communications Systems, Inc.
(Registrant)

By: /s/ GREGORY L. REYES

Gregory L. Reyes
President, Chief Executive Officer,
and Director
January 28, 2000

POWER OF ATTORNEY

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

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

SIGNATURE -----	TITLE -----	DATE ----
/s/ GREGORY L. REYES ----- Gregory L. Reyes	President, Chief Executive Officer, and Director	January 28, 2000
/s/ MICHAEL J. BYRD ----- Michael J. Byrd	Vice President, Finance and Chief Financial Officer	January 28, 2000
/s/ SETH D. NEIMAN ----- Seth D. Neiman	Chairman of the Board	January 28, 2000
/s/ NEAL DEMPSEY ----- Neal Dempsey	Director	January 28, 2000
/s/ MARK LESLIE ----- Mark Leslie	Director	January 28, 2000
----- Larry W. Sonsini	Director	January 28, 2000

VOLUME PRICING AGREEMENT 2085

VOLUME PRICING AGREEMENT NO. 2085

BUYER: DATA GENERAL CORPORATION
SUPPLIER: BROCADE COMMUNICATIONS SYSTEMS, INC.
TERM: Three (3) Years
MATERIAL: FIBRE CHANNEL SWITCHES ("SWITCHES") AND
GIGABIT INTERFACE CONVERTERS ("GBICs")

VOLUME PRICING AGREEMENT 2085

VOLUME PRICING AGREEMENT

This Volume Pricing Agreement Number 2085 (the "Agreement") is made as of October 1, 1998 (the "Effective Date") between Data General Corporation, a Delaware (U.S.A.) corporation with a principal place of business at 4400 Computer Drive, Westboro, Massachusetts 01580 (U.S.A.) (hereinafter referred to as "DGC") and Brocade Communications Systems, Inc., a Delaware corporation with a principal place of business at 1901 Guadalupe Parkway, San Jose, CA 95131 (U.S.A.) (hereinafter referred to as "SUPPLIER" or "BCS")

In consideration of the mutual covenants contained herein and other consideration, DGC and BCS agree to the following terms and conditions:

1. MATERIAL, ORDER ENTRY PERIOD AND METHOD OF ORDER
 - 1.1 The "Order Entry Period" (period during which DGC is entitled to place orders for MATERIAL) shall commence on the Effective Date of this Agreement, and shall continue until September 30, 2001 unless earlier terminated pursuant to [*] below. The Order Entry Period shall then continue after such date unless and until either party terminates the Order Entry Period by not less than [*] days' written notice. (Provided that the Agreement is not terminated for material breach by DGC, such termination shall not affect orders issued before the designated termination date.)
 - 1.2 BCS agrees to sell the MATERIAL listed in Attachment A (a) to DGC; (b) to the Affiliated Companies (as defined in Section 1.6 below); (c) for use solely in the course of manufacture of products for DGC, to DGC's contract manufacturer(s), in satisfaction of purchase orders issued in writing during the Order Entry Period, in accordance with the terms and conditions of this Agreement. The hardware components of the MATERIAL ("Hardware") and the GBICs shall conform to all specifications referenced in Attachment B and the software components of the MATERIAL ("Software") shall substantially conform to all specifications referenced in Attachment B, including without limitation DGC's Specifications for safety [*] and RF emissions and telecommunications compliance [*]. Further, all MATERIAL shall be "Year 2000 Qualified". For purposes of the foregoing, "Year 2000 Qualified" means that MATERIAL will correctly process, calculate, compare and sequence date data from, into and between the twentieth and the twenty-first centuries, including leap year calculations, when used in accordance with the associated product documentation; provided that all hardware, firmware and software used in combination with MATERIAL properly exchange accurate date data in appropriate Year 2000 format. Except as set forth herein, (i) neither party may make any changes to the specifications set forth in the attachments hereto without written consent of the other party, and (ii) only DGC shall be entitled to request modifications to the MATERIAL (excluding GBICs).
 - 1.3 DGC shall order MATERIAL under this Agreement only by means of its written purchase order(s). Telephone or facsimile communications will be accepted to initiate order processing, subject to a written confirmation by DGC on DGC's purchase order within [*] days thereof; in such case, the time of order placement shall relate back to the initial communication. Subject to the terms and conditions of this Agreement, BCS agrees to accept all purchase orders issued in accordance with this Agreement during the Order Entry Period. BCS agrees to notify DGC in writing of any improper order, within [*] business days of receipt.
 - 1.4 This Agreement shall apply to all orders for any MATERIAL listed in Attachment A which are identified by DGC's Specification Number(s). Any term of a Purchase Order which conflicts with or

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adds to the terms of this Agreement shall be of no force or effect; the parties agree that Purchase Orders shall only serve to state the MATERIAL ordered, the desired delivery date, method of shipment, "Ship-To" address and taxability of order status. In addition, this Agreement shall also apply to any other Replacements and Repair and Refurbishment services, provided that DGC's purchase order includes the following legend:

"This Purchase Order is placed under Volume Pricing Agreement No. 2085 dated October 1, 1998, which shall exclusively govern this Purchase Order."

- 1.5 DGC estimates that it will purchase an average quarterly quantity of units of MATERIAL as listed on Attachment A of this Agreement during the term of this Agreement. However, [*]. If the purchases for the previous two (2) quarters fall below [*] percent of the average quarterly quantity mentioned in this paragraph 1.5 and detailed in Attachment A, upon which initial pricing is herein based, BCS has the right to adjust prices on subsequent orders placed by DGC upon written notice to DGC. BCS will allow DGC [*] days to place sufficient non-cancelable orders to bring the actual quantities purchased in line with the forecast herein stated. If DGC's actual purchases of MATERIAL are [*] or more above the original forecast, DGC can request pricing be adjusted on subsequent new orders.
- 1.6 Any DGC divisions, plants, and companies controlled by, controlling or under common control with DGC (being DGC's "Affiliated Companies") may purchase MATERIAL, Replacements and Repair and Refurbishment services, all as otherwise provided in this Agreement.
2. PRICES, F.O.B. POINT, PAYMENT TERMS
- 2.1 Prices for MATERIAL purchased hereunder shall be as stated in Attachment A, F.O.B. [*], Place of Shipment, at BCS's contract manufacturer's U.S. facility (hereafter, the "F.O.B. Point"). Freight terms shall be freight charges collect. DGC shall not be liable for damage due to improper packaging of MATERIAL or for MATERIAL improperly [*], or for any concealed damage at the time of tender at the F.O.B. Point.
- 2.2 Payment shall be due, against BCS's invoice delivered to DGC, [*] days after the date of invoice. Unless otherwise agreed, invoices shall not issue until delivery of the MATERIAL at the F.O.B. Point.
- 2.3 BCS agrees that the [*] will be [*] than the [*] by BCS to any of its customers [*] products in [*] upon [*]. In the event that BCS offers [*] or other [*] to other customers for [*] in [*] upon [*] during the term of this Agreement, then BCS shall [*] similar [*] in [*] and [*] to DGC. DGC and BCS will meet quarterly to review pricing and, if mutually agreed in a signed writing, implement price adjustments based on the current market conditions and other related factors. The revised pricing, if any, will only apply to MATERIAL purchased from the review date forward, or upon a date agreed to in writing by both parties, and be in effect until the next pricing review or other pricing action. Upon DGC receipt of any amended pricing schedule or other document reflecting BCS's adjustments in price, pricing hereunder shall be deemed amended by substitution of such amended pricing schedule / document.
- 2.4 DGC acknowledges that MATERIAL, including documentation and other technical data, are subject

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to export controls imposed by the U.S. Export Administration Regulations, and the laws of other countries worldwide (the "Export Laws"). DGC warrants and represents to BCS that it will not export or re-export (directly or indirectly) any MATERIAL, or documentation or other technical data therefor, in whole or in part, in violation of the Export Laws and the regulations thereunder. DGC, at its costs, shall obtain all necessary export documentation, licenses and authorizations for international shipments, and BCS agrees to use commercially reasonable efforts to assist DGC in such effort.

3. LEAD TIME; DELIVERY- DEFINITIONS AND REQUIREMENTS

3.1 Timeliness of delivery of MATERIAL pursuant to the requirements of this Agreement is of the essence. BCS will use commercially reasonable efforts to cause MATERIAL to be delivered to DGC's designated "Ship-To" location no later than the "Date Due" specified on the purchase order(s) submitted pursuant to Section 1.4 above, provided that DGC allows no less than the lead time(s) stated in Attachment A (for MATERIAL) and Attachment D (for Replacements). For such purpose, lead time shall mean the time between BCS's receipt of DGC's order and the "Date(s) Due" specified for such order. BCS shall not deliver MATERIAL more than four (4) days before the specified "Date Due". BCS shall use commercially reasonable efforts to accommodate and accept orders allowing less than the required lead time. BCS will provide written acknowledgement of committed delivery dates for all DGC orders within 5 business days after BCS's receipt of DGC's order.

3.2 By the tenth (10th) business day of each month, DGC shall provide BCS with a written rolling 26-week forecast of its anticipated MATERIAL requirements.

3.3 Except as provided in Section 4.2, orders not delivered in a timely manner (as described in Section 3.1) shall be subject to rescheduling, at DGC's option and without charge, and without limitation of DGC's other remedies.

3.4 In the event that BCS determines that it may be unable to make timely delivery of MATERIAL not later than the committed delivery dates, then BCS shall promptly: (1) make commercially reasonable efforts (e.g., use of overtime, expedited procurement of parts and components, and expedited shipment (such as use of air freight)) to minimize the delay, and (2) inform DGC of the situation, the actions so taken and to be taken by BCS, and when BCS expects to be able to effect delivery. BCS is responsible for all incremental costs arising from actions taken to minimize late deliveries, including without limitation any incremental freight charges associated with expedited shipments.

3.5 Except as expressly otherwise stated herein, and subject to each term and condition of this Agreement, BCS will supply the MATERIAL described in Attachment A throughout the stated term of this Agreement. BCS shall provide [*] days' written notice of intent to discontinue the manufacture, sale or distribution of any or all MATERIAL ("End of Life" or "EOL"). DGC may place orders for any demand during the [*] days of such notice for delivery of affected MATERIAL prior to the end of the notice period. To the extent that such orders exceed DGC's previous forecast in Section 3.2 for MATERIAL, the orders shall be non-cancelable. Unless BCS agrees in writing to the contrary, BCS shall accept only forecasted orders in the last [*] days of the stated notice period, and such orders shall be (i) for delivery within four (4) months after the date such orders are placed, and (ii) non-cancelable.

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4. RESCHEDULING; CANCELLATION; CHANGE OF DESTINATION

4.1 Rescheduling: Deferred Deliveries --- DGC may adjust the "Date Due" to a later date specified by DGC in its notice, subject to the following conditions and restrictions:

DEFERMENT SCHEDULE

NOTICE PERIOD -----	RESCHEDULING CONDITIONS -----
0-30 days before Date Due	No rescheduling permitted
[*] days before Date Due	MATERIAL can be rescheduled; rescheduled date shall be no later than 90 days from the Date Due stated on DGC's initial order or the end of the current BCS Fiscal Quarter, which whichever comes first.
[*] days or greater before Date Due	Unlimited rescheduling permitted provided that the MATERIAL is not identified in Attachment A as DGC UNIQUE MATERIAL

4.2 Rescheduling: Accelerated or Less-Than-Leadtime Deliveries --- BCS shall accommodate DGC's requests to accelerate the date(s) of deliveries and/or to manufacture and deliver MATERIAL (specifically excluding GBICs which are not integrated into SWITCHES) in a shorter period than the applicable lead time, as follows:

ACCELERATION SCHEDULE

NOTICE PERIOD -----	CONDITIONS -----
0- 30 days before Date Due	BCS shall use commercially reasonable efforts to satisfy DGC's requirements
[*] days before Date Due	BCS shall accommodate DGC's requirements, insofar as not exceeding [*] above Monthly Forecasted Demand
[*] days before Date Due	BCS shall accommodate DGC's requirements, insofar as not exceeding [*] above Monthly Forecasted Demand
[*] days or greater before Date Due, or prior to BCS's leadtime, whichever is earlier	BCS shall accommodate DGC's requirements, insofar as not exceeding [*] above Monthly Forecasted Demand. Further, BCS shall use its commercially reasonable efforts to accommodate any requested increase/acceleration above that level.

For these purposes, "Monthly Forecasted Demand" shall mean the average of the last [*] months actual shipment quantities and the forecast for the next 4 months, which forecast has been submitted to BCS pursuant to Section 3.2 above no less than 30 days prior to the date of the request for acceleration.

The parties agree that DGC shall not have the remedies set forth in Section 3.3 above on account of BCS's failure to meet DGC's accelerated Due Dates.

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- 4.3 Cancellation -- DGC may cancel any order, by notice given not later than delivery of the MATERIAL to the F.O.B. Point. There shall be no cancellation charges for orders canceled with a notice period greater than the specified lead time for the MATERIAL being canceled, nor for cancellation of any MATERIAL described below which is canceled with at least the below-specified notice:

CANCELLATION SCHEDULE

NOTICE PERIOD -----	CANCELLATION CHARGES -----
0-30 days before Date Due	100% of the Purchase Price
31-89 days before Date Due	[*] of the Purchase Price
90 days or greater before Date Due, or prior to the specified leadtime, whichever is earlier	No liability for cancellation

All other cancellations may be subject to cancellation charges to be negotiated between the parties, which shall not exceed the lesser of (i) BCS's direct damages, or (ii) [*]. Without limitation, if cancelled MATERIAL is not customized for, or a proprietary product of, DGC, then if BCS can find an alternate customer to purchase cancelled MATERIAL within three (3) months after the date upon which DGC would have been obliged to take delivery of such MATERIAL, BCS agrees that its restocking charges, if asserted, will not exceed [*] of the Purchase Price.

- 4.4 Change of Destination -- By written notice given not later than [*] days before shipment of MATERIAL, DGC may change the "ship-to" destination designated in DGC's orders. Non-domestic shipments shall require 30 days written notice of such change.

5. WARRANTIES

- 5.1 BCS agrees that the warranty extended to DGC herein for the MATERIAL is the same or better than that extended by BCS to any of its customers purchasing comparable products (the "Standard Warranty"). In the event that BCS offers more favorable standard warranty terms (e.g., extended length of the warranty granted over standard BCS products) to other customers purchasing comparable products during the term of this Agreement, then BCS shall immediately extend similar terms to DGC and its Affiliated Companies for MATERIAL ordered after the date upon which such more favorable terms are granted.
- 5.2 All MATERIAL shall be new (except repaired or refurbished MATERIAL provided to DGC under warranty service by BCS) and, in the case of Hardware, in compliance with DGC's specifications as referenced in Attachment B and, to the extent not inconsistent, BCS's specifications, and in the case of Software, in substantial compliance with DGC's specifications as referenced in Attachment B and, to the extent not inconsistent, BCS's specifications. From time to time, BCS may issue notice of "Mandatory Field Changes", which are changes to MATERIAL required to satisfy governmental environmental, safety or other standards, reliability concerns, or to guarantee a continuity of supply. BCS will make commercially reasonable efforts to provide DGC with [*] days' prior written notice of Mandatory Field Changes prior to implementing such changes; however this period may be

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reduced if the change involves safety or reliability, or if otherwise required by law. BCS shall issue Mandatory Field Change Orders ("MFCOs") to effect such changes. The parties shall mutually agree on how DGC shall implement the MFCOs. MFCOs shall include all documentation necessary to properly define and implement any such change, and BCS shall at its expense deliver to DGC kits of all parts and materials necessary to effect MFCOs on all MATERIAL previously delivered as soon as practical under the circumstances. BCS will reimburse DGC's actual and reasonable costs incurred in implementing such MFCOs.

- 5.3 All Hardware shall be free from defects during the "Standard Warranty" stated in Attachment A, and all Software shall be materially free of defects during the Standard Warranty for Software stated in Attachment A. BCS agrees to repair or replace all defective Hardware and Software (as verified by BCS in its sole reasonable discretion) which is returned to BCS during the Standard Warranty, and to return such Hardware or Software to DGC within the "Warranty Cycle Time for MATERIAL" stated in Attachment A or as specified under DGC's "Advanced Exchange" terms stated below. In the event that Hardware or Software returned is not defective, DGC will be responsible for freight costs for return shipment to DGC. Defective Hardware or Software which is not repaired or replaced, and returned, within the stated period shall be subject to revocation of acceptance, whereupon BCS shall refund to DGC the then-current purchase price (less any previous credits, refunds or discounts) for such Hardware and Software. DGC shall comply with BCS's reasonable Return Material Authorization ("RMA") procedures when making returns under this Agreement; BCS shall use commercially reasonable efforts to provide RMAs to DGC (or DGC's designated contractors) within [*] of request. DGC shall be responsible for all charges arising from return of warranty claims to BCS and BCS shall be responsible for payment of all shipping charges relative to return of warranty claims to DGC.
- 5.4 "Advanced Exchange" -- BCS agrees to support DGC's "Advanced Exchange" requirements by delivering replacement MATERIAL prior to receipt of defective MATERIAL from DGC. The parties acknowledge that such Advance Exchange requests shall generally take between [*] and [*] calendar days.
- 5.4.1 Notwithstanding the foregoing, upon written request from DGC for "Expedited Next-Day Advanced Exchange", BCS will provide next business day shipment of replacement MATERIAL for MATERIAL listed on Attachment A of this Agreement that is covered by BCS's Standard Warranty to any DGC designated U.S. or Canadian location (excepting only requests made on weekends and holidays, which shall be delivered on the second business day) for a [*] per incident charge, unless the necessity for exercising Expedited Next-Day Advanced Exchange is attributable to delinquencies in the delivery of MATERIAL or spare Field Replaceable Units ("FRUs"), or of (normal) Advanced Exchange MATERIAL replacements, or of MATERIAL serviced under BCS's warranty, to DGC by BCS.
- 5.5 BCS agrees to maintain an adequate inventory of replacement MATERIAL for DGC to cover the estimated or actual annual replacement MATERIAL rate, as stated in Attachment C of this Agreement.
- 5.6 Regardless of whether or not DGC avails itself of the Expedited Next-Day Advance Exchange mechanism described in Section 5.4.1, DGC will be required to return all defective MATERIAL to BCS no later than fifteen (15) days after the replacement MATERIAL has been received by DGC. If the defective MATERIAL are not returned by DGC within thirty (30) days after receipt of the replacement MATERIAL, BCS will invoice DGC at the then-current purchase price, with payment due no later than [*] days after receipt of the invoice from BCS.

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- 5.7 Dead-on-Arrival ("DOA") MATERIAL and Catastrophic Failures of MATERIAL
- 5.7.1 Dead on Arrival: Insofar as requested by DGC in writing to meet its business requirements, BCS agrees to use commercially reasonable efforts to provide expedited assistance and replacement of MATERIAL found to be defective upon initial inspection or use at DGC, in no event longer than [*] days after receipt by BCS of the returned DOA MATERIAL.
- 5.7.2 "Catastrophic failures" are defined as MATERIAL demonstrating failure rates materially in excess of [*] times those predicted by the applicable specifications (under defect-per-million, mean-time-between-failure and any other applicable parameters). BCS also agrees that if a repair, recall or replacement is required, then BCS will make commercially reasonable efforts and at its sole discretion to: (A) provide sufficient replacement MATERIAL no later than [*] days after repair, recall or replacement is initiated to retrofit DGC's installed base, (B) repair, replace or accept for credit all affected MATERIAL in a jointly agreeable manner, (C) reimburse DGC for all actual and [*] to retrofit DGC's installed base, and (D) upon request, provide appropriate technical and business support at DGC and DGC's customer sites. BCS will reimburse DGC for all freight and freight related charges arising in connection with verified catastrophic warranty claims on such MATERIAL.
- 5.8 Mutual Warranties. Each party certifies and represents to the other party that as of the Effective Date, it has full power, right and authority to execute this Agreement, to fulfill all its rights and obligations herein.
- 5.9 Restrictions. The foregoing Standard Warranty shall not apply to MATERIAL that have been (i) damaged by accident, Acts of God, shipment, improper installation, abnormal physical or electrical stress, misuse or misapplication, as determined by BCS in its sole reasonable discretion, or (ii) modified without BCS's express written authorization.
- 5.10 GBICs. BCS warrants that the GBICs are new, and that the GBICs will conform to the specifications established by the manufacturer of the GBICs. Except as set forth herein, BCS makes no warranties of any kind with respect to the performance of the GBICs that BCS may use in the manufacture of MATERIAL. As a remedy for defective GBICs, BCS will provide replacement parts as a service to DGC for verified GBICs failures that occur within twelve (12) months of the date of shipment to DGC, as set forth in Attachment A. Such replacements will be administered in the same manner as warranty claims concerning Switches (e.g., RMA process, Advanced Exchange capability, Warranty Cycle Time, etc.).
- 5.11 Exclusive Remedy. DGC acknowledges and agrees that its sole and exclusive remedy for breach of the Standard Warranty is as set forth in this Section 5.
- 5.12 Disclaimer. EXCEPT AS STATED IN SECTION 7, THE FOREGOING WARRANTIES ARE IN LIEU OF, AND BCS EXPRESSLY DISCLAIMS, ALL OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.
- 5.13 Indemnification by DGC. DGC agrees to defend, indemnify and hold BCS harmless from any and all losses, damages, liabilities, costs and expenses (including but not limited to reasonable attorneys' fees and costs of litigation) incurred by BCS as a result of any third party claim, regardless of the form of action, arising from a modification: (i) to MATERIAL made by BCS at the request of DGC for MATERIAL sold by BCS to DGC or any DGC-affiliated entity entitled to purchase MATERIAL

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hereunder pursuant to Section 1.2 above, which claim would not have arisen but for the modification requested, or (ii) by DGC of the Documentation (as defined herein); provided that BCS promptly notifies DGC of any such claim in writing, gives DGC sole control of the defense and all related settlement negotiations, and cooperates with DGC in defending or settling any such claim.

6. QUALITY

6.1 It is BCS's intention and commitment to deliver Hardware and GBICs to DGC which is free of defects and Software which is materially free of defects. To that end, BCS will take those actions and make those reports to DGC as described in Attachment C ("Quality Requirements"). BCS shall establish and maintain a documented quality system as a means to ensure that all Hardware and GBICs processes and operations conform, and all Software processes and operations substantially conform, to the applicable specifications of this Agreement.

6.2 Product Changes/Concerns in MATERIAL Manufactured by or for BCS (Specifically Excluding GBICs) -- BCS shall use commercially reasonable efforts to provide DGC with [*] days' notice of changes to MATERIAL (specifically excluding GBICs) that affect the form, fit or function of such MATERIAL ("Engineering Change Order" or "ECO"). The ECO shall contain the reason for the change and test data to support the change. If requested, BCS shall concurrently make samples available for evaluation. BCS shall also notify DGC promptly should a concern arise regarding the quality of MATERIAL already delivered, e.g., any condition which might impact substantial compliance with specification, reliability, or safety, or increase the rate of defects. If DGC does not respond to BCS in writing with respect to an ECO within fifteen (15) business days following receipt of such ECO, the ECO will be deemed accepted by DGC. In the event that DGC objects in writing to an ECO in the stated time period, then DGC may provide BCS with written notice of such objection, and shall be entitled to (in addition to placing orders for the changed MATERIAL) submit purchase orders for the unchanged MATERIAL prior to the effective date of the implementation of the ECO, for delivery no more than ninety (90) days after the effective date of such implementation and in quantities which do not exceed the total quantity of such MATERIAL ordered by DGC in the six (6) months immediately preceding the date of notice of ECO.

6.3 Required Quality Levels for Hardware -- Without limitation, the parties shall evaluate quality by using Defect Per Million (DPM) statistics and other pertinent methods. BCS warrants that the aggregate DPM of the Hardware shall meet or exceed the threshold(s) stated in Attachment C. BCS agrees to seek to make continuous improvement in DPM statistics during each succeeding years of the term.

6.4 Non-Conforming MATERIAL -- DGC reserves the right to reject MATERIAL which in its reasonable determination does not conform to the specifications as referenced in Attachment B. DGC reserves the right to defer inspection until time of actual use of MATERIAL by DGC or the end user, as the case may be, but not longer than [*] days from shipment. Returns of rejected MATERIAL shall be by BCS's standard RMA procedure, with DGC shipping the MATERIAL prepaid to BCS's U.S. repair facility and BCS shipping prepaid return to DGC's U.S. warehouse.

6.5 Corrective Actions: Performance Review -- In the event BCS is unable to maintain the quality levels required herein, BCS will promptly initiate corrective action pursuant to the terms and conditions of Attachment F (Service and Support Requirements). A permanent process modification and root cause analysis will be made available within thirty (30) days or such other reasonable timeframe that is mutually agreed upon. Results of the failure or root cause analysis shall be provided to DGC in a written report detailing the results of the investigation and corrective actions plans to prevent its

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recurrence. DGC agrees to limit requests for failure or root analysis in situations where the results would be important to DGC's business or DGC's customer satisfaction. DGC and BCS shall meet on a quarterly basis to review BCS's performance.

6.6 SEE ARTICLE 8.3 and ATTACHMENT F

7. PROPRIETARY RIGHTS

7.1 Intellectual Property Rights Infringement Indemnification.

7.1.1 Hardware and Software. BCS warrants that no part of the MATERIAL (specifically excluding the GBICs) infringes any patent established under any of the [*] or any copyright or other proprietary right of any third party. BCS shall defend at its expense all claims, and pay all awards and damages, based on any claim that the MATERIAL (specifically excluding the GBICs) or its sale or use infringes any patent established under any of the [*] or any copyright or other proprietary right of any third party, provided that DGC promptly notifies BCS of such claim, provides its full cooperation and grants BCS control of its defense. DGC shall have the right to be represented by its own counsel (at DGC's expense). If use of MATERIAL (specifically excluding the GBICs) is enjoined, BCS shall make commercially reasonable efforts at its expense either (i) to gain rights to make, use and sell the MATERIAL (specifically excluding the GBICs) as set forth herein, or (ii) to modify the MATERIAL (specifically excluding the GBICs) so that it becomes non-infringing while remaining in conformity in all material respects with specifications. Otherwise, at DGC's option, DGC may return the MATERIAL (specifically excluding the GBICs), and BCS shall refund the [*] of MATERIAL (specifically excluding the GBICs) (less any previous credits, refunds or discounts) and accept its return.

7.1.2 GBICs. In the event that the GBICs are found to infringe the proprietary rights of any third party, BCS will use commercially reasonable efforts to assist DGC in procuring non-infringing GBICs from any manufacturer and/or vendor from which BCS procures GBICs. Further, BCS assigns to DGC its rights to pursue (as subrogated party) any rights and remedies BCS may have against the GBIC manufacturers and vendors from which BCS procures GBICs sold hereunder solely with respect to those GBICs sold to DGC by BCS hereunder.

7.2 Restrictions. BCS will not be obligated to defend or be liable for costs and damages to the extent that infringement, or a claim thereof, arises out of or is related to (a) a modification to MATERIAL (specifically excluding the GBICs) requested by DGC or made to MATERIAL (specifically excluding the GBICs) by DGC or a third party, (b) use or combination of MATERIAL (specifically excluding the GBICs) with products or data not provided by BCS if use of the MATERIAL (specifically excluding the GBICs) alone would not have so infringed and if such combination was not contemplated by BCS's written specifications or written product descriptions for the MATERIAL (specifically excluding the GBICs), (c) use of other than the latest unmodified release of MATERIAL (specifically excluding the GBICs) made available to DGC by BCS if such infringement would have been avoided by the use thereof.

7.3 Limitations. THE FOREGOING SECTIONS 7.1 AND 7.2 STATE THE ENTIRE LIABILITY OF BCS FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT BY MATERIAL OR GBICs FURNISHED UNDER THIS AGREEMENT.

7.4 Trademark License. Subject to the terms of this Agreement, BCS grants to DGC a non-exclusive, non-transferable right and license to use those BCS trademarks, service marks, and trade names

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described in Exhibit I (herein "Trademarks") in DGC's marketing of MATERIAL, provided that such use is in accordance with BCS's then current guidelines for using the BCS Trademarks, as such guidelines may be amended from time to time. Without limiting the foregoing, such use must reference the Trademarks as being owned by BCS. Nothing in this Agreement grants DGC ownership or any rights in or to use the Trademarks, except in accordance with this Section. BCS will have the exclusive right to own, use, hold, apply for registration for, and register the Trademarks during the term of, and after the expiration or termination of, this Agreement; provided, however, that nothing herein shall limit DGC's ability to use any component part of any Trademark if such component part is a word or term that is generic, descriptive or otherwise not under proprietary control of BCS. DGC will neither take nor authorize any activity inconsistent with such exclusive right. DGC will not use any Trademark as part of DGC's trade name, service mark, or trademark or other signifying mark, or in a manner that is confusingly similar; provided, however, that nothing herein shall limit DGC's ability to use any component part of any Trademark if such component part is a word or term that is generic, descriptive or otherwise not under proprietary control of BCS or in which BCS holds no enforceable trademark rights. Upon request, but no less frequently than quarterly, DGC shall regularly submit specimens of DGC's use of the Trademarks to BCS, in no event less than quarterly, and DGC agrees to immediately change or discontinue any improper Trademark use as requested by BCS, and submit corrected specimens thereof for review by BCS.

- 7.5 Authorized Reseller. During the term of this Agreement, DGC may indicate to End Users and to the public that it is an authorized reseller of MATERIAL.
- 7.6 Ownership. Except for the specific licenses granted herein, the Software and Documentation (as defined below) are and will remain the sole and exclusive property of BCS and its suppliers, if any, including without limitation all intellectual property rights of BCS in and to the Software and the Documentation, and all modifications to, and derivative works based upon, the Software and the Documentation, except as expressly provided in Section 10.1.2.
8. FIELD SERVICE SUPPORT
- 8.1 REPLACEMENTS
- 8.1.1 BCS shall maintain at the stocking location(s) described in Attachment D ("Description of Replacements, Prices, Lead Times and Warranty Terms") Replacements for all MATERIAL in reasonable quantities to service DGC's routine and emergency requirements, including without limitation those Replacements listed in Attachment D. BCS shall make Replacements for MATERIAL available to DGC throughout the "Replacements Availability Period" stated in Attachment D.
- 8.1.2 The provisions of this Agreement relative to MATERIAL shall also apply in every respect to Replacements, except as otherwise stated.
- 8.1.3 Replacements for Hardware and Software (Specifically Excluding GBICs)-BCS will sell Hardware Replacements to DGC for the price(s) stated in Attachment D. All Hardware Replacements shall be new or equal to new and shall conform to all applicable specifications hereunder, including without limitation all packaging specifications, and be free from defects for the "Period of Warranty for Replacements" stated in Attachment D. BCS will sell Software Replacements to DGC for the price(s) stated in Attachment D. All Software Replacements shall be new or equal to new and shall substantially conform to all applicable specifications hereunder, including without limitation all packaging specifications, and be materially free from defects for the "Period of Warranty for

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Replacements" stated in Attachment D. BCS agrees to repair or replace all defective Replacements (as verified by BCS in its sole reasonable discretion) which are returned to BCS during the relevant Replacements warranty period, and to return such items to DGC within the "Warranty Cycle Time for Replacements" stated in Attachment D.

- 8.1.4 GBICs Replacements. BCS will sell GBICs Replacements to DGC for the price(s) stated in Attachment A. All GBICs Replacements shall be new. BCS agrees to replace all defective GBICs Replacements (as verified by BCS in its sole reasonable discretion) which are returned to BCS during the relevant Replacements return period, and to replace such GBICs to DGC within the "Warranty Cycle Time for Replacements" stated in Attachment D.
- 8.2 OUT-OF-WARRANTY REPAIR AND REFURBISHMENT
- 8.2.1 BCS shall Repair and Refurbish MATERIAL and Replacements for DGC and such third parties as DGC may from time to time designate in writing at the rates stated in Attachment E ("Out-of Warranty Service Schedule"). "Repair" and "Refurbishment" shall have the meanings stated in Attachment E, and shall be at no charge for MATERIAL and Replacements covered by warranty.
- 8.2.2 BCS agrees to Repair or Refurbish MATERIAL and Replacements as ordered, and to return items to DGC within the "cycle time" stated in Attachment E. DGC shall be responsible for reimbursement of all shipping charges relative to Repairs and Refurbishments. All Repairs and Refurbishments shall be free from defects for the "Period of Warranty" stated in Attachment E.
- 8.3 SERVICE AND SUPPORT REQUIREMENTS
- 8.3.1 BCS will make available to DGC appropriate training relative to the use, installation, adjustment, operation, and maintenance of MATERIAL sold hereunder per Attachment F.
- 8.3.2 BCS will provide DGC and DGC will provide its customers the support defined in Attachment F.
9. DEFAULT AND TERMINATION
- 9.1 Default. The occurrence of any of the following acts or events shall constitute default of this Agreement: (a) the failure by such party to observe or perform any material covenant or obligation under this Agreement, or (b) such party becomes insolvent, suffering the appointment of a receiver, or making an assignment for the benefit of creditors; or proceedings are commenced against such party under any bankruptcy, insolvency or debtor's relief law, if such proceeding is not vacated or set aside within sixty (60) days after the date of commencement thereof;
- 9.2 Termination. In the case of default, if such default has not been cured within thirty (30) days after a party has received written notice of default from the other party, the party giving notice may give a second (final) Notice of Intent to Terminate, directed in the case of notice to DGC to its Vice President, Manufacturing, and in the case of BCS, to its Vice President, Finance and Administration. In the event thereafter that such default is not cured within five calendar days after the receipt of such Notice of Intent to Terminate, the party giving notice may terminate this Agreement by written notice at any time thereafter while such default continues.
- 9.3 Effect of Termination. Upon the expiration or termination of this Agreement, however arising: (a) DGC will cease holding itself out as an authorized reseller of MATERIAL, but may continue to provide support regarding MATERIAL to end users; (b) DGC will cease its use of the BCS

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Trademarks; and (c) each party will cease its use of the Confidential Information of the other party, and will return or destroy, at the other party's direction, all such Confidential Information and any copies or portions thereof which are incorporated into documents or archives, except that DGC may retain a mutually agreed number of copies of BCS's Confidential Information which is reasonably required in order to carry out its support obligations to its resellers and end users. DGC expressly acknowledges that the provisions of Section 10.4 shall remain in full force and effect after the termination of this Agreement, however arising.

- 9.3.1 If BCS has terminated this Agreement due to DGC's material breach of the terms of this Agreement, the parties agree that the timing for all amounts owed by DGC to BCS as of the effective date of such expiration or termination shall accelerate, and such payment shall become payable as of such effective date, whether or not longer payment periods had originally been established. Otherwise, DGC shall be entitled to the full payment period for the payment of amounts due and payable as of the effective date of termination.
- 9.3.2 After termination of this Agreement and provided that BCS has terminated this Agreement due to DGC's material breach of the terms of this Agreement, DGC may submit orders for MATERIAL, which orders are subject to approval by BCS in its sole discretion, provided that DGC pays BCS for such MATERIAL at the time such purchase order is accepted by BCS. The parties agree that orders submitted as set forth in this Section shall not be considered approved by BCS until and unless BCS has notified DGC of its acceptance of such order in writing.
- 9.4 No Damages for Termination. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR DAMAGES OF ANY KIND, INCLUDING SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, SOLELY ON ACCOUNT OF THE TERMINATION OR EXPIRATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.
- 9.5 Nonexclusive Remedy. The exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.
10. MISCELLANEOUS PROVISIONS
- 10.1 Documentation. Promptly following the Effective Date, BCS will provide to DGC BCS's standard technical documentation ("Documentation") including but not limited to data sheets, BCS Manuals (as defined below) and other manuals distributed to resellers of MATERIAL (such as technical manuals), all of which BCS will supply in electronic format, relating to MATERIAL purchased by DGC for use as set forth herein. Thereafter, during the term of this Agreement, BCS will provide all updates and corrections thereto when first made commercially available.
- 10.1.1 Technical Documentation. Subject to the terms of this Agreement, BCS hereby grants to DGC a nonexclusive, nontransferable worldwide license to reproduce and use BCS's technical documentation provided to DGC by BCS hereunder, solely for DGC's internal purposes in connection with the marketing and support of MATERIAL. The foregoing license to technical documentation shall not be transferable except by means of sublicense to: (a) the Affiliated Companies, and the resellers of DGC and Affiliated Companies, for use solely in the course of support of MATERIAL; (b) DGC's contract manufacturer(s), for use solely in the course of manufacture of products for DGC; (c) DGC's and Affiliated Companies' service contractor(s) for use solely in the course of service and support of MATERIAL on behalf of DGC or Affiliated Companies; (d) to DGC's "Certified Maintenance Organizations" ("CMOs", being DGC customers who have been qualified by DGC to be self-maintainers of DGC products containing MATERIAL and to whom DGC is making disclosure of DGC's own comparable technical DGC documentation), provided that such disclosure of BCS technical documentation to such CMOs be upon no more

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liberal or favorable terms as the disclosure of DGC's comparable technical documentation.

- 10.1.2 Manuals. Subject to the terms of this Agreement, BCS hereby grants to DGC a nonexclusive, nontransferable license to modify the BCS End User manual(s) (including manual text and layouts) for MATERIAL ("BCS Manuals"), subject to BCS's approval as described below, and to reproduce and distribute such revised versions of the BCS Manuals (the "DGC Manuals") worldwide with DGC's products. BCS acknowledges that DGC will own all right, title and interest in and to any such DGC modifications of the BCS End User Manuals, subject to BCS' ownership of the underlying BCS End User Manuals. BCS will review and approve the DGC Manuals as to form and content with respect to MATERIAL prior to their use or distribution. Such approval shall not be unreasonably withheld and shall be made within seven (7) business days following BCS's receipt of the proposed DGC Manuals.
- 10.1.3 Expenses. DGC is solely responsible for all expenses incurred by DGC in modifying, reproducing, distributing and using the Documentation.
- 10.1.4 Warranty and Disclaimers of Warranty.
- (a) Limitations. BCS grants the licenses in this Section 10.1 to DGC hereunder solely on an "AS IS" basis.
- (b) Limited Warranty. BCS warrants that no part of the Documentation infringes any copyright of any third party.
- (c) Disclaimer. EXCEPT AS STATED HEREIN, BCS DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE DOCUMENTATION, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR FITNESS FOR A PARTICULAR PURPOSE. The parties agree that BCS shall have no liability for errors introduced by DGC into the Documentation in the process of modifying, reproducing and using the Documentation.
- 10.2 Software License Agreement. The Software is licensed to DGC as set forth in Attachment G.
- 10.3 Diagnostic Support Tools, Information and Firmware -- BCS will maintain and make available to DGC throughout the "Replacements Availability Period" stated in Attachment D all diagnostic support tools and information for the MATERIAL which do not require license key activation for use, as may be reasonably requested by DGC for maintenance and support of the MATERIAL provided under this Agreement and in support of DGC's products. BCS shall provide to DGC all software bug fixes and corrections thereto which do not require a paid license key activation for use as soon as the same are commercially available. BCS grants and provides to DGC hereunder a license (which DGC may sublicense to DGC's Affiliated Companies, DGC's maintenance and service contractors, and DGC's authorized third party CMOs) to use all tools, information and firmware for such support and maintenance purpose.
- 10.4 Confidentiality -- All information relating to this Agreement or the items or services to be sold hereunder, insofar as marked as being the confidential or proprietary information of the disclosing party or identified as such at the time of disclosure and confirmed as such in writing within 30 days after disclosure, shall be protected according to the terms of this Section. Each party receiving such confidential information shall exercise such care as the receiving party uses with respect to its own confidential information of a similar nature, not to disclose any such information to any third party and to limit dissemination of such information to its employees or contractors on a need-to-know basis only; all such employees and contractors shall be bound by written contract, enforceable by the

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10.10 Limitation of Liability--

10.10.1 NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST REVENUES, LOSS OF DATA OR INTERRUPTION OF SERVICE, ARISING FROM BREACH OF THIS AGREEMENT.

10.10.2 WITH THE EXCEPTION OF DAMAGES PAYABLE BY BCS TO DGC UNDER SECTION 5 ("WARRANTIES"), WHICH DAMAGES SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY DGC TO BCS IN RESPECT OF THE AFFECTED MATERIAL IN THE WARRANTY PERIOD IMMEDIATELY PRECEDING THE DATE LIABILITY IS IMPOSED, IN NO EVENT WILL BCS'S LIABILITY UNDER THIS AGREEMENT FOR ANY AND ALL CLAIMS, HOWEVER CAUSED AND ON WHATEVER THEORY OF LIABILITY, EXCEED AN AMOUNT EQUAL TO THE GREATER OF (i) TEN PERCENT (10%) OF THE AMOUNTS PAID TO BCS BY DGC IN RESPECT OF THE AFFECTED MATERIAL IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH DAMAGES, OR (ii) TWO MILLION DOLLARS (\$2,000,000).

10.11 Whole Agreement; Amendment; Construction; Waiver -- This Agreement is the exclusive statement of the contract between the parties concerning the subject matter herein, and may be amended only in writing, duly executed by each party. Captions are for convenience only and shall not affect interpretation. This Agreement shall be construed according to its terms, neither for or against either party, and under and governed by the substantive laws of the State of [*] (U.S.A.), excluding its conflict of law rules and the application of the UN Convention on the International Sale of Goods. If any provision is declared invalid by any tribunal, then this Agreement shall be deemed adjusted to conform to the requirements for validity as declared at such time. Failure of either party to insist in any instance upon performance by the other party shall not be construed as a waiver.

10.12 "Year 2000" Assurance -- BCS agrees to take proper actions to anticipate changes necessitated in its business by the transition to the next millennium on January 1, 2000. Without limitation, BCS agrees that BCS's performance of its obligations under this Agreement and provision of MATERIAL to DGC will not be materially impaired or interrupted by causes arising from such change of date, and that all MATERIAL shall be "Year 2000 Qualified" as stated in Section 1.2. BCS agrees to cooperate with DGC relative to Year 2000 issues. BCS will keep DGC informed relative to BCS's state of Year 2000 readiness and of any significant BCS concerns that the foregoing assurances will not be fulfilled. BCS will use reasonable commercial efforts to require that its contractors and suppliers whose services or products are required by BCS in the performance of its obligations under this Agreement, or in the production of MATERIAL or Replacements for DGC hereunder, are contractually bound by these undertakings.

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

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EXECUTED UNDER SEAL:

BROCADE COMMUNICATIONS
SYSTEMS, INC.
("BCS")

DATA GENERAL CORPORATION
("DGC")

By: /s/ CHARLES SMITH

Charles Smith
Vice President of Worldwide Sales

By: /s/ WILLIAM F. O'NEILL

William F. O'Neill
Director, New Products and

Technology

Date: 8/4/99

Date: 7/29/99

ATTACHMENTS:

- A. Description of MATERIAL, Prices, Lead Times and Warranty Terms
- B. Specifications
- C. Quality Requirements
- D. Description of Replacements, Prices, Lead Times and Warranty Terms
- E. Out-of Warranty Service Schedule
- F. Service and Support Requirements
- G. Software License Agreement
- H. Patent Coverage List
- I. BCS Trademarks

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ATTACHMENT A

DESCRIPTION OF MATERIAL, PRICES, LEAD TIMES AND WARRANTY TERMS

A.1 Description of Hardware Components of MATERIAL and Prices:

DGC Specification Number	Vendor Part Number	Description	Price	Average Quarterly Volume
[*]	B-1630-016	Silkworm 16 Port Fibre Channel Switch, with [*]	\$ [*]	*See Below
[*]	B-1630-008	Silkworm 8 Port Fibre Channel Switch, with [*]	\$ [*]	*See Below
[*]	BR-2802-0000	Silkworm 2800, 16 Port Fibre Channel Switch with Dual Power Supply and [*]	\$ [*]	*See Below
[*]	BR-2402-0000	Silkworm 2400, 8 Port Fibre Channel Switch with Dual Power Supply and [*]	\$ [*]	*See Below
TBD	BR-2101-0000	Silkworm 2100, 8 Port Fibre Channel Switch with single power supply and [*]	\$ [*]	*See Below

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A.2. Description of Software Components of MATERIAL and Prices:

[*] and [*]	Version 1.1	[*] (as described in Exhibit A to Attachment G)	\$[*]
[*] and [*]	Version 2.1	[*] (as described in Exhibit A to Attachment G)	\$[*]
TBD	SW-200008-01	[*] version 2.1 for [*] (BR-2802-0000) or [*] (BR-2402-000)	\$[*]
TBD	SW-200024-02	[*] for BR 2101-0000 (DG PN TBD)	\$[*]

A.3 Description of GBICs and Prices:

[*]	X1017	GBICs Module Copper	\$ [*] Per switch requirement
[*]	X1006	GBICs Module S/W Optical	\$ [*] Per switch requirement

A.4 Description of Extended Warranty and Prices:

TBD	TBD	[*] Warranty for 118030714	\$ [*]
TBD	TBD	[*] Warranty for 118030715	\$ [*]
TBD	TBD	Extended Warranty-per year	[*] of the MATERIAL purchase price

Average Quarterly Volume is [] switches. The volume may be comprised of any qty. of the 4 various switch types.

B. Minimum Lead Times: 90 days to F.O.B. point.

C. Standard Warranty (exclusive of GBICs; for GBICs see below): [*] months after date of delivery to the F.O.B Point for Hardware, and [*] days for the Software. An optional extended warranty of [*] years in duration may be exercised by DGC within [*] from the date of purchase from BCS for Hardware.

D. Warranty Cycle Time for MATERIAL: [*] days

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- E. GBICs: Defective GBICs shall be replaced for a period of twelve (12) months after date of delivery to the F.O.B. Point.
- F. No Trouble Found (NTF) Repair Charges: BCS may request NTF Evaluation Charges, as stated below, for verified NTF MATERIAL in excess of [*] of the total return of MATERIAL to BCS over the previous 2 quarter period. The charge will not exceed the Repair Pricing shown on Attachment E of this Agreement. In the event DGC is charged for a NTF that is returned to DGC and that MATERIAL continues to fail, BCS agrees to re-verify the failure in a similar configuration.

Part Number -----	Description -----	NTF Evaluation Charges -----
[*](B-1630-008)	8 Port Switch	[*]
[*](B-1630-016)	16 Port Switch	[*]
[*](BR-2402-0000)	8 Port Switch	[*]
[*](BR-2802-0000)	16 Port Switch	[*]

*Or the repair pricing shown on Attachment E, whichever is less.

- G. DGC UNIQUE MATERIAL: None.

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ATTACHMENT B

SPECIFICATIONS

DGC Specifications:

118026931
118029629
118029645
118029646
118030714
118030715

are referenced herein and made part of this Volume Pricing Agreement.

Additional applicable DGC Specifications shall be added to this reference page as approved by mutual agreement of the parties in a signed writing.

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ATTACHMENT C

QUALITY REQUIREMENTS

A. QUALITY COMMITMENTS:

B.

DGC Part Number	BCS Part Number	Description-	Defects per Million (DPM) Target
[*]	B-1630-016	16 Port Switch	[*]
[*]	B-1630-008	8 Port Switch	[*]
[*]	BR-2402-0000	8 Port Switch	[*]
[*]	BR-2802-0000	16 Port Switch	[*]

DGC Part Number	BCS Part Number	Description-	MTBF Target
[*]	B-1630-016	16 Port Switch	[*]
[*]	B-1630-008	8 Port Switch	[*]
[*]	BR-2402-0000	8 Port Switch	[*]
[*]	BR-2802-0000	16 Port Switch	[*]

DGC Part Number	BCS Part Number	Description-	Annual Replacement Rate
[*]	B-1630-016	16 Port Switch	[*]
[*]	B-1630-008	8 Port Switch	[*]
[*]	BR-2402-0000	8 Port Switch	[*]
[*]	BR-2802-0000	16 Port Switch	[*]

DOA Rate: [*]
 Plug & Play Rate: [*]

B. TRACKING: BCS's commitments relative to identification of MATERIAL and Replacements (e.g. by serial number tracking or date codes):

Tracking shall be by BCS Model Number, Serial Number, Revision Number and via barcode label on the MATERIAL.

C. ADMINISTRATION: BCS shall make reasonable efforts to report to DGC's designated Quality Engineering group on a quarterly basis, pertinent statistics relating to MATERIAL hereunder, including, without limitation, the following:

MTBF data
 Failure rates
 Repair history

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- D. BCS's other pertinent data relative to MATERIAL and Replacement quality data shall also be available to DGC, as and upon DGC's reasonable requests from time to time. The initial reporting contact for purposes of this paragraph (only) is

Attention: Director Purchasing
Data General Corporation
Technology Drive, P.O. Box 786,
Apex, NC 27502

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ATTACHMENT D

DESCRIPTION OF REPLACEMENTS,

PRICES, LEAD TIMES AND WARRANTY TERMS

- A. For so long as MATERIAL is available for purchase hereunder, Replacements Pricing shall be BCS's price as listed on Attachment A or D below, of this Agreement for Replacements upon the date of purchase.

Thereafter, commencing upon the anniversary of the termination of the last Order Entry Period, and upon 90 days' notice to DGC, BCS may increase the price for any Replacement annually, by mutual agreement of the parties reduced to a signed writing.

- B. Period of Warranty for Replacements: Three (3) months after date of delivery to the F.O.B. Point or the remainder of the original Standard Warranty for the Hardware, whichever is longer; 90 days for Software.
- C. Warranty Cycle Time for Replacements: [*] days
- D. "Replacements Availability Period" shall mean the period commencing upon the effective date of this Agreement and ending, for any Replacement, [*] years after EOL notification to DGC of the MATERIAL to which such Replacement relates.
- E. U.S. Stocking location(s): BCS shall stock and deliver Replacements at the following stocking locations: San Jose, California.
- F. Replacements shall include, but not be limited to the items listed in Exhibit RPL (being, as of the effective date, the "Recommended Replacements List", attached hereto).

Silkworm II Switches are Field Replaceable Units (FRUs) with no replacement parts internal to the switch. The GBICs are FRUs. Pricing for replacement GBICs is as listed on Attachment A.

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EXHIBIT RPL

RECOMMENDED REPLACEMENTS LIST

SilkWorm 2400 (118030714) and 2800 (118030715) have Field Replaceable Units (FRU) and the pricing is as follows:

Part Number -----	Description -----	Pricing -----
XBR-000010	Power Supply	\$ [*]
XBR-000008	2400 Fan Tray	\$ [*]
XBR-000013	2800 Fan Tray	\$ [*]
XBR-000007	2400 Main Board	\$ [*]
XBR-000012	2800 Main Board	\$ [*]
XBR-000009	2400 Chassis	\$ [*]
XBR-000014	2800 Chassis	\$ [*]

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ATTACHMENT E

OUT-OF-WARRANTY SERVICE SCHEDULE

- A. Cycle Time to effect Out-of-Warranty Repair or Refurbishment: [*] days
- B. Period of Warranty for Repaired/Refurbished Material: [*] days.
- C. Cost (price) for Repair and Refurbishment: All out-of-warranty MATERIAL submitted for repair or Replacement will be returned with a DGC Purchase Order referencing a BCS RMA number. The DGC Purchase Order will include an evaluation charge of \$ 500 per unit returned. This evaluation charge will be applied toward the repair cost, which repair cost will be billed at BCS's then-current rates for such out-of-warranty repair, except as set forth below relative to NTE Repair Pricing. Upon return of all out-of-warranty MATERIAL, BCS will evaluate and submit to DGC within 5 days of the receipt of MATERIAL, a "Cost to Repair Proposal." No repair work will be initiated until formal written approval to proceed and authorizing Purchase Order is received by BCS from DGC. The repair will be completed and shipped back to DGC within 30 days of receipt of the written approval.

At no time shall the Repair and Refurbishment NTE Repair Pricing for the Mainboard assembly exceed the price listed below for the SilkWorm 1000 8-Port switch (118029629) or 16-Port switch (118029631).

Part Number -----	Description -----	NTE Repair Pricing -----
XDG-1001	SilkWorm II Mainboard	\$[*]

At no time shall the Repair and Refurbishment NTE Repair Pricing for the Mainboard assembly exceed the price listed below for the SilkWorm 2400 8-Port switch (118030714) or 2800 16-Port switch (118030715).

Part Number -----	Description -----	NTE Repair Pricing -----
XBR-000007	2400 Mainboard	\$[*]
XBR-000012	2800 Mainboard	\$[*]

BCS will use reasonable efforts to evaluate the reparability of the mainboard in its sole discretion.

Should DGC decide not to Repair and Refurbish MATERIAL, DGC has the option to scrap the MATERIAL at BCS.

D. Description of Repair and Refurbishment Activities: To effect Repair/Refurbishment of any MATERIAL, BCS shall use commercially reasonable efforts to achieve both Functional Repair as well as Refurbishment, as described below:

1. Functional Repair:

All actions required to clean, repair and restore MATERIAL to the form, fit, and function established by the specifications, including:

Verify and repair functional failures Install all ECO/FCOs which affect form, fit, or function to latest DG authorized revision.

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Replace any broken, chipped, dented, or cracked material affecting form, fit or function.

Perform adjustments and alignments as required. Test and verify functional performance.

Clean and remove dirt, dust, grease, and customer-installed labels.

Provide functional failure/repair report.

Packaging and shipping of the repaired unit shall conform to Specification for MATERIAL.

Exchange units or subassemblies in lieu of the original material are acceptable.

2. Refurbishment:

Functional Repair, as well as all actions required to correct cosmetic defects, blemishes, and discolorations.

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ATTACHMENT F

A. SERVICE AND SUPPORT REQUIREMENTS

1.0 Service and Support Requirement

DGC will be responsible for working directly with the end users, and BCS Support will work directly with DGC to support DGC personnel, as set forth below. DGC represents and warrants that it is experienced in, capable of, and staffed to provide, Level 1 and Level 2 support (as defined below). BCS offers training programs to assist in attaining this level of expertise on MATERIAL. BCS will accept calls only from DGC level II engineers who have successfully completed courses 2 and 3 set forth below and/or who have undergone formal DGC training on MATERIAL.

BCS will provide Level 3 support (as defined below).

2.0 Support Level Definitions

2.1 Level 1 Support: Level 1 support is the first line, direct end user contact, most likely via a telephone call handling group provided by DGC.

Level One support includes:

- * First contact direct DGC/End User interaction
- * Information collection and analysis
- * Identification of whether the problem is known and has a known solution
- * Troubleshooting and problem reproduction
- * Problem report administration and tracking

The parties agree that End Users shall not have the right to contact BCS directly for questions related to the Products.

2.2 Level 2 Support: Level 2 support is "technical support" provided by DGC personnel. Level 2 support is typically provided by experts in the applicable Product and who serve as the escalation point for Level 1. Level 2 support personnel are expected to resolve all known problems, installation and configuration issues, assist in firmware or driver updates at the End User site, search BCS posted Technical Notes and other technical information supplied that will assist in providing problem resolutions. All pertinent data shall be entered in DGC's problem tracking database.

Should the Level 2 analyst be unable to resolve a problem, either because of lack of expertise, exhausted troubleshooting knowledge, or expiration of the allotted Level 2 resolution time, the Level 2 analyst may escalate the problem to Level 3 for resolution as set forth below. Level 2 personnel of DGC will continue to diligently work with Level 3 personnel of BCS to accomplish resolution. Level 2 personnel of DGC will communicate all resolutions back to the End Users.

Escalations should be presented to BCS engineers in the form of a problem tracking data base record with all pertinent configuration detail and failure information or symptoms documented in detail.

In an effort to maintain an efficient support organization and crisp exchange of information, DGC will limit the number of support personnel (Level 2) authorized to contact BCS (Level 3) to approximately 5 (or their designated alternates).

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2.3 Level 3 Support: Level 3 support is provided by BCS System Engineers (SE) and/or Technical Support Engineers (TSE). Level 3 is the first point of contact for technical issues between BCS and DGC. Once the parties mutually agree that a problem should be escalated to Level 3, BCS will be responsible for resolution and will utilize commercially reasonable resources to resolve such problem.

Prior to escalating to Level 3, it is expected that DGC shall provide the following information and documentation:

- * Any error information from the device connected to the switch and from the switch.
- * All names and revisions of hardware equipment.
- * All firmware revisions of the drivers.
- * Any log files from the devices connected to the switch.
- * Any trace file from the devices connected to the switch.
- * The configuration information of the equipment being used.
- * Detailed definition of all steps taken to reproduce and resolve this situation prior to escalation to Level 3.

Assigned Level 3 support personnel (SE and/or TSE) can be contacted via direct dial, email to an established "support" alias, web site initiated input, and by calling BCS's 1-888-ATFIBRE support number. Direct access to BCS support personnel will be possible during normal BCS business hours (8 AM to 5 PM PST, M-F). Emergency situations for Severity 1 problems are handled via 7 X 24 pager coverage at 1-888-ATFIBRE (1-888-283-4273)

3.0 BCS Severity Definitions and Support Goals

The goal for initial response time to all telephone support requests is thirty (30) minutes or less during normal BCS working hours. For after hours telephone requests, the goal is one (1) hour or less. The targeted response time for requests submitted by other means, such as email, or fax, is four (4) hours.

Severity -----	Definition -----	Service Objective -----	Resolution Time -----
1	BCS Product is completely non-functional, or deemed a safety hazard, situation has high impact on development or delivery efforts. Installation problems.	Respond to initial request within 30 minutes during normal BCS business hours, and 1 hour for non-business hours. Resources applied until a solution or acceptable work-around is found.	Less than 5 days, using commercially reasonable efforts
2	BCS Product is functionally impaired, has substantially degraded performance but is not completely dysfunctional. There are no available work-arounds. Situation has medium impact on DGC activity	Respond to initial request within 1 (one) hour during normal BCS business hours. Resources applied continuously, during business hours, until a solution or work-around is found.	Less than 10 days
3	BCS Product or advertised functionality may be slightly impaired but is operational, has low to no impact on DGC activity, and there are work-arounds available.	Resources applied on a priority basis, until a solution or a work-around is found.	Next maintenance release.

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4	Generic questions, and enhancement requests.	Answer generic questions or provide path to answers within reasonable time frames. The BCS web site will be the prime repository for this type of information. Enhancement requests will be reviewed and implemented in the next major release, where feasible, or to meet specific commitments made.	Commercially reasonable efforts for generic questions. Enhancement requests are processed on a case by case basis.
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4.0 Firmware/Software Enhancements and Bug Fixes

BCS periodically releases new versions of firmware that provide enhancements to functionality and fix bugs (Severity 1,2, and 3 in the foregoing table). In addition, new firmware versions may enhance current features or enable new features. BCS provides license keys to enable features (i.e., Webtools, Zoning, SES, etc.). DGC will need to obtain a license key to enable new features.

Item 118029629 and 118029631	Per Copy or Per Incident
New Firmware Release on SilkWorm 1000 with Licensed Feature	[*]
New Feature	[*]
Item 118030714 and 118030715	Per Copy or Per Incident
New Firmware Release on SilkWorm 1000 with Licensed Feature	[*]
New Features for 118030714-2400 Switch BFOS*	[*]
New Features for 118030715-2800 Switch BFOS*	[*]
New Features for Software Bundle (Webtools, Zoning, and SES)	[*]

*BFOS = Brocade Fabric Operating System (all firmware and functionality that is standard with each switch)

Note: [*]

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

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B. TECHNICAL TRAINING PROGRAM

1. BCS TRAINING OUTLINE

	COURSE	DAYS	COST
2	Switch intro & features: Audience: Sales/Marketing/SE's	3	\$3,000
3	Install/Config/Troubleshoot/Mgmt tools: Audience: SE's, Tech support	2	\$3,000
	FULL COURSE (2 AND 3)	5	\$6,000

Note: Includes non-reproducible copy of all course materials for each person. Additional binders of training materials may be purchased from BCS.

- 1.1 Courses will be offered at BCS's offices in San Jose, CA or at such other facility notified to DGC from time to time. A minimum of five (5) students will be required to attend, or the course in question may, at BCS's sole option, be canceled. DGC agrees that it shall pay any and all travel and lodging expenses related to such training. BCS will make these courses available to End User customers, on terms to be negotiated at BCS's then-current rates for end user training courses.

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ATTACHMENT G

SOFTWARE LICENSE AND DISTRIBUTION AGREEMENT

This Software License and Distribution Agreement (the "Software Agreement") is entered into as October 1, 1999 ("Effective Date") by and between Brocade Communications Systems, Inc., a corporation organized under the laws of the state of California, U.S.A., and having its principal place of business at 1901 Guadalupe Parkway, San Jose, California 95131, ("BCS") and Data General Corporation a Delaware corporation having its principal place of business at 4400 Computer Drive, Westboro, MA. 01580 ("DGC").

RECITALS

WHEREAS, DGC has agreed to purchase MATERIAL from BCS under Volume Pricing Agreement No. 2085 ("VPA 2085"), including Software. (Unless otherwise indicated, capitalized terms shall have the same meaning assigned in VPA 2085.)

WHEREAS, BCS and DGC desire to extend their original equipment manufacturer relationship to include the Software, subject to the terms and conditions of this Software Agreement.

NOW, THEREFORE, BCS and DGC enter into this Software Agreement on the following terms and conditions:

1. Definitions.

- 1.1 Scope of Definitions. The definitions in this Section 1 shall apply to this Software Agreement only. If a definition in this Section 1 conflicts with a definition in VPA 2085, then the definition in this Section 1 shall apply to this Software Agreement, and the definition in VPA 2085 shall apply therein.
- 1.2 "Enhancements" shall mean new releases of Software with improved features and capabilities for which a fee will be charged.
- 1.3 "DGC Products" shall mean DGC products, including but not limited to servers, data storage, fibre channel interconnect technology, total enterprise solutions, and any and all related product information, programs or specifications.
- 1.4 "Hardware" shall mean BCS's hardware products and subassemblies, as further described in VPA 2085, which are the subject of VPA 2085 and which DGC shall purchase under VPA 2085.
- 1.5 "Software" shall mean BCS's proprietary software for use with the Hardware, as further described in Exhibit A hereto and as may be amended from time to time by BCS in its usual course of business.
- 1.6 "Updates" shall mean patches and bug fixes for which no fee will be charged.

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2. Prices.

- 2.1 Prices. The prices for licenses of Software and Enhancements to DGC will be as set forth in Exhibit B hereto or provided to DGC by BCS from time to time. DGC and BCS shall adjust such prices for Software from time to time according to the schedule set forth in VPA 2085.
- 2.2 Taxes. In addition to the prices shown on Exhibit B, DGC agrees to pay any applicable federal, state, or local taxes which may be levied on the license or use of Software or will provide BCS with an appropriate reseller tax exemption certificate.

3. Terms for Licensing of Software

- 3.1 Controlling Terms. The terms and conditions of licenses set forth in this Software Agreement apply to each order accepted or fulfilled by BCS and will supersede the terms of DGC's purchase order or other business forms notwithstanding BCS's acceptance or acknowledgment of such business forms.
- 3.2 Supply and Activation. BCS shall pre-install Software on Hardware to be shipped to DGC. DGC acknowledges that the Software must be activated by loading the appropriate license keys ("License Keys") onto the Software. DGC further acknowledges that each License Key may be specific to a particular Hardware unit and that separate License Keys may be required to activate the same Software function on separate Hardware units. Enhancements will also require License Keys. Updates will be delivered to DGC in a manner mutually agreed by the parties.
- 3.3 Prepaid License Keys. At BCS's sole discretion, DGC may order License Keys by prepaying for a quantity of License Keys and subsequently requesting License Keys for specific Hardware units until the number of prepaid License Keys in DGC's prepaid account is reduced to zero. BCS shall maintain records of the License Keys (including their corresponding Hardware units) charged against DGC's prepaid account. From time to time, DGC may reasonably request BCS to provide a copy of such records to DGC. Such records shall be deemed to be a correct and accurate accounting of DGC's prepaid account unless DGC provides written notification to BCS of an error in such records; DGC will use commercially reasonable efforts promptly to review and report any discrepancies noted therein. Any unused prepaid amounts are not refundable.
- 3.4 Acceptance. All orders for License Keys are subject to acceptance in writing by BCS and are not binding until written acceptance or authorization of the License Keys, whichever is earlier. In the case of acceptance by authorization, only the portion of the order authorized shall be considered binding. Notwithstanding the foregoing, each DGC purchase order will be deemed accepted by BCS unless BCS provides written notice to DGC of its decision to reject the purchase order within [*] business days after BCS's receipt of that order.
- 3.5 Cancellation. BCS reserves the right to cancel any accepted orders, or to refuse to deliver or delay delivery of authorized License Keys, if DGC fails to meet the obligations of this Software Agreement within the cure period set forth in Section 5.2 or if VPA 2085 is terminated due to DGC's breach.
- 3.6 Payment. All BCS invoices will be due and payable in U.S. dollars within [*] calendar days of the date of the invoice, and BCS will not send any invoice to DGC prior to the date of acceptance covered by the invoice.

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

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- 3.7 License Grant to DGC. Subject to the terms and conditions of this Software Agreement, BCS grants to DGC a nonexclusive, nontransferable, non-sublicensable license:
- (i) to use the program modules or features of the Software which have been activated by License Keys and for which DGC has paid the requisite fees for the purpose of manufacturing or testing DGC Products incorporating such Software and Hardware;
 - (ii) to distribute the Software to DGC's customers only in object code form as embedded in Hardware incorporated into DGC Products sold or leased to such customers;
 - (iii) to distribute the Enhancements and Updates to DGC's customers only in object form, including via electronic means provided that DGC uses commercially reasonable efforts to implement protections for the storage and transmission of the Enhancements and Updates to ensure that such electronic means are not circumvented by any third party in contravention of the restrictions in this Software Agreement.
- 3.8 Software Use by Second-Tier OEMs. Subject to the terms and conditions of this Software Agreement, BCS grants to DGC a nonexclusive, nontransferable, non-sublicensable license:
- (i) to grant to DGC's OEMs ("Second-Tier OEMs") any of the rights of Section 3.7 above or Section 3.9 below, provided that any such use shall be governed by a written agreement between DGC and Second-Tier OEM no less favorable to and protective of BCS than the license rights and restrictions of this Software Agreement; and
 - (ii) to distribute the Software to Second-Tier OEMs only in object code form as embedded in Hardware incorporated into DGC Products sold or leased to such Second-Tier OEMs.
- 3.9 Software Use by DGC's Customers. Subject to the terms and conditions of this Software Agreement, BCS grants to DGC a limited right to distribute (i) the Software or Enhancements which have been activated by License Keys and for which the requisite fees have been paid to BCS, (ii) Updates, to (A) DGC resellers with the right to further distribute to DGC customers, and (B) DGC's customers, without the right to further to distribute or sublicense, to use the program modules or features; provided that any use by a customer shall be governed by the End-User Software License Agreement attached hereto as Exhibit C or a written sublicense agreement between DGC and DGC's customer no less - favorable to and protective of BCS than the End-User Software License Agreement attached hereto as Exhibit C.
- 3.10 Provision of License Keys. Upon DGC's request, BCS and DGC shall use reasonable efforts to mutually agree upon a procedure for the distribution of License Keys from BCS to DGC's customers and Second-Tier OEMs.
- 3.11 Limitations. Except as otherwise expressly provided under this Software Agreement, DGC shall have no right, and DGC specifically agrees not to remove the Software from the Hardware in which it is embedded.
- 3.12 Ownership. DGC agrees that the foregoing licenses do not grant any title or other right of ownership to the Software and that BCS and/or its licensors shall continue to own all right, title and interest in and to the Software.

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- 3.13 Proprietary Notices. DGC agrees (i) not to remove or destroy any copyright, trademark, patent, or other notice, legends or markings of proprietary or confidential rights placed upon or contained within the Software, and (ii) to place such notices, legends and markings on and within the DGC product incorporating the Software (the "DGC Product") or on or within the documentation related to the DGC Product in accordance with the reasonable written instructions of BCS.
- 3.14 Restrictions. DGC, on behalf of itself, the DGC Affiliated Companies and the DGC contract manufacturer(s), agrees that it will not: (a) disassemble, decompile, or reverse engineer any Software; (b) except as authorized herein, copy or otherwise reproduce any Software, in whole or in part; or (c) except as set forth herein of in VPA 2085, create derivative works from, adapt, modify, change or enhance Software without BCS's prior written consent. DGC's rights in the Software will be limited to those expressly granted in this Agreement. Notwithstanding the foregoing, the parties agree that DGC shall have the right to modify the Software as may be required in connection with DGC's setup of the Software for a reseller or an end user, but shall have no rights to otherwise modify the Software. All rights not granted to DGC by BCS in the Software are reserved to BCS.
- 3.15 Restricted Rights. The Software shall be classified as "commercial computer software" as defined in the applicable provisions of the Federal Acquisition Regulation (the "FAR") and supplements thereto, including the Department of Defense (DoD) FAR Supplement (the "DFARS"). The parties acknowledge that the Software was developed entirely at private expense and that no part of the Software was first produced in the performance of a Government contract. If the Software is supplied for use by DoD, the Software is delivered subject to the terms of this Software Agreement and either (i) in accordance with DFARS 227.7202-1(a) and 227.7202-3(a), or (ii) with restricted rights in accordance with DFARS 253.227-7013(c)(1)(ii) (OCT 1988), as applicable. If the Software is supplied for use by a Federal agency other than DoD, the Software is restricted computer software delivered subject to the terms of this Software Agreement and (i) FAR 13.212(a); (ii) FAR 53.227-19; or (iii) FAR 53.227-14(ALT III), as applicable.
4. Limited Warranty; Limitations of Liability.
- 4.1 Limited Warranty. BCS warrants that the Software will substantially conform to its published specifications for a period of ninety (90) days from the later of receipt of the Hardware containing the Software or receipt of access to the Software. This limited warranty extends only to DGC as the original licensee. DGC's sole and exclusive remedy and the entire liability of BCS and its suppliers under this limited warranty will be, at BCS or its service center's option, repair, replacement, or, if neither repair nor replacement is commercially practicable in BCS's sole discretion, refund of the Software if reported (or, upon request, returned) to BCS or its designee. BCS does not warrant that the Software is error free or that DGC will be able to operate the Software without problems or interruptions. This warranty does not apply if the Software or the Hardware containing the Software (a) is licensed for beta, evaluation, testing or demonstration purposes for which BCS does not receive a license fee, (b) has been altered, except by BCS, (c) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by BCS, (d) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, or (e) is used in ultrahazardous activities.
- 4.2 BCS warrants that all Software shall be "Year 2000 Qualified". For purposes of the foregoing, "Year 2000 Qualified" Software will correctly process, calculate, compare and

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sequence date data from, into and between the twentieth and the twenty-first centuries, including leap year calculations, when used in accordance with the associated product documentation and provided that all hardware, firmware and software used in combination with such products properly exchange accurate date data in appropriate Year 2000 format. Neither party may make any changes to specifications without written consent of the other party.

- 4.3 Disclaimer of Warranty. BCS MAKES NO WARRANTIES OR REPRESENTATIONS AS TO PERFORMANCE OF THE SOFTWARE OR DGC PRODUCTS, EXCEPT AS SET FORTH ABOVE. ALL IMPLIED WARRANTIES AND CONDITIONS, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND (EXCEPT AS STATED BELOW) NONINFRINGEMENT, ARE HEREBY DISCLAIMED. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS SECTION 4, THE SOFTWARE IS PROVIDED "AS IS".
- 4.4 Limited Liability. THE LIABILITY OF BCS, IF ANY, FOR DAMAGES RELATING TO OR ARISING OUT OF THIS SOFTWARE AGREEMENT OR THE SUPPLY OF SOFTWARE HEREUNDER, WHETHER RESULTING FROM A TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHER FORM OF ACTION, SHALL BE LIMITED TO THE LIABILITY CAP SET FORTH IN SECTION 10.10.2 OF THE VPA 2085, AND SHALL IN NO EVENT INCLUDE LOSS OF PROFITS, COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, OR ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF BCS IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER THIS SOFTWARE AGREEMENT.
- 4.5 Support and Service. DGC will provide service and support directly to its resellers and customers for the Software, Enhancements and Updates; BCS has no obligations to provide support directly to DGC customers or resellers. BCS will provide service and support for the Software, Enhancements and Updates to DGC as set forth in Attachment F to VPA 2085.
- 4.6 Indemnity. The provisions of Section 7.1.1 of VPA 2085 are incorporated herein by reference.

5. Term and Termination.

- 5.1 Term. The term of this Software Agreement shall be the same as the term of VPA 2085.
- 5.2 Right to Terminate. Either party may terminate this Software Agreement (i) immediately upon termination of VPA 2085; or (ii) upon the occurrence of a default, as follows".
- (1) The occurrence of any of the following acts or events shall constitute default of this Agreement: (a) the failure by such party to observe or perform any material covenant or obligation under this Agreement, or (b) such party becomes insolvent, suffers the appointment of a receiver, or makes an assignment for the benefit of creditors; or proceedings are commenced against such party under any bankruptcy, insolvency or debtor's relief law, if such proceeding is not vacated or set aside within sixty (60) days after the date of commencement thereof.
- (2) In the case of default, if such default has not been cured within thirty (30) days after a party has received written notice of default from the other party, the party giving notice may give a second (final) Notice of Intent to Terminate, directed in the case of notice to DGC to its

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Vice President, Manufacturing, and in the case of notice to BCS, to its Vice President of Finance and Administration. In the event thereafter that such default is not cured within five (5) business days after the receipt of such Notice of Intent to Terminate, the party giving notice may terminate this Agreement by written notice at any time thereafter while such default continues.

- 5.3 Effect of Termination for Default. In the event that BCS terminates this Software Agreement on account of DGC's default, BCS may: (i) declare all amounts owed by DGC to be immediately due and payable and refuse to deliver any further License Keys or ship any further Hardware under VPA 2085 until such amounts have been paid; (ii) require C.O.D. payment; and (iii) pursue any other remedies at law or in equity available to it. Termination of the Software Agreement shall not terminate or otherwise affect any licenses previously distributed by DGC hereunder.
- 5.4 Liability for Termination. NEITHER PARTY SHALL BE LIABLE TO THE OTHER AS A RESULT OF THE EXPIRATION OR ANY TERMINATION OF THIS SOFTWARE AGREEMENT, INCLUDING FOR ANY MONEYS EXPENDED, DAMAGES SUFFERED OR LIABILITIES INCURRED BY EITHER IN THE CONDUCTING OR PROMOTING OF THEIR BUSINESS, OR FOR LOST PROFITS OR CONSEQUENTIAL DAMAGES OF ANY KIND.
- 5.5 Survival. DGC's obligations to pay BCS all amounts due hereunder, as well as Sections 1, 3.9 - 3.12 (inclusive), 4, 5, 6, 7, and 8 shall survive the expiration and any termination of this Software Agreement. The licenses under Sections 3.7, 3.8 and 3.9 and the warranties under Section 4 shall survive the expiration and termination of this Software Agreement.

6. Confidentiality

The confidentiality obligations set forth in VPA 2085 shall apply equally to information disclosed under this Software Agreement. (The provisions entitled "Protection of Information" in Exhibit C shall not apply to DGC).

7. General

The general provisions in VPA 2085 concerning the following subject matter, if any, are incorporated herein by reference and shall apply equally to this Software Agreement: Controlling or Governing Law, Venue, Arbitration or Alternate Dispute Resolution (relative only to claims solely between the parties and not involving third parties), Assignment, Injunctive or Equitable Relief, Relationship of the Parties, Compliance with Laws including Export Laws, Severability, Notices, Force Majeure, Headings, Modification, and Waiver.

8. Conflict Provision.

- 8.1 Entire Agreement. This Agreement, the exhibits hereto, and the relevant portions of VPA 2085 (which are fully incorporated herein by this reference) constitute the entire agreement between the parties pertaining to the subject matter hereof, and supersede in their entirety any prior or contemporaneous written or oral agreements between the parties.

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- 8.2 Conflicts. Except as expressly set forth herein, all other terms and conditions of VPA 2085 shall remain in full force and effect. In the event of conflict between this Software Agreement and VPA 2085, the terms and conditions of this Software Agreement shall apply to Software and the terms and conditions of VPA 2085 shall apply to Hardware.

IN WITNESS WHEREOF, the parties have caused this Software License Agreement to be executed by their duly authorized representatives.

BROCADE COMMUNICATIONS
SYSTEMS, INC.
("BCS")

DATA GENERAL CORPORATION
("DGC")

By: /s/ Charles Smith
Charles Smith
Vice President of Worldwide Sales

By: /s/ William F. O'Neill
William F. O'Neill
Director, New Products & Technology

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EXHIBIT A

DESCRIPTION OF SOFTWARE*

BCS Software Bundle I (Version 1.1)	PN SW-0000000007-0002
BCS Software Bundle II (Version 2.1)	PN SW-200007-02
QuickLoop	PN SW-2000008-01

*Includes WebTools, Zoning, and SCSI Enclosure Services (SES)

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EXHIBIT B

PRICES

BCS Software Bundle I PN SW-0000000007-0002	\$ [*] per license per switch
BCS Software Bundle II PN SW-200007-02	\$ [*] per license per switch
QuickLoop PN SW-2000008-01	\$ [*] per license per switch

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

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EXHIBIT C

END-USER SOFTWARE LICENSE AGREEMENT

PLEASE READ THIS END-USER SOFTWARE LICENSE AGREEMENT CAREFULLY BEFORE USING THE SOFTWARE CONTAINED IN THIS EQUIPMENT.

BY USING THE EQUIPMENT THAT CONTAINS THIS Software, YOU ARE CONSENTING TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, PROMPTLY RETURN THE EQUIPMENT AND DO NOT USE THE Software.

SINGLE USER LICENSE. Subject to the terms and conditions of this Agreement, Brocade Communications Systems, Inc. ("BCS") and its suppliers grant to Customer ("Customer") a nonexclusive license to use (a) BCS software which provides the basic operating environment for BCS equipment, and (b) the specific BCS program modules or features which have been enabled by software keys supplied by BCS or its authorized distributors and for which Customer has paid any applicable license fees (collectively, the "Software"), both of the foregoing in object code form only: (i) solely as embedded in BCS equipment owned or leased by Customer, and (ii) for key-enabled software, solely on the single central processing unit corresponding to the software key(s) supplied by BCS and to the license fees paid by Customer.

LIMITATIONS. Except as otherwise expressly provided under this Agreement, Customer shall have no right, and Customer specifically agrees not to:

- (i) make error corrections to or otherwise modify or adapt the Software nor create derivative works based upon the Software, or to permit third parties to do the same;
- (ii) copy, in whole or in part, decompile, reverse engineer, disassemble or otherwise reduce the Software to human-readable form; or
- (iii) remove the Software from the equipment in which it is embedded.

Only to the extent required by law, if any, BCS shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, upon Customer's request and upon payment of BCS's applicable fee. Customer shall observe strict obligations of confidentiality with respect to such information.

UPGRADES AND ADDITIONAL COPIES. For purposes of this Agreement, "Software" shall include (and the terms and conditions of this Agreement shall apply to) any upgrades, updates, bug fixes or modified versions (collectively, "Upgrades") or backup copies of the Software licensed or provided to Customer by BCS or an authorized distributor for which Customer has paid the applicable license fees and holds the corresponding software keys. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (1) CUSTOMER HAS NO LICENSE OR RIGHT TO USE ANY SUCH ADDITIONAL COPIES OR UPGRADES UNLESS CUSTOMER, AT THE TIME OF ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE AND THE CORRESPONDING Software KEYS TO THE ORIGINAL Software; AND (2) USE OF UPGRADES IS LIMITED TO BCS EQUIPMENT FOR WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE.

NOTICES OF PROPRIETARY RIGHTS. Customer agrees to maintain and reproduce all trademark, copyright, patent, and notices of other proprietary rights on all copies, in any form, of the Software in the same form and manner that such trademark, copyright, patent, and notices of other proprietary notices rights are included on the Software. Except as expressly authorized in this Agreement, Customer shall not make any copies or duplicates of any Software without the prior written permission of BCS. Customer may make such backup copies of the Software as may be necessary for Customer's lawful use, provided Customer affixes to such copies all trademark, copyright, confidentiality, and patent, and notices of other proprietary notices rights that appear on the original.

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PROTECTION OF INFORMATION. Customer agrees that aspects of the Software and associated documentation, including the specific design and structure of individual programs, constitute trade secrets and/or copyrighted material of BCS. Customer shall not disclose, provide, or otherwise make available such trade secrets or copyrighted material in any form to any third party without the prior written consent of BCS. Customer shall implement reasonable security measures to protect such trade secrets and copyrighted material. Title to Software and documentation shall remain solely with BCS.

LIMITED WARRANTY. BCS warrants that the Software will substantially conform to its published specifications for a period of ninety (90) days from the later of receipt of the equipment containing the Software or receipt of access to the Software. This limited warranty extends only to Customer as the original licensee. Customer's sole and exclusive remedy and the entire liability of BCS and its suppliers under this limited warranty will be, at BCS or its service center's option, repair, replacement, or refund of the Software if reported (or, upon request, returned) to BCS or its designee. Except as expressly granted in this Agreement, the Software is provided AS IS. BCS does not warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions.

This warranty does not apply if the Software or the BCS equipment in which the Software is embedded (a) is licensed for beta, evaluation, testing or demonstration purposes for which BCS does not receive a license fee, (b) has been altered, except by BCS, (c) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by BCS, (d) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, or (e) is used in ultrahazardous activities.

DISCLAIMER. EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW.

IN NO EVENT WILL BCS OR ITS SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE Software EVEN IF BCS OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL BCS'S OR ITS SUPPLIERS' LIABILITY TO CUSTOMER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE PRICE PAID BY CUSTOMER. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE ABOVE-STATED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

TERM AND TERMINATION. This Agreement is effective until terminated. Customer's license rights under this Agreement will terminate immediately without notice from BCS if Customer fails to comply with any provision of this Agreement. Upon termination, Customer must destroy all copies of Software and the corresponding software keys in its possession or control.

CUSTOMER RECORDS. Customer grants to BCS and its independent accountants the right to have conducted, through a mutually acceptable third party auditor, under a suitable confidentiality agreement, an audit of Customer's books, records and accounts during Customer's normal business hours to verify compliance with this Agreement. In the event such audit discloses material non-compliance with this Agreement, Customer shall promptly pay to BCS the appropriate licensee fees.

EXPORT. SOFTWARE, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Software.

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RESTRICTED RIGHTS. The Software shall be classified as "commercial computer software" as defined in the applicable provisions of the Federal Acquisition Regulation (the "FAR") and supplements thereto, including the Department of Defense (DoD) FAR Supplement (the "DFARS"). The parties acknowledge that the Software was developed entirely at private expense and that no part of the Software was first produced in the performance of a Government contract. If the Software is supplied for use by DoD, the Software is delivered subject to the terms of this Agreement and either (i) in accordance with DFARS 227.7202-1(a) and 227.7202-3(a), or (ii) with restricted rights in accordance with DFARS 252.227-7013(c)(1)(ii) (OCT 1988), as applicable. If the Software is supplied for use by a Federal agency other than DoD, the Software is restricted computer software delivered subject to the terms of this Agreement and (i) FAR 12.212(a); (ii) FAR 52.227-19; or (iii) FAR 52.227-14(ALT III), as applicable.

GENERAL. This Agreement shall be governed by and construed in accordance with the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflict of law. If any portion hereof is found to be void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect. This Agreement constitutes the entire agreement between the parties with respect to the use of the Software

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EXHIBIT H

[*]

[*]

[*]

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

MANUFACTURING AGREEMENT

Solectron California Corporation ("Solectron") whose principle place of business is located at 847 Gibraltar Drive, Milpitas, California 95035 and Brocade Communications Systems, Inc. ("Brocade") whose principle place of business is located at 1901 Guadalupe Parkway, San Jose, California 95131 in their desire to formulate a strategic business relationship and to define their expectations regarding this relationship, hereby agree as follows:

1.0 PRECEDENCE:

- 1.1 This Standard Manufacturing Agreement (the "Agreement") is intended by Solectron and Brocade to operate as a basic set of operating conditions regarding their respective business relationship whereby Solectron would manufacture certain models of Brocade's products as described in more particularity in the addenda to this Agreement (the "Products"). Product-specific requirements along with specific business terms and conditions with respect to each Product will be mutually agreed to and documented by an executed addendum to this Agreement.
- 1.2 It is the intent of the parties that this Agreement and its addenda shall prevail over the terms and conditions of any purchase order, acknowledgment form or other instrument. In the event of a conflict between the terms of this Agreement and the terms contained in any addenda to this Agreement, the terms of the addenda shall be controlling. Addenda shall not be binding until executed by authorized representatives of each party.
- 1.3 This Agreement may be executed in one or more counterparts, each of which will be deemed the original, but all of which will constitute but one and the same document. The parties agree this Agreement and its addenda may not be modified except in writing signed by both parties.
- 1.4 Nothing in this Agreement shall be construed or deemed to prevent or otherwise inhibit Brocade's ability or right to manufacture, at Brocade's facility or at a third party facility of Brocade's choice, the Products. Further, nothing in this Agreement shall be construed or deemed to (i) require Brocade to order any units of the Products to be manufactured by Solectron, or (ii) prevent or otherwise inhibit Brocade's ability or right to design, develop, manufacture, have manufactured, market, use, sell, and or distribute any follow-on products or derivatives of the Products.

2.0 TERM

- 2.1 The effective date of this Agreement shall be 7/30/, 1999 ("Effective Date"). This Agreement shall commence on the Effective Date, and shall continue for an initial term of three (3) years. Thereafter, this Agreement shall automatically be renewed for successive one (1) year renewal terms unless either party requests in writing, at least one hundred twenty (120) days prior to the anniversary date of the then-current term, that this Agreement not be so renewed.

3.0 PRODUCT FORECAST

3.1 It is agreed that Brocade will provide Solectron, on a monthly basis, a non-binding rolling twelve (12) month Product forecast. This section, as appropriate, may be modified in an addendum to reflect specific Product requirements. Solectron shall view all such forecasts as Confidential Information as provided in Section 11.

4.0 MATERIAL PROCUREMENT

4.1 Solectron is authorized to purchase materials using standard purchasing practices including, but not limited to, acquisition of material recognizing Economic Order Quantities, ABC buy policy and long lead time component management in order to meet the PO and long lead time requirements of Brocade, solely in accordance with the authorization procedures set forth in Section 4.2. Brocade recognizes its financial responsibility for the material purchased by Solectron on behalf of Brocade.

4.2 Solectron will purchase specified quantities of long lead time material and Brocade unique material as authorized by Brocade in advance and in writing. Solectron will compile and maintain (and provide an updated version to Brocade on a monthly basis that reflects Brocade's current requirements) a report concerning this long lead time material which will contain:

- * Brocade part number
- * Solectron part number
- * Manufacturer name
- * Manufacturer part number
- * Manufacturer description
- * Lead time
- * Where used
- * Quantity per unit of Product
- * Purchase quantity authorized by Brocade
- * Purchase price authorized by Brocade
- * Extended price

It is understood and agreed that if Brocade orders Solectron to stop production of Products for Brocade's convenience, prior to the consumption of all material authorized for purchase by Brocade pursuant to this Section 4.2, Brocade will purchase all material as provided in Section 4.3. It is the intention of both parties that Solectron effectively manages the long lead time and Brocade unique material inventory such that the inventory will be completely consumed by the end-of-support of the Products, and Brocade will consequently not have any such material inventory liability.

4.3. In the event of a termination or a cancellation of a purchase order or a material release, Solectron shall provide to Brocade within ten (10) business days the cost of material inventory and value-add, whether in raw form, work in process, or finished goods, and not returnable to the vendor or usable for other customers, the cost of material on order which cannot be canceled, and any vendor cancellation charges incurred with respect to material canceled or returned to the vendor.

- 4.4. Solectron shall undertake reasonable efforts to cancel all applicable component purchase orders and reduce component inventory through return for credit programs or allocate components for alternate programs if applicable. Charges will be finalized within thirty (30) business days.
- 4.5. Solectron shall define manufacturing capacity for each major step in the manufacturing process and total manufacturing capacity for each Product and/or family of Products. Solectron will also provide component supplier supply capacity information with the exception of Brocade Managed Components, as defined below in Section 7.3 (collectively "Capacity Information"). Capacity Information along with up-to-date information on Solectron's manufacturing capacity model and cycle time plan will be provided to Brocade on the first day of each month in a monthly report or as requested by Brocade. Component supplier capacity information will be provided on an as-needed basis.
- 4.6. During the term of this Agreement, Solectron agrees to aggressively monitor lead times and cycle times for the various Products as broken down into the following major categories:
- * Order processing cycle time
 - * Material lead time
 - * Manufacturing cycle time
 - * Pack out and shipping cycle time

This information will be reported to Brocade on a monthly basis, or as otherwise requested by Brocade ("Lead time Reports"). Solectron agrees to aggressively work with Brocade to develop strategies which will lead to ongoing reductions in lead times and cycle times for the various categories. The Lead time Reports will include the details and results of the implementation of such strategies.

- 4.7. Solectron will perform a preferred supplier comparison on an ongoing basis to ensure optimal use of Solectron's preferred supply base.
- 4.8. Upon written request by Brocade, Solectron agrees to increase or decrease the quantity of Products scheduled to be delivered to Brocade as follows:

[*]

Solectron agrees to use commercially reasonable efforts to meet the [*] in the table above. The above flexibility percentages are the limit for the sum of requested changes during any rolling [*] day planning cycle. [*]. The maximum cumulative reschedule delay is sixty (60) days.

5.0 PURCHASE ORDERS AND PRICE REVIEWS

- 5.1 Brocade agrees to provide Solectron Purchase Orders or Material Releases [*] calendar days in advance of the scheduled delivery date (or as otherwise provided by an

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addendum) and shall become effective upon acceptance of the order by Solectron. Solectron shall accept or reject all Purchase Orders within two (2) business days of receipt or such Purchase Orders shall be deemed accepted by Solectron. Such confirmation must include acceptance of requested delivery dates. If Solectron is unable to accept Brocade's requested delivery dates, Solectron must immediately advise Brocade of the reason such delivery dates cannot be met. Change orders shall be provided by written or electronically dispatched notice from Brocade. Solectron shall notify Brocade of acceptance of a change order within two (2) business days after receipt of Brocade's change order.

- 5.2 In the event of termination or cancellation of a purchase order, the terms of Section 4.3 shall apply.
- 5.3 Solectron and Brocade will meet every [*] months, or more frequently upon the request of either party, during the term of this Agreement to review pricing and determine whether any price increase or decrease is required. Any price change shall apply only to purchase orders or material releases issued after the effective date of such price change, unless otherwise agreed to by Solectron and Brocade.
- 6.0 DELIVERY
- 6.1 Solectron acknowledges and agrees that Solectron shall make commercially reasonable efforts to meet the target goal of 100% on-time delivery to Brocade's customer, defined as the shipment of Product by Solectron within a maximum window of 0 days early and 0 days late based on the acknowledged delivery due date. This section, as appropriate, may be modified by an addendum to reflect specific Product requirements.
- 6.2 All shipments shall be F.O.B. origin (Solectron's dock). Title and risk of loss shall pass to Brocade upon Solectron's tendered delivery to the common carrier or Brocade's designee.
- 6.3 Upon learning of any potential delivery delays, Solectron will notify Brocade within one (1) business hour as to the cause and extent of such delay.
- 6.4 If Solectron fails to make deliveries at the specified time and such failure is caused by Solectron, Solectron will, at no additional cost to Brocade, employ accelerated measures such as material expediting fees, premium transportation costs, or labor overtime required to meet the specified delivery schedule or minimize the lateness of deliveries; however, [*].
- 6.5 Should Brocade require Solectron to undertake export activity on behalf of Brocade, Brocade agrees to submit requested export information to Solectron pursuant to Solectron Guidelines for Brocade-Driven Export Shipments as provided in the addenda.
- 6.6 All Products shall be packaged and prepared for shipment in a manner which (i) follows the requirements set forth in Brocade's Purchase Order, (ii) follows good commercial practice, (iii) is acceptable to common carriers for shipment, and (iv) is adequate to ensure safe arrival. Each shipment shall be accompanied by a packing slip that includes Brocade's part numbers, purchase order number and the quantity shipped.

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7.0 PAYMENT TERMS

- 7.1 Solectron and Brocade agree to payment terms of [*] after the date of shipment of Product or Solectron's invoice, whichever is later.
- 7.2 Currency will be in U.S. Dollars unless specifically negotiated and reflected in the addenda.
- 7.3 Solectron and Brocade agree that the prices for each unit of Product manufactured by Solectron for Brocade pursuant to the Agreement shall be set forth in the applicable addenda, and further agree that such prices shall be generally based upon a formula of different percentage mark-ups or margins contained in such applicable addenda for the different components, depending upon whether the various components are either (i) components for which Solectron is responsible for all aspects of the management of the relationship with the supplier ("Solectron Managed Components"), or (ii) components for which Brocade is responsible for all aspects of the management of the relationship with the supplier ("Brocade Managed Components"). The applicable addenda for the products manufactured by Brocade as of the Effective Date shall be Exhibit 1 attached hereto.

8.0 QUALITY

- 8.1 Solectron shall manufacture the Products in accordance with the process quality requirements, standards, specifications and expectations as set forth in Exhibit 2 ("Quality System and Product Quality Requirements").
- 8.2 Solectron will use best industry standards in manufacturing, assembly and test, consistent with meeting Brocade's product specifications. As far as practical, Solectron will use documented industry standards (ASME, IPC, SPI, etc.).
- 8.3 Workmanship standards for the PCBA are IPC 610b Class II and IPC-R-700C Class II. Workmanship standards for the system level are Cosmetic Specifications of Molded Parts: SPI 1994 edition. As needed, Solectron and Brocade can mutually agree to add industry or product-specific standards.

9.0 ENGINEERING CHANGES

- 9.1 Brocade may, upon advance written notice to Solectron, submit engineering changes (ECOs) for incorporation into the Product. It is important that this notification include documentation of the change to effectively support an investigation of the impact of the engineering change. Solectron will use all reasonable efforts to review the engineering change and report to Brocade within two (2) business days. If any such change affects the price, delivery, or quality performance of said Product, an equitable adjustment will be negotiated between Solectron and Brocade prior to implementation of the change.
- 9.2 The parties agree that five (5) business days is a reasonable time period to permit Solectron to evaluate ECO impact regarding potential excess material liability, price, and delivery.

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- 9.3 Solectron agrees not to undertake significant process changes, design changes, or process step discontinuance affecting electrical performance and/or mechanical form and fit without prior written notification and concurrence of Brocade.
- 9.4 Brocade shall pay Solectron for their costs of implementing ECOs at the rate of [*] each. [*] per sustaining product per month will not be charged to Brocade. ECOs that are just for AVL changes will not be charged to Brocade. ECOs before a product reaches General Availability (GA) maturity will not be charged to Brocade.
- 10.0 INVENTORY MANAGEMENT
- 10.1 Solectron agrees to purchase components according to Brocade approved vendor list (AVL)
- 10.2 All tools, tooling equipment, test equipment and other related items furnished to Solectron by Brocade (See Attachment 1 for list effective at contract signing date) or paid for by Brocade ("Brocade Property") in connection with this Agreement will be clearly identified by Solectron and will remain the property of Brocade and shall:
- * Be clearly marked and remain the personal property of Brocade.
 - * Be kept free of liens and encumbrances.
 - * Be certified by Brocade to be in compliance with the GA0's Y2K guidelines.
- 10.3. Unless otherwise agreed, Brocade is responsible for the general maintenance of Brocade tooling/equipment. Solectron will maintain burn-in ovens, hi-pot tester and test fixtures at no labor cost to Brocade, but will charge Brocade for parts and supplies.
- 10.4. Brocade hereby appoints Solectron its bailee and assigns to Solectron the Brocade Property, and Solectron accepts such appointment and agrees that it will not issue any negotiable bills or receipts on the Brocade Property and shall neither file nor permit any lien or other claim to be filed against any of the Brocade Property. In the event that such a lien or claim is filed, Solectron shall promptly notify Brocade and shall take all action necessary to cause such lien or claim against the Brocade Property to be released or otherwise removed within forty-five (45) days. If such lien or claim is not released within such forty-five (45) days, then Solectron shall be deemed to have purchased the Brocade Property at the then current replacement costs for such Brocade Property and such amount shall be immediately payable to Brocade.
- 10.5. Solectron shall hold Brocade Property at its own risk and shall not modify the property without the written permission of Brocade. Brocade property will be used by Solectron only for purposes of this Agreement. Upon Brocade's request, Solectron shall redeliver the property to Brocade in the same condition as originally received by Solectron with the exception of reasonable wear and tear. In the event the property is lost, damaged or destroyed, Solectron's liability for the property is limited to the book value of the property.
- 11.0 CONFIDENTIAL INFORMATION AND PROPRIETARY RIGHTS
- 11.1 Solectron and Brocade have executed as of April 21, 1998, as part of this Agreement, a Nondisclosure Agreement for the reciprocal protection of confidential information (the

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"NDA Agreement"), as attached hereto as Attachment 2 and incorporated herein by reference.

- 11.2 Subject to the terms of the NDA Agreement and the proprietary rights of the parties, Solectron and Brocade agree to exchange, at least semi-annually, relevant process development information and business plans to include market trends, process technologies, product requirements, new product developments, available capacity and other information to support technology advancements by both Solectron and Brocade.
- 11.3 Solectron acknowledges and agrees that all right, title and interest in and to the Products manufactured by Solectron for Brocade pursuant to this Agreement shall remain with Brocade (and/or its suppliers, as applicable).
- 12.0 WARRANTY
- 12.1. Solectron warrants for a period of [*] from the date of completion of the manufacture of the Product, that (i) the Product will conform to the specifications applicable to such Product at the time of its manufacture, which are furnished in writing by Brocade and accepted by Solectron; (ii) such product will be of good material (except for material supplied by Brocade) and workmanship and free from defects for which Solectron is responsible in the manufacture; (iii) such Product will be free and clear of all liens and encumbrances and that Solectron will convey good and marketable title to such Product.
- 12.2. All Products are subject to Brocade's inspection and acceptance at Brocade's facility or facility of the purchasers of the Products before final acceptance. If any Product delivered hereunder fails to conform to the specifications provided by Brocade and accepted by Solectron, then Brocade shall notify Solectron of such failure and Solectron will have up to five (5) business days after receipt of defective Product, to either repair or replace the Product at Solectron's option and cost for Solectron-caused problems. If Solectron fails to repair or replace such Product within such five (5) business day period, then Brocade shall have the right, without liability, to require expedited shipping of the conforming Product at Solectron's sole cost.
- 12.3. In the event that any Product manufactured shall not be in conformity with the foregoing warranties, Solectron shall, at Solectron's sole expense, replace, repair or correct such Product within [*] of receipt of such defective Product. Solectron shall waive any charges to Brocade in order to effect the replacement of such defective Products to Brocade. Solectron agrees to maintain a repair capability for products under warranty. If Solectron is unable to repair, replace or correct such product, then Solectron shall credit Brocade for the purchase price paid by Brocade for such Product.
- 12.4. The foregoing constitutes Brocade's sole remedies against Solectron for breach of warranty claims.
- 12.5. Solectron shall have no responsibility or obligation to Brocade under warranty claims with respect to Products that have been subjected to abuse, misuse, accident, alteration, neglect or unauthorized repair.
- 12.6. Solectron shall have no liability or responsibility for any losses, damages, or failures to the extent that any such claims are a result of (i) Solectron's compliance with Brocade's supplied specifications, (ii) the negligence of Brocade in supplying the goods, services, or

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information in connection with the design, development, distribution, and configuration of the product, (iii) modification or alteration of product by a party other than Solectron, (iv) incorrect installation or incorporation of product by either Brocade or Brocade's authorized field representative, (v) inherent design flaws the product which may induce intermittent failures, (vi) and transportation damage from approved freight carriers.

12.7 THE WARRANTIES CONTAINED IN THIS SECTION ARE IN LIEU OF, AND SOLECTRON EXPRESSLY DISCLAIMS AND BROCADE WAIVES ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR USE.

13.0 TERMINATION

13.1. If either party fails to meet any one or more of the terms and conditions as stated in either this Agreement or the addenda, Solectron and Brocade agree to negotiate in good faith to resolve such default. Notwithstanding the foregoing, if the defaulting party fails to cure such default or submit an acceptable written plan (as determined by the non-defaulting party in its sole discretion) to resolve such default within thirty (30) days following the date of written notice of default, the nondefaulting party shall have the right to terminate this Agreement by furnishing the defaulting party with thirty (30) days written notice of termination.

13.2. Each party shall have the right to terminate this Agreement by giving termination notice, which termination shall become effective ten (10) days after mailing, if the other party:

13.2.a. files an application for or consents to or directs the appointment of, or takes of possession by, a receiver, a custodian, trustee or liquidator of all or substantially all of such other party's property, whether tangible or intangible, wherever located;

13.2.b. makes a general assignment for the benefit of creditors;

13.2.c. commences or has the intention of commencing a voluntary case under the federal bankruptcy laws (as now or hereinafter may be in effect);

13.2.d. is part of an adjudication that such other party is bankrupt or insolvent;

13.2.e. files or has the intent to file a petition seeking to take advantage of any other law providing for the relief of debtors;

13.2.f. acquiesces to or fails to have dismissed within ninety (90) days, any petition filed against such other party in any involuntary case under such bankruptcy law; or

13.2.g. terminates, dissolves, or ceases to continue all or substantially all of its business affairs or distributes a substantial portion of its assets.

- 13.3 Either Solectron or Brocade may terminate this Agreement without cause by giving one hundred twenty (120) days advance written notice to the other party.
- 13.4 The following Sections shall survive the expiration or earlier termination of this Agreement: sections 4.2, 4.3, 8, 11, 12, 13, 14, 15, 16, and 17.
- 14.0 DISPUTE RESOLUTION
- 14.1 In the spirit of continued cooperation, the parties intend to and hereby establish the following dispute resolution procedure to be utilized in the unlikely event any controversy should arise out of or concerning the performance of this Agreement.
- 14.2. In the event of a dispute or claim arising between the parties on any matter relating to this Agreement, either party may initiate negotiation proceedings by written notice to the other party setting forth the particulars of the dispute. Upon receipt of such notice, the parties agree to meet in good faith within two (2) weeks of the date of such notice, to jointly define the scope of and a method to remedy the dispute. If such meeting does not resolve the dispute, then senior management of Solectron and Brocade are authorized to and will meet personally within ten (10) days to confer in a bona fide attempt to resolve the matter. The parties will use diligent efforts to arrange meetings or telephone conferences as needed to facilitate these negotiations.
- 14.3. Should any disputes remain existent between the parties at the conclusion of the time periods set forth above, then the parties shall promptly submit any dispute to mediation with an independent mediator. In the event mediation is not successful in resolving the dispute within sixty (60) days of the beginning of the two-step resolution process set forth above, the parties agree to submit the dispute to binding arbitration in accordance with the rules of the Judicial Arbitration and Mediation Services/Endispute in San Jose, California (hereinafter "JAMS"), and judgment upon the award may be entered in any court having jurisdiction. A single arbitrator shall be selected according to JAMS rules within thirty (30) days of submission of the dispute to the JAMS. The arbitrator shall conduct the arbitration in accordance with the California Evidence Code. Except as expressly provided above, no discovery of any kind shall be taken by either party without the written consent of the other party, provided, however, that either party may seek the arbitrator's permission to take any deposition which is necessary to preserve the testimony of a witness who either is, or may become, outside the subpoena power of the arbitrator or otherwise unavailable to testify at the arbitration. The arbitrator shall have the power to enter any award that could be entered by a Judge of the Superior Court of the State of California sitting without a jury, and only such power, except that the arbitrator shall not have the power to award punitive damages, treble damages, or any other damages which are not compensatory, even if permitted under the laws of the State of California or any other applicable law. The arbitration award may be enforced in any court having jurisdiction over the parties and the subject matter of the arbitration. Notwithstanding the forgoing, the parties irrevocably submit to the non-exclusive jurisdiction of the Superior Court of the State of California, Santa Clara County, and the United States District Court for the Northern District of California, San Jose Branch, in any action to enforce an arbitration award.

15.0 LIMITATION OF LIABILITY

IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, OR TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY, OR OTHERWISE, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY DAMAGES OF ANY KIND WHETHER OR NOT EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

16.0 PATENT, COPYRIGHT AND TRADEMARK INDEMNITY

Each party (the "Indemnifying Party") shall defend, indemnify, and hold harmless the other party from any claims by a third party of infringement of intellectual properties resulting from the acts of the Indemnifying Party pursuant to this Agreement, provided that the other party (i) gives the Indemnifying Party prompt notice of any such claims, (ii) renders reasonable assistance to the Indemnifying Party thereon, and (iii) permits the Indemnifying Party to direct the defense of the settlement of such claims.

17.0 GENERAL

- 17.1. Each of the parties shall at all times during the term of this Agreement act as, and shall represent itself to be, an independent contractor, and not an agent or employee of the other.
- 17.2. Each party to this Agreement will maintain insurance to protect itself from claims (i) by the party's employees, agents and subcontractors under Worker's Compensation and Disability Acts, (ii) for damages because of injury to or destruction of tangible property resulting out of any negligent act, omission or willful misconduct of the party or the party's employees or subcontractors, (iii) for damages because of bodily injury, sickness, disease or death of its employees or any other person arising out of any negligent act, omission, or willful misconduct of the party or the party's employees, agents or subcontractors.
- 17.3. Neither party shall delegate, assign or transfer its rights or obligations under this Agreement, whether in whole or part, without the written consent of the other party, except that Brocade may assign this Agreement to a successor in interest in the event of a merger, acquisition or purchase of all or substantially all of the stock or assets of Brocade. A waiver of any default hereunder or of any of the terms and conditions of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed. The exercise of any right or remedy provided in this Agreement shall be without prejudice to the right to exercise any other right or remedy provided by law or equity, except as expressly limited by this Agreement.
- 17.4. In the event any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of any of the remaining provisions shall not in any way be affected or impaired.

- 17.5. Except for purchase orders which may be sent by normal carrier, all notices and communications hereunder are required to be sent to the address or telecopier number stated below (or such other address or telecopier number as subsequently notified in writing to the other party): (i) By facsimile with confirmation of transmission, (ii) personal same or next day delivery or (iii) sent by commercial overnight courier with written verification of delivery. All notices so given shall be deemed given upon the earlier of receipt or one (1) day after dispatch.

Any notices sent to Brocade hereunder should be sent to:

Brocade Communications Systems, Inc.
1901 Guadalupe Parkway
San Jose, CA 95131
Attn: Jean Zorzy
Fax No. (408) 487-8091

with a copy to:

Maureen S. Dorney, Esq.
Gary Cary Ware & Freidenrich
400 Hamilton Avenue
Palo Alto, CA 94301
Fax No. (650) 327-3699

Any notices sent to Solectron hereunder should be sent to:

Solectron Corporation
847 Gibraltar Drive, Bldg. #5
Milpitas, CA 95035
Attn: Jayne Carthy
Fax No. 408-956-6056

with a copy to:

Solectron Corporation
847 Gibraltar Drive, Bldg. #5
Milpitas, CA 95035
Attn: Legal Department
Fax No. 408-957-2717

- 17.6. Neither party shall be liable for any failure or delay in its performance under this Agreement due to acts of God, acts of civil or military authority, fires, floods, earthquakes, riots, wars or any other cause beyond the reasonable control of the delayed party provided that the delayed party: (i) gives the other party written notice of such cause within fifteen (15) days of the discovery of the event; and (ii) uses its reasonable efforts to remedy such delay in its performance. If Solectron is unable to deliver in accordance with agreed delivery Schedule, the terms of section 6.4 shall apply.
- 17.7. This Agreement shall be governed by, and construed in accordance with the laws of the State of California, excluding its conflict of laws provisions. In any action to enforce this Agreement, the prevailing party shall be awarded all court costs and reasonable attorney fees incurred.

- 17.8. Neither party shall object to the use of a photocopy of the original of this Agreement for the purpose of making any required or allowed public filings.
- 17.9. This Agreement, the NDA Agreement and the Exhibits hereto are intended as the complete, final and exclusive statement of the terms of the agreement between the parties regarding the subject matter hereof and supersedes any and all other prior or contemporaneous agreements or understandings, whether written or oral, between them relating to the subject matter thereof. This Agreement may not be modified except in writing executed by both parties.

Agreed:

Soletron California Corporation

Brocade Communications Systems, Inc.

By: /s/ MICHAEL T. LING

By: /s/ VICTOR RINKLE

Name: Michael T. Ling
Title: VP Ops
Date: 7-30-99

Name: Victor Rinkle
Title: VP Ops
Date: 7-30-99

Amendment No. 1 To The Manufacturing Agreement

This Amendment No. 1 ("Amendment") to the Standard Manufacturing Agreement (the "Agreement") which was entered into effective 7/30, 1999, is by and between Brocade Communication Systems, Inc., with a place of business at 1901 Guadalupe Parkway, San Jose, California 95131 ("Brocade") and Solectron California Corporation, with its place of business at 847 Gibraltar Drive, Milpitas, California 95035 ("Solectron").

RECITALS

WHEREAS, the parties have entered into an agreement whereby Solectron acts as a contract manufacturer for Brocade; and

WHEREAS, under limited circumstances, Brocade desires to grant [*] with a place of business at [*] with a limited right to purchase products direct from Solectron.

NOW THEREFORE, in consideration of the premises and mutual covenants contained in this Agreement, the parties hereby agree as follows:

AGREEMENT

1. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.
2. A new Section 18 is hereby added to this Agreement, as follows:
 - 18.1 In the event Brocade provides written notice to Solectron, [*] shall be entitled to purchase products directly from Solectron pursuant to the terms and conditions of this Agreement and at the same prices at which [*] could otherwise purchase such products from Brocade.
 - 18.2 Brocade shall provide Solectron with a list of products which Solectron may offer to [*] and the associated prices at which said products shall be offered. Such list shall be deemed confidential and subject to the non-disclosure agreement executed between Solectron and Brocade.
 - 18.3 Solectron shall remit to Brocade, in accordance with procedures to be mutually agreed upon, the difference in the price paid by [*] and the price which Brocade is charged under this Agreement for each product.
 - 18.4 Solectron acknowledges that in the event Brocade fails to notify Solectron that [*] right to buy products directly from Solectron has arisen, [*] may provide a copy of the agreement between [*] and Brocade as evidence to exercise such right. Prior to allowing [*] to buy directly,

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Solectron shall notify Brocade of the request from [*]
to exercise this provision.

3. Except as amended by the terms of this Amendment, all other
terms and conditions of the Agreement, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties, through their duly authorized officers,
have executed this Amendment.

Brocade:	Solectron:
Brocade Communication Systems, Inc.	Solectron California Corporation
By: /s/ VICTOR RINKLE	By: /s/ MICHAEL T. LING
-----	-----
Print Name: VICTOR RINKLE	Print Name: Michael T. Ling
Title: VP Ops	Title: VP Ops
Date: 7-30-99	Date: 7-30-99

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the Commission. Confidential treatment has been requested with respect to the
omitted portions.

EXHIBIT 1

PRICING

BROCADE COMMUNICATIONS MANUFACTURING AGREEMENT -- 7/20/98

ASSUMPTIONS:

- 1.) [*]
- 2.) [*]
- 3.) [*]
- 4.) [*]

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BROCADE COMMUNICATION

SOLECTRON(R)

SLR QUOTE # R05036-98

UNIT PRICING

ASSEMBLY # 40-0000220-02 REV. E
RECURRING EXPENSE (NRE)

SILKWORM II CPU

VOLUME/Quarter	[*]	[*]	[*]
Material Cost	[*]	[*]	[*]
Material Margin	[*]	[*]	[*]
Material Price	[*]	[*]	[*]
Assembly Labor	[*]	[*]	[*]
ICT Labor	[*]	[*]	[*]
TOTAL UNIT PRICE	[*]	[*]	[*]

MATERIAL LEAD TIME [*]

NONRECURRING EXPENSE (NRE)

Manufacturing Tooling (taxable)

Stencil	[*]
Wave Fixture	[*]

TOTAL Taxable Mfg

Mfg. Engineering (nontaxable)

Programming/Engineering	[*]
TOTAL Non-Taxable Mfg	[*]

Test Tooling (taxable)

ICT Fixture	[*]
TOTAL Taxable Test	[*]

Test Engineering (nontaxable)

ICT Program	[*]
TOTAL Non-Taxable Test	[*]

TOTAL Assembly NRE [*]

ICT ATE: HP307X UNIQUE TO 40-0000220-02

A. Basic test program to cover:

- this device will use TestJet only: U16, U31, U19, U22, U17, U20
- this device will use TestJet + Library Test: U4, U5, U9, U10

B. This test is based on the following assumptions:

- based on (estimated) node count: 625

LEAD TIME 3-4 weeks (upon receipt of all necessary documentation and P.O. #)

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SLS-10-021924 Rev: -

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

UNIT PRICING

ASSEMBLY # 40-0000273-01 REV.K

G PORT

RECURRING EXPENSE (NRE)

VOLUME/Quarter	[*]	[*]	[*]
Material Cost	\$[*]	\$[*]	\$[*]
Material Margin	[*]	[*]	[*]
Material Price	\$[*]	\$[*]	\$[*]
Assembly Labor	[*]	[*]	[*]
ICT Labor	[*]	[*]	[*]
TOTAL UNIT PRICE	\$[*]	\$[*]	\$[*]

MATERIAL LEAD TIME [*]

NONRECURRING EXPENSE (NRE)

MANUFACTURING TOOLING (TAXABLE)

Stencil	\$[*]
Pick & Place Fixture	\$[*]
Wave Fixture	\$[*]
TOTAL Taxable Mfg.	\$[*]
Mfg. Engineering (nontaxable)	
Programming/Engineering	\$[*]
TOTAL Non-Taxable Mfg.	\$[*]
Test Tooling (taxable)	
ICT Fixture	\$[*]
TOTAL Taxable Test	\$[*]
Test Engineering (nontaxable)	
ICT Program	\$[*]
TOTAL Non-Taxable Test	\$[*]
TOTAL ASSEMBLY NRE	\$[*]

ICT ATE: HP307X UNIQUE TO 40-0000273-01

- A. Basic test program to cover:
 - this device will use TestJet only: U1, U2, U3
- B. This test is based on the following assumptions:
 - based on (estimated) node count: 200

LEAD TIME 3 weeks (upon receipt of all necessary documentation and P.O. #)

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

UNIT PRICING

ASSEMBLY# 40-0000623-01 REV. 15

FLANNEL PORT BOARD

RECURRING EXPENSE (NRE)

VOLUME/Quarter	[*]	[*]	[*]
Material Cost	\$[*]	\$[*]	\$[*]
Material Margin	[*]	[*]	[*]
Material Price	\$[*]	\$[*]	\$[*]
Assembly Labor	[*]	[*]	[*]
ICT Labor	[*]	[*]	[*]
TOTAL UNIT PRICE	\$[*]	\$[*]	\$[*]

MATERIAL LEAD TIME [*]

NONRECURRING EXPENSE (NRE)

Manufacturing Tooling (taxable)

Stencil	\$[*]
Pick & Place Fixture	\$[*]
Wave Fixture	\$[*]
TOTAL Taxable Mfg.	\$[*]

Mfg. Engineering (nontaxable)

Programming/Engineering	\$[*]
TOTAL Non-Taxable Mfg.	\$[*]

Test Tooling (taxable)

ICT Fixture	\$[*]
TOTAL Taxable Test	\$[*]

Test Engineering (nontaxable)

ICT Program	\$[*]
TOTAL Non-Taxable Test	\$[*]

TOTAL ASSEMBLY NRE \$[*]

ICT ATE: HP307X UNIQUE TO 40-0000623-01

- A. Basic test program to cover:
 - this device will use TestJet only: U8, U9, U10, U11
- B. This test is based on the following assumptions:
 - based on (estimated) node count: 235

LEAD TIME 3 weeks (upon receipt of all necessary documentation and P.O. #)

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

BROCADE COMMUNICATION SOLECTRON (R) SLR QUOTE # R05036*98

UNIT PRICING

ASSEMBLY # 40-0000749-01 REV. A

SILKWORM II MOTHER BOARD

RECURRING EXPENSE (NRE)

VOLUME/Quarter	[*]	[*]	[*]
Material Cost	\$[*]	\$[*]	\$[*]
Material Margin	[*]	[*]	[*]
Material Price	\$[*]	\$[*]	\$[*]
Assembly Labor	[*]	[*]	[*]
ICT Labor	[*]	[*]	[*]
TOTAL UNIT PRICE	\$[*]	\$[*]	\$[*]

MATERIAL LEAD TIME [*]

NONRECURRING EXPENSE (NRE)

Manufacturing Tooling (taxable)	
Stencil	\$[*]
Pick & Place Fixture	\$[*]
Wave Fixture	\$[*]
TOTAL Taxable Mfg.	\$[*]
Mfg. Engineering (nontaxable)	
Programming/Engineering	\$[*]
TOTAL Non-Taxable Mfg.	\$[*]
Test Tooling (taxable)	
ICT Fixture	\$[*]
TOTAL Taxable Test	\$[*]
Test Engineering (nontaxable)	
ICT Program	\$[*]
TOTAL Non-Taxable Test	\$[*]
TOTAL ASSEMBLY NRE	\$[*]

ICT ATE: HP307X UNIQUE TO 40-0000749-01

- A. Basic test program to cover:
- this device will use TestJet only: U1, U2, U3, U27, U28, U29, U30, U31, U32, U33, U34, U35
 - this device will use TestJet + Library Test: U8-25
- B. This test is based on the following assumptions:
- based on (estimated) node count: 1275

LEAD TIME 4-5 weeks (upon receipt of all necessary documentation and P.O. #)

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

UNIT PRICING

ASSEMBLY# 70-0000370-03 REV. 1

SILKWORM II

RECURRING EXPENSE (NRE)

VOLUME/Quarter	[*]	[*]	[*]
Material Cost	\$[*]	\$[*]	\$[*]
Material Margin	[*]	[*]	[*]
Material Price	\$[*]	\$[*]	\$[*]
Assembly Labor	[*]	[*]	[*]
System Test	[*]	[*]	[*]
Haas Test	[*]	[*]	[*]
TOTAL UNIT PRICE	\$[*]	\$[*]	\$[*]

Solelectron Confidential

SLS-10-021924 Rev:

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EXHIBIT 2

QUALITY SYSTEM & PRODUCT QUALITY REQUIREMENTS

1 PURPOSE

1.1 This document outlines the Quality System and Product Quality Requirements to Solectron. While this document defines quality requirements that are the responsibility of Solectron, it is important to note that it is Brocade's intention to establish an open quality management relationship with Solectron.

2 SCOPE

2.1 The Quality System and Product Quality Requirements called out in this document are for the Fibre Channel Switches and associated printed circuit boards manufactured by Solectron.

2.2 Where the requirements called out in this document conflict with requirements called out elsewhere, the order of precedence is as follows:

2.2.1 Contractual agreements

2.2.2 Brocade Communications Purchase Order, Brocade Communications Engineering drawing or specification noted in the Purchase Order

2.2.3 This document

3 DEFINITIONS

3.1 Unless otherwise specified the terms used in this document are defined in:

3.1.1 ISO 8402-1986, Quality Vocabulary

3.1.2 ANSI/ASQC A3-1987, Quality Systems Terminology

3.2 Unit: In this document a unit is considered to be an assembled printed circuit board (e.g. a CPU board), a subassembly (e.g., power supply), a chassis, or a fully assembled switch made up of printed circuit boards, subassemblies, displays, and chassis.

4 RESPONSIBILITY

4.1 The Supply Base Engineer reporting to the Manager, Product and Process Quality in the Brocade Communications-Operations function is responsible for implementing the requirements of this document.

5 REFERENCE DOCUMENTS

5.1 ISO STANDARD 840 Quality Vocabulary

5.2 ISO 9000:1994 Quality management and quality assurance standards -Guide lines for selection and use

5.3 ISO 9002:1994 Quality Systems- Model for quality assurance in design/development, production, installation and servicing.

5.4 ANSI/ASQC A3- 1987 Quality Systems Terminology

5.5 ANSI/ASQC Q1 1986 Guide Lines for Quality System Audits

5.6 MIL STD 105E Sampling procedures and Tables for inspection by Attributes

6 EQUIPMENT REQUIRED (HARDWARE AND SOFTWARE) (NONE REQUIRED)

7 QUALITY SYSTEM REQUIREMENTS

7.1 Quality System Requirements:

Brocade Communications' Quality System requirements are defined in the document ISO 9002:1994. Solectron's conformance to these requirements will be determined by a Quality Assessment organized by the Supply Base Engineer and carried out with the

assistance of other Brocade Communication groups.

- 7.1.1 Brocade Communications reserves the right to conduct, with proper notification, periodic reviews of Solelectron's Process and Quality Control system. These reviews can include all aspects of materials management, manufacturing, test, and quality records associated with products and services sold or provided to Brocade Communications by Solelectron.
- 7.2 If the Quality Assessment shows that Solelectron is does not meet the ISO 9002 requirements, the deficiencies will be noted and corrective action may be required. (See the ANSI/ASQC Q1 1986: Guide Lines for Quality System Audits).
- 7.3 Process Definition:
Prior to the start of production, Brocade Communications' Supply Base Engineer (SBE) and Solelectron's representative will determine the key steps of the process flow. The key steps of the process flow will be documented using either Brocade's or Solelectron's documentation.
- 7.4 Process Changes:
Once the key process steps are defined, they can not be changed without written notification and approval from the Brocade Communications' Quality Engineer prior to the implementation of the changes. Examples of process changes are: using parts not called out on the Approved Vendor List (AVL), alterations to the agreed on process flow, changing pass/fail parameters, increasing or decreasing test times, changes in test equipment, relocation of the process to a different location, etc.
- 7.5 Process Reporting:
Prior to the start of volume production Brocade Communications' Quality Engineer and Solelectron's representative will agree on the content, format, and frequency of the Process Reports.
- 7.5.1 The Process Reports will include, at a minimum, yields at each operation, defect paretos at each operation, and corrective actions to address the significant defects. The reports will include data from the On-Going Reliability Test and the Out-Of the Box Audit (OOBA).
- 7.5.2 Brocade will, as far as practical, use Solelectron's data collection process and reports, provided they meet Brocade's requirements. The data will be sent electronically.
- 7.6 Process Qualification and Improvement
- 7.7 Prior to the start of volume shipments the Brocade and Solelectron will conduct a Product Verification Test (PVT). The PVT is a controlled build of a predetermined number of units with the purpose of demonstrating the capability of the process to produce defect free product in a cost efficient way.
- 7.7.1 The Brocade Quality Engineer and Solelectron's representative will determine prior to the start of the volume production the target yield for the PVT build.
- 7.7.1.1 If the target yield is reached, the process is considered capable and ready for volume production.
- 7.7.1.2 If the target yield is not met, the Brocade Supply Base Engineer and Solelectron's representative will jointly develop a corrective action plan to improve the process yield. When the corrective actions have been implemented, a second PVT build will be done. If this build meets the predetermined goals, the volume production can begin. If the yield is not met, the corrective action process will be duplicated until the predetermined yield criterion is reached.
- 7.7.2 Once volume production starts, the Brocade Supply Base Engineer and Solelectron's representative will agree on a yield improvement plan. The Yield Improvement Plan (YIP) will set targets for quarterly yield or process improvements. If the quarterly goals are not reached, the Brocade and Solelectron will determine what corrective actions are necessary to reach the quarterly goals.
- 7.8 On-Going Reliability Test
Brocade Communications uses an On-going Reliability Test (ORT) as a measure of the production process performance. Prior to the start of volume production Brocade's Supply Base Engineer and Solelectron's representative will agree on the how the

On-going Reliability test will be implemented. The implementation will follow the guidelines called out in the Brocade Communications' Process number 99-0000401-01

June 18, 1999

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Quality System
and
Product Quality Requirements

7.8.1 If there is a failure in the ORT, Solectron will immediately notify Brocade's Supply Base Engineer. Solectron's representative and Brocade's SBE will immediately start the failure analysis process and take any corrective action necessary. When the failure analysis is completed, the Brocade SBE will inform Brocade's Manager of Process and Product Quality of the findings and the status of the corrective action.

7.9 Failure Analysis:

Solectron is required to do failure analysis on all in-warranty units returned from Brocade's customers. At Brocade's request Solectron is required to perform the first level failure analysis (determine the failed component) within one working day after receiving the failed unit. The root-cause analysis (analysis of the defective component) must be done within ten working days after the receipt of the failed unit.

7.10 Epidemic Failure:

Epidemic failures are unit failures that are the result of defects in material, workmanship, and/or other deficiencies attributable to or within the control of Solectron, including but not limited to, incorrect use of components with inherent or latent defects, or consistent maladjustments during manufacture. The Epidemic Failure rate is defined as three times the Normal Annualized Failure rate specified in the Product Specification.

7.10.1 If the unit manufactured by Solectron for Brocade Communications is found to fail at an Epidemic rate, Solectron and Brocade Communications will mutually agree on a corrective action plan to be carried out by Solectron, at Solectron's expense to repair and replace the defective units.

7.11 Field Failure Rates as a Measure of Solectron Performance:

Solectron's performance in delivering a quality product is determined by the Field Failure Rate and is measured as the Annualized Field Failure Rate. This is rate is calculated as the average number of returns over the last three months divided by the installed base, then multiplied by twelve to give an annualized rate.

7.11.1 If the Field Failure Rate of the unit manufactured by Solectron for Brocade Communications exceeds the Normal Annualized Failure Rate called out in the Product specification, Solectron and Brocade Communications will mutually implement a program to determine the root causes of the Field Failure Rate and implement corrective actions.

ATTACHMENT 1 BRC CONSIGNED EQUIPMENT LIST

Item	Equip. Description	Serial Number	BRC Asset No.	SLR ID #	Comments
1	Dell Monitor 17"	7117360	100018		
2	Dell Monitor 17"	04036a606p	100007		
3	PC CPU DELL Dimension xps 166	88jpx	100013		
4	Dell Monitor 17", lab	04036a7fiv	102079		
5	PC CPU HP Vectra XA	us74152334	107074		
6	HP Vectra- PC	us75150685	107159		
7	Sony Monitor 200ES	4036166	100302		
8	Sony Monitor 200ES	4034244	100306		
9	HP Vectra- CPU	75150693	100307		
10	HP- CPU	us75150707	100345		
11	Ascend P50 - SLR -GW	7196010	106349		
12	Dell Laptop Latitude	7147346byk8642	106365		
13	Dell XPS CPU	88jq8	102064		
14	LinkSys 16 port 10bT Hub	N/A	107401		
15	LinkSys 16 port 10bT Hub	N/A	107402		
16	Bur-In Oven #1	N/A	N/A	BRCOVEN1	
17	Bur-In Oven #2	N/A	N/A	BRCOVEN2	
18	Bur-In Oven #3	N/A	N/A	BRCOVEN3	
19	Bur-In Oven #4	N/A	N/A	BRCOVEN4	
20	Bur-In Oven #5	N/A	N/A	BRCOVEN5	
21	Bur-In Oven #6	N/A	N/A	BRCOVEN6	
22	Bur-In Oven #7	N/A	N/A	BRCOVEN7	
23	Run-In Oven #1	N/A	N/A	BRCOVEN8	
24	Run-In Oven #2	N/A	N/A	BRCOVEN9	
25	Run-In Oven #3	N/A	N/A	BRCOVEN10	
26	ICT Fixture 40-0000749-01	N/A	N/A		Located on C4 shelf
27	ICT Fixture 40-0000623-01	N/A	N/A		Located on C1 shelf
28	ICT Fixture 40-0000220-01	N/A	N/A		Located on C1 shelf
29	ICT Fixture 40-0000004-01	N/A	N/A		Located on C1 shelf
30	ICT Fixture 40-0000273-01	N/A	N/A		Located on C1 shelf
31	ICT Fixture 40-0000003-01	N/A	N/A		Located on C1 shelf
32	SMT Stencil 40-0000623-04 Top	N/A	N/A		Located on F01 Shelf SMT
33	SMT Stencil 40-0000623-04 Bot	N/A	N/A		Located on F02 Shelf SMT
34	SMT Stencil 40-0000749-01 Top	N/A	N/A		Located on F03 Shelf SMT
35	SMT Stencil 40-0000749-01 Bot	N/A	N/A		Located on F04 Shelf SMT
36	SMT Stencil 40-0000220-03 T & B	N/A	N/A		Located on F05 Shelf SMT
37	SMT Stencil 40-0000273-03 Top	N/A	N/A		Located on F06 Shelf SMT
38	SMT Stencil 40-0000273-03 Bot	N/A	N/A		Located on F07 Shelf SMT
39	SMT Stencil 40-0200003-03 Top	N/A	N/A		Located on F09 Shelf SMT
40	SMT Stencil 40-0200003-03 Bot	N/A	N/A		Located on F08 Shelf SMT

41	SMT Stencil 40-0000001-01 T & B	N/A	N/A	Located on F10 Shelf used on proto run SMT
42	SMT Stencil 40-0000727-05 Top	N/A	N/A	Located on F11 Shelf SMT

Item	Equip. Description	Serial Number	BRC Asset No.	SLR ID #	Comments
43	SMT Stencil 40-0000727-05 Bot	N/A	N/A		Located on F12 Shelf SMT
44	SMT Stencil 40-0000004-03 Top	N/A	N/A		Located on F13 Shelf SMT
45	SMT Stencil 40-0000004-03 Bot	N/A	N/A		Located on F14 Shelf SMT
46	SMT Stencil 40-0000003-01 Top	N/A	N/A		Located on F15 Shelf SMT
47	SMT Stencil 40-0000003-01 Bot	N/A	N/A		Located on F16 Shelf SMT
48	Functional Test Fixture 2400			BRC2400 F/T 1	
49	Functional Test Fixture 2400			BRC2400 F/T 2	
50	Functional Test Fixture 2800			BRC2800 F/T 1	
51	Functional Test Fixture 2400			BRC2800 F/T 2	
52	Functional Test Debug Fixt. 2400			BRC2400 F/T DBG 1	
53	Functional Test Debug Fixt. 2800			BRC2800 F/T DBG 1	
54	Dell Optiplex PC	UN6JL			Used On ESS Chamber
55	Dell Monitor	84779-DVYN-29			Used On ESS Chamber
56	6681A Power Supply	US36400338			Used On ESS Chamber
57	6681A Power Supply	US36400327			Used On ESS Chamber
58	6680A Power Supply	US36480139			Used On ESS Chamber
59	6680A Power Supply	US36480130			Used On ESS Chamber
60					
61					
62					
63					

All parties below acknowledge that, by reason of their relationship, they may have access to certain information and materials concerning the other's business, plans, products and technical data which are confidential and of substantial value which would be impaired if such information were disclosed to third parties. Accordingly, for the purposes of protecting and preserving the confidential and/or proprietary nature of information to be disclosed or made available by each party to the others under this Mutual Nondisclosure Agreement ("Agreement"), the parties hereto agree as follows:

1. **Confidential Information.** For the purposes of this Agreement, Confidential Information means any technical, business, financial, contractual terms and conditions or other information or data furnished by one party to the other: (i) in written or other tangible form marked with a proprietary legend, or (ii) in oral or visual form, identified as being confidential at the time of the disclosure and thereafter summarized in a writing which identifies the Confidential Information and is transmitted to the receiving party within thirty (30) days after such oral or visual disclosure.
2. **Period of Protection.** The period of protection during which Confidential Information received pursuant to this Agreement shall be subject to an obligation of confidentiality and protection is five (5) years from the date of first receipt of the Confidential Information.
3. **Standard of Care.** The standard of care which each party shall be required to employ in protecting and handling a Confidential Information received pursuant to this Agreement is the same degree of care which the receiving party uses to protect and safeguard its own Confidential Information of the kind, but not less than a reasonable degree of care.
4. **Restrictions on Use.** Confidential Information shall be used solely for internal evaluation and use pertaining to the purpose of this Agreement and shall not otherwise be used for the benefit of the receiving party or others. Confidential Information shall be disclosed only to the employees of the receiving party who have a "need to know" and executed an internal nondisclosure agreement.
5. **Information Not Subject to Confidentiality.** The Confidential Information of a party shall not include and the foregoing obligations shall not apply to information or data which: (i) was generally available to the public at the time of receipt from the disclosing party, or thereafter to have become generally available to the public; (ii) is known to the receiving party on a non-confidential basis prior to its receipt from the disclosing party; (iii) disclosed with the prior written consent of the disclosing party; (iv) becomes known to the receiving party from a source other than the disclosing party without breach of this Agreement by the receiving party; (v) was required to be disclosed pursuant to law; (vi) developed independently by personnel of the receiving party who had no substantive knowledge of the disclosing party's Confidential Information at the time of such independent development.
6. **No License.** The disclosure of Confidential Information shall not be construed as granting either a license under any patent, patent application or any right of ownership in said Confidential Information.
7. **Equitable Relief.** The receiving party acknowledges and agrees that in the event of a breach or threatened breach of any provision of this Agreement, the disclosing party shall have no adequate remedy at law and shall therefore be entitled to enforce any such provision by temporary or permanent injunctive or mandatory relief obtained in any court without the necessity of proving damages, posting any bond or other security, and without prejudice or diminution of any other rights or remedies which may be available at law or in equity. This Agreement shall be construed in accordance with the laws of the State of California.
8. **Termination.** This Agreement may be terminated by either party giving the other parties a thirty (30) day termination notice in writing. Upon expiration or termination of this Agreement, each party shall cease all use of the other party's Confidential Information and return to the other party all tangible copies of the other party's Confidential Information.

AGREED:

SOLETRON

/s/ Kelly Priest
Authorized Representative's Signature

KELLY PRIEST

Name

DIRECTOR OF SALES

Title

4-15-98

Date

MILPITAS, CA

Address
SLRND3P doc (Date 11/22/95)

Brocade Communications Systems, Inc.

Name of Other Party

/s/ Jean Zanzu

Authorized Representative's Signature

Jean Zanzu

Name

DIRECTOR, SUPPLIER MGMT

Title

4/21/98

Date

1901 Guadalupe Pkwy
San Jose, CA 95131

Address

Name of Other Party

Authorized Representative's Signature

Name

Title

Date

Address

Confidential

BASIC LEASE INFORMATION
OFFICE NET

LEASE DATE: December 17, 1999
(same as date in first paragraph of Lease)

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

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

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

TENANT CONTACT: Mr. Victor Rinkle, Vice President, Operations
PHONE NUMBER: 408/487-8100
FAX NUMBER: 408/487-8101

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

LANDLORD'S NOTICE ADDRESS: 1735 Technology Drive, Suite 125
San Jose, CA 95110

LANDLORD'S REMITTANCE ADDRESS: P.O. Box 45587 Dept. #12196
San Francisco, CA 94145-0587

PROJECT DESCRIPTION: That certain Class A office project located on the parcel bounded by Airport Parkway on the north, Technology Drive on the East, Guadalupe Parkway on the West and Skyport Drive on the South, situated in the County of Santa Clara, City of San Jose, State of California.

BUILDING DESCRIPTION: That certain real property commonly known as Concourse VI, and located at 1745 Technology Drive, San Jose, California, and as depicted on Exhibit B attached hereto.

PREMISES: Approximately two hundred ten thousand six hundred seventy-seven (210,677) rentable square feet, which consists of one hundred percent (100%) of the Building and as depicted on Exhibit B attached hereto.

TEMPORARY PREMISES: Approximately seven thousand eight hundred sixty four (7,864) rentable square feet at the building located at 2055 Gateway Place, San Jose, California (the "PHASE I TEMPORARY PREMISES BUILDING"), and as depicted on Exhibit D, attached hereto.

Approximately thirty-nine thousand forty-three (39,043) rentable square feet at the building located at 1741 Technology Drive, San Jose, California (the "PHASE II TEMPORARY PREMISES BUILDING"), and as depicted on Exhibit E, attached hereto. Approximately twenty-seven thousand seven (27,007) rentable square feet are located on the 5th floor of the Temporary Premises Building and approximately twelve thousand thirty-six (12,036) rentable square feet are located on the 2nd floor of the Temporary Premises Building.

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

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

PARKING DENSITY: 3.6 spaces per 1,000 usable square feet of the Premises.

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

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

SCHEDULED LENGTH OF TERM: One hundred twenty (120) months following the Term Commencement Date.

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

BASE RENT: With respect to the Premises, see Paragraph 39. A hereof. With respect to each of the Phase I Temporary Premises and the Phase II Temporary Premises, see Paragraph 39.D(1) and (2) hereof.

SECURITY DEPOSIT: Six Million One Hundred Ninety-Three Thousand Nine Hundred Four Dollars and No/100 (\$6,193,904.00) Letter of Credit delivered in accordance with the terms of Paragraph 39.E (subject to adjustment as provided in Paragraphs 39.E and 19 hereof).

TENANT'S NAICS CODE: 51121

TENANT'S PROPORTIONATE SHARE OF BUILDING: 100.00%

TENANT'S PROPORTIONATE SHARE OF PROJECT: 23.73%

The foregoing Basic Lease Information is incorporated into and made a part of this Lease. Each reference in this Lease to any of the Basic Lease Information shall mean the respective information above and shall be construed to incorporate all of the terms provided under the particular Lease paragraph pertaining to such information. In the event of any conflict between the Basic Lease Information and the Lease, the latter shall control.

<p>LANDLORD</p> <p>Spieker Properties, L.P., a California limited partnership</p> <p>By: Spieker Properties, Inc., a Maryland corporation, its general partner</p> <p>By: _____ John W. Petersen Its: Vice President</p>	<p>TENANT</p> <p>Brocade Communications Systems, Inc. a Delaware corporation</p> <p>By: _____ Michael J. Byrd Its: Vice President, Finance, Chief Financial Officer</p> <p>By: _____ Victor Rinkle Its: Vice President, Operations</p>
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Additional Exhibits as Required

LEASE

THIS LEASE is made as of the 17th day of December, 1999, by and between Spieker Properties, L.P., a California limited partnership (hereinafter called "LANDLORD"), and Brocade Communications Systems, Inc., a Delaware corporation (hereinafter called "TENANT").

1. PREMISES

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

2. POSSESSION AND LEASE COMMENCEMENT

A. INTENTIONALLY OMITTED.

B. CONSTRUCTION OF IMPROVEMENTS. The term commencement date ("TERM COMMENCEMENT DATE") shall be the earlier of the date on which: (1) Tenant commences business operations in the Premises, as evidenced by, among other things, the presence in all or a portion of the Premises of business files and, during normal business hours, employees (excluding employees or other agents of Tenant installing and testing Tenant's equipment, furniture and fixtures); or (2) substantial completion of the Base Building Work and Tenant Improvements as described in EXHIBIT C attached hereto, or (3) September 1, 2000. If for any reason Landlord cannot deliver possession of the Premises to Tenant on the scheduled Term Commencement Date, Landlord shall not be subject to any liability therefor, nor shall Landlord be in default hereunder nor shall such failure affect the validity of this Lease, and Tenant agrees to accept possession of the Premises at such time as such improvements have been substantially completed, which date shall then be deemed the Term Commencement Date. Tenant shall not be liable for any Rent for any period prior to the Term Commencement Date (but without affecting any obligations of Tenant under any improvement agreement appended to this Lease). In the event of any dispute as to substantial completion of work performed or required to be performed by Landlord, the certificate of Landlord's architect or general contractor shall be conclusive. Substantial completion (as defined in EXHIBIT C hereto) shall have occurred notwithstanding Tenant's submission of a punchlist to Landlord, which Tenant shall submit, if at all, within fifteen (15) business days after the Term Commencement Date or otherwise in accordance with any improvement agreement appended to this Lease. After the Term Commencement Date and upon Landlord's request, Tenant shall promptly execute and return to Landlord a "Start-Up Letter" in which Tenant shall agree, among other things, to acceptance of the Premises (subject to Landlord's obligation to correct punchlist items as submitted by Tenant to Landlord in accordance with the term of this Paragraph 2.B) and to the determination of the Term Commencement Date, in accordance with the terms of this Lease, but Tenant's failure or refusal to do so shall not negate Tenant's acceptance of the Premises or affect determination of the Term Commencement Date.

C. DELIVERY OF POSSESSION. Landlord shall deliver possession of the Premises to Tenant with Base Building Work substantially complete (except for life safety testing) on or before July 6, 2000. In the event Landlord fails to deliver possession of the Premises to Tenant on or before July 6, 2000, Landlord shall grant to Tenant, for each day after July 6, 2000 until the day Landlord delivers possession of the Premises to Tenant with the Base Building Work substantially complete, a credit against Base Rent in an amount equal to the daily amount of Base Rent in effect for the first month of the Term of this Lease. The credit described in the preceding sentence shall be granted against Tenant's obligation to pay Base Rent in the second month of the Term. Tenant may terminate this Lease by delivering written notice to Landlord on or before January 31, 2001 if: (i) Landlord has not substantially completed the Base Building Work (as defined in EXHIBIT C) to be constructed by Landlord as described in EXHIBIT C to this Lease by December 31, 2000; (ii) Tenant has given Landlord at least twenty (20) days' prior written notice ("TENANT'S TERMINATION NOTICE PERIOD") of Landlord's failure to do so, except for punchlist items, and except for delays caused by Tenant or other third parties (including delays caused by the contractor or anyone else performing services on behalf of Tenant) or by events beyond Landlord's control and other force majeure events, including, but not limited to, strikes, material shortages, delays of governmental agencies and Acts of God, which delays will not be cause for termination hereunder; and (iii) Landlord has not, as of the expiration of Tenant's Termination Notice Period, substantially completed the Premises and delivered possession of the Premises to Tenant. In the event of such termination, Landlord shall return any Security Deposit to Tenant as well as any other sums paid hereunder by Tenant to Landlord. All obligations of Tenant and Landlord under this Lease shall thereafter terminate and no party shall have any further obligations under this Lease.

3. TERM

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

4. USE

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

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

B. LIMITATIONS. Tenant shall not permit any odors, smoke, dust, gas, substances, noise or vibrations to emanate from the Premises or from any portion of the common areas as a result of Tenant's or any Tenant's Party's use thereof, nor take any action which would constitute a nuisance or would disturb, obstruct or endanger any other tenants or occupants of the Building or Project or elsewhere, or interfere with their use of their respective premises or common areas. Storage outside the Premises of materials, vehicles or any other items is prohibited. Tenant shall not use or allow the Premises to be used for any immoral, improper or unlawful purpose, nor shall Tenant cause or maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer the commission of any waste in, on or about the Premises. Tenant shall not allow any sale by auction upon the Premises, or place any loads upon the floors, walls or ceilings which could endanger the structure, or place any harmful substances in the drainage system of the Building or Project. No waste, materials or refuse shall be dumped upon or permitted to remain outside the Premises. Landlord shall not be responsible to Tenant for the non-compliance by any other tenant or occupant of the Building or Project with any of the above-referenced rules or any other terms or provisions of such tenant's or occupant's lease or other contract.

C. COMPLIANCE WITH REGULATIONS. Subject to punchlist items, if any, provided by Tenant to Landlord in accordance with Paragraph 2.B above, when entering the Premises, Tenant accepts the Premises in the condition existing as of the date of such entry. Tenant shall at its sole cost and expense strictly comply with all existing or future applicable municipal, state and federal and other governmental statutes, rules, requirements, regulations, laws and ordinances, including zoning ordinances and regulations, and covenants, easements and restrictions of record (to the extent Tenant has actual or constructive knowledge of such restrictions of record) governing and relating to Tenant's Permitted Use or other specific use by Tenant or Tenant's Parties, occupancy or possession of the Premises, to Tenant's use of the common areas, or to the use, storage, generation or disposal of Hazardous Materials (hereinafter defined) by Tenant or Tenant's Parties (collectively "REGULATIONS"). Tenant hereby acknowledges that Landlord has provided information regarding restrictions of record existing as of the date of this Lease. Tenant shall at its sole cost and expense obtain any and all licenses or permits necessary for Tenant's use of the Premises. Tenant shall at its sole cost and expense promptly comply with the requirements of any board of fire underwriters or other similar body now or hereafter constituted. Tenant shall not do or permit anything to be done in, on, under or about the Project or bring or keep anything which will in any way increase the rate of any insurance upon the Premises, Building or Project or upon any contents therein or cause a cancellation of said insurance or otherwise affect said insurance in any manner. Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect and hold Landlord harmless from and against any loss, cost, expense, damage, attorneys' fees or liability arising out of the failure of Tenant to comply with any Regulation to the extent that such compliance is required of Tenant under this Lease. Tenant's obligations pursuant to the foregoing indemnity shall survive the expiration or earlier termination of this Lease. Landlord represents that, on the date Landlord delivers possession of the Premises to Tenant, the Premises shall comply in all material respects with those Regulations applicable to real property located in Santa Clara County and pertaining to the Premises. Landlord shall be responsible for complying with Regulations (including ADA and Title 24 to the extent any such compliance requirement of Landlord is expressly stated herein) pertaining to the common areas of the Project prior to and except to the extent arising out of Tenant's occupancy or use of the Premises or common areas or construction of any Tenant Improvements or Alterations made by or on behalf of Tenant, whether by Landlord or otherwise and whether performed before or after the Term Commencement Date, or installation of any equipment, fixtures, furniture or other personal property in or about the Premises. Tenant shall have the sole responsibility for complying, at Tenant's cost, with any and all provisions of the Americans with Disabilities Act of 1990, as it has been and may later be amended ("ADA"), (i) with respect to the Premises; and (ii) with respect to the common areas of the Project where in the case of this clause (ii) such compliance has been brought about by: (A) any Tenant Improvements or Alterations to the Premises or to the common areas made by or on behalf of Tenant, whether by Landlord or otherwise, and performed after the Term Commencement Date; (B) requirements of Tenant's employees, or any changes to Tenant's use of the Premises; or (C) any architectural barriers caused by Tenant's installation of any equipment, fixtures, furniture, or other personal property in or about the Premises (items (i) and (ii) collectively, "TENANT'S ADA RESPONSIBILITIES"). Tenant shall indemnify, defend and hold Landlord, its agents and employees harmless from and against any and all claims, damages, or liabilities (including, without limitation, reasonable attorneys' fees and costs) arising directly or indirectly from Tenant's failure to satisfy any of Tenant's ADA Responsibilities. Landlord shall indemnify, defend and hold Tenant, its agents and employees harmless from and against any and all claims, damages or liabilities arising directly or indirectly from Landlord's failure to comply with any obligations of a landlord under the ADA, other than such claims, damages or liabilities arising from Tenant's failure to satisfy any of Tenant's ADA Responsibilities; provided, however, that Landlord may treat costs of ADA compliance with respect to the common areas of the Project to the extent

incurred after the date Landlord delivers possession of the Premises to Tenant as an Operating Expense. Notwithstanding anything to the contrary contained in Paragraph 7.A of this Lease, costs of ADA and Title 24 compliance brought about by alterations to the common areas performed before the date Landlord delivers possession of the Premises to Tenant for Tenant's construction of the Tenant Improvements, or which are expressly made Landlord's responsibility under this Lease, will be borne solely by Landlord and shall neither be treated as an Operating Expense nor be the responsibility of Tenant, except to the extent provided herein. Landlord represents that, as of the date Landlord delivers possession of the Premises to Tenant, to the best of Landlord's actual knowledge, the Premises and the Building shall comply in all material respects with the ADA and Title 24 as the ADA and Title 24 have, as of the date Landlord delivers possession of the Premises to Tenant, been interpreted in Santa Clara County and pertain to the Premises and the Building. Notwithstanding anything to the contrary contained in this Lease, regardless of whether the cost of compliance with Regulations shall be borne by Tenant, or Tenant and other tenants of the Project as an Operating Expense (as defined herein), Landlord shall perform or cause to be performed any compliance with Regulations items as described in this Lease which items are located in the common area or are structural in nature; provided, however, that the costs of such compliance items shall be allocated in accordance herewith

D. HAZARDOUS MATERIALS. As used in this Lease, "HAZARDOUS MATERIALS" shall include, but not be limited to, hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any Regulation. Tenant shall not cause, or allow any of Tenant's Parties to cause, any Hazardous Materials to be handled, used, generated, stored, released or disposed of in, on, under or about the Premises, the Building or the Project or surrounding land or environment in violation of any Regulations. Tenant must obtain Landlord's written consent prior to the introduction of any Hazardous Materials onto the Project. Notwithstanding the foregoing, Tenant may handle, store, use and dispose of products containing small quantities of Hazardous Materials for "general office purposes" (such as toner for copiers) to the extent customary and necessary for the Permitted Use of the Premises; provided that Tenant shall always handle, store, use, and dispose of any such Hazardous Materials in a safe and lawful manner and never allow such Hazardous Materials to contaminate the Premises, Building, or Project or surrounding land or environment. Tenant shall immediately notify Landlord in writing of any Hazardous Materials' contamination of any portion of the Project of which Tenant becomes aware, whether or not caused by Tenant. Landlord shall have the right at all reasonable times and if Landlord determines in good faith that Tenant may not be in compliance with this Paragraph 4.D to inspect the Premises and to conduct tests and investigations to determine whether Tenant is in compliance with the foregoing provisions,

the costs of all such inspections, tests and investigations to be borne by Tenant. Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect and hold Landlord harmless from and against any and all claims, liabilities, losses, costs, loss of rents, liens, damages, injuries or expenses (including reasonable attorneys' and consultants' fees, and court costs), demands, causes of action, or judgments directly or indirectly arising out of or related to the use, generation, storage, release, or disposal of Hazardous Materials by Tenant or any of Tenant's Parties in, on, under or about the Premises, the Building or the Project or surrounding land or environment, which indemnity shall include, without limitation, damages for personal or bodily injury, property damage, damage to the environment or natural resources occurring on or off the Premises, losses attributable to diminution in value or adverse effects on marketability, the cost of any investigation, monitoring, government oversight, repair, removal, remediation, restoration, abatement, and disposal, and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the expiration or earlier termination of this Lease. Neither the consent by Landlord to the use, generation, storage, release or disposal of Hazardous Materials nor the strict compliance by Tenant with all laws pertaining to Hazardous Materials shall excuse Tenant from Tenant's obligation of indemnification pursuant to this Paragraph 4.D. Tenant's obligations pursuant to the foregoing indemnity shall survive the expiration or earlier termination of this Lease.

5. RULES AND REGULATIONS

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

6. RENT

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

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

7. OPERATING EXPENSES

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

- (1) TAXES. All real property taxes and assessments, possessory interest taxes, sales taxes, personal property taxes, business or license taxes or fees, gross receipts taxes, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, transit charges,

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

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

(3) COMMON AREA MAINTENANCE.

(a) Repairs, replacements, and general maintenance of and for the Building and Project and public and common areas and facilities of and comprising the Building and Project, including, but not limited to, the roof and roof membrane, windows, elevators, restrooms, conference rooms, health club facilities, lobbies, mezzanines, balconies, mechanical rooms, building exteriors, alarm systems, pest extermination, landscaped areas, parking and service areas,

driveways, sidewalks, loading areas, fire sprinkler systems, sanitary and storm sewer lines, utility services, heating/ventilation/air conditioning systems, electrical, mechanical or other systems, telephone equipment and wiring servicing, plumbing, lighting, and any other items or areas which affect the operation or appearance of the Building or Project, which determination shall be at Landlord's discretion, except for: those items to the extent paid for by the proceeds of insurance or paid by Tenant or other third parties; and those items attributable solely or jointly to specific tenants of the Building or Project.

(b) Repairs, replacements, and general maintenance shall include the cost of any improvements made to or assets acquired for the Project or Building that in Landlord's discretion may reduce any other Operating Expenses, including present or future repair work, are reasonably necessary for the health and safety of the occupants of the Building or Project, or for the operation of the Building systems, services and equipment, or are required to comply with any Regulation, such costs or allocable portions thereof to be amortized over such reasonable period as Landlord shall determine which period is substantially in accordance with generally accepted accounting principles, together with interest on the unamortized balance at the publicly announced "prime rate" charged by Wells Fargo Bank, N.A. (San Francisco) or its successor at the time such improvements or capital assets are constructed or acquired, plus two (2) percentage points, or in the absence of such prime rate, then at the U.S. Treasury six-month market note (or bond, if so designated) rate as published by any national financial publication selected by Landlord, plus four (4) percentage points, but in no event more than the lesser of (i) ten percent (10%) or (ii) the maximum rate permitted by law, plus reasonable financing charges.

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

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

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

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

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

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

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

trust or any other debt instrument encumbering the Building or Project or the land on which the Building or Project is situated; and advertising and promotional expenditures; Landlord's general corporate overhead and general administrative expenses not related to the operation of the Building or the Project (including executive salaries), except as specifically set forth in Paragraph 7.A of this Lease.

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

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

B. PAYMENT OF ESTIMATED OPERATING EXPENSES. "ESTIMATED OPERATING EXPENSES" for any particular year shall mean Landlord's estimate of the Operating Expenses for such fiscal year made with respect to such fiscal year as hereinafter provided. Landlord shall have the right from time to time to revise its fiscal year and interim accounting periods so long as the periods as so revised are reconciled with prior periods in a reasonable manner. During the last month of each fiscal year during the Term, or as soon thereafter as practicable, Landlord shall give Tenant written notice of the Estimated Operating Expenses for the ensuing fiscal year. Tenant shall pay Tenant's Proportionate Share of the Estimated Operating Expenses with installments of Base Rent for the fiscal year to which the Estimated Operating Expenses applies in monthly installments on the first day of each calendar month during such year, in advance. Such payment

shall be construed to be Additional Rent for all purposes hereunder. If at any time during the course of the fiscal year, Landlord reasonably determines that Operating Expenses are projected to vary from the then Estimated Operating Expenses by more than five percent (5%), Landlord may, by written notice to Tenant, revise the Estimated Operating Expenses for the balance of such fiscal year, and Tenant's monthly installments for the remainder of such year shall be adjusted so that by the end of such fiscal year Tenant has paid to Landlord Tenant's Proportionate Share of the revised Estimated Operating Expenses for such year, such revised installment amounts to be Additional Rent for all purposes hereunder.

C. COMPUTATION OF OPERATING EXPENSE ADJUSTMENT. "OPERATING EXPENSE ADJUSTMENT" shall mean the difference between Estimated Operating Expenses and actual Operating Expenses for any fiscal year determined as hereinafter provided. Within one hundred twenty (120) days after the end of each fiscal year, or as soon thereafter as practicable, Landlord shall deliver to Tenant a statement of actual Operating Expenses for the fiscal year just ended, accompanied by a computation of Operating Expense Adjustment. If such statement shows that Tenant's payment based upon Estimated Operating Expenses is less than Tenant's Proportionate Share of Operating Expenses, then Tenant shall pay to Landlord the difference within thirty (30) days after receipt of such statement, such payment to constitute Additional Rent for all purposes hereunder. If such statement shows that Tenant's payments of Estimated Operating Expenses exceed Tenant's Proportionate Share of Operating Expenses, then (provided that Tenant is not in default under this Lease) Landlord shall pay to Tenant the difference within thirty (30) days after delivery of such statement to Tenant. If this Lease has been terminated or the Term hereof has expired prior to the date of such statement, then the Operating Expense Adjustment shall be paid by the appropriate party within thirty (30) days after the date of delivery of the statement. Should this Lease commence or terminate at any time other than the first day of the fiscal year, Tenant's Proportionate Share of the Operating Expense Adjustment shall be prorated based on a month of 30 days and the number of calendar months during such fiscal year that this Lease is in effect. Notwithstanding anything to the contrary contained in Paragraph 7.A or 7.B, Landlord's failure to provide any notices or statements within the time periods specified in those paragraphs shall in no way excuse Tenant from its obligation to pay Tenant's Proportionate Share of Operating Expenses. During the Term hereof, and only in the event Landlord is holding a Letter of Credit (as defined in Paragraph 39.E hereof) as a Security Deposit on behalf of Tenant, Landlord shall credit to Tenant by way of an Operating Expense Adjustment an amount equal to fifty percent (50%) of the annual fee charged by the issuing bank for the Letter of Credit up to an amount not to exceed Fifteen Thousand Dollars (\$15,000).

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

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

8. INSURANCE AND INDEMNIFICATION

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

(1) PROPERTY INSURANCE. Landlord agrees to maintain property insurance insuring the Building against damage or destruction due to risk including fire, vandalism, and malicious mischief in an amount not less than the replacement cost thereof, in the form and with deductibles and

endorsements as selected by Landlord. At its election, Landlord may instead (but shall have no obligation to) obtain "All Risk" coverage, and may also obtain earthquake, pollution, and/or flood insurance in amounts selected by Landlord.

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

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

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

(2) LIABILITY INSURANCE. Commercial General Liability insurance covering bodily injury and property damage liability occurring in or about the Premises or arising out of the use and occupancy of the Premises and the Project, and any part of either, and any areas adjacent thereto, and the business operated by Tenant or by any other occupant of the Premises. Such insurance shall include contractual liability insurance coverage insuring all of Tenant's indemnity obligations under this Lease. Such coverage shall have a minimum combined single limit of liability of at least Two Million Dollars (\$2,000,000.00), and a minimum general aggregate limit of Three Million Dollars (\$3,000,000.00), with an "Additional Insured - Managers or Lessors

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

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

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

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

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

C. INDEMNIFICATION. Tenant shall indemnify, defend by counsel reasonably acceptable to Landlord, protect and hold Landlord, Spieker Properties, Inc., and each of their respective directors, shareholders, partners, lenders, members, managers, contractors, affiliates and employees (collectively, "LANDLORD INDEMNITEES") harmless from and against any and all claims, liabilities, losses, costs, loss of rents, liens, damages, injuries or expenses, including reasonable attorneys' and consultants' fees and court costs, demands, causes of action, or judgments, directly or indirectly arising out of or related to: (1) claims of injury to or death of persons or damage to property or business loss occurring

or resulting directly or indirectly from the use or occupancy of the Premises, Building or Project by Tenant or Tenant's Parties, or from activities or failures to act of Tenant or Tenant's Parties; (2) claims arising from work or labor performed, or for materials or supplies furnished to or at the request or for the account of Tenant in connection with performance of any work done for the account of Tenant within the Premises or Project; (3) claims arising from any breach or default on the part of Tenant in the performance of any covenant contained in this Lease; and (4) claims arising from the negligence or intentional acts or omissions of Tenant or Tenant's Parties. The foregoing indemnity by Tenant shall not be applicable to claims to the extent arising from the gross negligence or willful misconduct of Landlord or Landlord's agents, employees, or contractors or Landlord's breach of a material term of this Lease beyond any applicable cure periods. Landlord shall not be liable to Tenant and Tenant hereby waives all claims against Landlord for any injury to or death of, or damage to any person or property or business loss in or about the Premises, Building or Project by or from any cause whatsoever (other than Landlord's gross negligence or willful misconduct or Landlord's breach of a material term of this Lease beyond any applicable cure periods) and, without limiting the generality of the foregoing, whether caused by water leakage of any character from the roof, walls, basement or other portion of the Premises, Building or Project, or caused by gas, fire, oil or electricity in, on or about the Premises, Building or Project, acts of God or of third parties, or any matter outside of the reasonable control of Landlord. The provisions of this Paragraph shall survive the expiration or earlier termination of this Lease.

9. WAIVER OF SUBROGATION

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

10. LANDLORD'S REPAIRS AND MAINTENANCE

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

11. TENANT'S REPAIRS AND MAINTENANCE

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

12. ALTERATIONS

A. Tenant shall not make, or allow to be made, any alterations, physical additions, improvements or partitions, including without limitation the attachment of any fixtures or equipment, in, about or to the Premises ("ALTERATIONS") without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed with respect to proposed Alterations which: (a) comply with all applicable Regulations; (b) are, in Landlord's reasonable opinion, compatible with the Building or the Project and its mechanical, plumbing, electrical, heating/ventilation/air conditioning systems, and will not cause the Building or Project or such systems to be required to be modified to comply with any Regulations (including, without limitation, the Americans With Disabilities Act), unless Tenant in its sole discretion agrees in writing to pay for all costs and expenses associated with such compliance requirement (which agreement shall survive termination of this Lease); and (c) will not interfere with the use and occupancy of any other portion of the Building or Project by any other tenant or its invitees. Specifically, but without limiting the generality of the foregoing, Landlord shall have the right of written consent for all plans and specifications for the proposed Alterations, construction means and methods, all appropriate permits and licenses, any contractor or subcontractor to be employed on the work of Alterations, and the time for performance of such work, and may impose reasonable rules and regulations for contractors and subcontractors performing such work. Tenant shall also supply to Landlord any documents and information reasonably requested by Landlord in connection with Landlord's consideration of a request for approval hereunder. Notwithstanding the foregoing, Tenant shall have the right, without consent of, but upon at least ten (10) business days' prior written notice (as provided under Paragraph 12.B below) to, Landlord, to make non-structural, cosmetic Alterations within the interior of the Premises (and which are not visible from the outside of the Premises), which do not impair the value of the Building, and which cost, in the aggregate, less than Twenty-Five Thousand Dollars (\$25,000.00) in any twelve (12) month period during the Term of this Lease, provided that such Alterations shall nevertheless be subject to all of the remaining requirements of this Paragraph 12, including without limitation, subparagraphs (a) through (c) above, other than the requirement of Landlord's prior consent. In addition, all Alterations shall be performed by duly licensed contractors or subcontractors reasonably acceptable to Landlord, proof of insurance shall be submitted to Landlord as required under Paragraph 8.B above, and Landlord reserves the right to impose reasonable rules and regulations for contractors and subcontractors. Tenant shall, if requested by Landlord, promptly furnish Landlord with complete as-built plans and specifications for any Alterations performed by Tenant to the Premises, at Tenant's sole cost and expense. Tenant shall cause all Alterations to be accomplished in a first-class, good and workmanlike manner, and to comply with all applicable Regulations and Paragraph 27 hereof. Tenant shall at Tenant's sole expense, perform any additional work required under applicable Regulations due to the Alterations hereunder. No review or consent by Landlord of or to any proposed Alteration or additional work shall constitute a waiver of Tenant's obligations under this Paragraph 12, nor constitute any warranty or representation that the same complies with all applicable Regulations, for which Tenant shall at all times be solely responsible. Tenant shall reimburse Landlord for all costs which Landlord may incur in connection with granting approval to

Tenant for any such Alterations, including any costs or expenses which Landlord may incur in electing to have outside architects and engineers review said plans and specifications, and shall pay Landlord an administration fee of five percent (5%) of the cost of the Alterations as Additional Rent hereunder. All such Alterations shall remain the property of Tenant until the expiration or earlier termination of this Lease, at which time they shall be and become the property of Landlord; provided, however, that Landlord may, at Landlord's option, require that Tenant, at Tenant's expense, remove any or all Alterations (excluding the initial Tenant Improvements and any improvements installed by Landlord on behalf of Tenant in the Phase I Temporary Premises or the Phase II Temporary Premises (each as herein defined)) made by or on behalf of Tenant and restore the Premises by the expiration or earlier termination of this Lease, to their condition existing prior to the construction of any such Alterations, reasonable wear and tear excepted. All such removals and restoration shall be accomplished in a first-class and good and workmanlike manner so as not to cause any damage to the Premises or Project whatsoever. If Tenant fails to remove such Alterations or Tenant's trade fixtures or furniture or other personal property, Landlord may keep and use them or remove any of them and cause them to be stored or sold in accordance with applicable law, at Tenant's sole expense. In addition to and wholly apart from Tenant's obligation to pay Tenant's Proportionate Share of Operating Expenses, Tenant shall be responsible for and shall pay prior to delinquency any taxes or governmental service fees, possessory interest taxes, fees or charges in lieu of any such taxes, capital levies, or other charges imposed upon, levied with respect to or assessed against its fixtures or personal property, on the value of Alterations within the Premises, and on Tenant's interest pursuant to this Lease, or any increase in any of the foregoing based on such Alterations. To the extent that any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced to Tenant by Landlord.

At Landlord's election and notwithstanding the foregoing, however, Tenant shall pay to Landlord the cost of removing any such Alterations and restoring the Premises to their original condition, such cost to include a reasonable charge for Landlord's overhead and profit as provided above at the time Landlord grants written consent to a requested Alteration; provided, however, that Landlord shall not require that Tenant pay to Landlord the cost of removing any such Alterations and restoring the Premises to their original condition as described in the foregoing sentence if the following conditions precedent are satisfied by Tenant: (i) Tenant (and not a sublessee or assignee of Tenant) shall be the party for which the Alterations are requested and Tenant is in possession of the portion of the Premises upon which the Alterations shall be made, and (ii) the removal costs of such Alterations described above are determined by Landlord in its

reasonable discretion to be less than a cumulative total of one hundred thousand and no/100 dollars (\$100,000.00) with respect to all existing Alterations which Landlord may require to be removed pursuant to the terms of this Lease. Nothing in the foregoing sentence shall be interpreted to relieve Tenant of its obligations described in this Lease to remove Alterations and restore the Premises at Tenant's cost in accordance with this Paragraph 12, Paragraph 36 and with other applicable terms and conditions of this Lease. In the event that Tenant does remove any such Alterations and restores the Premises in accordance with the terms of this Lease, Landlord shall return any monies delivered by Tenant to Landlord in accordance with the preceding sentence. In the event Tenant fails to remove Alterations and restore the Premises in accordance with the terms of this Lease, Landlord may perform the same on Tenant's behalf apply monies collected by Landlord for such purpose to the removal and restoration or, in the event Landlord does not require any such payment by Tenant, the amount due from Tenant may be deducted from the Security Deposit or any other sums or amounts held by Landlord under this Lease.

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

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

13. SIGNS

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

1. Tenant shall submit plans and drawings for such signage to the City of San Jose and to any other public authorities having jurisdiction and shall obtain written approval from each such jurisdiction prior to installation, and shall fully comply with all applicable Regulations;
2. Tenant shall, at Tenant's sole cost and expense, design, construct and install such signage;
3. All signs shall be subject to Landlord's prior written approval, which Landlord shall have the right to withhold in its absolute and sole discretion;
4. Tenant shall maintain its signage in good condition and repair, and all costs of maintenance and repair shall be borne by Tenant. Maintenance shall include, without limitation, cleaning and, if such signage is illuminated, relamping at reasonable intervals. Tenant shall be responsible for any electrical energy used in connection with its signs;

5. At Landlord's option, Tenant's signage rights granted hereby may be revoked and terminated upon occurrence of any of the following events:
 - (a) Tenant shall be in material default, as defined in Paragraph 26 as determined by Landlord in its sole discretion, and shall not have cured said default for a period of ninety (90) days;
 - (b) Except with respect to Permitted Transfers described in Paragraph 21.A(3) hereof, Tenant shall assign this Lease or sublet any portion of the Premises without Landlord's prior written consent in accordance with Paragraph 21, or Tenant occupies less than fifty percent (50%) of the Premises;
 - (c) This Lease shall terminate or otherwise no longer be in effect.
6. Upon the expiration or earlier termination of this Lease if Tenant fails to remove its signage in accordance with this Paragraph 13, or at such other time that Tenant's signage rights are terminated pursuant to the terms hereof, Landlord shall cause Tenant's signage to be removed from the Building and the Building to be repaired and restored to the condition which existed prior to the installation of Tenant's signage (including, if necessary, the replacement of any precast concrete panels), all at the sole cost and expense of Tenant and otherwise in accordance with Paragraph 36 of this Lease, without further notice from Landlord notwithstanding anything to the contrary contained in this Lease. Tenant shall pay all costs and expenses for such removal and restoration within thirty (30) days following delivery of an invoice therefor.

14. INSPECTION/POSTING NOTICES

After reasonable notice, except in emergencies where no such notice shall be required, Landlord and Landlord's agents and representatives, shall have the right to enter the Premises to inspect the same, to clean, to perform such work as may be permitted or required hereunder, to make repairs, improvements or alterations to the Premises, Building or Project or to other tenant spaces therein, to deal with emergencies, to post such notices as may be permitted or required by law to prevent the perfection of liens against Landlord's interest in the Project or to exhibit the Premises to prospective tenants, purchasers, encumbrancers or to others, or for any other purpose as Landlord may deem necessary or desirable; provided, however, that Landlord shall use reasonable efforts not to unreasonably interfere with Tenant's business operations. Tenant shall not be entitled to any abatement of Rent by reason of the exercise of any such right of entry. Tenant waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes or special security areas (designated in advance), and Landlord shall have the right to use any and all means which Landlord may deem necessary or proper to open said doors in an emergency, in order to obtain entry to any portion of the Premises, and any entry to the Premises or portions thereof obtained by Landlord by any of said means, or otherwise, shall not be construed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portions thereof. At any time within six (6) months prior to the expiration of the Term or following any earlier termination of this Lease or agreement to terminate this Lease, Landlord shall have the right to erect on the Premises, Building and/or Project a suitable sign indicating that the Premises are available for lease.

15. SERVICES AND UTILITIES

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

B. Tenant shall not without written consent of Landlord use any apparatus, equipment or device in the Premises, including without limitation, computers, electronic data processing machines, copying machines, and other machines, using excess lighting or using electric current, water, or any other resource in excess of or which will in any way increase the amount of electricity, water, or any other resource being furnished or supplied for the use of the Premises for reasonable and normal office use, and the Permitted Use, in each case as of the date Tenant takes possession of the Premises and as determined by Landlord, or which will require additions or alterations to or interfere with the Building power distribution systems; nor connect with electric current, except through existing electrical outlets in the Premises or water pipes, any apparatus, equipment or device for the purpose of using electrical current, water, or any other resource. If Tenant shall require water or electric current or any other resource in excess of that being furnished or supplied for the use of the Premises as of the date Tenant takes possession of the Premises as determined by Landlord, Tenant shall first procure the written consent of Landlord which Landlord may refuse, to the use thereof, and Landlord may cause a special meter to be installed in the Premises so as to measure the amount of water, electric current or other resource consumed for any such other use. Tenant shall pay directly to Landlord upon demand as an addition to and separate from payment of Operating Expenses the cost of all such additional resources, energy, utility service and meters (and of installation, maintenance and repair thereof and of any additional circuits or other equipment necessary to furnish such additional resources, energy, utility or service). Landlord may add to the separate or metered charge a recovery of additional expense incurred in keeping account of the excess water, electric current or other resource so consumed. Following receipt of Tenant's request to do so, Landlord shall use good faith efforts to

restore any service specifically to be provided under Paragraph 15 that becomes unavailable and which is in Landlord's reasonable control to restore; provided, however, that Landlord shall in no case be liable for any damages directly or indirectly resulting from nor shall the Rent or any monies owed Landlord under this Lease herein reserved be abated by reason of: (a) the installation, use or interruption of use of any equipment used in connection with the furnishing of any such utilities or services, or any change in the character or means of supplying or providing any such utilities or services or any supplier thereof; (b) the failure to furnish or delay in furnishing any such utilities or services when such failure or delay is caused by acts of God or the elements, labor disturbances of any character, or otherwise or because of any interruption of service due to Tenant's use of water, electric current or other resource in excess of that being supplied or furnished for the use of the Premises as of the date Tenant takes possession of the Premises; (c) the inadequacy, limitation, curtailment, rationing or restriction on use of water, electricity, gas or any other form of energy or any other service or utility whatsoever serving the Premises or Project, whether by Regulation or otherwise; or (d) the partial or total unavailability of any such utilities or services to the Premises or the Building or the diminution in the quality or quantity thereof, whether by Regulation or otherwise; or (e) any interruption in Tenant's business operations as a result of any such occurrence; nor shall any such occurrence constitute an actual or constructive eviction of Tenant or a breach of an implied warranty by Landlord. Landlord shall further have no obligation to protect or preserve any apparatus, equipment or device installed by Tenant in the Premises, including without limitation by providing additional or after-hours heating or air conditioning. Landlord shall be entitled to cooperate voluntarily and in a reasonable manner with the efforts of national, state or local governmental agencies or utility suppliers in reducing energy or other resource consumption. The obligation to make services available hereunder shall be subject to the limitations of any such voluntary, reasonable program. In addition, Landlord reserves the right to change the supplier or provider of any such utility or service from time to time. Tenant shall have the right to directly contract with or otherwise obtain any electrical or janitorial service for or with respect to the Premises or Tenant's operations therein from any supplier or provider of any such service. Tenant shall cooperate with Landlord and any supplier or provider of such services designated by Landlord from time to time to facilitate the delivery of such services to Tenant at the Premises and to the Building and Project, including without limitation allowing Landlord and Landlord's suppliers or providers, and their respective agents and contractors, reasonable access to the Premises for the purpose of installing, maintaining, repairing, replacing or upgrading such service or any equipment or machinery associated therewith.

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

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

16. SUBORDINATION

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

17. FINANCIAL STATEMENTS

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

18. ESTOPPEL CERTIFICATE

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

19. SECURITY DEPOSIT

Tenant agrees to deposit with Landlord upon execution of this Lease, a security deposit as stated in the Basic Lease Information (the "SECURITY DEPOSIT"), which sum shall be held and owned by Landlord, without obligation to pay interest, as security for the performance of Tenant's covenants and obligations under this Lease. The Security Deposit is not an advance rental deposit or a measure of

damages incurred by Landlord in case of Tenant's default. Upon the occurrence of any event of default by Tenant, Landlord may from time to time, without prejudice to any other remedy provided herein or by law, use such fund as a credit to the extent necessary to credit against any arrears of Rent or other payments due to Landlord hereunder, and any other damage, injury, expense or liability caused by such event of default, and Tenant shall pay to Landlord, on demand, the amount so applied in order to restore the Security Deposit to its original amount. Although the Security Deposit shall be deemed the property of Landlord, any remaining balance of such deposit shall be promptly returned by Landlord to Tenant at such time after termination of this Lease that all of Tenant's obligations under this Lease have been fulfilled to Landlord's reasonable satisfaction, reduced by such amounts as may be required by Landlord (i) to remedy defaults on the part of Tenant in the payment of Rent or other obligations of Tenant under this Lease, (ii) to repair damage to the Premises, Building or Project caused by Tenant or any Tenant's Parties, and (iii) to clean the Premises to the extent Tenant fails to comply with Paragraph 36 hereof. Landlord may use and commingle the Security Deposit with other funds of Landlord. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, and all other provisions of any Regulations, now or hereinafter in force, which restricts the amount or types of claim that a landlord may make upon a security deposit or imposes upon a landlord (or its successors) any obligation with respect to the handling or return of security deposits.

20. LIMITATION OF TENANT'S REMEDIES

The obligations and liability of Landlord to Tenant for any default by Landlord under the terms of this Lease are not personal obligations of Landlord or of the individual or other partners of Landlord or its or their partners, directors, officers, or shareholders, and Tenant agrees to look solely to Landlord's interest in the Project for the recovery of any amount from Landlord, and shall not look to other assets of Landlord nor seek recourse against the assets of the individual or other partners of Landlord or its or their partners, directors, officers or shareholders. Any lien obtained to enforce any such judgment and any levy of execution thereon shall be subject and subordinate to any lien, mortgage or deed of trust on the Project. Under no circumstances shall Tenant have the right to offset against or recoup Rent or other payments due and to become due to Landlord hereunder except as expressly provided in this Lease, which Rent and other payments shall

be absolutely due and payable hereunder in accordance with the terms hereof. In no case shall Landlord be liable to Tenant for any lost profits, damage to business, or any form of special, indirect or consequential damage on account of any breach of this Lease or otherwise, notwithstanding anything to the contrary contained in this Lease.

21. ASSIGNMENT AND SUBLETTING

A. (1) GENERAL. This Lease has been negotiated to be and is granted as an accommodation to Tenant. Accordingly, this Lease is personal to Tenant, and Tenant's rights granted hereunder do not include the right to assign this Lease or sublease the Premises, or to receive any excess, either in installments or lump sum, over the Rent which is expressly reserved by Landlord as hereinafter provided, except as otherwise expressly hereinafter provided. Tenant shall not assign or pledge this Lease or sublet the Premises or any part thereof, whether voluntarily or by operation of law, or permit the use or occupancy of the Premises or any part thereof by anyone other than Tenant, or suffer or permit any such assignment, pledge, subleasing or occupancy, without Landlord's prior written consent except as provided herein. If Tenant desires to assign this Lease or sublet any or all of the Premises in the case where Landlord's consent is required, Tenant shall give Landlord written notice (the "TRANSFER NOTICE") at least thirty (30) days prior to the anticipated effective date of the proposed assignment or sublease, which shall contain all of the information reasonably requested by Landlord to address Landlord's decision criteria specified hereinafter. Landlord shall then have a period of ten (10) business days following receipt of the Transfer Notice to notify Tenant in writing that Landlord elects either: (i) to terminate this Lease as to the space so affected as of the date so requested by Tenant; or (ii) to consent to the proposed assignment or sublease, subject, however, to Landlord's prior written consent of the proposed assignee or subtenant and of any related documents or agreements associated with the assignment or sublease. If Landlord should fail to notify Tenant in writing of such election within said period, Landlord shall be deemed to have waived option (i) above, but written consent by Landlord of the proposed assignee or subtenant shall still be required. If Landlord does not exercise option (i) above, Landlord's consent to a proposed assignment or sublease shall not be unreasonably withheld. Consent to any assignment or subletting shall not constitute consent to any subsequent transaction to which this Paragraph 21 applies. Notwithstanding the foregoing, Landlord hereby waives its right to recapture a portion of the Premises, as such right is described in clause (i) above, in the following circumstance only: (X) Such proposed sublease shall commence during the first thirty-six (36) months of the Term of this Lease, and (Y) the term of such proposed sublease shall expire before the expiration of the forty-second (42nd) month following the Term Commencement Date and no extension options shall be granted in such sublease, and (Z) Tenant shall at all times during such period possess and occupy no less than fifty percent (50%) of the Premises. With respect to any sublease that occurs during the initial forty-two (42) months of the Term of this Lease, the standard of "sound financial condition" described as a condition to Landlord's consent shall be based upon a determination by Landlord, in its reasonable discretion, that such proposed transferee shall have a tangible net worth, evidenced by audited financial statements delivered to Landlord pursuant to the terms of this Lease, that is reasonably sufficient, taking into account all expected obligations of the transferee with respect to the proposed transfer and all of its other contingent and noncontingent obligations, to service when due the obligations of the transferee with respect to the proposed transfer.

(2) CONDITIONS OF LANDLORD'S CONSENT. Without limiting the other instances in which it may be reasonable for Landlord to withhold Landlord's consent to an assignment or subletting, Landlord and Tenant acknowledge that it shall be reasonable for Landlord to withhold Landlord's consent in the following instances: if the proposed assignee does not agree to be bound by and assume the obligations of Tenant under this Lease in form and substance reasonably satisfactory to Landlord; the use of the Premises by such proposed assignee or subtenant would not be a Permitted Use or would violate any exclusivity or other arrangement which Landlord has with any other tenant or occupant or any Regulation or would increase the Occupancy Density or Parking Density of the Building or Project, or would otherwise result in an undesirable tenant mix for the Project as determined by Landlord; the proposed assignee or subtenant is not of sound financial condition as determined by Landlord in Landlord's sole discretion; the proposed assignee or subtenant is a governmental agency; the proposed assignee or subtenant does not have a good reputation as a tenant of property or a good business reputation; the proposed assignee or subtenant is a person with whom Landlord is negotiating to lease space in the Project or is a present tenant of the Project; the assignment or subletting would entail any Alterations which would lessen the value of the leasehold improvements in the Premises or use of any Hazardous Materials (except as expressly approved in this Lease) or other noxious use or use which may unreasonably disturb other tenants of the Project; or Tenant is in default of any obligation of Tenant under this Lease, or Tenant has defaulted under this Lease on three (3) or more occasions during any twelve (12) months preceding the date that Tenant shall request consent. Failure by or refusal of Landlord to consent to a proposed assignee or subtenant shall not cause a termination of this Lease. Upon a termination under Paragraph 21.A(1)(i), Landlord may lease the Premises to any party, including parties with whom Tenant has negotiated an assignment or sublease, without incurring any liability to Tenant. At the option of Landlord, a surrender and termination of this Lease shall operate as an assignment to Landlord of some or all subleases or subtenancies. Landlord shall exercise this option by giving notice of that assignment to such

subtenants on or before the effective date of the surrender and termination. In connection with each request for assignment or subletting, Tenant shall pay to Landlord Landlord's standard fee (which amount shall not exceed \$1,500.00) for approving such requests, as well as all costs reasonably incurred by Landlord and all costs incurred by any mortgagee or ground lessor in approving each such request and effecting any such transfer, including, without limitation, reasonable attorneys' fees.

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

B. **BONUS RENT.** Any Rent or other consideration realized by Tenant under any such sublease or assignment in excess of the Rent payable hereunder, after amortization of a reasonable brokerage commission and reasonable attorneys' fees incurred by Tenant solely in connection with the sublease or assignment, reasonable, actual out of pocket costs of tenant improvements made solely in connection with the sublease or assignment and paid for by Tenant, and reasonable, out-of-pocket marketing costs, shall be divided and paid, fifty percent (50%) to Tenant, fifty percent (50%) to Landlord. In any subletting or assignment undertaken by Tenant, Tenant shall diligently seek to obtain the then-fair market rental amount (as reasonably determined by Landlord and Tenant) available in the marketplace for comparable space available for leasing (using as a basis for such determination other Landlord-owned Buildings and Projects of the same stature and located in the same geographic area in which the Premises are located).

C. **CORPORATION.** If Tenant is a corporation, a transfer of corporate shares by sale, assignment, bequest, inheritance, operation of law or other disposition (including such a transfer to or by a receiver or trustee in federal or state bankruptcy, insolvency or other proceedings) resulting in a change in the present control of such corporation or any of its parent corporations by the person or persons owning a majority of said corporate shares, shall constitute an assignment for purposes of this Lease. Notwithstanding anything to the contrary in this Lease, the transfer of outstanding capital stock or other listed equity interests, or the purchase of outstanding capital stock or other listed equity interests, or the purchase of equity interests issued in an initial public offering of stock, by persons or parties other than "insiders" within the meaning of the Securities Exchange Act of 1934, as amended, through the "over-the-counter" market or any recognized national or international securities exchange shall not be included in determining whether control has been transferred.

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

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

22. AUTHORITY

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

23. CONDEMNATION

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

B. **CONDEMNATION NOT RESULTING IN TERMINATION.** If a portion of the Project of which the Premises are a part should be taken or condemned for any public use under any Regulation, or by right of eminent domain, or by private purchase in lieu thereof, and the taking prevents or materially interferes with the Permitted Use of the Premises, and this Lease is not terminated as provided in Paragraph 23.A. above, the Rent payable hereunder during the unexpired portion of this Lease shall be reduced, beginning on the date when the physical taking shall have occurred, to such amount as may be fair and reasonable under all of the circumstances, but only after giving Landlord credit for all sums received or to be received by Tenant by the condemning authority, subject to the last sentence of Paragraph 23.C of this Lease. Notwithstanding anything to the contrary contained in this Paragraph, if the temporary use or occupancy of any part of the Premises shall be taken or appropriated under power of eminent domain during the Term, this Lease shall be and remain unaffected by such taking or appropriation and Tenant shall continue to pay in full all Rent payable hereunder by Tenant during the Term; in the event of any such temporary

appropriation or taking, Tenant shall be entitled to receive that portion of any award which represents compensation for the use of or occupancy of the Premises during the unexpired Term. In the event a portion or the whole of Tenant's Premises shall be taken or appropriated under the power of eminent domain or conveyed in lieu thereof and such restoration cannot be made, in Landlord's sole opinion, within one hundred eight (180) days from the time of taking, Landlord shall notify Tenant within sixty (60) days of such taking and Tenant shall have the right to cancel this Lease by giving Landlord written notice of its intention to cancel within thirty (30) days of the date of Landlord's notice. If, however, within sixty (60) days after the date that the nature and extent of the taking are finally determined, Landlord notifies Tenant that Landlord at its cost will add on to the remaining Premises so that the area and the approximate layout of the Premises will be substantially the same after the date of taking as they were before the date of taking, and Landlord commences the restoration immediately and completes the restoration within one hundred eighty (180) days after Landlord so notifies Tenant, this Lease shall continue in full force and effect without any reduction in Rent, except the abatement made pursuant to this paragraph.

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

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

24. CASUALTY DAMAGE

A. GENERAL. If the Premises or Building should be damaged or destroyed by fire, tornado, or other casualty (collectively, "CASUALTY"), Tenant shall give immediate written notice thereof to Landlord upon learning of the same. Within thirty (30) days after Landlord's receipt of such notice, Landlord shall notify Tenant whether in Landlord's good faith estimation material restoration of the

Premises can reasonably be made within one hundred eighty (180) days from the date of such notice and receipt of required permits for such restoration. Landlord's determination shall be binding on Tenant.

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

C. GREATER THAN 180 DAYS. If the Premises or Building should be damaged by Casualty to such extent that material restoration cannot in Landlord's estimation be reasonably completed within one hundred eighty (180) days after the date of such notice and receipt of required permits for such rebuilding or repair, and such damage materially and adversely interferes with the conduct of Tenant's business in the Premises, then either Party shall have the right to cancel this Lease by giving the other party written notice within ten (10) days from the date of Landlord's notice that material restoration cannot in Landlord's estimation be reasonably completed within such one hundred eighty (180) day period. Said cancellation shall be effective thirty (30) days from the first day that either party gives its notice to cancel. If neither party elects to so cancel this Lease, Landlord shall proceed to rebuild and repair the Premises diligently and in the manner determined by Landlord, except that Landlord shall not be required to rebuild, repair or replace any part of any Alterations which may have been placed on or about the Premises by Tenant. If the Premises are untenable in whole or in part following such damage, the Rent payable hereunder during the period in which they are untenable shall be abated proportionately. Notwithstanding the above, Landlord shall not be required to rebuild, repair or replace any part of any Alterations which may have been placed, on or about the Premises or paid for by Tenant. If the Premises are untenable in whole or in part following such damage, the Rent payable hereunder during the period in which they are untenable shall be abated proportionately, but only to the extent of rental abatement insurance proceeds received by Landlord during the time and to the extent the Premises are unfit for occupancy.

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

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

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

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

25. HOLDING OVER

Unless Landlord expressly consents in writing to Tenant's holding over, Tenant shall be unlawfully and illegally in possession of the Premises, whether or not Landlord accepts any rent from Tenant or any other person while Tenant remains in possession of the Premises without Landlord's written consent. If Tenant shall retain possession of the Premises or any portion thereof without Landlord's consent following the expiration of this Lease or sooner termination

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

26. DEFAULT

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

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

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

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

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

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

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

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

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

B. REMEDIES UPON DEFAULT.

(1) **TERMINATION.** In the event of the occurrence of any event of default, Landlord shall have the right to give a written termination notice to Tenant, and on the date specified in such notice, Tenant's right to possession shall terminate, and this Lease shall terminate unless on or before such date all Rent in arrears and all costs and expenses incurred by or on behalf of Landlord hereunder shall have been paid by Tenant and all other events of default of this Lease by Tenant at the time existing shall have been fully remedied to the satisfaction of Landlord. At any time after such termination, Landlord may recover possession of the Premises or any part thereof and expel and remove therefrom Tenant and any other person occupying the same, including any subtenant or subtenants notwithstanding Landlord's consent to any sublease, by any lawful means, and again repossess and enjoy the Premises without prejudice to any of the remedies that Landlord may have under this Lease, or at law or equity by any reason of Tenant's default or of such termination. Landlord hereby reserves the right, but shall not have the obligation, to recognize the continued possession of any subtenant. The delivery or surrender to Landlord by or on behalf of Tenant of keys, entry codes, or other means to bypass security at the Premises shall not terminate this Lease.

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

Premises or the appointment of a receiver under application of Landlord to protect Landlord's interest under this Lease or other entry by Landlord upon the Premises shall not constitute an election to terminate Tenant's right to possession.

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

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

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

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

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

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

27. LIENS

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

28. INTENTIONALLY OMITTED

29. TRANSFERS BY LANDLORD

In the event of a sale or conveyance by Landlord of the Building or a foreclosure by any creditor of Landlord, the same shall operate to release Landlord from any liability upon any of the covenants or conditions, express or implied, herein contained in favor of Tenant, to the extent required to be performed after the passing of title to Landlord's successor-in-interest. In such event, Tenant agrees to look solely to the responsibility of the successor-in-interest of Landlord under this Lease with respect to the performance of the covenants and duties of "Landlord" to be performed after the passing of title to Landlord's successor-in-interest. This Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee. Landlord's successor(s)-in-interest shall not have liability to Tenant with respect to the failure to perform any of the obligations of "Landlord," to the extent required to be performed prior to the date such successor(s)-in-interest became the owner of the Building.

30. RIGHT OF LANDLORD TO PERFORM TENANT'S COVENANTS

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

31. WAIVER

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

32. NOTICES

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

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

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

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

33. ATTORNEYS' FEES

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

34. SUCCESSORS AND ASSIGNS

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

35. FORCE MAJEURE

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

36. SURRENDER OF PREMISES

Tenant shall, upon expiration or sooner termination of this Lease, surrender the Premises to Landlord in the same condition as existed on the date Tenant originally took possession thereof, reasonable wear and tear excepted, including, but not limited to, all interior walls cleaned, all holes in walls repaired and all floors cleaned, waxed, and free of any Tenant-introduced marking or painting, all to the reasonable satisfaction of Landlord. Tenant shall remove all of its debris from the Project. At or before the time of surrender, Tenant shall comply with the terms of Paragraph 12.A. hereof with respect to Alterations to the Premises and all other matters addressed in such Paragraph. If the Premises are not so surrendered at the expiration or sooner termination of this Lease, the provisions of Paragraph 25 hereof shall apply. All keys to the Premises or any part thereof shall be surrendered to Landlord upon expiration or sooner termination of the Term. Tenant shall give written notice to Landlord at least thirty (30) days prior to vacating the Premises and shall meet with Landlord for a joint inspection of the Premises at the time of vacating at a mutually agreeable time, but nothing contained herein shall be construed as an extension of the Term or as a consent by Landlord to any holding over by Tenant. In the event of Tenant's failure to participate in such joint inspection, Landlord's inspection at or after Tenant's vacating the Premises shall conclusively be deemed correct for purposes of determining Tenant's responsibility for repairs and restoration. Any delay caused by Tenant's failure to carry out its obligations under this Paragraph 36 beyond the term hereof, shall constitute unlawful and illegal possession of Premises under Paragraph 25 hereof.

37. PARKING

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

Tenant may request additional parking spaces from time to time and if

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

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

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

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

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

38. MISCELLANEOUS

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

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

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

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

E. MODIFICATION. This Lease may not be modified except by a written instrument signed by the parties hereto. Tenant accepts the area of the Premises as specified in the Basic Lease Information as the approximate area of the Premises for all purposes under this Lease, and acknowledges and agrees that no other definition of the area (rentable, usable or otherwise) of the Premises shall apply. Tenant shall in no event be entitled to a recalculation of the square footage of the Premises, rentable, usable or otherwise, and no recalculation, if made, irrespective of its purpose, shall reduce Tenant's obligations under this Lease in any manner, including without limitation the amount of Base Rent payable by Tenant or Tenant's Proportionate Share of the Building and of the Project.

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

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

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

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

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

K. DRAFTING AND DETERMINATION PRESUMPTION. The parties acknowledge that this Lease has been agreed to by both the parties, that both Landlord and Tenant have consulted with attorneys with respect to the terms of this Lease and that no presumption shall be created against Landlord because Landlord drafted this Lease. Except as otherwise specifically set forth in this Lease, with respect to any consent, determination or estimation of Landlord required or allowed in this Lease or requested of Landlord, Landlord's consent, determination or estimation shall be given or made solely by Landlord in Landlord's good faith opinion, whether or not objectively reasonable. If Landlord fails to respond to any request for its consent within the time period, if any, specified in this Lease, Landlord shall be deemed to have disapproved such request, except as otherwise expressly provided in this Lease.

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

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

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

O. QUIET ENJOYMENT. Upon payment by Tenant of the Rent, and upon the observance

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

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

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

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

39. ADDITIONAL PROVISIONS

A. RENT.

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

From the Term Commencement Date through the end of the twelfth (12th) month following the Term Commencement Date:	\$516,159.00 per month plus operating expenses per Paragraph 7 of this Lease. Operating Expenses for calendar year 2000 are estimated to be \$183,289.00 per month.
Month 13 following the Term Commencement Date through Month 24:	\$531,643.00 per month plus operating expenses per Paragraph 7 of this Lease
Month 25 following the Term Commencement Date through Month 36:	\$547,593.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 37 following the Term Commencement Date through Month 48:	\$564,020.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 49 following the Term of Commencement Date through Month 60:	\$580,941.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 61 following the Term Commencement Date through Month 72:	\$598,369.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 73 following the Term Commencement Date through Month 84:	\$616,320.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 84 following the Term Commencement Date through Month 96:	\$634,810.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 97 following the Term Commencement Date through Month 108:	\$653,854.00 per month plus operating expenses per Paragraph 7 of this Lease
Month 109 following the Term Commencement Date through Month 120:	\$673,470.00 per month plus operating expenses per Paragraph 7 of this Lease.

B. EARLY ACCESS. Provided that Tenant does not interfere whatsoever with the construction of the Base Building Work (each as described in EXHIBIT C hereto), Landlord shall provide access to Tenant to the Premises on March 15, 2000, during normal business hours after reasonable prior notice to Landlord for purposes of installing furniture, fixtures and equipment (including network cabling and telecommunications equipment to the extent such installation is approved by Landlord in writing) and to commence construction of the Tenant Improvements therein in the Premises, with all terms and conditions of this Lease in full force and effect, excluding payment of Rent and Operating Expenses. Any interference by Tenant or any of Tenant's Parties with the construction of the Base Building Work shall constitute a Tenant Delay as defined in EXHIBIT C and shall constitute a delay by Tenant for purposes of Paragraph 3 hereof. Landlord and Tenant shall each reasonably cooperate with the other to attempt to reasonably coordinate their respective construction schedules to accommodate the early access by Tenant contemplated by this Paragraph 39.B.

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

- (1) If Tenant elects to exercise such option, then Tenant shall provide Landlord with written notice no earlier than the date which is Two Hundred Seventy (270) days prior to the expiration of the then current term of this Lease, but no later than 5:00 p.m. (Pacific Standard Time) on the date which is one hundred eighty (180) days prior to the expiration of the then current term of this Lease. If Tenant fails to provide such notice, Tenant shall have no further or additional right to extend or renew the term of this Lease.
- (2) The Base Rent in effect at the expiration of the then current term of this Lease shall be increased to reflect the current fair market rental for comparable space in the Building or Project and in other similar buildings in the same rental market as of the date the renewal term is to commence, taking into account the specific provisions of this Lease which will remain constant, and the Building amenities, location, identity, quality, age, conditions, term of lease, tenant improvements, services provided, and other pertinent items.
- (3) Landlord shall advise Tenant of the new Base Rent for the Premises for the applicable renewal term which will be based on Landlord's determination of fair market rental value no later than fifteen (15) days after receipt of notice of Tenant's exercise of its option to renew. Tenant shall have forty-five (45) days after receipt of such notification from Landlord to accept the new Base Rent. If Tenant does not accept Landlord's

determination of the new Base Rent within such forty-five (45) day period, this option shall be null and void, and Landlord shall have no further obligation to Tenant and may enter into a lease for the Premises with a third party on such terms and conditions as Landlord may determine in its sole discretion.

- (4) Notwithstanding anything to the contrary contained in this Paragraph, in no event shall the Base Rent for any renewal term be less than the Base Rent in effect at the expiration of the previous term. In addition, Landlord shall have no obligation to provide or pay for any tenant improvements or brokerage commissions during any renewal term.
- (5) Tenant's right to exercise any options to renew under this Paragraph shall be conditioned upon Tenant occupying the entire Premises and the same not being occupied by any assignee, subtenant or licensee other than Tenant or its affiliate at the time of exercise of any option and commencement of the renewal term. Tenant's exercise of any option to renew shall constitute a representation by Tenant to Landlord that as of the date of exercise of the option and the

commencement of the applicable renewal term, Tenant does not intend to seek to assign this Lease in whole or in part, or sublet all or any portion of the Premises.

- (6) Any exercise by Tenant of any option to renew under this Paragraph shall be irrevocable. If requested by Landlord, Tenant agrees to execute a lease amendment or, at Landlord's option, a new lease agreement on Landlord's then standard lease form for the Building reflecting the foregoing terms and conditions (which new lease form shall be reasonably acceptable to Tenant and shall provide to Tenant the benefit of its bargain contained herein), prior to the commencement of the renewal term. The options to renew granted under this Paragraph are not transferable; the parties hereto acknowledge and agree that they intend that each option to renew this Lease under this Paragraph shall be "personal" to the specific Tenant named in this Lease and that in no event will any assignee or sublessee have any rights to exercise such options to renew.
- (7) If more than one renewal option is provided above, the exercise of each renewal option shall be contingent upon Tenant exercising the prior renewal option. Only one renewal option may be exercised at a time. As each renewal option provided for above is exercised, the number of renewal options remaining to be exercised is reduced by one and upon exercise of the last remaining renewal option Tenant shall have no further right to extend the term of this Lease.

D. TEMPORARY PREMISES.

- (1) PHASE I TEMPORARY PREMISES. Prior to delivery by Landlord to Tenant of the Phase II Temporary Premises and the Premises, Landlord shall deliver to Tenant possession of the premises depicted on EXHIBIT D, attached hereto (the "PHASE I TEMPORARY PREMISES"), which Phase I Temporary Premises comprise approximately seven thousand eight hundred sixty-four (7,864) rentable square feet. The terms and conditions of this Lease shall apply to Tenant's possession and use of the Phase I Temporary Premises; provided, however, that Rent due and payable commencing on the Phase I Temporary Premises Term Commencement Date (as defined herein) through the date Tenant surrenders possession of the Phase I Temporary Premises to Landlord as provided herein shall be an amount equal to Twenty-Three Thousand Five Hundred Ninety-two and No/100 (\$23,592.00) per month. If the obligation for payment of Base Rent for the Phase I Temporary Premises commences on a day other than the first day of a month, then such Base Rent shall be prorated and the prorated installment shall be paid on the first day of the calendar month next succeeding the Phase I Temporary Premises Term Commencement Date (as defined herein). The term commencement date ("PHASE I TEMPORARY PREMISES TERM COMMENCEMENT DATE") with respect to the Phase I Temporary Premises shall be the date Landlord delivers possession of the Phase I Temporary Premises to Tenant. Landlord hereby agrees to install Phase I Temporary Premises Building standard carpeting in the Phase I Temporary Premises prior to January 1, 2000. By taking possession of the Phase I Temporary Premises, Tenant accepts them "as is," as being in good order, condition and repair and the condition in which Landlord is obligated to deliver them and suitable for the Permitted Use (with respect to the Phase I Temporary Premises) and Tenant's intended operations in the Phase I Temporary Premises, whether or not any notice of acceptance is given. Landlord shall make commercially reasonable efforts to deliver possession of the Phase I Temporary Premises to Tenant on or before January 1, 2000. Tenant's taking of possession of the Phase I Temporary Premises or any part thereof shall constitute Tenant's confirmation of substantial completion thereof for all purposes hereof. If for any reason Landlord cannot deliver possession of the Phase I Temporary Premises to Tenant on the scheduled Phase I Temporary Premises Term Commencement Date, Landlord shall not be subject to any liability therefor, nor shall Landlord be in default hereunder nor shall such failure affect the validity of this Lease, and unless the Premises have been delivered to Tenant, Tenant agrees to accept possession of the Phase I Temporary Premises at such time as such improvements have been substantially completed, which date shall then be deemed the Phase I Temporary Premises Term Commencement Date. Within thirty (30) days following substantial completion of the Tenant Improvements (as defined in EXHIBIT C hereto), Tenant shall surrender possession of the Temporary Premises in accordance with Paragraph 36 hereof.
- (2) PHASE II TEMPORARY PREMISES. Prior to delivery by Landlord to Tenant of the Premises, Landlord shall deliver to Tenant possession of the premises depicted on EXHIBIT E, attached hereto (the "PHASE II TEMPORARY PREMISES"), which Phase II Temporary Premises comprise approximately thirty-nine thousand forty-three (39,043) rentable square feet. The terms and conditions of this Lease shall apply to Tenant's possession and use of the Phase II Temporary Premises; provided, however, that Base Rent due and payable commencing on the Phase II Temporary Premises Term Commencement Date (as defined herein) through the date Tenant surrenders possession of the Phase II Temporary Premises to Landlord as provided herein shall be an amount equal to Ninety-Five Thousand Six Hundred Fifty-Five and 35/100 (\$95,655.35) per month. If the obligation for payment of Base

Rent for the Phase II Temporary Premises commences on a day other than the first day of a month, then such Base Rent shall be prorated and the prorated installment shall be paid on the first day of the calendar month next succeeding the Phase II Temporary Premises Term Commencement Date (as defined herein). The term commencement date ("PHASE II TEMPORARY PREMISES TERM COMMENCEMENT DATE") with respect to the Phase II Temporary Premises shall be the date Landlord delivers possession of the Phase II Temporary Premises. On or about January 31, 2000, Landlord shall provide to Tenant a written description of the tenant improvements to be constructed by Landlord in the Phase II Temporary Premises. By taking possession of the Phase II Temporary Premises, Tenant accepts them "as is," as being in good order, condition and repair and the condition in which Landlord is obligated to deliver them and suitable for the Permitted Use (with respect to the Phase II Temporary Premises) and Tenant's intended operations in the Phase II Temporary Premises, whether or not any notice of acceptance is given. Landlord shall make commercially reasonable efforts to deliver possession of the Phase II Temporary Premises to Tenant on or before April 1, 2000. Tenant's taking of possession of the Phase II Temporary Premises or any part thereof shall constitute Tenant's confirmation of substantial completion thereof for all purposes hereof, whether or not substantial completion of the Phase II Temporary Premises Building or Project shall have occurred. If for any reason Landlord cannot deliver possession of the Phase II Temporary Premises to Tenant on the scheduled Phase II Temporary Premises Term Commencement Date, Landlord shall not be subject to any liability therefor, nor shall Landlord be in default hereunder nor shall such failure affect the validity of this Lease, and unless the Phase II Temporary Premises have been delivered to Tenant, Tenant agrees to accept possession of the Phase II Temporary Premises at such time as such improvements have been substantially completed, which date shall then be deemed the Phase II Temporary Premises Term Commencement Date. Tenant shall not be liable for any Rent for any period prior to the Phase II Temporary Premises Term Commencement Date (but without affecting any obligations of Tenant under any improvement agreement appended to this Lease). In the event of any dispute as to substantial completion of work performed or required to be performed by Landlord with respect to the Phase II Temporary Premises, the certificate of Landlord's architect or general contractor shall be conclusive. Within thirty (30) days following substantial completion of the Tenant Improvements (as defined in EXHIBIT C hereto), Tenant shall surrender possession of the Phase II Temporary Premises in accordance with Paragraph 36 hereof.

E. LETTER OF CREDIT.

- (1) DELIVERY OF LETTER OF CREDIT. In lieu of depositing a security deposit with Landlord, Tenant shall, on execution of this Lease, deliver to Landlord and cause to be in effect during the Lease Term an unconditional, irrevocable letter of credit

("LOC") in the amount specified for the Security Deposit in the Basic Lease Information, as it may be increased as provided in this Lease (the "LOC AMOUNT") for an initial term of the LOC of three (3) years and thereafter shall renew automatically from year to year through 30 days beyond the expiration date of this Lease or any extension thereto. The LOC shall be in a form acceptable to Landlord and shall be issued by an LOC bank selected by Tenant and acceptable to Landlord. The text of the LOC shall expressly state that the LOC shall survive the termination of this Lease. An LOC bank is a bank that accepts deposits, maintains accounts, has a local office that will negotiate a letter of credit, and the deposits of which are insured by the Federal Deposit Insurance Corporation. Tenant shall pay all expenses, points, or fees incurred by Tenant in obtaining the LOC. The LOC shall not be mortgaged, assigned or encumbered in any manner whatsoever by Tenant without the prior written consent of Landlord. Tenant acknowledges that Landlord has the right to transfer or mortgage its interest in the Project, the Building and in this Lease and Tenant agrees that in the event of any such transfer or mortgage, Landlord shall have the right to transfer or assign the LOC and/or the LOC Security Deposit (as defined below) to the transferee or mortgagee, and in the event of such transfer, Tenant shall look solely to such transferee or mortgagee for the return of the LOC and/or the LOC Security Deposit. The maximum amount of any transfer fee associated with such transfer shall not be in excess of reasonable transfer fees customarily required by issuing banks, which amount shall be expressly stated in the terms of the LOC, and shall be payable by Landlord.

- (2) REPLACEMENT OF LETTER OF CREDIT. Tenant may, from time to time, replace any existing LOC with a new LOC if the new LOC (a) becomes effective at least thirty (30) days before expiration of the LOC that it replaces; (b) is in the required LOC amount; (c) is issued by an LOC bank acceptable to Landlord; and (d) otherwise complies with the requirements of this Paragraph 39.E.
- (3) LANDLORD'S RIGHT TO DRAW ON LETTER OF CREDIT. Landlord shall hold the LOC as security for the performance of Tenant's obligations under this Lease. If, after notice and failure to cure within any applicable period provided in this Lease, Tenant is in default pursuant to this Lease, Landlord may, without prejudice to any other remedy it has, draw on that portion of the LOC necessary to (a) pay Rent or other sum in default; (b) pay or reimburse Landlord for any amount that Landlord may spend or become obligated to spend in exercising Landlord's rights under Paragraph 30 (Right of Landlord to Perform Tenant's Covenant); and/or (c) compensate Landlord for any expense, loss, or damage that Landlord may suffer because of Tenant's default. If Tenant fails to renew or replace the LOC at least thirty (30) days before its expiration, Landlord may, without prejudice to any other remedy it has, draw on the entire amount of the LOC.
- (4) LOC SECURITY DEPOSIT. Any amount of the LOC that is drawn on by Landlord but not applied by Landlord shall be held by Landlord as a security deposit (the "LOC SECURITY DEPOSIT") in accordance with Paragraph 19 of this Lease.
- (5) RESTORATION OF LETTER OF CREDIT AND LOC SECURITY DEPOSIT. If Landlord draws on any portion of the LOC and/or applies all or any portion of such draw, Tenant shall, within five (5) business days after demand by Landlord, either (a) deposit cash with Landlord in an amount that, when added to the amount remaining under the LOC and the amount of any LOC Security Deposit, shall equal the LOC Amount then required under this Paragraph 39.E; or (b) reinstate the LOC to the full LOC Amount.
- (6) REDUCTION OF LETTER OF CREDIT. At least fifteen (15) business days prior to the dates specified in each of clauses a. through d. below, Tenant shall deliver to Landlord for review Tenant's financial statements prepared in accordance with generally accepted accounting principles and audited by a nationally recognized public accounting firm acceptable to Landlord, and any other financial information requested by Landlord ("TENANT'S FINANCIAL INFORMATION") If: (i) Tenant has a tangible net worth, which "tangible net worth" shall be determined by Landlord in its sole discretion and shall mean assets less intangible assets and total liabilities, with intangible assets including nonmaterial benefits such as goodwill, patents, copyrights, and trademarks, in excess of One Hundred Seventy five Million and No/100 Dollars (\$175,000,000.00) as reflected in Tenant's Financial Information, which amount shall be determined by Landlord to its satisfaction prior to any reduction in the LOC Amount; and (ii) Tenant's Financial Information reflects four (4) consecutive calendar quarters of profitability, as determined by Landlord, during the time period immediately preceding Tenant's request for reduction in the LOC Amount described in this subparagraph during the time period immediately preceding Tenant's request for reduction in the LOC Amount, as such profitability is determined by Landlord, then the following reductions in the LOC Amount may be made in accordance with the terms of this Paragraph 39.E(6):
 - a. At any time after the end of the thirty-sixth (36th) month following the Term Commencement Date, the LOC Amount may be reduced to an amount equal to

Four Million Six Hundred Forty-Five Thousand Four Hundred Twenty Eight and No/100 Dollars (\$4,645,428.00);

- b. At any time after the end of the forty-eighth (48th) month following the Term Commencement Date, the LOC Amount may be reduced to an amount equal to Three Million Ninety-Six Thousand Nine Hundred Fifty-Two and No/100 Dollars (\$3,960,952.00);
- c. At any time after the end of the sixtieth (60th) month following the Term Commencement Date, the LOC Amount may be reduced to an amount equal to One Million Five Hundred Forty-Eight Thousand Four Hundred Seventy-Six and No/100 Dollars (\$1,548,476.00);
- d. At any time after the end of the seventy-second (72nd) month following the Term Commencement Date, the LOC may be returned by Landlord to the issuing bank for cancellation provided that Tenant has, prior to such delivery by Landlord, delivered a cash security Deposit (to be held by Landlord in accordance with the terms of Paragraph 19 of this Lease) an amount equal to Eight Hundred Fifty-Six Thousand Seven Hundred Fifty-Nine and No/100 Dollars (\$856,759.00).

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

LOC Amount as a Security Deposit in accordance with the terms of this Lease, and enforce all other rights available to Landlord pursuant to the terms of this Lease or under applicable law.

40. JURY TRIAL WAIVER

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

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

LANDLORD

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

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

By: _____
John W. Petersen
Its: Vice President

Date: December 17, 1999

TENANT

Brocade Communications Systems, Inc.,
a Delaware corporation

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

Date: December 17, 1999

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

Date: December 17, 1999

EXHIBIT A
RULES AND REGULATIONS

1. Driveways, sidewalks, halls, passages, exits, entrances, elevators, escalators and stairways shall not be obstructed by tenants or used by tenants for any purpose other than for ingress to and egress from their respective premises. The driveways, sidewalks, halls, passages, exits, entrances, elevators and stairways are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence, in the judgment of Landlord, shall be prejudicial to the safety, character, reputation and interests of the Building, the Project and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of such tenant's business unless such persons are engaged in illegal activities. No tenant, and no employees or invitees of any tenant, shall go upon the roof of any Building, except as authorized by Landlord. No tenant, and no employees or invitees of any tenant shall move any common area furniture without Landlord's consent.

2. No sign, placard, banner, picture, name, advertisement or notice, visible from the exterior of the Premises or the Building or the common areas of the Building shall be inscribed, painted, affixed, installed or otherwise displayed by Tenant either on its Premises or any part of the Building or Project without the prior written consent of Landlord in Landlord's sole and absolute discretion. Landlord shall have the right to remove any such sign, placard, banner, picture, name, advertisement, or notice without notice to and at the expense of Tenant, which were installed or displayed in violation of this rule. If Landlord shall have given such consent to Tenant at any time, whether before or after the execution of Tenant's Lease, such consent shall in no way operate as a waiver or release of any of the provisions hereof or of the Lease, and shall be deemed to relate only to the particular sign, placard, banner, picture, name, advertisement or notice so consented to by Landlord and shall not be construed as dispensing with the necessity of obtaining the specific written consent of Landlord with respect to any other such sign, placard, banner, picture, name, advertisement or notice.

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

3. The directory of the Building or Project will be provided exclusively for the display of the name and location of tenants only and Landlord reserves the right to charge for the use thereof and to exclude any other names therefrom.

4. No curtains, draperies, blinds, shutters, shades, screens or other coverings, awnings, hangings or decorations shall be attached to, hung or placed in, or used in connection with, any window or door on the Premises without the prior written consent of Landlord. In any event with the prior written consent of Landlord, all such items shall be installed inboard of Landlord's standard window covering and shall in no way be visible from the exterior of the Building. All electrical ceiling fixtures hung in offices or spaces along the perimeter of the Building must be fluorescent or of a quality, type, design, and bulb color approved by Landlord. No articles shall be placed or kept on the window sills so as to be visible from the exterior of the Building. No articles shall be placed against glass partitions or doors which Landlord considers unsightly from outside Tenant's Premises.

5. Landlord reserves the right to exclude from the Building and the Project, between the hours of 6 p.m. and 8 a.m. and at all hours on Saturdays, Sundays and legal holidays, all persons who are not tenants or their accompanied guests in the Building. Each tenant shall be responsible for all persons for whom it allows to enter the Building or the Project and shall be liable to Landlord for all acts of such persons.

Landlord and its agents shall not be liable for damages for any error concerning the admission to, or exclusion from, the Building or the Project of any person.

During the continuance of any invasion, mob, riot, public excitement or other circumstance rendering such action advisable in Landlord's opinion, Landlord reserves the right (but shall not be obligated) to prevent access to the Building and the Project during the continuance of that event by any means it considers appropriate for the safety of tenants and protection of the Building, property in the Building and the Project.

6. All cleaning and janitorial services for the Building and the Premises shall be provided exclusively through Landlord. Except with the written consent of Landlord, no person or persons other than those approved by Landlord shall be permitted to enter the Building for the purpose of cleaning the same. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness of its Premises. Landlord shall in no way be responsible to Tenant for any loss of property on the Premises, however occurring, or for any damage done to Tenant's property by the janitor or any other employee or any other person.

7. Tenant shall see that all doors of its Premises are closed and securely locked and must observe strict care and caution that all water faucets or water apparatus, coffee pots or other heat-generating devices are entirely shut off before Tenant or its employees leave the Premises, and that all utilities shall likewise be carefully shut off, so as to prevent waste or damage. Tenant shall be responsible for any damage or injuries sustained by

other tenants or occupants of the Building or Project or by Landlord for noncompliance with this rule. On multiple-tenancy floors, all tenants shall keep the door or doors to the Building corridors closed at all times except for ingress and egress.

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

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

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

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

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

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

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

EXHIBIT B
(TO BE ATTACHED)

EXHIBIT C

LEASE IMPROVEMENT AGREEMENT

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

1. Base Building Work. The "Base Building Work" described on SCHEDULE 1 to this EXHIBIT C, IF ANY, has been or will be performed by Landlord at Landlord's sole cost and expense and shall be constructed in a good and workman-like manner and the Premises shall be delivered to Tenant in compliance with Regulations as expressly stated in Paragraph 4.C. hereof.
2. Plans and Specifications.

2.1 Tenant shall retain the services of Devcon (the "SPACE PLANNER") to prepare a detailed space plan (the "SPACE PLAN") mutually satisfactory to Landlord and Tenant for the construction of the Tenant Improvements in the Premises. Tenant shall submit the Space Plan and any proposed revisions thereto to Landlord for Landlord's approval. In the event that Tenant fails to deliver an approved Space Plan on or before February 7, 2000, such failure shall constitute a Tenant Delay hereunder.

2.2 Based on the approved Space Plan, Tenant shall cause the Space Planner to prepare detailed plans, specifications and working drawings mutually satisfactory to Landlord and Tenant for the construction of the Tenant Improvements (the "PLANS"). Landlord and Tenant shall diligently pursue the preparation of the Plans. Tenant shall submit the Plans and any proposed revisions thereto, including the estimated cost of the Tenant Improvements. All necessary revisions to the Space Plan and the Plans shall be made within two (2) business days after Landlord's response thereto. This procedure shall be repeated until Landlord ultimately approves the Space Plan and Plans. Landlord shall approve or disapprove the Plans and any proposed revisions thereto, including the estimated cost of the Tenant Improvements, in writing within three (3) business days after receipt thereof. If Landlord fails to approve or disapprove the Space Plan or the Plans or any revisions thereto within the time limits specified herein, Landlord shall be deemed to have disapproved the same. Tenant shall cause the final Plans and the cost estimate to be prepared and approved no later than March 30, 2000. In the event Tenant fails to prepare and approve the final Plans and the cost estimate on or before March 30, 2000, such failure shall constitute a Tenant Delay hereunder.

2.3 Intentionally Omitted.

2.4 Notwithstanding the foregoing, Tenant shall cause the Space Planner to deliver to Landlord on or before March 30, 2000 plans, specifications and working drawings for the construction of the Tenant Improvements which are sufficiently complete to enable the City of San Jose to issue any required permits.

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

2.6 Landlord may approve or disapprove the Space Plan or Plans or any proposed revision thereto submitted to Landlord in Landlord's sole discretion. Landlord shall not be deemed to have approved the Space Plan, the Plans, or any proposed revisions thereto, unless approved by Landlord in writing. Landlord shall approve or disapprove any Space Plan, Plans or proposed revisions thereto submitted to Landlord for Landlord's approval within three (3) business days after Landlord's receipt thereof. If Landlord has not approved in writing any Space Plan, Plans, or proposed revisions thereto submitted to Landlord within three (3) business days after Landlord's receipt thereof, Landlord shall be deemed to have disapproved the same.

3. Specifications for Standard Tenant Improvements.

3.1 Specifications and quantities of standard building components which will comprise and be used in the construction of the Tenant Improvements ("STANDARDS") are set forth in SCHEDULE 2 to this EXHIBIT C. As used herein, "STANDARDS" or "BUILDING Standards" shall mean the standards for a particular item selected from time to time by Landlord for the

Building, including those set forth on SCHEDULE 2 of this EXHIBIT C, or such other standards of equal or better quality as may be mutually agreed between Landlord and Tenant in writing.

3.2 No deviations from the Standards are permitted.

4. Tenant Improvement Cost.

4.1 The cost of the Tenant Improvements shall be paid for by Tenant, including, without limitation, the cost of: Standards; space plans and studies; architectural and engineering fees; permits, approvals and other governmental fees; labor, material, equipment and supplies; construction fees and other amounts payable to contractors or subcontractors; taxes; off-site improvements; remediation and preparation of the Premises for construction of the Tenant Improvements; taxes; filing and recording fees; premiums for insurance and bonds; attorneys' fees; financing costs; and all other costs expended or to be expended in the construction of the Tenant Improvements, including those costs incurred for construction of elements of the Tenant Improvements in the Premises, which construction was performed by Landlord prior to the execution of the Lease or for materials comprising the Tenant Improvements which were purchased by Landlord prior to the execution of the Lease; and an administration fee of One Hundred Eighty-Five Thousand and No/100 Dollars (\$185,000.00); provided, however, that in the event that the Lease is modified to provide for an increase in the rentable square feet of the Premises which results in an increase in the total cost of the Tenant Improvements, the aforementioned administration fee shall be increased by an amount equal to three percent (3%) of the amount of such increase.

4.2 Provided Tenant is not in default under the Lease, including this Improvement Agreement, Landlord shall contribute a one-time tenant improvement allowance not to exceed Thirty-One and 19/100 Dollars (\$31.19) per rentable square foot of the Premises ("TENANT IMPROVEMENT ALLOWANCE") toward the cost of the initial Tenant Improvements. Provided Tenant is not then in default under the Lease, including this Improvement Agreement, during the construction of the Tenant Improvements, Landlord shall make monthly disbursements of the Tenant Improvement Allowance for the benefit of Tenant shall authorize the release of monies for the benefit of Tenant as follows:

- (a) Monthly Disbursements. On or before the twenty-first (21st) day of the calendar month, during the construction of the Tenant Improvements (or such other date as Landlord may designate in writing), Tenant shall deliver to Landlord: (i) a request for payment of Tenant's contractor, which request shall be approved by Tenant, showing the schedule, by trade, of percentage of completion of the Tenant Improvements, detailing the portion of the work completed and the portion not completed; (ii) invoices from any subcontractor, laborer, materialmen, supplier and any other party which performed work on Tenant's behalf pursuant to this Improvement Agreement, including, but not limited to, labor rendered and materials delivered to the Premises; (iii) executed conditional mechanic's lien releases from all of the parties submitting invoices with respect to the work performed and for which payment is requested to be made, which releases shall comply with the appropriate provisions of California Civil Code 3262(d); (iv) executed unconditional mechanic's lien releases from all of the parties with respect to work performed and included on prior pay requests, which releases shall comply with the appropriate provisions of California Civil Code; and (v) all other information reasonably requested by Landlord. Tenant's request for payment shall be deemed Tenant's acceptance and approval of the specific work furnished and or the materials actually supplied as set forth in Tenant's payment request. Within ten (10) business days thereafter, Landlord shall deliver a check (or transfer funds electronically) to Tenant made jointly payable to Tenant's contractor and Tenant in payment of the lesser of (A) Landlord's proportionate share of the amount of such request for payment by Tenant's contractor, as set forth in this paragraph, less a ten percent (10%) retention (the aggregate amount of such retentions to be known as the "FINAL RETENTION"), and (B) the balance of any remaining available portion of the Tenant Improvement Allowance (not including the Final Retention), provided Landlord does not dispute any request for payment based upon noncompliance with the Plans and or Standards, or due to any substandard work, or for any other reasonable cause. For purposes of this Improvement Agreement, Landlord's proportionate share shall be the product of the following: (X) the amount of the Tenant Improvement Allowance over total cost of the Tenant Improvements, as such total cost may from time to time increase as provided herein, multiplied by (Y) the total amount approved by Landlord in Tenant's written request for payment as described above. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's payment request.
- (b) Final Retention. Subject to the provisions of this Improvement Agreement, a check for the Final Retention payable jointly to Tenant's contractor and Tenant shall be delivered by Landlord to Tenant following the completion of the construction of the Tenant Improvements and expiration of the time for filing of any mechanics' liens claimed or which might be filed on account of any work ordered by Tenant or its contractor or any subcontractor; provided that (A) Tenant delivers to Landlord properly executed and unconditional mechanics lien releases in compliance with both California Civil Code Section 3262(d)(2) and with Section 3262(d)(3) or Section 3262(d)(4) (which mechanics' lien releases shall be executed by the subcontractors, labor suppliers and materialmen in addition to Tenant's contractor), and all appropriate bills and supporting documentation for the work ordered by Tenant or its contractor or any subcontractor, (B) Landlord has determined that no substantial work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building or Project, the structure or exterior appearance of the Building or Project, and (C) Space Planner and Tenant's contractor deliver to Landlord a certificate of completion, in a form reasonably acceptable to Landlord certifying that the construction of the Tenant Improvements has been substantially completed.
- (c) Other Terms. Landlord shall only be obligated to make disbursements from the Tenant Improvement Allowance in accordance with the terms of this Agreement.

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

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

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

4.6 Notwithstanding anything to the contrary in this Improvement Agreement, in the event that the cost of the Tenant Improvements exceeds the Tenant Improvement Allowance, upon Tenant's written request, Landlord shall provide an additional amount not to exceed Four Dollars (\$4.00) per rentable square foot (the "BASE RENT INCREASE FACTOR") toward the excess cost of the Tenant Improvements, which Base Rent Increase Factor shall be disbursed in accordance with the terms of this Paragraph 4. Tenant must provide such written request to Landlord prior to the Term Commencement Date defined in the Lease. In the event Tenant fails to so provide such written notice to Landlord, Tenant shall be deemed to waive its right to receive the Base Rent Increase Factor. The Base Rent Increase Factor shall be amortized over the initial Term of the Lease commencing upon disbursement of monies, at an interest rate of ten percent (10%) per annum, payable in monthly installments as Base Rent, in accordance with the terms of the Lease. If the costs of the Tenant Improvements does exceed the Tenant Improvement Allowance, and Tenant elects to receive the Base Increase Rent Factor pursuant to this Paragraph 4.6, Landlord and Tenant shall each execute a written amendment to the Lease, prepared by Landlord, to reflect the appropriate increase in the amount of Base Rent.

5. Construction of Tenant Improvements.

5.1 Within ten (10) days after Tenant's and Landlord's approval of the Plans including the estimate of the cost of the Tenant Improvements and Landlord's receipt of payment of any such estimated cost exceeding the amount of the Tenant Improvement Allowance, Tenant shall cause the contractor to proceed to secure a building permit and commence construction of the Tenant Improvements provided that the Building has in Landlord's discretion reached the stage of construction where it is appropriate to commence construction of the Tenant Improvements in the Premises.

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

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

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

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

(b) All work shall be done in conformity with a valid building permit when required, a copy of which shall be furnished to Landlord before such work is commenced, and in any case, all such work shall be performed in a good and workmanlike and first-class manner, and in accordance with all applicable Regulations and the requirements and standards of any insurance underwriting board, inspection bureau or insurance carrier insuring the Premises pursuant to the Lease. Notwithstanding any failure by Landlord to object to any such work, Landlord shall have no responsibility for Tenant's failure to comply with all applicable Regulations. Tenant shall be responsible for ensuring that construction and installation of the Tenant Improvements will not affect the structural integrity of the Building.

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

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

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

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

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

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

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

(j) Tenant hereby indemnifies and holds Landlord harmless with respect to any and all costs, losses, damages, injuries and liabilities

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

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

to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances which may be necessary to effect such rights of direct enforcement.

(l) Commencing upon the execution of the Lease, Tenant shall hold weekly meetings at a reasonable time with the Space Planner and the contractor regarding the progress of the preparation of the Plans and the construction of the Tenant Improvements, which meetings shall be held at a location designated by Tenant, and Landlord and/or its agents shall receive prior notice of, and shall have the right to attend, all such meetings, and upon Landlord's request, certain of Tenant's contractors shall attend such meetings. One such meeting each month shall include the review of contractor's current request for payment.

(m) Tenant and Tenant's contractors and all other parties performing work on the Premises on Tenant's behalf shall comply with the each of the Building rules and regulations as described in the Lease and with the contractor rules and regulations, attached hereto as SCHEDULE 3. Tenant shall be liable for any violation of the Building or the contractor rules and regulations by Tenant's contractors or any other party performing work on the Premises on Tenant's behalf.

6. Insurance Requirements.

6.1 All of Tenant's contractors shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant as set forth in Paragraph 8 of the Lease.

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

6.3 Certificates for all insurance carried pursuant to this Improvement Agreement must comply with the requirements of Paragraph 8 of the Lease and shall be delivered to Landlord before the commencement of construction of the Tenant Improvements and before the contractor's equipment is moved onto the site. In the event the Tenant Improvements are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant's contractors shall maintain all of the foregoing insurance coverage in force until the Tenant Improvements are fully completed and accepted by Landlord, except for any Product and Completed Operation Coverage insurance required by Landlord, which is to be maintained for five (5) years following completion of the work and acceptance by Landlord and Tenant. All policies carried under this Paragraph 6 shall insure Landlord and Tenant, as their interests may appear, as well as the contractors. All insurance maintained by Tenant's contractors shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the owner and that any other insurance maintained by owner is excess and noncontributing with the insurance required hereunder. Landlord may, in its discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of the Tenant Improvements and naming Landlord as a co-obligee.

7. Completion and Rental Commencement Date.

7.1 Tenant's obligation to pay Rent under the Lease shall commence on the Scheduled Term Commencement Date and the Scheduled Term Commencement Date shall be the Term Commencement Date notwithstanding anything to the contrary contained in Paragraph 2 of the Lease. However, except as otherwise provided herein, Landlord Delays (as defined below) shall extend the Term Commencement Date, but only in the event that substantial completion of the Tenant Improvements is actually delayed beyond September 1, 2000, despite Tenant's best efforts to adapt and compensate for such delays. In addition, no Landlord Delays shall be deemed to have occurred unless Tenant has provided notice, in compliance with the Lease, to Landlord specifying that a delay shall be deemed to have occurred because of actions, inactions or circumstances specified in the notice in reasonable detail. If such actions, inactions or circumstances are not cured by Landlord within one (1) business day after receipt of such notice ("COUNT DATE"), and if such actions, inaction or circumstances otherwise qualify as a Landlord Delay, then a Landlord Delay shall be deemed to have occurred commencing as of the Count Date. The Term Commencement Date shall be extended by one day for each day from the Count Date that a Landlord Delay has occurred, as calculated as provided above. The term "Landlord Delays," as such term may be used in this Improvement Agreement, shall mean any actual delays in the completion of the Tenant Improvements which are due to any act or omission of Landlord, its agents or contractors. Landlord Delays shall include but not be limited to: (i) delays in the giving of authorizations or approvals by Landlord beyond the periods provided in this Improvement Agreement, (ii) delays due to the acts or failures to act, of Landlord, its agents or contractors, where such acts or failures to act are required by the terms of this Improvement Agreement and actually result in a delay of the completion of the Tenant

Improvements beyond September 1, 2000, provided that Tenant acts in a commercially reasonable manner to mitigate any such delay, and (iii) delays due to the unreasonable interference of Landlord, its agents or contractors with the completion of the Tenant Improvements. Notwithstanding anything to the contrary contained in this Improvement Agreement or in the Lease, if a Landlord Delay does occur but the Premises is substantially complete on or before September 1, 2000, then the Term Commencement Date shall not be extended and shall be the date described in Paragraph 2.B of the Lease. In the event a Landlord Delay shall not occur, then the Term Commencement Date shall be the date described in Paragraph 2.B of the Lease.

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

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

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

7.5 For purposes of the Lease and this Improvement Agreement, "SUBSTANTIAL COMPLETION" shall have occurred when (i) Landlord's architect and Tenant's architect each state in writing that the Tenant Improvements are substantially complete in accordance with the terms of the Lease and this Improvement Agreement, and (ii) services and utilities are made available to the Building.

SCHEDULE 1
TO EXHIBIT C

BASE BUILDING WORK - 1745 Technology Drive, San Jose, CA

I. PROJECT DESCRIPTION

GENERAL: The Project Site is a parcel of land located on Technology Drive, between Skyport Road and Airport Parkway in San Jose, California.

SITE: 15.45 Acres (parcel includes 1731, 1733, 1735, 1737, and 1745 Technology Drive)

BUILDING AREAS: Net Rentable Area 210,677 RSF
Parking 3.6 spaces / 1000 useable square feet

FLOORS: The total number of floors from Lobby Level to the top floor of office space will be eight. The typical office floor size for floors three through eight will be approximately 26,268 RSF. A single core will serve each building floor. In addition, there will be a mechanical penthouse.

PRIMARY INTERIOR PLANNING CRITERIA: Structural floor slab to structural floor slab dimensions will be set so as to allow the following floor-to-ceiling heights:

LEVEL	HEIGHT	HEIGHT	SLAB TO SLAB	CEILING
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		Ground Floor	16'0"	11'6"
		2 through 8	13'6"	9'0"

II. ARCHITECTURAL DESCRIPTION

EXTERIOR WALLS: The exterior wall material will include glass, aluminum, polished stone and pre-cast concrete.

ACOUSTICAL: The air shaft walls at each level will contain acoustical insulation. The main trunk ductwork at each level will be wrapped with acoustical insulation. Major equipment components will be mounted on sound and vibration isolating devices.

ELEVATORS: There will be four passenger elevators in the core, one of which will have a swing door for freight.

INTERIOR FINISHES: The Main Lobby floor will be mostly stone and the walls will be a combination of stone, wood panels, and/or other materials.

Typical floors will include drywall on all core walls. Exterior walls will receive stud framing but no drywall.

Tenant elevator lobbies will include finishes of equal or better quality than the lobby on floors two through five of 1741 Technology Drive, San Jose, California.

Toilet Room wall and floor finished will be ceramic tile and paint. Toilet partitions will be ceiling-mounted, painted metal. The lavatory tops will be polished stone.

Elevator cabs will have wood veneer walls with stone base and carpeted floors.

ADA COMPLIANCE: The Project will be designed and constructed in compliance with the current Title 24 and American With Disabilities Act (ADA) requirements at the time of building permit issuance.

III. STRUCTURAL DESCRIPTION

FOUNDATION: Precast driven piles supporting caps and grade beams with a concrete slab on grade.

OFFICE BUILDING STRUCTURE: Concrete fill over metal deck supported by wide flange steel beams and columns.

LIVE LOADS: The general live load capacity of office area floor slabs will be 100 lbs per sf.

IV. MECHANICAL, PLUMBING, ELECTRICAL AND FIRE/SAFETY SYSTEMS DESCRIPTION

MECHANICAL SYSTEM:

The air conditioning system will consist of a variable air volume system with one factory furnished water-cooled VAV unit per floor. These will be supplied with condenser water from two closed circuit coolers and circulating pumps located in the penthouse.

The heating system will be limited to a hot water loop with valves to each floor.

The control system will include an electronic Direct Digital Temperature Control System. The sensing accuracy and component reliability of the Direct Digital Temperature Control System will allow heating and cooling systems to maintain consistently comfortable conditions throughout the tenant space.

The mechanical systems are designed to deliver HVAC interior conditioning based on the following loads and outdoor conditions:

Load: Occupancy: 1 person/150 sf of useable area

 Electrical Consumption:
 Lighting - 1.5 watts/usf
 Tenant Power - 1.0 watts/usf
 Ventilation - 0.15 cfm/usf

Winter: Indoor 72-F dry bulb
 Outdoor 34-F dry bulb

Summer: Indoor 75-F dry bulb
 Relative Humidity not to exceed 50%
 Outdoor 84-F dry bulb
 Outdoor 64-F wet bulb

POWER SYSTEM:

The electrical service will be supplied through primary underground circuits from Pacific Gas & Electric Company. The incoming electric service will be 480/277 volt, three phase, four wire running to the main switchboard area. The main switchgear will include 480/277 volt electric service to the typical floor will be fed from the main building bus risers. Dry-type transformers will reduce 480/277 volt service to 120/208 volt, three-phase, four wire service for special lighting and receptacle loads on all tenant floors. Transformer capacity will be designed to accommodate a connected load of 4.0 watts per square foot of usable area.

PLUMBING SYSTEM:

The plumbing system will consist of domestic hot and cold water supply, sanitary sewer and storm sewer piping systems. The system design will be in accordance with the City of San Jose Building Code and assures sufficient capacity to handle the occupancy of the Building. Plumbing fixtures, fittings and trim shall be high quality commercial type and will be coordinated with the architectural features of the Building.

TELEPHONE SYSTEM:

Telephone closets for riser use shall be provided on each floor with pathways to main the telephone room.

FIRE PROTECTION SYSTEM:

Automatic sprinklers will be provided throughout the Building in accordance with NFPA #13, for light hazard occupancy design criteria. Sprinkler head drops, sprinkler head relocations and additional heads will be completed as part of tenant work. Firehose connections will be located in stairwells in accordance with code requirements.

STAIR/ELEVATOR
SHAFT PRESSURIZATION:

The emergency egress stairwells and elevator shafts in the Building will be served by pressurization systems. These systems will, in the event of an emergency condition, pressurize egress stairwells and elevator shafts to reduce the possibility of smoke entering the egress stairwell or elevator shaft.

EMERGENCY POWER SYSTEM:

Emergency power shall be provided by a permanently installed diesel-powered electrical generator set and, as required by code, power will automatically be supplied to support all stairwell and elevator shaft pressurization equipment, emergency lighting, fire alarm and communications systems, emergency use of elevators, fire pumps and ancillary emergency fire/safety equipment in the unlikely event of normal power source loss. In addition, after written request by Tenant, Landlord will provide additional emergency power equal to 250 kW to the Building. Tenant shall pay any additional costs associated with the additional emergency power increase upon written request by Landlord.

FIRE ALARM AND
COMMUNICATION SYSTEMS

The fire alarm and communication systems will be an addressable alarm system with Title 24 ADA provisions. Annunciation, control and communication equipment will be located in the Fire Control Center to the

Building with additional indicators located at the Security Desk and the Building Engineer's Office. The fire alarm system will have battery back-up and be UL listed as a system.

ACCESS CONTROL:

All building entrances will be locked after hours. After hours access will be via proximity card reader. The elevators shall have card key access system to each floor.

SCHEDULE 2
TO EXHIBIT C

BUILDING STANDARDS

1745 TECHNOLOGY DRIVE, SAN JOSE, CALIFORNIA 95110

The following constitutes the Building Standard tenant improvements ("Standards") in the quantities specified:

PARTITIONS

INTERIOR: 3 5/8" metal studs with 5/8" gypsum board on each side. Taped smooth and ready for finish.

DEMISING: 3 5/8" metal studs with 5/8" gypsum board with sound batt insulation. Taped smooth and ready for finish.

PERIMETER WAINSCOT: 5/8" layer of gypsum board. Taped smooth ready for finish. Extruded bronze finish aluminum sill to match exterior mullions.

PAINT: 1 of coat primer, 2 coats of interior latex paint in eggshell finish, on each side of partitions.

DOOR ASSEMBLIES

DOORS: Doors will be 3'-0" x 8'- 10" x 1-3/4" solid core construction with maple veneer faces and edge.

Interior Doors: 3'-0" x 8'- 10" 1-3/4" solid core door with clear plain sliced maple.

DOOR FRAMES: Door frames will be clear anodized aluminum.

DOOR HARDWARE: Tenant entry doors shall receive a lockset, surface mounted closer, butt hinges, and door stop.
Tenant interior doors shall receive a latchset, butt hinges and door stop.
Door hardware to be Schlage "L" series Mortise locks, finish: 626.
Hager 3 knuckle hinges, finish: 626.
LCN#1460 Slimline series door closer.
Quality #432 door stop.

CEILING SYSTEM

ACOUSTIC CEILINGS AND SUSPENDED SYSTEMS: Acoustical suspended ceilings will be Armstrong Dune, Armstrong Silhouette XL 9/16" grid.

LIGHT FIXTURES: Light fixtures will be Daylite or equal, lay-in mounted 2' x 4' (2)-lamp parabolic with reflector, Motorola rapid start electronic ballast or equal, 277 volt fixture with ready connect soft wire system. SP35 Super Saver II T-8 Fluorescent lamps.

LIGHT SWITCH ASSEMBLY: Switches will be paired in double gang box to meet Title 24 requirements. Bryant #4901, white finish.

ELECTRICAL AND TELEPHONE

RECEPTACLES: Receptacles will be duplex 20 ampere, 125 volt AC with Bryant wall plate, smooth line, white finish.

TELEPHONE OUTLETS: Outlets will be a standard telephone plate in manufacturer's standard colors, mounted vertically level with electrical receptacles, white color.

EXIT SIGNAGE: Exit signs to be Lerrt/Lergt recessed ceiling edgelit LED exit light. 3/16" thick clear acrylic double panels with opaque separator with green engraved lettering.

HEATING AND AIR CONDITIONING SYSTEM

HVAC SYSTEM: Energy efficient high velocity variable air volume system with conditioned space zoned on the average of 1 zone per every 800 square feet. Perimeter zones will have heating, interior zones have cooling only. Interior grills and registers painted to match acoustic ceiling tile.

FIRE PROTECTION

FIRE SPRINKLER HEADS: Sprinkler head to be Viking Model B1 and B2 concealed automatic and quick response sprinklers.
Color: Off White.

FLOOR COVERING

CARPET: 38 oz weight cut pile, Designweave, Sabre Classic, installed over pad. All standard colors available.

TILE: Armstrong, Standard Excelon vinyl composition tile. All standard colors available.

BASE: Burke, 4" rubber base, topset over VCT and straight cut over carpet.
All standard colors available.

WINDOW COVERING

BLINDS: 1" aluminum Levelor Mark 1 Dustguard 1" blinds.
Color: aluminum. Sized to fit within aluminum mullion module.

SCHEDULE 3
TO EXHIBIT C

CONTRACTOR RULES AND REGULATIONS

GENERAL REQUIREMENTS FOR BUILDING CONSTRUCTION WORK

INTENT

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

Preliminary

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

EXCEPTIONS - The following work is required to be performed on an overtime or off-hours basis: core drilling, nailing of tackless carpet stripping, spray painting of any lacquer or other volatile or odor creating substances, and any type of concrete chipping. Any scheduling requests for these types of off-hours work must be approved and authorized by the Management Office prior to performance any of work.

3. All contractors must supply Certificate(s) of Insurance naming Spieker Properties, L.P. as additionally insured prior to the start of any construction. Insurance certificates and copies of permits, as required, must be provided to Project Management prior to the commencement of any work.
4. Contractors representative will meet with Project Management representative prior to beginning contracted work, to review the scope of construction work, construction methods, these general requirements, any additional project specific requirements, and any potential impact to the satisfactory on-going operation of building services.
5. The contractor will coordinate proper parking locations for construction personnel with Project Management prior to starting construction, to avoid impacting our tenants parking availability.

PROJECT AREA ACCESS

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

DURING WORK PERFORMANCE

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

responsible for all damage they cause and clean-up.

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

- o Covering HVAC supply and return duct openings to protect from construction dirt / dust being spread to other areas of the building or into the HVAC equipment / system. This can be accomplished by sealing off, covering with filtering media, or other Project Management approved method.
 - o Coordinate with Project Manager prior to construction to have fire sprinkler systems isolated, smoke detectors disabled, or alarm systems de-activated for periods as may be necessary. Contractor will protect those smoke detectors or fire sprinkler heads left installed in the area, after disabling, by covering them with plastic bags during construction.
 - o Where electrical components or circuits are removed, contractor will ensure full compliance with OSHA required lockout / tagout procedures to prevent personal injuries or system outages.
 - o Develop the best isolation possible of the construction area to contain any dirt, dust, noise or other potential tenant impact which may be generated by demo, construction work and clean-up.
6. Any damage to any project area including but not limited to, parking areas, doors, freight elevators, and carpets will be reported to the Project Office and repaired by the contractor immediately. Spieker Properties reserves the right to remedy any damage at the Contractors expense if the damage is not repaired in a timely manner.
 7. No powder-actuated guns are to be used without the specific prior authorization of the Project Management Office.
 8. No foreign substances are to be poured down any restroom floor drains, or into other restroom fixtures.
 9. All firewall and floor penetrations shall be sleeved and sealed in accordance with applicable fire code, using only approved, UL listed, fire stop materials. All firestop installations must be reviewed and approved by the Project Manager prior to closing the associated area of work.
 10. All electrical panel and circuit breaker labeling will be performed in accordance with acceptable industry methods, or as may be directed by Project Management.
 11. Contractor will notify the Management Office at least 48 hours in advance of construction completion. A walk-through and punch list will be developed for each job.
 12. Smoking is prohibited in all buildings, and parking garages, at all times.
 13. The Contractor is responsible for ensuring, on an on-going basis, that common areas, work space, and construction use restrooms are thoroughly cleaned upon completion of work, including trash and material disposal, removal of all noise and dust shielding materials installed at beginning of project, windows cleaned, etc.
 14. THE PROJECT OFFICE IS TO BE NOTIFIED IMMEDIATELY SHOULD ANY EMERGENCY DEVELOP, ANY BUILDING SYSTEM OR OPERATION BE IMPACTED, OR ANY ASPECT OF THE CONSTRUCTION EFFORT IMPACT ANY TENANT.

SAFETY / COMPLIANCE

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

MATERIALS

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

Project Completion

1. Upon completion of project, contractor will perform a full air balance of any installed or modified HVAC systems, providing one copy of each air balance report to the Management Office.
2. Upon completion of project, a completed test report (witnessed by a Fire Department representative as required) will be provided to the Project Management Office for all fire sprinkler or fire alarm systems having been impacted by any aspect of the construction work.
3. Upon completion of construction, one (1) set of as-built prints, and one (1) set of as-built sepias, are to be provided to the Management Office.

- 4. Contractor will ensure that specific submittals, manufacturers operation and maintenance manuals, and applicable manufacturers cut sheets are delivered to the Project Office for all equipment or components installed in the course of their work. This includes, but is not limited to, mechanical equipment, fire alarm system components, fire sprinkler system components, HVAC system equipment or components, lighting system components, electrical distribution or control components, and any sensing or monitoring components.
- 5. Upon completion of construction clean inside of all perimeter windows and the interior of all lighting fixtures and louvers. Thoroughly clean all work areas, common areas where impacted, construction use restrooms, and freight elevators. Coordinate construction clean-up schedule with Management Office.

Building Contact List

Any questions or concerns should be directed to:

PROJECT DIRECTOR	-	CHEQUITA MCCULLOUGH
BUILDING MANAGERS	-	CHEQUITA MCCULLOUGH
CUSTOMER SERV. REP.	-	_____ N/A _____
BUILDING ENGINEER	-	DON DEL BONO
MANAGEMENT OFFICE	-	(408) 467-7150
MANAGEMENT OFFICE FAX	-	(408) 467-7160

CONSENT OF INDEPENDENT ACCOUNTANTS

As independent public accountants, we hereby consent to the incorporation of our report dated November 24, 1999 included in the form 10-K, into the Company's previously filed Registration Statements (Files No's. 333-85187 and 333-95653) on Form 8.

/s/ Arthur Andersen LLP

San Jose, California
January 26, 2000

3-MOS
OCT-30-1999
NOV-01-1998
OCT-30-1999
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