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Date 10/31/06

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October 30, 2006

VIA OVERNIGHT DELIVERY

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Sharla Dillon
Dockets and Record Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

06-00271

T.R.A. DOCKET ROOM
2006 OCT 31 PM 1:42

Re: Joint Application of McDATA Corporation, Computer Network Technology Corporation and Brocade Communications Systems, Inc., For Approval of the Indirect Transfer of Control of Computer Network Technology Corporation

Dear Ms. Dillon:

On behalf of McDATA Corporation, Computer Network Technology Corporation and Brocade Communications Systems, Inc., enclosed for filing are an original and thirteen (13) copies of the above-referenced Application. Also enclosed is a check in the amount of $25.00 for the filing fee.

Please date-stamp the enclosed extra copy of this filing and return it in the self-addressed, stamped envelope provided. Should you have any questions, please do not hesitate to contact the undersigned (202) 424-7500.

Respectfully submitted,

Katie Besha

William B. Wilhelm, Jr.
Brett P. Ferenchak
Katie B. Besha

BEFORE THE
TENNESSEE REGULATORY AUTHORITY

Joint Application of	)	
McDATA Corporation,	)	
Computer Network Technology Corporation	)	
	)	Docket No. _____
and	)	
Brocade Communications Systems, Inc.	)	
For Approval of the Indirect Transfer of Control of Computer Network Technology Corporation	)	

JOINT APPLICATION

McDATA Corporation ("McDATA"), its wholly owned subsidiary Computer Network Technology Corporation ("CNT"), and Brocade Communications Systems, Inc. ("Brocade") (McDATA, CNT and Brocade collectively, "Applicants"), through their undersigned counsel and pursuant to Section 65-4-112 of the Tennessee Code, Tenn. Code Ann. § 65-4-112, and the Rules of the Tennessee Regulatory Authority ("TRA"), hereby request TRA approval or such authority as may be necessary or required to enable the parties to consummate a transaction between McDATA and Brocade through which Brocade will acquire indirect control of CNT, a wholly owned subsidiary of McDATA and an authorized non-dominant provider of telecommunications services.

The Applicants request that the Authority act expeditiously to grant the authority requested herein prior to the Conference scheduled for December 18, 2006, so that the Applicants can timely consummate the proposed transaction to meet important business objectives.

In support of their Application, the Applicants state as follows:

I. DESCRIPTION OF THE APPLICANTS

A. Computer Network Technology Corporation ("CNT")

CNT is a corporation organized under the laws of the state of Minnesota and operated as both CNT and McDATA Services Corporation. CNT's business address is 6000 Nathan Lane North, Minneapolis, Minnesota 55442. CNT is a wholly owned subsidiary of McDATA. CNT was acquired by McDATA in 2005. Prior to its acquisition CNT designed, developed, marketed, sold and supported worldwide sales of data networking solutions involving hardware, firmware, software, professional services, connectivity and remote systems monitoring directly to end users.

In Tennessee, CNT holds a Certificate of Convenience and Necessity authorizing it to provide local exchange and interexchange telecommunications services pursuant to an Order issued in Docket 03-00612 on June 10, 2004. CNT is authorized to provide telecommunications services in 45 other states and the District of Columbia. Its affiliate, CNT Telecom Services, Inc. is authorized to provide telecommunications services in two (2) additional states: Alabama and Virginia. CNT is also authorized by the FCC to provide international and domestic interstate telecommunications services as a non-dominant carrier. After completion of the proposed transaction, CNT will retain its authorization and will continue to provide services to its customers. Further information concerning CNT's legal, technical, managerial and financial qualifications to provide service was submitted with its application for certification and other subsequent filings with the Commission and is, therefore, a matter of public record. CNT respectfully requests that the Commission take official notice of that information and incorporate it herein by reference.

B. McDATA Corporation ("McDATA")

McDATA is a Delaware corporation with principal offices located at 11802 Ridge Parkway, Broomfield, Colorado 80021. McDATA is publicly traded on the NASDAQ Global Select Market. McDATA's Class A common shares are traded under the symbol "MCDTA" and its Class B common shares are traded under the symbol "MCDT". McDATA does not hold any authorizations relating to the provision of telecommunications services.

McDATA designs, develops, markets, sells and supports data storage networking and application infrastructure management solutions involving hardware, firmware, software, professional services, connectivity and remote systems monitoring. It offers a variety of products and services directly to end users and indirectly through channel partners.

Additional information on McDATA is available on the company's website at: http://www.mcdata.com.

C. Brocade Communications Systems, Inc. ("Brocade")

Brocade is a Delaware corporation with principal offices located at 1745 Technology Drive, San Jose, California 95110. Brocade is publicly traded on the NASDAQ Global Select Market under the symbol "BRCD." Brocade does not hold any authorizations relating to the provision of telecommunications services.

Brocade designs, develops, markets, sells, and supports data storage networking and application infrastructure management solutions, offering a line of storage networking products, software and services that enable companies to implement highly available, scalable, manageable, and secure environments for data storage applications. Brocade products are installed around the world at companies, institutions, and other entities ranging from large enterprises to small and medium size businesses. Brocade products and services are marketed,

sold, and supported worldwide. Additional information regarding Brocade is available on the company's website at: http://www.brocade.com.

Brocade has the technical, managerial, and financial qualifications to acquire control of CNT. Brocade is operated by a highly qualified management team, all of whom have extensive backgrounds in information technology, networking and computer industries. Management biographies for the Brocade management team are attached hereto as Exhibit A. Brocade's management team will augment the existing management of McDATA and CNT.[1] Brocade's most recent financial statements from SEC Form 10-K are provided as Exhibit B.

II. CONTACT INFORMATION

Questions or inquiries concerning this Application may be directed to:

For Applicants:

William B. Wilhelm, Jr.
Brett P. Ferenchak
Katie B. Besha
Bingham McCutchen LLP
3000 K Street, NW, Suite 300
Washington, DC 20007-5116
Tel: (202) 424-7500
Fax: (202) 424-7647
Email: william.wilhelm@bingham.com
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katie.besha@bingham.com

For McDATA and CNT:

Larry D. Starns
Corporate Counsel
McDATA Corporation
6000 Nathan Lane North
Minneapolis, MN 55442

[1] Final decisions regarding the post-closing management team of McDATA and CNT have not yet been made, but are expected to consist of highly qualified individuals primarily from the existing Brocade and McDATA/CNT management teams.

Tel: (763) 268-8740
Fax: (763) 268-6810
Email: Larry.Starns@mcdata.com

For Brocade:

Tom MacMitchell
Director of Legal Affairs
Brocade Communications Systems, Inc.
1745 Technology Drive
San Jose, CA 95110
Tel: (408) 333-5833
Fax: (408) 333-5630
Email: tmacmitchell@brocade.com

III. DESCRIPTION OF THE TRANSACTION

McDATA and Brocade have entered into an Agreement and Plan of Reorganization dated as of August 7, 2006 ("Agreement")[2] whereby Brocade will acquire McDATA in an all stock transaction. Specifically, Worldcup Merger Corporation ("Merger Sub"), a wholly owned subsidiary of Brocade created for the purposes of this transaction, will be merged with and into McDATA with McDATA surviving the merger. The merger will be accomplished by (1) the cancellation of the Class A and Class B common stock of McDATA and (2) the conversion of Merger Sub's stock into common stock of McDATA. Under the terms of the Agreement, McDATA stockholders will receive 0.75 shares of Brocade common stock for each share of McDATA Class A common stock and each share of McDATA Class B common stock they hold.[3] As a result of the proposed transaction, CNT will become a wholly owned indirect subsidiary of Brocade. Attached as Exhibit D is an illustrative chart of the proposed transaction.

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[2] A copy of the Agreement is provided as Exhibit C.

[3] Upon completion of the Transaction, McDATA stockholders will own approximately 30 percent of Brocade.

Following the consummation of the proposed transaction, CNT's customers will continue to receive service under the same rates, terms and conditions of service as before. CNT will become a wholly owned indirect subsidiary of Brocade, will continue to operate and provide services to CNT's customers, and will retain the assets used in the provisions of those services. Upon completion of the transfer, however, CNT will change its name to "Brocade Services Corporation." Upon completion of the transaction and the name change, CNT will file (1) an application to change its name including a copy of its amended authority to transact business from the Secretary of State and (2) revised tariffs to reflect the name change. CNT currently does not have any customers in Tennessee and, therefore, does not need to provide notice to customers in Tennessee. Except for the associated name change, the proposed transaction will not involve a change in CNT's operating authority in Tennessee and CNT's tariffs will remain in effect. Aside from the name change, the proposed transaction will be seamless and virtually transparent to Tennessee consumers.

IV. PUBLIC INTEREST CONSIDERATIONS

Applicants respectfully submit that the proposed transaction serves the public interest. In particular, Applicants submit that: (1) the proposed transaction will increase competition in the Tennessee telecommunications market by reinforcing the status of CNT as a viable competitor and (2) the proposed transaction will minimize the disruption of service and, except for the name change, will be virtually transparent to Tennessee consumers.

The proposed transaction is expected to facilitate competition in Tennessee by improving the operational position of CNT. The combination of the products and services of CNT and McDATA with Brocade's complementary products and services will provide customers with the long-term confidence that their strategic requirements for a storage networking infrastructure needed for increased productivity, business continuity and regulatory compliance will be met.

Moreover, given that the proposed transaction will not affect CNT's rates, terms and conditions of services, the proposed transaction will have no negative effects on consumers.

V. CONCLUSION

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application. Accordingly, Applicants respectfully request expedited treatment to permit Applicants to complete the proposed transaction as soon as possible.

Respectfully submitted,

By: 

William B. Wilhelm, Jr.
Brett P. Ferenchak
Katie B. Besha
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Washington, DC 20007-5116
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brett.ferenchak@bingham.com
katie.besha@bingham.com

COUNSEL FOR APPLICANTS

Dated: October 30, 2006

LIST OF EXHIBITS

Exhibit A	-	Management Biographies for Brocade
Exhibit B	-	Financial Statements for Brocade
Exhibit C	-	Agreement
Exhibit D	-	Illustrative Chart

Verifications

EXHIBIT A

Management Biographies of Brocade

BROCADE MANAGEMENT BIOGRAPHIES

Michael Klayko has served as Brocade's Chief Executive Officer and a director since January 2005. Prior to that, he served as Vice President, Worldwide Sales from May 2004 until January 2005. From April 2003 until May 2004, Mr. Klayko served as Vice President, Worldwide Marketing and Support, and from January 2003 until April 2003, he was Vice President, OEM Sales. From May 2001 to January 2003, Mr. Klayko was Chief Executive Officer and President of Rhapsody Networks, a privately held technology company acquired by Brocade. From December 1998 to April 2001, Mr. Klayko served as Executive Vice President of McDATA Corporation. From March 1995 to November 1998, Mr. Klayko was Senior Vice President for North American Sales at EMC Corporation, a provider of information storage systems products. Mr. Klayko also held various executive sales and marketing positions at Hewlett-Packard Company and IBM Corporation. Mr. Klayko received a B.S. in Electronic Engineering from Ohio Institute of Technology, in Columbus, Ohio.

Richard Deranleau has served as Brocade's Chief Financial Officer since May 2006. Mr. Deranleau served as interim Chief Financial Officer from December 2005 until May 2006. He has held the title Controller and Treasurer since June 2003 and Vice President since November 2005. From 1992 to May 2003, Mr. Deranleau served in various management positions for Polycom, Inc., including Vice President of Finance and Treasurer from January 2001 to May 2003. Prior to Polycom, Mr. Deranleau held various accounting and finance positions at Tandem Computers and Coopers and Lybrand, LLC. Mr. Deranleau holds a B.S. in Economics from Iowa State University, an M.B.A. from San Jose State University in San Jose, California, and is a Certified Public Accountant.

Tejinder (TJ) Grewal has served as Vice President of Corporate Development since August of 2004, and is responsible for developing and managing strategic Brocade corporate initiatives, including merger and acquisitions, alliances, key business initiatives, and the Brocade investment portfolio. From 1999 through August 2004, Mr. Grewal worked with McKinsey & Company, where he advised software, semiconductor, and consumer hardware clients as part of the company's High Technology Practice. Prior to joining McKinsey, he was a senior manager in Ernst & Young's technology practice. Mr. Grewal holds an MBA from McMaster University and a BA from York University, both in Canada.

Don Jaworski has served as Brocade's Vice President, Product Development since November 2004. Prior to that, Mr. Jaworski served as Brocade's Vice President, Engineering from April 2003 to November 2004. From January 2002 to December 2002, Mr. Jaworski was with Mohr, Davidow Ventures, an early stage venture capital firm, as an Entrepreneur in Residence. From June 2000 to July 2001, Mr. Jaworski served as Senior Vice President of Product Development of Cacheflow, Inc., which acquired SpringBank Network, Inc., a privately held company, where Mr. Jaworski held the position of Chief Executive Officer and Vice President of Engineering from May 2000 to June 2000. Mr. Jaworski holds a B.S. in Computer Science from Bowling Green State University and an M.B.A. from Santa Clara University in Santa Clara, California.

Tyler Wall has served as Vice President and General Counsel of Brocade since June 2005 and as Corporate Secretary and Chief Compliance Officer since July 2005. Prior to joining Brocade and

from February 2000, he served as Vice President and General Counsel of Chordiant Software, Inc., an enterprise software applications corporation, where he was also Corporate Secretary from January 2004. From 1998 to February 2000, he served as Chordiant's Director of Legal Affairs. Prior to joining Chordiant, Mr. Wall worked at Oracle Corporation, a provider of database and application software, where he served as Corporate Counsel for the commercial licensing and distribution group. Mr. Wall holds a B.S. in economics with English literature minor from University of Utah; a J.D. from Santa Clara University School of Law; and an M.B.A. from Santa Clara University School of Business.

Ian Whiting has served as Brocade's Vice President, World Wide Sales since May 2005. From 2003 until his promotion to his current position, Mr. Whiting served as Brocade's Vice President of EMEA and Latin America, and from 2001 through 2002 as Brocade's Executive Director of Partner Sales for EMEA. Prior to joining Brocade in 2001, he was Director of Compaq Storage Works EMEA. Mr. Whiting holds a bachelor's degree in French and German from the University College Swansea, an M.A. in European Business Studies from Cranfield School of Management, and a diploma of marketing from the Chartered Institute of Marketing in Maidenhead, United Kingdom.

EXHIBIT B

Financial Statements for Brocade

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 29, 2005

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	**77-0409517**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*

1745 Technology Drive
San Jose, CA 95110
(408) 333-8000
(Address, including zip code, of Registrant's principal executive offices and 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, $0.001 par value
Preferred Stock Purchase Rights

Indicate by check mark whether the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☑

Indicated by check mark whether the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☑

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. ☑

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes ☑ No ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☑

The aggregate market value of voting and non-voting common equity held by non-affiliates of the Registrant was approximately $1,160,326,000 as of April 30, 2005 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 24, 2005, was 273,027,000 shares.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's Proxy Statement for its 2006 Annual Meeting of Stockholders (the "Proxy Statement"), to be filed with the Securities and Exchange Commission, are incorporated by reference into Part III of this Form 10-K.

BROCADE COMMUNICATIONS SYSTEMS, INC.

FORM 10-K

INDEX

Item 8. ***Financial Statements and Supplementary Data***

BROCADE COMMUNICATIONS SYSTEMS, INC.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

THE BOARD OF DIRECTORS AND STOCKHOLDERS
BROCADE COMMUNICATIONS SYSTEMS, INC:

We have audited accompanying consolidated balance sheets of Brocade Communications Systems, Inc. and subsidiaries (the Company) as of October 29, 2005 and October 30, 2004, and the related consolidated statements of operations, stockholders' equity and comprehensive income (loss), and cash flows for each of the years in the three-year period ended October 29, 2005. In connection with our audits of the consolidated financial statements, we also have audited the financial statement schedule as listed in Item 15(2). These consolidated financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). 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 consolidated financial statements referred to above present fairly, in all material respects, the financial position of Brocade Communications Systems, Inc. and subsidiaries as of October 29, 2005 and October 30, 2004, and the results of their operations and their cash flows for each of the years in the three-year period ended October 29, 2005, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the related financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, present fairly, in all material respects, the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of Brocade Communications Systems, Inc. and subsidiaries internal control over financial reporting as of October 29, 2005, based on the criteria established in "Internal Control — Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated January 16, 2006 expressed an unqualified opinion on management's assessment of, and the effective operation of, internal control over financial reporting.

/s/ KPMG LLP

Mountain View, California
January 16, 2006

BROCADE COMMUNICATIONS SYSTEMS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

	Fiscal Year Ended		
	October 29, 2005	October 30, 2004	October 25, 2003
	(In thousands, except per share amounts)		
Net revenues	$ 574,120	$ 596,265	$ 525,277
Cost of revenues	251,161	268,974	241,163
Gross margin	322,959	327,291	284,114
Operating expenses:			
Research and development	130,936	141,998	145,896
Sales and marketing	101,202	102,445	115,075
General and administrative	25,189	24,593	21,306
Internal review and SEC investigation costs	14,027	—	—
Settlement of an acquisition-related claim	—	6,943	—
Amortization of deferred stock compensation	1,512	537	649
Restructuring costs (reversals)	(670)	8,966	20,828
In-process research and development	7,784	—	134,898
Lease termination charge and other, net	—	75,591	—
Total operating expenses	279,980	361,073	438,652
Income (loss) from operations	42,979	(33,782)	(154,538)
Interest and other income, net	22,656	18,786	18,424
Interest expense	(7,693)	(10,677)	(13,339)
Gain on repurchases of convertible subordinated debt	2,318	5,613	11,118
Gain (loss) on investments, net	(5,062)	436	3,638
Income (loss) before provision for income taxes	55,198	(19,624)	(134,697)
Income tax provision	12,077	14,070	11,852
Net income (loss)	$ 43,121	$ (33,694)	$(146,549)
Net income (loss) per share — basic	$ 0.16	$ (0.13)	$ (0.58)
Net income (loss) per share — diluted	$ 0.16	$ (0.13)	$ (0.58)
Shares used in per share calculation — basic	268,176	260,446	250,610
Shares used in per share calculation — diluted	270,260	260,446	250,610

See accompanying notes to consolidated financial statements.

BROCADE COMMUNICATIONS SYSTEMS, INC.

CONSOLIDATED BALANCE SHEETS

	October 29, 2005	October 30, 2004
	(In thousands, except par value)	
ASSETS		
Current assets:		
Cash and cash equivalents	$ 182,001	$ 79,375
Short-term investments	209,865	406,933
Total cash, cash equivalents and short-term investments	391,866	486,308
Restricted short-term investments	277,230	—
Accounts receivable, net of allowances of $4,942 and $3,861 in 2005 and 2004, respectively	70,104	95,778
Inventories	11,030	5,597
Prepaid expenses and other current assets	23,859	19,131
Total current assets	774,089	606,814
Long-term investments	95,306	250,600
Property and equipment, net	108,118	124,701
Other assets	8,168	5,267
Total assets	$ 985,681	$ 987,382
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 23,778	$ 40,826
Accrued employee compensation	37,762	33,330
Deferred revenue	45,488	34,886
Current liabilities associated with lease losses	4,659	5,677
Other accrued liabilities	73,783	57,933
Convertible subordinated debt	278,883	—
Total current liabilities	464,353	172,652
Non-current liabilities associated with lease losses	12,481	16,799
Convertible subordinated debt	—	352,279
Commitments and contingencies (Note 9)		
Stockholders' equity:		
Preferred stock, $0.001 par value 5,000 shares authorized, no shares issued and outstanding	—	—
Common stock, $0.001 par value, 800,000 shares authorized:		
Issued and outstanding: 269,695 and 264,242 shares at October 29, 2005 and October 30, 2004, respectively	270	264
Additional paid-in capital	855,563	832,655
Deferred stock compensation	(3,180)	(5,174)
Accumulated other comprehensive income	(3,974)	860
Accumulated deficit	(339,832)	(382,953)
Total stockholders' equity	508,847	445,652
Total liabilities and stockholders' equity	$ 985,681	$ 987,382

See accompanying notes to consolidated financial statements.

BROCADE COMMUNICATIONS SYSTEMS, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY AND COMPREHENSIVE INCOME (LOSS)

	Common Stock Shares	Common Stock Amount	Additional Paid-In Capital	Deferred Stock Compensation	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity	Comprehensive Income (Loss)
					(In thousands)			
Balances at October 26, 2002	234,652	$ 235	$ 649,000	$ (6,348)	$ 6,078	$ (202,710)	$ 446,255	$ —
Issuance of common stock	3,511	3	11,641	—	—	—	11,644	—
Issuance of common stock related to the Rhapsody acquisition	19,735	20	134,853	—	—	—	134,873	—
Warrants issued related to the Rhapsody acquisition	—	—	1,939	—	—	—	1,939	—
Change in deferred stock compensation	—	—	(3,777)	3,777	—	—	—	—
Deferred stock compensation related to the acquisition of Rhapsody	—	—	—	(1,677)	—	—	(1,677)	—
Deferred stock compensation related to the change in measurement dates	—	—	1,571	(1,571)	—	—	—	—
Amortization of deferred stock compensation	—	—	—	1,597	—	—	1,597	—
Stock-based compensation expense	—	—	193	—	—	—	193	—
Repurchase of common stock	(257)	—	(126)	—	—	—	(126)	—
Change in unrealized gain (loss) on marketable equity securities and investments, net of tax	—	—	—	—	(1,094)	—	(1,094)	(1,094)
Change in cumulative translation adjustments	—	—	—	—	813	—	813	813
Net loss	—	—	—	—	—	(146,549)	(146,549)	(146,549)
Balances at October 25, 2003	257,641	258	795,294	(4,222)	5,797	(349,259)	447,868	(146,830)
Issuance of common stock	5,461	5	24,747	—	—	—	24,752	—
Issuance of common stock for acquisition-related claim	1,346	1	6,942	—	—	—	6,943	—
Repurchase and retirement of common stock	(206)	—	(288)	—	—	—	(288)	—
Change in deferred stock compensation	—	—	3,335	(3,335)	—	—	—	—
Deferred stock compensation related restricted stock grants	—	—	1,705	(1,705)	—	—	—	—
Amortization of deferred stock compensation	—	—	—	4,088	—	—	4,088	—
Stock-based compensation expense	—	—	920	—	—	—	920	—
Change in unrealized gain (loss) on marketable equity securities and investments, net of tax	—	—	—	—	(5,219)	—	(5,219)	(5,219)
Change in cumulative translation adjustments	—	—	—	—	282	—	282	282
Net loss	—	—	—	—	—	(33,694)	(33,694)	(33,694)
Balances at October 30, 2004	264,242	264	832,655	(5,174)	860	(382,953)	445,652	(38,631)
Issuance of common stock	6,665	7	30,032	—	—	—	30,039	—
Repurchase and retirement of common stock	(62)	—	(326)	—	—	—	(326)	—
Common stock repurchase program	(1,150)	(1)	(7,049)	—	—	—	(7,050)	—
Tax benefits from employee stock option transactions	—	—	2,571	—	—	—	2,571	—
Change in deferred stock compensation	—	—	(4,231)	4,231	—	—	—	—
Deferred stock compensation related restricted stock grants and Therion acquisition	—	—	1,911	(1,622)	—	—	289	—
Amortization of deferred stock compensation	—	—	—	(615)	—	—	(615)	—
Change in unrealized gain (loss) on marketable equity securities and investments, net of tax	—	—	—	—	(4,270)	—	(4,270)	(4,270)
Change in cumulative translation adjustments	—	—	—	—	(564)	—	(564)	(564)
Net income	—	—	—	—	—	43,121	43,121	43,121
Balances at October 29, 2005	269,695	$ 270	$ 855,563	$ (3,180)	$ (3,974)	$ (339,832)	$ 508,847	$ 38,287

See accompanying notes to consolidated financial statements

BROCADE COMMUNICATIONS SYSTEMS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

	Fiscal Year Ended		
	October 29, 2005	October 30, 2004	October 25, 2003
		(In thousands)	
Cash flows from operating activities:			
Net income (loss)	$ 43,121	$ (33,694)	$ (146,549)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Tax benefit from employee stock plans	2,571	—	—
Depreciation and amortization	46,203	52,162	46,941
Loss on disposal of property and equipment	1,879	8,510	4,568
Amortization of debt issuance costs	1,366	1,929	2,440
(Gain) loss on investments and marketable equity securities, net	5,178	(202)	(3,640)
Gain on repurchases of convertible subordinated debt	(2,318)	(5,613)	(11,118)
Provision for doubtful accounts receivable and sales returns	2,955	3,406	3,137
Non-cash compensation expense	377	5,008	1,790
Settlement of an acquisition-related claim	—	6,943	—
Non-cash restructuring charges	—	4,995	8,088
In-process research and development	7,784	—	134,898
Changes in assets and liabilities:			
Accounts receivable	21,312	(24,249)	19,635
Inventories	(5,433)	(1,636)	1,441
Prepaid expenses and other assets	(4,196)	1,089	4,739
Accounts payable	(17,117)	4,874	(24,394)
Accrued employee compensation	4,432	2,784	5,712
Deferred revenue	10,602	14,994	(2,726)
Other accrued liabilities	12,394	6,595	7,206
Liabilities associated with lease losses	(5,245)	(5,910)	(8,660)
Net cash provided by operating activities	125,865	41,985	43,508
Cash flows from investing activities:			
Purchases of short-term investments	(254,642)	(98,126)	(53,954)
Purchases of long-term investments	(202,764)	(288,436)	(130,468)
Proceeds from maturities of short-term investments	618,063	72,025	62,543
Proceeds from sales and maturities of long-term investments	178,428	118,078	30,859
Proceeds from sales of marketable equity securities	—	—	5,454
Purchases of property and equipment	(27,267)	(53,758)	(31,306)
Purchases of non-marketable minority equity investments	(3,498)	(500)	—
Purchases of restricted short-term investments	(275,995)	—	—
Cash acquired from (paid in connection with) an acquisition	(7,185)	—	2,453
Net cash provided by (used in) investing activities	25,140	(250,717)	(114,419)
Cash flows from financing activities:			
Repurchases of convertible subordinated debt	(70,485)	(84,366)	(94,386)
Accrual (settlement) of repurchase obligation	—	(9,029)	9,029
Proceeds from issuance of common stock, net	29,720	21,207	11,515
Common stock repurchase program	(7,050)	—	—
Payments on assumed capital lease and debt obligations for Rhapsody acquisition	—	—	(12,583)
Net cash used in financing activities	(47,815)	(72,188)	(86,425)
Effect of exchange rate fluctuations on cash and cash equivalents	(564)	283	813
Net increase (decrease) in cash and cash equivalents	102,626	(280,637)	(156,523)
Cash and cash equivalents, beginning of year	79,375	360,012	516,535
Cash and cash equivalents, end of year	$ 182,001	$ 79,375	$ 360,012
Supplemental disclosure of cash flow information:			
Common stock issued for acquisition of Rhapsody, net of acquisition costs	$ —	$ —	$ 137,134
Net assets acquired from acquisition of Rhapsody	$ —	$ —	$ 3,556
Cash paid for interest	$ 8,195	$ 11,165	$ 14,056
Cash paid for income taxes	$ 3,193	$ 4,047	$ 4,831

See accompanying notes to consolidated financial statements.

BROCADE COMMUNICATIONS SYSTEMS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Operations of Brocade

Brocade Communications Systems, Inc. (Brocade or the Company) designs, develops, markets, sells, and supports data storage networking products and services, offering a line of storage networking products that enable companies to implement highly available, scalable, manageable, and secure environments for data storage applications. The Brocade SilkWorm family of storage area networking (SAN) products is designed to help companies reduce the cost and complexity of managing business information within a data storage environment. In addition, the Brocade Tapestry ™ family of application infrastructure solutions extends the ability to manage and optimize application and information resources across the enterprise. Brocade products and services are marketed, sold, and supported worldwide to end-user customers through distribution partners, including original equipment manufacturers (OEMs), value-added distributors, systems integrators, and value-added resellers.

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

Brocade, the Brocade B weave logo, Fabric OS, Secure Fabric OS, and SilkWorm are registered trademarks and Tapestry is a trademark of Brocade Communications Systems, Inc., in the United States and in other countries. All other brands, products, or service names are or may be trademarks or service marks of, and are used to identify, products or services of their respective owners.

2. Summary of Significant Accounting Policies

Fiscal Year

The Company's fiscal year is the 52 or 53 weeks ending on the last Saturday in October. As is customary for companies that use the 52/53-week convention, every fifth year contains a 53-week year. Fiscal years 2005 and 2003 were both 52-week fiscal years. Fiscal year 2004 was a 53-week fiscal year. The second quarter of fiscal year 2004 consisted of 14 weeks, which is one week more than a typical quarter.

Principles of Consolidation

The Consolidated Financial Statements include the accounts of Brocade Communication Systems, Inc. and its subsidiaries. All significant intercompany accounts and transactions have been eliminated.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original or remaining maturity of three months or less at the date of purchase to be cash equivalents.

Investments and Equity Securities

Investment securities with original or remaining maturities of more than three months but less than one year are considered short-term investments. Investment securities with original or remaining maturities of one year or more are considered long-term investments. Short-term and long-term investments consist of debt securities issued by United States government agencies, municipal government obligations, and corporate bonds and notes. In the first quarter of fiscal year 2005, the Company concluded that it was appropriate to classify its auction rate securities as short-term investments. These investments were previously classified as cash and cash equivalents. Accordingly, we have revised our October 30, 2004 balance sheet to report these securities totaling $35.2 million as short-term investments on the accompanying Consolidated Balance Sheets.

Short-term and long-term investments are maintained at three major financial institutions, are classified as available-for-sale, and are recorded on the accompanying Consolidated Balance Sheets at fair value. Fair value is determined using quoted market prices for those securities. Unrealized holding gains and losses are included as a separate component of accumulated other comprehensive income on the accompanying Consolidated Balance

Sheets, net of any related tax effect. Realized gains and losses are calculated based on the specific identification method and are included in gain (loss) on investments, net on the Consolidated Statements of Operations.

Restricted short-term investments consists of debt securities issued by the United States government. These investments are maintained at one major financial institution, and are recorded on the accompanying Consolidated Balance Sheets at fair value.

The Company recognizes an impairment charge when the declines in the fair values of its investments below the cost basis are judged to be other-than-temporary. The Company considers various factors in determining whether to recognize an impairment charge, including the length of time and extent to which the fair value has been less than the Company's cost basis, the financial condition and near-term prospects of the investee, and the Company's intent and ability to hold the investment for a period of time sufficient to allow for any anticipated recovery in market value.

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

From time to time the Company makes equity investments in non-publicly traded companies. These investments are included in other assets on the accompanying Consolidated Balance Sheets, and are generally accounted for under the cost method if the Company does not have the ability to exercise significant influence over the respective company's operating and financial policies. The Company monitors its investments for impairment on a quarterly basis and makes appropriate reductions in carrying values when such impairments are determined to be other-than-temporary. Impairment charges are included in interest and other income, net on the Consolidated Statements of Operations. Factors used in determining an impairment include, but are not limited to, the current business environment including competition and uncertainty of financial condition; going concern considerations such as the rate at which the investee company utilizes cash, and the investee company's ability to obtain additional private financing to fulfill its stated business plan; the need for changes to the investee company's existing business model due to changing business environments and its ability to successfully implement necessary changes; and comparable valuations. If an investment is determined to be impaired, a determination is made as to whether such impairment is other-than-temporary (see Note 14). As of October 29, 2005 and October 30, 2004, the carrying values of the Company's equity investments in non-publicly traded companies were $3.8 million and $0.5 million, respectively.

Fair Value of Financial Instruments

Fair value of certain of the Company's financial instruments, including cash and cash equivalents, accounts receivable, employee notes receivable, accounts payable, and accrued liabilities, approximate cost because of their short maturities. The fair value of investments and marketable equity securities is determined using quoted market prices for those securities or similar financial instruments. The fair value of convertible subordinated debt is determined using the average bid and ask price on the Portal Market for the convertible debt.

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. The Company records inventory write-down based on excess and obsolete inventories determined primarily by future demand forecasts. All of our inventory is located offsite.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation is computed using the straight-line method over the estimated useful lives of the assets. Estimated useful lives of four

years are used for computer equipment, software, furniture and fixtures, except for the Company's enterprise-wide, integrated business information system, which is being depreciated over five to seven years. Estimated useful lives of up to four years are used for engineering and other equipment. Estimated useful life of 30 years is used for buildings. Leasehold improvements are amortized using the straight-line method over the shorter of the useful life of the asset or the remaining term of the lease.

Notes Receivable from Non-Executive Employees

Prior to fiscal year 2003, the Company historically provided loans to various non-executive employees principally related to the respective employees' relocation to the San Francisco Bay area. The loans are generally evidenced by secured promissory notes to the Company and bear interest at prevailing rates. Notes receivable from employees are included in prepaid expenses and other current assets, and other assets in the accompanying Consolidated Balance Sheets depending upon their remaining term. As of October 29, 2005 and October 30, 2004, the Company had outstanding loans to various employees totaling less than $0.1 million and $1.6 million, respectively.

Accrued Employee Compensation

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

Concentrations

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

A majority of the Company's trade receivable balance is derived from sales to OEM partners in the computer storage and server industry. As of October 29, 2005, three customers accounted for 37 percent, 18 percent, and 10 percent of total accounts receivable. As of October 30, 2004, three customers accounted for 29 percent, 26 percent, and 20 percent of total accounts receivable. The Company performs ongoing credit evaluations of its customers and does not require collateral on accounts receivable balances. The Company has established reserves for credit losses and sales returns, and other allowances. The Company has not experienced material credit losses in any of the periods presented.

For the fiscal years ended October 29, 2005, October 30, 2004, and October 25, 2003, three customers each represented greater than ten percent of the Company's total revenues for combined totals of 71 percent, 70 percent, and 67 percent of total revenues, respectively. The level of sales to any single customer may vary and the loss of any one of these customers, or a decrease in the level of sales to any one of these customers, could seriously harm the Company's financial condition and results of operations.

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

The Company's business is concentrated in the storage area networking industry, which has been impacted by unfavorable economic conditions and reduced global information technology ("IT") spending rates. Accordingly, the Company's future success depends upon the buying patterns of customers in the storage area networking industry, their response to current and future IT investment trends, and the continued demand by such customers for the Company's products. The Company's continued success will depend upon its ability to enhance its existing

products and to develop and introduce, on a timely basis, new cost-effective products and features that keep pace with technological developments and emerging industry standards.

Revenue Recognition

Product revenue. Product revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred, the fee is fixed or determinable, and collection is probable. However, for newly introduced products, many of the Company's large OEM customers require a product qualification period during which the Company's products are tested and approved by the OEM customer for sale to their customers. Revenue recognition, and related cost, is deferred for shipments to new OEM customers and for shipments of newly introduced products to existing OEM customers until satisfactory evidence of completion of the product qualification has been received from the OEM customer. Revenue from sales to the Company's master reseller customers is recognized in the same period in which the product is actually sold by the master reseller (sell-through).

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

Service revenue. Service revenue consists of training, warranty, and maintenance arrangements, including post-contract customer support ("PCS") services. PCS services are offered under renewable, annual fee-based contracts or as part of multiple element arrangements and typically include upgrades and enhancements to the Company's software operating system, and telephone support. Service revenue, including revenue allocated to PCS elements, is deferred and recognized ratably over the contractual period. Service contracts are typically one to three years in length. Training revenue is recognized upon completion of the training. Service and training revenue were not material in any of the periods presented.

Multiple-element arrangements. The Company's multiple-element product offerings include computer hardware and software products, and support services. The Company also sells certain software products and support services separately. The Company's software products are essential to the functionality of its hardware products and are, therefore, accounted for in accordance with Statement of Position 97-2, *"Software Revenue Recognition"* ("SOP 97-2"), as amended. The Company allocates revenue to each element based upon vendor-specific objective evidence ("VSOE") of the fair value of the element or, if VSOE is not available, by application of the residual method. VSOE of the fair value for an element is based upon the price charged when the element is sold separately. Revenue allocated to each element is then recognized when the basic revenue recognition criteria are met for each element.

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

Software Development Costs

Eligible software development costs are capitalized upon the establishment of technological feasibility in accordance with Statement of Financial Accounting Standards No. 86, *"Accounting for the Costs of Computer Software to be Sold, Leased, or Otherwise Marketed."* Technological feasibility is defined as completion of designing, coding and testing activities. Total eligible software development costs have not been material to date.

Costs related to internally developed software and software purchased for internal use are capitalized in accordance with Statement of Position 98-1, *"Accounting for Costs of Computer Software Developed or Obtained for Internal Use."* During the year ended October 28, 2000, the Company purchased an enterprise-wide, integrated business information system. As of October 29, 2005, a net book value of $3.5 million related to the purchase and

subsequent implementation and upgrade of this system was included in property and equipment. These costs are being depreciated over the initial estimated useful life of seven years.

Advertising Costs

The Company expenses all advertising costs as incurred. Advertising costs were not material in any of the periods presented.

Impairment of Long-lived Assets

Long-lived assets to be held and used are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Determination of recoverability is based on an estimate of undiscounted future cash flows resulting from the use of the asset and its eventual disposition. Measurement of an impairment loss for long-lived assets that management expects to hold and use is based on the fair value of the asset as estimated using a discounted cash flow model. Long-lived assets to be disposed of are reported at the lower of carrying amount or fair value less costs to sell.

Income Taxes

Income tax expense is based on pretax financial accounting income. Deferred tax assets and liabilities are recognized for the expected tax consequences of temporary differences between the tax bases of assets and liabilities and their reported amounts, along with net operating loss carryforwards and credit carryforwards. A valuation allowance is recognized to the extent that it is more likely than not that the tax benefits will not be realized.

Computation of Net Income (Loss) per Share

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

Foreign Currency Translation

Assets and liabilities of non-United States subsidiaries that operate where the functional currency is the local currency are translated to United States dollars at exchange rates in effect at the balance sheet date with the resulting translation adjustments recorded as a separate component of accumulated other comprehensive income. Income and expense accounts are translated at average exchange rates during the period. Where the functional currency is the United States dollar, translation adjustments are recorded in other income or expense.

Stock-Based Compensation

The Company accounts for its stock option plans and its Employee Stock Purchase Plan in accordance with the provisions of Accounting Principles Board Opinion 25, *"Accounting for Stock Issued To Employees,"* ("APB 25"), whereby the difference between the exercise price and the fair market value on the date of grant is recognized as compensation expense. Under the intrinsic value method of accounting, no compensation expense is recognized in the Company's Consolidated Statements of Operations when the exercise price of the Company's employee stock option grants equals the market price of the underlying common stock on the date of grant, and the measurement date of the option grant is certain. The measurement date is certain when the date of grant is fixed and determinable. When the measurement date is not certain, then the Company records stock compensation expense using variable accounting under APB 25. From 1999 through July 2003, the Company granted 98.8 million options subject to variable accounting as the measurement date of the options grant was not certain. As of October 29, 2005, 3.3 million options with a weighted average exercise price of $13.00 and a weighted average remaining life of 6.1 years remain outstanding and continue to be accounted for under variable accounting. When variable accounting is applied to stock option grants, the Company remeasures the intrinsic value of the options at the end of each

reporting period or until the options are exercised, cancelled or expire unexercised. Compensation expense in any given period is calculated as the difference between total earned compensation at the end of the period, less total earned compensation at the beginning of the period. Compensation earned is calculated under an accelerated vesting method in accordance with FASB Interpretation 28.

Statement of Financial Accounting Standards No. 123, *"Accounting for Stock-Based Compensation,"* (SFAS 123), established a fair value based method of accounting for stock-based 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 under SFAS 123.

Statement of Financial Accounting Standards No. 148, *"Accounting for Stock-Based Compensation — Transition and Disclosure an Amendment of FASB Statement No. 123"* (SFAS 148), amended the disclosure requirements of SFAS 123 to require more prominent disclosures in both annual and interim financial statements regarding the method of accounting for stock-based employee compensation and the effect of the method used on reported results. The pro forma information resulting from the use of the fair value based method under SFAS 123 is as follows (in thousands except per share amounts):

	Fiscal Year Ended		
	October 29, 2005	October 30, 2004	October 25, 2003
Net income (loss)	$ 43,121	$ (33,694)	$(146,549)
Add: Stock-based employee compensation expense (benefit) included in reported net income (loss), net of tax	(616)	5,007	1,789
Deduct: Stock-based compensation expense determined under fair value based method, net of tax	(19,337)	(37,376)	(35,908)
Pro forma net profit (loss)	$ 23,168	$ (66,063)	$(180,668)
Basic earnings (loss) per share:			
As reported	$ 0.16	$ (0.13)	$ (0.58)
Pro Forma	$ 0.09	$ (0.25)	$ (0.72)
Diluted earnings (loss) per share:			
As reported	$ 0.16	$ (0.13)	$ (0.58)
Pro Forma	$ 0.09	$ (0.25)	$ (0.72)

The fair value of stock options granted under the Plans during fiscal year 2005, and the fair value of common stock issued under the Purchase Plan during fiscal year 2005, was approximately $27.7 million. Pro forma compensation expense associated with stock options granted under the Plans during fiscal year 2005, and common stock issued under the Purchase Plan during fiscal year 2005, was approximately $9.8 million.

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

	Employee Stock Option Plans			Employee Stock Purchase Plan		
	October 29, 2005	October 30, 2004	October 25, 2003	October 29, 2005	October 30, 2004	October 25, 2003
Expected dividend yield	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Risk-free interest rate	3.7-4.1%	1.8-3.5%	1.2-3.0%	2.5-3.4%	1.0-1.5%	0.9-1.0%
Expected volatility	45.8%	52.0%	70.5%	45.8%	43.6%	63.5%
Expected life (in years)	2.8	2.7	1.9	0.5	0.5	0.5

The Black-Scholes option-pricing model was developed for use in estimating the fair value of traded options that have no vesting restrictions and are fully transferable. In addition, option-pricing models require the input of highly subjective assumptions, including the expected stock price volatility. Because the Company's employee stock options have characteristics significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing

models do not necessarily provide a reliable single measure of the fair value of the Company's options. Under the Black-Scholes option-pricing model, the weighted-average fair value of employee stock options granted during the years ended October 29, 2005, October 30, 2004, and October 25, 2003, was $1.94 per share, $1.97 per share, and $1.96 per share, respectively. When the measurement date is not certain, compensation cost is estimated based on the intrinsic value of the award remeasured at the end of each reporting period.

Use of Estimates in Preparation of Consolidated Financial Statements

The preparation of financial statements and related disclosures in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the Consolidated Financial Statements and accompanying notes. Estimates are used for, but not limited to, the useful lives of fixed assets, allowances for doubtful accounts and product returns, inventory and warranty reserves, facilities lease losses and other charges, fixed asset and investment impairment charges, accrued liabilities and other reserves, taxes, and contingencies. Actual results could differ materially from these estimates.

Recent Accounting Pronouncements

In November 2004, the FASB issued Statement of Financial Accounting Standards No. 151, *"Inventory Costs — an amendment of ARB No. 43"* ("SFAS 151"), which is the result of its efforts to converge U.S. accounting standards for inventories with International Accounting Standards. SFAS No. 151 requires idle facility expenses, freight, handling costs, and wasted material (spoilage) costs to be recognized as current-period charges. It also requires that allocation of fixed production overheads to the costs of conversion be based on the normal capacity of the production facilities. SFAS No. 151 will be effective for inventory costs incurred during fiscal years beginning after June 15, 2005. The Company does not expect the adoption of SFAS 151 will have material impact on its financial position, results of operations, and cash flows.

In December 2004, the FASB issued a revision of Statement of Financial Accounting Standards No. 123, *"Accounting for Stock-Based Compensation"* ("SFAS 123R"). SFAS 123R supersedes APB Opinion No. 25, *"Accounting for Stock Issued to Employees,"* and its related implementation guidance. SFAS 123R establishes standards for the accounting for transactions in which an entity incurs liabilities in exchange for goods or services that are based on the fair value of the entity's equity instruments or that may be settled by the issuance of those equity instruments. SFAS 123R does not change the accounting guidance for share-based payment transactions with parties other than employees provided in SFAS 123 as originally issued and EITF Issue No. 96-18, *"Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services."* SFAS 123R is effective for the first interim or annual reporting period of the company's first fiscal year that begins on or after June 15, 2005. The Company expects the adoption of SFAS 123R to have a negative impact on its financial position, results of operations, and cash flows. See Note 2, "Summary of Significant Accounting Policies," of the Notes to Consolidated Financial Statements for information related to the pro forma effects on the Company's reported net income (loss) and net income (loss) per share of applying the fair value recognition provision of the previous SFAS 123 to stock-based compensation.

In March 2005, the U.S. Securities and Exchange Commission, or SEC, released Staff Accounting Bulletin 107, *"Share-Based Payments,"* ("SAB 107"). The interpretations in SAB 107 express views of the SEC staff, or staff, regarding the interaction between SFAS 123R and certain SEC rules and regulations, and provide the staff's views regarding the valuation of share-based payment arrangements for public companies. In particular, SAB 107 provides guidance related to share-based payment transactions with non-employees, the transition from nonpublic to public entity status, valuation methods (including assumptions such as expected volatility and expected term), the accounting for certain redeemable financial instruments issued under share-based payment arrangements, the classification of compensation expense, non-GAAP financial measures, first-time adoption of SFAS 123R in an interim period, capitalization of compensation cost related to share-based payment arrangements, the accounting for income tax effects of share-based payment arrangements upon adoption of SFAS 123R, the modification of employee share options prior to adoption of SFAS 123R and disclosures in Management's Discussion and Analysis subsequent to adoption of SFAS 123R. SAB 107 requires stock-based compensation be classified in the same expense lines as cash compensation is reported for the same employees. The Company will apply the principles of SAB 107 in conjunction with its adoption of SFAS 123R.

In June 2005, the FASB issued Statement of Financial Accounting Standards No. 154, *"Accounting Changes and Error Corrections"* ("SFAS 154"), a replacement of APB Opinion No. 20, *"Accounting Changes"*, and Statement of Financial Accounting Standards No. 3, *"Reporting Accounting Changes in Interim Financial Statements."* The Statement applies to all voluntary changes in accounting principle and changes the requirements for accounting for and reporting of a change in accounting principle. SFAS 154 requires retrospective application to prior periods' financial statements of a voluntary change in accounting principle unless it is impracticable. It is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. Earlier application is permitted for accounting changes and corrections of errors made occurring in fiscal years beginning after June 1, 2005.

In June 2005, the FASB issued FASB Staff Position No. 143-1, *"Accounting for Electronic Equipment Waste Obligations"* ("FSP 143-1"). FSP 143-1 was issued to address the accounting for obligations associated with Directive 2002/96/EC on Waste Electrical and Electronic Equipment (the "Directive") adopted by the European Union. The Directive obligates a commercial user to incur costs associated with the retirement of a specified asset that qualifies as historical waste equipment effective August 13, 2005. FSP 143-1 requires commercial users to apply the provisions of SFAS 143, *Accounting for Conditional Asset Retirement Obligations*, and the related FASB Interpretation No. 47, *Accounting for Conditional Asset Retirement Obligations*, to the obligation associated with historical waste. FSP 143-1 is effective the later of the first reporting period ending after June 8, 2005 or the date of the adoption of the law by the applicable European Union-member. The Company is in the process of determining the effect of the adoption of FSP 143-1 will have on its financial position, results of operations, and cash flows.

Reclassifications

Certain reclassifications have been made to prior year balances in order to conform to the current year presentation except where information required to make those reclassifications is not available. For fiscal years 2005 and 2004, engineering costs related to the ongoing maintenance of existing products is included in cost of revenues. However, since the information required to separately identify these costs in fiscal year 2003 was not available, these engineering costs are included in research and development expense in fiscal year 2003.

3. Acquisitions

Therion Software Corporation

On May 3, 2005, the Company completed its acquisition of Therion Software Corporation ("Therion"), a privately held developer of software management solutions for the automated provisioning of servers over a storage network based in Redmond, Washington. As of the acquisition date the Company owned approximately 13% of Therion's equity interest through investments totaling $1.0 million. Therion was a development stage company with no recognized revenue and a core technology that had not yet reached technological feasibility. Accordingly, the acquisition of Therion was accounted for as an asset purchase.

The total purchase price was $12.1 million, consisting of $9.3 million cash consideration for Therion's preferred and common stock holders, assumed stock options valued at $1.7 million, the Company's initial investment of $1.0 million, and direct acquisition cost of $0.1 million. Of the $9.3 million cash consideration, the Company paid $7.3 million upon closing the transaction and recorded the remaining liability of $2.0 million to be paid over the next eighteen months. The fair value of the assumed stock options was determined using the Black-Scholes option-pricing model. In connection with this acquisition, the Company recorded a $7.8 million in-process research and development charge, and allocated the remaining purchase price to net assets of $2.9 million, deferred stock compensation of $1.5 million, and net liabilities of $0.1 million, based on fair values.

Pro forma results of operations related to the Therion acquisition have not been presented since the result of Therion operations were immaterial in relation to Brocade.

Rhapsody Networks, Inc.

On January 27, 2003, the Company completed its acquisition of Rhapsody Networks, Inc. ("Rhapsody"), a provider of next-generation intelligent switching platforms. In exchange for all of the outstanding securities of Rhapsody, the

Company issued 19.8 million shares of its common stock and assumed warrants to purchase 0.4 million shares of Brocade common stock and options to purchase 0.3 million shares of Brocade common stock. In addition, in the second quarter of fiscal year 2004, the Company recorded a $6.9 million charge in settlement of a claim relating to its acquisition of Rhapsody. Under the terms of the settlement, in the third quarter of fiscal year 2004 the Company issued 1.3 million shares of its common stock to the former Rhapsody shareholders in exchange for a release of claims.

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

As of the acquisition date, Rhapsody was a development stage company with no recognized revenue and a core technology that had not yet reached technological feasibility. Technological feasibility is established when an enterprise has completed all planning, designing, coding, and testing activities necessary to establish that the technology can be utilized to meet design specifications, including functions, features, and technical performance requirements. The Company incurred $17.2 million in expenses related to bringing the Rhapsody core technology to technological feasibility. The Company completed the development of this technology in fiscal year 2004 and is beginning to generate revenues related to this technology. Based upon the factors noted above, the Company concluded that for accounting purposes it was not purchasing a business with an existing revenue stream, but rather a group of assets centered on a core technology that the Company believes will ultimately be developed into a saleable product. As a result, the acquisition of Rhapsody was accounted for as an asset purchase.

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

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

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

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

4. Restructuring Costs

Fiscal 2004 Second Quarter Restructuring

During the three months ended May 1, 2004, the Company implemented a restructuring plan designed to optimize the Company's business model to drive improved profitability through reduction of headcount as well as certain structural changes in the business. The plan encompassed organizational changes, which includes a reduction in force of 110 people, or nine percent, announced on May 19, 2004. As a result, the Company recorded $10.5 million in restructuring costs consisting of severance and benefit charges, equipment impairment charges, and contract termination and other charges. Severance and benefits charges of $7.5 million consisted of severance and related employee termination costs, including outplacement services, associated with the reduction of the Company's workforce. Equipment impairment charges of $1.2 million primarily consisted of excess equipment that is no longer being used as a result of the restructuring program. Contract termination and other charges of $1.7 million were primarily related to the cancellation of certain contracts in connection with the restructuring of certain business functions.

During the three months ended October 30, 2004, the Company recorded a reduction of $1.0 million to restructuring costs, primarily because actual payments were lower than the estimated amount. No other material changes in estimates were made to the fiscal 2004 second quarter restructuring accrual. As of October 29, 2005, there were no remaining liabilities related to this restructuring.

Fiscal 2003 Second Quarter Restructuring

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

Total restructuring costs incurred of $10.9 million consisted of severance and benefit charges, equipment impairment charges, and contract termination and other charges. Severance and benefits charges of $4.2 million consisted of severance and related employee termination costs, including outplacement services, associated with the reduction of the Company's workforce. Equipment impairment charges of $5.2 million primarily consisted of excess equipment that is no longer being used as a result of the restructuring program. Contract termination and other charges of $1.5 million were primarily related to the cancellation of certain contracts in connection with the restructuring of certain business functions.

During the year ended October 29, 2005, the Company recorded a $0.7 million of restructuring reversal, primarily due to recovery of amounts previously written off. During the year ended October 30, 2004, the Company recorded a reduction of $0.5 million to restructuring costs, primarily due to lower than expected outplacement and contract termination costs. No other material changes in estimates were made to the fiscal 2003 second quarter restructuring accrual. As of October 29, 2005, there were no remaining liabilities related to this restructuring.

Fiscal 2003 First Quarter Restructuring

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

Total restructuring costs incurred of $10.1 million consisted of severance and benefit charges, equipment impairment charges, and contract termination and other charges. Severance and benefits charges of $8.5 million consisted of severance and related employee termination costs related to the reduction of the Company's workforce, including outplacement services and the write-off of unrecoverable employee loans of certain terminated employees. Contract termination charges of $0.9 million were primarily related to the cancellation of certain contracts in connection with the restructuring of certain business functions and the consolidation of excess facilities. Equipment

impairment charges of $0.6 million were related to excess computer equipment resulting from the workforce reduction, consolidation of excess facilities, and the restructuring of certain business functions.

No material changes in estimates were made to the fiscal 2003 first quarter restructuring accrual. As of October 29, 2005, there were no remaining liabilities related to this restructuring.

The following table summarizes the total restructuring costs incurred and charged to restructuring expense during the second quarter of fiscal year 2004 and the first and second quarters of fiscal year 2003, costs paid or otherwise settled, and the remaining unpaid or otherwise unsettled accrued liabilities (in thousands) as of October 29, 2005:

	Severance and Benefits	Contract Terminations and Other	Equipment Impairment	Total
Fiscal 2003 restructuring costs	$ 12,714	$ 2,425	$ 5,867	$ 21,006
Cash payments	(10,019)	(1,938)	—	(11,957)
Non-cash charges	(2,221)	—	(5,867)	(8,088)
Adjustments	(178)	—	—	(178)
Remaining accrued liabilities at October 25, 2003	296	487	—	783
Cash payments for 2003 restructuring	(43)	(255)	—	(298)
Adjustments for 2003 restructuring	(225)	(232)	—	(457)
Remaining accrued liabilities for 2003 restructuring	28	—	—	28
Fiscal 2004 second quarter restructuring costs	7,480	1,740	1,241	10,461
Cash payments for 2004 restructuring	(5,661)	(1,692)	—	(7,353)
Non-cash charges	—	—	(1,241)	(1,241)
Adjustments	(981)	(48)	—	(1,029)
Remaining accrued liabilities for 2004 restructuring	838	—	—	838
Total restructuring accrued liabilities at October 30, 2004	866	—	—	866
Cash payments for 2003 restructuring	(28)	—	—	(28)
Cash payments for 2004 restructuring	(838)	—	—	(838)
Total restructuring accrued liabilities at October 29, 2005	$ —	$ —	$ —	$ —

5. Liabilities Associated with Facilities Lease Losses and Asset Impairment Charges

Lease Termination Charge and Other, Net

On November 18, 2003, the Company purchased a building located at its San Jose headquarters. This 194,000 square foot facility was previously leased, and certain unused portions of the facility were previously reserved and included in the facilities lease loss liability noted below. The total consideration for the building purchase was $106.8 million, consisting of the purchase of land and building valued at $30.0 million and a lease termination fee of $76.8 million. The value of the land and building as of the purchase date was determined based on the estimated fair market value of the land and building. As a result of the building purchase, during the quarter ended January 24, 2004, the Company recorded adjustments of $23.7 million to the previously recorded facilities lease loss reserve, deferred rent, and leasehold improvement impairments related to the purchased facility.

During the quarter ended January 24, 2004, the Company consolidated the engineering organization and development, test and interoperability laboratories into the purchased facilities and vacated other existing leased facilities. As a result, the Company recorded a charge of $20.9 million related to estimated facilities lease losses, net of expected sublease income, on the vacated facilities. These charges represented the fair value of the lease liability based on assumptions regarding the vacancy period, sublease terms, and the probability of subleasing this space. The assumptions that the Company used were based on market data, including the then current vacancy rates and lease activities for similar facilities within the area. Should there be changes in real estate market conditions or should it take longer than expected to find a suitable tenant to sublease the remaining vacant facilities, adjustments to the facilities lease losses reserve may be necessary in future periods based upon then current actual events and circumstances.

The following table summarizes the activity related to the lease termination charge and other, net incurred in the year ended October 30, 2004 (in thousands):

Lease termination charge	$ 76,800
Closing costs and other related charges	1,234
Reversal of previously recorded facilities lease loss reserve	(23,731)
Additional reserve booked as a result of facilities consolidation	20,855
Asset impairments associated with facilities consolidation	433
Total charge, net	$ 75,591

Facilities Lease Losses and Related Asset Impairment Charges

During the three months ended October 27, 2001, the Company recorded a charge of $39.8 million related to estimated facilities lease losses, net of expected sublease income, and a charge of $5.7 million in connection with the estimated impairment of certain related leasehold improvements. These charges represented the low-end of an estimated range of $39.8 million to $63.0 million and may be adjusted upon the occurrence of future triggering events.

During the three months ended July 27, 2002, the Company completed a transaction to sublease a portion of these vacant facilities. Accordingly, based on then current market data, the Company revised certain estimates and assumptions, including those related to estimated sublease rates, estimated time to sublease the facilities, expected future operating costs, and expected future use of the facilities. The Company reevaluates its estimates and assumptions on a quarterly basis and makes adjustments to the reserve balance if necessary. No material adjustments were made to the facilities lease losses reserve for the year ended October 30, 2004.

In November 2003 the Company purchased a previously leased building. In addition, the Company consolidated the engineering organization and development, test and interoperability laboratories into the purchased facilities and vacated other existing leased facilities. As a result, the Company recorded adjustments to the facilities lease loss reserve recorded in fiscal year 2001 described above, and recorded additional reserves in connection with the facilities consolidation.

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

	Lease Loss Reserve
Reserve balances at October 25, 2003	$ 24,277
Reversal of previously recorded lease loss reserve associated with building purchase	(16,933)
Additional reserve booked as a result of November 2003 facilities leases	20,855
Cash payments on facilities leases	(5,910)
Non-cash charges and other adjustments, net	187
Reserve balances at October 30, 2004	22,476
Cash payments on facilities leases	(5,202)
Non-cash charges and other adjustments, net	(134)
Reserve balances at October 29, 2005	$ 17,140

Cash payments for facilities leases related to the above noted facilities lease loss reserve will be paid over the respective lease terms through fiscal year 2010.

6. Balance Sheet Details

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

	October 29, 2005	October 30, 2004
Inventories:		
Raw materials	$ 1,517	$ 1,950
Finished goods	9,513	3,647
Total	$ 11,030	$ 5,597
Property and equipment, net:		
Computer equipment and software	$ 68,294	$ 63,524
Engineering and other equipment	123,811	111,109
Furniture and fixtures	4,136	4,429
Land and building	30,000	30,000
Leasehold improvements	41,696	39,520
	267,937	248,582
Less: Accumulated depreciation and amortization	(159,819)	(123,881)
Total	$ 108,118	$ 124,701
Other accrued liabilities:		
Income taxes payable	$ 36,923	$ 27,769
Accrued warranty	1,746	4,669
Inventory purchase commitments	6,634	4,326
Accrued sales programs	8,327	8,231
Accrued restructuring	—	866
Other	20,153	12,072
Total	$ 73,783	$ 57,933

Leasehold improvements at October 29, 2005 and October 30, 2004 are shown net of estimated impairments related to facilities lease losses (see Note 5).

7. Investments and Equity Securities

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

	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
October 29, 2005				
U.S. government and its agencies and municipal obligations	$413,574	$ —	$ (2,629)	$410,945
Corporate bonds and notes	173,021	11	(1,576)	171,456
Equity securities	34	2	—	36
Total	$586,629	$ 13	$ (4,205)	$582,437
Reported as:				
Short-term investments				$209,865
Restricted short-term investments				277,230
Other current assets				36
Long-term investments				95,306
Total				$582,437

	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
October 30, 2004				
U.S. government agencies and municipal obligations	$526,953	$ 1,307	$ (972)	$527,288
Corporate bonds and notes	130,604	146	(505)	130,245
Equity securities	694	164	—	858
Total	$658,251	$ 1,617	$ (1,477)	$658,391
Reported as:				
Short-term investments				$406,933
Other current assets				858
Long-term investments				250,600
Total				$658,391

For the year ended October 29, 2005, gross realized losses on sales of marketable equity securities were $5.2 million primarily associated with the defeasance of the indenture agreement relating to the Company's 2% Convertible Notes. For the year ended October 30, 2004, gross realized gains on sales of marketable equity securities were $0.2 million. For the year ended October 25, 2003, gross realized gains on sales of marketable equity securities were $2.7 million. At October 29, 2005 and October 30, 2004, net unrealized holding gains (loss) of $(4.2) million and $0.1 million, respectively, were included in accumulated other comprehensive income in the accompanying Consolidated Balance Sheets.

The following table provides the breakdown of the investments with unrealized losses at October 29, 2005 and October 30, 2004 (in thousands):

	Less than 12 Months		12 Months or Longer		Total	
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
October 29, 2005						
U.S. government and its agencies and municipal obligations	$324,219	$ (1,769)	$ 69,376	$ (860)	$393,595	$ (2,629)
Corporate bonds and notes	95,303	(1,050)	54,206	(526)	149,509	(1,576)
Total	$419,522	$ (2,819)	$123,582	$ (1,386)	$543,104	$ (4,205)

	Less than 12 Months		12 Months or Longer		Total	
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
October 30, 2004						
U.S. government agencies and municipal obligations	$175,667	$ (972)	$ —	$ —	$175,667	$ (972)
Corporate bonds and notes	95,256	(427)	5,321	(78)	100,577	(505)
Total	$270,923	$ (1,399)	$ 5,321	$ (78)	$276,244	$ (1,477)

The gross unrealized losses related to fixed income securities were due to changes in interest rates. The Company's management has determined that the gross unrealized losses on its investment securities at October 29, 2005 are temporary in nature. The Company reviews its investments to identify and evaluate investments that have indications of possible impairment. Factors considered in determining whether a loss is temporary include the length of time and extent to which fair value has been less than the cost basis, the financial condition and near-term prospects of the investee, and the Company's intent and ability to hold the investment for a period of time sufficient to allow for any anticipated recovery in market value. Substantially all of the Company's fixed income securities are rated investment grade or better.

The following table summarizes the maturities of the Company's investments in debt securities issued by United States government agencies, municipal government obligations, and corporate bonds and notes as of October 29, 2005 (in thousands):

	Amortized Cost	Fair Value
Less than one year	$489,680	$487,095
Due in 1 - 2 years	83,226	81,872
Due in 2 - 3 years	13,689	13,434
Total	$586,595	$582,401

8. Convertible Subordinated Debt

On December 21, 2001, and January 10, 2002, the Company sold, in private placements pursuant to Section 4(2) of the Securities Act of 1933, as amended, an aggregate of $550 million in principal amount, two percent convertible subordinated notes due January 2007 (the "Notes" or "Convertible Subordinated Debt"). The initial purchasers purchased the Notes from the Company at a discount of 2.25 percent of the aggregate principal amount. Holders of the Notes may, in whole or in part, convert the Notes into shares of the Company's common stock at a conversion rate of 22.8571 shares per $1,000 principal amount of notes (approximately 6.4 million shares

may be issued upon conversion based on outstanding debt of $278.9 million as of October 29, 2005) at any time prior to maturity on January 1, 2007, subject to earlier redemption. Under the original term of the Notes, at any time on or after January 5, 2005, the Company was entitled to redeem the notes in whole or in part at the following prices expressed as a percentage of the principal amount:

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

The Company is required to pay interest on January 1 and July 1 of each year, beginning July 1, 2002. Debt issuance costs of $12.4 million are being amortized over the term of the notes. The amortization of debt issuance costs will accelerate upon early redemption or conversion of the notes. The net proceeds remain available for general corporate purposes, including working capital and capital expenditures. As of October 29, 2005, the remaining balance of unamortized debt issuance costs was $1.4 million, which is included in prepaid expenses and other current assets in the accompanying Consolidated Balance Sheets.

During fiscal years 2005 and 2004, the Company repurchased on the open market $73.4 million and $90.7 million in face value of its Convertible Subordinated Debt, respectively. For the year ended October 29, 2005, the Company paid an average of $0.96 for each dollar of face value for an aggregate purchase price of $70.5 million, which resulted in a pre-tax gain of $2.3 million. For the year ended October 30, 2004, the Company paid an average of $0.93 for each dollar of face value for an aggregate purchase price of $84.4 million, which resulted in a pre-tax gain of $5.6 million. As of October 29, 2005, the remaining balance outstanding of the convertible subordinated debt was $278.9 million.

On August 23, 2005, in accordance with the terms of the indenture agreement dated December 21, 2001 with respect to the Convertible Subordinated Debt, the Company elected to deposit securities with the trustee of the Notes (the "Trustee"), which fully collateralized the outstanding notes, and to discharge the indenture agreement. Pursuant to this election, the Company provided an irrevocable letter of instruction to the Trustee to issue a notice of redemption on June 26, 2006 and to redeem the Notes on August 22, 2006 (the "Redemption Date"). Over the course of the next year, the Trustee, using the securities deposited with them, will pay to the noteholders (1) all the interest scheduled to become due per the original note prior to the Redemption Date, and (2) all the principal and remaining interest, plus a call premium of 0.4% of the face value of the Notes, on the Redemption Date. As of October 29, 2005, the Company had an aggregate of $277.2 million in interest-bearing U.S. securities with the Trustee. The securities will remain on the Company's balance sheet as restricted short-term investments until the Redemption Date. The Company recorded a loss on investments of $4.7 million in the three months ended October 29, 2005 with respect to the disposition of certain short-term and long-term investments that was necessary to deposit the securities with the Trustee.

The notes are not listed on any securities exchange or included in any automated quotation system, however, the notes are eligible for trading on the Portal SM Market. On October 28, 2005, the average bid and ask price on the Portal Market of the notes was 97.9, resulting in an aggregate fair value of approximately $273.2 million.

9. Commitments and Contingencies

Leases

The Company leases its facilities under various operating lease agreements expiring through August 2010. In connection with these agreements the Company has signed unconditional, irrevocable letters of credit totaling $8.3 million as security for the leases. In addition to base rent, many of the operating lease agreements require that the Company pay a proportional share of the respective facilities' operating expenses. Rent expense for the years ended October 29, 2005, October 30, 2004, and October 25, 2003 was $10.7 million, $11.2 million, and $22.7 million, respectively.

Future minimum lease payments under all non-cancelable operating leases at October 29, 2005 were as follows (in thousands):

Fiscal Year Ended October	Operating Leases
2006	$ 16,298
2007	14,290
2008	13,815
2009	13,812
2010	11,653
Total minimum lease payments	$ 69,868

As of October 29, 2005, the Company has recorded $17.1 million in facilities lease loss reserves related to future lease commitments for unused space, net of expected sublease income (see Note 5).

Product Warranties

The Company provides warranties on its products ranging from one to three years. Estimated future warranty costs are accrued at the time of shipment and charged to cost of revenues based upon historical experience. The Company's accrued liability for estimated future warranty costs is included in other accrued liabilities on the accompanying Consolidated Balance Sheets. For the three months ended January 29, 2005, the Company recorded a warranty benefit of approximately $1.9 million as a result of a change in warranty terms with a customer. The following table summarizes the activity related to the Company's accrued liability for estimated future warranty costs during the years ended October 29, 2005 and October 30, 2004 (in thousands):

	Accrued Warranty
Balance at October 25, 2003	$ 3,723
Liabilities accrued	2,890
Claims paid	(474)
Changes in liability for pre-existing warranties	(1,470)
Balance at October 30, 2004	4,669
Liabilities accrued	1,053
Claims paid	(582)
Changes in liability for pre-existing warranties	(3,394)
Balance at October 29, 2005	$ 1,746

In addition, the Company has standard indemnification clauses contained within its various customer contracts whereby the Company indemnifies the parties to whom it sells its products with respect to the Company's product infringing upon any patents, trademarks, copyrights, or trade secrets, as well as against bodily injury or damage to real or tangible personal property caused by a defective Company product. As of October 29, 2005, there have been no known events or circumstances that have resulted in an indemnification related liability to the Company.

Manufacturing and Purchase Commitments

The Company has a manufacturing agreement with Hon Hai Precision Industry Co. ("Foxconn") under which the Company provides twelve-month product forecasts and places purchase orders in advance of the scheduled delivery of products to the Company's customers. The required lead-time for placing orders with Foxconn depends on the specific product. As of October 29,2005, the Company's aggregate commitment to Foxconn for inventory components used in the manufacture of Brocade products was $42.4 million, net of purchase commitment reserves of $6.6 million, which the Company expects to utilize during future normal ongoing operations. The Company's purchase orders placed with Foxconn are cancelable, however if cancelled, the agreement with Foxconn requires the

Company to purchase from Foxconn all inventory components not returnable, usable by, or sold to, other customers of Foxconn.

Legal Proceedings

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

On July 20, 2001, the first of a number of putative class actions for violations of the federal securities laws was filed in the United States District Court for the Southern District of New York against the Company, certain of its officers and directors, and certain of the underwriters for the Company's initial public offering of securities. A consolidated amended class action captioned In Re Brocade Communications Systems, Inc. Initial Public Offering Securities Litigation was filed on April 19, 2002. The complaint generally alleges that various underwriters engaged in improper and undisclosed activities related to the allocation of shares in the Company's initial public offering and seeks unspecified damages on behalf of a purported class of purchasers of common stock from May 24, 1999 to December 6, 2000. The lawsuit against the Company is being coordinated for pretrial proceedings with a number of other pending litigations challenging underwriter practices in over 300 cases as In Re Initial Public Offering Securities Litigation, 21 MC 92(SAS). In October 2002, the individual defendants were dismissed without prejudice from the action, pursuant to a tolling agreement. On February 19, 2003, the Court issued an Opinion and Order dismissing all of the plaintiffs' claims against the Company. In June 2004, a stipulation of settlement for the claims against the issuer defendants, including the Company, was submitted to the Court for approval. On August 31, 2005, the Court granted preliminary approval of the settlement. The settlement is subject to a number of conditions, including final approval by the Court.

Beginning on or about May 19, 2005, several securities class action complaints were filed against the Company and certain of its current and former officers. These actions were filed on behalf of purchasers of the Company's stock from February 2001 to May 2005. These complaints were filed in the United States District Court for the Northern District of California. On January 12, 2006, the Court appointed a lead plaintiff and lead counsel and ordered that a consolidated complaint be filed by March 3, 2006. The securities class action complaints allege, among other things, violations of sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The complaints seek unspecified monetary damages and other relief against the defendants. The complaints generally allege that the Company and the individual defendants made false or misleading public statements regarding the Company's business and operations. These lawsuits followed the Company's restatement of certain financial results due to stock-based compensation accounting issues.

Beginning on or about May 24, 2005, several derivative actions were also filed against certain of the Company's current and former directors and officers. These actions were filed in the United States District Court for the Northern District of California and in the California Superior Court in Santa Clara County. The complaints allege that certain of the Company's officers and directors breached their fiduciary duties to the Company by engaging in alleged wrongful conduct including conduct complained of in the securities litigation described above. The Company is named solely as a nominal defendant against whom the plaintiffs seek no recovery. The derivative actions pending in the District Court for the Northern District of California were consolidated and the Court created a Lead Counsel structure. The derivative plaintiffs filed a consolidated complaint on October 7, 2005 and the Company filed a motion to dismiss that action on October 27, 2005. On January 6, 2006, Brocade's motion was granted and the consolidated complaint was dismissed with leave to amend. The derivative actions pending in the Superior Court in Santa Clara County were consolidated. The derivative plaintiffs filed a consolidated complaint on September 19, 2005. The Company filed a motion to stay that action in deference to the substantially identical consolidated derivative action pending in the District Court, and on November 15, 2005, the Court stayed the action.

No amounts have been recorded in the accompanying Consolidated Financial Statements associated with these matters.

10. Stockholders' Equity

Stock Option Exchange Program

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

In accordance with the Exchange Program, on January 9, 2003, the Company cancelled 58.7 million outstanding stock options and issued promises to grant new stock options to participating employees. On July 10, 2003, the first business day that was six months and one day after the cancellation of the exchanged options, the Company granted to participating employees 26.6 million new stock options at an exercise price of $6.54 per share. The exercise price per share of the new stock options was equal to the fair market value of the Company's common stock at the close of regular trading on July 10, 2003. As of October 29, 2005, 13.0 million of these options, or approximately five percent of the Company's outstanding common stock, remain outstanding and could have a dilutive effect on the Company's future earnings per share to the extent that the future market price of the Company's common stock exceeds $6.54 per share. No financial or accounting effect to the Company's financial position, results of operations, or cash flows for the years ended October 29, 2005, October 30, 2004 and October 25, 2003 was associated with this transaction.

Stockholder Rights Plan

On February 5, 2002, the Company's Board of Directors adopted a stockholder rights plan. Under the plan, the Company declared and paid a dividend of one right for each share of common stock held by stockholders of record as of the close of business on February 19, 2002. Each right initially entitles stockholders to purchase a fractional share of the Company's preferred stock at $280 per share. However, the rights are not immediately exercisable and will become exercisable only upon the occurrence of certain events. If a person or group acquires or announces a tender or exchange offer that would result in the acquisition of 15 percent or more of the Company's common stock while the stockholder rights plan remains in place, then, unless the rights are redeemed by the Company for $0.001 per right, the rights will become exercisable by all rights holders except the acquiring person or group for shares of the Company or the third party acquirer having a value of twice the right's then-current exercise price. The stockholder rights plan may have the effect of deterring or delaying a change in control of Brocade.

Employee Stock Purchase Plan

In March 1999, the Board of Directors approved the adoption of the Company's 1999 Employee Stock Purchase Plan (the Purchase Plan), and the Company's shareholders approved the Purchase Plan in April 1999. The Purchase Plan permits eligible employees to purchase shares of the Company's common stock through payroll deductions at 85 percent of the fair market value at certain plan-defined dates. The maximum number of shares of the Company's common stock available for sale under the Purchase Plan is 37.2 million shares, plus an annual increase to be added on the first day of the Company's fiscal year, equal to the lesser of 20.0 million shares, or 2.5 percent of the outstanding shares of common stock at such date. Accordingly, on October 30, 2005 and October 31, 2004, 6.7 million and 6.6 million additional shares, respectively, were made available for issuance under the Purchase Plan. During the years ended October 29, 2005, October 30, 2004, and October 25, 2003, the Company issued 2.8 million shares, 2.3 million shares, and 2.4 million shares, respectively, under the Purchase Plan. At October 29, 2005, 28.3 million shares were available for future issuance under the Purchase Plan.

Deferred Stock Compensation

In the three months ended July 29, 2005, the Company recorded $1.5 million of deferred stock compensation in connection with its acquisition of Therion. In addition, in the second quarter of fiscal 2003, the Company also recorded $1.7 million of deferred stock compensation in connection with its acquisition of Rhapsody. The deferred stock compensation represents the intrinsic value of unvested restricted common stock and assumed stock options, and is being amortized over the respective remaining service periods on a straight-line basis (see Note 3, "Acquisitions," of the Notes to Consolidated Financial Statements). As of October 29, 2005, the remaining unamortized balance of the deferred stock compensation related to the Therion acquisition was approximately $1.2 million and the deferred stock compensation related to the Rhapsody acquisition has been substantially amortized.

In addition to the deferred stock compensation connected with the Company's acquisitions of Rhapsody and Therion, the Company has recorded deferred stock compensation arising from stock option grants subject to variable accounting, change in measurement dates and restricted stock award grants to certain employees. Compensation expense resulting from these non-acquisition related grants are included in cost of revenues, R&D, sales and marketing, or G&A, based on the department of the employee receiving the award. Accordingly, the consolidated statements of operations caption entitled "amortization of deferred stock compensation" does not include the compensation expense arising from these awards. As of October 29, 2005, the remaining unamortized balance of non-acquisition related deferred stock compensation was $2.0 million.

Deferred stock compensation is presented as a reduction of stockholders' equity and amortized ratably over the vesting period of the applicable options. The Company recorded $1.5 million, $0.5 million, and $0.6 million, as amortization of deferred stock compensation during the years ended October 29, 2005, October 30, 2004, and October 25, 2003, respectively. Deferred stock compensation is decreased in the period of forfeiture for any accrued but unvested compensation arising from the early termination of an option holder's services.

Total stock-based compensation expense recognized for the years ended October 29, 2005, October 30, 2004, and October 25, 2003 was $0.4 million, $5.0 million and $1.7 million, respectively. At October 29, 2005, total unamortized deferred stock compensation was $3.2 million.

1999 Director Option Plan

In March 1999, the Board of Directors approved the 1999 Director Option Plan (the "Director Plan") and the Company's shareholders approved the Director Plan in April 1999. The Director Plan provides for the grant of common stock to Directors of the Company. At October 29, 2005, the Company had reserved 1.6 million shares of authorized but unissued shares of common stock for future issuance under the Director Plan. Of this amount, 1.1 million shares were outstanding, and 0.5 million shares were available for future grants.

1999 Stock Plan

In March 1999, the Board of Directors approved the Company's 1999 Stock Plan (the "1999 Plan") and the Company's shareholders approved the 1999 Plan in April 1999. The 1999 Plan provides for the grant of incentive stock options and/or nonstatutory stock options to employees. Per the terms of the 1999 Plan, the maximum number of shares of the Company's common stock available for sale under the 1999 Plan is 132.0 million shares, plus an annual increase to be added on the first day of the Company's fiscal year, equal to the lesser of 40.0 million shares, or 5.0 percent of the outstanding shares of common stock at such date. Accordingly, on October 30, 2005 and October 31, 2004, 13.5 million and 13.2 million additional shares, respectively, were made available for grant under the 1999 Plan. At October 29, 2005, the Company had reserved 73.0 million shares of authorized but unissued shares of common stock for future issuance under the 1999 Plan. Of this amount, 32.4 million shares were outstanding, and 40.6 million shares were available for future grants.

1999 Nonstatutory Stock Option Plan

In September 1999, the Board of Directors approved the Company'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 51.4 million shares of common stock have been reserved for issuance under the NSO Plan. At October 29, 2005, the Company had reserved approximately 45.0 million shares of authorized but unissued shares of common stock for future issuance under the NSO Plan. Of this amount, 11.1 million shares were outstanding, and 33.9 million shares were available for future grants.

Rhapsody Stock Option Plan

In January 2003, in connection with the Rhapsody acquisition, the Company assumed the Rhapsody's Stock Option Plan (the "Rhapsody Plan"). The Rhapsody Plan provides for the grant of incentive stock options and/or nonstatutory stock options to employees and consultants. At October 29, 2005, there were 0.2 million shares outstanding, and there were no available shares for future grants under the Rhapsody Plan.

Therion Stock Option Plan

In May 2005, in connection with the Therion acquisition, the Company assumed the Therion's Stock Option Plan (the "TherionPlan"). The Therion Plan provides for the grant of incentive stock options and/or nonstatutory stock options to employees and consultants. At October 29, 2005, there were 0.4 million shares outstanding under the Therion Plan, and there were no available shares for future grants.

Stock Options

The Company, under the various stock option plans (the "Plans") discussed above, grants stock options for shares of common stock to employees and directors. In accordance with the Plans, the stated exercise price for non-qualified stock options shall not be less than 85 percent of the estimated fair market value of common stock on the date of grant. Incentive stock options may not be granted at less than 100 percent of the estimated fair market value of the common stock, and stock options granted to a person owning more than 10 percent of the combined voting power of all classes of stock of the Company must be issued at 110 percent of the fair market value of the stock on the date of grant. The Plans provide that the options shall be exercisable over a period not to exceed ten years. The majority of options granted under the Plans vest over a period of four years. Certain options granted under the Plans vest over shorter periods. At October 29, 2005, the Company had cumulatively reserved 120.2 million shares of authorized but unissued shares of common stock for future issuance under the Plans. Of this amount, 45.2 million shares were outstanding, and 75.0 million shares were available for future grants.

The following table summarizes stock option plan activity under all of the Plans (in thousands except per share amounts):

	Fiscal Year Ended October 29, 2005		Fiscal Year Ended October 30, 2004		Fiscal Year Ended October 25, 2003	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
Outstanding at beginning of year	49,524	$ 7.12	46,591	$ 7.70	78,982	$ 34.71
Granted	11,488	$ 5.15	15,319	$ 5.52	42,272	$ 6.04
Exercised	(3,836)	$ 4.98	(2,705)	$ 4.83	(1,113)	$ 0.61
Cancelled	(11,997)	$ 8.02	(9,681)	$ 7.52	(73,550)	$ 35.82
Outstanding at end of year	45,179	$ 6.59	49,524	$ 7.14	46,591	$ 7.70
Exercisable at end of year	25,963	$ 7.52	24,654	$ 7.99	19,475	$ 8.33

The following table summarizes information about stock options outstanding and exercisable at October 29, 2005 (in thousands except number of years and per share amounts):

	Options Outstanding			Options Exercisable	
Range of Exercise Prices	Number	Weighted Average Remaining Years	Weighted Average Exercise Price	Number	Weighted Average Exercise Price
$0.01 - $4.93	9,041	6.58	$ 3.72	2,919	$ 3.34
$4.97 - $6.93	34,071	6.59	$ 6.08	21,174	$ 6.19
$7.06 - $25.34	1,552	5.24	$ 14.93	1,363	$ 15.45
$28.11 - $45.53	181	4.47	$ 36.96	181	$ 36.97
$62.00 - $104.94	334	4.73	$ 81.39	326	$ 81.39
$0.01 - $104.94	45,179	6.52	$ 6.59	25,963	$ 7.52

From May 1999 through July 2003, the Company granted 98.8 million options subject to variable accounting as the measurement date of the options grant was not certain. As of October 29, 2005, 3.3 million options with a weighted average exercise price of $13.00 and a weighted average remaining life of 6.1 years remain outstanding and continue to be accounted for under variable accounting.

The dilutive impact of potential common shares associated with stock options, by application of the treasury stock method, for the year ended October 29, 2005 were 2.1 million. There was no dilutive impact of potential common shares associated with stock options, by application of the treasury stock method, for the years ended October 30, 2004 or October 25, 2003, as the Company had a net loss for each of those years.

Equity Compensation Plan Information

The following table summarizes information, as of October 29, 2005, with respect to shares of the Company's common stock that may be issued under the Company's existing equity compensation plans (in thousands except per share amounts):

	A	B	C
Plan Category	Number of Securities to be Issued upon Exercise of Outstanding Options	Weighted Average Exercise Price of Outstanding Options	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column A)
Equity compensation plans approved by shareholders(1)	34,093(3)	$ 6.17	41,129(4)
Equity compensation plans not approved by shareholders (2)	11,086(5)	$ 7.88	33,828
Total	45,179	$ 6.59	74,957

(1) Consists of the Purchase Plan, the Director Plan, the 1999 Plan, the Rhapsody Plan, and the Therion Plan. Both the Rhapsody Plan and Therion Plan were assumed in connection with acquisitions.

(2) Consists solely of the NSO Plan.

(3) Excludes purchase rights accruing under the Purchase Plan. As of October 29, 2005, the Purchase Plan had a shareholder-approved reserve of 37.2 million shares, of which 28.3 million shares were available for future issuance.

(4) Consists of shares available for future issuance under the Purchase Plan, the Director Plan, the 1999 Plan, the Rhapsody Plan, and the Therion Plan.

(5) Substantially all shares were granted prior to fiscal year ended October 25, 2003.

Employee 401(k) Plan

The Company sponsors the Brocade Communications Systems, Inc. 401(k) Plan (the Plan), which qualifies under Section 401 (k) of the Internal Revenue Code and is designed to provide retirement benefits for its eligible employees through tax deferred salary deductions.

Through December 31, 2001, employees could contribute from 1 percent to 20 percent of their eligible compensation to the Plan. Effective January 1, 2002, the employee contribution limit was increased to 60 percent of eligible compensation. Employee contributions are limited to a maximum annual amount as set periodically by the Internal Revenue Service. The Company matches employee contributions dollar for dollar up to a maximum of $1,500 per year per person. Beginning as of the first day of fiscal year 2006, the Company will match employee contributions dollar for dollar up to a maximum of $2,000 per year per person. All matching contributions vest immediately. The Company's matching contributions to the Plan totaled $1.4 million, $1.5 million, and $1.5 million for the years ended October 29, 2005, October 30, 2004, and October 25, 2003, respectively.

11. Income Taxes

Income (loss) before provision for income taxes consisted of the following (in thousands):

	Fiscal Year Ended		
	October 29, 2005	October 30, 2004	October 25, 2003
United States	$ 20,398	$ (46,684)	$(137,293)
International	34,800	27,060	2,596
Total	$ 55,198	$ (19,624)	$(134,697)

The provision for income taxes consisted of the following (in thousands):

	Fiscal Year Ended		
	October 29, 2005	October 30, 2004	October 25, 2003
Federal:			
Current	$ 2,942	$ —	$ —
Deferred	—	—	—
	2,942	—	—
State:			
Current	2,826	428	431
Deferred	—	—	—
	2,826	428	431
Foreign:			
Current	6,309	13,642	11,421
Deferred	—	—	—
	6,309	13,642	11,421
Total	$ 12,077	$ 14,070	$ 11,852

The difference between the United States federal statutory rate and the Company's income tax provision for financial statement purposes consisted of the following:

	Fiscal Year Ended		
	October 29, 2005	October 30, 2004	October 25, 2003
Provision for (benefit from) income taxes at statutory rate	35.0%	(35.0)%	(35.0)%
State taxes, net of federal tax benefit	4.1	1.8	0.3
Foreign income taxed at other than U.S. rates	(10.7)	14.7	7.5
In-process research and development	4.9	—	35.0
Research and development credit	(0.3)	(31.5)	(10.7)
Other permanent items	2.9	1.7	(0.9)
Tax on repatriated foreign earnings under Act, net of credits	7.2	—	—
Change in valuation allowance	(21.2)	120.0	12.6
Provision for income taxes	21.9%	71.7%	8.8%

The American Jobs Creation Act of 2004 (the "AJCA") was enacted on October 22, 2004. One provision of the AJCA effectively reduces the tax rate on qualifying repatriation of earnings held by foreign-based subsidiaries to approximately 5.25 percent. Normally, such repatriations would be taxed at a rate of up to 35 percent. In the fourth quarter of fiscal year 2005, the Company made the decision that it would repatriate approximately $78.2 million under the AJCA. This repatriation of earnings triggered a U.S. federal tax payment of approximately $3.4 million and a state tax payment of approximately $0.6 million. These amounts are reflected in the current income tax expense. Prior to the AJCA, the Company did not provide deferred taxes on undistributed earnings of foreign subsidiaries as the Company intended to utilize these earnings through expansion of its business operations outside the United States for an indefinite period of time.

The Company intends to indefinitely reinvest any undistributed earnings of foreign subsidiaries that are not repatriated under the AJCA and therefore has not provided deferred taxes on approximately $38.9 million of undistributed earnings as of October 29, 2005. If these earnings were distributed to the United States in the form of dividends or otherwise, or if the shares of the relevant foreign subsidiaries were sold or otherwise transferred, the Company could be subject to additional U.S. income taxes, subject to an adjustment for foreign tax credits, and foreign withholding taxes. Determination of the amount of unrecognized deferred income tax liability related to these earnings is not practicable.

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

	October 29, 2005	October 30, 2004
Net operating loss carryforwards	$ 157,393	$ 152,744
Variable stock option compensation charge	4,957	5,741
Tax credit carryforwards	66,046	62,883
Reserves and accruals	57,631	70,135
Capitalized research expenditures	22,257	27,526
Net unrealized losses on investments	1,675	3,569
Other	177	262
Total	310,136	322,860
Less: Valuation allowance	(310,136)	(322,860)
Net deferred tax assets	$ —	$ —

During the year ended October 29, 2005, the Company had a change in valuation allowance of $12.7 million. The cumulative valuation allowance has been placed against the gross deferred tax assets. The valuation allowance

will be reduced in the period in which the Company is able to utilize the deferred tax assets on its tax return, resulting in a reduction in income tax payable. The tax benefit of these credits and loss carryforwards attributable to non compensatory stock options will be accounted for as a credit to shareholders' equity rather than a reduction of income tax expense. Included in the valuation allowance is $162.9 million and $159.1 million as of October 29, 2005 and October 30, 2004, respectively, that would be credited to shareholders' equity associated with stock options.

As of October 29, 2005, the Company had federal net operating loss carryforwards of $425.7 million and state net operating loss carryforwards of $193.0 million. Additionally, the Company has $36.2 million of federal tax credits and $45.9 million of state tax credits. The federal net operating loss and other tax credit carryforwards expire on various dates between 2016 through 2024; the state net operating loss carryforwards expire on various dates between 2007 through 2024. Under the current tax law, net operating loss and credit carryforwards available to offset future income in any given year may be limited by statute or upon the occurrence of certain events, including significant changes in ownership interests.

12. Segment Information

The Company is organized and operates as one operating segment: the design, development, manufacturing, marketing and selling of infrastructure for storage area networks ("SANs"). The Chief Executive Officer is the Company's Chief Operating Decision Maker (CODM), as defined by SFAS 131, "Disclosures about Segments of an Enterprise and Related Information." The CODM allocates resources and assesses the performance of the Company based on consolidated revenues and overall profitability.

Revenues are attributed to geographic areas based on the location of the customer to which products are shipped. Domestic revenues include sales to certain OEM customers who take possession of Brocade products domestically and then distribute those products to their international customers. Domestic and international revenues were 63 percent and 37 percent of total revenues, respectively, for the year ended October 29, 2005, 65 percent and 35 percent of total revenues, respectively, for the year ended October 30, 2004, and 67 percent and 33 percent of total revenues, respectively, for the year ended October 25, 2003. To date, service revenue has not exceeded 10 percent of total revenues.

For the year ended October 29, 2005, three customers accounted for 29 percent, 21 percent, and 21 percent of total revenues, respectively. For the year ended October 30, 2004, the same three customers accounted for 29 percent, 22 percent, and 19 percent of total revenues, respectively. For the year ended October 25, 2003, also the same three customers accounted for 30 percent, 20 percent, and 17 percent of total revenues, respectively. The level of sales to any single customer may vary and the loss of any one of these customers, or a decrease in the level of sales to any one of these customers, could have a material adverse impact on the Company's financial condition or results of operations.

Geographic information for the years ended October 29, 2005, October 30, 2004, and October 25, 2003 are presented below (in thousands).

	Fiscal Year Ended		
	October 29, 2005	October 30, 2004	October 25, 2003
Net Revenues:			
North America (principally the United States)	$ 373,710	$ 387,225	$ 351,576
Europe, the Middle East, and Africa	139,741	153,114	134,669
Asia Pacific	60,669	55,926	39,032
Total	$ 574,120	$ 596,265	$ 525,277

The majority of the Company's assets as of October 29, 2005, October 30, 2004, and October 25, 2003 were attributable to its United States operations.

13. Interest and Other Income, net

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

	Fiscal Year Ended		
	October 29, 2005	October 30, 2004	October 25, 2003
Interest income	$ 22,270	$ 19,619	$ 19,099
Other income (expense), net	386	(833)	(675)
Total	$ 22,656	$ 18,786	$ 18,424

14. Gain on Investments, net

Net loss on investments of $5.1 million for the year ended October 29, 2005 consisted of $5.2 million losses on the disposition of portfolio investments primarily associated with the defeasance of the indenture agreement relating to the Company's 2% Convertible Notes, offset by $0.1 million gains on the disposition of non-marketable private strategic investments. Net gain on investments of $0.4 million for the year ended October 30, 2004 consisted of gains on the disposition of non-marketable private strategic investments. Net gain on investments of $3.6 million for the year ended October 25, 2003 consisted of a gain on the disposition of private strategic investments of $3.1 million, and a gain of $2.7 million that resulted from the acquisition of a non-publicly traded company in which the Company had a minority equity investment, offset by an impairment charge of $2.2 million that resulted from an other-than-temporary decline in the estimated fair value of a equity investment in a different non-publicly traded company. The carrying value of the Company's equity investments in non-publicly traded companies at October 29, 2005 and October 30, 2004 was $3.8 million and $0.5 million, respectively.

15. Net Income (Loss) per Share

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

	Fiscal Year Ended		
	October 29, 2005	October 30, 2004	October 25, 2003
Net income (loss)	$ 43,121	$ (33,694)	$(146,549)
Basic and diluted net income (loss) per share:			
Weighted-average shares of common stock outstanding	268,256	260,849	251,275
Less: Weighted-average shares of common stock subject to repurchase	(80)	(403)	(665)
Weighted-average shares used in computing basic net income (loss) per share	268,176	260,446	250,610
Dilutive potential common shares	2,084	—	—
Weighted-average shares used in computing diluted net income per share	270,260	260,446	250,610
Basic net income (loss) per share	$ 0.16	$ (0.13)	$ (0.58)
Diluted net income (loss) per share	$ 0.16	$ (0.13)	$ (0.58)

For the years ended October 29, 2005, potential common shares in the form of stock options to purchase 30.6 million weighted-average shares of common stock were antidilutive and, therefore, not included in the computation of diluted earnings per share. For the years ended October 30, 2004 and October 25, 2003, stock option outstanding of 49.5 million shares and 46.6 million shares, respectively, were antidilutive as the Company had a net loss and, therefore, not included in the computation of diluted earnings per share. In addition, for the years ended October 29, 2005, October 30, 2004 and October 25, 2003, potential common shares resulting from the potential

conversion of the Company's convertible subordinated debt of 6.8 million, 9.2 million and 12.0 million weighted-average common shares were antidilutive, respectively, and, therefore, not included in the computation of diluted earnings per share.

16. Related Party and Other Transactions

Larry W. Sonsini was a director of Brocade until March 2005. Mr. Sonsini is a member and Chairman and CEO of Wilson Sonsini Goodrich & Rosati, Professional Corporation ("WSGR"), the Company's principal outside legal counsel. Aggregate fees billed to the Company by WSGR for legal services rendered, including general corporate counseling, litigation services, merger and acquisition related services, and services related to the Company's audit committee internal review and SEC investigation, during the years ended October 29, 2005, October 30, 2004, and October 25, 2003, were $6.7 million, $0.6 million, and $1.2 million, respectively. The Company believes that the services rendered to the Company by WSGR have been on terms no more favorable than those with unrelated parties.

The Company reimbursed Mr. Gregory L. Reyes, Brocade's former Chairman of the Board and Chief Executive Officer, for expenses incurred by Mr. Reyes in the operation of his private plane when used for Brocade business. Mr. Reyes also served as a Director of Brocade until April 2005, and Advisor until July 2005. During fiscal years 2005, 2004 and 2003, the Company incurred expenses of approximately zero, $360,000 and $300,000, respectively, for expenses incurred by Mr. Reyes pursuant to this reimbursement agreement. The amount reimbursed to Mr. Reyes was consistent with the Company's employee travel expense reimbursement policy and, the Company believes, the amount was at or below the market rate charged by charter carriers for comparable travel arrangements.

The Company also has an agreement with San Jose Sharks, L.P., which is a limited partnership in which Mr. Reyes has a general partnership interest. Under the agreement, Brocade receives marketing and advertising services and use of certain facilities owned by the limited partnership. During fiscal years 2005, 2004 and 2003, we made payments of approximately $149,000, $360,000 and $472,000, respectively, pursuant to this agreement. We entered into this agreement before Mr. Reyes acquired his interest in the limited partnership. We believe that the terms we received under the agreement were no more or less favorable than those with unrelated parties.

During the normal course of business the Company purchases certain equipment from vendors who are also its customers and with whom the Company has contractual arrangements. The equipment purchase by the Company is primarily used for testing purposes in its development labs or otherwise consumed internally. The Company believes that all such transactions are on an arms-length basis and subject to terms no more favorable than those with unrelated parties.

Item 9. ***Changes in and Disagreements with Accountants on Accounting and Financial Disclosure***

None.

Item 9A. ***Controls and Procedures***

Evaluation of Disclosure Controls and Procedures

The Company's Chief Executive Officer and Chief Financial Officer, after evaluating the effectiveness of the Company's "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of the end of the period covered by this report, have concluded that the Company's disclosure controls and procedures are effective and are designed to ensure that the information it is required to disclose is recorded, processed, summarized and reported within the necessary time periods.

Changes in Internal Control over Financial Reporting

The Company's Chief Executive Officer and Chief Financial Officer have evaluated the changes to the Company's internal control over financial reporting that occurred during the quarter ended October 29, 2005 as required by paragraph (d) of Rules 13a-15 and 15d-15 under the Securities Exchange Act of 1934, as amended, and have concluded that there were no such changes that materially affected or are reasonably likely to materially affect the Company's internal control over financial reporting. As part of the Company's ongoing process improvement and compliance efforts, the Company continued to strengthen automated controls within its enterprise resource program (or "ERP") system during the fourth quarter of fiscal year 2005. The Company believes that its disclosure controls and procedures were operating effectively as of October 29, 2005.

Management Report on Internal Control over Financial Reporting

The management of Brocade Communications Systems, Inc. is responsible for establishing and maintaining adequate internal control over financial reporting. Our internal control system was designed to provide reasonable assurance to the company's management and board of directors regarding the preparation and fair presentation of published financial statements. Internal control over financial reporting is defined in Rule 13a-15(f) or 15d-15(f) promulgated under the Securities Exchange Act of 1934 as a process designed by, or under the supervision of, the company's principal executive and principal financial officers and effected by the company's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the company;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

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

override of the controls. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and may not be detected.

Our management assessed the effectiveness of its internal control over financial reporting as of October 29, 2005. In making this assessment, it used the criteria based on the framework set forth by the Committee of Sponsoring Organizations of the Treadway Commission in "Internal Control — Integrated Framework." Based on our assessment we believe that, as of October 29, 2005, our internal control over financial reporting is effective based on those criteria.

Our Independent Registered Public Accounting Firm, KPMG LLP, has issued an audit report on our assessment of our internal control over financial reporting. The report of KPMG LLP appears on the next page.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

THE BOARD OF DIRECTORS AND STOCKHOLDERS
BROCADE COMMUNICATIONS SYSTEMS, INC:

We have audited management's assessment, included in the accompanying "Management's Report on Internal Control Over Financial Reporting," that Brocade Communications Systems, Inc. and subsidiaries (the Company) maintained effective internal control over financial reporting as of October 29, 2005, based on criteria established in "Internal Control — Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audits included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those polices and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that the Company maintained effective internal control over financial reporting as of October 29, 2005, is fairly stated, in all material respects, based on criteria established in "Internal Control — Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Also, in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of October 29, 2005, based on the criteria established in "Internal Control — Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of the Company as of October 29, 2005 and October 30, 2004, and the related consolidated statements of operations, stockholders' equity and comprehensive income (loss), and cash flows for each of the years in the three-year period ended October 29, 2005, and the related financial statement schedule, and our report dated January 16, 2006 expressed an unqualified opinion on those consolidated financial statements and financial statement schedule.

/s/ KPMG LLP

Mountain View, California
January 16, 2006

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Brocade Communications Systems, Inc.:

We consent to the incorporation by reference in the registration statements on Forms S-8 (Nos. 333-129909, 333-129908, 333-117897, 333-103571, 333-100797, 333-72480, 333-64260, 333-53734, 333-39126, 333-95653, and 333-85187) and on Form S-3 (No. 333-84698) of Brocade Communication Systems, Inc. and subsidiaries ("the Company") of our report dated January 16, 2006, with respect to the consolidated balance sheets of the Company as of October 29, 2005 and October 30, 2004, and the related consolidated statements of operations, stockholders' equity and comprehensive income (loss), and cash flows for each of the years in the three-year period ended October 29, 2005, and related financial statement schedule, management's assessment of the effectiveness of internal control over financial reporting as of October 29, 2005, and the effectiveness of internal control over financial reporting as of October, 29, 2005, which reports appear in the October 29, 2005 annual report on Form 10-K of Brocade Communications Systems, Inc. and subsidiaries.

/s/ KPMG LLP

Mountain View, California
January 16, 2006

EXHIBIT 31.1

CERTIFICATION

I, Michael Klayko, certify that:

1. I have reviewed this Annual Report on Form 10-K for the fiscal year ended October 29, 2005 of Brocade Communications Systems, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: January 18, 2006

/s/ Michael Klayko

Michael Klayko
Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION

I, Richard Deranleau, certify that:

1. I have reviewed this Annual Report on Form 10-K for the fiscal year ended October 29, 2005 of Brocade Communications Systems, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: January 18, 2006

/s/ Richard Deranleau

Richard Deranleau
Interim Chief Financial Officer
(Principal Accounting Officer)

EXHIBIT 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
AND CHIEF FINANCIAL OFFICER PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Michael Klayko, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Brocade Communications Systems, Inc. on Form 10-K for the fiscal year ended October 29, 2005 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Annual Report on Form 10-K fairly presents in all material respects the financial condition and results of operations of Brocade Communications Systems, Inc.

By: /s/ Michael Klayko
Michael Klayko
Chief Executive Officer

I, Richard Deranleau, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Brocade Communications Systems, Inc. on Form 10-K for the fiscal year ended October 29, 2005 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Annual Report on Form 10-K fairly presents in all material respects the financial condition and results of operations of Brocade Communications Systems, Inc.

By: /s/ Richard Deranleau
Richard Deranleau
Interim Chief Financial Officer,
VP, Controller and Treasurer

EXHIBIT C

Agreement

AGREEMENT AND PLAN OF REORGANIZATION

BY AND AMONG

BROCADE COMMUNICATIONS SYSTEMS, INC.,

WORLDCUP MERGER CORPORATION

AND

MCDATA CORPORATION

Dated as of August 7, 2006

TABLE OF CONTENTS

Page

INDEX OF DEFINED TERMS

Term	Reference
Company Preferred Stock	2.2(a)
Company Privacy Policy	2.7(a)(vii)
Company Products	2.7(c)
Company Purchase Plan	1.6(e)
Company Real Property	2.13(b)
Company Registered Intellectual Property	2.7(a)(iv)
Company Restricted Stock	2.2(a)
Company Rights	2.2(a)
Company Rights Agreement	2.2(a)
Company SEC Reports	2.4(a)
Company's FSA	5.9(d)
Company Stock Option Plans	2.2(b)
Company Stock-Based Award	5.9(c)
Company Termination Fee	7.3(b)(i)(1)
Confidentiality Agreement	5.4(a)
Continuing Employees	5.9(d)
Contract	2.2(a)
Controlled Group Affiliate	2.12(e)
Convertible Debt	2.2(c)
Credit Suisse	2.10
D&O Insurance	5.10(b)
Delaware Law	Recitals
Distribution Date	5.15
DOJ	5.6(a)
Domain Names	2.7(a)(i)
Effect	8.3(c)
Effective Time	1.2
Employee	2.12(a)
End Date	7.1(b)
ERISA	2.12(c)(i)
Exchange Act	2.3(c)
Exchange Agent	1.7(a)
Exchange Fund	1.7(b)
Exchange Ratio	1.6(a)
Export Approvals	2.8(c)(i)
FCPA	2.8(d)
FTC	5.6(a)
GAAP	2.4(b)
Governmental Entity	2.3(c)
Hazardous Material	2.14(a)
Hazardous Material Activities	2.14(b)

Term	Reference
Hazardous Materials Laws	2.14(b)
HSR Act	2.3(c)
include, includes and including	8.3(a)
Indemnified Parties	5.10(a)
Indenture	5.19
Intellectual Property	2.7(a)(i)
IP Contracts	2.7(j)
Issued Calls	5.19
Knowledge	8.3(b)
Legal Requirements	2.2(e)
Liens	2.1(d)
Material Adverse Effect	8.3(c)
Merger	1.1
Merger Sub	Preamble
Merger Sub Common Stock	1.6(d)
Nasdaq	1.6(f)
Necessary Consents	2.3(c)
Open Source Material	2.7(q)
Parent	Preamble
Parent Balance Sheet	3.4(b)
Parent Benefit Plan	3.11(a)(i)
Parent Board Approval	3.15
Parent Charter Documents	3.1(b)
Parent Common Stock	1.6(a)
Parent Disclosure Letter	Article III
Parent Financials	3.4(b)
Parent Material Contract	3.13
Parent Options	3.2(b)
Parent Permits	3.8(b)
Parent Preferred Stock	3.2(a)
Parent Purchase	4.2(b)(v)
Parent Rights	3.2(a)
Parent Rights Agreement	3.2(a)
Parent SEC Reports	3.4(a)
Parent Stock Option Plans	3.2(b)
Parent Termination Fee	7.3(b)(ii)(1)
Parent's FSA	5.9(d)
Parent's Savings Plan	5.9(h)(ii)
Permits	2.8(b)
Person	8.3(d)
Personal Data	2.7(a)(v)

Term	Reference
Proxy Statement/Prospectus	2.17
PTO	2.7(b)
Purchased Calls	5.19
Registered Intellectual Property	2.7(a)(iii)
Registration Statement	2.17
Representatives	5.3(a)
Restricted Purchases	4.2(b)(v)
Routine Grants	4.1(b)(iv)
Sarbanes-Oxley Act	2.4(c)
SEC	2.2(a)
Securities Act	2.4(a)
Share Issuance	Recitals
Significant Subsidiaries	2.1(b)
Stockholders' Meeting	5.2(a)
Subsidiary	2.1(a)
Subsidiary Charter Documents	2.1(b)
Superior Offer	5.3(g)(ii)
Surviving Corporation	1.1
Surviving Corporation Common Stock	1.6(d)
Tax	2.6(a)
Taxes	2.6(a)
Tax Returns	2.6(b)(i)
the business of	8.3(a)
Triggering Event	7.1(i)
U.S. Bank	5.19
URLs	2.7(a)(i)
User Data	2.7(a)(vi)
Voting Debt	2.2(d)
Wells Fargo	5.19
WGM	5.14(b)
WSGR	5.14(b)

INDEX OF EXHIBITS

AGREEMENT AND PLAN OF REORGANIZATION

This AGREEMENT AND PLAN OF REORGANIZATION (this "**Agreement**") is made and entered into as of August 7, 2006, by and among Brocade Communications Systems, Inc., a Delaware corporation ("**Parent**"), Worldcup Merger Corporation, a Delaware corporation and direct wholly-owned subsidiary of Parent ("**Merger Sub**"), and McDATA Corporation, a Delaware corporation (the "**Company**").

RECITALS

A. The respective Boards of Directors of Parent, Merger Sub and the Company have deemed it advisable and in the best interests of their respective corporations and stockholders that Parent and the Company consummate the business combination and other transactions provided for herein.

B. The respective Boards of Directors of Parent, Merger Sub and the Company have approved, in accordance with the applicable provisions of the General Corporation Law of the State of Delaware ("**Delaware Law**"), this Agreement and the transactions contemplated hereby, including the Merger (as defined in Section 1.1).

C. The Board of Directors of the Company has resolved to recommend to its stockholders adoption of this Agreement.

D. The Board of Directors of Parent has authorized, and resolved to recommend to its stockholders approval of, the issuance of shares of Parent Common Stock (as defined in Section 1.6(a)) in connection with the Merger (the "**Share Issuance**").

E. Parent, as the sole stockholder of Merger Sub, has approved, and immediately following the execution hereof, will adopt, this Agreement.

F. Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe certain conditions to the Merger.

G. For United States federal income tax purposes, the parties intend that the Merger qualify as a reorganization under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "**Code**"), and the parties intend, by executing this Agreement, to adopt a plan of reorganization for purposes of Section 368(a) of the Code.

NOW, THEREFORE, in consideration of the covenants, promises and representations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

THE MERGER

1.1 The Merger. At the Effective Time (as defined in Section 1.2) and subject to and upon the terms and conditions of this Agreement and the applicable provisions of Delaware Law, Merger Sub shall be merged with and into the Company (the "**Merger**"), the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation. The Company, as the surviving corporation after the Merger, is hereinafter sometimes referred to as the "**Surviving Corporation.**"

1.2 Closing; Effective Time. The closing of the Merger (the "**Closing**") shall take place at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, located at 650 Page Mill Road, Palo Alto, California, at a time and date to be specified by the parties, which shall be no later than the second business day after the satisfaction or waiver of the conditions set forth in Article VI (other than those that by their terms are to be satisfied or waived at the Closing), or at such other time, date and location as the parties hereto agree in writing; provided, however, that if all the conditions set forth in Article VI shall not have been satisfied or waived on such second business day, then the Closing shall take place on the first business day on which all such conditions shall have been satisfied or waived. The date on which the Closing occurs is referred to herein as the "**Closing Date**." Subject to the provisions of this Agreement, the parties hereto shall cause the Merger to be consummated by filing the Certificate of Merger in the form attached hereto as Exhibit A with the Secretary of State of the State of Delaware in accordance with the relevant provisions of Delaware Law (the "**Certificate of Merger**") (the time of such filing with the Secretary of State of the State of Delaware (or such later time as may be agreed in writing by the Company and Parent and specified in the Certificate of Merger) being the "**Effective Time**") as soon as practicable on or after the Closing Date.

1.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in this Agreement and the applicable provisions of Delaware Law, including Section 259 thereof. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

1.4 Certificate of Incorporation and Bylaws. At the Effective Time, the certificate of incorporation of the Company shall be amended and restated in its entirety (as set forth on Exhibit A to the Certificate of Merger) to be identical to the certificate of incorporation of Merger Sub, as in effect immediately prior to the Effective Time, until thereafter amended in accordance with Delaware Law and as provided in such certificate of incorporation; provided, however, that at the Effective Time, Article I of the certificate of incorporation of the Surviving Corporation shall be amended and restated in its entirety to read as follows: "The name of the corporation is McDATA Corporation," and the certificate of incorporation shall be amended so as to comply with Section 5.10(a). At the Effective Time, the bylaws of the Company shall be amended and restated in

their entirety to be identical to the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, until thereafter amended in accordance with Delaware Law and as provided in such bylaws; provided, however, that at the Effective Time, the bylaws shall be amended so as to comply with Section 5.10(a).

1.5 Directors and Officers. The initial directors of the Surviving Corporation shall be the directors of Merger Sub immediately prior to the Effective Time, until their respective successors are duly elected or appointed and qualified. The initial officers of the Surviving Corporation shall be the officers of Merger Sub immediately prior to the Effective Time, until their respective successors are duly elected or appointed and qualified.

1.6 Effect on Capital Stock. Subject to the terms and conditions of this Agreement, at the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the holders of any shares of capital stock of the Company, the following shall occur:

(a) Company Common Stock. Each share of Class A Common Stock, par value $0.01 per share, of the Company (together with the associated Company Right (as defined in Section 2.2(a)) under the Company Rights Agreement (as defined in Section 2.2(a)) ("**Company Class A Common Stock**") and each share of Class B Common Stock, par value $0.01 per share, of the Company (together with the associated Company Right under the Company Rights Agreement) ("**Company Class B Common Stock**" and, together with the Company Class A Common Stock, "**Company Common Stock**") issued and outstanding immediately prior to the Effective Time, other than any shares of Company Common Stock to be canceled pursuant to Section 1.6(c), will each be canceled and extinguished and automatically converted (subject to Section 1.6(f)) into the right to receive 0.75 of a validly issued, fully paid and nonassessable share (the "**Exchange Ratio**") of common stock of Parent, par value $0.001 per share (together with any associated Parent Right (as defined in Section 3.2(a)) under the Parent Rights Agreement (as defined in Section 3.2(a)) ("**Parent Common Stock**") upon surrender of the certificate representing such share of Company Common Stock (or surrender of a Book Entry Share (as defined in Section 1.7(c)) in the manner provided in Section 1.7 (or in the case of a lost, stolen or destroyed certificate, upon delivery of an affidavit (and bond, if required) in the manner provided in Section 1.9).

(b) Repurchase Rights. If any shares of Company Common Stock outstanding immediately prior to the Effective Time remain unvested or subject to a repurchase option, risk of forfeiture or other condition immediately following the Effective Time pursuant to the terms and conditions of any applicable restricted stock purchase agreement or other agreement with the Company, then the shares of Parent Common Stock issued in exchange for such shares of Company Common Stock will also be unvested and subject to the same repurchase option, risk of forfeiture or other condition, and the certificates representing such shares of Parent Common Stock may accordingly be marked with appropriate legends. The Company shall take all action reasonably necessary to ensure that, from and after the Effective Time, the Surviving Corporation is entitled to exercise any such repurchase option or other right set forth in any such restricted stock purchase agreement or other agreement.

(c) Cancellation of Treasury and Parent Owned Stock. Each share of Company Common Stock held by the Company or Parent immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof.

(d) Capital Stock of Merger Sub. Each share of common stock, par value $0.01 per share, of Merger Sub (the "**Merger Sub Common Stock**") issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of common stock, par value $0.01 per share, of the Surviving Corporation (the "**Surviving Corporation Common Stock**"). Each certificate evidencing ownership of shares of Merger Sub Common Stock shall evidence ownership of such share of Surviving Corporation Common Stock.

(e) Stock Options; Stock-Based Awards; Employee Stock Purchase Plan. At the Effective Time, all Company Options (as defined in Section 2.2(b)) outstanding under each Company Stock Option Plan (as defined in Section 2.2(b)) shall be assumed by Parent in accordance with Sections 5.9(a) and 5.9(b). Company Stock-Based Awards (as defined in Section 5.9(c)) under the applicable Company Benefit Plans (as defined in Section 2.12(a)) shall be treated as set forth in Section 5.9(c). Rights outstanding under the Company's Employee Stock Purchase Plan (the "**Company Purchase Plan**") shall be treated as set forth in Section 5.9(g).

(f) Fractional Shares. No fraction of a share of Parent Common Stock will be issued by virtue of the Merger, but in lieu thereof each holder of record of shares of Company Common Stock who would otherwise be entitled to a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock that otherwise would be received by such holder of record) shall, upon surrender of such holder's Certificate(s) (as defined in Section 1.7(c)), receive an amount of cash (rounded to the nearest whole cent), without interest, equal to the product of: (i) such fraction, multiplied by (ii) the average closing sale price of one share of Parent Common Stock for the 10 most recent trading days that Parent Common Stock has traded ending on the trading day one day prior to the Effective Time, as reported on the Nasdaq Stock Market's National Market ("**Nasdaq**").

(g) Adjustments to Exchange Ratio. The Exchange Ratio shall be adjusted to reflect fully the appropriate economic effect of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Parent Common Stock or Company Common Stock), reorganization, recapitalization, reclassification or other like change with respect to Parent Common Stock or Company Common Stock having a record date on or after the date hereof and prior to the Effective Time.

1.7 Surrender of Certificates.

(a) Exchange Agent. Parent shall select Wells Fargo Shareowner Services or another institution reasonably satisfactory to the Company to act as the exchange agent (the "**Exchange Agent**") hereunder for the purpose of distributing the Parent Common Stock and other cash amounts contemplated by this Article I to the holders of Company Common Stock.

(b) Parent to Provide Common Stock. Promptly after the Effective Time, Parent shall enter into an agreement with the Exchange Agent (which agreement shall be in a form reasonably acceptable to the Company), which shall provide that Parent shall make available to the Exchange Agent for exchange in accordance with this Article I, the shares of Parent Common Stock issuable pursuant to Section 1.6(a) in exchange for outstanding shares of Company Common Stock. In addition, Parent shall make available as necessary from time to time after the Effective Time, cash in an amount sufficient for payment in lieu of fractional shares pursuant to Section 1.6(f) and any dividends or distributions which holders of shares of Company Common Stock may be entitled pursuant to Section 1.7(d). Any cash and Parent Common Stock deposited with the Exchange Agent shall hereinafter be referred to as the "**Exchange Fund**."

(c) Exchange Procedures. As soon as reasonably practicable after the Effective Time, Parent shall cause the Exchange Agent to mail to each holder of record (as of the Effective Time) of a certificate or certificates (the "**Certificates**"), which immediately prior to the Effective Time represented outstanding shares of Company Common Stock or non-certificated shares of Company Common Stock represented by book entry ("**Book Entry Shares**") whose shares were converted into the right to receive shares of Parent Common Stock pursuant to Section 1.6(a), cash in lieu of any fractional shares pursuant to Section 1.6(f) and any dividends or other distributions pursuant to Section 1.7(d): (i) a letter of transmittal in customary form (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates or Book Entry Shares to the Exchange Agent) and (ii) instructions for effecting the surrender of the Certificates or Book Entry Shares in exchange for certificates representing whole shares of Parent Common Stock, cash in lieu of any fractional shares pursuant to Section 1.6(f) and any dividends or other distributions pursuant to Section 1.7(d). Upon surrender of Certificates or Book Entry Shares for cancellation to the Exchange Agent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto and such other documents as may reasonably be required by the Exchange Agent, the holder of record of such Certificates or Book Entry Shares shall be entitled to receive in exchange therefor the number of whole shares of Parent Common Stock (after taking into account all Certificates and Book Entry Shares surrendered by such holder of record) to which such holder is entitled pursuant to Section 1.6(a) (which, at the election of Parent, may be in uncertificated book entry form unless a physical certificate is requested by the holder of record or is otherwise required by applicable Legal Requirements (as defined in Section 2.2(e)), a cash payment in lieu of fractional shares which such holder has the right to receive pursuant to Section 1.6(f) and a cash payment for any dividends or distributions payable pursuant to Section 1.7(d), and the Certificates and Book Entry Shares so surrendered shall forthwith be canceled. Until so surrendered, outstanding Certificates or Book Entry Shares will be deemed from and after the Effective Time, for all corporate purposes, to evidence the ownership of the number of full shares of Parent Common Stock into which such shares of Company Common Stock shall have been so converted and the right to receive an amount in cash in lieu of the issuance of any fractional shares in accordance with Section 1.6(f) and any dividends or distributions payable pursuant to Section 1.7(d).

(d) Distributions With Respect to Unexchanged Shares. No dividends or other distributions declared or made after the date hereof with respect to Parent Common Stock with a

record date after the Effective Time and no payment in lieu of fractional shares pursuant to Section 1.6(f) will be paid to the holders of any unsurrendered Certificates or Book Entry Shares with respect to the shares of Parent Common Stock represented thereby until the holders of record of such Certificates shall surrender such Certificates or Book Entry Shares. Subject to applicable Legal Requirements, following surrender of any such Certificates or Book Entry Shares, the Exchange Agent shall deliver to the record holders thereof, without interest (i) promptly after such surrender, the number of whole shares of Parent Common Stock issued in exchange therefor along with payment in lieu of fractional shares pursuant to Section 1.6(f) and the amount of any such dividends or other distributions with a record date after the Effective Time and theretofore paid with respect to such whole shares of Parent Common Stock and (ii) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time and a payment date subsequent to such surrender payable with respect to such whole shares of Parent Common Stock.

(e) Transfers of Ownership. If shares of Parent Common Stock are to be issued in a name other than that in which the Certificates or Book Entry Shares surrendered in exchange therefor are registered, it will be a condition of the issuance thereof that the Certificates or Book Entry Shares so surrendered will be properly endorsed and otherwise in proper form for transfer and that the Persons (as defined in Section 8.3(d)) requesting such exchange will have paid to Parent or any agent designated by it any transfer or other Taxes (as defined in Section 2.6(a)) required by reason of the issuance of shares of Parent Common Stock in any name other than that of the registered holder of the Certificates or Book Entry Shares surrendered, or established to the satisfaction of Parent or any agent designated by it that such Tax has been paid or is not payable.

(f) Required Withholding. Each of Parent, the Exchange Agent and the Surviving Corporation shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement to any holder or former holder of Company Common Stock such amounts as may be required to be deducted or withheld therefrom under the Code or under any provision of state, local or foreign Tax law or under any other applicable Legal Requirements). To the extent such amounts are so deducted or withheld, the amount of such consideration shall be treated for all purposes under this Agreement as having been paid to the Person to whom such consideration would otherwise have been paid.

(g) No Liability. Notwithstanding anything to the contrary in this Section 1.7, neither the Exchange Agent, the Surviving Corporation nor any party hereto shall be liable to a holder of shares of Parent Common Stock or Company Common Stock for any amount paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

(h) Investment of Exchange Fund. The Exchange Agent shall invest any cash included in the Exchange Fund as directed by Parent on a daily basis; provided that no such investment or loss thereon shall affect the amounts payable to holders of shares of Company Common Stock pursuant to this Article I. Any interest and other income resulting from such investment shall become a part of the Exchange Fund, and any amounts in excess of the amounts payable to the holders of shares of Company Common Stock pursuant to this Article I shall promptly be paid to Parent.

(i) Termination of Exchange Fund. Any portion of the Exchange Fund which remains undistributed to the holders of Certificates or Book Entry Shares six months after the Effective Time shall, at the request of the Surviving Corporation, be delivered to the Surviving Corporation or otherwise according to the instruction of the Surviving Corporation, and any holders of the Certificates or Book Entry Shares who have not surrendered such Certificates in compliance with this Section 1.7 shall after such delivery to the Surviving Corporation look only to the Surviving Corporation for the shares of Parent Common Stock pursuant to Section 1.6(a), cash in lieu of any fractional shares pursuant to Section 1.6(f) and any dividends or other distributions pursuant to Section 1.7(d) with respect to the shares of Company Common Stock formerly represented thereby. If any Certificate or Book Entry Share shall not have been surrendered prior to two years after the Effective Time (or immediately prior to such time as such amounts would otherwise escheat to or become property of any Governmental Entity (as defined in Section 2.3(c)), any such portion of the Exchange Fund remaining unclaimed by holders of shares of Company Common Stock immediately prior to such time shall, to the extent permitted by law, become the property of Parent free and clear of any claims or interest of any Person previously entitled thereto.

1.8 No Further Ownership Rights in Company Common Stock. All shares of Parent Common Stock issued upon the surrender for exchange of shares of Company Common Stock in accordance with the terms hereof (including any cash paid in respect thereof pursuant to Sections 1.6(f) and 1.7(d)) shall be deemed to have been issued or paid in full satisfaction of all rights pertaining to such shares of Company Common Stock, and there shall be no further registration of transfers on the records of the Surviving Corporation of shares of Company Common Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates or Book Entry Shares are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this Article I.

1.9 Lost, Stolen or Destroyed Certificates. In the event any Certificates shall have been lost, stolen or destroyed, the Exchange Agent shall issue in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit of that fact by the holder thereof, such shares of Parent Common Stock, cash for fractional shares, if any, as may be required pursuant to Section 1.6(f) and any dividends or distributions payable pursuant to Section 1.7(d); provided, however, that Parent may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed Certificates to deliver a bond in such sum as it may reasonably direct as indemnity against any claim that may be made against Parent, the Company or the Exchange Agent with respect to the Certificates alleged to have been lost, stolen or destroyed.

1.10 Tax Consequences. It is intended by the parties hereto that the Merger shall constitute a reorganization within the meaning of Section 368(a) of the Code. The parties hereto adopt this Agreement as a plan of reorganization within the meaning of Treasury Regulations Sections 1.368-1(c), 1.368-2(g) and 1.368-3(a).

1.11 Further Action. At and after the Effective Time, the officers and directors of Parent and the Surviving Corporation will be authorized to execute and deliver, in the name and on behalf

of the Company and Merger Sub, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company and Merger Sub, any other actions and things necessary or advisable to vest, perfect or confirm of record or otherwise in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Parent and Merger Sub, except as set forth in the disclosure letter supplied by the Company to Parent dated as of the date hereof (the "**Company Disclosure Letter**"), as follows:

2.1 Organization; Standing; Charter Documents; Subsidiaries.

(a) Organization; Standing and Power. The Company and each of its Subsidiaries (as defined below) (i) is a corporation or other organization duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (except, in the case of good standing, for entities organized under the laws of any jurisdiction that does not recognize such concept), (ii) has the requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted, and (iii) is duly qualified or licensed and in good standing to do business in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure to so qualify or to be in good standing, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect (as defined in Section 8.3(c)) on the Company. For purposes of this Agreement, "**Subsidiary**," when used with respect to any party, shall mean any corporation or other organization at least a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the Board of Directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such party or by any one or more of its Subsidiaries, or by such party and one or more of its Subsidiaries.

(b) Charter Documents. The Company has delivered or made available to Parent: true and correct copies of (i) the certificate of incorporation (including any certificate of designations) and bylaws of the Company, each as amended to date (collectively, the "**Company Charter Documents**") and (ii) the certificate of incorporation and bylaws, or like organizational documents, each as amended to date (collectively, "**Subsidiary Charter Documents**"), of each of its Significant Subsidiaries (as defined in Rule 1.02 of Regulation S-X promulgated by the SEC, "**Significant Subsidiaries**"), and each such instrument is in full force and effect. The Company is not in violation of any of the provisions of the Company Charter Documents, none of the Company's Significant Subsidiaries are in material violation of the applicable Subsidiary Charter Documents and none of the Company's other Subsidiaries are in violation of its applicable certificate of incorporation and bylaws, or like organizational documents, each as amended to date, except for

such violations as would not reasonably be expected to have a Material Adverse Effect on the Company.

(c) Minutes. The Company has made available to Parent and its representatives true and complete copies of the minutes of all meetings of the stockholders, the Board of Directors and each committee of the Board of Directors of the Company and each of its Significant Subsidiaries held since January 1, 2003.

(d) Subsidiaries. Section 2.1(d) of the Company Disclosure Letter sets forth each Subsidiary of the Company. All the outstanding shares of capital stock of, or other equity or voting interests in, each such Subsidiary have been duly authorized and validly issued and are fully paid and nonassessable and are owned by the Company, a wholly-owned Subsidiary of the Company, or the Company and another wholly-owned Subsidiary of the Company, free and clear of all pledges, claims, liens, charges, encumbrances, options and security interests of any kind or nature whatsoever (collectively, "**Liens**"), including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other ownership interests, except for restrictions imposed by applicable securities laws. Other than the Subsidiaries of the Company, the Company does not own, directly or indirectly, any securities or capital stock of, or other equity or voting interests of any nature in, any other Person.

2.2 Capital Structure.

(a) Capital Stock. The authorized capital stock of the Company consists of: (i) 250,000,000 shares of Company Class A Common Stock, (ii) 200,000,000 shares of Company Class B Common Stock and (iii) 25,000,000 shares of preferred stock, par value $0.01 per share (the "**Company Preferred Stock**"), 45,000 shares of which have been designated as Series A Junior Participating Preferred Stock, all of which have been reserved for issuance upon exercise of preferred stock purchase rights (the "**Company Rights**") issuable pursuant to the Rights Agreement dated as of May 18, 2001, between the Company and the Bank of New York as Rights Agent (the "**Company Rights Agreement**"), a true and complete copy of which is filed as Exhibit 99.1 to the Company's Registration Statement on Form 8-A filed with the U.S. Securities and Exchange Commission (the "**SEC**") on May 21, 2001. At the close of business on August 4, 2006: (x) 118,693,396 shares of Company Class A Common Stock and 35,642,368 shares of Company Class B Common Stock were issued and outstanding, in each case, excluding shares of Company Common Stock held by the Company in its treasury, (y) 1,439,560 shares of Company Class A Common Stock and 3,085,256 shares of Company Class B Common Stock were issued and held by the Company in its treasury, and (z) no shares of Company Preferred Stock were issued and outstanding. No shares of Company Common Stock are owned or held by any Subsidiary of the Company. All of the outstanding shares of capital stock of the Company are, and all shares of capital stock of the Company which may be issued as contemplated or permitted by this Agreement will be, when issued, duly authorized and validly issued, fully paid and nonassessable and not subject to any preemptive rights. Section 2.2(a) of the Company Disclosure Letter sets forth (A) the name of each holder of Company Restricted Stock, (B) the number of shares of Company Restricted Stock held by such holder, (C) the repurchase price of such Company Restricted Stock, (D) the date

on which such Company Restricted Stock was purchased or granted, (E) the applicable vesting schedule pursuant to which the Company's right of repurchase or forfeiture lapses, and (F) the extent to which such Company right of repurchase or forfeiture has lapsed as of the date hereof. Subject to the terms and conditions of the applicable restricted stock purchase agreement, upon consummation of the Merger, (1) the shares of Parent Common Stock issued in exchange for any shares of Company Restricted Stock will, without any further act of Parent, Merger Sub, the Company or any other Person, become subject to the restrictions, conditions and other provisions contained in such Contract (as defined below) and (2) Parent will automatically succeed to and become entitled to exercise the Company's rights and remedies under any such Contract without modification. There are no commitments or agreements to which the Company is bound obligating the Company to waive its right of repurchase or forfeiture with respect to any Company Restricted Stock as a result of the Merger (whether alone or upon the occurrence of any additional or subsequent events). For purposes of this Agreement, "**Company Restricted Stock**" shall mean shares of Company Common Stock that are subject to a Contract or other arrangement pursuant to which the Company has the right to repurchase, redeem or otherwise reacquire such shares of Company Common Stock, including by forfeiture. For purposes of this Agreement, "**Contract**" shall mean any written, oral or other agreement, contract, subcontract, settlement agreement, lease, binding understanding, instrument, note, option, warranty, purchase order, license, sublicense, insurance policy, benefit plan or legally binding commitment or undertaking of any nature, as in effect as of the date hereof or as may hereinafter be in effect.

(b) Stock Options. As of the close of business on August 4, 2006: (i) 8,208,706 shares of Company Class A Common Stock and 19,345,782 shares of Company Class B Common Stock were subject to issuance pursuant to outstanding Company Options (as defined below) to purchase Company Common Stock under the applicable Company Benefit Plans that are stock option plans as set forth on Section 2.12(a) of the Company Disclosure Letter (the "**Company Stock Option Plans**") (equity or other equity-based awards, whether payable in cash, shares or otherwise, granted under or pursuant to the Company Stock Option Plans, other than the Company Rights, Company Stock-Based Awards and the Convertible Debt (as defined in Section 2.2(c)), are referred to in this Agreement as "**Company Options**"), (ii) no shares of Company Class A Common Stock or Class B Common Stock were reserved for future issuance under the Company Purchase Plan, and (iii) no shares of Company Class A Common Stock and no shares of Class B Common Stock were subject to issuance pursuant to outstanding Company Stock-Based Awards. Section 2.2(b) of the Company Disclosure Letter sets forth a list of each outstanding Company Stock-Based Award and Company Option, and (1) the particular Company Benefit Plan (if any) pursuant to which such Company Stock-Based Award or Company Option was granted, (2) the name of the holder of such Company Stock-Based Award or Company Option, (3) the number of shares of Company Common Stock subject to such Company Stock-Based Award or Company Option, (4) the exercise price of such Company Stock-Based Award or Company Option, (5) the date on which such Company Stock-Based Award or Company Option was granted, (6) the applicable vesting schedule, and the extent to which such Company Stock-Based Award or Company Option is vested and exercisable, and (7) the date on which such Company Stock-Based Award or Company Option expires. All shares of Company Common Stock subject to issuance under the applicable Company Benefit Plans, upon issuance on the terms and conditions specified in the instruments pursuant to which they are

issuable, would be duly authorized, validly issued, fully paid and nonassessable. The exercise price of each Company Stock-Based Award and Company Option is no less than the fair market value of a share of Company Common Stock as determined on the date of grant of such Company Stock-Based Award or Company Option. All grants of Company Stock-Based Awards and Company Options were validly issued and properly approved by the Board of Directors of the Company in material compliance with all applicable Legal Requirements and recorded on the Company Financials (as defined in Section 2.4(b)) in accordance with GAAP (as defined in Section 2.4(b)), and no such grants involved any "back dating," "forward dating" or similar practices with respect to the effective date of grant. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or other similar rights or equity based awards with respect to the Company other than as set forth in this Section 2.2(b).

(c) Convertible Debt. The Company has (i) reserved 16,111,259 shares of Company Class A Common Stock for issuance upon conversion of the Company's 2.25% Convertible Subordinated Notes due February 15, 2010 (the "**2.25% Notes**") and (ii) reserved 8,476,787 shares of Company Class A Common Stock (of which 8,297,079 shares remain reserved) for issuance upon conversion of the 3.00% Convertible Subordinated Notes originally issued by Computer Network Technology Corporation ("**CNT**") and for which the Company is now a co-obligor and guarantor (the "**3.00% Notes**" and, together with the 2.25% Notes, the "**Convertible Debt**").

(d) Voting Debt. Except as set forth in Section 2.2(c), no bonds, debentures, notes or other indebtedness of the Company or any of its Subsidiaries (i) having the right to vote on any matters on which stockholders may vote (or which is convertible into, or exchangeable for, securities having such right) or (ii) the value of which is any way based upon or derived from capital or voting stock of the Company (collectively, "**Voting Debt**"), is issued or outstanding as of the date hereof.

(e) Other Securities. Except as otherwise set forth in this Section 2.2 or in Section 2.2 of the Company Disclosure Letter, as of August 4, 2006, there are no securities, options, warrants, calls, rights, Contracts, arrangements or undertakings of any kind to which the Company or any of its Subsidiaries is a party or by which any of them is bound obligating the Company or any of its Subsidiaries to (including on a deferred basis) issue, deliver or sell, or cause to be issued, delivered or sold, or otherwise granting the Company or any of its Subsidiaries the right to have a third party issue, deliver or sell to the Company or any of its Subsidiaries, additional shares of capital stock, Voting Debt or other voting securities of the Company or any of its Subsidiaries, or obligating the Company or any of its Subsidiaries to issue, grant, extend or enter into any such security, option, warrant, call, right, Contract, arrangement or undertaking. All outstanding shares of Company Common Stock, all outstanding Company Options, and all outstanding shares of capital stock of each Subsidiary of the Company have been issued and granted in compliance in all material respects with (i) all applicable securities laws and all other applicable Legal Requirements and (ii) all requirements set forth in applicable Contracts. Except for shares of Company Restricted Stock, there are not any outstanding Contracts of the Company or any of its Subsidiaries to (A) repurchase, redeem or otherwise acquire any shares of capital stock of, or other equity or voting interests in, the Company or any of its Subsidiaries or (B) dispose of any shares of the capital stock

of, or other equity or voting interests in, any of its Subsidiaries. The Company and its Subsidiaries have not entered into any swaps, caps, collars, floors or other derivative contracts or securities relating to interest rates, equity securities, debt securities or commodities. Neither the Company nor any of its Subsidiaries is a party to, nor are there, any voting agreements, irrevocable proxies, voting trusts, registration rights agreements or other voting arrangements with respect to shares of the capital stock of, or other equity or voting interests in, the Company or any of its Subsidiaries. For purposes of this Agreement, "**Legal Requirements**" shall mean any federal, state, local, municipal, foreign or other law, statute, constitution, principle of common law, resolution, ordinance, code, order, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity.

(f) No Changes. Since August 4, 2006, and through the date hereof, other than (i) pursuant to the exercise of Company Options outstanding as of August 4, 2006, issued pursuant to Company Stock Option Plans, (ii) pursuant to the exercise of Company Stock-Based Awards outstanding as of August 4, 2006, issued pursuant to the applicable Company Benefit Plans or (iii) repurchases from Employees following termination of employment pursuant to the terms of applicable pre-existing stock option or purchase agreements, there has been no change in (A) the outstanding capital stock of the Company, (B) the number of Company Options or Company Stock-Based Awards outstanding, or (C) the number of other options, warrants or other rights to purchase capital stock of the Company.

2.3 Authority; Non-Contravention; Necessary Consents.

(a) Authority. The Company has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company and no other corporate proceedings on the part of the Company are necessary to authorize the execution and delivery of this Agreement or to consummate the Merger and the other transactions contemplated hereby, subject only to the adoption of this Agreement by the Company's stockholders. The adoption of this Agreement by the holders of a majority of the outstanding shares of Company Class A Common Stock, which are entitled to one (1) vote per share, and Company Class B Common Stock, which are entitled to one-tenth (1/10) of a vote per share, voting together as a single class, is the only vote of the holders of any class or series of Company capital stock necessary to approve and adopt this Agreement, approve the Merger and consummate the Merger and the other transactions contemplated hereby. This Agreement has been duly executed and delivered by the Company and, assuming due execution and delivery by Parent and Merger Sub, constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms , except that such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting or relating to creditors' rights generally and (ii) is subject to general principles of equity.

(b) Non–Contravention. The execution and delivery of this Agreement by the Company does not, and performance of this Agreement by the Company will not: (i) conflict with or

violate any provision of the Company Charter Documents or any Subsidiary Charter Documents of any Subsidiary of the Company, (ii) subject to the adoption of this Agreement by the Company's stockholders as contemplated in Section 5.2 and compliance with the requirements set forth in Section 2.3(c), conflict with or violate any material Legal Requirement applicable to the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries or any of their respective properties is bound or affected, or (iii) subject to obtaining the consents set forth in Section 2.3(b) of the Company Disclosure Letter, result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or impair the Company's rights or alter the rights or obligations of any third party under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a Lien on any of the properties or assets of the Company or any of its Subsidiaries pursuant to, any Company Material Contract (as defined in Section 2.15), except, in the case of clauses (ii) and (iii) above, for any such conflicts, breaches, defaults or violations that would not be material to the Company and its Subsidiaries, taken as a whole, or materially impede the ability of the Company to consummate the transactions contemplated by this Agreement in accordance with its terms.

(c) Necessary Consents. No consent, approval, order or authorization of, or registration, declaration or filing with any supranational, national, state, municipal, local or foreign government, any instrumentality, subdivision, court, administrative agency or commission or other governmental entity or instrumentality, or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental function (a "**Governmental Entity**") is required to be obtained or made by the Company in connection with the execution and delivery of this Agreement or the consummation of the Merger and other transactions contemplated hereby, except for: (i) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and appropriate documents with the relevant authorities of other states in which the Company and/or Parent are qualified to do business, (ii) the filing of the Proxy Statement/Prospectus (as defined in Section 2.17) with the SEC in accordance with the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and the effectiveness of the Registration Statement (as defined in Section 2.17), (iii) such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Act**"), (iv) the consents listed on Section 2.3(c) of the Company Disclosure Letter, (v) such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable state securities or "blue sky" laws and the securities laws of any foreign country, and (vi) such other consents, clearances, authorizations, filings, approvals and registrations with respect to any Governmental Entity the failure of which to obtain would not, individually or in the aggregate, have a Material Adverse Effect on the Company. The consents, approvals, orders, authorizations, registrations, declarations and filings set forth in (i) through (v) are referred to herein as the "**Necessary Consents**."

2.4 SEC Filings; Financial Statements.

(a) SEC Filings. The Company has filed all required registration statements, prospectuses, reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated by reference) required to be filed by it with the SEC since February

1, 2003. The Company has made available to Parent all such registration statements, prospectuses, reports, schedules, forms, statements and other documents in the form filed with the SEC that are not publicly available through the SEC's EDGAR database. All such required registration statements, prospectuses, reports, schedules, forms, statements and other documents are referred to herein as the "**Company SEC Reports.**" As of their respective dates, the Company SEC Reports complied as to form in all material respects with the requirements of the Securities Act of 1933, as amended (the "**Securities Act**"), or the Exchange Act, as the case may be, and the rules and regulations of the SEC thereunder applicable to such Company SEC Reports. The Company SEC Reports did not at the time they were filed (or if amended or superseded by a filing prior to the date of this Agreement then on the date of such filing) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the Company's Subsidiaries is required to file any forms, reports or other documents with the SEC. The Company has previously furnished to Parent a complete and correct copy of any amendments or modifications, which have not yet been filed with the SEC but which are required to be filed, to agreements, documents or other instruments which previously had been filed by the Company with the SEC pursuant to the Securities Act or the Exchange Act. As of the date hereof, there are no unresolved comments issued by the staff of the SEC with respect to any of the Company SEC Reports.

(b) Financial Statements. Each of the consolidated financial statements (including, in each case, any related notes thereto) contained in the Company SEC Reports (as amended prior to the date of this Agreement) (the "**Company Financials**"): (i) complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto, (ii) was prepared in accordance with United States generally accepted accounting principles ("**GAAP**") applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited interim financial statements, as may be permitted by the SEC on Form 10-Q, 8-K or any successor form under the Exchange Act), and (iii) fairly presented, in all material respects, the consolidated financial position of the Company and its consolidated Subsidiaries as at the respective dates thereof and the consolidated results of the Company's operations and cash flows for the periods indicated (subject, in the case of unaudited statements, to normal year-end audit adjustments, as permitted by GAAP and the applicable rules and regulations promulgated by the SEC). The balance sheet of the Company contained in the Company SEC Reports as of April 30, 2006, is hereinafter referred to as the "**Company Balance Sheet.**" Other than liabilities (A) disclosed in the Company Financials or (B) incurred since the date of the Company Balance Sheet in the ordinary course of business consistent with past practice, neither the Company nor any of its Subsidiaries has any liabilities (absolute, accrued, contingent or otherwise) of a nature required by GAAP to be disclosed on a consolidated balance sheet or in the notes thereto which are, individually or in the aggregate, material to the business, results of operations or financial condition of the Company and its Subsidiaries, taken as a whole. Neither the Company nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K promulgated by the SEC).

(c) Internal Controls and Procedures. The Company has established and maintains disclosure controls and procedures and internal control over financial reporting, as such terms are defined in, and as required by, Rules 13a-15 and 15d-15 under the Exchange Act. The Company's disclosure controls and procedures are reasonably designed to ensure that all material information required to be disclosed by the Company in the reports that it files or furnishes under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such material information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure and to make the certifications required pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 (the "**Sarbanes-Oxley Act**"). The Company's management has completed an assessment of the effectiveness of the Company's system of internal control over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act for the fiscal year ended January 31, 2006, and such assessment concluded that such controls were effective and the Company's independent registered accountant has issued (and not subsequently withdrawn or qualified) an attestation report concluding that the Company maintained effective internal control over financial reporting as of January 31, 2006. Since January 31, 2006 and through the date hereof, to the Knowledge of the Company, no events, facts or circumstances have occurred, or exist, such that management would not be able to complete its assessment of the effectiveness of the Company's system of internal control over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act for the fiscal year ended January 31, 2007, and conclude, after such assessment, that such controls were effective. The principal executive officer and principal financial officer of the Company have made all certifications required by the Sarbanes-Oxley Act and any related rules and regulations promulgated by the SEC. The Company and each of its Subsidiaries has established and maintains, adheres to and enforces a system of internal controls over financial reporting, which are effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements (including the Company Financials) for external purposes in accordance with GAAP, including policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company and its Subsidiaries, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the Company and its Subsidiaries are being made only in accordance with appropriate authorizations of management and the Board of Directors of the Company, and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements of the Company and its Subsidiaries. To the Knowledge of the Company, since the date of the Company's most recent Form 10-Q filed with the SEC, neither the Company nor any of its Subsidiaries (including any Employee (as defined in Section 2.12(a)), nor the Company's independent auditors has identified or been made aware of (A) any significant deficiency or material weakness in the design or operation of internal control over financial reporting utilized by the Company and its Subsidiaries, (B) any fraud, whether or not material, that involves the Company's management or other Employees), or (C) any claim or allegation regarding any of the foregoing. In connection with the periods covered by the Company Financials, the Company has disclosed to Parent all deficiencies and weaknesses identified in writing by the Company or the Company's independent auditors (whether current or former) in

the design or operation of internal controls over financial reporting utilized by the Company and its Subsidiaries.

(d) Sarbanes-Oxley Act; Nasdaq. The Company is in compliance in all material respects with (i) the applicable provisions of the Sarbanes-Oxley Act and (ii) the applicable listing and corporate governance rules and regulations of Nasdaq.

2.5 Absence of Certain Changes or Events. Since the date of the Company Balance Sheet there has not been: (a) any Material Adverse Effect on the Company, (b) any declaration, setting aside or payment of any dividend on, or other distribution (whether in cash, stock or property) in respect of, any of the Company's or any of its Subsidiaries' capital stock, or any repurchase for value or redemption by the Company or any of its Subsidiaries of any of the Company's capital stock or any other securities of the Company or its Subsidiaries except for repurchases from Employees following termination of employment pursuant to the terms of applicable pre-existing stock option or purchase agreements, (c) any split, combination or reclassification of any of the Company's or any of its Subsidiaries' capital stock, (d) any granting by the Company or any of its Subsidiaries of any material (whether individually or in the aggregate) increase in compensation or fringe benefits, except for normal increases of cash compensation in the ordinary course of business consistent with past practice (other than to directors or officers of the Company), or any payment by the Company or any of its Subsidiaries of any material (whether individually or in the aggregate) bonus, except for bonuses made in the ordinary course of business consistent with past practice (other than to directors or officers of the Company), or any granting by the Company or any of its Subsidiaries of any material (whether individually or in the aggregate) increase in severance or termination pay or any entry by the Company or any of its Subsidiaries into any material (whether individually or in the aggregate) employment, severance, termination or indemnification agreement, (e) entry by the Company or any of its Subsidiaries into any licensing or other agreement with regard to the acquisition or disposition of any material Intellectual Property (as defined in Section 2.7(a)(i)), other than non-exclusive license, supply and distribution agreements entered into in the ordinary course of business consistent with past practice, (f) any material (whether individually or in the aggregate) amendment or consent with respect to any Company Material Contract in effect since the date of the Company Balance Sheet, (g) any material change by the Company in its accounting methods, principles or practices, except as required by concurrent changes in GAAP or (h) any material revaluation by the Company of any of its assets.

2.6 Taxes.

(a) Definition. For the purposes of this Agreement, the term "**Tax**" or, collectively, "**Taxes**" shall mean (i) any and all federal, state, local and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts, (ii) any liability for the payment of any amounts of the type described in clause (i) of this Section 2.6(a) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period, and

(iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) of this Section 2.6(a) as a result of any express or implied obligation to indemnify any other Person or as a result of any obligations under any agreements or arrangements with any other Person with respect to such amounts and including any liability for taxes of a predecessor entity.

(b) Tax Returns and Audits.

(i) The Company and each of its Subsidiaries have filed all material federal, state, local and foreign returns, estimates, information statements and reports (including amendments thereto) relating to any and all Taxes ("**Tax Returns**") required to be filed by any of them and have paid, or have adequately reserved (in accordance with GAAP) for the payment of, all Taxes required to be paid, and the most recent financial statements contained in the Company SEC Reports reflect an adequate reserve (in accordance with GAAP) for all Taxes payable by the Company and its Subsidiaries through the date of such financial statements. No material deficiencies for any Taxes have been asserted or assessed, or to the Knowledge of the Company, proposed, against the Company or any of its Subsidiaries that are not subject to adequate reserves (in accordance with GAAP), nor has the Company or any of its Subsidiaries executed any waiver of any statute of limitations on or extending the period for the assessment or collection of any material Tax.

(ii) The Company and each of its Subsidiaries have timely paid or withheld with respect to their Employees (and paid over any amounts withheld to the appropriate Taxing authority) all federal and state income taxes, Federal Insurance Contribution Act, Federal Unemployment Tax Act and other similar Taxes required to be paid or withheld.

(iii) No audit or other examination of any material Tax Return of the Company or any of its Subsidiaries is presently in progress, nor has the Company or any of its Subsidiaries been notified in writing of any request for such an audit or other examination.

(iv) The Company has made available to Parent or its legal counsel, copies of all material Tax Returns for the Company and each of its Subsidiaries filed for all periods beginning February 1, 2003 or later.

(v) Neither the Company nor any of its Subsidiaries is, nor has been at any time, a "United States Real Property Holding Corporation" within the meaning of Section 897(c)(2) of the Code.

(vi) Neither the Company nor any of its Subsidiaries has constituted either a "distributing corporation" or a "controlled corporation" in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code (A) in the two years prior to the date of this Agreement or (B) in a distribution which otherwise constitutes part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) that includes the Merger.

(vii) Neither the Company nor any of its Subsidiaries has engaged in a "reportable transaction," as set forth in Treas. Reg. § 1.6011-4(b), or any transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service has

determined to be a tax avoidance transaction and identified by notice, regulation or other form of published guidance as a "listed transaction," as set forth in Treas. Reg. § 1.6011-4(b)(2).

(viii) Neither the Company nor any of its Subsidiaries has taken any action or has failed to take any action or knows of any fact, agreement, plan or other circumstance that would cause the Merger to fail to qualify as a reorganization with the meaning of Section 368(a) of the Code.

2.7 Intellectual Property.

(a) Definitions. For the purposes of this Agreement, the following terms have the following meanings:

(i) "**Intellectual Property**" shall mean any or all of the following and all rights in, arising out of, or associated therewith: (A) all United States, international and foreign patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof; (B) all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know how, technology, technical data and customer data; (C) all copyrights, copyrights registrations and applications therefor, and all other rights corresponding thereto throughout the world; (D) all mask works, mask work registrations and applications therefor, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topology; (E) domain names, uniform resource locators ("**URLs**") and other names and locators associated with the Internet (collectively, "**Domain Names**"), (F) all computer software, including all source code, object code, firmware, development tools, files, records and data, and all media on which any of the foregoing is recorded; (G) all industrial designs and any registrations and applications therefor throughout the world; (H) all trade names, logos, common law trademarks and service marks, trademark and service mark registrations and applications therefor throughout the world; (I) all databases and data collections and all rights therein throughout the world; (J) all moral and economic rights of authors and inventors, however denominated, throughout the world; and (K) any similar or equivalent rights to any of the foregoing anywhere in the world.

(ii) "**Company Intellectual Property**" shall mean any Intellectual Property that is owned by, or exclusively licensed to, the Company or any of its Subsidiaries.

(iii) "**Registered Intellectual Property**" shall mean all United States, international and foreign: (A) patents and patent applications (including provisional applications); (B) registered trademarks, applications to register trademarks, intent-to-use applications, or other registrations or applications related to trademarks; and (C) registered copyrights and applications for copyright registration.

(iv) "**Company Registered Intellectual Property**" shall mean all of the Registered Intellectual Property owned by, or filed in the name of, the Company or any of its Subsidiaries.

(v) "**Personal Data**" shall mean a natural person's name, street address, telephone number, e-mail address, photograph, social security number, driver's license number, passport number, credit or debit card number or customer or account number, or any other piece of information that allows the identification of a natural person.

(vi) "**User Data**" shall mean any Personal Data or other data or information collected by or on behalf of the Company or any of its Subsidiaries from users of any Company Product or website of the Company or any of its Subsidiaries.

(vii) "**Company Privacy Policy**" shall mean any external or internal, past or present policy of the Company or any of its Subsidiaries relating to: (A) the privacy of users of any Company Product or of any externally accessible website of the Company or any of its Subsidiaries, (B) the collection, storage, disclosure, and transfer of any User Data or Personal Data, or (C) any Employee information.

(b) Registered Intellectual Property; Proceedings. Section 2.7(b) of the Company Disclosure Letter sets forth (i) all material Company Registered Intellectual Property and specifies, where applicable, the jurisdictions in which each such item of Company Registered Intellectual Property has been issued or registered, the filing, publication, issue and/or expiration dates, and the corresponding application and registration numbers and similar identifiers, (ii) all proceedings or actions before any court or tribunal (including the United States Patent and Trademark Office (the "**PTO**") or equivalent authority anywhere else in the world) related to any material Company Registered Intellectual Property.

(c) Company Products. Section 2.7(c) of the Company Disclosure Letter sets forth a list (by name and version number) of all products, software or service offerings of the Company or any of its Subsidiaries (collectively, "**Company Products**") that are currently being sold, distributed, provided or otherwise disposed of, or which the Company or any of its Subsidiaries currently supports or is obligated to support or maintain, or any products or services under development which the Company intends to make commercially available within 12 months of the date hereof.

(d) No Order. No material Company Intellectual Property or Company Product is subject to any proceeding or outstanding order, Contract or stipulation restricting in any manner the use, transfer, or licensing thereof by the Company or any of its Subsidiaries, or which may adversely affect the validity, use or enforceability of such Company Intellectual Property or Company Product.

(e) Registration. Each item of material Company Registered Intellectual Property is valid and subsisting, and all necessary registration, maintenance and renewal fees currently due in connection with such material Company Registered Intellectual Property have been made and all necessary documents, recordations and certificates in connection with such material Company Registered Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of prosecuting, maintaining or perfecting such material Company Registered Intellectual Property. The

Company has no Knowledge of any facts or circumstances that would render any material Company Registered Intellectual Property unenforceable.

(f) Absence of Liens. The Company owns and has good and exclusive title to each item of material Company Intellectual Property (including all Company Intellectual Property embodied in, or necessary for the use, distribution, importation, sale or other exploitation of, any Company Product) owned by it, free and clear of any Liens (excluding non-exclusive licenses and related restrictions granted in the ordinary course of business consistent with past practice and Liens that do not materially restrict Company's use or exploitation of any Company Intellectual Property). All Company Intellectual Property will be fully transferable, alienable and licensable by the Surviving Corporation and/or Parent without material restriction and without material payment of any kind to any third party.

(g) Third-Party Development. To the extent that any technology, software or Intellectual Property has been developed or created independently or jointly by a third party for the Company or any of its Subsidiaries, or any technology, software or other Intellectual Property that has been developed or created independently or jointly by a third party is incorporated into or bundled or distributed with any of the Company Products, the Company and its Subsidiaries have a written agreement with such third party with respect thereto and the Company and its Subsidiaries thereby either (i) have obtained ownership of, and are the exclusive owners of, or (ii) have obtained licenses (sufficient for the conduct of its business as currently conducted and as proposed to be conducted) to all technology, software or Intellectual Property in such work, material or invention by operation of law or by valid assignment, to the fullest extent it is legally possible to do so. Except as set forth on Section 2.7(g) of the Company Disclosure Letter, no Person who has licensed any Intellectual Property to the Company or any of its Subsidiaries has ownership rights or license rights to improvements made by or for the Company or any such Subsidiary in such Intellectual Property. Without limiting the foregoing, the Company and each of its Subsidiaries has the right to use, pursuant to valid licenses, all data (including personal data of third parties), all software development tools, library functions, operating systems, data bases, compilers and all other third-party software to the extent that each of the foregoing (i) is used in the operation of the Company's and its Subsidiaries' business, or (ii) is required to create, modify, compile, operate or support any software that is Company Intellectual Property or is incorporated into or distributed with any Company Product.

(h) Transfers. Neither the Company nor any of its Subsidiaries has transferred ownership of, or granted any exclusive license with respect to, any material Intellectual Property that is or was Company Intellectual Property (including any Company Intellectual Property embodied in, or necessary for the use, distribution, importation, sale or other exploitation of, any Company Product by the Company), to any third party, or knowingly permitted the Company's rights in such Intellectual Property to lapse or enter the public domain.

(i) Licenses. Other than "shrink wrap" and similar widely available commercial end-user licenses, Section 2.7(i) of the Company Disclosure Letter sets forth a list of all contracts, licenses and agreements to which the Company or any of its Subsidiaries is a party (i) with respect to

material Company Intellectual Property licensed or transferred to any third party, or (ii) pursuant to which a third party has licensed or transferred any material Intellectual Property to the Company or any of its Subsidiaries.

(j) No Conflict. All Contracts affecting the use or ownership of either (i) material Company Intellectual Property, or (ii) Intellectual Property of a third party licensed to the Company or any of its Subsidiaries that is material to the Company and its Subsidiaries, taken as a whole, are in full force and effect (such Contracts referred to herein as "**IP Contracts**"). The consummation of the transactions contemplated by this Agreement will neither violate nor result in the breach, modification, cancellation, termination, suspension of, or acceleration of any payments (including allowing any third party to require the Company or any of its Subsidiaries to prepay any obligations or result in the loss of any prepaid royalties or fees) with respect to, any IP Contracts. Each of the Company and its Subsidiaries is in material compliance with, and has not materially breached any term of any IP Contracts and, to the Knowledge of the Company, all other parties to IP Contracts are in compliance with, and have not materially breached any term of, such Contracts. Following the Closing Date, the Surviving Corporation will be permitted to exercise all of the Company's and its Subsidiaries' rights under all IP Contracts to the same extent the Company and its Subsidiaries would have been able to had the transactions contemplated by this Agreement not occurred and without the payment of any additional material amounts or material consideration, or the loss of any material prepaid royalties or material fees, other than ongoing fees, royalties or payments which the Company or any of its Subsidiaries would otherwise be required to pay or would lose.

(k) Effect of Transaction. Neither this Agreement nor the transactions contemplated by this Agreement, including the assignment to Parent or the Surviving Corporation by operation of law or otherwise of any contracts or agreements to which the Company or any of its Subsidiaries are a party, will result in (i) either Parent or the Surviving Corporation granting to any third party any right to or with respect to any material Intellectual Property right owned by, or licensed to, either of them, (ii) either Parent or the Surviving Corporation being bound by, or subject to, any non-compete or other material restriction on the operation or scope or their respective businesses, or (iii) either Parent or the Surviving Corporation being obligated to pay any material royalties or other material amounts to any third party in excess of those payable by Parent or the Company, respectively, prior to the Closing.

(l) No Infringement. To the Knowledge of the Company, the operation of the business of the Company and its Subsidiaries as such business currently is conducted and reasonably contemplated to be conducted, including (i) the Company's and its Subsidiaries' design, development, manufacture, distribution, reproduction, marketing or sale of the products, software or services of the Company and its Subsidiaries (including Company Products), (ii) the Company's use of any product, device, algorithm or process and (iii) the use, distribution and exploitation of User Data (if any), has not and does not infringe or misappropriate the Intellectual Property of any third party or constitute unfair competition or unfair trade practices under the laws of any jurisdiction.

(m) All Necessary Intellectual Property. To the Knowledge of Company, the Company and its Subsidiaries own or otherwise have sufficient rights to all material Intellectual Property used in and/or necessary to the conduct of the business of the Company and its Subsidiaries as it currently is conducted, and as it is currently planned to be conducted by the Company and its Subsidiaries.

(n) No Notice of Infringement. To the Knowledge of the Company, neither the Company nor any of its Subsidiaries has received notice from any third party that the operation of the business of the Company or any of its Subsidiaries or any act, product or service of the Company or any of its Subsidiaries, infringes or misappropriates the Intellectual Property of any third party or constitutes unfair competition or unfair trade practices under the laws of any jurisdiction.

(o) No Third Party Infringement. To the Knowledge of the Company, no Person has infringed or misappropriated, or is infringing or misappropriating, any material Company Intellectual Property, including any Company Intellectual Property (other than Company Intellectual Property owned by a third party) embodied in, or necessary for the use, distribution, importation, sale or other exploitation of, any Company Product by the Company.

(p) Proprietary Information Agreements. The Company and each of its Subsidiaries has taken reasonable steps to protect the Company's and its Subsidiaries' rights in the Company's confidential information and trade secrets that it wishes to protect or any trade secrets or confidential information of third parties provided to the Company or any of its Subsidiaries, and, without limiting the foregoing, each of the Company and its Subsidiaries has and enforces a policy requiring each Employee to execute a proprietary information and confidentiality agreement substantially in the form provided to Parent, and to the Knowledge of the Company, all Employees of the Company and any of its Subsidiaries have executed such an agreement, except where the failure to do so is not reasonably expected to have a Material Adverse Effect on the Company.

(q) Open Source. For purposes of this Agreement, "**Open Source Material**" shall mean any software or other Intellectual Property that is distributed or made available as "open source software" or "free software" or is otherwise publicly distributed or made generally available in source code or equivalent form under terms that permit modification and redistribution of such software or Intellectual Property. Open Source Materials includes software that is licensed under the GNU General Public License, GNU Lesser General Public License, Mozilla License, Common Public License, Apache License or BSD License, as well as all other similar "public" licenses.

(i) Section 2.7(q)(i) of the Company Disclosure Letter accurately identifies and describes (A) each item of Open Source Material (x) that is material to a Company Product and (y) that is or has been contained in, distributed with, or used in the development of a Company Product or from which any part of any Company Product has been derived, or which is or has been distributed or made available to any third party by or for the Company or any of its Subsidiaries, (B) the applicable license terms for each such item of Open Source Material, (C) the Company Product(s) (if any) to which each such item of Open Source Material relates, and (D) whether (and if so, how) each such item of Open Source Material has been modified or distributed by or for the Company or any of its Subsidiaries.

(ii) Except as set forth in Section 2.7(q)(ii) of the Company Disclosure Letter, neither the Company nor any of its Subsidiaries has (A) incorporated Open Source Materials into, or combined Open Source Materials with, any Company Product or Company Intellectual Property or used Open Source Materials to develop or provide any Company Product or Company Intellectual Property, (B) distributed Open Source Materials in conjunction with or for use with any Company Product or Company Intellectual Property, or (C) otherwise used Open Source Materials, in the case of each of (A), (B) or (C), in a manner that (x) imposes or could impose a requirement or condition that such Company Product or Company Intellectual Property (or any material portion thereof) (1) be disclosed or distributed in source code form, (2) be licensed for the purpose of making modifications or derivative works, or (3) be redistributable at no charge, or (y) grants or would require the grant of a license to any Person of any Company Intellectual Property.

(r) Privacy and Personal Data. Neither the Company nor its Subsidiaries have breached or violated any Company Privacy Policy and, to the Knowledge of Company, there has been no unauthorized or illegal use of or access to any of the User Data or Personal Data collected by Company or its Subsidiaries from its customers or users of its websites. Neither the execution, delivery, or performance of this Agreement nor the consummation of any of the transactions contemplated by this Agreement, nor Parent's or the Surviving Corporation's possession or use of any User Data will result in any violation of any law or Company Privacy Policy.

2.8 Compliance; Permits; Exports; FCPA.

(a) Compliance. Neither the Company nor any of its Subsidiaries is in conflict with, or in default or in violation of, any Legal Requirement applicable to the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries or any of their respective businesses or properties is bound or affected, except for those conflicts, defaults or violations that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on the Company. As of the date hereof, the Company has not received notice that any investigation or review by any Governmental Entity is pending and, to the Knowledge of the Company, no such investigation or review has been threatened, against the Company or any of its Subsidiaries. There is no material judgment, injunction, order or decree binding upon the Company or any of its Subsidiaries which has or would reasonably be expected to have the effect of prohibiting or materially impairing (i) any business practices of the Company or any of its Subsidiaries, (ii) any acquisition of material property by the Company or any of its Subsidiaries or (iii) the conduct of business by the Company and its Subsidiaries as currently conducted.

(b) Permits. The Company and its Subsidiaries hold, to the extent legally required, all material permits, licenses, variances, clearances, consents, commissions, franchises, exemptions, orders and approvals from Governmental Entities ("**Permits**") that are required for the operation of the business of the Company and its Subsidiaries as currently conducted (collectively, "**Company Permits**"). As of the date hereof, no suspension or cancellation of any of the Company Permits is pending or, to the Knowledge of the Company, threatened, except for such suspensions or cancellations that, individually or in the aggregate, would not reasonably be expected to have a

Material Adverse Effect on the Company. The Company and its Subsidiaries are in compliance in all material respects with the terms of the Company Permits.

(c) Export Control Laws. Each of the Company and its Subsidiaries (x) is conducting its export transactions in accordance in all material respects, and (y) has conducted its export transactions in accordance, other than as would not reasonably be expected to have a Material Adverse Effect on the Company, with all applicable U.S. export and re-export control laws and, to the Knowledge of the Company, all other applicable import/export controls in other countries in which the Company and its Subsidiaries conduct business.

(i) Each of the Company and its Subsidiaries has obtained, and is in material compliance with, all material export licenses, license exceptions and other consents, notices, waivers, approvals, orders, authorizations, registrations, declarations, classifications and filings with any Governmental Entity required for (A) the export and re-export of products, services, software and technologies and (B) releases of technologies and software to foreign nationals located in the United States and abroad ("**Export Approvals**");

(ii) As of the date hereof, there are no pending or, to the Knowledge of the Company, threatened claims or legal actions against the Company or any Subsidiary alleging a violation of such Export Approvals or the export control laws of any Governmental Entity; and

(iii) No Export Approvals for the transfer of export licenses to Parent or the Surviving Corporation are required by the consummation of the Merger, other than such Export Approvals the failure of which to obtain would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect on the Company.

(d) Foreign Corrupt Practices Act. Neither the Company nor any of its Subsidiaries, nor to the Knowledge of the Company, any officer, director, agent, Employee or other Person associated with or acting on their behalf, has, directly or indirectly, materially violated any provision of the Foreign Corrupt Practices Act of 1977, as amended (the "**FCPA**"), and to the Knowledge of the Company, none of them has used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, made, offered or authorized any unlawful payment to foreign or domestic government officials or employees, or made, offered or authorized any unlawful bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment. The Company has established reasonable internal controls and procedures designed to ensure compliance with the FCPA.

2.9 Litigation. As of the date hereof, there are no claims, suits, actions or proceedings pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries, before any court, Governmental Entity, or any arbitrator that seek to restrain or enjoin the consummation of the transactions contemplated hereby or which would reasonably be expected, either individually or in the aggregate with all such claims, actions or proceedings, to be material to the Company and its Subsidiaries taken as a whole.

2.10 Brokers' and Finders' Fees; Fees and Expenses. Except for fees payable to Credit Suisse Securities LLC (USA) ("**Credit Suisse**") pursuant to an engagement letter dated June 24, 2004, a copy of which has been provided to Parent, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or similar fee or commission in connection with this Agreement or any transaction contemplated hereby based upon arrangements made by or on behalf of the Company. Section 2.10 of the Company Disclosure Letter sets forth a listing of any Contract with any accountant, broker, financial advisor, consultant, legal counsel or other Person retained by the Company in connection with this Agreement or the transactions contemplated hereby which is other than on a "time and materials" basis at customary rates.

2.11 Transactions with Affiliates. Except as set forth in the Company SEC Reports, since the date of the Company's last proxy statement filed with the SEC, no event has occurred as of the date hereof that would be required to be reported by the Company pursuant to Item 404 of Regulation S-K promulgated by the SEC. Section 2.11 of the Company Disclosure Letter sets forth a list of those Persons who may be deemed to be, in the Company's reasonable judgment, affiliates of the Company within the meaning of Rule 145 promulgated under the Securities Act (each, a "**Company Affiliate**").

2.12 Employee Benefit Plans.

(a) Schedule. Section 2.12(a) of the Company Disclosure Letter sets forth a correct and complete list of all "employee benefit plans" (as defined in Section 3(3) of ERISA), and all other material employee benefit plans, programs, agreements, policies, contracts, arrangements or payroll practices, including Company Material Contracts pursuant to Section 2.15(a)(ii), bonus plans, incentive, equity or equity-based compensation, or deferred compensation arrangements, change in control, termination or severance plans or arrangements, stock purchase, severance pay, sick leave, vacation pay, salary continuation for disability, hospitalization, medical, dental, vision, life insurance, educational assistance and scholarship plans and programs or other material employee benefit plans or program, whether written or unwritten, funded or unfunded, which is or has been maintained, contributed to, or required to be contributed to, by the Company or any Controlled Group Affiliate (as defined in Section 2.12(e)) for the benefit of current or former employees, consultants or directors (each, an "**Employee**"), or with respect to which the Company or any Controlled Group Affiliate has or may have any liability or obligation (collectively, the "**Company Benefit Plans**"). Neither the Company nor any Controlled Group Affiliate has a Contract, plan or commitment, whether legally binding or not, to create any additional Company Benefit Plan or to modify any existing Company Benefit Plan that would reasonably be expected to result in material liability to the Company and its Controlled Group Affiliates, taken as a whole.

(b) Documents. With respect to each Company Benefit Plan covering Employees who perform services in the United States, the Company has delivered or made available to Parent for review, (i) the most recent documents constituting the Company Benefit Plans (including all amendments thereto and related trust documents), and with respect to any Company Benefit Plan that has been merged into another Company Benefit Plan, the plan documents in effect prior to the merger of such plan, (ii) the most recent annual actuarial valuations and/or audited statement of

assets and liabilities for each applicable Company Benefit Plan, (iii) the most recent Form 5500 and all schedules thereto, (iv) the most recent Approval (as defined in Section 2.12(c)(i)) for each Company Benefit Plan, as applicable, (v) all material correspondence to or from any Governmental Entity relating to any Company Benefit Plan, (vi) all discrimination tests for each Company Benefit Plan, if applicable, for the most recent plan year, (vii) all material communications to Employees regarding in each case, relating to any amendments, terminations, establishments, increases or decreases in benefits, acceleration of payments or vesting schedules or other events which would result in any material liability under any Company Benefit Plan or proposed Company Benefit Plan, and (viii) the most recent summary plan description together with the summary(ies) of material modifications thereto, if any, required under ERISA with respect to each Company Benefit Plan.

(c) Benefit Plan Compliance.

(i) With respect to each Company Benefit Plan, no event has occurred and there exists no condition or set of circumstances, in connection with which the Company or any of its Subsidiaries would be subject to any material liability under the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), the Code or any other applicable Legal Requirement, which would reasonably be expected to result in material liability to the Company and its Controlled Group Affiliates, taken as a whole.

(ii) Each Company Benefit Plan has been, in all material respects, administered and operated in accordance with its terms, with the applicable provisions of ERISA, the Code and all other applicable material Legal Requirements and the terms of all applicable collective bargaining agreements. Each Company Benefit Plan, including any material amendments thereto, that is capable of approval by, and/or registration for and/or qualification for special tax status with, the appropriate taxation, social security and/or supervisory authorities in the relevant country, state, territory or the like (each, an "**Approval**") has received such Approval or there remains a period of time in which to obtain such Approval retroactive to the date of any material amendment that has not previously received such Approval, except for the lack of such Approvals which would not reasonably be expected to result in material liability to the Company and its Controlled Group Affiliates, taken as a whole. Except as required by Legal Requirements, no condition exists that would prevent the Company or Parent from terminating or amending any Company Benefit Plan at any time for any reason without material liability to the Company and its Controlled Group Affiliates, taken as a whole (other than ordinary administration expenses or routine claims for benefits).

(iii) No material oral or written representation or commitment with respect to any material aspect of any Company Benefit Plan has been made to an Employee of the Company or any of its Subsidiaries by an authorized Employee of the Company that is not materially in accordance with the written or otherwise preexisting terms and provisions of such Company Benefit Plans that would reasonably be expected to result in material liability to the Company and its Controlled Group Affiliates, taken as a whole. To the Knowledge of the Company, neither the Company nor any of its Subsidiaries has entered into any agreement, arrangement or understanding, whether written or oral, with any trade union, works council or other Employee representative body

or any material number or category of its Employees which would prevent, restrict or materially impede the implementation of any lay-off, redundancy, severance or similar program within its or their respective workforces (or any part of them).

(iv) There are no unresolved claims or disputes under the terms of, or in connection with, any Company Benefit Plan (other than routine undisputed claims for benefits), and no action, legal or otherwise, has been commenced, or to the Knowledge of the Company, is threatened or reasonably anticipated (other than routine claims for benefits), with respect to any material claim, which would reasonably be expected to result in material liability to the Company and its Controlled Group Affiliates, taken as a whole.

(d) Plan Funding. With respect to the Company Benefit Plans, there are no material benefit or funding obligations for which contributions have not been made or properly accrued or will not be offset by insurance and there are no material benefit or funding obligations which have not been accounted for by reserves, or otherwise properly footnoted in accordance with the requirements of GAAP, on the financial statements of the Company. The assets of each Company Benefit Plan which is funded are reported at their fair market value on the books and records of such Company Benefit Plan.

(e) No Pension or Welfare Plans. Neither the Company nor any other Person under common control within the meaning of Section 414(b), (c), (m) or (o) of the Code (a "**Controlled Group Affiliate**") with the Company has ever maintained, established, sponsored, participated in, or contributed to, any (i) Company Benefit Plan which is or was subject to Title IV of ERISA or Section 412 of the Code, (ii) "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA), (iii) "multiple employer plan" as defined in ERISA or the Code, or (iv) "funded welfare plan" within the meaning of Section 419 of the Code. No Company Benefit Plan provides health benefits that are not fully insured through an insurance contract.

(f) Continuation Coverage. No Company Benefit Plan provides post-termination or retiree welfare benefits (whether or not insured), with respect to any Person for any reason (other than coverage mandated by applicable Legal Requirements and neither the Company nor any Controlled Group Affiliate has ever represented, promised or contracted (whether in oral or written form) to any Employee (either individually or to Employees as a group) or any other Person that such Employee(s) or other Person would be provided with post-termination or retiree welfare benefits, except to the extent required by applicable Legal Requirements or as would not otherwise reasonably be expected to result in material liability to the Company and its Controlled Group Affiliates, taken as a whole.

(g) Effect of Transaction. The execution of this Agreement and the consummation of the transactions contemplated hereby will not (either alone or upon the occurrence of any additional or subsequent events) constitute an event under any Company Benefit Plan that will or may result in any payment (whether of severance pay or otherwise), acceleration of payment, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Employee. There is no contract, agreement, plan or arrangement to which the Company or any

Controlled Group Affiliate is a party or by which it is bound to compensate any Employee for excise taxes paid pursuant to Section 4999 of the Code.

(h) Labor. The Company is not presently, nor has it been in the past, a party to, or bound by, any collective bargaining agreement or union contract with respect to Employees and no collective bargaining agreement is being negotiated by the Company or any of its Subsidiaries. To the Knowledge of the Company, there are no activities or proceedings of any labor union to organize any Employees. There is no labor dispute, strike or work stoppage against the Company or any of its Subsidiaries pending or, to the Knowledge of the Company, threatened or reasonably anticipated which may materially interfere with the respective business activities of the Company or any of its Subsidiaries. None of the Company, any of its Subsidiaries or any of their respective representatives or Employees has committed any material unfair labor practice in connection with the operation of the respective businesses of the Company or any of its Subsidiaries. There are no actions, suits, claims, labor disputes or grievances pending, or, to the Knowledge of the Company, threatened or reasonably anticipated relating to any labor, safety or discrimination matters involving any Employee, including, without limitation, charges of unfair labor practices or discrimination complaints, which, if adversely determined, would, individually or in the aggregate, be material to the Company and its Subsidiaries, taken as a whole. Neither the Company nor any of its Subsidiaries has engaged in any unfair labor practices within the meaning of the National Labor Relations Act. Neither the Company nor any of its Subsidiaries have incurred any material liability or material obligation under the Worker Adjustment and Retraining Notification Act or any similar state or local law which remains unsatisfied.

(i) Employment Matters. Except as would not reasonably be expected to result in material liability to the Company and its Controlled Group Affiliates, taken as a whole, the Company: (i) is in compliance in all material respects with all applicable foreign, federal, state and local laws, rules and regulations respecting employment (including but not limited to the classification of any Person as an employee or independent contractor), employment practices, terms and conditions of employment and wages and hours, in each case, with respect to Employees; (ii) has withheld and reported all amounts required by law or by agreement to be withheld and reported with respect to wages, salaries and other payments to Employees; (iii) is not liable for any arrears of wages or any taxes or any penalty for failure to comply with any of the foregoing; and (iv) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Entity, with respect to unemployment compensation benefits, social security or other benefits or obligations for Employees (other than routine payments to be made in the normal course of business and consistent with past practice). The services provided by each of the U.S. Employees (other than consultants and contractors) are terminable at will by the Company and the Company is not a party to any Contract with any U.S. Employees (other than consultants and contractors) that provides for severance or other post-termination pay. Neither the Company nor any of its Subsidiaries is party to any Contract with any non-U.S. Employee that provides benefits to such non-U.S. Employee or restrictions on the Company in excess of those required by applicable Legal Requirements.

2.13 Title to Properties.

(a) Leases. Section 2.13(a) of the Company Disclosure Letter sets forth a list of all material real property leases to which the Company or any of its Subsidiaries is a party or by which any of them is bound (each, a "**Company Lease**"). No party has a right to occupy any of the premises subject to a Company Lease ("**Company Leased Property**") except for the Company or its Subsidiaries. The Company has made available to Parent a true and complete copy of each Company Lease.

(b) Properties Section 2.13(b) of the Company Disclosure Letter sets forth a list of all real property owned by the Company or any of its Subsidiaries (the "**Company Owned Property**" and collectively with the Company Leased Property, the "**Company Real Property**"). With respect to the Company Owned Property, the Company has made available to Parent copies of the deeds and other instruments (as recorded) by which the Company or any of its Subsidiaries acquired such parcel of property, and copies of all title insurance policies, opinions, abstracts and surveys in the possession of the Company or any of its Subsidiaries relating thereto. Except as would not materially and adversely affect the ability of the Company or Subsidiary to operate its business as now being conducted, there are no structural, electrical, mechanical, plumbing, roof, paving or other defects in any improvements located on any of the Company Owned Property. There are no pending, or, to the Knowledge of the Company, threatened condemnation or eminent domain actions or proceedings, or any special assessments or other activities of any public or quasi-public body that are reasonably likely to adversely affect the Company Real Property.

(c) Valid Title. The Company and each of its Subsidiaries has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of its tangible properties and assets, real, personal and mixed, used or held for use in its business that are material to the Company and its Subsidiaries, taken as a whole, free and clear of any Liens, except for (i) Liens imposed by law in respect of obligations not yet due which are owed in respect of Taxes or (ii) Liens which are not material in character, amount or extent, and which do not materially detract from the value, or materially interfere with the present use, of the property subject thereto or affected thereby.

2.14 Environmental Matters. Except as would not reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole:

(a) no underground storage tanks and no amount of any substance that has been designated as radioactive, toxic, hazardous or a pollutant or contaminant or words of similar meaning and effect by applicable Legal Requirements, including PCBs, asbestos, petroleum, urea-formaldehyde and mold, (a "**Hazardous Material**") are present as a result of the actions of the Company or any of its Subsidiaries or any affiliate of the Company, or, to the Knowledge of the Company, as a result of any actions of any third party or otherwise, in, on or under any property, including the land and the improvements, ground water and surface water thereof, that the Company or any of its Subsidiaries has at any time owned, operated, occupied or leased;

(b) neither the Company nor any of its Subsidiaries has disposed of, transported, stored, sold, used, released, generated, exposed its Employees or others to, or distributed, manufactured, sold, transported or disposed of any product containing a Hazardous Material (collectively "**Hazardous Material Activities**") in violation of any Legal Requirement to prohibit, regulate or control Hazardous Materials or any Hazardous Material Activity (collectively, "**Hazardous Materials Laws**");

(c) no action or proceeding is pending or, to the Company's Knowledge, threatened against the Company or any of its Subsidiaries arising out of Hazardous Materials Laws;

(d) neither the Company nor any of its Subsidiaries has entered into any agreement that may require it to guarantee, reimburse, pledge, defend, hold harmless or indemnify any other party with respect to liabilities arising out of any Hazardous Materials Laws or the Hazardous Materials Activities of the Company or any of its Subsidiaries; and

(e) to the Knowledge of the Company, there are no facts or circumstances likely to prevent or delay timely compliance by the Company or any of its Subsidiaries with the European Directive 2002/96/EC on waste electrical and electronic equipment or European Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment.

2.15 Contracts.

(a) Material Contracts. For purposes of this Agreement, "**Company Material Contract**" shall mean:

(i) any "material contracts" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC) with respect to the Company and its Subsidiaries;

(ii) any employment or consulting Contract (in each case, under which the Company or any of its Subsidiaries may have continuing obligations as of the date hereof) with (A) any current or former executive officer or other employee of the Company earning an annual salary in excess of $200,000 or (B) any member of the Company's Board of Directors, other than those that are terminable by the Company or any of its Subsidiaries on no more than 30 days notice without liability or financial obligation to the Company;

(iii) any Contract or plan, including any stock option plan, stock appreciation right plan or stock purchase plan, any of the benefits of which will be increased, or the vesting of benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement (either alone or upon the occurrence of any additional or subsequent events) or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement;

(iv) any agreement of indemnification or any guaranty that is or could be material to the Company and its Subsidiaries, taken as a whole (in each case, under which the

Company or any of its Subsidiaries has continuing obligations as of the date hereof) other than any agreement of indemnification entered into in connection with the sale or license of hardware or software products in the ordinary course of business;

(v) any Contract containing any covenant (A) limiting the right of the Company or any of its Subsidiaries to engage in any line of business, to make use of any material Intellectual Property or to compete with any Person in any material line of business, (B) granting any exclusive rights, or (C) otherwise prohibiting or limiting the right of the Company and its Subsidiaries to sell, distribute or manufacture any material products or services or to purchase or otherwise obtain any material software, components, parts or subassemblies;

(vi) any Contract relating to the disposition or acquisition by the Company or any of its Subsidiaries after the date of this Agreement of a material amount of assets not in the ordinary course of business;

(vii) any Contract governing the terms of any material ownership or investments of the Company or any of its Subsidiaries in any other Person or business enterprise other than Company's Subsidiaries, or any Contract pursuant to which the Company or its Subsidiaries has any material obligation or commitment (whether conditional or otherwise) to make any investment or acquire any ownership interest in any other Person or business enterprise other than the Company's Subsidiaries;

(viii) any dealer, distributor, joint marketing or development agreement under which the Company or any of its Subsidiaries have continuing material obligations to jointly market any product, technology or service and which may not be canceled without penalty upon notice of 90 days or less, or any agreement pursuant to which the Company or any of its Subsidiaries have continuing obligations to jointly develop any Intellectual Property that will not be wholly owned by the Company or any of its Subsidiaries and which may not be terminated without penalty upon notice of 90 days or less;

(ix) any Contract to provide source code to any third party for any product or technology of the Company and its Subsidiaries;

(x) any Contract containing any support, maintenance or service obligation on the part of the Company or any of its Subsidiaries, which represents a value or liability in excess of $1,000,000 on an annual basis, other than those obligations that are terminable by the Company or any of its Subsidiaries on no more than 30 days notice without liability or financial obligation to the Company or its Subsidiaries;

(xi) any Contract to license any third party to manufacture or reproduce any of the Company's products, services or technology or any Contract to sell or distribute any of the Company's products, services or technology, except agreements with distributors or sales representatives in the ordinary course of business consistent with past practice and terminable without penalty upon notice of 90 days or less;

(xii) any mortgages, indentures, guarantees, loans or credit agreements, security agreements or other Contracts relating to the borrowing of money or extension of credit, in each case in excess of $750,000, other than (A) accounts receivables and payables and (B) loans to direct or indirect wholly-owned Subsidiaries, in each case in the ordinary course of business;

(xiii) any material settlement agreement with continuing obligations thereunder entered into within five years prior to the date of this Agreement;

(xiv) any Company Lease; or

(xv) any other Contract that has a value of $2,000,000 or more in any individual case and which may not be terminated without penalty upon notice of 90 days or less, or is otherwise material and relates to one of the Company's customers listed on Section 2.15(a)(xv) of the Company Disclosure Letter which sets forth a list of the Company's top 10 customers by revenue for the fiscal year ended January 31, 2006.

(b) Schedule. Section 2.15(b) of the Company Disclosure Letter sets forth a list of all Company Material Contracts to which the Company or any of its Subsidiaries is a party or is bound by as of the date hereof and which are described in Sections 2.15(a)(i) through 2.15(a)(xv) hereof.

(c) No Breach. All Company Material Contracts are valid and in full force and effect except to the extent they have previously expired in accordance with their terms or if the failure to be in full force and effect, individually or in the aggregate, would not reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole. Neither the Company nor any of its Subsidiaries has violated any provision of, or committed or failed to perform any act which, with or without notice, lapse of time or both would constitute a default under the provisions of, any Company Material Contract, except in each case for those violations and defaults which, individually or in the aggregate, would not reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole. To the Knowledge of the Company, no third party has violated any provision of, or committed or failed to perform any act which, with or without notice, lapse of time or both would constitute a default under the provisions of, any Company Material Contract, except in each case for those violations and defaults which, individually or in the aggregate, would not reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole.

2.16 Insurance. The insurance policies covering the Company, its Subsidiaries or any of their respective Employees, properties or assets, including policies of life, property, fire, workers' compensation, products liability, directors' and officers' liability and other casualty and liability insurance are set forth on Section 2.16 of the Company Disclosure Letter. All such insurance policies are in full force and effect, no notice of cancellation has been received, and there is no existing default or event which, with the giving of notice or lapse of time or both, would constitute a default, by any insured thereunder, except for such defaults that would not, individually or in the aggregate, have a Material Adverse Effect on the Company. There is no material claim pending under any of such policies as to which coverage has been questioned, denied or disputed by the

underwriters of such policies and there has been no threatened termination of, or material premium increase with respect to, any such policies.

2.17 Disclosure. None of the information supplied or to be supplied by or on behalf of the Company for inclusion or incorporation by reference in the registration statement on Form S-4 (or similar successor form) to be filed with the SEC by Parent in connection with the issuance of Parent Common Stock in the Merger (including amendments or supplements thereto) (the "**Registration Statement**") will, at the time the Registration Statement becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. None of the information supplied or to be supplied by or on behalf of the Company for inclusion or incorporation by reference in the Joint Proxy Statement/Prospectus to be filed with the SEC as part of the Registration Statement (the "**Proxy Statement/Prospectus**"), will, at the time the Proxy Statement/Prospectus is mailed to the stockholders of Parent and the Company, at the time of the Parent and Company Stockholders' Meetings (as defined in Section 5.2(a)) or as of the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Proxy Statement/Prospectus will comply as to form in all material respects with the provisions of the Exchange Act and the rules and regulations promulgated by the SEC thereunder. Notwithstanding the foregoing, no representation or warranty is made by the Company with respect to statements made or incorporated by reference therein about Parent supplied by Parent for inclusion or incorporation by reference in the Registration Statement or the Proxy Statement/Prospectus.

2.18 Board Approval. The Board of Directors of the Company has, by resolutions duly adopted by unanimous vote at a meeting of all directors duly called and held and not subsequently rescinded or modified in any way prior to the date hereof (the "**Company Board Approval**"), (a) determined that the Merger is fair to, and in the best interests of, the Company and its stockholders and declared the Merger to be advisable, (b) approved this Agreement and the transactions contemplated hereby, including the Merger, and (c) recommended that the stockholders of the Company adopt this Agreement and directed that such matter be submitted to the Company's stockholders at the Company Stockholders' Meeting.

2.19 Fairness Opinion. The Company's Board of Directors has received a written opinion from Credit Suisse, dated as of August 7, 2006, to the effect that, as of such date and subject to the matters set forth in the opinion, the aggregate number of shares of Parent Common Stock to be received by the holders of Company Common Stock pursuant to the Merger (based on 150,330,384 shares of Company Common Stock outstanding as of July 31, 2006) is fair, from a financial point of view, to such holders of Company Common Stock, other than Parent. A written copy of such opinion will be provided to Parent prior to the execution of this Agreement, solely for informational purposes, promptly following the execution and delivery of this Agreement by the Company.

2.20 Rights Plan. The Company has taken all action so that (a) Parent shall not be an "Acquiring Person" under the Company Rights Plan and (b) the entering into of this Agreement and the Merger and the consummation of the other transactions contemplated hereby will not result in the grant of any rights to any Person under the Company Rights Agreement or enable or require the Company Rights to be exercised, distributed or triggered as a result thereof.

2.21 Takeover Statutes. The Board of Directors of the Company has taken all necessary actions so that the restrictions contained in Section 203 of the Delaware General Corporation Law applicable to a "business combination" (as defined in such Section 203), and any other similar Legal Requirement, are not applicable to this Agreement, the Merger and the other transactions contemplated hereby.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub represent and warrant to the Company, except as set forth in the disclosure letter supplied by Parent and Merger Sub dated as of the date hereof (the "**Parent Disclosure Letter**"), as follows:

3.1 Organization; Standing; Charter Documents; Subsidiaries.

(a) Organization; Standing and Power. Parent and each of its Subsidiaries is a corporation or other organization duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, has the requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted and is duly qualified or licensed and in good standing to do business in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary other than in such jurisdictions where the failure to be so organized, existing and in good standing or so qualified, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on Parent.

(b) Charter Documents. Parent has delivered or made available to the Company a true and correct copies of (i) the certificate of incorporation (including any Certificate of Designations) and bylaws of Parent, each as amended to date (collectively, the "**Parent Charter Documents**") and (ii) the Subsidiary Charter Documents of each of its Significant Subsidiaries, and each such instrument is in full force and effect. Parent is not in violation of any of the provisions of the Parent Charter Documents and each Significant Subsidiary of Parent is not in violation of its respective Subsidiary Charter Documents, except in the case of a Significant Subsidiary, as would not reasonably be expected to have a Material Adverse Effect on Parent.

(c) Subsidiaries. Exhibit 21 to Parent's Annual Report on Form 10-K for the fiscal year ended December 31, 2001 includes all the Subsidiaries of Parent which are Significant Subsidiaries. All the outstanding shares of capital stock of, or other equity or voting interests in,

each such Significant Subsidiary have been duly authorized and validly issued and are fully paid and nonassessable and are, except as set forth in such Exhibit 21, owned directly or indirectly by Parent, free and clear of all Liens, including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other ownership interests, except for restrictions imposed by applicable securities laws, or as would not reasonably be expected to have a Material Adverse Effect on Parent or a material adverse effect on such Significant Subsidiary.

3.2 Capital Structure.

(a) Capital Stock. The authorized capital stock of Parent consists of: (i) 800,000,000 shares of Parent Common Stock and (ii) 5,000,000 shares of preferred stock, par value $0.001 per share (the "**Parent Preferred Stock**"), of which 800,000 shares have been designated as Series A Participating Preferred Stock, all of which have been reserved for issuance upon exercise of preferred stock purchase rights (the "**Parent Rights**") issuable pursuant to the Preferred Stock Rights Agreement dated as of February 7, 2002 by and between Parent and Wells Fargo Bank, MN N.A. (the "**Parent Rights Agreement**"), a true and complete copy of which is filed as Exhibit 4.1 to the Company's Registration Statement on Form 8-A filed with the SEC on February 11, 2002. At the close of business on August 4, 2006: (A) 270,232,918 shares of Parent Common Stock were issued and outstanding, excluding shares of Parent Common Stock held by Parent in its treasury, (B) no shares of Parent Common Stock were held by Parent in its treasury, and (C) no shares of Parent Preferred Stock were issued and outstanding. All of the outstanding shares of capital stock of Parent are, and all shares of capital stock of Parent which may be issued as contemplated or permitted by this Agreement will be, when issued, duly authorized and validly issued, fully paid and nonassessable and not subject to any preemptive rights.

(b) Stock Options. As of the close of business on August 4, 2006: (i) 41,513,674 shares of Parent Common Stock were subject to issuance pursuant to outstanding options to purchase Parent Common Stock under the stock option, stock award, stock appreciation or phantom stock plans of Parent (the "**Parent Stock Option Plans**") (stock options, stock awards, stock appreciation rights, phantom stock awards, stock-related awards and performance awards granted by Parent pursuant to the Parent Stock Option Plans are referred to in this Agreement as "**Parent Options**"), (ii) 32,185,861 shares of Parent Common Stock were reserved for future issuance under the employee stock purchase plan of Parent, and (iii) no shares of Parent Common Stock were subject to issuance pursuant to outstanding options, rights or warrants to purchase Parent Common Stock issued other than pursuant to the Parent Stock Option Plans and the Parent employee stock purchase plan. All shares of Parent Common Stock subject to issuance as aforesaid, upon issuance on the terms and conditions specified in the instruments pursuant to which they are issuable, would be duly authorized, validly issued, fully paid and nonassessable. Since February 1, 2005, the exercise price of each Parent Option has been no less than the fair market value of a share of Parent Common Stock as determined on the date of grant of such Parent Option. Since February 1, 2005, all grants of Parent Options were validly issued and properly approved by the Board of Directors of Parent (or a duly authorized committee or subcommittee thereof) in material compliance with all applicable Legal Requirements and recorded on the Parent Financials (as defined in Section 3.4(b)) in accordance with GAAP, and no such grants involved any "back dating," "forward dating" or similar

practices with respect to the effective date of grant. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or other similar rights or equity based awards with respect to Parent, other than as set forth in this Section 3.2(b).

(c) Voting Debt. No Voting Debt of Parent is outstanding as of the date hereof.

(d) Other Securities. Except as otherwise set forth in this Section 3.2, as of August 4, 2006, there are no securities, options, warrants, calls, rights, Contracts, arrangements or undertakings of any kind to which Parent or any of its Subsidiaries is a party or by which any of them is bound obligating Parent or any of its Subsidiaries to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of capital stock, Voting Debt or other voting securities of Parent or any of its Subsidiaries, or obligating Parent or any of its Subsidiaries to issue, grant, extend or enter into any such security, option, warrant, call, right, Contract, arrangement or undertaking. All outstanding shares of Parent Common Stock, all outstanding Parent Options, and all outstanding shares of capital stock of each Subsidiary of Parent have been issued and granted in compliance in all material respects with (i) all applicable securities laws and all other applicable Legal Requirements and (ii) all requirements set forth in applicable material Contracts.

(e) No Changes. Since August 4, 2006, and through the date hereof, other than (i) pursuant to the exercise of Parent Options outstanding as of August 4, 2006, issued pursuant to the Parent Stock Option Plans, (ii) issuances under Parent's employee stock purchase plan, or (iii) repurchases from Employees following their termination pursuant to the terms of their pre-existing stock option or purchase agreements, there has been no change in (A) the outstanding capital stock of Parent, (B) the number of Parent Options outstanding, or (C) the number of other options, warrants or other rights to purchase Parent capital stock, which would constitute a material change in the capitalization of Parent.

(f) Merger Sub Capital Stock. The authorized capital stock of Merger Sub consists of 1,000 shares of Merger Sub Common Stock, of which 1,000 shares are issued and outstanding. Parent is the sole stockholder of Merger Sub and is the legal and beneficial owner of all 1,000 issued and outstanding shares. Merger Sub was formed solely for purposes of effecting the Merger and the other transactions contemplated hereby. Except as contemplated by this Agreement, Merger Sub does not hold, nor has it held, any material assets or incurred any material liabilities nor has Merger Sub carried on any business activities other than in connection with the Merger and the transactions contemplated by this Agreement. All of the outstanding shares of capital stock of Merger Sub have been duly authorized and validly issued, and are fully paid and nonassessable and not subject to any preemptive rights.

3.3 Authority; Non-Contravention; Necessary Consents.

(a) Authority. Each of Parent and Merger Sub has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Parent and Merger Sub and no other corporate proceedings on the part of Parent or Merger Sub are

necessary to authorize the execution and delivery of this Agreement or to consummate the Merger and the other transactions contemplated hereby, subject only to the adoption of this Agreement by Parent as the sole stockholder of Merger Sub, which shall occur immediately following the execution hereof, the approval of the Share Issuance by the holders of a majority of the outstanding shares of Parent Common Stock and the filing of the Certificate of Merger pursuant to Delaware Law. This Agreement has been duly executed and delivered by Parent and Merger Sub and, assuming due execution and delivery by the Company, constitutes a valid and binding obligation of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with its terms, except that such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting or relating to creditors' rights generally and (ii) is subject to general principles of equity.

(b) Non–Contravention. The execution and delivery of this Agreement by Parent and Merger Sub does not, and performance of this Agreement by Parent and Merger Sub will not: (i) conflict with or violate any provision of the Parent Charter Documents, the certificate of incorporation or bylaws of Merger Sub or any other Subsidiary Charter Documents of any Subsidiary of Parent, (ii) subject to compliance with the requirements set forth in Section 3.3(c), conflict with or violate any material Legal Requirement applicable to Parent, Merger Sub or any of Parent's other Subsidiaries or by which Parent, Merger Sub or any of Parent's other Subsidiaries or any of their respective properties is bound or affected, or (iii) subject to obtaining the consents set forth in Section 3.3(b) of the Parent Disclosure Letter, result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or impair Parent's rights or alter the rights or obligations of any third party under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a Lien on any of the properties or assets of Parent or any of its Subsidiaries pursuant to, any Parent Material Contract (as defined in Section 3.13), except, in the case of clauses (ii) and (iii) above, for any such consents, waivers and approvals under any of Parent's or any of its Subsidiaries' Contracts required to be obtained in connection with the consummation of the transactions contemplated hereby, which, if individually or in the aggregate not obtained, would result in a Material Adverse Effect on Parent.

(c) Necessary Consents. No consent, approval, order or authorization of, or registration, declaration or filing with any Governmental Entity is required to be obtained or made by Parent in connection with the execution and delivery of this Agreement or the consummation of the Merger and other transactions contemplated hereby, except for (i) the Necessary Consents and (ii) such other consents, clearances, authorizations, filings, approvals and registrations with respect to any Governmental Entity the failure of which to obtain would not, individually or in the aggregate, have a Material Adverse Effect on Parent.

3.4 SEC Filings; Financial Statements.

(a) SEC Filings. Parent has filed all required registration statements, prospectuses, reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated by reference) required to be filed by it with the SEC since February 1, 2003. Parent has made available to the Company all such registration statements, prospectuses,

reports, schedules, forms, statements and other documents in the form filed with the SEC that are not publicly available through the SEC's EDGAR database. All such required registration statements, prospectuses, reports, schedules, forms, statements and other documents are referred to herein as the "**Parent SEC Reports**." As of their respective dates, the Parent SEC Reports complied as to form in all material respects with the requirements of the Securities Act, or the Exchange Act, as the case may be, and the rules and regulations of the SEC thereunder applicable to such Parent SEC Reports. The Parent SEC Reports did not at the time they were filed (or if amended or superseded by a filing prior to the date of this Agreement then on the date of such filing) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of Parent's Subsidiaries is required to file any forms, reports or other documents with the SEC. Parent has previously furnished to the Company a complete and correct copy of any amendments or modifications which have not yet been filed with the SEC, but which are required to be filed, to agreements, documents or other instruments which previously had been filed by Parent with the SEC pursuant to the Securities Act or the Exchange Act. As of the date hereof, there are no unresolved comments issued by the staff of the SEC with respect to any of the Parent SEC Reports.

(b) Financial Statements. Each of the consolidated financial statements (including, in each case, any related notes thereto) contained in the Parent SEC Reports (as amended prior to the date of this Agreement) (the "**Parent Financials**"): (i) complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto, (ii) was prepared in accordance with GAAP applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited interim financial statements, as may be permitted by the SEC on Form 10-Q, 8-K or any successor form under the Exchange Act), and (iii) fairly presented, in all material respects, the consolidated financial position of Parent and its consolidated Subsidiaries as at the respective dates thereof and the consolidated results of Parent's operations and cash flows for the periods indicated (subject, in the case of unaudited statements, to normal year-end audit adjustments, as permitted by GAAP and the applicable rules and regulations promulgated by the SEC). The balance sheet of Parent contained in the Parent SEC Reports as of April 29, 2006, is hereinafter referred to as the "**Parent Balance Sheet**." Other than liabilities (A) disclosed in the Parent Financials or (B) incurred since the date of the Parent Balance Sheet in the ordinary course of business consistent with past practice, neither Parent nor any of its Subsidiaries has any liabilities (absolute, accrued, contingent or otherwise) of a nature required by GAAP to be disclosed on a consolidated balance sheet or in the notes thereto which, individually or in the aggregate, would be reasonably expected to have a Material Adverse Effect on Parent. Neither Parent nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K promulgated by the SEC).

(c) Internal Controls and Procedures. Parent has established and maintains disclosure controls and procedures and internal control over financial reporting as such terms are defined and as required by Rules 13a-15 and 15d-15 under the Exchange Act. Parent's disclosure controls and procedures are reasonably designed to ensure that all material information required to be disclosed by Parent in the reports that it files or furnishes under the Exchange Act is recorded,

processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such material information is accumulated and communicated to Parent's management as appropriate to allow timely decisions regarding required disclosure and to make the certifications required pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act. Parent's management has completed an assessment of the effectiveness of Parent's internal controls over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act for the fiscal year ended October 29, 2005, and such assessment concluded that such controls were effective and Parent's independent registered accountant has issued (and not subsequently withdrawn or qualified) an attestation report concluding that Parent maintained effective internal controls over financial reporting as of October 29, 2005. Since October 29, 2005 and through the date hereof, to the Knowledge of Parent, no events, facts or circumstances have occurred, or exist, such that management would not be able to complete its assessment of the effectiveness of Parent's system of internal controls over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act for the fiscal year ended October 28, 2006, and conclude, after such assessment, that such controls were effective. The principal executive officer and principal financial officer of Parent have made all certifications required by the Sarbanes-Oxley Act and any related rules and regulations promulgated by the SEC. Parent has established and maintains, adheres to and enforces a system of internal control over financial reporting, which are effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Parent and its Subsidiaries, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of Parent and its Subsidiaries are being made only in accordance with appropriate authorizations of management and the Board of Directors of Parent, and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of Parent's assets that could have a material effect on the financial statements of Parent and its Subsidiaries. To the Knowledge of Parent, since the date of Parent's most recent Form 10-Q filed with the SEC, neither Parent nor any of its Subsidiaries (including any Employee), nor Parent's independent auditors has identified or been made aware of (A) any significant deficiency or material weakness, which as of the date hereof has not been reasonably resolved, in the design or operation of internal controls over financial reporting utilized by Parent and its Subsidiaries, (B) any fraud, whether or not material, that involves Parent's management or other Employees), or (C) any claim or allegation regarding any of the foregoing.

(d) Sarbanes-Oxley Act; Nasdaq. Parent is in material compliance with (i) the applicable provisions of the Sarbanes-Oxley Act and (ii) the applicable listing and corporate governance rules and regulations of Nasdaq.

3.5 Absence of Certain Changes or Events. Since the date of the Parent Balance Sheet there has not been: (a) any Material Adverse Effect on Parent, (b) any declaration, setting aside or payment of any dividend on, or other distribution (whether in cash, stock or property) in respect of, any of Parent's or any of its Subsidiaries' capital stock, or any repurchase for value or redemption by

Parent or any of its Subsidiaries of any of Parent's capital stock or any other securities of Parent or its Subsidiaries, except for repurchases from Employees following termination of employment pursuant to the terms of applicable pre-existing stock option or purchase agreements, or (c) any split, combination or reclassification of any of Parent's or any of its Subsidiaries' capital stock.

3.6 Taxes.

(a) Parent and each of its Subsidiaries have filed all material Tax Returns required to be filed by any of them and have paid, or have adequately reserved (in accordance with GAAP) for the payment of, all Taxes required to be paid, and the most recent financial statements contained in the Parent SEC Reports reflect an adequate reserve (in accordance with GAAP) for all Taxes payable by Parent and its Subsidiaries through the date of such financial statements. No material deficiencies for any Taxes have been asserted or assessed, or to the Knowledge of Parent, proposed, against Parent or any of its Subsidiaries that are not subject to adequate reserves (in accordance with GAAP), nor has Parent or any of its Subsidiaries executed any waiver of any statute of limitations on or extending the period for the assessment or collection of any material Tax.

(b) Parent and each of its Subsidiaries have timely paid or withheld with respect to their Employees (and paid over any amounts withheld to the appropriate Taxing authority) all federal and state income taxes, Federal Insurance Contribution Act, Federal Unemployment Tax Act and other similar Taxes required to be paid or withheld.

(c) No audit or other examination of any material Tax Return of Parent or any of its Subsidiaries is presently in progress, nor has Parent or any of its Subsidiaries been notified in writing of any request for such an audit or other examination.

(d) Neither Parent nor any of its Subsidiaries has constituted either a "distributing corporation" or a "controlled corporation" in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code (A) in the two years prior to the date of this Agreement or (B) in a distribution which otherwise constitutes part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) that includes the Merger.

(e) Neither Parent nor any of its Subsidiaries has engaged in a "reportable transaction," as set forth in Treas. Reg. § 1.6011-4(b), or any transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service has determined to be a tax avoidance transaction and identified by notice, regulation or other form of published guidance as a "listed transaction," as set forth in Treas. Reg. § 1.6011-4(b)(2).

(f) Neither Parent nor any of its Subsidiaries has taken any action or has failed to take any action or knows of any fact, agreement, plan or other circumstance that would to cause the Merger to fail to qualify as a reorganization with the meaning of Section 368(a) of the Code.

3.7 Intellectual Property.

(a) No Infringement. To the Knowledge of Parent, as of the date hereof, the products, services and operations of Parent do not infringe or misappropriate the Intellectual Property of any third party where such infringement or misappropriation, individually or in the aggregate, would be reasonably expected to have a Material Adverse Effect on Parent.

(b) No Impairment. The Merger will not result in the termination or breach of any Contract to which Parent is a party, which termination or breach would reasonably be expected to have a Material Adverse Effect on Parent.

(c) All Necessary Intellectual Property. To the Knowledge of Parent, Parent and its Subsidiaries own or otherwise have sufficient rights to all Intellectual Property used in and/or necessary to the conduct of the business of Parent and its Subsidiaries as it currently is conducted, and as it is currently planned to be conducted by Parent and its Subsidiaries, except as would not reasonably be expected to have a Material Adverse Effect on Parent.

(d) No Third Party Infringement. To the Knowledge of Parent, no Person has infringed or misappropriated, or is infringing or misappropriating, any material Intellectual Property owned by Parent.

(e) No Notice of Infringement. To the Knowledge of Parent, neither Parent nor any of its Subsidiaries has received notice from any third party that the operation of the business of Parent or any of its Subsidiaries or any act, product or service of Parent or any of its Subsidiaries, infringes or misappropriates the Intellectual Property of any third party or constitutes unfair competition or unfair trade practices under the laws of any jurisdiction except as would not otherwise reasonably be expected to have a Material Adverse Effect on Parent.

(f) Proprietary Information Agreements. Parent and its Subsidiaries have taken reasonable steps to protect Parent's and its Subsidiaries' rights in Parent's confidential information and trade secrets that it wishes to protect or any trade secrets or confidential information of third parties provided to Parent or any of its Subsidiaries, and, without limiting the foregoing, each of Parent and its Subsidiaries has and enforces a policy requiring each Employee to execute a proprietary information and confidentiality agreement substantially in the form provided to Parent, and, to the Knowledge of Parent, all Employees of Parent and any of its Subsidiaries who are involved in the development of material Intellectual Property of the Parent or its Subsidiaries have executed such an agreement, except where the failure to do any of the foregoing is not reasonably expected to have a Material Adverse Effect on Parent.

3.8 Compliance; Permits.

(a) Compliance. Neither Parent nor any of its Subsidiaries is in conflict with, or in default or in violation of, any Legal Requirement applicable to Parent or any of its Subsidiaries or by which Parent or any of its Subsidiaries or any of their respective businesses or properties is bound or affected, except, in each case, or in the aggregate, for conflicts, violations and defaults that would

not have a Material Adverse Effect on Parent. As of the date hereof, no material investigation or review by any Governmental Entity is pending or has been threatened in a writing delivered to Parent or any of its Subsidiaries, against Parent or any of its Subsidiaries. As of the date hereof, there is no material judgment, injunction, order or decree binding upon Parent or any of its Subsidiaries which has or would reasonably be expected to have the effect of prohibiting or materially impairing (i) any material business practices of Parent or any of its Subsidiaries, (ii) any acquisition of material property by Parent or any of its Subsidiaries or (iii) the conduct of business by Parent and its Subsidiaries as currently conducted, and except as would not have a Material Adverse Effect on Parent.

(b) Permits. Parent and its Subsidiaries hold, to the extent legally required, all Permits that required for the operation of the business of Parent, as currently conducted, the failure to hold which would reasonably be expected to have a Material Adverse Effect on Parent (collectively, "**Parent Permits**"). Parent and its Subsidiaries are in compliance in all material respects with the terms of the Parent Permits.

3.9 Litigation. As of the date hereof, there are no claims, suits, actions or proceedings pending or, to the Knowledge of Parent, overtly threatened against Parent or any of its Subsidiaries, before any court, Governmental Entity, or any arbitrator that seek to restrain or enjoin the consummation of the transactions contemplated hereby or which would reasonably be expected, either individually or in the aggregate with all such claims, actions or proceedings, to have a Material Adverse Effect on Parent.

3.10 Brokers' and Finders' Fees. Except for fees payable to Morgan Stanley & Co., Incorporated pursuant to an engagement letter dated June 29, 2006, Parent has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or any transaction contemplated hereby.

3.11 Employee Benefit Plans.

(a) Benefit Plan Compliance.

(i) With respect to the benefit plans of Parent or any of its Subsidiaries that would be Benefit Plans if sponsored or maintained by the Company or a Controlled Group Affiliate ("**Parent Benefit Plan**"), no event has occurred and there exists no condition or set of circumstances, in connection with which Parent or any of its Subsidiaries would be subject to any material liability under ERISA, the Code or any other applicable Legal Requirement, which would reasonably be expected to have a Material Adverse Effect on Parent.

(ii) Each Parent Benefit Plan has been, in all material respects, administered and operated in accordance with its terms, with the applicable provisions of ERISA, the Code and all other applicable material Legal Requirements and the terms of all applicable collective bargaining agreements. Each Parent Benefit Plan, including any amendments thereto, that is capable of Approval has received such Approval or there remains a period of time in which to obtain such Approval retroactive to the date of any amendment that has not previously received such Approval,

except for the lack of such Approvals which would not reasonably be expected to have a Material Adverse Effect on Parent.

(iii) No material oral or written representation or commitment with respect to any material aspect of any Parent Benefit Plan has been made to an Employee of Parent or any of its Subsidiaries by an authorized Employee of Parent that is not in accordance with the written or otherwise preexisting terms and provisions of such Parent Benefit Plans, except for such representations or commitments which would not reasonably be expected to have a Material Adverse Effect on Parent.

(iv) There are no unresolved claims or disputes under the terms of, or in connection with, any Parent Benefit Plan (other than routine undisputed claims for benefits), and no action, legal or otherwise, has been commenced with respect to any such claim, except for such claims or disputes which would not reasonably be expected to have a Material Adverse Effect on Parent.

(b) Plan Funding. With respect to the Parent Benefit Plans, there are no material benefit or funding obligations for which contributions have not been made or properly accrued, or will not be offset by insurance, and there are no material benefit or funding obligations which have not been accounted for by reserves, or otherwise properly footnoted in accordance with the requirements of GAAP, on the financial statements of Parent. The assets of each Parent Benefit Plan which is funded are reported at their fair market value on the books and records of such Parent Benefit Plan.

(c) No Pension or Welfare Plans. Neither Parent nor any Controlled Group Affiliate with Parent has ever maintained, established, sponsored, participated in, or contributed to, any (i) Parent Benefit Plan which is or was subject to Title IV of ERISA or Section 412 of the Code, (ii) "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA), (iii) "multiple employer plan" as defined in ERISA or the Code, or (iv) "funded welfare plan" within the meaning of Section 419 of the Code. No Parent Employee Plan provides health benefits that are not fully insured through an insurance contract.

(d) Continuation Coverage. No Parent Benefit Plan provides post-termination or retiree welfare benefits (whether or not insured), with respect to any Person for any reason (other than coverage mandated by applicable Legal Requirements) and neither Parent nor any Controlled Group Affiliate has ever represented, promised or contracted (whether in oral or written form) to any Employee (either individually or to Employees as a group) or any other Person that such Employee(s) or other Person would be provided with post-termination or retiree welfare benefits, except to the extent required by applicable Legal Requirements or as would not otherwise reasonably be expected to have a Material Adverse Effect on Parent.

(e) Labor. Parent is not presently, nor has it been in the past, a party to, or bound by, any collective bargaining agreement or union contract with respect to Employees and no collective bargaining agreement is being negotiated by Parent or any of its Subsidiaries. To the Knowledge of Parent, there are no activities or proceedings of any labor union in the United States to

organize any Employees. There is no labor dispute, strike or work stoppage against Parent or any of its Subsidiaries pending or, to the Knowledge of Parent, threatened or reasonably anticipated which may materially interfere with the respective business activities of Parent or any of its Subsidiaries. None of Parent, any of its Subsidiaries or any of their respective representatives or Employees has committed any material unfair labor practice in connection with the operation of the respective businesses of Parent or any of its Subsidiaries. There are no actions, suits, claims, labor disputes or grievances pending, or, to the Knowledge of Parent, threatened or reasonably anticipated relating to any labor, safety or discrimination matters involving any Employee, including charges of unfair labor practices or discrimination complaints, which, if adversely determined, would, individually or in the aggregate, have a Material Adverse Effect on Parent. Neither Parent nor any of its Subsidiaries has engaged in any unfair labor practices within the meaning of the National Labor Relations Act. Neither Parent nor any of its Subsidiaries have incurred any material liability or material obligation under the Worker Adjustment and Retraining Notification Act or any similar state or local law which remains unsatisfied.

3.12 Environmental Matters. Except as would not result in a Material Adverse Effect on Parent:

(a) no underground storage tanks and no amount of any Hazardous Material are present as a result of the actions of Parent or any of its Subsidiaries or any affiliate of Parent, or, to the Knowledge of Parent, as a result of any actions of any third party or otherwise, in, on or under any property, including the land and the improvements, ground water and surface water thereof, that Parent or any of its Subsidiaries has at any time owned, operated, occupied or leased;

(b) neither Parent nor any of its Subsidiaries has disposed of, transported, stored, sold, used, manufactured, disposed of, released, generated or exposed its Employees or others to, or distributed, manufactured, sold, transported or disposed of any product containing a Hazardous Material in violation of any Hazardous Materials Laws;

(c) no action or proceeding is pending or, to Parent's Knowledge, threatened against Parent or any of its Subsidiaries arising out of Hazardous Materials Laws;

(d) neither Parent nor any of its Subsidiaries has entered into any agreement that may require it to guarantee, reimburse, pledge, defend, hold harmless or indemnify any other party with respect to liabilities arising out of any Hazardous Materials Laws or the Hazardous Materials Activities of Parent or any of its Subsidiaries; and

(e) to the Knowledge of Parent there are no facts or circumstances likely to prevent or delay timely compliance by Parent or any of its Subsidiaries with the European Directive 2002/96/EC on waste electrical and electronic equipment or European Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment.

3.13 Material Contracts. All Parent Material Contracts (as defined below) are valid and in full force and effect except to the extent they have previously expired in accordance with their terms or if the failure to be in full force and effect, individually or in the aggregate, would not reasonably

be expected to be material to Parent and its Subsidiaries, taken as a whole. Neither Parent nor any of its Subsidiaries has violated any provision of, or committed or failed to perform any act which, with or without notice, lapse of time or both would constitute a default under the provisions of, any Parent Material Contract, except in each case for those violations and defaults which, individually or in the aggregate, would not reasonably be expected to be material to Parent and its Subsidiaries, taken as a whole. To the Knowledge of Parent, no third party has violated any provision of, or committed or failed to perform any act which, with or without notice, lapse of time or both would constitute a default under the provisions of, any Company Material Contract, except in each case for those violations and defaults which, individually or in the aggregate, would not reasonably be expected to be material to Parent and its Subsidiaries, taken as a whole. For purposes of this Agreement, "**Parent Material Contract**" shall mean any Contract of Parent that meets the definitions set forth in item (i) and (ii) of Item 601(b)(10) of Regulation S-K under the Securities Act.

3.14 Disclosure. None of the information supplied or to be supplied by or on behalf of Parent or Merger Sub for inclusion or incorporation by reference in the Registration Statement will, at the time the Registration Statement becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. None of the information supplied or to be supplied by or on behalf of Parent and Merger Sub for inclusion or incorporation by reference in the Proxy Statement/Prospectus, will, at the time the Proxy Statement/Prospectus is mailed to the stockholders of Parent and the Company, the time of the Parent and Company Stockholders' Meetings or as of the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Proxy Statement/Prospectus will comply as to form in all material respects with the provisions of the Exchange Act and the rules and regulations promulgated by the SEC thereunder. Notwithstanding the foregoing, no representation or warranty is made by Parent with respect to statements made or incorporated by reference therein about the Company supplied by the Company for inclusion or incorporation by reference in the Registration Statement or the Proxy Statement/Prospectus.

3.15 Board Approval. The Board of Directors of Parent has, by resolutions duly adopted by unanimous vote at a meeting of all directors duly called and held and not subsequently rescinded or modified in any way prior to the date hereof (the "**Parent Board Approval**"), (a) determined that the Merger is fair to, and in the best interests of, Parent and its stockholders and declared the Merger to be advisable, (b) approved this Agreement and the transactions contemplated hereby, including the Merger and the Share Issuance, and (c) recommended that the stockholders of Parent approve the Share Issuance and directed that such matter be submitted to Parent's stockholders at the Parent Stockholders' Meeting.

3.16 Fairness Opinion. Parent's Board of Directors has received a written opinion from Morgan Stanley & Co. Incorporated, dated as of August 7, 2006, in customary form to the effect that, as of such date, subject to the matters set forth in the opinion, the Exchange Ratio is fair, from a

financial point of view, to Parent, and has delivered to the Company a copy of such opinion for informational purposes only.

3.17 Rights Plan. Parent has taken all action so that (a) the Company shall not be an "Acquiring Person" under the Parent Rights Agreement and (b) the entering into of this Agreement and the Merger and the consummation of the other transactions contemplated hereby will not result in the grant of any rights to any Person under the Parent Rights Agreement or enable or require the Parent Rights to be exercised, distributed or triggered as a result thereof.

ARTICLE IV

CONDUCT PRIOR TO THE EFFECTIVE TIME

4.1 Conduct of Business by the Company.

(a) Ordinary Course. During the period from the date hereof and continuing until the earlier of the termination of this Agreement pursuant to its terms or the Effective Time, the Company and each of its Subsidiaries shall, except as otherwise expressly contemplated by this Agreement or to the extent that Parent shall otherwise consent in writing, (i) carry on its business in the usual, regular and ordinary course, in substantially the same manner as heretofore conducted and in compliance with all applicable Legal Requirements in all material respects and (ii) use its commercially reasonable efforts consistent with past practices and policies to (x) preserve intact its present business organization, (y) keep available the services of its present executive officers and Employees, and (z) preserve its relationships with customers, suppliers, licensors, licensees, and others with which it has business dealings.

(b) Required Consent. In addition, without limiting the generality of Section 4.1(a), except as permitted by the terms of this Agreement or as provided in Article IV of the Company Disclosure Letter, without the prior written consent of Parent, during the period from the date hereof and continuing until the earlier of the termination of this Agreement pursuant to its terms or the Effective Time, the Company shall not do any of the following, and shall not permit any of its Subsidiaries to do any of the following:

(i) Enter into any new line of business;

(ii) Declare, set aside or pay any dividends on or make any other distributions (whether in cash, stock, equity securities or property) in respect of any capital stock or split, combine or reclassify any capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for any capital stock, other than any such transaction by a wholly-owned Subsidiary of it that remains a wholly-owned Subsidiary of it after consummation of such transaction, in the ordinary course of business consistent with past practice;

(iii) Purchase, redeem or otherwise acquire, directly or indirectly, any shares of its capital stock or the capital stock of its Subsidiaries, except repurchases of unvested

shares at cost in connection with the termination of the employment relationship with any Employee pursuant to stock option or purchase agreements in effect on the date hereof;

(iv) Issue, deliver, sell, authorize, pledge or otherwise encumber any shares of capital stock, Voting Debt or any securities convertible into shares of capital stock or Voting Debt, or subscriptions, rights, warrants or options to acquire any shares of capital stock or Voting Debt or any securities convertible into shares of capital stock or Voting Debt, or enter into other agreements or commitments of any character obligating it to issue any such securities or rights, other than: (A) issuances of Company Common Stock upon the exercise of Company Options, warrants or other rights of the Company existing on the date hereof in accordance with their present terms or granted pursuant to clause (C) hereof, (B) issuances of shares of Company Common Stock to participants in the Company Purchase Plan pursuant to the terms thereof, (C) grants of stock options or other stock based awards (including Company Restricted Stock) of, or to acquire, up to 5,800,000 shares of Company Common Stock in the aggregate, granted under the Company Stock Option Plans in effect on the date hereof, in each case in the ordinary course of business consistent with past practice in connection with annual compensation reviews or ordinary course promotions or to new hires and which options or stock based awards have a vesting schedule no more favorable than one-quarter (1/4) on the first anniversary of the date of grant, and one-forty-eighth (1/48) on each monthly anniversary of the date of grant thereafter and do not accelerate, or become subject to acceleration, directly or indirectly, as a result of the approval or consummation of the Merger and/or termination of employment following the Merger, but in no event shall the period for exercisability under such option following termination of employment be extended beyond 90 days following a termination of employment for any reason other than retirement, death or total and permanent disability ("**Routine Grants**");

(v) Cause, permit or propose any amendments to the Company Charter Documents or any of the Subsidiary Charter Documents of the Company's Subsidiaries;

(vi) Acquire or agree to acquire by merging or consolidating with, or by purchasing any equity or voting interest in or a portion of the assets of, or by any other manner, any business or any Person or division thereof, or otherwise acquire or agree to acquire any assets which are material, individually or in the aggregate, to the business of the Company and its Subsidiaries taken as a whole;

(vii) Enter into any binding agreement, agreement in principle, letter of intent, memorandum of understanding or similar agreement with respect to any material joint venture, strategic partnership or alliance, except for non-exclusive marketing, distributor, reseller, end-user and related channel agreements entered into in the ordinary course of business consistent with past practice;

(viii) Sell, lease, license, encumber or otherwise dispose of any properties or assets except (A) sales of inventory in the ordinary course of business consistent with past practice or (B) the sale, lease, license or disposition of property, assets or non-exclusive licenses of Intellectual Property in the ordinary course of business consistent with past practice, in each case,

which are not material, individually or in the aggregate, to the business of the Company and its Subsidiaries taken as a whole;

(ix) Make any loans, advances or capital contributions to, or investments in, any Person, other than: (A) loans or investments by it or a wholly-owned Subsidiary of it to or in it or any wholly-owned Subsidiary of it, or (B) employee loans or advances for travel and entertainment expenses made in the ordinary course of business consistent with past practice;

(x) Except as required by GAAP or the SEC, make any material change in its methods or principles of accounting;

(xi) Except as required by Legal Requirements, make or change any Tax election or adopt or change any accounting method in respect of Taxes that, individually or in the aggregate, is reasonably likely to adversely affect in any material respect the Tax liability or Tax attributes of the Company or any of its Subsidiaries, settle or compromise any material Tax liability or consent to any extension or waiver of any limitation period with respect to Taxes;

(xii) Except as required by GAAP or the SEC, materially revalue any of its assets;

(xiii) (A) Pay, discharge, settle or satisfy any claims or litigation (whether or not commenced prior to the date of this Agreement) other than the payment, discharge, settlement or satisfaction for money, of claims or litigation (x) in the ordinary course of business consistent with past practice or in amounts not in excess of $1,000,000 individually or $7,500,000 in the aggregate or (y) to the extent subject to reserves on the Company Financials existing as of the date hereof in accordance with GAAP, or (B) waive the benefits of, agree to modify in any manner, terminate, release any Person from or knowingly fail to enforce any confidentiality or similar agreement to which the Company or any of its Subsidiaries is a party or of which the Company or any of its Subsidiaries is a beneficiary;

(xiv) Except as required by Legal Requirements or written Contracts currently binding on the Company or its Subsidiaries, (A) increase in any manner the amount of compensation or fringe benefits of, pay any bonus to or grant severance or termination pay to any Employee or director of the Company or any Subsidiary of the Company other than immaterial increases in the ordinary course of business consistent with past practice, (B) make any increase in or commitment to increase the benefits or expand the eligibility under any Company Benefit Plan (including any severance plan), adopt or amend or make any commitment to adopt or amend any Company Benefit Plan or make any contribution, other than regularly scheduled contributions, to any Company Benefit Plan, (C) waive any stock repurchase rights, accelerate, amend or change the period of exercisability of Company Options or Company Restricted Stock, or reprice any Company Options or authorize cash payments in exchange for any Company Options, (D) enter into any employment, severance, termination or indemnification agreement with any Company Employee or enter into any collective bargaining agreement, (other than offer letters and letter agreements entered into in the ordinary course of business consistent with past practice with employees who are terminable "at will," provided that the total compensation under any such offer letter or letter

agreement does not exceed $200,000), (E) grant any stock appreciation right, phantom stock award, stock-related award or performance award (whether payable in cash, shares or otherwise) to any Person (including any Employee), or (F) enter into any agreement with any Employee the benefits of which are (in whole or in part) contingent or the terms of which are materially altered upon the occurrence of a transaction involving the Company of the nature contemplated hereby; provided, however, that nothing herein shall be construed as prohibiting the Company from granting Company Options that are Routine Grants;

(xv) Grant any exclusive rights with respect to any material Intellectual Property;

(xvi) Enter into or renew any Contracts (A) containing, or otherwise subjecting the Company, the Surviving Corporation or Parent to, any non-competition, exclusivity or other material restrictions on the operation of the business of the Company or the Surviving Corporation or Parent, or (B) that provide access or rights to Company interoperability or compatibility information, create obligations or restrictions on the Company with respect to interoperability or compatibility of any Company products, or require the Company to collaborate with third party storage networking vendors regarding support of mixed environments;

(xvii) Enter into any agreement or commitment the effect of which would be to grant to a third party following the Merger any actual or potential right of license to any Intellectual Property owned at the Effective Time by Parent or any of its Subsidiaries;

(xviii) Enter into or renew any Contracts containing any material support, maintenance or service obligation, other than those obligations in the ordinary course of business consistent with past practice that are terminable by the Company or any of its Subsidiaries on no more than 30 days notice without liability or financial obligation to the Company;

(xix) Hire employees other than in the ordinary course of business consistent with past practice and at compensation levels substantially comparable to that of similarly situated employees;

(xx) Incur any indebtedness for borrowed money in excess of $20,000,000 in the aggregate (provided that any such indebtedness less than $20,0000,000 in the aggregate shall be on terms (other than the principal amount) that are reasonably acceptable to Parent) or guarantee any such indebtedness of another Person, issue or sell any debt securities or options, warrants, calls or other rights to acquire any debt securities of the Company or any of its Subsidiaries, guarantee any debt securities of another Person, enter into any "keep well" or other agreement to maintain any financial statement condition of any other Person (other than any wholly-owned Subsidiary of it) or enter into any arrangement having the economic effect of any of the foregoing, other than in connection with the financing of ordinary course trade payables consistent with past practice;

(xxi) Make any capital expenditures beyond those contained in the Company's capital expenditure budget in effect on the date hereof, a copy of which has been provided to Parent, or outside of the ordinary course of business consistent with past practice;

(xxii) Other than in the ordinary course of business consistent with past practice, enter into, modify or amend in a manner adverse to the Company, or terminate any Company Material Contract currently in effect, or waive, release or assign any material rights or claims thereunder, in each case, in a manner adverse to the Company;

(xxiii) Enter into any Contract reasonably likely to require the Company or any of its Subsidiaries to pay a third party in excess of an aggregate of $2,500,000; or

(xxiv) Agree in writing or otherwise to take any of the actions described in (i) through (xxiii) above.

4.2 Conduct of Business by Parent.

(a) Ordinary Course. During the period from the date hereof and continuing until the earlier of the termination of this Agreement pursuant to its terms or the Effective Time, Parent and each of its Subsidiaries shall, except as otherwise expressly contemplated by this Agreement or to the extent that the Company shall otherwise consent in writing, (i) carry on its business in the usual, regular and ordinary course, in substantially the same manner as heretofore conducted and in compliance with all applicable Legal Requirements in all material respects and (ii) use its commercially reasonable efforts consistent with past practices and policies to (x) preserve intact its present business organization, (y) keep available the services of its present executive officers and Employees, and (z) preserve its relationships with customers, suppliers, licensors, licensees, and others with which it has business dealings.

(b) Required Consent. In addition, without limiting the generality of Section 4.2(a), except as permitted by the terms of this Agreement or as provided in Article IV of the Parent Disclosure Letter, without the prior written consent of the Company, during the period from the date hereof and continuing until the earlier of the termination of this Agreement pursuant to its terms or the Effective Time, Parent shall not do any of the following, and shall not permit any of its Subsidiaries to do any of the following:

(i) Declare, set aside or pay any dividends on or make any other distributions (whether in cash, stock, equity securities or property) in respect of any capital stock or split, combine or reclassify any capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for any capital stock, other than any such transaction by a wholly-owned Subsidiary of it that remains a wholly-owned Subsidiary of it after consummation of such transaction, in the ordinary course of business consistent with past practice;

(ii) Purchase, redeem or otherwise acquire, directly or indirectly, any shares of its capital stock, except repurchases of (A) unvested shares at cost (or by forfeiture) in connection with the termination of the employment relationship with any employee pursuant to stock option or purchase agreements in effect on the date hereof or entered into the ordinary course of business after the date hereof, or (B) shares in connection with any stock repurchase program authorized by the Board of Directors of Parent on or prior to the date hereof;

(iii) Issue, deliver, sell or authorize any shares of capital stock, Voting Debt or any securities convertible into shares of capital stock or Voting Debt, or subscriptions, rights, warrants or options to acquire any shares of capital stock or Voting Debt or any securities convertible into shares of capital stock or Voting Debt, or enter into other agreements or commitments of any character obligating it to issue any such securities or rights, other than (A) issuances of Parent Common Stock upon the exercise of Parent Options, warrants or other rights of Parent, (B) issuances of shares of Parent Common Stock to participants in any employee stock purchase plan of Parent pursuant to the terms thereof, (C) grants of stock options or other stock based awards (including restricted stock) of or to acquire shares of Parent Common Stock granted under the Parent Stock Option Plans in effect on the date hereof, in each case in the ordinary course of business consistent with past practice, (D) in connection with Parent Purchases (as defined below) that are not Restricted Purchases (as defined below), or (E) as necessary in the reasonable judgment of Parent for retention purposes;

(iv) Cause, permit or propose any amendments to the Parent Charter Documents or any of the Subsidiary Charter Documents of Parent's Subsidiaries other than as set forth in Section 5.10;

(v) Acquire or agree to acquire by merging or consolidating with, or by purchasing any equity or voting interest in or a portion of the assets of, or by any other manner, any business or any Person or division thereof, or otherwise acquire or agree to acquire any assets (any such transaction a "**Parent Purchase**"), in each of the foregoing cases, which would (A) require the approval of Parent's stockholders, (B) have a purchase price consisting of cash and/or Parent Common Stock (valued based on the closing price of Parent Common Stock on the day immediately prior to execution of the definitive agreement for any such Parent Purchase), individually or in the aggregate, in excess of $150,000,000 or (C) otherwise pose a material risk of (1) delaying the Merger or (2) making it materially more difficult to obtain any Necessary Consent (such Parent Purchases, "**Restricted Purchases**");

(vi) Except as necessary to comply with obligations in Section 5.6, sell, lease, license, encumber or otherwise dispose of any properties or assets except (A) sales of inventory in the ordinary course of business consistent with past practice or (B) the sale, lease, license or disposition of property, assets or licenses of Intellectual Property, in each case, which would not (1) require approval of Parent's stockholders or (2) otherwise pose a material risk of (x) delaying the Merger or (y) making it materially more difficult to obtain any Necessary Consent;

(vii) Make any investments in any Person, other than investments (A) by it or a Subsidiary to or in it or any Subsidiary of it, (B) in connection with ordinary course treasury activities, (C) that is a Parent Purchase which is not a Restricted Purchase, or (D) in an amount not in excess of $100,000,000, individually or in the aggregate that would not (1) require approval of Parent's stockholders or (2) otherwise pose a material risk of (x) delaying the Merger or (y) making it materially more difficult to obtain any Necessary Consent;

(viii) Except as required by GAAP or the SEC, make any material change in its methods, principles or practices of accounting;

(ix) Except as required by Legal Requirements, make any Tax election or accounting method change that, individually or in the aggregate, is reasonably likely to adversely affect in any material respect the Tax liability or Tax attributes of Parent;

(x) Except as required by GAAP or the SEC, materially revalue any of its assets;

(xi) Incur any new indebtedness for borrowed money, issue or sell any debt securities or options, warrants, calls or other rights to acquire any debt securities of the Company or any of its Subsidiaries, guarantee any debt securities of another Person, enter into any "keep well" or other agreement to maintain any financial statement condition of any other Person (other than any Subsidiary of it) or enter into any arrangement having the economic effect of any of the foregoing, all having a total value in excess of $275,000,000 in the aggregate, other than (A) refinancing of existing indebtedness and (B) in connection with the financing of ordinary course trade payables consistent with past practice; or

(xii) Agree in writing or otherwise to take any of the actions described in (i) through (xi) above.

ARTICLE V

ADDITIONAL AGREEMENTS

5.1 Proxy Statement/Prospectus; Registration Statement. As promptly as practicable after the execution of this Agreement, (a) Parent and the Company shall prepare and file with the SEC (as part of the Registration Statement) the Proxy Statement/Prospectus relating to the respective Stockholders' Meetings of each of Parent and the Company to be held to consider the Stock Issuance, in the case of Parent, and adoption of this Agreement, in the case of the Company, and (b) Parent will prepare and file with the SEC the Registration Statement in which the Proxy Statement/Prospectus will be included as a prospectus in connection with the registration under the Securities Act of the shares of Parent Common Stock to be issued in connection with the Merger. Each of Parent and the Company shall provide promptly to the other such information concerning its business affairs and financial statements as, in the reasonable judgment of the providing party or its counsel, may be required or appropriate for inclusion in the Proxy Statement/Prospectus and the Registration Statement pursuant to this Section 5.1, or in any amendments or supplements thereto, and to cause its counsel and auditors to cooperate with the other's counsel and auditors in the preparation of the Proxy Statement/Prospectus and the Registration Statement. Each of Parent and the Company will respond to any comments from the SEC, will use reasonable best efforts to cause the Registration Statement to be declared effective under the Securities Act as promptly as practicable after such filing and to keep the Registration Statement effective as long as is necessary to consummate the Merger and the transactions contemplated hereby. Each of Parent and the Company will notify the other promptly upon the receipt of any comments from the SEC or its staff in connection with the filing of, or amendments or supplements to, the Registration Statement and/or the Proxy Statement/Prospectus. Whenever any event occurs which is required to be set forth in an amendment or supplement to the Proxy Statement/Prospectus or the Registration Statement, Parent

or the Company, as the case may be, will promptly inform the other of such occurrence and cooperate in filing with the SEC or its staff, and/or mailing to stockholders of Parent and/or the Company, such amendment or supplement. Each of Parent and the Company shall cooperate and provide the other (and its counsel) with a reasonable opportunity to review and comment on any amendment or supplement to the Registration Statement and Prospect/Proxy Statement prior to filing such with the SEC, and will provide each other with a copy of all such filings made with the SEC. Neither Parent nor the Company shall make any amendment to the Proxy Statement/Prospectus or the Registration Statement without the approval of the other party, which approval shall not be unreasonably withheld or delayed. Parent and the Company will cause the Proxy Statement/Prospectus to be mailed to their respective stockholders at the earliest practicable time after the Registration Statement is declared effective by the SEC. Parent shall also use its reasonable best efforts to take any action required to be taken by it under any applicable state securities laws in connection with the issuance of Parent Common Stock in the Merger, and the Company shall furnish any information concerning the Company and the holders of the Company's securities as may be reasonably requested in connection with any such action.

5.2 Meeting of Stockholders; Board Recommendation.

(a) Meeting of Stockholders. Promptly after the Registration Statement is declared effective under the Securities Act, each of Parent and the Company will take all action necessary in accordance with Delaware Law and its certificate of incorporation and bylaws to call, hold and convene a meeting of its stockholders to consider, in the case of Parent, the Share Issuance, and, in the case of the Company, adoption of this Agreement (each, a "**Stockholders' Meeting**") to be held as promptly as practicable, and in any event (to the extent permissible under applicable Legal Requirements) within 60 days after the declaration of effectiveness of the Registration Statement. Each of Parent and the Company will use its reasonable best efforts to hold their respective Stockholders' Meetings on the same date. Subject to Section 5.3(d), each of Parent and the Company will use its reasonable best efforts to solicit from their respective stockholders proxies in favor of, in the case of Parent, the Stock Issuance, and, in the case of the Company, the adoption of this Agreement and will take all other action necessary or advisable to secure the vote or consent of its stockholders required by the rules of Nasdaq or Delaware Law to obtain such approvals. Notwithstanding anything to the contrary contained in this Agreement, Parent or the Company, as the case may be, may adjourn or postpone its Stockholders' Meeting to the extent necessary (i) to ensure that any necessary supplement or amendment to the Proxy Statement/Prospectus is provided to its respective stockholders in advance of the vote on the Share Issuance (in the case of Parent) or the adoption of this Agreement (in the case of the Company), or (ii) if as of the time for which the Stockholders' Meeting is originally scheduled (as set forth in the Proxy Statement/Prospectus) there are insufficient shares of capital stock represented (either in person or by proxy) to constitute a quorum necessary to conduct the business of such Stockholders' Meeting. Each of Parent and the Company shall ensure that its respective Stockholders' Meeting is called, noticed, convened, held and conducted, and that all proxies solicited by it in connection with its Stockholders' Meeting are solicited in compliance with Delaware Law, its certificate of incorporation and bylaws, the rules of Nasdaq and all other applicable Legal Requirements.

(b) Board Recommendation. Except to the extent expressly permitted by Section 5.3(d): (i) the Board of Directors of each of Parent and the Company shall recommend that its respective stockholders vote in favor of, in the case of Parent, the Share Issuance, and in the case of the Company, adoption of this Agreement, at their respective Stockholders' Meetings, (ii) the Proxy Statement/Prospectus shall include a statement to the effect that the Board of Directors of Parent has recommended that Parent's stockholders vote in favor of the Share Issuance at Parent's Stockholders' Meeting and the Board of Directors of the Company has recommended that the Company's stockholders vote in favor of adoption of this Agreement at the Company's Stockholders' Meeting, and (iii) neither the Board of Directors of Parent or the Company nor any committee thereof shall withdraw, amend or modify, or propose or resolve to withdraw, amend or modify in a manner adverse to the other party hereto, the recommendation of its respective Board of Directors as set forth in the preceding clauses.

5.3 Acquisition Proposals.

(a) No Solicitation. From the date hereof until the earlier of the termination of this Agreement pursuant to its terms or the Effective Time, each of Parent and the Company agrees that neither it nor any of its Subsidiaries nor any of the officers and directors of it or its Subsidiaries shall, and that it shall use reasonable best efforts to cause its and its Subsidiaries' Employees, agents and representatives (including any investment banker, attorney or accountant retained by it or any of its Subsidiaries) (collectively, "**Representatives**") not to (and shall not authorize any of them to) directly or indirectly: (i) solicit, initiate, encourage, knowingly facilitate or induce any inquiry with respect to, or the making, submission or announcement of, any Acquisition Proposal (as defined in Section 5.3(g)), (ii) participate in any discussions or negotiations regarding, or furnish to any Person any nonpublic information with respect to, or take any other action to facilitate any inquiries or the making of any proposal that constitutes or may reasonably be expected to lead to, any Acquisition Proposal, (iii) engage in discussions with any Person with respect to any Acquisition Proposal, except as to the existence of the provisions of this Section 5.3, (iv) approve, endorse or recommend any Acquisition Proposal (except to the extent specifically permitted pursuant to Section 5.3(d)), or (v) enter into any letter of intent or similar document or any Contract contemplating or otherwise relating to any Acquisition Proposal or transaction contemplated thereby. Parent and the Company, as the case may be, and their respective Subsidiaries will immediately cease any and all existing activities, discussions or negotiations with any third parties conducted heretofore with respect to any Acquisition Proposal with respect to itself.

(b) Notification of Unsolicited Acquisition Proposals.

(i) As promptly as practicable after receipt of any Acquisition Proposal or any request for nonpublic information or inquiry which it reasonably believes would lead to an Acquisition Proposal, Parent or the Company, as the case may be, shall provide the other party with oral and written notice of the material terms and conditions of such Acquisition Proposal, request or inquiry, and the identity of the Person or group making any such Acquisition Proposal, request or inquiry and a copy of all written materials provided in connection with such Acquisition Proposal, request or inquiry. The recipient of such Acquisition Proposal, request or inquiry, shall provide the

other party hereto as promptly as practicable oral and written notice setting forth all such information as is reasonably necessary to keep the other party hereto informed in all material respects of the status and details (including material amendments or proposed material amendments) of any such Acquisition Proposal, request or inquiry and shall promptly provide the other party hereto a copy of all written materials subsequently provided in connection with such Acquisition Proposal, request or inquiry.

(ii) Parent or the Company, as the case may be, shall provide the other with 48 hours prior notice (or such lesser prior notice as is provided to the members of its Board of Directors) of any meeting of its Board of Directors at which its Board of Directors will consider any Acquisition Proposal.

(c) Superior Offers. Notwithstanding anything to the contrary contained in Section 5.3(a), in the event that Parent or the Company, as the case may be, receives an unsolicited, bona fide written Acquisition Proposal from a third party that its Board of Directors has in good faith concluded (following the receipt of advice of its outside legal counsel and its financial advisor), contains financial terms that are superior to the terms of this Agreement and otherwise is, or is reasonably likely to lead to, a Superior Offer (as defined in Section 5.3(g)), Parent or the Company, as the case may be, may then take the following actions (but only if and to the extent that its Board of Directors concludes in good faith, following the receipt of advice of its outside legal counsel and its financial advisor, that the failure to do so would be reasonably likely to constitute a breach of its fiduciary obligations under applicable Legal Requirements):

(i) Furnish nonpublic information to the third party making such Acquisition Proposal, provided that (A) concurrently with furnishing any such nonpublic information to such party, it gives the other party hereto written notice that it is furnishing such nonpublic information, (B) it receives from the third party an executed confidentiality agreement containing customary limitations on the use and disclosure of all nonpublic written and oral information furnished to such third party on the Company's or Parent's behalf, as the case may be, the terms of which are at least as restrictive as the terms contained in the Confidentiality Agreement (as defined in Section 5.4(a)), and (C) contemporaneously with furnishing any such nonpublic information to such third party, it furnishes such nonpublic information to the other party hereto (to the extent such nonpublic information has not been previously so furnished); and

(ii) Engage in negotiations with the third party with respect to the Acquisition Proposal, provided that concurrently with entering into negotiations with such third party, it gives the other party hereto written notice of such party's intention to enter into negotiations with such third party.

(d) Change of Recommendation.

(i) In response to the receipt of a Superior Offer that has not been withdrawn, the Board of Directors of Parent or the Company, as the case may be, may withhold, withdraw, amend or modify its recommendation in favor of, in the case of Parent, the Share Issuance, and in the case of the Company, adoption of this Agreement, and, in the case of a Superior

Offer that is a tender or exchange offer made directly to the stockholders of the Company or Parent, as the case may be, may recommend that its stockholders accept the tender or exchange offer (any of the foregoing actions, whether by a Board of Directors or a committee thereof, a "**Change of Recommendation**"), if all of the following conditions in clauses (1) through (6) are met:

(1) A Superior Offer with respect to it has been made and has not been withdrawn;

(2) In the case of Parent, its stockholders have not approved the Share Issuance, and in the case of the Company, its stockholders have not adopted this Agreement;

(3) It shall have provided the other party hereto with written notice of its intention to effect a Change of Recommendation (a "**Change of Recommendation Notice**") at least two business days prior to effecting a Change of Recommendation, which shall state expressly (A) that it has received a Superior Offer, (B) the material terms and conditions of the Superior Offer and the identity of the Person or group making the Superior Offer, and (C) that it intends to effect a Change of Recommendation and the manner in which it intends to do so;

(4) After delivering the Change of Recommendation Notice, it shall have provided the other party hereto with a reasonable opportunity to make such adjustments in the terms and conditions of this Agreement during such two business day period, and shall have negotiated in good faith with respect thereto during such two business day period, regarding any changes proposed by the other party for the purpose of enabling such party's Board of Directors to proceed with its recommendation in favor of, in the case of Parent, the Share Issuance, and in the case of the Company, adoption of this Agreement, without effecting a Change of Recommendation;

(5) Its Board of Directors has concluded in good faith, following the receipt of advice of its outside legal counsel, that, in light of such Superior Offer, the failure of the Board of Directors to effect a Change of Recommendation would be reasonably likely to constitute a breach of its fiduciary obligations to its stockholders under applicable Legal Requirements; and

(6) It shall not have breached in any material respect any of the provisions set forth in Section 5.2 or this Section 5.3 (including clause (B) of Section 5.3(c)(i)) with respect to such Superior Offer.

(ii) Other than in connection with an Acquisition Proposal or a Superior Offer (which shall be subject to Section 5.3(d)(i) and not subject to this Section 5.3(d)(ii)), nothing in this Agreement shall prohibit or restrict the Board of Directors of the Company or Parent, as the case may be, from making a Change of Recommendation to the extent that such Board of Directors determines in good faith, following the receipt of advice of its outside legal counsel, that the failure of the Board of Directors to effect a Change of Recommendation would be reasonably likely to constitute a breach of the Board of Directors' fiduciary obligations to its stockholders under applicable Legal Requirements; provided, however, that such party shall send to the other party

hereto written notice of its intention to effect a Change of Recommendation at least two business days prior to effecting a Change of Recommendation.

(iii) The Board of Directors of the Company or Parent, as the case may be, shall not make any Change of Recommendation other than in compliance with and as permitted by this Section 5.3(d).

(e) Continuing Obligation to Call, Hold and Convene Stockholders' Meeting; No Other Vote. Notwithstanding anything to the contrary contained in this Agreement, the obligation of Parent or the Company, as the case may be, to call, give notice of, convene and hold its Stockholders' Meeting shall not be limited or otherwise affected by the commencement, disclosure, announcement or submission to it of any Acquisition Proposal, or by any Change of Recommendation. Neither Parent nor the Company shall submit to the vote of its stockholders any Acquisition Proposal, or propose to do so.

(f) Compliance with Tender Offer Rules. Nothing contained in this Agreement shall prohibit Parent or the Company or their respective Board of Directors from taking and disclosing to the stockholders of Parent or the Company, as the case may be, a position contemplated by Rules 14d-9 and 14e-2(a) promulgated under the Exchange Act; provided that the content of any such disclosure thereunder shall be governed by the terms of this Agreement, including with respect to any Change of Recommendation as set forth in Section 5.3(d).

(g) Certain Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(i) "**Acquisition Proposal**," with respect to a party, shall mean any offer or proposal, relating to any transaction or series of related transactions involving: (A) any purchase from such party or acquisition by any Person or "group" (as defined under Section 13(d) of the Exchange Act and the rules and regulations thereunder) of more than a fifteen percent (15%) interest in the total outstanding voting securities of such party or any of its Subsidiaries or any tender offer or exchange offer that if consummated would result in any Person or group beneficially owning fifteen percent (15%) or more of the total outstanding voting securities of such party or any of its Subsidiaries or any merger, consolidation, business combination or similar transaction involving such party or any of its Subsidiaries, (B) any sale, lease (other than in the ordinary course of business), exchange, transfer, license (other than in the ordinary course of business), acquisition or disposition of more than fifteen percent (15%) of the assets of such party (including its Subsidiaries taken as a whole), or (C) any liquidation or dissolution of such party (provided, however, the transactions contemplated hereby shall not be deemed an Acquisition Proposal); and

(ii) "**Superior Offer**," with respect to a party, shall mean an unsolicited, bona fide written offer made by a third party to acquire, directly or indirectly, pursuant to a tender offer, exchange offer, merger, consolidation or other business combination, all or substantially all of the assets of such party or a majority of the total outstanding voting securities of such party as a result of which the stockholders of such party immediately preceding such transaction would hold less than fifty percent (50%) of the equity interests in the surviving or resulting entity of such

transaction or any direct or indirect parent or subsidiary thereof, on terms that the Board of Directors of such party has in good faith concluded (following the receipt of advice of its outside legal counsel and its financial adviser), taking into account all legal, financial, regulatory and other aspects of the offer and the Person making the offer, to be more favorable, from a financial point of view, to such party's stockholders (in their capacities as stockholders) than the terms of the Merger and is reasonably capable of being consummated.

5.4 Confidentiality; Access to Information; No Modification of Representations, Warranties or Covenants.

(a) Confidentiality. The parties acknowledge that the Company and Parent have previously executed a Confidentiality Agreement dated May 6, 2003 (the "**Confidentiality Agreement**"), which Confidentiality Agreement will continue in full force and effect in accordance with its terms and each of Parent and the Company will hold, and will cause its respective Representatives to hold, any Evaluation Material (as defined in the Confidentiality Agreement) confidential in accordance with the terms of the Confidentiality Agreement.

(b) Access to Information. During the period beginning on the date of this Agreement and ending on the earlier to occur of the Effective Time or the termination of this Agreement pursuant to its terms, the Company shall afford Parent and Parent's Representatives reasonable access during reasonable hours to its properties, books, records and personnel to obtain all information concerning its business, including the status of product development efforts, properties, results of operations and personnel, as Parent may reasonably request. Parent shall afford the Company and the Company's Representatives reasonable access during reasonable hours to such information as the Company may reasonably request during the period prior to the Effective Time in connection with events arising after the date of this Agreement, to the extent such information (i) is reasonably necessary to confirm whether there has been any inaccuracy in or breach of Parent's representations and warranties contained herein, or failure by Parent to perform any of Parent's covenants or agreements contained herein, in each case, which would be material to Parent or (ii) otherwise relates to any material development in Parent's business which could reasonably be expected to lead to a Material Adverse Effect on Parent. Parent and the Company shall hold all information received pursuant to this Section 5.4(b) confidential in accordance with the terms of the Confidentiality Agreement. Notwithstanding the foregoing, this Section 5.4(b) shall not require any of Parent, the Company or any their respective Subsidiaries to permit any inspection, or to disclose any information, that would result in (i) the waiver of any applicable attorney-client privilege; provided that such Person shall have used its reasonable best efforts to allow such inspection or disclose such information in a manner that would not result in a waiver of attorney-client privilege, or (ii) the violation of any Legal Requirements promulgated by a Governmental Entity.

(c) No Modification of Representations and Warranties or Covenants. No information or knowledge obtained in any investigation or notification pursuant to this Section 5.4, Section 5.6 or Section 5.7 shall affect or be deemed to modify any representation or warranty contained herein, the covenants or agreements of the parties hereto or the conditions to the obligations of the parties hereto under this Agreement.

5.5 Public Disclosure. Without limiting any other provision of this Agreement, Parent and the Company will consult with each other before issuing, and provide each other the opportunity to review, comment upon and concur with, and use its respective reasonable best efforts to agree on any press release or public statement with respect to this Agreement and the transactions contemplated hereby, including the Merger and any Acquisition Proposal, and will not issue any such press release or make any such public statement prior to such consultation and (to the extent practicable) agreement, except as may be required by law or any listing agreement with Nasdaq or any other applicable national or regional securities exchange or market. The parties hereto have agreed to the text of the joint press release announcing the signing of this Agreement. Notwithstanding the foregoing, each of Parent and the Company may make any public statement in response to questions from the press, analysts, investors or those attending industry conferences and make internal announcements to employees, so long as such statements are consistent with previous press releases, public disclosures or public statements made jointly by the Company and Parent (or individually, if approved by the other party).

5.6 Regulatory Filings; Reasonable Best Efforts.

(a) Regulatory Filings. Each of Parent, Merger Sub and the Company shall coordinate and cooperate with one another and shall each use its reasonable best efforts to comply with, and shall each refrain from taking any action that would impede compliance with, all Legal Requirements, and as promptly as practicable after the date hereof, each of Parent, Merger Sub and the Company shall make all filings, notices, petitions, statements, registrations, submissions of information, applications or submissions of other documents required by any Governmental Entity in connection with the Merger and the transactions contemplated hereby, including: (i) Notification and Report Forms with the United States Federal Trade Commission (the "**FTC**") and the Antitrust Division of the United States Department of Justice ("**DOJ**") as required by the HSR Act, (ii) any other filing necessary to obtain any Necessary Consent, (iii) filings under any other comparable pre-merger notification forms required by the merger notification or control laws of any applicable jurisdiction, as agreed by the parties hereto, and (iv) any filings required under the Securities Act, the Exchange Act, any applicable state or securities or "blue sky" laws and the securities laws of any foreign country, or any other Legal Requirement relating to the Merger (including with respect to the Company, any filings under the New Jersey Industrial Site Recovery Act, as amended, and any rules or regulations promulgated thereunder). Each of Parent and the Company will cause all documents that it is responsible for filing with any Governmental Entity under this Section 5.6(a) to comply in all material respects with all applicable Legal Requirements.

(b) Exchange of Information. Parent, Merger Sub and the Company each shall promptly supply the other with any information which may be required in order to effectuate any filings or applications pursuant to Section 5.6(a). Except where prohibited by applicable Legal Requirements, and subject to the Confidentiality Agreement, each of the Company and Parent shall (i) consult with the other prior to taking a position with respect to any such filing or application, (ii) permit the other to review and discuss in advance, and consider in good faith the views of the other in connection with any analyses, appearances, presentations, memoranda, briefs, white papers, arguments, opinions and proposals (collectively, "**Briefings**") before making or submitting any of

the foregoing to any Governmental Entity by or on behalf of any party hereto in connection with any investigations or proceedings in connection with this Agreement or the transactions contemplated hereby (including under any antitrust or fair trade Legal Requirement) and not submit any such Briefing without the consent of the other parties, (iii) coordinate with the other in preparing and exchanging such information and (iv) promptly provide the other (and its counsel) with copies of all filings, presentations or submissions (and a summary of any oral presentations) made by such party with any Governmental Entity in connection with this Agreement or the transactions contemplated hereby. It is acknowledged and agreed that the parties hereto shall have, except where prohibited by applicable Legal Requirements, joint responsibility for determining the strategy for dealing with the FTC, DOJ or any other Governmental Entity with responsibility for reviewing the Merger with respect to antitrust or competition issues. Subject to applicable Legal Requirements, no party hereto shall independently participate in any meeting with any Governmental Entity in respect of any such filings, applications, Briefings, investigation, proceeding or other inquiry without giving the other parties hereto prior notice of such meeting and, to the extent permitted by such Governmental Entity, the opportunity to attend and participate.

(c) Notification. Each of Parent, Merger Sub and the Company will notify the other promptly upon the receipt of: (i) any comments from any officials of any Governmental Entity in connection with any filings made pursuant hereto and (ii) any request by any officials of any Governmental Entity for amendments or supplements to any filings made pursuant to, or information provided to comply in all material respects with, any Legal Requirements. Whenever any event occurs that is required to be set forth in an amendment or supplement to any filing made pursuant to Section 5.6(a), Parent, Merger Sub or the Company, as the case may be, will promptly inform the other of such occurrence and cooperate in filing with the applicable Governmental Entity such amendment or supplement.

(d) Reasonable Best Efforts. Subject to the express provisions of Section 5.2 and Section 5.3 hereof and upon the terms and subject to the conditions set forth herein, each of the parties agrees to use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the Merger and the other transactions contemplated by this Agreement, including using reasonable best efforts to accomplish the following: (i) the taking of all reasonable acts necessary to cause the conditions precedent set forth in Article VI to be satisfied, (ii) the obtaining of all necessary actions or nonactions, waivers, consents, approvals, orders and authorizations from Governmental Entities and the making of all necessary registrations, declarations and filings (including registrations, declarations and filings with Governmental Entities, if any) and, subject to the limitations set forth herein, the taking of all steps and remedies as may be necessary to avoid any suit, claim, action, investigation or proceeding by any Governmental Entity, (iii) the obtaining of all necessary consents, approvals or waivers from third parties, including all Necessary Consents, (iv) the defending of any suits, claims, actions, investigations or proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Entity vacated or reversed, and (v) the execution or delivery of any additional instruments necessary to

consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement. In connection with and without limiting the foregoing, the Company and its Board of Directors shall, if any takeover statute or similar Legal Requirement is or becomes applicable to the Merger, this Agreement or any of the transactions contemplated by this Agreement, use its reasonable best efforts to ensure that the Merger and the other transactions contemplated by this Agreement may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to minimize the effect of such Legal Requirement on the Merger, this Agreement and the transactions contemplated hereby.

(e) Limitation on Divestiture. Notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement shall be deemed to require Parent or the Company or any Subsidiary or affiliate thereof to agree to any Action of Divestiture, which would have a Material Adverse Effect (without giving effect to the proviso contained in the definition of "Material Adverse Effect" with respect to clause (i) therein) on the business of Parent (on a combined basis with the Company) following the Merger. The Company shall not take or agree to take any Action of Divestiture without the prior written consent of Parent. For purposes of this Agreement, an "**Action of Divestiture**" shall mean any divestiture by Parent or the Company, or any of Parent's Subsidiaries or affiliates, of shares of capital stock or of any business, assets or property of Parent or its Subsidiaries or affiliates, or of the Company or its Subsidiaries or affiliates, or the imposition of any material limitation on the ability of any of them to conduct their businesses or to own or exercise control of such assets, properties and stock.

5.7 Notification of Certain Matters.

(a) By the Company. The Company shall give prompt notice to Parent and Merger Sub of any representation or warranty made by it contained in this Agreement becoming untrue or inaccurate, or any failure of the Company to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement of which the Company has Knowledge, in each case, such that the conditions set forth in Section 6.3(a) or 6.3(b) would not be satisfied.

(b) By Parent. Parent and Merger Sub shall give prompt notice to the Company of any representation or warranty made by it contained in this Agreement becoming untrue or inaccurate, or any failure of Parent to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement of which Parent has Knowledge, in each case, such that the conditions set forth in Section 6.2(a) or 6.2(b) would not be satisfied.

5.8 Third-Party Consents. As soon as practicable following the date hereof, Parent and the Company will each use its reasonable best efforts to obtain any material consents, waivers and approvals under any of its or its Subsidiaries' respective Contracts required to be obtained in connection with the consummation of the transactions contemplated hereby; provided, however, that in the event the Company is required to expend any money or other consideration to obtain any such consents, the parties hereto shall consult with each other prior to making any such expenditure.

5.9 Equity Awards and Employee Benefits.

(a) Assumption of Stock Options. At the Effective Time, each then outstanding Company Option, whether or not exercisable at the Effective Time and regardless of the respective exercise prices thereof, will be assumed by Parent. Each Company Option so assumed by Parent under this Agreement will continue to have, and be subject to, the same terms and conditions set forth in the applicable Company Option (including any applicable stock option agreement or other document evidencing such Company Option) immediately prior to the Effective Time (including any repurchase rights or vesting provisions), except that (i) each Company Option will be exercisable (or will become exercisable in accordance with its terms) for that number of whole shares of Parent Common Stock equal to the product of the number of shares of Company Common Stock that were issuable upon exercise of such Company Option immediately prior to the Effective Time multiplied by the Exchange Ratio, rounded down to the nearest whole number of shares of Parent Common Stock and (ii) the per share exercise price for the shares of Parent Common Stock issuable upon exercise of such assumed Company Option will be equal to the quotient determined by dividing the exercise price per share of Company Common Stock at which such Company Option was exercisable immediately prior to the Effective Time by the Exchange Ratio, rounded up to the nearest whole cent. Each assumed Company Option shall be vested immediately following the Effective Time as to the same percentage of the total number of shares subject thereto as it was vested as to immediately prior to the Effective Time, except to the extent such Company Option by its terms in effect prior to the date hereof provides for acceleration of vesting. As soon as reasonably practicable, Parent will use all reasonable efforts to issue to each Person who holds an assumed Company Option a document evidencing the foregoing assumption of such Company Option by Parent.

(b) Incentive Stock Options. The conversion of Company Options provided for in Section 5.9, with respect to any options which are intended to be "incentive stock options" (as defined in Section 422 of the Code) shall be effected in a manner consistent with Section 424(a) of the Code.

(c) Company Stock-Based Awards. Immediately upon the Effective Time, each award of shares, or units, granted under applicable Company Benefit Plans and representing the right to receive in the future shares of Company Common Stock, other than Company Restricted Stock and Company Options (each, other than Company Restricted Stock and Company Options, a "**Company Stock-Based Award**"), whether vested or unvested, which is outstanding immediately prior to the Effective Time shall be fully vested and converted into a right to receive shares of Parent Common Stock in accordance with Section 1.6(a).

(d) Service Recognition. Subject to Section 5.9(d), as of the Closing Date and for a period of at least one year following the Closing Date, Parent, in its sole and absolute discretion, will either (i) continue Company Benefit Plans other than the 401(k) Plans (as provided pursuant to Section 5.9(h)), (ii) permit Employees of the Company and each of its Subsidiaries who continue employment with Parent or the Surviving Corporation following the Closing Date ("**Continuing Employees**"), and, as applicable, their eligible dependents, to participate in the employee benefit

plans, programs or policies (including, without limitation, any generally available vacation, sick, personal time off plans or programs, but excluding the stock compensation plans or arrangements) of Parent and any plan of Parent intended to qualify within the meaning of Section 401(a) of the Code on terms no less favorable than those provided to similarly situated employees of Parent, or (iii) a combination of clauses (i) and (ii). To the extent Parent elects to have Continuing Employees and their eligible dependents participate in its employee benefit plans, program or policies (other than stock compensation plans or arrangements) following the Closing Date, (A) each such Continuing Employee will receive credit for purposes of eligibility to participate, vesting and vacation, sick, personal time off (but not for purposes of benefit accrual) under such plan, program or policy for years of service with the Company (or any of its Subsidiaries), including predecessor employers prior to the Closing Date; provided that such credit (1) does not result in a duplication of benefits, compensation, incentive or otherwise and (2) does not result in an increase in the level of benefits to which a similarly situated employee of Parent would be entitled, (B) Parent will use its reasonable best efforts to cause any and all pre-existing condition limitations, eligibility waiting periods and evidence of insurability requirements under any group health plans of Parent in which such employees and their eligible dependents will participate to be waived will use its reasonable best efforts to provide credit for any co-payments and deductibles prior to the Closing Date for purposes of satisfying any applicable deductible, out-of-pocket or similar requirements under any such plans that may apply after the Closing Date, and (C) for each Continuing Employee who is a participant, and maintains a positive account balance, in a flexible spending account for medical or dependent care expenses under a Company Benefit Plan pursuant to Section 125 and 129 of the Code ("**Company's FSA**"), if Parent, in its sole discretion, elects to terminate the Company's FSA during the calendar year in which the Closing occurs, on the first day the Continuing Employees are eligible to participate in the flexible spending account for medical or dependent care expenses under a Parent Benefit Plan pursuant to Section 125 and 129 of the Code ("**Parent's FSA**"), Parent agrees that it will use its reasonable best efforts, subject to applicable Legal Requirements, to cause Parent's FSA to assume each such Continuing Employee's account balance under the Company's FSA and the elections made thereunder attributable to such Continuing Employee.

(e) Continuing Employee Compensation. For a period of at least one year following the Closing Date, Parent shall, or shall cause the Surviving Corporation to, compensate each Continuing Employee with cash compensation, including base salary rate and target bonus opportunity and cash severance benefits, on terms no less favorable in the aggregate than the total cash compensation opportunity and cash severance benefits provided to similarly situated employees of Parent. Nothing herein shall (i) require Parent to continue the employment of any Continuing Employee or (ii) limit Parent's ability and discretion to change or amend the total cash compensation opportunity and cash severance benefits to which a Continuing Employee may be entitled provided that, following such change or amendment, the total cash compensation opportunity and cash severance benefits payable to such Continuing Employee are on terms no less favorable in the aggregate than the total cash compensation opportunity and cash severance benefits provided to similarly situated employees of Parent.

(f) Severance/Retention. From and after the Closing Date, Parent shall cause the Surviving Corporation to honor, in accordance with their terms as in effect immediately prior to the

Closing Date, the executive severance agreements or other employment, severance and retention agreements as set forth in the Company Disclosure Letter with Employees of the Company and its affiliates. Following the Closing Date, Parent shall cause the Surviving Corporation to honor in accordance with its terms, as in effect immediately prior to the Closing Date, the Company's retention plan (as disclosed in Annex 2 of the Company Disclosure Letter); provided, however, that Parent may amend or terminate such plan at any time provided that no such amendment or termination may adversely affect an eligible employee's right to a retention bonus without the employee's written consent. Notwithstanding anything herein to the contrary, in the event a Continuing Employee is terminated involuntarily and without cause on or prior to the date that is 90 days following the Closing Date and such Continuing Employee is not participating in any stay bonus or retention plan of Parent, the Company, or the Surviving Corporation, such Continuing Employee shall receive, and Parent shall pay, the cash severance benefits to which such Continuing Employee would be entitled pursuant to the Separation Pay Plan, the terms of which are described in the Company Disclosure Letter.

(g) Termination of Company Purchase Plan. Prior to the Effective Time, the Company shall take all action that may be necessary to cause all participants' rights under all current offering periods under the Company Purchase Plan to terminate on or prior to the day immediately preceding the Closing Date, and on such date all accumulated payroll deductions allocated to each participant's account under the Company Purchase Plan shall thereupon be returned to each participant as provided by the terms of the Company Purchase Plan and no shares of Company Common Stock shall be purchased under the Company Purchase Plan for such final offering period. As of the close of business on the day immediately prior to the Closing Date, the Company shall have terminated the Company Purchase Plan and provided such notice of termination as may be required by the terms of the Company Purchase Plan. The form and substance of any such notice regarding the Company Purchase Plan termination shall be subject to the review and approval of Parent, which shall not be unreasonably withheld.

(h) Termination of 401(k) Plans.

(i) Unless otherwise requested by Parent in writing prior to the Effective Time, the Company shall cause to be adopted prior to the Closing Date resolutions of the Company's Board of Directors to cease all contributions to any and all 401(k) plans maintained or sponsored by the Company or any of its Subsidiaries (collectively, the "**401(k) Plans**"), and to terminate the 401(k) Plans, on the day preceding the Closing Date. The form and substance of such resolutions shall be subject to the review and approval of Parent, which shall not be unreasonably withheld. The Company shall deliver to Parent an executed copy of such resolutions as soon as practicable following their adoption by the Company's Board of Directors and shall fully comply with such resolutions.

(ii) To the extent the 401(k) Plans are terminated in accordance with Section 5.9(h), Parent shall cause the tax-qualified defined contribution plan established or maintained by Parent ("**Parent's Savings Plan**") to accept eligible rollover distributions (as defined in Section 402(c)(4) of the Code) from Continuing Employees with respect to any account balances

distributed to them by the 401(k) Plans. Rollovers of outstanding loans under the 401(k) Plans shall be permitted. The distribution and rollover described herein shall comply with applicable Legal Requirements and each party shall make all filings and take any actions required of such party under applicable Legal Requirements in connection therewith. Each Continuing Employee shall be immediately eligible to participate in Parent's Savings Plan as of the Closing Date.

(iii) If, in accordance with Section 5.9(h), Parent requests in writing that the Company not terminate the 401(k) Plans, the Company shall take such actions as Parent may reasonably require in furtherance of the assumption of the 401(k) Plans by Parent, including, but not limited to, adopting such amendments as Parent may deem necessary or advisable in connection with such assumption.

(i) Communications. Neither the Company nor any officer or member of the Board of Directors of the Company shall communicate in writing to Employees regarding any matters discussed in this Section 5.9, without the consent of Parent, such consent not to be unreasonably withheld. Neither the Company nor any officer or member of the Board of Directors of the Company will make any oral communications to Employees that are inconsistent with the provisions of this Section 5.9.

(j) No Third Party Beneficiaries. Without limiting the generality of Section 8.5, or any specific applicability thereof, with respect to the legal enforceability of the foregoing, this Section 5.9 is intended to be for the sole benefit of the parties to this Agreement and this Section 5.9 is not intended to confer upon any other Person (including any Continuing Employee) any rights or remedies hereunder.

5.10 Indemnification.

(a) Indemnity. From and after the Effective Time, Parent shall, and shall cause the Surviving Corporation to, to the fullest extent permitted by applicable Legal Requirements, indemnify, defend and hold harmless, and provide advancement of expenses to, each Person who is now or who becomes prior to the Effective Time an officer or director of the Company or any of its Subsidiaries (the "**Indemnified Parties**") against all losses, claims, damages, costs, expenses, liabilities or judgments or amounts that are paid in settlement of or in connection with any claim or action that is based in whole or in part on, or arises in whole or in part out of, the fact that such Person is or was a director or officer of the Company or any of its Subsidiaries, and pertaining to any matter existing or occurring, or any acts or omissions occurring, at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time (including matters, acts or omissions occurring in connection with the approval of this Agreement and the consummation of the transactions contemplated hereby), to the same extent such Persons are entitled to be indemnified or have the right to advancement of expenses as of the date of this Agreement by the Company or any of its Subsidiaries pursuant to the certificate of incorporation and bylaws of the Company, or the Subsidiary Charter Documents of its Subsidiaries, and indemnification agreements of the Company and its Subsidiaries in existence on the date hereof with such Persons. The certificate of incorporation and bylaws of the Surviving Corporation will contain provisions with respect to exculpation and indemnification that are at least as favorable to the Indemnified Parties as those

contained in the certificate of incorporation and bylaws of the Company as in effect on the date hereof, which provisions will not be amended, repealed or otherwise modified for a period of six years from the Effective Time in any manner that would adversely affect the rights thereunder of Indemnified Parties, unless such modification is required by law.

(b) Insurance. For a period of six years after the Effective Time, Parent shall cause the Surviving Corporation to use its reasonable best efforts to cause to be maintained in effect the directors' and officers' liability insurance maintained by the Company covering those Persons who are covered by the Company's directors' and officers' liability insurance policy as of the date hereof (the "**D&O Insurance**") for events occurring prior to the Effective Time on terms comparable to those applicable to the current directors and officers of the Company for a period of six years; provided that if the existing D&O Insurance expires, is terminated or is canceled during such six-year period, Parent shall cause the Surviving Corporation to use its reasonable best efforts to substitute therefor policies containing terms and conditions which are no less favorable than those applicable to the current directors and officers of the Company; provided, however, that in no event will the Surviving Corporation be required to expend in excess of 250% of the annual premium currently paid by the Company for such coverage (and to the extent the annual premium would exceed 250% of the annual premium currently paid by the Company for such coverage, the Surviving Corporation shall use its reasonable best efforts to cause to be maintained the maximum amount of coverage as is available for such 250% of such annual premium). To the extent that a six year "tail" policy to extend the Company's existing D&O Insurance is available prior to the Closing such that the lump sum payment for such coverage does not exceed six times 250% of the annual premium currently paid by the Company for such coverage, the Company shall obtain such "tail" policy and such "tail" policy shall satisfy Parent's obligation under this Section 5.10.

(c) Third–Party Beneficiaries. This Section 5.10 is intended to be for the benefit of, and shall be enforceable by, the Indemnified Parties and their heirs and personal representatives and shall be binding on Parent and the Surviving Corporation and its successors and assigns. In the event Parent or the Surviving Corporation or its successor or assign (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in each case, proper provision shall be made so that the successor and assign of Parent or the Surviving Corporation, as the case may be, honors the obligations set forth with respect to Parent or the Surviving Corporation, as the case may be, in this Section 5.10.

5.11 Form S-8. Parent agrees to file with the SEC, no later than 15 business days after the date on which the Closing Date, a registration statement on Form S-8 (or any successor form), if available for use by Parent, relating to the shares of Parent Common Stock issuable with respect to assumed Company Options eligible for registration on Form S-8 and shall use reasonable best efforts to maintain the effectiveness of such registration statement thereafter for so long as any of such options or other rights remain outstanding.

5.12 Nasdaq Listing. Prior to the Effective Time, Parent agrees to use its reasonable best efforts to authorize for listing on Nasdaq the shares of Parent Common Stock issuable, and those

required to be reserved for issuance, in connection with the Merger, subject to official notice of issuance.

5.13 Company Affiliates; Restrictive Legend.

The Company will provide Parent with such information and documents as Parent reasonably requests for purposes of reviewing the list of Company Affiliates included in the Company Disclosure Letter. The Company will use its reasonable best efforts to deliver or cause to be delivered to Parent, as promptly as practicable on or following the date hereof, from each Company Affiliate an executed affiliate agreement pursuant to which such affiliate shall agree to be bound by the provisions of Rule 145 promulgated under the Securities Act, in the form provided by Parent. Parent will give stop transfer instructions to its transfer agent with respect to any Parent Common Stock received pursuant to the Merger by any Company Affiliate and there will be placed on the certificates representing such Parent Common Stock, or any substitutions therefor, a legend stating in substance that the shares were issued in a transaction to which Rule 145 promulgated under the Securities Act applies and may only be transferred (a) in conformity with Rule 145 or (b) in accordance with a written opinion of counsel, reasonably acceptable to Parent in form and substance, that such transfer is exempt from registration under the Securities Act.

5.14 Treatment as Reorganization.

(a) None of Parent, Merger Sub or the Company shall, and they shall not permit any of their respective Subsidiaries to, take any action (or fail to take any action) prior to or following the Closing that would reasonably be expected to cause the Merger to fail to qualify as a reorganization with the meaning of Section 368(a) of the Code.

(b) Parent, on its behalf and on behalf of Merger Sub, and the Company shall execute and deliver to each of Wilson Sonsini Goodrich & Rosati, Professional Corporation, counsel to Parent and Merger Sub ("**WSGR**"), and Weil, Gotshal & Manges LLP, counsel to the Company ("**WGM**"), certificates substantially in the forms attached hereto as Exhibits B and C at such time or times as reasonably requested by each such law firm in connection with its delivery of the tax opinions referred to in Section 6.1(f).

5.15 Company Rights Plan. The Company shall not redeem the Company Rights or amend or modify (including by delay of the "**Distribution Date**" thereunder) or terminate the Company Rights Plan prior to the Effective Time unless, and only to the extent that: (a) it is required to do so by order of a court of competent jurisdiction or (b) its Board of Directors has concluded in good faith, after receipt of advice of its outside legal counsel, that, in light of a Superior Offer with respect to it, the failure to effect such amendment, modification or termination would be reasonably likely to constitute a breach of its fiduciary obligations to its stockholders under applicable Legal Requirements.

5.16 Board of Directors. The Board of Directors of Parent shall take all actions necessary such that effective as of immediately following the Effective Time, two members of the Board of

Directors of the Company who are acceptable to Parent shall become members of the Board of Directors of Parent.

5.17 Section 16 Matters. Prior to the Effective Time, Parent and the Company shall take all such steps as may be required (to the extent permitted under applicable Legal Requirements) to cause any dispositions of Company Common Stock (including derivative securities with respect to Company Common Stock) resulting from the transactions contemplated by Article I of this Agreement by each individual who is subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Company, and the acquisition of Parent Common Stock (including derivative securities with respect to Parent Common Stock) by each individual who is or will be subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to Parent, to be exempt under Rule 16b-3 promulgated under the Exchange Act.

5.18 Merger Sub Compliance. Parent shall cause Merger Sub to comply with all of Merger Sub's obligations under or relating to this Agreement. Merger Sub shall not engage in any business which is not in connection with the Merger and the transactions contemplated hereby.

5.19 Convertible Debt. At the Closing, the Company shall execute and deliver: (a) to Wells Fargo Bank Minnesota, National Association, as trustee ("**Wells Fargo**") under the Indenture, dated as of February 7, 2003, between the Company and Wells Fargo (the "**Indenture**") relating to the 2.25% Notes, a supplemental indenture effective as of the Closing complying with the requirements of Section 4.11 and Article 11 of the Indenture together with any related certificates, legal opinions and other documents required by the Indenture to be delivered in connection with the supplemental indenture, (b) to U.S. Bank National Association, as trustee ("**U.S. Bank**") under the Indenture, dated as of February 20, 2002, between CNT and U.S. Bank relating to the 3.00% Notes (the "**CNT Indenture**," as amended by the First Supplemental Indenture dated as of June 1, 2005 among the Company, CNT and US Bank), a supplemental indenture effective as of the Closing which complies with Section 4.11 and Article 11 of the CNT Indenture together with any related certificates, legal opinions and other documents required by the CNT Indenture to be delivered in connection with the supplemental indenture, and (c) amendments to the confirmations relating the purchased call option (the "**Purchased Calls**") and the issued call options (the "**Issued Calls**") entered into contemporaneously with the Indenture, providing that the Purchased Calls and Issued Calls, respectively, shall survive the Closing and be exercisable into shares of Parent Common Stock, in form and substance satisfactory to Parent, in each case, to any and all counterparties to such confirmations; provided, however, that, with respect to the Purchased Calls and the Issued Calls, (i) any discussions concerning the terms of such amendments with the "calculation agent" under such confirmations shall be led and controlled by the Parent (provided that the Company shall be entitled to participate in any such discussions), and (ii) in the event that the calculation agent expresses a desire to adjust the terms of the Purchased Calls and Issued Calls in a manner unsatisfactory to Parent, in its sole discretion, Parent shall be entitled to negotiate a termination of such confirmations with such counterparty, to be effective on or after the Closing.

ARTICLE VI

CONDITIONS TO THE MERGER

6.1 Conditions to the Obligations of Each Party to Effect the Merger. The respective obligations of each party to this Agreement to effect the Merger shall be subject to the satisfaction (or waiver, if permissible under applicable Legal Requirements) at or prior to the Closing Date of the following conditions:

(a) Parent Stockholder Approval. The Share Issuance shall have been approved by the requisite vote under applicable Legal Requirements by the stockholders of Parent.

(b) Company Stockholder Approval. This Agreement shall have been approved and adopted by the requisite vote under applicable Legal Requirements by the stockholders of the Company.

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

(d) Registration Statement Effective; Proxy Statement/Prospectus. The SEC shall have declared the Registration Statement effective. No stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose, and no similar proceeding in respect of the Proxy Statement/Prospectus, shall have been initiated or threatened in writing by the SEC.

(e) HSR Act. All waiting periods (and any extension thereof) under the HSR Act relating to the transactions contemplated hereby shall have expired or been terminated early. All other material foreign antitrust approvals, clearances or expirations of waiting periods required to be obtained prior to the Merger in connection with the transactions contemplated hereby shall have been obtained.

(f) Tax Opinions. Parent and the Company shall each have received written opinions from their tax counsel (WSGR and WGM, respectively), in form and substance reasonably satisfactory to them, to the effect that the Merger will constitute a reorganization within the meaning of Section 368(a) of the Code (the issuance of such opinions shall be conditioned upon the receipt by such counsel of the certificates of Parent, Merger Sub and the Company referred to in Section 5.14(b)) and such opinions shall not have been withdrawn.

(g) Nasdaq Listing. The shares of Parent Common Stock to be issued in the Merger and the transactions contemplated hereby shall have been authorized for listing on Nasdaq, subject to official notice of issuance.

6.2 Additional Conditions to the Obligations of the Company. The obligation of the Company to consummate and effect the Merger shall be subject to the satisfaction at or prior to the Closing Date of each of the following conditions, any of which may be waived, in writing, exclusively by the Company:

(a) Representations and Warranties. (i) The representations and warranties of Parent and Merger Sub contained in this Agreement which are qualified by a "Material Adverse Effect" qualification shall be true and correct in all respects as so qualified at and as of the date of this Agreement and at and as of the Closing Date as though made at and as of the Closing Date and (ii) the representations and warranties of Parent and Merger Sub contained in this Agreement which are not qualified by a "Material Adverse Effect" qualification (it being understood and agreed that all other materiality qualifications and other qualifications based on the word "material" or similar phrases contained in such representations and warranties shall be disregarded) shall be true and correct at and as of the date of this Agreement and at and as of the Closing Date as though made at and as of the Closing Date, except for such failures to be true and correct as would not have, in each case or in the aggregate, a Material Adverse Effect on Parent (except that the representations and warranties contained in Section 3.2 shall be true and correct in all material respects); provided, however, that, with respect to clauses (i) and (ii) hereof, representations and warranties that are made as of a particular date or period shall be true and correct (in the manner set forth in clauses (i) or (ii), as applicable) only as of such date or period (it being understood that no update of or modification to the Parent Disclosure Letter shall be made after the execution of this Agreement). The Company shall have received a certificate with respect to the foregoing signed on behalf of Parent, with respect to the representations and warranties of Parent, by an authorized executive officer of Parent and a certificate with respect to the foregoing signed on behalf of Merger Sub, with respect to the representations and warranties of Merger Sub, by an authorized executive officer of Merger Sub.

(b) Agreements and Covenants. Parent and Merger Sub shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date, and the Company shall have received a certificate with respect to the foregoing signed on behalf of Parent, with respect to the covenants of Parent, by an authorized executive officer of Parent and a certificate with respect to the foregoing signed on behalf of Merger Sub, with respect to the covenants of Merger Sub, by an authorized executive officer of Merger Sub.

(c) Material Adverse Effect. No Material Adverse Effect on Parent shall have occurred since the date hereof and be continuing.

6.3 Additional Conditions to the Obligations of Parent. The obligations of Parent and Merger Sub to consummate and effect the Merger shall be subject to the satisfaction at or prior to the Closing Date of each of the following conditions, any of which may be waived, in writing, exclusively by Parent and Merger Sub:

(a) Representations and Warranties. (i) The representations and warranties of the Company contained in this Agreement which are qualified by a "Material Adverse Effect" qualification shall be true and correct in all respects as so qualified at and as of the date of this

Agreement and at and as of the Closing Date as though made at and as of the Closing Date and (ii) the representations and warranties of the Company contained in this Agreement which are not qualified by a "Material Adverse Effect" qualification (it being understood and agreed that all other materiality qualifications and other qualifications based on the word "material" or similar phrases contained in such representations and warranties shall be disregarded) shall be true and correct at and as of the date of this Agreement and at and as of the Closing Date as though made at and as of the Closing Date, except for such failures to be true and correct as would not have, in each case or in the aggregate, a Material Adverse Effect on the Company (except that the representations and warranties contained in Section 2.2 shall be true and correct in all material respects); provided, however, that, with respect to clauses (i) and (ii) hereof, representations and warranties that are made as of a particular date or period shall be true and correct (in the manner set forth in clauses (i) or (ii), as applicable) only as of such date or period (it being understood that no update of or modification to the Company Disclosure Letter shall be made after the execution of this Agreement). Parent and Merger Sub shall have received a certificate with respect to the foregoing signed on behalf of the Company by an authorized executive officer of the Company.

(b) Agreements and Covenants. The Company shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it at or prior to the Closing Date, and Parent and Merger Sub shall have received a certificate to such effect signed on behalf of the Company by an authorized executive officer of the Company.

(c) Material Adverse Effect. No Material Adverse Effect on the Company shall have occurred since the date hereof and be continuing.

(d) No Governmental Restriction. There shall not be any pending suit, action or proceeding asserted by any Governmental Entity (i) challenging or seeking to restrain or prohibit the consummation of the Merger or any of the other transactions contemplated by this Agreement, the effect of which restraint or prohibition if obtained would cause the condition set forth in Section 6.1(c) to not be satisfied or (ii) seeking to require Parent or the Company or any Subsidiary or affiliate thereof to effect an Action of Divestiture.

ARTICLE VII

TERMINATION, AMENDMENT AND WAIVER

7.1 Termination. This Agreement may be terminated at any time prior to the Effective Time, by action taken or authorized by the Board of Directors of the terminating party, and except as provided below, whether before or after the requisite approvals of the stockholders of the Company or Parent:

(a) by mutual written consent duly authorized by the Boards of Directors of Parent and the Company;

(b) by either the Company or Parent if the Merger shall not have been consummated by February 7, 2007, which date (i) shall be automatically extended to May 7, 2007 and (ii) may be further extended at the election of the Company in its sole discretion to August 7, 2007, if, in either case, the Merger shall not have been consummated as of the result of a failure to satisfy the conditions set forth in Section 6.1(c), Section 6.1(e) or Section 6.3(d) (as appropriate, the "**End Date**"); provided, however, that the right to terminate this Agreement under this Section 7.1(b) shall not be available to any party whose action or failure to act has been a principal cause of or resulted in the failure of the Merger to occur on or before such date and such action or failure to act constitutes a breach of this Agreement;

(c) by either the Company or Parent if a Governmental Entity shall have issued an order, decree or ruling or taken any other action (including the failure to have taken an action), in any case having the effect of permanently restraining, enjoining or otherwise prohibiting the Merger, which order, decree, ruling or other action is final and nonappealable;

(d) by either the Company or Parent if the required approval of the stockholders of the Company contemplated by this Agreement shall not have been obtained by reason of the failure to obtain the required vote at a meeting of the Company stockholders duly convened therefore or at any adjournment thereof; provided, however, that the right to terminate this Agreement under this Section 7.1(d) shall not be available to the Company where the failure to obtain Company stockholder approval shall have been caused by the action or failure to act of the Company and such action or failure to act constitutes a breach by the Company of this Agreement;

(e) by either the Company or Parent if the required approval of the stockholders of Parent contemplated by this Agreement shall not have been obtained by reason of the failure to obtain the required vote at a meeting of the Parent stockholders duly convened therefore or at any adjournment thereof; provided, however, that the right to terminate this Agreement under this Section 7.1(e) shall not be available to Parent where the failure to obtain Parent stockholder approval shall have been caused by the action or failure to act of Parent and such action or failure to act constitutes a breach by Parent of this Agreement;

(f) by Parent if a Triggering Event (as defined below in this Section 7.1) with respect to the Company shall have occurred;

(g) by the Company if a Triggering Event with respect to Parent shall have occurred;

(h) by the Company, upon a breach of any representation, warranty, covenant or agreement on the part of Parent set forth in this Agreement, or if any representation or warranty of Parent shall have become untrue, in either case such that the conditions set forth in Section 6.2(a) or Section 6.2(b) would not be satisfied as of the time of such breach or as of the time such representation or warranty shall have become untrue; provided that if such inaccuracy in Parent's representations and warranties or breach by Parent is curable by Parent prior to the End Date through the exercise of reasonable efforts, then the Company may not terminate this Agreement under this Section 7.1(h) prior to 30 days following the receipt of written notice from the Company to Parent of

such inaccuracy or breach; provided that Parent continues to exercise its reasonable best efforts to cure such breach through such 30 day period (it being understood that the Company may not terminate this Agreement pursuant to this Section 7.1(h) if it shall have materially breached this Agreement or if such inaccuracy or breach by Parent is cured within such 30 day period); and

(i) by Parent, upon a breach of any representation, warranty, covenant or agreement on the part of the Company set forth in this Agreement, or if any representation or warranty of the Company shall have become untrue, in either case such that the conditions set forth in Section 6.3(a) or Section 6.3(b) would not be satisfied as of the time of such breach or as of the time such representation or warranty shall have become untrue; provided that if such inaccuracy in the Company's representations and warranties or breach by the Company is curable by the Company prior to the End Date through the exercise of reasonable efforts, then Parent may not terminate this Agreement under this Section 7.1(i) prior to 30 days following the receipt of written notice from Parent to the Company of such inaccuracy or breach; provided that the Company continues to exercise its reasonable best efforts to cure such breach through such 30 day period (it being understood that Parent may not terminate this Agreement pursuant to this paragraph 7.1(i) if it shall have materially breached this Agreement or if such inaccuracy or breach by the Company is cured within such 30 day period).

For the purposes of this Agreement, a "**Triggering Event**," with respect to Parent or the Company, as the case may be, shall be deemed to have occurred if: (i) its Board of Directors or any committee thereof shall for any reason have made a Change of Recommendation or otherwise withdrawn or shall have amended or modified in a manner adverse to the other party hereto its recommendation in favor of, in the case of Parent, approval of the Share Issuance, or in the case of the Company, the adoption of this Agreement, (ii) it shall have failed to include in the Proxy Statement/Prospectus the recommendation of its Board of Directors in favor of, in the case of Parent, approval of the Share Issuance, or in the case of the Company, the adoption of this Agreement, (iii) its Board of Directors fails to reaffirm (publicly, if so requested) its recommendation in favor of, in the case of Parent, approval of the Share Issuance, or in the case of the Company, the adoption of this Agreement, within 10 business days after the other party hereto requests in writing that such recommendation be reaffirmed, (iv) its Board of Directors or any committee thereof shall have approved or recommended any Acquisition Proposal, (v) it shall have entered into any letter of intent or similar document or any agreement, contract or commitment accepting any Acquisition Proposal; or (vi) a tender or exchange offer relating to its securities shall have been commenced by a Person unaffiliated with the other party hereto and it shall not have sent to its security holders pursuant to Rule 14e-2 promulgated under the Securities Act, within 10 business days after such tender or exchange offer is first published, sent or given, a statement disclosing that the Board of Directors of such party recommends rejection of such tender or exchange offer.

7.2 Notice of Termination; Effect of Termination. Any termination of this Agreement under Section 7.1 above will be effective immediately upon the delivery of a valid written notice of the terminating party to the other party hereto. In the event of the termination of this Agreement as provided in Section 7.1, this Agreement shall be of no further force or effect, except (a) as set forth in Section 5.4(a), this Section 7.2, Section 7.3 and Article VIII, each of which shall survive the

termination of this Agreement and (b) nothing herein shall relieve any party from liability for any willful breach of this Agreement. No termination of this Agreement shall affect the obligations of the parties contained in the Confidentiality Agreement, which agreement shall survive termination of this Agreement in accordance with its terms.

7.3 Fees and Expenses.

(a) General. Except as set forth in this Section 7.3, all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses whether or not the Merger is consummated; provided, however, that Parent and the Company shall share equally all fees and expenses, other than attorneys' and accountants' fees and expenses, which fees shall be paid by the party incurring such expense, incurred in relation to (i) the printing and filing with the SEC of the Proxy Statement/Prospectus (including any preliminary materials related thereto) and the Registration Statement (including financial statements and exhibits) and any amendments or supplements thereto and (ii) the filing fee for the Notification and Report Forms filed with the FTC and DOJ under the HSR Act and premerger notification and reports forms under similar applicable Legal Requirements of other jurisdictions, in each case pursuant to Section 5.6(a).

(b) Payments.

(i) Payment by the Company. In the event that this Agreement is terminated by Parent or the Company, as applicable:

(1) pursuant to (x) Section 7.1(b) or Section 7.1(d) and such termination is preceded by, or concurrent with, the occurrence of a Triggering Event with respect to the Company, or (y) Section 7.1(f), then the Company shall promptly, but in no event later than three business days after the date of such termination, pay Parent a fee equal to $22,000,000 in immediately available funds (the "**Company Termination Fee**"); or

(2) (x) pursuant to Section 7.1(b) or Section 7.1(d) and such termination is not preceded by, or concurrent with, the occurrence of a Triggering Event with respect to the Company and (y) following the date hereof and prior to the termination of this Agreement, there has been public disclosure of an Acquisition Proposal with respect to the Company and (A) within 12 months following the termination of this Agreement an Acquisition (as defined in Section 7.3(b)(iv)) of the Company is consummated or (B) within 12 months following the termination of this Agreement the Company enters into an agreement providing for an Acquisition of the Company, then the Company shall promptly pay Parent the Company Termination Fee, but in no event later than three business days after the first to occur of (A) or (B) (it being understood that only one Company Termination Fee shall be payable in the event that (A) and (B) both occur).

(ii) Payment by Parent. In the event that this Agreement is terminated by Parent or the Company, as applicable:

(1) pursuant to (x) Section 7.1(b) or Section 7.1(e) and such termination is preceded by, or concurrent with, the occurrence of a Triggering Event with respect to Parent, or (y) Section 7.1(g), then Parent shall promptly, but in no event later than three business days after the date of such termination, pay the Company a fee equal to $22,000,000 in immediately available funds (the "**Parent Termination Fee**"); or

(2) (x) pursuant to Section 7.1(b) or Section 7.1(e) and such termination is not preceded by, or concurrent with, the occurrence of a Triggering Event with respect to Parent and (y) following the date hereof and prior to the termination of this Agreement, there has been public disclosure of an Acquisition Proposal with respect to Parent and (A) within 12 months following the termination of this Agreement an Acquisition of Parent is consummated or (B) within 12 months following the termination of this Agreement Parent enters into an agreement providing for an Acquisition of Parent, then Parent shall promptly pay the Company the Parent Termination Fee, but in no event later than three business days after the first to occur of (A) or (B) (it being understood that only one Parent Termination Fee shall be payable in the event that (A) and (B) both occur).

(3) Other Payment. Notwithstanding the foregoing, in the event that (i) this Agreement is terminated by Parent or the Company pursuant to Section 7.1(b) or 7.1(c); provided, with respect to Section 7.1(c) solely to the extent such order, decree or ruling or other action is based on an action or proceeding brought by a Governmental Entity under Legal Requirements relating to antitrust or competition, and (ii) all of the conditions set forth in Section 6.1 are satisfied (other than (A) Sections 6.1(a), 6.1(c) 6.1(e) and 6.1(f); provided with respect to Section 6.1(c), solely to the extent the existence of such statute, rule, regulation, executive order, decree, injunction or other order is based upon Legal Requirements relating to antitrust or competition enforced by, or in an action or proceeding brought by, a Governmental Entity or (B) the failure of any of the conditions in Section 6.1 to be satisfied having been caused by the action or failure to act of Parent and such action or failure to act constitutes a material breach of this Agreement) and Section 6.3 (other than Section 6.3(d)) are satisfied, Parent shall promptly, but in no event later than three business days after the date of such termination, pay the Company a fee equal to $60,000,000 in immediately available funds, which $60,000,000 fee shall be the exclusive termination fee payable by Parent in such case and no Parent Termination Fee shall be payable pursuant to clause (1) or (2) of Section 7.3(b)(ii).

(iii) Interest and Costs; Other Remedies. Each of Parent and the Company acknowledges that the agreements contained in this Section 7.3(b) are integral parts of the transactions contemplated by this Agreement, and that, without these agreements, the other party hereto would not enter into this Agreement. Accordingly, if Parent or the Company, as the case may be, fails to pay in a timely manner the amounts due pursuant to this Section 7.3(b), and, in order to obtain such payment, the other party hereto makes a claim that results in a judgment against the party failing to pay for the amounts set forth in this Section 7.3(b), the party so failing to pay shall

pay to the other party hereto its reasonable costs and expenses (including reasonable attorneys' fees and expenses) in connection with such suit, together with interest on the amounts set forth in this Section 7.3(b) at the prime rate of Citibank, N.A. in effect on the date such payment was required to be made. Payment of the fees described in this Section 7.3(b) shall not be in lieu of damages incurred in the event of breach of this Agreement.

(iv) Certain Definitions. For the purposes of this Section 7.3(b) only, "**Acquisition**," with respect to a party hereto, shall mean any of the following transactions (other than the transactions contemplated by this Agreement): (A) a merger, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving the party pursuant to which the stockholders of the party immediately preceding such transaction hold less than fifty percent (50%) of the aggregate equity interests in the surviving or resulting entity of such transaction or any direct or indirect parent thereof, (B) a sale or other disposition by the party of assets representing in excess of fifty percent (50%) of the aggregate fair market value of the party's business immediately prior to such sale, or (C) the acquisition by any Person or group (including by way of a tender offer or an exchange offer or issuance by the party or such Person or group), directly or indirectly, of beneficial ownership or a right to acquire beneficial ownership of shares representing in excess of fifty percent (50%) of the voting power of the then outstanding shares of capital stock of the party.

7.4 Amendment. Subject to applicable Legal Requirements, this Agreement may be amended by the parties hereto, by action taken or authorized by their respective Boards of Directors, at any time before or after approval of the matters presented in connection with Merger by the stockholders of Parent and the Company, provided, however, after such approval, no amendment shall be made which by applicable Legal Requirements or in accordance with the rules of any relevant stock exchange requires further approval by such stockholders without such further stockholder approval. This Agreement may not be amended except by execution of an instrument in writing signed on behalf of each of Parent, Merger Sub and the Company.

7.5 Extension; Waiver. At any time prior to the Effective Time, any party hereto, by action taken or authorized by its respective Board of Directors, may, to the extent legally allowed: (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. Delay in exercising any right under this Agreement shall not constitute a waiver of such right.

ARTICLE VIII

GENERAL PROVISIONS

8.1 Non-Survival of Representations and Warranties. The representations and warranties of the Company, Parent and Merger Sub contained in this Agreement, or any instrument delivered

pursuant to this Agreement, shall terminate at the Effective Time, and only the covenants that by their terms survive the Effective Time and this Article VIII shall survive the Effective Time.

8.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, (b) on the date of confirmation of receipt (or, the first business day following such receipt if the date is not a business day) of transmission by telecopy or telefacsimile, or (c) on the date of confirmation of receipt (or, the first business day following such receipt if the date is not a business day) if delivered by a nationally recognized courier service. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

(i) if to Parent or Merger Sub, to:

Brocade Communications Systems, Inc.
1745 Technology Drive
San Jose, California 95110
Attention: Chief Executive Officer
Telephone No.: (408) 333-8000
Telecopy No.: (408) 333-5258

with copies to:

Brocade Communications Systems, Inc.
1745 Technology Drive
San Jose, California 95110
Attention: General Counsel
Telephone No.: (408) 333-8000
Telecopy No.: (408) 333-5630

and

Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304-1050
Attention: Larry W. Sonsini
Katharine A. Martin
Bradley L. Finkelstein
Telephone No.: (650) 493-9300
Telecopy No.: (650) 493-6811

(ii) if to the Company, to:

McDATA Corporation
11802 Ridge Parkway
Broomfield, Colorado 80021
Attention: Chief Executive Officer
Telephone No.: (720) 558-8000
Telecopy No.: (720) 558-4747

with copies to:

McDATA Corporation
11802 Ridge Parkway
Broomfield, Colorado 80021
Attention: Chief Legal Officer
Telephone No.: (720) 558-8000
Telecopy No.: (720) 558-4747

and

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: Thomas A. Roberts
Raymond O. Gietz
Telephone No.: (212) 310-8000
Telecopy No.: (212) 310-8007

and

Weil, Gotshal & Manges LLP
201 Redwood Shores Parkway
Redwood Shores, California 94065
Attention: Kyle C. Krpata
Telephone No.: (650) 802-3000
Telecopy No.: (650) 802-3100

8.3 Interpretation; Knowledge.

(a) When a reference is made in this Agreement to Exhibits, such reference shall be to an Exhibit to this Agreement unless otherwise indicated. When a reference is made in this Agreement to Sections, such reference shall be to a section of this Agreement unless otherwise indicated. For purposes of this Agreement, the words "**include**," "**includes**" and "**including**," when used herein, shall be deemed in each case to be followed by the words "without limitation." The table of contents and headings contained in this Agreement are for reference purposes only and shall

not affect in any way the meaning or interpretation of this Agreement. When reference is made herein to "**the business of**" an entity, such reference shall be deemed to include the business of such entity and its Subsidiaries, taken as a whole. When reference is made herein to a "**business day**," such reference shall mean any day, other than a Saturday, Sunday and any day which is a legal holiday under the laws of the State of California or is a day on which banking institutions located in San Francisco, California are authorized or required by law or other governmental action to close. An exception or disclosure made in the Company Disclosure Letter with regard to a representation of the Company, or in the Parent Disclosure Letter with regard to a representation of Parent or Merger Sub, shall be deemed made with respect to any other representation by such party where the nature of such exception or disclosure makes it reasonably apparent on its face that such exception or disclosure would be an appropriate exception or disclosure in such other representation(s).

(b) For purposes of this Agreement, the term "**Knowledge**" means, with respect to any fact or matter in question, (i) with respect to the Company, that any of John Kelley, Todd Oseth, Scott Berman, Rob Beyer, Raj Das, Thomas Despres, Michael Frendo, Tim Graumann, Gary Gysin, Tom McGimpsey, Jill Sanford or David Vitt has actual knowledge of such fact or matter, or (ii) with respect to Parent, that any "officer" (as such term is defined in Rule 16a-1(f) promulgated under the Exchange Act) has actual knowledge of such fact or matter.

(c) For purposes of this Agreement, the term "**Material Adverse Effect**," when used in connection with an entity, means any change, event, violation, inaccuracy, circumstance or effect (any such item, an "**Effect**"), individually or when taken together with all other Effects that have occurred prior to the date of determination of the occurrence of the Material Adverse Effect, that is or would be (i) materially adverse to the business, assets (including intangible assets), financial condition or results of operations of such entity taken as a whole with its Subsidiaries or (ii) materially impedes the ability of such entity to consummate the transactions contemplated by this Agreement in accordance with the terms hereof and applicable Legal Requirements; provided, however, that, for purposes of clause (i) above, in no event shall any of the following, alone or in combination, be deemed to constitute, nor shall any of the following be taken into account in determining whether there has been or will be, a Material Adverse Effect on any entity: (A) any Effect resulting from compliance with the terms and conditions of this Agreement or actions taken at the express request of the other party to this Agreement (provided that the exception in this clause (A) shall not apply to the use of the term "Material Adverse Effect" in Sections 6.2(a) and 6.3(a) with respect to the representations and warranties contained in Sections 2.3, 2.7(k), 2.10, 2.12(g), 2.17, 2.18, 2.19, 2.20, 3.3, 3.10, 3.14, 3.15, 3.16 and 3.17), (B) (x) any loss of or adverse impact on relationships with employees, customers, suppliers or distributors, (y) any delays in or cancellations of orders for the products or services of such entity and (z) any reduction in revenues, in each case to the extent attributable to the announcement or pendency of the Merger, (C) any change in such entity's stock price or trading volume, in and of itself, (D) failure to meet revenue or earnings projections, in and of itself, for any period ending (or for which earnings are released) on or after the date hereof (provided that the exception in this clause (D) shall not apply to the facts and circumstances underlying any such failure to the extent such facts and circumstances are not otherwise excluded pursuant to the preceding clauses (A) through (C) or the following clauses (E) through (J)), (E) any Effect resulting from changes affecting any of the industries in which such

entity operates generally or the United States economy generally (except to the extent such changes disproportionately affect such entity), (F) any Effect resulting from changes affecting general worldwide economic or capital market conditions (except to the extent such changes disproportionately affect such entity), (G) any Effect resulting from (x) changes in applicable Legal Requirements or (y) GAAP or formal pronouncements by standards bodies related thereto, (H) acts of war or terrorism (except to the extent such acts disproportionately affect such entity), (I) earthquakes, hurricanes, tornadoes or other natural disasters (except to the extent such disasters disproportionately affect such entity) or (J) stockholder class action or derivative litigation arising from allegations of breach of fiduciary duty relating to this Agreement or false or misleading public disclosure (or omission) in connection with this Agreement (provided that the exception in this clause (J) shall not apply to the facts and circumstances underlying any allegation of false or misleading public disclosure (or omission) in connection with this Agreement).

(d) For purposes of this Agreement, the term "**Person**" shall mean any individual, corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization, entity or Governmental Entity.

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

8.5 Entire Agreement; Third-Party Beneficiaries. This Agreement and the documents and instruments and other agreements among the parties hereto as contemplated by or referred to herein, including the Company Disclosure Letter and the Parent Disclosure Letter (a) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, it being understood that the Confidentiality Agreement shall continue in full force and effect until the Closing and shall survive any termination of this Agreement and (b) are not intended to confer upon any other Person any rights or remedies hereunder, except as specifically provided, following the Effective Time, in Section 5.10.

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

8.7 Other Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other

remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached.

8.8 Governing Law; Specific Performance; Jurisdiction.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof.

(b) The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware).

(c) Each of the parties hereto irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other party hereto or its successors or assigns, shall be brought and determined exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). Each of the parties hereto hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the parties hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement, (i) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure to serve in accordance with this Section 8.8, (ii) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (iii) to the fullest extent permitted by applicable Legal Requirements, any claim that (A) the suit, action or proceeding in such court is brought in an inconvenient forum, (B) the venue of such suit, action or proceeding is improper or (C) this Agreement, or the subject mater hereof, may not be enforced in or by such courts.

8.9 Rules of Construction. The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application

of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

8.10 Assignment. No party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other parties. Any purported assignment in violation of this Section 8.10 shall be void. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

8.11 Waiver of Jury Trial. EACH OF PARENT, MERGER SUB AND THE COMPANY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF PARENT, MERGER SUB OR THE COMPANY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

*****

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

BROCADE COMMUNICATIONS SYSTEMS, INC.

By: _____
Michael Klayko
Chief Executive Officer

WORLDCUP MERGER CORPORATION

By: _____
Michael Klayko
Chief Executive Officer

MCDATA CORPORATION

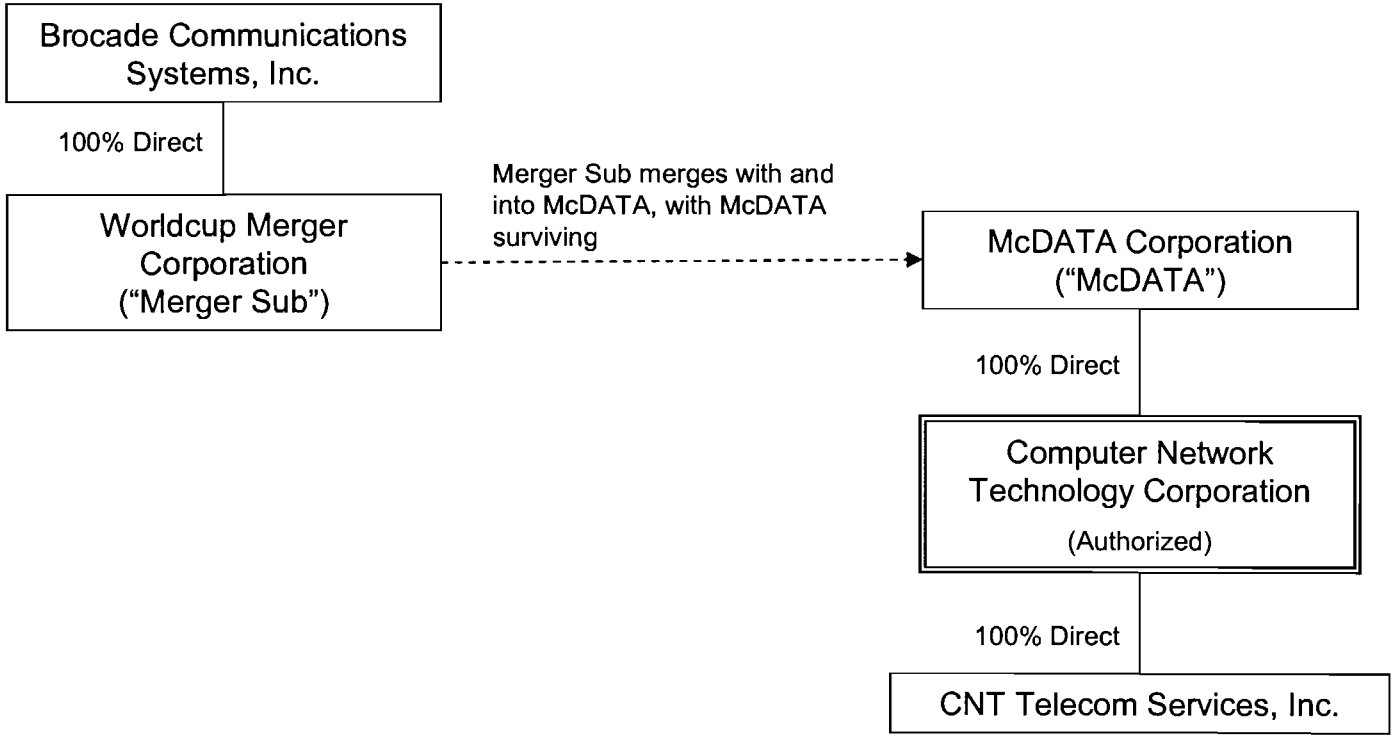
By: _____
John A. Kelley, Jr.
Chief Executive Officer

EXHIBIT D

Illustrative Chart

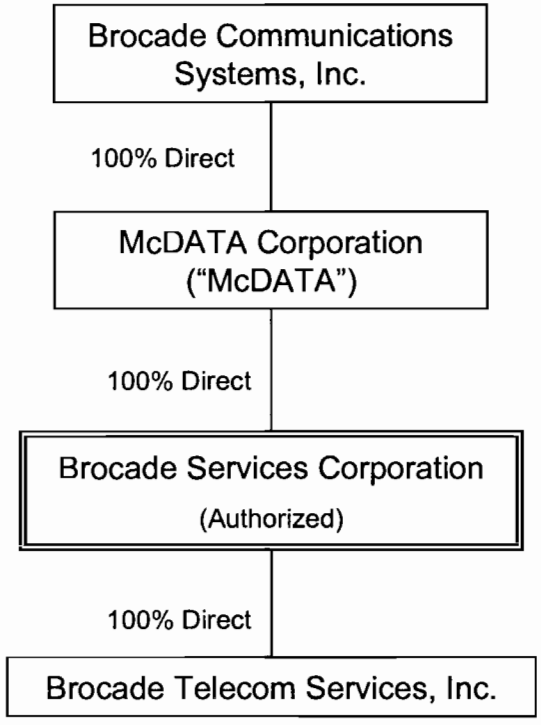
PRE- AND POST-TRANSACTION ILLUSTRATIVE CHART

Pre-Transaction



PRE- AND POST-TRANSACTION ILLUSTRATIVE CHART

Post-Transaction



Post-Closing, Computer Network Technology Corporation will change its name to Brocade Services Corporation and CNT Telecom Services, Inc. will change its name to Brocade Telecom Services, Inc.

Verifications

STATE OF COLORADO)
) **ss:**
COUNTY OF BROOMFIELD)

VERIFICATION

I, Thomas O. McGimpsey, state that I am: (*i.*) General Counsel, Secretary, and Senior Vice President of McDATA Corporation ("McDATA"); and (*ii.*) President and Secretary of Computer Network Technology Corporation ("CNT"); that both McDATA and CNT are Parties in the foregoing filing; that I am authorized to make this Verification on behalf of McDATA and CNT; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

Thomas O. McGimpsey
General Counsel, Secretary, and Senior Vice President
McDATA Corporation

President and Secretary
Computer Network Technology Corporation

Sworn and subscribed before me this 18 day of October, 2006.

Notary Public

HEATHER K. STRAUSS
Notary Public
State of Colorado

My commission expires:

HEATHER K. STRAUSS
Notary Public, State of Colorado
My Commission Expires
March 25, 2008

Tennessee

STATE OF CALIFORNIA)
) **ss:**
COUNTY OF SANTA CLARA)

VERIFICATION

I, Tyler Wall, state that I am Vice President, General Counsel, and Corporate Secretary of Brocade Communications Systems, Inc. ("Brocade"); that Brocade is a Party in the foregoing filing; that I am authorized to make this Verification on behalf of Brocade; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

Tyler Wall
Vice President, General Counsel, and Corporate Secretary
Brocade Communications Systems, Inc.

Sworn and subscribed before me this 19th day of October, 2006.

Notary Public

My commission expires: DEC. 3, 2007

ANNE L. BLAIR
Commission # 1454043
Notary Public - California
Santa Clara County
My Comm. Expires Dec 3, 2007

Tennessee