

NETWORK SUBSCRIPTION AGREEMENT

THIS NETWORK SUBSCRIPTION AGREEMENT (this “*Agreement*”) is made as of the Effective Date, between Brocade Communications Systems, Inc. with its principal place of business at 130 Holger Way, San Jose, California 95134 (“*Brocade*”), and [REDACTED] having its principal place of business at [REDACTED] (“*Customer*”).

1. SCOPE OF AGREEMENT

- 1.1 DIR Contract No. DIR-TSO-2644 and this Agreement governs Customer’s use of Network Subscription (as defined below) utilizing certain Brocade Technology. For the avoidance of doubt and notwithstanding anything herein to the contrary, Customer is not purchasing any Brocade Technology or other equipment from Brocade under this Agreement.
- 1.2 With respect to any Subscription purchased within the United States or its territories, this Agreement is entered into, and all Subscription(s) shall be performed by or on behalf of Brocade Communications Systems Inc.
- 1.3 This Agreement incorporates DIR Contract No. 2644 and all provisions of the schedules, exhibits, supplements, addendums, amendments and other documents that are referenced herein. All of these documents taken together, including those effective in the future, shall constitute the entire agreement between Brocade and Customer and replace any prior oral and/or written communications, negotiations and agreements relating to the subject matter hereof. This Agreement may NOT be altered, supplemented, or amended by the use of any other document(s) unless otherwise agreed to in a written agreement signed by both parties.

2. DEFINITIONS

The following terms have the meanings ascribed to them when used with an initial capital letter in this Agreement.

“*Affiliate*” means an entity that controls, is controlled by (directly or indirectly) or is under common control with the entity referred to, but only for the time that such control exists. As used in this definition, “**Control**” means the right to control more than fifty percent (50%) of the voting interests of the entity referred to.

“*Brocade Technology*” means all product, replacement parts, software, Documentation, web sites, and any other technology, data or other data, information or content owned or licensed by Brocade and furnished or otherwise made available by Brocade or its agents to Customer pursuant to this Agreement.

“*Designated Representative*” means the person(s) duly authorized by each party who have the authority to take the actions referenced in any provision of this Agreement.

“*Documentation*” means Brocade’s written documentation provided in connection with Brocade Technology that describes the functions and features of the Brocade Technology, including user guides and manuals, Help Files, FAQ, information describing technical functionality and specifications, and related information that Brocade provides to its customers generally in connection with the Brocade Technology, whether in print, web based, or other electronic form, all as they may be updated from time to time. “*Documentation*” does not include marketing and promotional materials.

“*Network Subscription*” or “*Subscription*” means the subscription(s) and Brocade Technology provided by Brocade to Customer pursuant to the applicable Subscription Schedule.

“*Order*” means a document signed by both parties that describes purchase terms for Subscription(s) including but not limited to a Subscription Schedule.

APPENDIX F TO DIR CONTRACT NO. DIR-TSO-2644

Agreement No. _____

"Premises" means location where Subscription(s) are used and/or installed.

"Program" means: (i) the software programs, bundled firmware or standalone software products or other software delivered by Brocade for use with the Subscription(s), including all backup copies; (ii) Program Updates and; (iii) Documentation for the Program.

"Program Update" means a bug fix, error correction, update, enhancement (major or minor), new release, or modification of any kind of any part of the Program that Brocade makes available to its customers.

"Tax" or "Taxes" means all taxes assessed on or against this Agreement or any Brocade Technology, including any products and equipment, utilized in connection with the provision of the Subscription services provided hereunder, including without limitation any sales, use, gross receipts or other similar transaction tax(es); provided that Taxes do not include any taxes on or measured by the net income net worth or shareholder's capital of Brocade. Taxes will be handled in accordance with Appendix A, Section 8E of DIR Contract No. DIR-TSO-2644.

"Subscription Schedule" refers to the terms and conditions not otherwise set forth in this Agreement that the parties may agree to from time to time for the provision of the Subscription. A Subscription Schedule will include without limitation a description of the Brocade Technology/Subscription, additional support and respective pricing for each as well as estimated delivery date, FOB destination, bill to address, Premise address(es) and name (including contact information) of the Designated Representative and other contact name(s), if applicable. The standard Subscription Schedule form is attached as Exhibit A and each Subscription Schedule executed by the parties shall be subject to the provisions of DIR Contract No. DIR-TSO-2644 and this Agreement.

3. TERM & TERMINATION

- 3.1 This Agreement will commence upon the date last executed by the parties ("Effective Date") and will terminate upon the expiration of the last surviving Subscription Schedule unless otherwise terminated as provided by Appendix A, Section 11B of DIR Contract No. DIR-TSO-2644. The term of the Subscription will be identified in the applicable Subscription Schedule.
- 3.2 This Agreement and/or all Subscription Schedules may be terminated by either party if the other party breaches any of its material obligations under this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of such breach. The termination of this Agreement will not affect either party's obligation to make payments to the other party as a result of events that occurred prior to termination. Subject to record retention policies and laws, upon such termination, the Brocade Technology must be returned to Brocade within the 30-day notification period.
- 3.3 Notwithstanding anything in this Agreement to the contrary, Brocade may immediately terminate this Agreement and/or any Subscription Schedule in whole or in part if: (i) Customer fails to comply with the payment provisions of this Agreement, (ii) upon the insolvency, bankruptcy, or dissolution of Customer, or; (iii) if Brocade believes there has been or will be a substantial impairment of Customer's credit or an assignment for the benefit of Customer's creditors. Upon such termination, the Brocade Technology must be returned within 15 days of notification by Brocade.
- 3.4 Terminations shall be handled in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-2644.
 - 3.4.1 Termination for non-appropriation shall be handled in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-2644.
- 3.5 Subject to record retention policies and laws, upon expiration or termination of this Agreement or any Subscription Schedule in whole or in part, Customer shall return Brocade Technology to Brocade pursuant to the RMA Procedures set forth in this Agreement. In the event of a termination of this Agreement or any

APPENDIX F TO DIR CONTRACT NO. DIR-TSO-2644

Agreement No. _____

Subscription Schedule by the Customer, Customer will bear all costs associated with the return of the Brocade Technology and shall do so in a manner that ensures a timely the return of the respective Brocade Technology. Upon termination or expiration of the Agreement, unless otherwise specifically provided in the Subscription Schedule, the following amounts will become immediately due and payable: (i) any unpaid amounts for the Subscription provided through the date of termination; (ii) the monthly recurring charges accrued until the Brocade Technology is returned to Brocade as provided by this Agreement, and; (iii) any other amounts due and payable under this Agreement. Further, if Customer fails to make arrangements for return or otherwise fails to return Brocade Technology within the respective notice period, Brocade may take all actions reasonably necessary to obtain possession of and remove the Brocade Technology. Customer will not interfere with or object to such repossession or removal and Customer will cooperate (and ensure cooperation of its employees, subcontractors, agents, representatives, and other third parties) with Brocade in such efforts. Without limiting any other remedies Brocade may have in law or in equity, if Customer fails to return the Brocade Technology within the respective notification period, amounts due and payable for the Subscription(s) will continue to accrue until the Brocade Technology is received by Brocade and for 60 days thereafter.

- 3.6 **Survival.** The following provisions shall survive expiration or termination of this Agreement: 1, 2, 3, 4, 5.7, 5.9, 6, 7, 8.3, 8.4, 9.1, 10, 11, 12, 13, and 15.

4. PRICE AND PAYMENT TERMS

- 4.1 The Subscription(s) Charges will be invoiced monthly in advance of the due date (and will not be pro-rated) at the rate set forth on the applicable Subscription Schedule and in shall be handled in accordance with Appendix C of DIR Contract No. DIR-TSO-2644.
- 4.2 All Subscription Charges and other amounts payable by Customer are due and payable in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-2644. Brocade further reserves the right to seek collection of all overdue amounts (including by referral to third party collectors).
- 4.3 Charges for non-recurring expenses (such as technical services, installation and training) will be quoted in accordance with Appendix C of DIR Contract No. DIR-TSO-2644, contracted, and billed separately from the Subscription.
- 4.4 The prices stated in each Order are exclusive of Taxes. Taxes shall be handled in accordance with Appendix A, Section 8E of DIR Contract No. DIR-TSO-2644.
- 4.5 Brocade will invoice and Customer shall bear applicable shipping and related charges that result from Customer's procurement, subsequent unit relocation, termination of the Subscription and other applicable fees as provided by this Agreement.

5. QUOTES, ORDERS, SHIPMENT, DELIVERY

- 5.1 **Quote.** At Customer's request, Brocade shall issue a quote stating terms for the purchase of the Subscription (a "**Quote**"). Each Brocade Quote shall be valid for sixty (60) days from issuance unless otherwise specifically stated in the Quote.
- 5.2 **Orders.** Nothing in this Agreement requires the parties to enter into any Orders. However, once entered into, each Order is a binding agreement for the purchase of the Subscription and is subject to the provisions of DIR Contract No. DIR-TSO-2644 and this Agreement. This Agreement shall govern each Order by any of Customer's Affiliates and Customer will be responsible for any Affiliate's purchases under this Agreement (including but not limited to an Affiliate's failure to make payment or other breach of this Agreement). Brocade may, in its sole discretion, reject an Order for failure to state the information required, or for failure to accurately reflect the commercial terms established by a Quote, Order, or Subscription Schedule.

APPENDIX F TO DIR CONTRACT NO. DIR-TSO-2644

Agreement No. _____

- 5.3 **Changing or Modifying Orders.** If the parties wish to change or modify an existing Order, they shall execute a written statement that references the specific Order by date, purchase order number, or other identifier, and describes the requested changes (a “**Change Order**”). No changes to an Order shall become effective until both parties have mutually agreed upon and executed the Change Order.
- 5.4 **Cancellation.** Customer may cancel an Order without incurring a cancellation charge by written notice received by Brocade at any time at least ten (10) business days prior to the originally scheduled shipment date. Any other cancellation requested by Customer is subject to good faith discussions between Brocade and Customer, with the understanding that Customer may incur restocking/cancellation charges as a result of such cancellation.
- 5.5 **Postponing Shipment.** Customer may postpone a shipment date one time by written notice given at least five (5) business days prior to the scheduled shipment date, provided that the rescheduled date does not exceed the original date by more than thirty (30) days. Shipment dates may be rescheduled only by a Designated Representative of Customer.
- 5.6 **Delivery & Shipping.** Brocade will deliver Brocade Technology and Subscription to the Premises or other location designated by Customer on the applicable Subscription Schedule using a carrier of Brocade’s choice. Shipping dates are estimates only. If Brocade becomes aware that it will not be able to meet a delivery date, then: (i) it shall promptly notify Customer of the delay and its proposed solution and recovery plans, and (ii) shall expedite delivery of any such Brocade Technology, at its expense. Brocade may change or discontinue Brocade Technology at any time. A change in a Brocade Technology may occur after a Customer places an Order but before Brocade performs the Subscription. As a result, Brocade Technology Customer receives might display minor differences from the Brocade Technology ordered. However, the Brocade Technology will meet or exceed all material specifications of such Order.
- 5.7 **RMA Procedure.** Customer shall not return any Brocade Technology (including but not limited to replacement parts) without a return material authorization (“RMA”) number issued by Brocade. In the event of a return due to a support or warranty issue, Brocade will make arrangements for shipping the Brocade Technology back to Brocade from the Premises or other location designated by the Customer using a carrier selected by Brocade. All returns as a result of termination by the Customer will be facilitated as outlined in section 3.5 of the Agreement. Customer shall prepare the Brocade Technology for return to Brocade using the original packaging (or other packaging reasonably suitable for the Brocade Technology and type of shipment) and include the Order number, approximate date on which the Brocade Technology was delivered to Customer, RMA information and any other information as Brocade may require. Customer shall adhere to any other written RMA instruction that Brocade may issue from time to time. Failure to follow the RMA procedure as outlined in this Section could result in additional fees due and payable by Customer to Brocade including without limitation, recurring monthly fees for the Subscription and amounts associated with missing, wrong or damaged Brocade Technology, any failure to package or prepare Brocade Technology for return to Brocade as provided in this Section, additional shipping costs and the for the cost of replacing or restoring Brocade Technology to good working order.
- 5.8 **Documentation.** Notwithstanding anything in the Documentation to the contrary, the Documentation shall be part of the Agreement only as to those parts that: (i) describe the features and functions of the Product, or (ii) are expressly incorporated in this Agreement, a Subscription Schedule or an Order.
- 5.9 **Order of Precedence of Documents.** In the event of a conflict between the documents that constitute DIR Contract No. DIR-TSO-2644, the Agreement, the documents shall govern in the following order of precedence: (i) DIR-TSO-2644, (ii) the Subscription Schedule, (iii) the Agreement (iv) the local implementation agreement for the Subscription provided outside the United States, (v) applicable provisions in the Documentation, the Order.

APPENDIX F TO DIR CONTRACT NO. DIR-TSO-2644

Agreement No. _____

6. PROGRAMS.

Subject to the terms of DIR Contract No. DIR-TSO-2644, and the Agreement, Customer may use the Program(s) subject to the provisions of the license agreement that accompanies the Brocade Technology or that is posted at www.brocade.com.

7. USE OF SUBSCRIPTION BY CUSTOMER

- 7.1 The Brocade Technology is personal property of Brocade and no title, equity, ownership or right (including any license right) in or to the Brocade Technology in whole or in part shall pass to Customer except as otherwise expressly provided by this Agreement. Customer agrees that it may not pass any right or interest in the Brocade Technology to a third party and Customer shall ensure it takes necessary steps to protect Brocade's rights under this Agreement such that the Brocade Technology cannot be construed as a fixture nor shall it become a fixture on the Premises or any other location. Customer will not take any action that causes or purports to cause the imposition of any lien, claim, interest, right or encumbrance on Brocade Technology or otherwise transfer any right or interest in the Brocade technology to a third party. Further, Customer will immediately take all necessary action to remove any lien or encumbrance on the Brocade Technology (other than any lien or encumbrance in favor of or expressly approved by Brocade) arising in connection with the Subscription provided under this Agreement or any Subscription Schedule. Customer shall not remove or alter any asset tag affixed to Brocade Technology.
- 7.2 Customer will maintain the Premises and any other location where Brocade Technology may be located in a safe and secure manner, in accordance with recommended industry standards and conditions, and in a manner as required by the specifications accompanying the Brocade Technology and/or as may be advised by Brocade. Such requirements include but are not limited to ensuring use of the appropriate power requirements, data communications equipment, network and/or using cabling. Customer shall not remove or alter any asset tag affixed to Brocade Technology. Further, Customer will not, and will not permit others to, rearrange, disconnect, remove, relocate, attempt to repair, or otherwise tamper with any Subscription and/or Brocade Technology without the prior written consent of Brocade. If Customer wishes to relocate Brocade Technology, Customer shall provide thirty (30) day prior written notification to Brocade. Relocation may only occur within the country of original delivery.
- 7.3 Further, Customer will allow, or will secure permission, as applicable, for Brocade and its underlying suppliers, sub-contractors or agents to access Premises and/or Brocade Technology for the installation, maintenance, repair, replacement, relocation, inspection, monitoring, identification, or repossession of the Brocade Technology and performance of the Subscription from time to time as may be determined is necessary or desirable by Brocade. Brocade will use commercially reasonable efforts to notify Customer regarding timing and implementation of any replacement Brocade Technology (hardware or software) that will occur on the Premises. Customer shall notify Brocade promptly of any changes in Customer's hardware or software that may affect Subscription provided by Brocade.
- 7.4 Customer will provide Brocade with current and accurate information for Customer's Designated Representative and any other contact necessary for access to Customer's Premises.
- 7.5 Customer will provide Brocade and its authorized agents, sub-contractors, suppliers and agents with a safe place to work. Customer will comply with all laws and regulations regarding the working conditions on the Customer Premises and use of the Subscription. Brocade Technology may not be used for any purpose other than that for which it is provided to Customer under this Agreement. Brocade personnel who perform work related to the Subscription on Customer's premises will use reasonable efforts to comply with Customer's on-site security requirements. Customer may require any Brocade personnel to leave its premises for any reason or no reason in Customer's sole discretion, provided, however, that if Customer

APPENDIX F TO DIR CONTRACT NO. DIR-TSO-2644

Agreement No. _____

has not provided reasonable grounds for requiring the personnel to leave, then Brocade shall be relieved of its obligations under the Agreement to the extent it is delayed in performing them by reason of the removal.

- 7.6 At all times during the term of this Agreement, Customer will cooperate in all reasonable respects with Brocade (and its suppliers, sub-contractors and agents) to enable Brocade to provide the Subscription contemplated under this Agreement and any Subscription Schedule. Brocade's provision of the Subscription is conditional upon Customer's compliance with this Agreement. To the extent that Customer fails to cooperate with Brocade, provide access to the Brocade Technology or otherwise follow any reasonable instruction by Brocade, Brocade's ability to provide the Subscription(s) may be impacted and Brocade will have no liability for its delay and/or inability to provide the Subscription(s).
- 7.7 Customer will bear risk of loss of such Brocade Technology while on Customer's Premises except to the extent the loss is caused by the act, omission or negligence of Brocade and/or its suppliers, agents and contractors.
- 7.8 Brocade, or an agent designated by Brocade, shall have the right to perform an audit of Customer's use of the Subscription during normal business hours. Customer agrees to cooperate with Brocade in such audit and to provide Brocade with all records reasonably related to Customer's use of the Subscription. The audit will be limited to verification of Customer's compliance with the provisions of this Agreement.

8. WARRANTY

- 8.1 Brocade warrants that the Subscription provided under any Subscription Schedule will substantially conform to the description of Subscription in the respective Subscription Schedule, and that the Subscription will be performed in a workmanlike manner. Brocade Technology and replacement parts used in repairing or servicing Brocade Technology may be new, equivalent-to-new, or reconditioned. The Brocade Technology provided under this Agreement will conform to the specifications in the Documentation shipped with the Brocade Technology. Brocade shall use commercially reasonable efforts to repair and/or replace Brocade Technology that does not conform to the specifications as provided herein within the normal manufacturing lead times.
- 8.2 This warranty does not apply to Subscription(s) and Brocade Technology (including without limitation replacement parts) which: (i) has been serviced, modified or altered, except as expressly authorized by Brocade; (ii) have not been installed, operated, exposed to conditions, repaired, or maintained in accordance with any installation, handling, maintenance or operation instructions supplied or specified by Brocade; (iii) have been subjected to unusual physical or electrical stress; or (iv) have been damaged as a result of accident, misuse, transporting, negligence, accident or relocation by Customer or a third party. Customer agrees that the use of any third party products, including but not limited to, optical transceiver components and hardware based SAN taps, which have not been certified or are supported by Brocade may cause errors in the operation of the Subscription(s). Customer acknowledges that its use of any such third party products shall release Brocade from the performance of Brocade's respective obligations and Customer agrees to pay Brocade for any time and materials associated with Brocade diagnosing such issues at Brocade's hourly billing rate. Brocade may at its discretion provide additional support to resolve any such issues.
- 8.3 Customer's exclusive remedy for breach of this warranty is the correction of defective Subscription(s) by Brocade, or at Brocade's election, a refund of the most recent three (3) months of recurring Subscription charges attributable to the defective Subscription.
- 8.4 Brocade specifically disclaims any and all warranties and liability related to any security software. Customer acknowledges that security software does not guarantee the security of Customer's network, and that Customer is responsible for all other aspects of security, including without limitation, correct installation and setup of the security features of the software and all related requirements, correctly configured security policies, selection of hardware and software (including network security tools), correct installation, configuration, and maintenance of the hardware and software, the interoperability of the various components of Customer's network, and a physically and electronically secure operating

APPENDIX F TO DIR CONTRACT NO. DIR-TSO-2644

Agreement No. _____

environment. Brocade further disclaims any and all warranties and liability related to any third party products not supplied by Brocade. BROCADE DOES NOT WARRANT THAT THE SUBSCRIPTION WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL FAILURES OR DEFECTS WILL BE CORRECTED. EXCEPT AS EXPRESSLY SET FORTH HEREIN, SUBSCRIPTION(S) ARE PROVIDED "AS IS" AND NEITHER BROCADE OR ITS SUPPLIERS OR AGENTS MAKE ANY WARRANTIES WITH RESPECT TO THE SUBSCRIPTION(S) OR ANY BROCADE TECHNOLOGY SUPPLIED, MAINTAINED, OPERATED OR RECOMMENDED, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. SUPPORT, SECURITY AND NETWORK ACCESS

- 9.1 **Brocade's Access to Secure Information Systems and Data.** Customer will be solely responsible for the content of all information that Customer stores or transfers via the Subscription(s), for backing up and maintaining copies of all its data and for the removal of any confidential, proprietary, or personal information on Brocade Technology. Brocade is not responsible for managing Customer's network environment. Brocade shall not attempt to access Customer's secure network(s) or other information systems without Customer's prior consent, either via its personnel performing services onsite, or remotely. For example, Brocade may not use any automated "phone home" or remote diagnostic support tool embedded with the Brocade Technology without Customer's prior consent.
- 9.2 **Support.** "Brocade Essential Support with Next Business Day Parts" is included with the Subscription delivered under this Agreement. Customer may upgrade to "Brocade Premier or Premier-Plus Support", or other level of service available that may be available from time to time for an additional fee and subject to Brocade's terms and conditions applicable to such offer. A description of Brocade's current service offers and applicable terms and conditions is outlined in Exhibit B. For the avoidance of doubt, Brocade does not provide any kind of support for third party products not supplied by Brocade. Customer agrees that any warranty and/or support for such products shall be provided, if at all, by the manufacturer, distributor or reseller of such products.

10. CONFIDENTIALITY

- 10.1 To the extent allowable under the Texas Public Information Act, the following information is "Confidential Information: (i) any information related to a party's performance of, or failure to perform, this Agreement; and any information that is marked or designated as "Confidential" or with like notice; (ii) as to the party disclosing the information, any information related to that party's assets, liabilities, financial results, financing plans, business strategies, product development plans, operations, source code, technology, know-how, trade secrets, customers, vendors, contractors, Brocades and personnel, and all other information that a reasonable person would understand to be confidential; and (iii) as to Customer, data center locations, data center designs (including non-graphic information observed at Customer's data center); but excluding in all cases any information which is independently developed by the other party as shown by such party's written business records, is or becomes generally available to the public other than through breach of this Agreement, or violation of law or other agreement. Each party agrees not to disclose the other party's Confidential Information to any third party except to its agents, advisors, affiliates and representatives, and with respect to Brocade, its potential investors, each who need to know the information to represent or advise it with respect to the subject matter of this Agreement and who are bound by non-disclosure obligations at least as stringent as those stated in this Agreement; provided, however, that a party will not be liable for disclosure of the other party's Confidential Information if it is required by law or regulation to be disclosed and, to the extent not prohibited by applicable law or regulation, the disclosing party gives advance written notice of the disclosure to the other party at the earliest possible time, or the party discloses the information as part of a bona fide legal proceeding to enforce its rights under this Agreement. Each party agrees to use at least a reasonable degree of care to protect the other party's Confidential Information. Each party agrees not to use the other party's Confidential Information except in connection with the performance of its obligations or exercise of its rights under this Agreement. Subject to record retention policies and laws, each party shall return or destroy the other party's Confidential

APPENDIX F TO DIR CONTRACT NO. DIR-TSO-2644

Agreement No. _____

Information on completion of the Subscription, or earlier on request of the other party, provided that a party may retain the other party's Confidential Information if reasonably necessary to use the Subscription, or to maintain reasonable and customary business records and (ii) the obligation to return or destroy does not extend to automatically generated computer back-up or archival copies generated in the ordinary course of receiving party's information systems procedures, provided that except as otherwise permitted herein, receiving party shall make no further use of such copies. On request of a party, an officer of the other party shall certify its compliance with the preceding sentence.

- 10.2 This Agreement shall not limit either party's present or future business activities or relationships of any nature, including business activities or relationships that may be competitive with those of the other party. Each party acknowledges that the other party and its affiliates are actively engaged in business activities, investment, technology exploitation, and research and development efforts that are or may be similar to or coincident with the activities of the other party or its Confidential Information. Accordingly, each party further acknowledges that this Agreement shall in no way limit, restrict or preclude either party from assigning employees or pursuing any of its present or future business activities or interests, either alone or in conjunction with other parties, or from entering into any agreements or transaction with any other person or entity, regardless of whether such business activities and interests are competitive with any actual or proposed business activities and interests of the other party. The parties further agree that each may in the future develop or purchase products or services related to or similar to the subject matter of this Agreement.

The parties agree that monetary damages would not be a sufficient remedy for breach of this section and therefore agree that either party shall be entitled to seek injunctive and other specific relief. Notwithstanding anything in this Agreement to the contrary, the provisions of this Section 10 shall survive for two (2) years after expiration or termination of this Agreement.

11. INDEMNIFICATION

- 11.1 **General Indemnification.** Indemnification shall be handled in accordance with Appendix A, Section 10A of DIR Contract No. DIR-TSO-2644.

12. LIMITATION OF LIABILITY

- 12.1 LIMITATION OF LIABILITY SHALL BE IN ACCORDANCE TO APPENDIX A, SECTION 10K OF DIR CONTRACT NO. DIR-TSO-2644.

13. RELATIONSHIP OF THE PARTIES

Each party is an independent contractor of the other and nothing in this Agreement shall be construed to create an association, trust, partnership, joint venture, or agency relationship between the parties. Although the parties may refer to each other colloquially as "partners" they do not intend to create a partnership, and neither party has any fiduciary duty, obligation, or liability to the other or any obligation to share profits and losses. Neither party will have any rights, power, or authority to act or create an obligation, express or implied, on behalf of another party except as expressly specified in this Agreement.

14. MISCELLANEOUS

- 14.1 **High-Risk Disclaimer.** The Subscription provided under this Agreement are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life-support machines, or any other application in which the failure of the products, software, or services could lead directly to death, personal injury, or severe physical or property damage (collectively, "High-Risk Activities"). Brocade expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

APPENDIX F TO DIR CONTRACT NO. DIR-TSO-2644

Agreement No. _____

- 14.2 **Export Compliance.** Customer acknowledges that the Subscription provided under this Agreement, which may include technology and encryption, are subject to the customs and export control laws and regulations of the United States ("U.S."), may be rendered or performed either in the U.S., in countries outside the U.S., or outside of the borders of the country in which Customer or the Brocade Technology is located, and may also be subject to the customs and export laws and regulations of the country in which the Subscription is rendered or received. Customer agrees to abide by those laws and regulations. Brocade's acceptance of any Order for Subscription(s) is contingent upon the issuance of any applicable export license required by the U.S. Government or any other applicable national government; Brocade is not liable for delays or failure to deliver the Subscription resulting from failure to obtain such license or certification.
- 14.3 **Excluded Data.** Customer acknowledges that any software and/or the Subscription provided under this Agreement are not designed to offer functionality providing security and access management for the processing and/or storage of the following categories of data: (1) data that is classified and or used on the U.S. Munitions list, including software and technical data; (2) articles, services and related technical data designated as defense articles and defense services; (3) ITAR (International Traffic in Arms Regulations) related data; and (4) other personally identifiable information that is subject to heightened security requirements as a result of Customer's internal policies or practices or by law or regulation (examples include but are not limited to the Health Insurance Portability and Accountability Act, the Gramm-Leach-Bliley Act, Family Educational Rights and Privacy Act, and hereinafter may be collectively referred to as "Excluded Data"). Customer hereby agrees that Customer is solely responsible for reviewing and ensuring its data that will be provided to Brocade (or to which Brocade will have access) does not contain Excluded Data.
- 14.4 **U.S. Government Restricted Rights.** The software and documentation provided with the Subscription are "commercial items" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end-users acquire the software and documentation with only those rights set forth herein.
- 14.5 **Assignment.** Assignments shall be handled in accordance with Appendix A, Section 4D of DIR Contract No. DIR-TSO-2644.
- 14.6 **Non-Waiver.** The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other or subsequent right or remedy. Specifically, but without limitation, Customer's payment of fees is not a waiver of any claims for breach of this Agreement.
- 14.7 **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.
- 14.8 **Notices.** Notices shall be handled in accordance with Appendix A, Section 12 of DIR Contract No. DIR-TSO-2644.
- 14.9 **Force Majeure.** Force Majeure shall be handled in accordance with Appendix A, Section 11C of DIR Contract No. DIR-TSO-2644.
- 14.10 **Controlling Law, Venue, Costs of Suit, and Waiver of Jury Trial.** With respect to disputes which may arise as a result of this Agreement in the US, the laws of the State of Texas (exclusive of its conflict of law principles) govern this Agreement, including all matters of construction, validity and performance.
- 14.11 **Dispute Resolution.** Dispute Resolution shall be handled in accordance with Appendix A, Section 11A of DIR Contract No. DIR-TSO-2644.

APPENDIX F TO DIR CONTRACT NO. DIR-TSO-2644

Agreement No. _____

- 14.12 **Publicity.** Neither party may issue any press release or other publicity regarding the subject matter of this Agreement without the other party's prior written consent.
- 14.13 **Trademarks.** Neither party may use the other party's name, logo, trade or service marks, or similar indicia (each a "Trademark") without the other party's prior written consent. Any authorized use shall be subject to the Trademark owner's mark usages guidelines provided to the other or published on its website.
- 14.14 **Intellectual Property.** Intellectual Property shall be handled in accordance with Appendix 5, Section 11B of DIR Contract No. DIR-TSO-2644. 15.15 **Designated Representative.** Each party shall appoint a Designated Representative(s). Each party shall notify the other of their appointed Designated Representative(s) and their respective contact information as may be modified from time to time via notification to the other.
- 14.15 **Compliance with Laws.** Each party shall comply with all applicable governmental law, statutes, ordinances, administrative orders, rules, authorizations and regulations, including without limitation, those related to the export of technical materials. Customer will not use the Subscription or allow the Subscription to be used (i) for any unlawful purpose; or (ii) in violation of any relevant government law, statutes, ordinance, administrative order, rules or regulation or authorization.
- 14.16 **Translations.** This Agreement is in English and the English language shall be controlling in all respects. Any other version in any other language shall be for accommodation only and shall not be binding upon the parties. All communications and notices to be made or given pursuant to this Agreement, and any dispute proceeding related to or arising hereunder, shall be in the English language. In the event of any discrepancy or inconsistency between different language versions of the Agreement (and all associated documents or correspondence concerning this Agreement), the English language version shall prevail.
- 14.17 **Counterparts.** This Agreement may be executed in two or more counterparts, all of which, taken together, shall be considered to be one and the same instrument.
- 14.18 **Entire Agreement.** DIR CONTRACT NO. DIR-TSO-2644 AND THIS AGREEMENT ARE THE COMPLETE AND EXCLUSIVE AGREEMENTS BETWEEN THE PARTIES REGARDING ITS SUBJECT MATTER AND SUPERSEDES AND REPLACES ANY PRIOR OR CONTEMPORANEOUS AGREEMENT OR UNDERSTANDING, WRITTEN OR ORAL.

Each party warrants and represents that its respective signatories, whose signatures appear below, have been and are on the date of signature duly authorized to execute this Agreement.

Customer

Brocade Communications Systems, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

SUBSCRIPTION SCHEDULE

SCHEDULE NUMBER ___

Customer Billing Address:

Designated Representative Name, Address, Telephone Number, E-mail Address and other applicable contact information

Other applicable Contact Name(s) and Telephone No(s):

Premise Address (if different from Customer Address):

Shipping Address (if different from the Premise Address):

Subscription Price:

Recurring Subscription Charge - \$_____/month, billable monthly in advance in accordance with Appendix C, of DIR Contract No. DIR-TSO-2644

Subscription:

During the term of this Subscription Schedule, Brocade shall perform the Subscription in accordance with the terms and conditions of this Subscription Schedule and at the prices set forth herein. The Subscription encompasses the following:

1. **[Insert brief description of the equipment-based services (capacity, e.g.) and attach exhibits as needed.]**
2. **[Describe support and maintenance terms including pricing]**

Term of Subscription Schedule

This Subscription Schedule shall commence on the Effective Date and continue until the date it is terminated pursuant to Appendix A, Section 11B of DIR Contract No. DIR-TSO-2644.

**SUBSCRIPTION SCHEDULE
(CON'T)**

Other Terms Applicable to this Subscription Schedule:

By signing this Subscription Schedule, Brocade and Customer agree that the provisions of DIR Contract No. DIR-TSO-2644 and the Network Subscription Agreement (the "Agreement") executed by the parties on or about [insert date] and the exhibits attached to this Subscription Schedule apply to this Subscription Schedule and are incorporated by this reference. To the extent that this Subscription Schedule is inconsistent with the Agreement, the terms of this Subscription Schedule shall prevail.

Customer

Brocade Communications Systems, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX F TO DIR CONTRACT NO. DIR-TSO-2644

Agreement No. _____

EXHIBIT B
Description of Support

Support options include options for Brocade Assurance Limited Lifetime Warranty, Essential, Premier & Premier Plus Support are generally described as:

Brocade Assurance Limited Lifetime Warranty: Applies only to Brocade branded FCX, ICX6610, ICX6430, ICX6450, FWS and TI products purchased on or after October 1, 2009 or FI-SX800/1600 chassis and SX-FI modules purchased on or after July 1, 2010. For these select products, Brocade provides a limited lifetime warranty beginning on the Effective Date and continuing for as long as the Customer continues to use the Brocade branded equipment, as set forth below¹.

- 24x7 access to Brocade's support call center for 90-days from Effective Date
- Replacement of such product hardware or software media next business day provided the request is received before 2PM local time where applicable.
- Response times are based on local standard business days and working hours and commercially reasonable efforts. Response times commence when Brocade is informed of the warranty failure via web request. In some countries and regions and under certain supplier constraints, actual response times may vary. If your location is outside the customary service area, your response time may be longer.
- Software (embedded in Brocade product) Customer may download defect repairs from Brocade.com for the firmware release current at time of purchase or any previous release and may also access Brocade's Knowledge Portal.
- End User may also download software maintenance updates through the product end of support date.

¹ For more information, visit: www.brocade.com/warranty.

Essential Support: Brocade Essential Support includes a secure remote access infrastructure to remotely monitor customer environments, and provides several service level options such as:

- 4-Hour Onsite
 - 4-Hour Parts
 - Next-Business-Day Onsite
 - Next-Business-Day Parts
 - Return to Factory
 - Remote Support
 - Software Technical Support (24x7 Access)
-
- ***4hr Onsite***
Provides 24X7 access to Brocade's support call center, electronic access to firmware updates, and four-hour response for onsite parts and labor in most major metropolitan areas worldwide. Response time commences upon determination that hardware replacement is required.
 - ***4hr Parts***
Provides 24X7 access to Brocade's support call center, electronic access to firmware updates, and four-hour response on parts delivery in most major metropolitan areas worldwide. Response time commences

APPENDIX F TO DIR CONTRACT NO. DIR-TSO-2644

Agreement No. _____

upon determination that hardware replacement is required. Physical installation of the replacement part and defective product return are to be performed by the end user.

– ***Next Day Onsite***

Provides 24X7 access to Brocade's support call center, electronic access to firmware updates, and next business day response for onsite parts and labor in most major metropolitan areas worldwide. All requests must be received by 2:00 pm local time to meet next business day response.

– ***Next Day Parts***

Provides 24X7 access to Brocade's support call center, electronic access to firmware updates, and next business day response for onsite parts in most major metropolitan areas worldwide. In areas where Next Business Day Parts delivery is not available, the replacement parts will ship the next business day from the nearest Brocade regional depot & standard freight carrier delivery times will apply. All requests must be received by 2:00 pm, local time to meet next business day response. Physical installation of the replacement part and defective product return are to be performed by the end user.

– ***Return to Factory***

Provides 24X7 access to Brocade's support call center, electronic access to firmware updates, and 5 business-day hardware repair from date received. Standard freight carrier delivery times will apply.

– ***Remote Support for hardware products*** (Not available on all products)

Provides 24x7 access to Brocade's support call center and electronic access to firmware updates. Hardware replacement is through the standard time and materials process at the then current rates.

– ***Software Technical Support for Application Software***

Provides 24x7 access to Brocade's software support call center and electronic access to software updates.

• **Premier Support Plan**

Brocade Premier Support includes all the offerings of Essential Support in addition to a Brocade Support Account Manager (SAM), Premier account profile, priority access to Brocade Technical Support expertise, accelerated escalation management, fault management, proactive monitoring, quarterly support reviews, annual Brocade SAN Health and/or Brocade NET Health checks, and optional firmware upgrade services. More specifically Premier Support provides a proactive level of support coverage and communications that may be required for Brocade products in large environments through dedicated Support Account Managers (SAM). Brocade Support Account Managers shall act as the key escalation contact for support plan related issues through providing:

- Single point of contact for implementations, change activities, escalations, and critical situation management
- Software recommendations for upgrades and releases
- Proactive communication of technical tips, best practices, white papers, and other applicable information
- Management of Premier account profile which provides Brocade Technical Support insight into account specific network diagrams, device lists, and configuration files.
- Leadership of quarterly support review activities
- Annual Network Health Check:
 - The Network Health Check is conditional and contingent upon the End User providing data (in a decodable format) to Brocade as rendered by the Health Check tool

APPENDIX F TO DIR CONTRACT NO. DIR-TSO-2644

Agreement No. _____

This plan also includes:

- Priority call access to Brocade for more immediate problem resolution
- Accelerated escalation management and communication
- Fault management, proactive monitoring, and analysis of in scope device alert messages (e.g SNMPc) and the initiation of Service Requests (SR) for those alerts which are deemed to be service impacting
- Secure Remote Access to in scope devices for the purposes of troubleshooting and performance/operational information collection.
- Remote troubleshooting & problem resolution
- Access to MySupport
- Hardware replacement or repair per the applicable Service Level
- Software support including ongoing software Updates

• **Premier Plus Support Plan**

Brocade Premier-Plus Support includes all the offerings available in Brocade Premier Support, with the addition of a Brocade Onsite Support Engineer (OSE) to provide proactive product support and management. These engineers are senior in nature and have access to a vast Brocade knowledge base and the ability to leverage many strategic Brocade partnerships to help resolve issues in heterogeneous IT environments. More specifically, Premier Plus Support provides a proactive level of support coverage and communications required for Brocade products in large storage environments through dedicated Support Account Managers (SAM). Brocade Support Account Managers shall act as the key escalation contact for support plan related issues through providing:

- Single point of contact for implementations, change activities, escalations, and critical situation management
- Software recommendations for upgrades and releases
- Proactive communication of technical tips, best practices, white papers, and other applicable information
- Management of Premier account profile which provides Brocade Technical Support insight into account specific network diagrams, device lists, and configuration files.
- Leadership of quarterly support review activities
- Annual Network Health Check:
 - The Network Health Check is conditional and contingent upon the End User providing data (in a decodable format) to Brocade as rendered by the Health Check tool

This plan also includes:

- Priority call access to Brocade for more immediate problem resolution
- Accelerated escalation management and communication
- Fault management, proactive monitoring, and analysis of in scope device alert messages (e.g SNMPc) and the initiation of Service Requests (SR) for those alerts which are deemed to be service impacting
- Secure Remote Access to in scope devices for the purposes of troubleshooting and performance/operational information collection.
- Remote troubleshooting & problem resolution
- Access to MySupport
- Hardware replacement or repair per the applicable Service Level
- Software support including ongoing Updates

This plan includes a senior level Brocade Onsite Support Engineer (OSE). The OSE has access to a vast Brocade knowledge base and essential resources to help expedite problem resolution. They are also available to augment Customer's staff by performing activities such as:

- Tuning and optimization of Brocade products
- Software release planning and documentation
- Onsite contact for support and product escalations
- Assistance with installation of software Upgrades
- Assistance with capturing data collections required for problem determination
- Collect Brocade Network Health data on a regular basis to facilitate trend analysis
- Provide onsite Brocade technical product expertise to augment IT staff resources and skills
- Perform proactive maintenance and support to optimize Brocade product environments

APPENDIX F TO DIR CONTRACT NO. DIR-TSO-2644

Agreement No. _____

- Understand, troubleshoot, diagnose and resolve end user issues
 - Provide knowledge transfer on Brocade products to IT staff
 - Define, manage, and execute problem resolution plans and communicate closure/resolution to Brocade technical support, SAM, and End Users
 - Other support activities as mutually agreed in connection with the Covered Products
-
- Full time OSE (PP-OSE-FT) or Part time OSE (PP-OSE-PT)
 - Full time definition- Monday-Friday 8am-5pm, totaling 40 hours per week
 - Part time definition - 2 ½ days per week totaling 20 hours a week.
 - Resource may be scheduled outside of this time as mutually agreed upon with seven (7) days advance notice. Any such scheduled hours shall then be reduced from the weekly total hours