SHEARMAN & STERLING LLP
Antitrust Unpacked
ANTITRUST LAW BLOG

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Sample Antitrust-Related Provisions in M&A Agreements

This note collects a sample of antitrust-related provisions, including risk-shifting provisions, that have been used in actual deals. Of course, every deal stands on its own, and the language that has been used in one deal may not be appropriate for another deal. Inclusion of a provision in this sample does not constitute an endorsement of the language. Rather, the sample is designed to give you a good idea of the types of provisions that parties in fact have used in dealing with antitrust process and risk in negotiated transactions.

Dale Collins

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I. Definitions

a. Antitrust laws

(i) Competition laws (expansive)

"Antitrust Law"" shall mean the Sherman Act, 15 U.S.C. §§ 1-7, as amended; the Clayton Act, 15 U.S.C. §§ 12-27, 29 U.S.C. §§ 52-53, as amended; the HSR Act; the Federal Trade Commission Act, 15 U.S.C. §§ 41-58, as amended; and all other federal, state and foreign statutes, rules, regulations, Orders, decrees, administrative and judicial doctrines, and other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade.

(ii) Includes non-U.S. competition laws (Example 1)

the HSR Act, the Sherman Act, as amended, the Clayton Act, as amended, the Federal Trade Commission Act, as amended, and any other federal, state or foreign law, regulation or decree designed to prohibit, restrict or regulate actions for the purpose or effect of monopolization or restraint of trade (collectively "Antitrust Laws"),

(iii) Includes non-U.S. competition laws (Example 2)

For purposes of this Agreement, "Regulatory Law" means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, and all other federal, state or foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines and other Laws, including without limitation any antitrust, competition or trade regulation Laws, that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening competition through merger or acquisition.

(iv) Includes non-U.S. competition laws (Example 3)

"Antitrust Laws" means the HSR Act, the Clayton Act of 1914, the Sherman Antitrust Act of 1890, the Federal Trade Commission Act, the Federal Economic Competition Law (*Ley Federal de Competencia Económica*) of Mexico and any other United States, Mexican, Belgian or other foreign, supranational, federal or state Laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade, including any applicable merger control rules.

(v) Separate definition for non-U.S. antitrust laws

For purposes of this Agreement, (A) "Antitrust Law" means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, Foreign Antitrust Laws and all other federal, state and foreign, if any, statutes, rules, regulations, Orders, decrees, administrative and judicial doctrines and other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition and (B) "Foreign Antitrust Laws" means the applicable requirements of antitrust, competition or other similar Laws, rules, regulations and judicial doctrines of jurisdictions other than the United States.

b. HSR Act

(i) Example 1

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

(ii) Example 2

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder, and any successor to such statute, rules or regulations.

c. Governmental authority

(i) Example 1

"Governmental Authority" means any federal, national, foreign, supranational, state, provincial, county, local or other government, governmental, regulatory or administrative authority, agency, instrumentality or commission or any court, tribunal, or judicial or arbitral body of competent jurisdiction.

(ii) Example 2

"Governmental Entity" means any state, nation or international body or governmental organization, whether federal, state, county, local or foreign, or multinational, including but not limited to any agency, authority, official or instrumentality of any such government or political subdivision or any court, tribunal or arbitrator(s) of competent jurisdiction[, self-regulatory organization] or any statutory authority.

d. Antitrust approvals

"Antitrust Approvals" shall mean the expiration or termination of any waiting period under the HSR Act and the applicable merger control Laws of Austria, Germany, Ukraine, and such other jurisdictions as Buyer Parent reasonably determines are required in connection with the consummation of the Transactions.

e. Government authorizations

"Governmental Authorization" means any license (including any license or authorization issued by the FCC), permits (including construction permits), certificates, waivers, amendments, consents, Franchises (including similar authorizations or permits), exemptions, variances, expirations and terminations of any waiting period requirements (including pursuant to the HSR Act), other actions by, and notices, filings, registrations, qualifications, declarations and designations with, and other authorizations and approvals issued by or obtained from a Government Authority.

II. Representations and Warranties

a. Antitrust-related consents and approvals

(i) U.S. and non-U.S. merger control requirements (with materiality out) (Example 1)

(b) The execution and delivery of this Agreement by the Company do not, and the performance of this Agreement by the Company and the consummation of the Merger will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except (i) for applicable requirements, if any, of Blue Sky Laws, any filings required to be made with the SIX, the premerger notification requirements of the HSR Act, the requirements of the EU Merger Regulation or other applicable foreign, federal, state or supranational antitrust, competition, fair trade or similar Laws and the filing and recordation of the Certificate of Merger as required by the DGCL, and (ii) where the failure to obtain such consents, approvals, authorizations or permits, or to make such filings or notifications, would not have a Company Material Adverse Effect.

(ii) U.S. and non-U.S. merger control requirements (with materiality out) (Example 2)

Other than in connection with or in compliance with (i) the provisions of the DGCL, (ii) the Exchange Act, (iii) the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as

amended, and the rules and regulations promulgated thereunder (the "HSR Act"), (iv) any applicable requirements under Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (published in the Official Journal of the European Union on January 29, 2004 at L 24/1) (the "EC Merger Regulation"), (v) any applicable requirements of Laws in other foreign jurisdictions governing antitrust or merger control matters, and (vi) the approvals set forth on Section 3.3(b) of the Disclosure Schedule (collectively, the "Company Approvals"), no authorization, consent or approval of, or filing with, any United States or foreign governmental or regulatory agency, national securities exchange, commission, court, body, entity or authority (each, a "Governmental Entity") is necessary, under applicable Law, for the consummation by the Company of the transactions contemplated by this Agreement, except for such authorizations, consents, approvals or filings (x) that, if not obtained or made, would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or (y) as may arise in connection with the Financing or as a result of facts, circumstances relating to Parent or its affiliates (as defined in Section 8.13(a)) or Laws or contracts binding on Parent or its affiliates.

b. Buyer representations on the fair market value of U.S. assets (for HSR valuation purposes)

(i) Example 1

Fair Market Value of US Assets. The Purchaser has determined in good faith that the aggregate fair market value of the non-exempt assets, as defined in the HSR Act, of the Acquired Companies and the Subsidiaries does not exceed $70.9 million.

(ii) Example 2

Hart-Scott-Rodino Act. Buyer has determined, in good faith and in accordance with 16 CFR 801.10(c)(3), that the fair market value of the U.S. assets to be acquired that are included in the Acquired Assets is not greater than $70.9 million. This determination is made solely for the purpose of determining the applicability of the Hart-Scott-Rodino Act to the transaction.

c. Seller representation of assets and sales in or into the U.S.

(iii) Example 1

HSR. As determined in accordance with the United States Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations thereunder, the Company and its Subsidiaries: (a) do not hold assets located in the United States having an aggregate fair

market value in excess of US $70.9 million, and (b) did not have aggregate sales in or into the United States in excess of US $70.9 million in the Company's most recent fiscal year.

III. Conditions Precedent

a. HSR Act waiting period

(i) Example 1

Governmental Approvals. Any waiting period (and any extensions thereof) under the HSR Act shall have expired or have been terminated;

(ii) Example 2

6.3. *HSR Clearance* . The applicable approvals, clearances or waiting periods under the HSR Act shall have been obtained, expired or been earlier terminated without the imposition of a Burdensome Condition.[1] [Applicable to the buyer]

7.3. *HSR Clearance* . The applicable approvals, clearances or waiting periods under the HSR Act shall have been obtained, expired or been earlier terminated. [Applicable to the seller]

b. HSR Act waiting period plus any voluntary commitment not to close

(i) Example 1

The waiting period applicable to the consummation of the Merger under the HSR Act shall have expired or been terminated, and there shall not be in effect any voluntary agreement between Parent or the Company and the Federal Trade Commission or the Department of Justice pursuant to which Parent or the Company has agreed not to consummate the Merger for any period of time.

[1] Technically, there is no "HSR clearance". The waiting period simply ends by its own accord or early termination by in the investigating agency. The waiting period can end, say 30 days after all merging parties have submitted sufficient responses to their respective second requests, even though the investigation may continue for months because of a timing agreement with the parties or the need for a regulatory approval. Critically, the DOJ or FTC may challenge a transaction long after the waiting period has ended, even if the agency investigated the transaction during the waiting period and closed the investigation without taking enforcement action.

(ii) Example 2

(c) *Antitrust Approvals and Waiting Periods*. Any waiting period (and any extension thereof) applicable to the consummation of the Merger under the HSR Act and any agreement with a Governmental Authority not to consummate the Transactions shall have expired or been terminated.

c. HSR "approval"

HSR Approval Condition. The HSR Approval shall have been obtained and shall remain in full force and effect (the "HSR Approval Condition").

"HSR Approval" means the expiration or early termination of the applicable waiting periods required pursuant to the HSR Act;[1]

d. All "antitrust approvals"

(i) Simple provision

(b) *Antitrust Approvals*. All Antitrust Approvals shall have been made or obtained, as the case may be.

"Antitrust Approvals" shall mean the expiration or termination of any waiting period under the HSR Act and the applicable merger control Laws of Austria, Germany, Ukraine, and such other jurisdictions as Buyer Parent reasonably determines are required in connection with the consummation of the Transactions.

(ii) Approvals without Burdensome Condition

(b) (i) any applicable waiting period (or extensions thereof) under the HSR Act relating to the transactions contemplated by this Agreement shall have expired or been terminated and (ii) any applicable waiting period (or extensions thereof) or approvals under each other applicable Competition Law relating to the transactions contemplated by this Agreement and set forth on Section 9.01(b) of the Company Disclosure Schedule shall have expired, been terminated or been obtained (solely with respect to the obligations of Parent and Merger Subsidiary, in each case without the imposition of any Burdensome Condition);

[1] This definition can easily be modified to compass more than the expiration or termination of the applicable waiting period under the HSR Act.

e. HSR Act and multinational regulatory approvals (with materiality proviso)

(i) Example 1

HSR Act. All applicable waiting periods (and any extensions thereof) under the HSR Act and under any similar foreign statutes and regulations applicable to the Merger shall have expired, terminated or where applicable, approvals have been obtained (except where the failure of which to expire, terminate or be obtained would not reasonably be expected to, individually or in the aggregate, materially and adversely affect the Company and Parent, taken as a whole, or would not reasonably be expected to result in criminal liability);

(ii) Example 2

Antitrust Waiting Periods. (i) Any waiting period (and any extensions thereof) applicable to consummation of the Merger under the HSR Act and, to the extent material, under any foreign antitrust, competition or pre-merger notification law shall have expired or been terminated, and (ii) all other material foreign antitrust, competition, trade, pre-merger notification or other regulatory approvals as may be required to consummate the Merger shall have been made or obtained, as applicable.

(iii) Example 3

(i) Any applicable waiting period under the HSR Act shall have expired or been earlier terminated, (ii) the European Commission shall have issued a decision under the EC Merger Regulation declaring the Merger compatible with the common market, and (iii) all applicable waiting and other time periods under other applicable foreign, federal antitrust, competition or fair trade Laws or applicable Laws, other than the HSR Act and the EC Merger Regulation, shall have expired, lapsed or been terminated (as appropriate) and all regulatory clearances in any relevant jurisdiction shall have been obtained, in each case, in respect of the Merger unless otherwise waived by Parent (the "Foreign Antitrust Condition"); *provided, however*, that with respect to the Foreign Antitrust Condition, the failure of such condition shall not relieve either Parent or Merger Sub of its obligation to consummate the Merger unless consummation of the Merger without obtaining any of the regulatory clearances referred to in this subclause (iii) would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(iv) Example 4

(d) Regulatory Approvals. (i) any applicable waiting period under the HSR Act shall have expired or been terminated; (ii) the European Commission shall have taken a decision (or been deemed to have taken a decision) under Article 6(1)(b) or, if the European Commission has initiated proceedings pursuant to Article 6(1)(c), under Article 8 of the EC

Merger Regulation, declaring the Merger compatible with the common market or any national competition authority of any European Union member state with jurisdiction shall have taken a decisions clearing or approving the transaction under any applicable antitrust, competition or fair trade Laws of any European Union member state or any applicable waiting period under such Laws shall have expired, lapsed or been terminated; and (iii) all applicable waiting and other time periods under other applicable foreign, federal or state antitrust, competition or fair trade Laws or applicable Laws having expired, lapsed or been terminated (as appropriate) and all regulatory clearances in any relevant jurisdiction having been obtained, in each case, in respect of the Merger unless otherwise waived by Purchaser (the "Foreign Antitrust Condition"); *provided, however*, that with respect to the Foreign Antitrust Condition, the failure of such condition shall not relieve either Parent or Purchaser of its obligation to consummate the Merger if the failure of a waiting period to expire or be terminated or the failure to obtain any required approval would not reasonably be expected to result in material limitations on the operation by Parent of the assets of Parent, its subsidiaries or the Company or its subsidiaries or the failure of a waiting period to expire or be terminated or the failure to obtain any required approval would not subject Parent or Purchaser to the payment of a material fine or penalty.

(v) Example 5 (with provision for timing agreement with DOJ)

(i) Any applicable waiting period under the HSR Act, Mexico's Federal Law on Economic Competition, or imposed by any agreement with the Antitrust Division of the U.S. Department of Justice shall have expired or been earlier terminated, and (ii) all applicable waiting and other time periods under other applicable state or foreign antitrust, competition or fair trade Laws or applicable Laws, other than those referred to in the foregoing clause (i), shall have expired, lapsed or been terminated (as appropriate) and all regulatory clearances in any relevant jurisdiction shall have been obtained, in each case, in respect of the Merger unless otherwise waived by Parent; *provided* that with respect to the condition set forth in this clause (ii), the failure of such condition shall not relieve either Parent or Purchaser of its obligation to consummate the Merger unless consummation of the Merger without obtaining any of the regulatory clearances referred to in this clause (ii) would reasonably be expected to have, individually or in the aggregate, a Regulatory Material Adverse Effect or result in criminal liability for any officer or director of Parent, the Company or any of their respective Subsidiaries.

(vi) Example 6 (with provision for referral to EU Member States)

(a) *Regulatory Consents*. (i) The waiting period (and any extensions thereof) applicable to the consummation of the Transaction under the HSR Act shall have expired or been earlier terminated; (ii) all Governmental Consents required to be obtained from the FCC for the consummation of the Transaction shall have been obtained; and (iii) the European

Commission shall have adopted a decision pursuant to the EC Merger Regulation declaring that the Transaction is compatible with the common market (or such compatibility shall have been deemed to exist under Article 10(6) of the EC Merger Regulation), or, in the event that that the European Commission adopts a decision pursuant to Article 9(3)(b) of the EC Merger Regulation (or is deemed to have done so pursuant to Article 9(5) of the EC Merger Regulation) referring the review of all or part of the Transaction to a Governmental Entity of a member state of the European Union, such Governmental Entity (or any other Governmental Entity of such member state) shall have granted approval of the transactions or part thereof that were so referred.

f. Condition precedent with agreed list of jurisdictions in exhibit to Agreement

(i) Specified list (Example 1)

Antitrust Consents. (i) Any applicable waiting period under the HSR Act shall have expired or been earlier terminated and (ii) any affirmative approval of a Governmental Authority required under any other Antitrust Law set forth in Section 8.01(b) of the Company Disclosure Schedule shall have been obtained or deemed to have been obtained under such applicable Antitrust Law.

(ii) Specified list (Example 2)

(d) *Regulatory Approvals/HSR Act*. (i) All waiting periods (and extensions thereof) applicable to the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements under the HSR Act and any other applicable Antitrust Laws, as set forth on Schedule 9.1(d), shall have expired or been terminated, and (ii) the clearances, approvals and consents required to be obtained under applicable Antitrust Laws to permit the Parties to consummate the transactions contemplated by this Agreement and the Ancillary Agreements, as set forth on Schedule 9.1(d), shall have been obtained ((i) and (ii) together, the "Antitrust Approvals").

(iii) Specified list (Example 3)

(c) *No Order*. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law or Order, whether temporary, preliminary or permanent, which is then in effect and has the effect of enjoining, restraining, prohibiting or otherwise preventing the consummation of the Transactions (collectively, a "Restraint"); *provided, however*, that any antitrust, competition, fair trade or similar Law or Order (whether temporary, preliminary or permanent) which has such an effect shall constitute a "Restraint" only if it arises in the United States, the European Union or a jurisdiction specified in Section 8.01(d) of the Company Disclosure Schedule.

(d) *Regulatory Approvals*. (i) Any waiting period (and any extension thereof) applicable to the consummation of the Merger under the HSR Act shall have expired or been terminated; (ii) the approval of the European Commission of the Transactions shall have been obtained pursuant to the EU Merger Regulation (or the approval by those national competition authorities in the European Union that have jurisdiction as a result of a referral of the Transactions under the EU Merger Regulation); and (iii) any approval or waiting period with respect to those jurisdictions set forth in Section 8.01(d) of the Company Disclosure Schedule shall have been obtained or terminated or shall have expired.

(iv) Specified list (Example 4)

(c) Antitrust Laws.

(i) All applicable waiting periods under (A) the HSR Act, and (B) the German Act Against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschrankungen),*with respect to the transactions contemplated by this Agreement shall have expired or been terminated.

(ii) All applicable approvals and authorizations under the Spanish Defense of Competition Law (*Ley 15/2007, de 3 de julio, de Defensa de la Competencia*) with respect to the transactions contemplated by this Agreement shall have been obtained (whether implicitly through the expiration of any waiting periods or explicitly by resolution).

(v) Specified list with additional material jurisdictions

(c) *Antitrust Laws; Consents and Approvals*. Unless the Offer Closing shall have occurred, (i) all applicable waiting periods under the HSR Act with respect to the Merger shall have expired or been terminated, (ii) all consents required under any other Antitrust Law of the jurisdictions set forth on Section 6.01(c) of the Company Disclosure Letter shall have been obtained or any applicable waiting period thereunder shall have expired or been terminated, (iii) all other consents, approvals and authorizations of any Governmental Entity required of Parent, the Company or any of their Subsidiaries to consummate the Merger, the failure of which to be obtained, individually or in the aggregate, would have a Parent Material Adverse Effect or a Material Adverse Effect, shall have been obtained and shall be in full force and effect and (iv) the conditions of any agreement entered into by any Party with any Governmental Entity the effect of which is to prohibit the Merger pending the completion of the Governmental Entity's review or investigation of the Merger shall have been satisfied or waived in accordance with the terms thereof.

g. Condition precedent with list of jurisdictions to be negotiated

> (c) *Antitrust Laws*. Any applicable waiting period (or extension thereof) under the HSR Act and any other applicable Antitrust Law that, within fifteen (15) days following the date of this Agreement, the parties identify and agree is applicable to the Merger shall have expired or been terminated and the European Commission shall have issued a decision under the EC Merger Regulation declaring the Merger compatible with the common market and all approvals, clearances, filings and notices required under any other applicable Antitrust Law that, within fifteen (15) days following the date of this Agreement, the parties identify and agree is applicable to the Merger shall have been obtained or made

h. Detailed condition precedent—US/EU/Canada/other

> (A) The applicable waiting period (and any extension thereof) under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder (the "HSR Act"), shall have expired or been earlier terminated (and no action to enjoin or restrain the consummation of the Tender Offer, based on US competition law by the US Department of Justice or Federal Trade Commission shall be pending and there shall not be in effect an agreement or commitment not to close the Tender Offer), (B) the European Commission shall have issued a decision pursuant to the EC Merger Regulation declaring the transactions contemplated hereby compatible with the common market (or compatibility being deemed under Article 10(6) of the EC Merger Regulation), (C) the applicable waiting period shall have expired or been waived and the Commissioner of the Canadian Competition Bureau shall have advised the Offeror that he does not intend to oppose the consummation of the transactions contemplated by the Agreement or shall have issued an advance ruling certificate in respect of such transactions pursuant to Section 102 of the Competition Act (Canada), (D) the approvals of the other Merger Control Authorities shall have been received and any applicable waiting periods shall have expired or have been terminated or waived.

i. No law, order or injunction

(i) Example 1

> *No Injunctions or Restraints*. No Law, injunction, judgment or ruling enacted, promulgated, issued, entered, amended or enforced by any Governmental Authority (collectively, "Restraints") shall be in effect enjoining, restraining, preventing or prohibiting consummation of the Transactions or making the consummation of the Transactions illegal;

(ii) Example 2

(a) *No Laws*. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any Applicable Law which is in effect and which has the effect of making any of the material transactions contemplated by this Agreement or any of the Ancillary Agreements illegal or otherwise prohibiting the consummation of any of the material transactions contemplated by this Agreement or any of the Ancillary Agreements.

(b) *No Injunctions*. No temporary restraining order, preliminary or permanent injunction or other Order issued by any court of competent jurisdiction or other similar legal restraint shall be in effect that has the effect of prohibiting the consummation of any of the material transactions contemplated by this Agreement or any of the Ancillary Agreements.

(iii) Example 3

(c) *No Legal Prohibition.* No Governmental Entity of competent jurisdiction shall have (i) enacted, issued, promulgated, entered, enforced or deemed applicable to the Merger any Applicable Law that is in effect and has the effect of making the Merger illegal in any jurisdiction or which has the effect of prohibiting or otherwise preventing the consummation of the Merger in any jurisdiction or (ii) issued or granted any Order (whether temporary, preliminary or permanent) that has the effect of making the Merger illegal in any jurisdiction or which has the effect of prohibiting or otherwise preventing the consummation of the Merger in any jurisdiction.

(iv) Example 4

No Injunctions or Restraints. No temporary restraining order, preliminary or permanent injunction or other judgment, Order or decree (a "Restraint") of any court or agency of competent jurisdiction located in the United States or in any other jurisdiction outside of the United States in which the Company or any of its Subsidiaries, or Parent or any of its Subsidiaries, engage in business activities that prohibits the consummation of the Merger shall have been issued and remain in effect, and no Law shall have been enacted, issued, enforced, entered, or promulgated and remains in effect that prohibits or makes illegal the consummation of any of the transactions contemplated by this Agreement.

j. No pending actions or litigation

(i) No threatened or pending litigation

No Threatened or Pending Litigation. There shall be no Proceeding, Order, injunction or final judgment relating thereto, pending before any Governmental Authority in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this

Agreement or the consummation of the transactions contemplated hereby, and to the knowledge of Sellers or Purchaser and Purchaser Ohio Affiliate, there shall be no threatened Proceeding or Order, which Sellers or Purchaser and Purchaser Ohio Affiliate in good faith reasonably believe could result in the consummation of the transactions contemplated hereby being restrained or prohibited or the award of damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby.

(ii) No threatened or pending litigation by U.S. or Canadian antitrust authorities

No Litigation. There shall not be instituted or pending any suit, action or proceeding by the United States Federal Trade Commission or the Antitrust Division of the United States Department of Justice under any U.S. Antitrust Law or the Commissioner of Competition appointed pursuant to Section 7 of the Competition Act (Canada) under the Competition Act (Canada) (the "Commissioner") (i) challenging or seeking to make illegal, to delay materially or otherwise directly or indirectly to prohibit the consummation of the Merger or any of the other transactions contemplated hereby, (ii) seeking to prohibit Parent's ability to vote, transfer, receive dividends or otherwise exercise full rights of ownership with respect to the stock of the Surviving Entity or (iii) seeking to prohibit, limit, restrain or impair Parent's ability to own, control, direct, manage, or operate or to retain or change any portion of the assets, licenses, operations, rights, product lines, businesses or interests therein of the Company or its Subsidiaries from and after the Effective Time or any of the assets, licenses, operations, rights, product lines, businesses or interests therein of Parent or its Subsidiaries, except, in each case, where the remedy sought by such Governmental Authority is one that Parent would be required to accept consistent with its obligations under Section 6.03(a).

(iii) No government actions

No Governmental Actions. There shall be no Action of any kind or character pending by a Governmental Entity against Micron, the Buyer, the Sellers or the Company, any of their respective properties or assets, or any of their respective Directors or Officers (in their capacities as such) that seeks to prohibit the consummation of any of the material transactions contemplated by this Agreement or any of the Ancillary Agreements

(iv) No U.S. or EC actions

No Action. There shall not be pending any Action instituted or initiated by any federal Governmental Authority in the United States or any Governmental Authority in the European Union or any European Union member state seeking a Restraint with respect to

the consummation of the Merger which would enjoin, restrain, prohibit or make illegal the consummation of the Merger;

(v) No pending actions in specified jurisdictions

No Litigation. There shall not be pending any suit, action or proceeding with respect to any antitrust, competition, fair trade or similar Law by any Governmental Authority in the United States, the European Union or in any jurisdiction specified in Section 8.01(d) of the Company Disclosure Schedule (i) seeking to restrain or prohibit the consummation of the Merger or any other transaction contemplated by this Agreement or seeking to obtain from the Company, Parent, Merger Sub or any other Subsidiary or Affiliate of Parent any damages that would meet the materiality standard set forth in the last sentence of Section 7.08(c), (ii) seeking to impose limitations on the ability of Parent or any Subsidiary or Affiliate of Parent to hold, or exercise full rights of ownership of, any shares of capital stock of the Surviving Corporation, including the right to vote such shares on all matters properly presented to the stockholders of the Surviving Corporation,

(vi) More detailed provision

No Restraints. There shall not be instituted or pending any suit, action or proceeding in which a Governmental Entity of competent jurisdiction is seeking (i) an Order or (ii) to (A) prohibit, limit, restrain or impair Parent's ability to own or operate or to retain or change all or a material portion of the assets, licenses, operations, rights, product lines, businesses or interest therein of the Company or any of its Subsidiaries or other Affiliates from and after the Effective Time or any of the assets, licenses, operations, rights, product lines, businesses or interest therein of Parent or its Subsidiaries (including by requiring any sale, divestiture, transfer, license, lease, disposition of or encumbrance or hold separate arrangement with respect to any such assets, licenses, operations, rights, product lines, businesses or interest therein) or (B) prohibit or limit in any respect Parent's ability to vote, transfer, receive dividends or otherwise exercise full ownership rights with respect to the stock of the Surviving Corporation, and no Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law deemed applicable to the Merger individually or in the aggregate resulting in, or that is reasonably likely to result in, any of the foregoing.

(vii) No pending litigation for a temporary restraining order

No Restraints. No temporary restraining order, preliminary or permanent injunction or other Order preventing the consummation of the Merger shall have been issued by any court of competent jurisdiction or other Governmental Body in the United States or in any Specified Foreign Jurisdiction and remain in effect, and there shall not be pending any

motion for a temporary restraining order brought by a United States Governmental Body under applicable United States Antitrust Law, and there shall not be any Legal Requirement enacted or deemed applicable to the Merger in the United States or in any Specified Foreign Jurisdiction that makes consummation of the Merger illegal.

(viii) No pending litigation that may impose a Substantial Detriment

No Antitrust Suits, Orders or Laws. (i) No suit, action or other proceeding under any Antitrust Law by any Governmental Entity of competent jurisdiction shall be pending that would reasonably be expected to restrain, enjoin or otherwise prevent or make illegal the consummation of the Merger or that would reasonably be expected to impose a Substantial Detriment and (ii) no temporary restraining order, preliminary or permanent injunction or other judgment, order or decree or other legal restraint or prohibition issued by any Governmental Entity of competent jurisdiction under any Antitrust Law shall be in effect that imposes or, individually in the aggregate, would reasonably be expected to impose, a Substantial Detriment, and no Antitrust Law shall have been enacted, entered, promulgated or enforced by any Governmental Entity that, in any case, imposes or, individually or in the aggregate, is reasonably expected to impose a Substantial Detriment.

(ix) Closing if appeal is pending

If there is no decree, order or injunction restricting or prohibiting the Mergers but an appeal is pending, Parent shall not be obligated to proceed to close the Mergers until the Termination Date, as such date may be extended pursuant to Section 8.1(b), and if such appeal remains pending on such Termination Date, Parent shall be obligated to close the Mergers on such date, provided that on such date all other conditions to Closing have then been satisfied.

IV. General Efforts Covenants

(*i*) *Example 1*

Subject to the terms and conditions hereof, each party hereto shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Law to consummate and make effective the transactions contemplated hereby as promptly as practicable, including using its reasonable best efforts to obtain or make all necessary or appropriate filings required under applicable Law and to lift any injunction or other legal bar to the consummation of the transactions contemplated by this Agreement as promptly as practicable after the date of this Agreement. None of the parties shall knowingly take, cause or permit to be taken

any action which such party reasonably expects is likely to materially delay or prevent consummation of the transactions contemplated by this Agreement.

(ii) Example 2

Subject to the terms and conditions of this Agreement, prior to the Effective Time, each of the Company, Parent and Merger Sub shall use its commercially reasonable efforts to take, or cause to be taken, all other actions and do, or cause to be done, all other things necessary, proper or advisable under applicable Law to consummate the Transactions, including, (i) making all appropriate filings and submissions (and filings and submissions considered by Parent to be advisable) under the HSR Act and with any other Governmental Authority pursuant to any other applicable Antitrust Laws or otherwise as determined by Parent, as promptly as practicable, but in no event later than ten (10) Business Days after the date hereof with respect to filing under the HSR Act, and shall make as promptly as practicable any other appropriate submissions under other applicable Antitrust Laws, (ii) obtaining as promptly as practicable the termination of any waiting period under the HSR Act and any applicable foreign Antitrust Laws, (iii) cooperating and consulting with each other in (A) determining which filings are required to be made prior to the Effective Time with, and which material consents, approvals, permits, notices or authorizations are required to be obtained prior to the Effective Time from, Governmental Authorities in connection with the execution and delivery of this Agreement and related agreements and consummation of the transactions contemplated hereby and thereby and (B) timely making all such filings and timely seeking all such consents, approvals, permits, notices or authorizations.

(iii) Example 3

(a) Subject to the terms and conditions of this Agreement (including Section 5.4(d) [regarding proposing and accepting consent agreements]), each of the parties hereto shall cooperate with the other parties and use (and shall cause their respective Subsidiaries to use) their respective best efforts to (i) take, or cause to be taken, all actions, and do, or cause to be done, all things, necessary, proper or advisable to cause the conditions to Closing to be satisfied as promptly as practicable (and in any event no later than the Extended Walk-Away Date) and to consummate and make effective, in the most expeditious manner practicable, the Transactions, including preparing and filing promptly and fully all documentation to effect all necessary filings, notifications, notices, petitions, statements, registrations, submissions of information, applications and other documents (including any required or recommended filings under applicable Antitrust Laws), (ii) obtain promptly (and in any event no later than the Extended Walk-Away Date) all approvals, consents, clearances, expirations or terminations of waiting periods, registrations, permits, authorizations and other confirmations from any Governmental Authority or third party necessary, proper or advisable to consummate the Transactions, (iii) defend any lawsuits or

other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the Transactions and (iv) obtain all necessary consents, approvals or waivers from third parties. For purposes of this Agreement, "Antitrust Laws" means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, all applicable Foreign Antitrust Laws and all other applicable Laws issued by a Governmental Authority that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

(iv) Example 4

The Purchaser shall make any necessary filings with respect to, and use its [best efforts/reasonable best efforts/commercially reasonable efforts] promptly to obtain, all authorizations, consents, orders and approvals of all Governmental Authorities and officials that may be or become necessary for its execution and delivery of, and the performance of its obligations pursuant to, this Agreement and will cooperate fully with the other parties in promptly seeking to obtain all such authorizations, consents, orders and approvals. Each party hereto agrees to make any necessary filings for which it is responsible pursuant to the HSR Act, the EU Merger Regulation, and any other Law that requires a mandatory merger control filing with respect to the transaction contemplated by this Agreement ("Applicable MC Law"), within five (5) Business Days of the date hereof (unless otherwise agreed by the parties) and to supply as promptly as practicable to the appropriate Governmental Authorities any additional information and documentary material that may be requested pursuant to the HSR Act, the EU Merger Regulation and any other Applicable MC Law. The Sellers shall not be required to pay any fees or other payments to any Governmental Authorities in connection with any such authorization, consent, order or approval (other than normal filing fees that are imposed by Law on the Seller).

V. Conduct of Business Covenants

a. Covenants with respect to contracts

(i) Example 1

(b) Without limiting the generality of clause (a) above and in furtherance thereof, from and after the date hereof until the Effective Time, except (1) as expressly set forth in Section 5.1 of the Company Disclosure Letter, (2) as expressly contemplated or permitted by this Agreement, (3) as required by Law or (4) as consented to in writing by Parent (which

consent shall not be unreasonably withheld, conditioned or delayed), the Company shall not, and shall not permit any of its Subsidiaries to:

. . .

(xii) (A) prematurely terminate or enter into any Material Contract or Contract that, if in effect on the date hereof, would have been a Material Contract, except in the ordinary course of business consistent with past practice, (B) materially amend or modify (other than extensions at the end of term or in the ordinary course of business consistent with past practice) any Material Contract, (C) waive any term of or any material default under, or release, settle or compromise any material claim against the Company or any of its Subsidiaries or liability or obligation owing to the Company or any of its Subsidiaries, under any Material Contract or (D) enter into any Contract which contains a change of control or similar provision in favor of the other party or parties thereto or would otherwise require a payment or give rise to any rights to such other party or parties in connection with the Offer, the Merger or the other transactions contemplated by this Agreement;

(ii) Example 2

In addition, and without limiting the generality of the foregoing, except for matters set forth in the GeoEye Disclosure Letter or otherwise expressly permitted or expressly contemplated by this Agreement or with the prior written consent of DigitalGlobe (which shall not be unreasonably withheld, conditioned or delayed), from the date of this Agreement to the Effective Time, GeoEye shall not, and shall not permit any GeoEye Subsidiary to, do any of the following:

. . .

(xii)(A) terminate or cancel any GeoEye Material Contract or (B) enter into or amend any material Contract (including any Contract that, if entered into on the date hereof, would have been a GeoEye Material Contract), unless in the case of this clause (B), (1) such Contract is terminable by GeoEye on no more than 90 days' written notice, (2) such Contract is entered into in the ordinary course of business, consistent with past practice, and (3) such Contract, or in the case of an amendment, such amendment, does not require GeoEye or any of its Subsidiaries to make payments in excess of $10,000,000 over the term of such Contract or in excess of $500,000 in connection with the termination of such Contract;

(iii) Example 3

Without limiting the generality of the foregoing, except with the prior written consent of Parent (which consent shall not be unreasonably withheld or delayed) or as expressly

contemplated by this Agreement or set forth in Schedule 6.01 of the Company Disclosure Schedule, the Company shall not, nor shall it permit any of its Subsidiaries to:

. . .

(q) except as required by Applicable Law or the transactions contemplated hereby, amend, modify or terminate any Material Contract or Lease, or knowingly waive, release or assign any material rights, claims or benefits under any Material Contract or Lease or with respect to any investment in any Person (including without limitation, the right to designate one or more members to the board of directors or similar governing body of any Person (or its Affiliates) or other governance rights), or enter into (i) any Lease (whether as lessor, sublessor, lessee or sublessee) or (ii) any new Contract that, if entered into prior to the date of this Agreement, would constitute a Material Contract; or

(iv) Example 4

Without limiting the generality of the foregoing, and subject to the exceptions set forth in clauses (i) through (iv) of the preceding sentence, during the period from the date of this Agreement to the Effective Time, the Company shall not, and shall not permit any of its Subsidiaries to:

. . .

(ix) (A) (1) enter into, (2) modify or amend in any material respect or modify or amend outside the ordinary course of business or (3) terminate any Specified Contract or (B) waive, release or assign any material rights or claims thereunder;

(x) enter into, modify, amend or terminate any Contract, which if so entered into, modified, amended or terminated would reasonably be expected to (A) adversely affect in any material respect the Company or any of its Subsidiaries, taken as a whole, (B) impair in any material respect the ability of the Company to perform its obligations under this Agreement or (C) prevent or materially delay the consummation of the transactions contemplated by the Agreement;

b. Covenants with respect to capital expenditures

(i) Capped according to schedule

In addition, and without limiting the generality of the foregoing, except for matters set forth in Section 5.01 of the Company Disclosure Schedule or as otherwise expressly required by this Agreement, or as required by Law or Judgment, from the date of this Agreement until the Effective Time, the Company shall not, and shall not permit any Company Subsidiary to, directly or indirectly do any of the following without the prior written consent of Parent (which consent may be given or withheld in its sole discretion):

. . .

(ix) make or agree to make any capital expenditure or expenditures, or incur any obligations or liabilities in connection therewith, that in the aggregate are in excess of the aggregate amount set forth in Schedule 5.01(ix) of the Company Disclosure Schedule;

(ii) Capped by forecast plan or not in excess of $1,000,000

Without limiting the generality of the foregoing, except (A) as expressly contemplated by this Agreement, (B) as set forth in Section 7.1 of the Company Disclosure Letter, (C) as required by applicable Law or (D) to the extent Parent otherwise consents in writing (which consent shall not be unreasonably withheld, conditioned or delayed), the Company agrees that neither the Company nor any Subsidiary shall, between the date of this Agreement and the Effective Time, do any of the following:

. . .

(u) make or commit to make any capital expenditure other than in respect of those capital expenditure projects that are (i) contemplated by the Company's fiscal year 2011 forecast or (ii) not in excess of $1,000,000 in the aggregate;

(iii) Capped by multiple criteria

(ii) Except (i) as expressly permitted or required by this Agreement, (ii) as set forth in the corresponding Section of the Disclosure Letter, or (iii) as may be agreed in writing by Parent (which consent shall not be unreasonably withheld), during the period specified in the preceding sentence, the Company will not and will not permit any of its Subsidiaries to:

. . .

(u) incur any material capital expenditure or any obligations, liabilities or indebtedness in respect thereof, except for any capital expenditures not exceeding (i) $50 million individually, (ii) $225 million in the aggregate in 2011 (taking into account any expenditures incurred prior to the date hereof in 2011) and (iii) $250 million per year for 2012 and after;

(iv) Capped by business plan and set limits

Except with Purchaser's prior written consent (not to be unreasonably withheld, conditioned or delayed), Seller shall cause each of the Company and its Subsidiaries (i) to conduct its business in the ordinary course and, to the extent consistent therewith, use its commercially reasonable efforts to (A) preserve its business organizations intact, (B) maintain existing relations and goodwill with Governmental Entities, customers, suppliers, distributors, creditors, lessors, employees and business associates, and (C) keep available

the services of its present employees and agents; and (ii) not to (other than as set forth in the corresponding section of the Seller Disclosure Letter):

. . .

except as contemplated by the capital budget set forth in the business plan set forth on Schedule 4.16 of the Seller Disclosure Letter, make or authorize any payment of, or accrual or commitment for, capital expenditures in excess of $25,000,000.00 in the aggregate in any consecutive six-month period (or $50,000,000.00 in the event of an increase in data demand in the Business significantly in excess of the demand anticipated on the date hereof);

(v) Capped by business plan and set limits (with ordinary course exception for supplies)

Without limiting the generality of the foregoing, and except with the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed), as required by applicable Laws, as otherwise contemplated or permitted by this Agreement or as set forth on Section 7.1 of the Company Disclosure Schedule, during the period from the date of this Agreement to the Control Time, the Company will not, and will cause its Subsidiaries not to:

. . .

(m) make any capital expenditures, except (i) capital expenditures made in accordance with the Company's annual budget and capital expenditure plan, as furnished to Parent, (ii) other capital expenditures in an aggregate amount not to exceed $250,000 or (iii) purchases of supplies in the ordinary course of business, consistent with past practice; . . . .

(vi) Capped by CapEx plan plus overrun limits

(b) Without limiting the generality of Section 5.2(a), and notwithstanding anything to the contrary in Section 5.2(a), except as expressly permitted by this Agreement, or with the prior written consent of Parent (which consent may be withheld or conditioned in Parent's absolute discretion), or as required by applicable Law, during the period from the date of this Agreement to the Effective Time, the Company shall not, and shall not permit any of its Subsidiaries to:

. . .

(v) make any capital expenditure or expenditures which (A) involves the purchase of real property (other than that real property set forth on Section 5.2(e) of the Company Disclosure Letter that the Company is presently obligated by Contract to purchase) or (B) is not provided for in the CapEx Plan (provided, however, that the Company may make capital expenditures (x) for any particular item in excess of the amount specified for such

item on the page entitled "Summary of Spending by Improvement Type" included in the CapEx Plan in an amount not to exceed 20% of the amount specified for such item on the page entitled "Summary of Spending by Improvement Type" included in the CapEx Plan and/or (y) for any particular items not contemplated by the CapEx Plan, in an aggregate amount for all such items in clauses (x) and (y) not to exceed 10% of the total amount of capital expenditures contemplated by the CapEx Plan); . . . .

(vii) Capped by set limit (with ordinary course exception)

Without limiting the generality of the foregoing, except as expressly provided or permitted herein or as set forth in Schedule 6.1, during the Pre-Closing Period, the Company shall not, directly or indirectly, other than in the ordinary course of business, do any of the following without the prior written consent of Parent (which consent shall not be unreasonably withheld or delayed): . . . .

. . .

(k) make any material acquisition or capital expenditure in excess of $25,000 in the aggregate for the Company, taken as a whole, other than in the ordinary course of business or as provided for in the Company's annual budget; . . . .

c. Collective bargaining agreements

(i) Example 1

From the date of this Agreement through the earlier of termination of this Agreement or the Effective Time:

. . .

(c) Except as consented to in writing by Parent or as set forth in Section 5.1(c) of the Disclosure Schedule, the Company will not:

. . .

(viii) enter into, extend, renew, modify, or amend any collective bargaining agreement;

(ii) Example 2

In addition to and without limiting the generality of the foregoing, during the period from the date of this Agreement to the Effective Time, except as otherwise set forth in Section 4.01(a) of the Company Disclosure Schedule, the Company shall not, and shall not permit any of its Subsidiaries to, without Parent's prior written consent:

. . .

(xiv) except as otherwise contemplated by this Agreement or as required to ensure that any Company Benefit Plan or Company Benefit Agreement is not then out of compliance with applicable law or to comply with any Contract or Company Benefit Agreement entered into prior to the date hereof (complete and accurate copies of which have been heretofore delivered to Parent), (A) adopt, enter into, terminate or amend (I) any collective bargaining agreement or Company Benefit Plan or . . . .

(iii) Example 3

(b) In addition, and without limiting the generality of Section 5.2(a), RH agrees that, during the period from the date of this Agreement until the earlier of the Closing or the termination of this Agreement pursuant to its terms, except as (i) otherwise expressly permitted or required under or by this Agreement (including as contemplated by Section 6.16), (ii) set forth in Section 5.2(b) of the RH Disclosure Schedule, (iii) consented to by Battery in writing (it being understood that any request for a consent shall be considered in good faith by Battery) or (iv) required by any Law, RH shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, do, or agree to do, any of the following:

. . .

(xviii) enter into, renew or amend any collective bargaining agreement, except in the ordinary course of business consistent with past practice;

d. Other conduct of business covenants

(i) Exclusive dealing arrangements

Except as contemplated by or otherwise permitted under this Agreement, or required by Applicable Law, or described in Company Disclosure Schedule 4.1 or to the extent that Parent shall otherwise consent in writing, from the date of this Agreement until the Closing, the Company covenants and agrees with Parent that the Company shall not, and shall cause the Retained Subsidiaries not to:

. . .

(p) enter into any agreement or arrangement that materially limits the freedom of the Company or any Retained Subsidiary to engage or participate, or compete with any other Person, in any line of business, market or geographic area, or prohibits the sale of products or services by the Company or any Retained Subsidiary, or commits to an exclusive dealing agreement of any type, except for agency or distributorship agreements or similar agreements entered into in the ordinary course of business that in each case are terminable by the Company or a Retained Subsidiary by the giving of notice of sixty (60) days or less

without post-termination obligations, termination penalties, purchase options or similar obligations;

e. Savings clause

(i) Example 1

Nothing contained in this Agreement is intended to give Parent or Merger Sub, directly or indirectly, the right to control or direct the Company's or its Subsidiaries' operations prior to the Acceptance Time, and nothing contained in this Agreement is intended to give the Company, directly or indirectly, the right to control or direct Parent's or its Subsidiaries' operations prior to the Acceptance Time. Prior to the Acceptance Time, each of the Company, Parent and Merger Sub shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries' respective operations.

(ii) Example 2

5.02 *Control of the Operations*. Nothing contained in this Agreement shall give Parent, directly or indirectly, rights to control or direct the Company's operations prior to the Effective Time. Prior to the Effective Time, the Company shall exercise, consistent with the terms of this Agreement, complete control and supervision of its and the Company Subsidiaries' operations for purposes of the HSR Act or any other applicable antitrust Law prior to the expiration or termination of any applicable waiting period under the HSR Act or any other applicable antitrust Law waiting period, or prior to the receipt of any applicable approval under any antitrust or competition law.

(ii) Example 3

Notwithstanding the foregoing, the parties to this Agreement acknowledge and agree that (i) nothing contained in this Agreement shall give Parent or Merger Subsidiary, directly or indirectly, the right to control or direct the Company's operations for purposes of the HSR Act or any other applicable Antitrust Law prior to the expiration or termination of any applicable waiting period under the HSR Act or any other applicable Antitrust Law waiting period, or prior to receipt of any applicable approval under any antitrust or competition law; and (ii) notwithstanding anything to the contrary set forth in this Agreement, no consent of Parent or Merger Subsidiary will be required with respect to any matter set forth in this Agreement to the extent the requirement of such consent would violate any Applicable Law.

V. Merger Control Filing Covenants

a. Covenant to make HSR filings and comply with any second request

(i) Example 1

In furtherance and not in limitation of the foregoing, each party hereto agrees to (x) make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated by this Agreement within ten (10) Business Days of the date of this Agreement, (y) supply as promptly as reasonably practicable any additional information and documentary material that may be requested pursuant to the HSR Act and (z) use its reasonable best efforts to take or cause to be taken all other actions necessary, proper or advisable consistent with this Section 7.2 to cause the expiration or termination of the applicable waiting periods, or receipt of required authorizations, as applicable, under the HSR Act as soon as practicable. Without limiting the foregoing, the parties shall request and shall use reasonable best efforts to obtain early termination of the waiting period under the HSR Act.

(ii) Example 2

Without limiting the foregoing, each of the Company and Parent shall . . . (iii) as promptly as reasonably practicable following the receipt thereof, respond to (or properly reduce the scope of) any formal or informal request for additional information or documentary material received by the Company, Parent or any of their respective Affiliates from any Governmental Authority whether received prior to or after the date of this Agreement;

(iii) Example 3

The Company and Parent will, at the time determined by the Parent (but in any event no earlier than ten (10) Business Days after the date hereof) and on no less than five (5) Business Days' notice to the Company, file with the United States Federal Trade Commission (the " FTC ") and the Antitrust Division of the United States Department of Justice (the " DOJ ") the notification and report forms required for the transactions contemplated hereby, and subsequent to such filings, Parent and the Company will provide any supplemental information that may be requested in connection therewith pursuant to the HSR Act, which notification and report forms and supplemental information will comply in all material respects with the requirements of the HSR Act.

(iv) Example 4

The parties shall (i) respond as promptly as practicable to any inquiries or requests for documentation or information or any request for additional information (a "second request") received from the FTC or the DOJ and to all inquiries and requests received from any other Governmental Authority in connection with Competition Law matters, and (ii) use their reasonable best efforts to resolve objections, if any, as may be asserted by any Governmental Authority with respect to the transactions contemplated by this Agreement under any Competition Laws and to cause the waiting periods, approvals or other requirements under the HSR Act and all other Competition Laws to terminate or expire or be obtained prior to the Termination Date.

b. Timing to make HSR Act filings

(i) Upon notice by Parent to Company

The Company and Parent will, at the time determined by the Parent (but in any event no earlier than ten (10) Business Days after the date hereof) and on no less than five (5) Business Days' notice to the Company, file with the United States Federal Trade Commission (the "FTC") and the Antitrust Division of the United States Department of Justice (the "DOJ") the notification and report forms required for the transactions contemplated hereby, and subsequent to such filings, Parent and the Company will provide any supplemental information that may be requested in connection therewith pursuant to the HSR Act, which notification and report forms and supplemental information will comply in all material respects with the requirements of the HSR Act.

c. Covenant to make multinational filings

(i) Example 1

Each of the Purchaser and the Sellers agree to make, if applicable, an appropriate filing pursuant to the HSR Act with respect to the transactions contemplated hereby within [ten] Business Days after the date hereof and to supply promptly any additional information and documentary material that may be requested pursuant to the HSR Act. In addition, each party agrees to make, or to cause to be made, any filing that may be required under any other antitrust or competition law or by any other antitrust or competition authority, including any other requirements of the antitrust legislation of any other relevant jurisdiction, if applicable, within 30 days after the date hereof and to supply promptly any additional information and documentary material that may be requested pursuant thereto. Each party shall have responsibility for its respective filing fees associated with the HSR filings and any other similar filings required in any other jurisdictions.

(ii) Example 2

Promptly following the execution of this Agreement, the parties shall file with all other appropriate Governmental Authorities the notifications and other information (if any) required to be filed under other applicable Antitrust Laws with respect to the transactions contemplated in the Transaction Documents. The Company and Parent shall, furthermore, proceed to promptly prepare and file with the appropriate Governmental Authorities such additional requests, reports or notifications as may be required in connection with this Agreement and shall diligently and expeditiously prosecute, and shall cooperate fully with each other in the prosecution of, such matters. Each of Parent and the Company shall furnish to the other such necessary information and reasonable assistance as the other may reasonably request in connection with its preparation of any filing or submission which is necessary under the applicable Antitrust Laws. Parent and the Company shall keep each other apprised of the status of any communications with, and any inquiries or requests for additional information from, the FTC, the DOJ and any other Governmental Authority with whom a filing has been made pursuant to Antitrust Laws.

(iii) Example 3

In furtherance and not in limitation of the foregoing, each party hereto agrees (i) to make an appropriate filing of a Notification and Report Form pursuant to the HSR Act and any other applicable Antitrust Law with respect to the transactions contemplated hereby as promptly as practicable after the date hereof, (ii) to supply as promptly as reasonably practicable any additional information and documentary material that may be requested pursuant to the HSR Act or any other applicable Antitrust Law and (iii) use its best efforts to take or cause to be taken all other actions necessary, proper or advisable to obtain applicable clearances, consents, authorizations, approvals or waivers and to cause the expiration or termination of the applicable waiting periods with respect to the approval of the Merger under the HSR Act, the German Act Against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschrankungen*), the Spanish Defense of Competition Law (*Ley 15/2007, de 3 de julio, de Defensa de la Competencia*) and any other applicable Antitrust Laws so as to enable the Closing to occur no later than the Outside Date.

(iv) Example 4

Subject to the terms and conditions herein provided and without limiting the foregoing, the Company and Parent shall (i) promptly, and in any event no later than fifteen (15) business days after the date hereof, make all required filings of Notification and Report Forms pursuant to the HSR Act, (ii) as promptly as practicable make appropriate filings with the European Commission in accordance with the EC Merger Regulation, (iii) use reasonable best efforts to cooperate with each other in (x) determining whether any filings are required to be made with, or actions or nonactions, waivers, authorizations, expirations or

terminations of waiting periods, clearances, consents or approvals are required to be obtained from, any other Governmental Entities (including any foreign jurisdiction in which the Company or its Subsidiaries are operating any business) or third parties in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and (y) timely making all such filings and timely seeking all such actions or nonactions, waivers, authorizations, expirations or terminations of waiting periods, clearances, consents and approvals, (iv) supply as promptly as practicable such information or documentation that may be requested pursuant to any Regulatory Law (as defined in Section 5.6(f)) by any Governmental Entity, and (v) use reasonable best efforts to take, or cause to be taken, all other actions and do, or cause to be done, all other things necessary, proper or advisable to consummate and make effective the transactions contemplated hereby.

(v) Purchaser election for non-mandatory jurisdictions

Upon the terms and subject to the conditions of this Agreement, each party hereto agrees to make any appropriate filings, if necessary or advisable (in the opinion of Parent), pursuant to the HSR Act, the EU Merger Regulation or other applicable foreign, federal, state or supranational antitrust, competition, fair trade or similar Laws with respect to the Transactions as promptly as practicable and to supply as promptly as practicable and advisable to the appropriate Governmental Authorities any additional information and documentary material that may be requested pursuant to the HSR Act, the EU Merger Regulation or other applicable foreign, federal, state or supranational antitrust, competition, fair trade or similar Laws. All antitrust filings to be made shall be made in substantial compliance with the requirements of the HSR Act, the EU Merger Regulation and other applicable foreign, federal, state or supranational antitrust, competition, fair trade or similar Laws, as applicable.

d. Pulling/refiling and timing agreements

(i) Purchaser control

(e) Each party hereto shall and shall cause its respective Subsidiaries to respond as promptly as reasonably practicable and advisable to any inquiries or requests for information and documentary material received from any Governmental Authority in connection with any antitrust or competition matters related to this Agreement and the Transactions. The Company and its Subsidiaries shall not, but Parent may if in its good faith judgment it determines (after consulting in advance with the Company and in good faith taking the Company's views into account) that the taking of such action would enhance the likelihood of obtaining any necessary antitrust, competition, fair trade or similar clearance by the Outside Date, extend any waiting period or agree to refile under

the HSR Act, the EU Merger Regulation or any other applicable state, federal, foreign or supranational antitrust, competition, fair trade or similar Laws.

(ii) Mutual control (Example 1)

The parties agree not to extend any waiting period under the HSR Act or enter into any agreement with any Governmental Authority to delay, or otherwise not to consummate as soon as practicable, any of the transactions contemplated by this Agreement except with the prior written consent of the other parties hereto, which consent may be withheld in the sole discretion of the non-requesting party.

(iii) Mutual control (Example 2)

(e) Each Buyer and each Seller agrees that, during the term of this Agreement, it will not withdraw its filing under the Hart-Scott-Rodino Act or any other applicable antitrust, competition or trade regulation law without the written consent of the other party.

(f) Each Buyer and each Seller agrees that it will not enter into any timing agreement with any Governmental Entity without the written consent of the other party.

e. Timing agreements

(i) No timing agreements without mutual consent

None of Parent, the Purchaser or the Company shall commit to or agree with any Governmental Authority to stay, toll or extend any applicable waiting period under the HSR Act or applicable competition Laws, without the prior written consent of the other parties.

(ii) Timing agreement at purchaser's option with consultation

(e) The Company and its Subsidiaries shall not, but Parent may, if in its good faith judgment it determines (after consulting in advance with the Company and in good faith taking the Company's views into account) that the taking of such action would enhance the likelihood of obtaining any necessary antitrust, competition, fair trade or similar clearance by the Outside Date or the Extended Outside Date, as applicable, enter into an agreement with a Governmental Authority not to consummate the Transactions or agree to withdraw and refile under the HSR Act or any other applicable Antitrust Law.

f. Timing of second request compliance

(i) Earliest practicable date

If any request for additional information and documents, including a "second request" under the HSR Act, is received from any Governmental Authority then the Parties shall substantially comply with any such request at the earliest practicable date.

(ii) Promptly as practicable with outside date

(iv) respond as promptly as practicable under the circumstances to any inquiries received from any Governmental Entity or any other authority enforcing applicable antitrust, competition, trade regulation or similar Laws for additional information or documentation in connection with antitrust, competition, trade regulation or similar matters;

(v) without limiting the generality of Section 6.3(d)(iv), (A) use its reasonable best efforts to achieve Substantial Compliance as promptly as practicable with any request for additional information or documentary material issued by a Governmental Entity under 15 U.S.C. Sect. 18a(e) and in conjunction with the transactions contemplated by this Agreement (a " Second Request"), (B) certify Substantial Compliance with any Second Request as promptly as practicable after the date of such Second Request, but in no event later than September 30, 2010, (C) take all actions necessary to assert, defend and support its certification of Substantial Compliance with such Second Request;

(iii) Reasonable best by a date certain (Example 1)

Section 5.04(c). Each of the Company, Parent and Merger Sub shall use reasonable best efforts to certify compliance with any "second request" for additional information or documentary material from the Department of Justice or the Federal Trade Commission pursuant to the HSR Act within four (4) months after receipt of such second request and to produce documents on a rolling basis.

(iv) Reasonable best by a date certain (Example 2)

From the date of this Agreement through the date of termination of the required waiting period under any applicable Antitrust Laws, none of the Company, Parent or Merger Subsidiary shall take any action that could reasonably be expected to hinder or delay the obtaining of clearance or the expiration of the required waiting period under the HSR Act or any other applicable Antitrust Law. Without limiting the preceding sentence, each of the parties will use their reasonable best efforts to certify substantial compliance with any second request for information made by the DOJ (" Second Request Certification ") and certify that the response to any Supplementary Information Request made by the Canadian

Competition Bureau is correct and complete in all material respects (" SIR Certification ") by November 28, 2012, or such later date as Parent and Company may mutually agree upon in writing (the " Antitrust Certification Date ").

(v) Outside date (Example 1—60 days)

In the event the Buyer or Seller receives a Second Request in connection with the transactions contemplated by this Agreement, such party will comply with such request as provided by Section 7A(e) of the Hart-Scott-Rodino Act not more than 60 days from the date of service of the request. For purposes of this provision, a party shall be deemed to have complied with any such request by providing a response that the party in good faith believes to be in substantial compliance and by certifying its substantial compliance within the 60 day period. In the event that a party receives a subpoena or civil investigative demand requesting materials and information similar to that usually demanded in a Second Request, such Party shall comply with such subpoena or civil investigative demand not more than 60 days from the date of service of the subpoena or civil investigative demand. In the event the Governmental Entity disputes the adequacy of compliance by a party with respect to a Second Request, subpoena, or civil investigative demand, the party shall endeavor to satisfy the Governmental Entity so as to minimize any delay in the conduct or resolution of the investigation.

(vi) Outside date (Example 2—60 days)

In furtherance and not in limitation of the foregoing, Parent (and, as applicable, Sub and the ultimate parent entity of Parent) and INX shall (i) make an appropriate filing of a notification and report form pursuant to the HSR Act with respect to the Transactions as promptly as practicable, and in any event within 15 Business Days of the date hereof, (ii) supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act and in any event, "substantially comply" and certify substantial compliance with any request for additional information (also known as a "second request") issued pursuant to the HSR Act within 60 days of such request and (iii) take all other actions necessary to cause the expiration or termination of the applicable waiting period under the HSR Act as soon as practicable.

(vii) Outside date (Example 3—60 days; tying timing to "reasonable best efforts")

[Reasonable best efforts obligation.] For the avoidance of doubt, American and US Airways agree that obligations relating to "reasonable best efforts" and "as soon as practicable" in the preceding sentence shall, among other things, mean, with respect to filing of the notification and required form under the HSR Act made by the parties prior to the date of this Agreement, using reasonable best efforts to be prepared to complete a certification of compliance with any

request for additional information issued by the Department of Justice or Federal Trade Commission in connection with the transactions contemplated by this Agreement ("*Second Request*") no later than 60 days following the issuance of such Second Request.

(viii) Outside date (Example 4—60 days)

In furtherance and not in limitation of the foregoing [reasonable best efforts provision], Parent (and, as applicable, Sub and the ultimate parent entity of Parent) and INX shall (i) make an appropriate filing of a notification and report form pursuant to the HSR Act with respect to the Transactions as promptly as practicable, and in any event within 15 Business Days of the date hereof, (ii) supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act and in any event, "substantially comply" and certify substantial compliance with any request for additional information (also known as a "second request") issued pursuant to the HSR Act within 60 days of such request and (iii) take all other actions necessary to cause the expiration or termination of the applicable waiting period under the HSR Act as soon as practicable.

(ix) Outside date (Example 5—90 days)

In furtherance and not in limitation of the foregoing, Parent (and, as applicable, Merger Sub and any ultimate parent entity of Parent) and the Company shall (A) make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby as promptly as practicable, and in any event within 30 days of the date hereof, (B) supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act, and in any event, "substantially comply" and certify substantial compliance with any request for additional information (also known as a "second request") issued pursuant to the HSR Act within 90 days of such request and (C) take all other actions necessary to cause the expiration or termination of the applicable waiting period under the HSR Act as soon as practicable, including, subject to Section 7.1(c)(v), entering into any settlement, undertaking, consent decree, stipulation or agreement with any governmental authority in connection with the transactions contemplated hereby, and divesting, holding separate (including by establishing a trust or otherwise) or taking any other action with respect to any of Parent's or any of its affiliate's businesses, assets or properties as of the date of this Agreement; provided, however, that no Party shall be required to commit to or effect any action that is not conditioned upon the consummation of the Merger.

(x) Outside date (Example 6—90 days)

(b) In furtherance and not in limitation of the provisions of Section 6.3(a), each of the parties, as applicable, agrees to prepare and file as promptly as reasonably practicable any

filings required to be made under any Antitrust Law or Foreign Merger Control Law; provided that, in any event, an appropriate Notification and Report Form pursuant to the HSR Act shall be prepared and filed as soon as reasonably practicable but in no event later than eight Business Days. Parent shall pay all filing fees for the filings required under any Antitrust Law or Foreign Merger Control Law by the Company and Parent. Each of Parent and the Company agrees to promptly comply with any Request for Additional Information and Documentary Materials (a "Second Request") from the relevant Governmental Entity pursuant to the HSR Act and in any event within ninety calendar days of receipt of such Second Request.

(xi) Outside date (Example 7—90 days)

(c) Without limiting the generality of Section 6.09(b), in the event the Company or Parent receives a Second Request in connection with the Transactions, such party will comply with such Second Request as provided by the HSR Act not more than ninety (90) days from the date of service of the Second Request. For purposes of this provision, a party shall be deemed to have complied with any such request by providing a response that the party in good faith believes to be in substantial compliance notwithstanding any Governmental Authority's ultimate refusal to certify substantial compliance within the ninety (90) day period. In the event that a party receives a subpoena or civil investigative demand requesting materials and information similar to that usually demanded in a Second Request, such party shall comply with such subpoena or civil investigative demand not more than ninety (90) days from the date of service of the subpoena or civil investigative demand. In the event the Governmental Authority disputes the adequacy of compliance by a party with respect to a Second Request, subpoena, or civil investigative demand, the party shall endeavor to satisfy the Governmental Authority so as to minimize any delay in the conduct or resolution of the investigation. For purposes of determining the Additional Per Share Consideration (if any), the number of days included in the Ticking Fee Period shall be reduced by one day for each day following the later of (i) the sixtieth (60th) day from the date of service of the Second Request and (ii) the date on which Parent, but not the Company, has certified substantial compliance with a Second Request until, in each case, the day on which the Company certifies substantial compliance with such Second Request.

(xii) Outside date (Example 8—120 days)

Section 5.03(b)(ii). Request for Additional Information. Parent and the Company each shall, and shall cause their respective Subsidiaries to, supply as promptly as practicable any information and documentary material that may be requested by any Governmental Entity pursuant to Antitrust Laws or any other applicable Laws. If a request for additional information has been issued under the HSR Act or a civil investigative demand or subpoena has been issued pursuant to any other Antitrust Law, Parent and the Company

shall supply, or cause to be supplied, the information necessary for such party to certify substantial compliance with the applicable Governmental Entity in connection with such a request as promptly as practicable such that Parent and the Company, as applicable, can, if required to do so, certify substantial compliance with such request as soon as practicable after the issuance thereof, but in no event later than 120 days of the issuance thereof.

(xiii) Outside date for U.S. and EU

Section 5.4(b). In furtherance and not in limitation of the foregoing: (i) each party hereto agrees to make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the Transactions as soon as practicable and in any event within ten (10) business days of the date hereof (unless the parties otherwise agree to a different date), and to supply as soon as practicable any additional information and documentary material that may be requested pursuant to the HSR Act and use its reasonable best efforts to take, or cause to be taken, all other actions consistent with this Section 5.4 necessary to cause the expiration or termination of the applicable waiting periods under the HSR Act (including any extensions thereof) as soon as practicable; (ii) Parent agrees to file with the European Commission as soon as practicable the Form CO, if any, required for the Transactions pursuant to the EC Merger Regulation and to supply as soon as practical any additional information and documentary material that may be required or requested by the European Commission and use its reasonable best efforts to take or cause to be taken all other actions consistent with this Section 5.4 necessary to obtain any necessary approvals, consents, waivers, permits, authorizations or other actions or non-actions from the European Commission as soon as practicable. The parties agree that they will use their reasonable best efforts to ensure that they have "substantially complied" with any "second request" for information from the U.S. Federal Trade Commission ("FTC") or U.S. Department of Justice ("DOJ") or similar request by the European Commission or other Governmental Authority under any Foreign Antitrust Law by October 15, 2011 if such compliance is required for clearance or approval.[1]

g. Paying for the filing

(i) Allocating fees for HSR filing (1/2 to each party)

Fees and Expenses. (a) Except as set forth in this Section 8.03, all Expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring such expenses, whether or not the Mergers or any other transaction is consummated, except that (i) Trulia and Zillow shall each pay one-half of all

1 An end date of October 15, 2011 would have provided approximately five months for compliance with a second request.

Expenses relating to (A) printing and mailing the Joint Proxy Statement and (B) the filing fee for the Notification and Report Forms filed under the HSR Act and . . . .

h. Representation on secondary filings

(i) Example 1

The Company does not own, directly or indirectly, any voting interest in any Person that requires an additional filing by Parent under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act").

VI. Cooperation Covenants

a. Detailed cooperation covenant

(i) Example 1

Without limiting, and subject to, Section 5.04(b)(ii) the parties agree to use good faith efforts to (A) give each other reasonable advance notice of all meetings with any Governmental Entity relating to the Antitrust Laws, (B) to the extent not prohibited by such Governmental Entity, not participate independently in any such meeting without first giving the other party (or the other party's outside counsel) an opportunity to attend and participate in such meeting, (C) to the extent practicable, give the other party reasonable advance notice of all oral communications with any Governmental Entity relating to Antitrust Laws, (D) if any Governmental Entity initiates an oral communication regarding the Antitrust Laws, promptly notify the other party of the substance of such communication, (E) provide each other with a reasonable advance opportunity to review and comment upon and consider in good faith the views of the other in connection with all written communications (including any analyses, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto relating to proceedings under the Antitrust Laws) with a Governmental Entity regarding the Antitrust Laws and (F) promptly provide each other with copies of all written communications to or from any Governmental Entity relating to the Antitrust Laws. The parties may, as they deem advisable and necessary, designate any competitively sensitive materials provided to the other under this Section 5.04 as "outside counsel only." Such materials and the information contained therein shall be given only to outside counsel and previously-agreed outside economic consultants of the recipient and will not be disclosed by such outside counsel or outside economic consultants to employees, officers, or directors of the recipient without the advance written consent of the party providing such materials.

(ii) Example 2

Each of the Company and Parent shall, in connection with the Offer, the Merger and the transactions contemplated hereby, with respect to actions taken on or after the date of this Agreement, without limitation: (1) promptly notify the other of, and if in writing, furnish the other with copies of (or, in the case of oral communications, advise the other of) any communications from or with any Governmental Authority with respect to the Offer, the Merger or the other transactions contemplated hereby, (2) permit the other to review and discuss in advance, and consider in good faith the view of the other in connection with, any proposed written or oral communication with any Governmental Authority, (3) not participate in any substantive meeting or have any substantive communication with any Governmental Authority unless it has given the other party a reasonable opportunity to consult with it in advance and, to the extent permitted by such Governmental Authority, gives the other the opportunity to attend and participate therein, (4) furnish the other party's outside legal counsel with copies of all filings and communications between it and any such Governmental Authority with respect to the Merger and the other transactions contemplated hereby; *provided* that such material may be redacted as necessary (I) to comply with contractual arrangements, (II) to address good faith legal privilege or confidentiality concerns and (III) to comply with applicable Law and (5) furnish the other party's outside legal counsel with such necessary information and reasonable assistance as the other party's outside legal counsel may reasonably request in connection with its preparation of necessary submissions of information to any such Governmental Authority.

(iii) Example 3

(f) Each of the Company and Parent shall, in connection with the Transactions, with respect to actions taken on or after the date of this Agreement, without limitation:

(i) promptly notify the other of, and if in writing, furnish the other with copies of any communications from or with any Governmental Authority with respect to the Transactions;

(ii) permit the other to review and discuss in advance, and consider in good faith the view of the other in connection with, any proposed written or oral communication with any Governmental Authority;

(iii) not participate in any substantive meeting or have any substantive communication with any Governmental Authority unless it has given the other party a reasonable opportunity to consult with it in advance and, to the extent permitted by such Governmental Authority, gives the other the opportunity to attend and participate therein;

(iv) furnish the other party's outside legal counsel with copies of all filings and communications between it and any such Governmental Authority with respect to the Transactions;

provided, however, that such material may be redacted as necessary to (A) comply with contractual arrangements, (B) address legal privilege or confidentiality concerns and (C) comply with applicable Law; and (v) furnish the other party's outside legal counsel with such necessary information and reasonable assistance as the other party's outside legal counsel may reasonably request in connection with its preparation of necessary submissions of information to any such Governmental Authority. The Company and Parent may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 6.09 as "Antitrust Counsel Only Material". Such materials and the information contained therein shall be given only to the outside antitrust counsel of the recipient and designated in house counsel of Parent approved by the Company and will not be disclosed by such outside counsel or in-house counsel to directors, officers, other employees, potential Financing Sources or other Representatives of the recipient unless express permission is obtained in advance from the source of the materials (the Company or Parent as the case may be) or its outside legal counsel. Notwithstanding anything to the contrary in this Section 6.09, materials provided to the other party or its outside legal counsel may be redacted to remove references concerning the valuation of the Company and its Subsidiaries or as regards Parent's plans for conducting its business or that of the Company and its Subsidiaries after consummation of the Transactions.

(iv) Example 4

To the extent not prohibited by applicable Law, each party shall use its reasonable best efforts to furnish to the other parties all information required for any application, notification or other filing to be made pursuant to any applicable Laws in connection with the Merger and the transactions contemplated hereby. Parent and the Company shall give each other reasonable prior notice of any communication with, and any proposed understanding, undertaking or agreement with, any Governmental Entity regarding any such applications, notifications or filings or any such transaction. The parties hereto agree that both Parent and Company shall be represented at all in-person meetings and in all substantive conversations with any Governmental Entity regarding the matters set forth in this Section 7.5, except (i) if, and to the extent that, any Governmental Entity objects to any party's being represented at any such meeting or in any such conversation and (ii) to the extent that the communication or meeting relates to a national security risk mitigation agreement between Parent and CFIUS or any of its constituent agencies. The parties hereto will consult and cooperate with one another in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto in connection with proceedings under or relating to the HSR Act, the Foreign Merger Control Laws, any other applicable foreign Competition Laws and Exon-Florio. Unless Parent and the Company agree otherwise, Parent shall take the lead in coordinating any applications, notifications or filings, obtaining any necessary

approvals, and resolving any investigation or other inquiry of any such agency or other Governmental Entity under the HSR Act, the Foreign Merger Control Laws, any other applicable foreign Competition Laws and Exon-Florio.

b. Provision for the exchange of filings and submissions

(i) Example 1

Within five (5) business days after the date hereof, to the extent legally permitted, each of the Company and Parent shall provide to counsel for the other party all filings and written submissions, including attachments thereto, made by the Company to any Governmental Entity regarding the Transactions, *provided* that each party shall be entitled to redact competitively sensitive information and any information relating to Company valuation and similar matters relating to the Transactions.

(ii) Example 2

Each of Parent and the Company will promptly furnish to the other (x) all necessary information as the other may reasonably request in connection with the preparation of any filing or submission pursuant to the HSR Act and (y) copies of all written communications (and memoranda setting forth the substance of any oral communication) with any Governmental Authority in connection with the transactions contemplated by this Agreement; *provided , however* , that Parent or Company can redact discussions of the transaction value and reasonably designate applicable materials as for review by the other's outside counsel only.

c. Provision for the furnishing information to other side and governmental authorities

To the extent permitted by Applicable Law, the Company and Parent shall, as promptly as practicable, (i) upon the reasonable request of the other party, furnish to such party and upon any reasonable request from a Governmental Authority, furnish to such Governmental Authority, any information or documentation concerning themselves, their Affiliates, directors, officers and securityholders, information or documentation concerning the Merger and the other transactions contemplated hereby and such other matters as may be requested and (ii) make available their respective personnel and advisers to each other and, upon reasonable request, any Governmental Authority, in connection with (A) the preparation of any Filing made by or on their behalf to any Governmental Authority in connection with the Merger or the other transactions contemplated hereby or (B) any investigation, review or approval process.

d. Provisions for agency meetings

(i) Reciprocal right to attend meetings (Example 1)

The parties hereto agree that both Parent and Company shall be represented at all in person meetings and in all substantive conversations with any Governmental Entity regarding the matters set forth in this Section 7.4, except if, and to the extent, that any Governmental Entity objects to any party's being represented at any such meeting or in any such conversation and such objection has not been withdrawn after the parties' have used their reasonable best efforts to contest such objection.

(ii) Reciprocal right to attend meetings (Example 2—with some asymmetry)

The Company will consult with Parent prior to any meetings, by telephone or in person, with the staff of a Governmental Authority in connection with the transactions contemplated by this Agreement, and Parent will have the right to have a representative present at any such meeting to the extent permitted by such Governmental Authority and reasonably practical. Parent will consult with the Company prior to any meetings, by telephone or in person, with the staff of a Governmental Authority in connection with the transactions contemplated by this Agreement, and the Company will have the right to have a representative present at any such meeting to the extent permitted by such Governmental Authority and reasonably practical.

(iii) Right to attend meetings (with consent exception)

Unless prohibited by Applicable Law or by the applicable Governmental Authority, each of the Company and Parent shall (i) to the extent reasonably practicable, not participate in or attend any meeting, or engage in any substantive conversation with any Governmental Authority in respect of the Merger (including with respect to any of the actions referred to in Section 8.01(a)) without the other (provided that, subject to Section 8.01(c), either party may participate in or attend any such non-substantive meeting), (ii) to the extent reasonably practicable, give the other reasonable prior notice of any such meeting or conversation and (iii) in the event one party is prohibited by Applicable Law or by the applicable Governmental Authority from participating or attending any such meeting or engaging in any such conversation, keep such party reasonably apprised with respect thereto; *provided that*, Parent or its representatives may conduct such a meeting or conversation without the Company or its representatives present upon the prior written consent of the Company (such consent not to be unreasonably withheld, conditioned or delayed).

(iv) Efforts not to preclude opportunity to attend

In connection with the parties' obligations under this Section 7.02(b), each party shall use its reasonable best efforts to ensure that the other parties are not prohibited by any Governmental Authority from participating in any meetings, discussions, negotiations, conferences or other communications with such Governmental Authority.

(v) No independent meetings

No party hereto shall independently participate in any formal meeting with any Governmental Body in respect of any such filings, investigation, or other inquiry without giving the other parties hereto prior notice of the meeting and, to the extent permitted by such Governmental Body, the opportunity to attend and/or participate.

e. Outside counsel information carveouts

(i) Example 1

Each of the Company and Parent may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 8.01 as "Outside Counsel Only Material." Such materials and the information contained therein shall be given only to the outside counsel of the recipient and, subject to any additional confidentiality or joint defense agreement the parties may mutually propose and enter into, will not be disclosed by such outside counsel to employees, officers or directors of the recipient unless express permission is obtained in advance from the source of the materials (the Company or Parent, as the case may be) or its legal counsel. Notwithstanding anything to the contrary in this Section 8.01, materials provided to the other party or its outside counsel may be redacted (i) to remove references concerning valuation, (ii) as necessary to comply with contractual arrangements and (iii) as necessary to address reasonable attorney-client or other privilege or confidentiality concerns.

f. Seller cooperation in Purchaser filings

(i) Example 1

The parties hereto shall cooperate and assist one another in connection with all actions to be taken pursuant to Section 7.08(a), including the preparation and making of the filings referred to therein and, if requested, amending or furnishing additional information hereunder. The Company shall use its reasonable best efforts to provide or cause to be provided promptly to Parent all necessary information and assistance as any Governmental Authority may from time to time require in connection with obtaining the relevant waivers,

permits, consents, approvals, authorizations, qualifications, Orders or expiration of waiting periods in relation to these filings or in connection with any other review or investigation of the Transactions by a Governmental Authority. The Company shall use its reasonable best efforts to provide or cause to be provided promptly all assistance and cooperation to allow Parent to prepare and submit any filings or submissions under the HSR Act, the EU Merger Regulation or other applicable foreign, federal, state or supranational antitrust, competition, fair trade or similar Laws, including providing to Parent any information that Parent may from time to time require for the purpose of any filing, notification, application or request for further information made in respect of any such filing.

(ii) Example 2

(iv) respond as promptly as practicable under the circumstances to any inquiries received from any Governmental Entity or any other authority enforcing applicable antitrust, competition, trade regulation or similar Laws for additional information or documentation in connection with antitrust, competition, trade regulation or similar matters;

(v) without limiting the generality of Section 6.3(d)(iv), (A) use its reasonable best efforts to achieve Substantial Compliance as promptly as practicable with any request for additional information or documentary material issued by a Governmental Entity under 15 U.S.C. Sect. 18a(e) and in conjunction with the transactions contemplated by this Agreement (a "Second Request"), (B) certify Substantial Compliance with any Second Request as promptly as practicable after the date of such Second Request, but in no event later than September 30, 2010 [approximately 5 months from the date of the agreement], (C) take all actions necessary to assert, defend and support its certification of Substantial Compliance with such Second Request and (D) not extend any waiting period under the HSR Act or enter into any agreement with such Governmental Entities or other authorities to delay, or otherwise not to consummate as soon as practicable, any of the transactions contemplated by this Agreement except with the prior written consent of the other parties hereto, which consent may be withheld in the sole discretion of the non-requesting party;

g. Seller obligations to participate in defense

(i) General obligation

The parties hereto will consult and cooperate with one another in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto in connection with proceedings under or relating to the HSR Act and applicable foreign Competition Laws. Parent shall take the lead in coordinating any filings, obtaining any necessary approvals, and resolving any investigation or

other inquiry of any such agency or other Governmental Entity under the HSR Act and applicable foreign Competition Laws.

(ii) Obligation to attend meetings if requested by Purchaser

If reasonably requested by ABI or its Subsidiaries, and if not prohibited from doing so by the relevant Governmental Authority, the Company and its Subsidiaries shall, upon reasonable notice, cause an informed representative thereof to attend any one or more meetings, either by phone or in person, with ABI or its Subsidiaries before a Governmental Authority in support of obtaining the Required Approvals.

h. Buyer control of strategy and tactics

(i) Simple provision (Example 1)

Notwithstanding anything in this Agreement to the contrary: . . . (ii) Parent shall, on behalf of the parties, control and lead all communications and strategy relating to the Antitrust Laws and litigation matters relating to the Antitrust Laws (provided that the Company is not prohibited from complying with applicable Law), subject to good faith consultations with the Company and the inclusion of the Company at meetings with Governmental Entities with respect to any discussion related to the Merger under the Antitrust Laws.

(ii) Simple provision (Example 2)

Each party shall consult with the other party and consider in good faith the views of the other party prior to entering into any agreement, arrangement, undertaking or understanding (oral or written) with any Governmental Authority relating to any Antitrust Law with respect to the Merger or the other transactions contemplated hereby; *provided*, that subject to its undertakings in Section 6.03(c), the final determination as to the appropriate course of action shall be made by Parent.

(iii) Simple provision (Example 3)

The parties hereto shall cooperate fully with each other in connection with (y) assessing whether any action by or in respect of, or filing with, any Governmental Entity is required, in connection with the consummation of the Transactions and (z) seeking any such Consents or making any such filings; *provided, however*, that Buyer shall make the ultimate determination about which actions or filings, if any, are necessary.

(iv) Buyer control of strategy and filings (Example 1)

Parent shall take the lead in (i) the scheduling of, and strategic planning for, any meeting with any Governmental Authority under the HSR Act or any other applicable Competition Law, (ii) the making of any filings, including the initial filings under the HSR Act, (iii) the process for the receipt of any necessary approvals and (iv) the resolution of any investigation or other inquiry of any such Governmental Authority. Without limiting the foregoing sentence, except as prohibited by Applicable Law, each of Parent and the Company shall, (A) to the extent reasonably practicable, consult with each other prior to taking any material substantive position with respect to the filings under the HSR Act or any other Competition Law in discussions with or filings to be submitted to any Governmental Authority, (B) to the extent reasonably practicable, permit the other to review and discuss in advance, and consider in good faith the views of the other in connection with, any analyses, presentations, memoranda, briefs, arguments, opinions and proposals to be submitted to any Governmental Authority with respect to filings under the HSR Act or any other Competition Law, and (C) to the extent reasonably practicable, coordinate with the other in preparing and exchanging such information and 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 Authority relating to this Agreement or the transactions contemplated hereby under the HSR Act or any other Competition Law.

(v) Buyer control of strategy and filings (Example 2)

Notwithstanding anything in this Agreement to the contrary, Parent and Purchaser shall, on behalf of the parties, control and lead all communications and strategy relating to any litigation or to obtaining all approvals, consents, waivers, registrations, permits, authorizations and other confirmations from any Governmental Entity or third party necessary, proper or advisable to consummate the Merger; *provided, however*, that Parent shall consult in advance with the Company and in good faith take the Company's views into account regarding the overall strategic direction of any such litigation or approval process, as applicable, and consult with the Company prior to taking any material substantive positions, making dispositive motions or other material substantive filings or submissions or entering into any negotiations concerning such litigation or approvals, as applicable.

(vi) Buyer with "principal responsibility" and seller approval for delays

provided, that, Parent, after prior, good faith consultation with the Company and after considering, in good faith, the Company's views and comments, shall have the principal responsibility for devising and implementing the strategy for obtaining any of the Antitrust Approvals or Required Gaming Approvals and shall take the lead in all meetings and

communications with, or Proceeding involving, any Governmental Authority in connection with obtaining the Antitrust Approvals and the Required Gaming Approvals; *provided, however*, that the consent of each party shall be required prior to the taking of any action (including the failure to take any such action) in connection with obtaining any Antitrust Approvals or Required Gaming Approvals if such action (or failure to act) would be reasonably likely to materially delay, or materially impair the likelihood of obtaining, any such approvals.

(vii) Buyer control with seller covenant to support buyer

Parent shall be entitled to direct the antitrust defense of the Offer, the Mergers or any other transactions contemplated thereby, or negotiations with, any Governmental Authority or other Third Party relating to the Offer, the Mergers or regulatory filings under applicable competition Law, subject to the provisions of this Section 5.5. The Company shall use its commercially reasonable efforts to provide full and effective support of Parent in all material respects in all such negotiations and other discussions or actions to the extent requested by Parent.

(viii) Expanded provision (with buyer control proviso)

Each party hereto will consult and cooperate with the other parties and will consider in good faith the views of the other parties in connection with any filing, analysis, appearance, presentation, memorandum, brief, argument, opinion, or proposal made or submitted in connection with the Transactions, *provided, however*, that Buyer shall have responsibility for determining the strategy for dealing with the FTC, the DOJ, and any other Governmental Authority regarding antitrust matters. In addition, except as may be prohibited by any Governmental Entity or by any applicable Law, in connection with any such request or Legal Proceeding, to the extent reasonably practicable, each party hereto will permit authorized Representatives of the other parties to be present at each substantive meeting or conference relating to such request or Legal Proceeding and to have access to and be consulted in connection with any substantive document, opinion or proposal made or submitted to any Governmental Entity in connection with such request or Legal Proceeding.

(ix) Best efforts to cooperate but with buyer control

(b) To the fullest extent permitted by applicable Law, each of Parent and HoldCo, on the one hand, and the Company, on the other hand, shall, in connection with the efforts referenced in Section 6.04(a), use its best efforts to (i) cooperate in all respects with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party; (ii) seek the

Company's review and comments on strategy and submissions in a timely manner; (iii) consider in good faith the views of the other party and keep the other party reasonably informed of the status of matters related to the transactions contemplated by this Agreement, including furnishing the other with any written notices or other communications received by such party from, or given by such party to, the Federal Trade Commission (the "FTC"), the Antitrust Division of the Department of Justice (the "DOJ") or any other U.S. or foreign Governmental Entity or Self-Regulatory Organization and of any communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated hereby; and (iii) permit the other party to review in draft any communication to be submitted by it to, give reasonable consideration to the other party's comments thereon, and consult with each other in advance of any in-person or telephonic meeting or conference with, the FTC, the DOJ or any other Governmental Entity or Self-Regulatory Organization or, in connection with any proceeding by a private party, with any other Person, and to the extent permitted by the FTC, the DOJ or such other applicable Governmental Entity or Self-Regulatory Organization or other Person, give the other party or its Representatives the opportunity to attend and participate in such meetings and conferences in accordance with Antitrust Law; *provided, however*, that in the event of any disagreement concerning any such filing, submission, investigation, inquiry, proceeding, communication or meeting, the determination of Parent shall be final and conclusive; *provided, further*, that nothing in this Agreement shall prevent a party from responding to or complying with a subpoena or other legal process required by Law or submitting documents or factual information in response to a request therefor.

(x) Buyer control of appeals, consent decree negotiations, and general strategy

Parent shall have the right, but not the obligation, to (i) appeal an adverse decision on the merits, (ii) propose, negotiate, offer to commit and effect, by consent decree, hold separate order or otherwise, the divestiture of such assets of Parent, the Surviving Corporation, or either's respective Subsidiaries as may resolve such objections, suits, orders, decrees, decisions, determinations or judgments and (iii) determine and direct the strategy and process by which the Parties will seek required approvals under the Antitrust Laws. In furtherance (but not limitation) of the foregoing, the Company shall not, without the prior written consent of Parent, enter into any Contract with any Governmental Agency relating to such Governmental Agency's review or investigation of the Offer or the Merger under the Antitrust Laws.

(xi) Buyer control (but with special consultation provisions for certain jurisdictions)

Parent shall have the principal responsibility for devising and implementing the strategy for obtaining any necessary antitrust or competition clearances and shall take the lead in all

meetings and communications with any Governmental Authority in connection with obtaining any necessary antitrust or competition clearances; *provided, however*, that, with respect to the jurisdictions referenced in Section 8.01(d) [jurisdictions in which antitrust clearance is a condition precedent], Parent shall consult in advance with the Company and in good faith take the Company's views into account regarding the overall strategic direction of obtaining antitrust or competition clearance in those jurisdictions and consult with the Company prior to taking any material substantive position in any written submissions or, to the extent practicable, discussions with Governmental Agencies in those jurisdictions. The Company shall consult with Parent prior to taking any material substantive position with respect to the filings under the HSR Act, the EU Merger Regulation or other applicable foreign, federal, state or supranational antitrust, competition, fair trade or similar Laws, in any written submission to, or, to the extent practicable, in any discussions with, any Governmental Authority. With respect to the jurisdictions referenced in Section 8.01(d), each party shall permit the other party to review and discuss in advance, and shall consider in good faith the views of the other party in connection with, any analyses, presentations, memoranda, briefs, written arguments, opinions, written proposals or other materials to be submitted to the Governmental Authorities in those jurisdictions with respect to such filings. Each party shall keep the other apprised of the material content and status of any material communications with, and material communications from, any Governmental Authority with respect to the Transactions, including promptly notifying the other of any material communication it receives from any Governmental Authority relating to any review or investigation of the Transactions under the HSR Act, the EU Merger Regulation or other applicable foreign, federal, state or supranational antitrust, competition, fair trade or similar Laws. The parties to this Agreement shall, and shall cause their respective Affiliates to use their reasonable best efforts to, provide each other with copies of all material, substantive correspondence, filings or communications between them or any of their respective Representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to this Agreement and the Transactions; *provided, however*, that materials may be redacted (i) to remove references concerning the valuation of the Company and its Subsidiaries; (ii) as necessary to comply with contractual arrangements or applicable Laws; and (iii) as necessary to address reasonable attorney-client or other privilege or confidentiality concerns.

(xii) Buyer control (with litigation exception)

For the avoidance of doubt, Parent shall direct and fully control any lawsuits or other legal proceedings described in this Section 6.04(c); *provided, however*, that, subject to Parent's overall direction and control, if the Company is a party to any such lawsuit or other legal proceeding, it shall have the right to act independently in a reasonable manner with respect to any matter to the extent that such matter would reasonably be expected to result in an Order that would have an adverse effect on the Company as a separate company if the

Merger were not consummated (*provided* that in such circumstance the Company shall consult with Parent and consider Parent's views and comments in good faith).

(xiii) Mutual notice

Neither party shall initiate, or participate in any meeting or discussion with any Governmental Entity with respect to any filings, applications, investigation, or other inquiry regarding the Merger or filings under any Premerger Notification Rules without giving the other party reasonable prior notice of the meeting or discussion and, to the extent permitted by the relevant Governmental Entity, the opportunity to attend and participate (which, at the request of either party, shall be limited to outside antitrust counsel only); *provided*, *however*, that neither the Company nor Parent shall engage in any substantive communication with any Governmental Entity with respect to any proposed Divestiture Action without the consent of the other party.

i. Buyer ability to exclude seller from agency meetings

(d) With respect to the jurisdictions referenced in Section 8.01(d) [jurisdictions in which antitrust approval is a condition precedent], Parent shall, to the extent practicable and permitted by the relevant Governmental Authority, give the Company (through its counsel) the opportunity to attend and participate in all substantive meetings, telephone calls or discussions in respect of any filings, investigation (including settlement of the investigation), litigation or other inquiry; *provided* that, Parent or its representatives may conduct such a meeting, telephone call or discussion without the Company or its representatives present if Parent determines in good faith, taking into account the relevant facts and circumstances at the time (including the nature of the jurisdiction and the relevant Governmental Authority in question), that the taking of such action would enhance the likelihood of obtaining any necessary antitrust, competition, fair trade or similar clearance by the Outside Date; and *provided further* that to the extent practicable, Parent shall consult with the Company in advance and consider in good faith the view of the Company in making any such determination.

j. Covenant to avoid actions that would increase antitrust risk

(i) General prohibition (Example 1)

(h) Each of the Company and Parent shall not, and shall not permit their respective Affiliates to, take any action or enter into any transaction, the effect of which is to impair, delay or prevent any required approvals, or expiration of the waiting period, under the Antitrust Laws.

(ii) General prohibition (Example 2)

Neither party shall, and each party shall cause its Affiliates not to, enter into any transaction, or any agreement to effect any transaction (including any merger or acquisition), that might reasonably be expected to make it more difficult, or to increase the time required, to (i) obtain the expiration or termination of the waiting period under the HSR Act or any other applicable Antitrust Law applicable to the Transactions or (ii) obtain all other authorizations, consents, orders, and approvals of Governmental Authorities necessary for the consummation of the Transactions.

(iii) General prohibition (Example 3)

Neither party shall, nor shall it permit any of its Subsidiaries to, acquire or agree to acquire any business, Person or division thereof, or otherwise acquire or agree to acquire any assets if the entering into of a definitive agreement relating to or the consummation of such acquisition would be reasonably likely to result in the material delay or impairment of (i) the ability of the parties to obtain the applicable clearance, approval or waiver from a Governmental Entity or Self-Regulatory Organization charged with the enforcement of any Antitrust Law with respect to the transactions contemplated by this Agreement or (ii) the expiration or termination of any applicable waiting period.

(iv) General prohibition (Example 4)

Neither party shall enter into any agreement, transaction, or any agreement to effect any transaction (including any merger or acquisition) that would reasonably be expected to make it materially more difficult, or to materially increase the time required, to (i) obtain the expiration or termination of the waiting period under the HSR Act, or any other Competition Law applicable to the transaction contemplated hereby, (ii) avoid the entry of, the commencement of litigation seeking the entry of, or to effect the dissolution of, any injunction, temporary restraining order or other order that would materially delay or prevent the consummation of the transactions contemplated hereby, or (iii) obtain all authorizations, consents, orders and approvals of Governmental Authorities necessary for the consummation of the transactions contemplated hereby.

(v) General prohibition (Example 5)

Neither the Company nor Parent shall, and each of them shall cause its Subsidiaries not to, directly or indirectly (whether by merger, consolidation or otherwise), acquire, purchase, lease or license (or agree to acquire, purchase, lease or license) any business, corporation, partnership, association or other business organization or division or part thereof, or any securities or collection of assets, if doing so would reasonably be expected to: (i) impose any material delay in the obtaining of, or materially increase the risk of not obtaining, any

Consent, or exemption of any Governmental Authority necessary to consummate the Merger and the other transactions contemplated hereby or the expiration or termination of any applicable waiting period; (ii) materially increase the risk of any Governmental Authority entering an order prohibiting the consummation of the Merger and the other transactions contemplated hereby; or (iii) materially increase the risk of not being able to remove any such order on appeal or otherwise.

(vi) General prohibition with Purchaser proviso

The Company, Parent and Merger Sub and any of their respective Affiliates shall not take any action with the intention to or that could reasonably be expected to hinder or delay the obtaining of clearance or any necessary approval of any Antitrust Authority under an Premerger Notification Rule or Antitrust Law or the expiration of the required waiting period under the Premerger Notification Rules or any other Antitrust Laws; *provided, however*, that Parent may take any reasonable action to resist or reduce the scope of a Divestiture Action, even if it delays such expiration to a date not beyond the Termination Date.

(vii) No investments that would increase antitrust risk

None of Acquiror, any Subsidiary of Acquiror or the Company shall acquire or make any investment in any corporation, partnership, limited liability company or other business organization or any division or assets thereof, that would reasonably be expected to materially delay the satisfaction of the conditions contained in Article VI or materially adversely affect the consummation of the Merger.

(viii) No acquisitions that would increase antitrust risk

Neither the Company nor Parent shall, nor shall they permit their respective Subsidiaries or Affiliates to, acquire or agree to acquire any business, person or division thereof, or otherwise acquire or agree to acquire any assets, if, upon advice of such party's outside legal counsel, the entering into of a definitive agreement relating to or the consummation of such acquisition, (i) would reasonably be expected to delay or to increase the likelihood of not obtaining the applicable action, nonaction, waiver, clearance, consent or approval under the HSR Act or applicable requirements of the Competition Act (Canada) (including the regulations thereunder, as each may be amended from time to time, the "Competition Act") in connection with the Merger and the other transactions contemplated hereby prior to the Outside Date or (ii) would reasonably be expected to require any action, nonaction, waiver, clearance, consent or approval of any other Governmental Authority with respect to the transactions contemplated hereby.

(ix) No acquisitions or investments that would increase antitrust risk

Neither Parent nor Company shall, and each of them shall cause its respective Subsidiaries not to, acquire or agree to acquire, by merging with or into or consolidating with, or by purchasing a portion of the assets of or equity in, any business or any corporation, partnership, association or other business organization or division thereof, in each case, that operate in the specific industries in which Company and its Subsidiaries operate, if the entering into of a definitive agreement relating to, or the consummation of such acquisition, merger or consolidation would reasonably be expected to: (i) materially increase the risk of any Governmental Entity seeking or entering an order prohibiting the consummation of the transactions contemplated by this Agreement; (ii) materially increase the risk of not being able to remove any such order on appeal or otherwise; or (iii) otherwise prevent the consummation of the transactions contemplated by this Agreement.

(x) Strict prohibition on acquisitions above a specified size

From the date of this Agreement until the Effective Time, except (A) as otherwise expressly contemplated by this Agreement, (B) as Schlumberger may approve in writing (such approval not to be unreasonably withheld, conditioned or delayed), (C) as set forth in Section 7.1 of the Smith Disclosure Letter, or (D) as required by Applicable Law, Smith will not and will not permit any of its Subsidiaries to:

. . .

(viii) acquire or agree to acquire by merging or consolidating with, or by purchasing an equity interest in or a substantial portion of the assets or properties of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, in each case (1) for consideration in excess of $30 million in respect of any one acquisition or for aggregate consideration for all such acquisitions in excess of $100 million in 2010 and $30 million in the aggregate in 2011 or (2) where a filing under the HSR Act or any non-U.S. competition, antitrust or premerger notification laws is required;

k. Protecting attorney-client and other privileges

The parties shall take reasonable efforts to share information protected from disclosure under the attorney-client privilege, work product doctrine, joint defense privilege or any other privilege pursuant to this section so as to preserve any applicable privilege.

VII. Litigation Covenants

a. Simple covenants

(i) Example 1

Each of the parties hereto agrees to cooperate and use its reasonable best efforts to vigorously contest and resist any action or proceeding, including administrative or judicial action or proceeding, and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order (whether temporary, preliminary or permanent) that is in effect and that restricts, prevents or prohibits consummation of the Merger and the transactions contemplated by this Agreement, including reasonably pursuing administrative and judicial appeal.

(ii) Example 2

Subject to the terms and conditions of this Agreement and Section 5.04(b) and Section 5.04(d) below and except with regard to matters related to the Antitrust Laws and clearances and litigation thereunder, each of the parties hereto shall cooperate with the other parties and use (and shall cause their respective Subsidiaries to use) their respective reasonable best efforts to promptly . . . . (vi) defend or contest any claim, suit, action or other proceeding brought by a third party that would otherwise prevent or materially impede, interfere with, hinder or delay the consummation of the transactions described herein.

(iii) Example 3

In furtherance and not in limitation of the covenants of the parties contained in this Section 5.4, if any administrative or judicial action or proceeding, including any proceeding by a private party, is instituted (or threatened to be instituted) challenging any transaction contemplated by this Agreement as violative of any Antitrust Law, each of the Company and Parent shall use best efforts to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the Transactions.

b. Detailed obligation (with reasonable best efforts defined)

(d) In the event that any investigation or administrative or judicial action or proceeding is instituted (or threatened to be instituted) by a Governmental Entity or private party challenging the Offer, the Merger or any other transaction contemplated by this Agreement,

or any other agreement contemplated hereby, each of Parent, Merger Sub and the Company shall cooperate with each other and use its respective reasonable best efforts to respond to and contest and resist any such investigation, action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other Order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the transactions contemplated by this Agreement. For the purposes of this Section 6.03(d), reasonable best efforts shall include, without limitation, the defense through litigation on the merits of any claim asserted in any court, agency or other proceeding by any person, entity or Governmental Entity, seeking to delay, restrain, prevent, enjoin or otherwise prohibit consummation of such transactions, however, in no event shall any of Parent, Merger Sub or the Company be required to make or agree to any divestiture, hold separate agreement, sale or other disposition of the assets or businesses of the Parent, its subsidiaries, Merger Sub or the Company or its subsidiaries to meet their respective obligations under this Agreement.

c. Buyer election

(i) With delay of closing for appeal

Notwithstanding anything in this Agreement to the contrary, Parent shall have the right, but not the obligation, to oppose by refusing to consent to, through litigation or otherwise any request, attempt or demand by any Governmental Authority or other Person for any divestiture, hold separate condition or any other restriction with respect to any assets, businesses or product lines of either Parent or the Company and shall have the obligation to defend litigation instituted by such Governmental Authority or other Person with respect to the legality of the Mergers under applicable Competition Laws. Notwithstanding the foregoing, Parent shall take all actions required under this Section 5.5, in a timely manner, as are necessary to achieve the clearance or approval of the Governmental Authority or other Person prior to the Termination Date, *provided, however*, that Parent shall not be required to take actions that would amount to a Burdensome Condition. If there is no decree, order or injunction restricting or prohibiting the Mergers but an appeal is pending, Parent shall not be obligated to proceed to close the Mergers until the Termination Date, as such date may be extended pursuant to Section 8.1(b), and if such appeal remains pending on such Termination Date, Parent shall be obligated to close the Mergers on such date, provided that on such date all other conditions to Closing have then been satisfied. The parties shall take reasonable efforts to share information protected from disclosure under the attorney-client privilege, work product doctrine, joint defense privilege or any other privilege pursuant to this section so as to preserve any applicable privilege.

d. Buyer control of litigation strategy

(i) Example 1

(g) In the event of any Action by a Governmental Authority or other third party challenging the Transactions, each of Parent, Merger Sub and the Company shall cooperate with each other and use their respective reasonable best efforts to respond to and contest and resist any such Action and to have vacated, lifted, reversed or overturned any Order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the Transactions prior to the Extended Outside Date. Notwithstanding anything to the contrary in this Section 6.09, with respect to Antitrust Laws, Parent shall be entitled to direct and control all communications, strategy and defense of the Transactions in any Action by, or negotiations with, any Governmental Authority or other Person relating to the Transactions or regulatory filings. For avoidance of doubt, neither the Company nor any of its Subsidiaries shall make any offer, acceptance or counter-offer or otherwise engage in negotiations or discussions with any Governmental Authority or other Person with respect to any Divestiture Action required to permit the consummation of the Transactions by the Extended Outside Date or any sale or other disposal or hold separate required to comply with Wisconsin Statutes §§ 157.067(2) and 445.12(6), except in either case as required by the Governmental Authority or as specifically requested by or agreed with Parent. Nothing herein shall relieve Parent of its obligations under Section 6.09(f).

(ii) Example 2

(c) Notwithstanding any other provision of this Agreement, Acquiror shall have the absolute right to contest any challenge to this Agreement by any Governmental Entity, including contesting through a litigation proceeding initiated by the Commissioner of Competition, the U.S. Department of Justice or the U.S. Federal Trade Commission to enjoin the transactions contemplated by this Agreement, and to control all aspects of said litigation for the Parties, provided that (x) such actions do not prevent the satisfaction of the condition referred to in Section 6.1(f), as it relates to the approvals or clearances described in paragraphs 1 and 3 of Schedule E hereto, by the Outside Date, nor limit the obligations of Acquiror to take the actions set forth in Section 9.5(a) if required to allow satisfaction of the condition referred to in Section 6.1(f), as it relates to the approvals or clearances described in paragraphs 1 and 3 of Schedule E hereto, by the Outside Date, and (y) Acquiror affords Company with reasonable advance written notice of any such contest or litigation, an opportunity to participate in the development and formulation of the legal strategy of such contest or litigation, an opportunity to participate in all associated proceedings, and Acquiror shall consider in good faith Company's views and opinions in all material respects related to such matters (provided, that, notwithstanding clause (y)

above, Acquiror shall retain full discretion and authority with respect to the aspects of any such litigation described in clause (y) above).

e. Obligation (with buyer control of strategy)

(i) Example 1

(d) In the event that any administrative or judicial action or proceeding is instituted (or threatened to be instituted) by a Governmental Authority or private party challenging the Merger or any other Transaction, each of Parent, Merger Sub and the Company shall cooperate in all respects with each other and use its respective commercially reasonable efforts to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the Transactions. Parent shall be entitled to direct the antitrust defense of the Merger or any other Transactions, or negotiations with, any Governmental Authority or other Person relating to the Merger or regulatory filings under applicable Antitrust Law, subject to the provisions of Sections 7.07(a), (b), (c) and (e). The Company shall not make any offer, acceptance or counter-offer to or otherwise engage in negotiations or discussions with any Governmental Authority with respect to any proposed settlement, consent decree, commitment or remedy, or, in the event of litigation, discovery, admissibility of evidence, timing or scheduling, except as specifically requested by or agreed with Parent. The Company shall use its commercially reasonable efforts to provide full and effective support of Parent in all material respects in all such negotiations and discussions to the extent requested by Parent.

(ii) Example 2

In the event that any permanent or preliminary injunction or other order is entered or becomes reasonably foreseeable to be entered in any proceeding that would make consummation of the transactions contemplated hereby in accordance with the terms of this Agreement unlawful or that would restrain, enjoin or otherwise prevent or materially delay the consummation of the transactions contemplated by this Agreement, Parent shall take promptly any and all steps necessary to vacate, modify or suspend such injunction or order so as to permit such consummation prior to the Termination Date. The Company shall cooperate with Parent and shall use its reasonable best efforts to assist Parent in resisting and reducing any Divestiture Action. The parties shall take reasonable efforts to share information protected from disclosure under the attorney-client privilege, work product doctrine, joint defense privilege or any other privilege pursuant to this section so as to preserve any applicable privilege.

(iii) Example 3 (with carve-out for settlements prior to Outside Date)

In furtherance and not in limitation of the covenants of the parties contained in this Section 6.3, if any administrative or judicial action or proceeding, including any proceeding by a Governmental Entity or any other person is instituted (or threatened to be instituted) challenging any of the Transactions as violative of any Law, each of the Company and Parent shall use reasonable best efforts to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the Transactions. Subject to the terms of this Agreement, Parent shall be entitled to direct the defense of the Transaction in any investigation or litigation by, or negotiations with, any Governmental Entity or other Person relating to the Merger or regulatory filings under applicable Regulatory Law. Nothing in this Agreement shall restrict Parent from (if it so chooses) opposing by refusing to consent to, through litigation or otherwise, any request, attempt or demand by any Governmental Entity or other person for any divestiture, hold separate condition or any other restriction with respect to any assets, businesses or product lines of either Parent or the Company, in each case, to the extent doing so would not and would not reasonably be expected to prevent the Closing from occurring by the Outside Date.

(iv) Example 4

If any objections are asserted with respect to the transactions contemplated hereby under any Regulatory Law or if any suit or proceeding, whether judicial or administrative, is instituted by any Governmental Entity or any private party challenging any of the transactions contemplated hereby as violative of any Regulatory Law, each of Parent and the Company shall use its reasonable best efforts to: (i) oppose or defend against any action to prevent or enjoin consummation of this Agreement (and the transactions contemplated herein), and/or (ii) take such action as reasonably necessary to overturn any regulatory action by any Government Entity to block consummation of this Agreement (and the transactions contemplated herein), including by defending any suit, action, or other legal proceeding brought by any Governmental Entity in order to avoid entry of, or to have vacated, overturned or terminated, including by appeal if necessary, in order to resolve any such objections or challenge as such Governmental Entity or private party may have to such transactions under such Regulatory Law so as to permit consummation of the transactions contemplated by this Agreement, *provided* that Parent and Company shall cooperate with one another in connection with all proceedings related to the foregoing and Parent shall have final decision-making authority on any action or decision required to insure that Parent can meet its obligations in this Section 6.3 and its ability to consummate the transaction.

(v) Example 5

Parent and the Company shall, and shall cause each of their respective Subsidiaries to, defend through litigation on the merits any claim asserted in court or administrative or other tribunal by any Person (including any Governmental Authority) in order to avoid entry of, or to have vacated or terminated, any decree, order or judgment (whether temporary, preliminary or permanent) that would prevent the Closing prior to the Outside Date; *provided, however*, that such litigation in no way limits the obligations of the parties to comply with their reasonable best efforts obligations under the terms of this Section 7.08. Parent shall have the sole and exclusive right to direct and control any litigation, negotiation or other action, with counsel of its own choosing, and the Company agrees to cooperate with Parent with respect thereto; *provided, however*, that, with respect to the jurisdictions referenced in Section 8.01(d) [jurisdictions in which antitrust approval is a condition precedent], Parent shall consult in advance with the Company and in good faith take the Company's views into account regarding the overall strategic direction of the defense of any such litigation and consult with the Company prior to taking any material substantive positions, making dispositive motions or other material substantive filings or entering into any negotiations concerning such litigation.

f. Buyer option to litigate

Notwithstanding anything in this Agreement to the contrary: (i) Subject to Section 5.04(b), Parent shall have the unilateral right to determine whether or not the parties will litigate with any Governmental Entities to oppose any enforcement action or remove any court or regulatory orders impeding the ability to consummate the Merger.

g. Buyer option to litigate with reasonable good faith belief

Notwithstanding anything in this Agreement to the contrary, the parties hereto understand and agree that "reasonable best efforts" shall not require Parent to . . . (iii) litigate or participate in the litigation of any proceeding involving the FCC, the Federal Trade Commission or Department of Justice, whether judicial or administrative . . . except, in the case of this clause (iii), to the extent Parent determines in its reasonable good faith judgment that there is a reasonable prospect of success in relation to such litigation and that the participation by Parent in such litigation would not pose a material risk of the imposition of a Burdensome Condition;

h. Requirement to litigate (except as otherwise agreed)

If any administrative or judicial action or proceeding is instituted (or threatened to be instituted) by a Governmental Authority challenging the transactions contemplated by this Agreement as violative of the HSR Act or any applicable antitrust or competition Law,

each of the Parent and the Company shall, and shall cause their respective Representatives to, cooperate to contest and resist, except insofar as the Parent and the Company may otherwise agree, any such action or proceeding, including any action or proceeding that seeks a temporary restraining order or preliminary injunction that would prohibit, prevent or restrict consummation of the transactions contemplated by this Agreement.

i. No obligation to continue to litigate past termination date

The parties hereto acknowledge and agree that the obligations of the Company hereunder shall not include any requirement of the Company to defend any proceeding challenging this Agreement or the consummation of the Transactions beyond the Outside Date.

VIII. Risk-Shifting Covenants

a. No obligation to make divestitures proviso

(i) Simple proviso

Notwithstanding the foregoing, nothing in this Section 7.5 or otherwise in this Agreement shall require Purchaser or any Purchaser Affiliate to propose, negotiate, effect or agree to, the sale, divestiture, license or other disposition of any assets or businesses of Purchaser or any Purchaser Affiliate (including the Purchased Assets) or otherwise take any action that limits the freedom of action with respect to, or its ability to retain any of the businesses, product lines or assets of Purchaser or any Purchaser Affiliate (including the Purchased Assets).

(ii) More detailed proviso (Example 1)

Notwithstanding anything in this Agreement to the contrary, in no event will Purchaser be obligated to propose or agree to accept any undertaking or condition, to enter into any consent decree, to make any divestiture, to accept any operational restriction, or take any other action that, in the reasonable judgment of Purchaser, could be expected to limit the right of Purchaser to own or operate all or any portion of their respective businesses or assets. With regard to any Governmental Antitrust Entity, neither the Seller nor any of its respective affiliates shall, without Purchaser's written consent, in Purchaser's sole discretion, discuss or commit to any divestiture transaction, or discuss or commit to alter their businesses or commercial practices in any way, or otherwise take or commit to take any action that limits Purchaser's freedom of action with respect to, or Purchaser's ability to retain any of the businesses, product lines or assets of, the [business to be acquired] or otherwise receive the full benefits of this Agreement.

(iii) More detailed proviso (Example 2)

Nothing in this Section 5.6 shall require Parent to offer, accept or agree to (i) dispose or hold separate any part of its or INX's businesses, operations, assets or product lines (or a combination of Parent's and INX's respective businesses, operations assets or product lines), (ii) not compete in any geographic area or line of business, (iii) restrict the manner in which, or whether, Parent, INX, the Surviving Company or any of their affiliates may carry on business in any part of the world or (iv) pay any consideration (other than ordinary course filing, application or similar fees and charges) to obtain any approval, consent or waiver from a third party necessary to consummate the Transactions.

(iv) No obligation to litigate or divest

Notwithstanding anything in this Agreement to the contrary, it is expressly understood and agreed that: (i) neither Parent nor Merger Sub shall have any obligation to litigate or contest any administrative or judicial action or proceeding or any decree, judgment, injunction or other order, whether temporary, preliminary or permanent; and (ii) neither Parent nor Merger Sub shall be under any obligation to make proposals, execute or carry out agreements, enter into consent decrees or submit to orders providing for (A) the sale, divestiture, license or other disposition or holding separate (through the establishment of a trust or otherwise) of any assets or categories of assets of Parent or any of its Affiliates or the Company or any of its Subsidiaries, (B) the imposition of any limitation or regulation on the ability of Parent or any of its Affiliates to freely conduct their business or own such assets, or (C) the holding separate of the shares of Company Common Stock or any limitation or regulation on the ability of Parent or any of its Affiliates to exercise full rights of ownership of the shares of Company Common Stock, other than, in the case of clauses (A), (B) or (C) above, for any such sale, divestiture, license, disposition, holding separate, limitation or regulation that would be immaterial to the Parent and/or the Company and their respective Subsidiaries, taken as a whole (any of the foregoing, an "Antitrust Restraint").

b. Unconditional obligation to propose and accept settlements ("Hell or high water" obligation)

(i) Example 1

Without limiting the generality of the Buyers' undertaking pursuant to Section 4.2(a), each Buyer agrees to use its best efforts, and to take any and all steps necessary, to eliminate each and every impediment under any antitrust, competition or trade regulation law that is asserted by any Governmental Entity (through the Head of the Governmental Entity or Division thereof) or any other party so as to enable the Parties hereto to close the transactions contemplated hereby, prior to the Termination Date, including but not limited

to (i) negotiating, committing to and effecting by consent decree, hold separate orders, or otherwise, the sale, divesture or disposition of such of the Buyers' assets, properties or businesses or of the Company's properties or businesses to be acquired by it pursuant hereto, and the entrance into such other arrangements, as are necessary in order to effect the dissolution of any injunction, temporary restraining order or other order in any suit or proceeding, which would otherwise have the effect of preventing the consummation of the transactions contemplated by this Agreement prior to the Termination Date and (ii) defending through litigation on the merits any claim asserted in court by any party in order to avoid entry of, or to have vacated or terminated, any decree, order or judgment (whether temporary, preliminary or permanent) that would prevent the Closing from occurring prior to the Termination Date; *provided, however*, that such litigation in no way limits the obligation of each Buyer to use its best efforts, and to take any and all steps necessary, to eliminate each and every impediment under any antitrust, competition or trade regulation law to close the transactions contemplated hereby prior to the Termination Date.

(ii) Example 2

Notwithstanding anything herein to the contrary, Parent shall take any and all action necessary, including but not limited to (i) selling or otherwise disposing of, or holding separate and agreeing to sell or otherwise dispose of, assets, categories of assets or businesses of the Company or Parent or their respective Subsidiaries; (ii) terminating existing relationships, contractual rights or obligations of the Company or Parent or their respective Subsidiaries; (iii) terminating any venture or other arrangement; (iv) creating any relationship, contractual rights or obligations of the Company or Parent or their respective Subsidiaries or (v) effectuating any other change or restructuring of the Company or Parent or their respective Subsidiaries (and, in each case, to enter into agreements or stipulate to the entry of an order or decree or file appropriate applications with any Antitrust Authority in connection with any of the foregoing and in the case of actions by or with respect to the Company or its Subsidiaries or its or their businesses or assets; by consenting to such action by the Company and provided, that any such action may, at the discretion of the Company, be conditioned upon consummation of the Merger) (each a "Divestiture Action") to ensure that no Governmental Entity enters any order, decision, judgment, decree, ruling, injunction (preliminary or permanent), or establishes any law, rule, regulation or other action preliminarily or permanently restraining, enjoining or prohibiting the consummation of the Merger, ("Antitrust Prohibition") or to ensure that no Antitrust Authority with the authority to clear, authorize or otherwise approve the consummation of the Merger, fails to do so by the Termination Date. In the event that any action is threatened or instituted challenging the Merger as violative of any Premerger Notification Rule or other Antitrust Law, Parent shall take all action necessary, including but not limited to any Divestiture Action to avoid or resolve such action.

(iii) Example 3

Notwithstanding any other provision of this Agreement to the contrary, Parent shall and, shall cause its Subsidiaries to, propose, negotiate, offer to commit and effect (and if such offer is accepted, commit to and effect), by consent decree, hold separate order, or otherwise, the sale, divestiture or disposition of such assets or businesses of Parent or any of its Subsidiaries, or effective as of the Effective Time, the Surviving Corporation or its Subsidiaries, or otherwise offer to take or offer to commit to take any action (including any action that limits its freedom of action, ownership or control with respect to, or its ability to retain or hold, any of the businesses, assets, product lines, properties or services of Parent, the Surviving Corporation, or any of their respective Subsidiaries) which it is lawfully capable of taking and if the offer is accepted, take or commit to take such action, in each case, as may be required in order to avoid the commencement of any Action to prohibit the Merger or any other transaction contemplated by this Agreement, or if already commenced, to avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order or other order in any Action so as to enable the Closing to occur as soon as reasonably possible (and in any event, not later than the Outside Date). Company shall not, without the written consent of Parent, publicly or before any Governmental Entity or other third party, offer, suggest, propose or negotiate, and shall not commit to or effect, by consent decree, hold separate order or otherwise, any sale, divestiture, disposition, prohibition or limitation or other action of a type described in this Section 5.5(b).

(iv) Example 4

The required actions by Parent hereunder shall include, without limitation, the proposal, negotiation and acceptance by Parent prior to the Outside Date of (i) any and all divestitures of the businesses or assets of it or its subsidiaries or its controlled affiliates or of the Company or any of the Company Subsidiaries, (ii) any agreement to hold any assets of Parent or its subsidiaries or its controlled affiliates or of the Company or any of the Company Subsidiaries separate, (iii) any agreement to license any portion of the business of Parent or its subsidiaries or its controlled affiliates or of the Company or any of the Company Subsidiaries, (iv) any limitation to or modification of any of the businesses, services or operations of Parent or its subsidiaries or its controlled affiliates or, following the Closing, of the Company or any of the Company Subsidiaries, and (v) any other action (including any action that limits the freedom of action, ownership or control with respect to, or ability to retain or hold, any of the businesses, assets, product lines, properties or services of Parent or its subsidiaries or its controlled affiliates or of the Company or any of the Company Subsidiaries), in each case as may be required by any applicable Governmental Entity in order to obtain approval for the Transactions.

(iv) Example 5

Parent (including by its Subsidiaries) agrees to take, or cause to be taken (including by its Subsidiaries), any and all steps and to make, or cause to be made (including by its Subsidiaries), any and all undertakings necessary to resolve such objections, if any, that a Governmental Authority may assert under any Antitrust Law with respect to the Transactions, and to avoid or eliminate each and every impediment under any Antitrust Law that may be asserted by any Governmental Authority with respect to the Transactions, in each case, so as to enable the Closing to occur as promptly as practicable and in any event no later than the Extended Walk-Away Date, including, without limitation, (x) proposing, negotiating, committing to and effecting, by consent decree, hold separate order, or otherwise, the sale, divestiture or disposition of any businesses, assets, equity interests, product lines or properties of Parent or the Company (or any of their respective Subsidiaries) or any equity interest in any joint venture held by Parent or the Company (or any of their respective Subsidiaries), (y) creating, terminating, or divesting relationships, ventures, contractual rights or obligations of the Company or Parent or their respective Subsidiaries and (z) otherwise taking or committing to take any action that would limit Parent's freedom of action with respect to, or its ability to retain or hold, directly or indirectly, any businesses, assets, equity interests, product lines or properties of Parent or the Company (including any of their respective Subsidiaries) or any equity interest in any joint venture held by Parent or the Company (or any of their respective Subsidiaries), in each case as may be required in order to obtain all approvals, consents, clearances, expirations or terminations of waiting periods, registrations, permits, authorizations and other confirmations required directly or indirectly under any Antitrust Law or to avoid the commencement of any action to prohibit the Transactions under any Antitrust Law, or, in the alternative, to avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order or other order in any action or proceeding seeking to prohibit the Transactions or delay the Closing beyond the Extended Walk-Away Date. To assist Parent in complying with its obligations set forth in this Section 5.4, the Company shall, and shall cause its Subsidiaries to, enter into one or more agreements requested by Parent to be entered into by any of them prior to the Closing with respect to any transaction to divest, hold separate or otherwise take any action that limits the Company's or its Subsidiaries' freedom of action, ownership or control with respect to, or their ability to retain or hold, directly or indirectly, any of the businesses, assets, equity interests, product lines or properties of the Company or any of its Subsidiaries or any equity interest in any joint venture held by the Company or any of its Subsidiaries (each, a "Divestiture Action"); *provided, however*, that (i) the consummation of the transactions provided for in any such agreement for a Divestiture Action (a "Divestiture Agreement") shall be conditioned upon the Closing or satisfaction of all of the conditions to Closing in a case where the Closing will occur immediately following such Divestiture Action (and where Parent has irrevocably committed to effect the Closing immediately following such Divestiture Action)

and (ii) Parent shall indemnify for and hold the Company and its Subsidiaries harmless from all costs, expenses and liabilities incurred by the Company or its Subsidiaries arising from or relating to such Divestiture Agreement (other than any of the foregoing arising from the breach by the Company or any applicable Subsidiary of such Divestiture Agreement).

(v) Example 6

Parent shall determine, direct and have full control over the strategy and process by which the parties will seek required approvals under Antitrust Laws, including the sole right to make all determinations with respect to the matters described in the next sentence. In furtherance of, and not in limitation of, the covenants of the parties contained in Section 6.04(a), Section 6.04(b), Section 6.04(c) and Section 6.04(d), Parent shall use its best efforts to take, or cause to be taken, all such further actions as may be necessary to resolve such objections, if any, as the FTC, the DOJ, state antitrust enforcement authorities or competition authorities of any other nation or other jurisdiction or any other Person may assert under any Law with respect to the Merger and the other transactions contemplated hereby, and shall use its best efforts to avoid or eliminate each and every impediment under any Law that may be asserted by any Governmental Entity or Self-Regulatory Organization with respect to the Merger so as to enable the Closing to occur no later than the Outside Date, including (x) proposing, negotiating, committing to and effecting, by consent decree, hold separate order or otherwise, regardless of the consideration, the sale, divestiture, license or disposition of any assets or businesses of the Company or its Subsidiaries or controlled Affiliates or of Parent or its Subsidiaries or controlled Affiliates, and (y) otherwise taking or committing to take any actions that after the Closing Date would limit the freedom of Parent, the Company or their Subsidiaries' or controlled Affiliates' freedom of action with respect to, or its ability to retain, one or more of its or its Subsidiaries' businesses, product lines or assets, in each case as may be required in order to effect the satisfaction of the conditions to the Merger set forth in Article VII prior to the Outside Date and to avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order or other Order in any suit or proceeding that would otherwise have the effect of preventing the Closing or delaying the Closing beyond the Outside Date; *provided, however*, that neither the Company nor any of its Subsidiaries shall be required to become subject to, or consent or agree to or otherwise take any action with respect to, any Order, requirement, condition, understanding or agreement of or with a Governmental Entity or Self-Regulatory Organization to sell, to license, to hold separate or otherwise dispose of, or to conduct, restrict, operate, invest or otherwise change the assets or business of the Company or any of its Affiliates, unless such Order, requirement, condition, understanding or agreement is binding on the Company only in the event that the Closing occurs.

c. Limitation of obligation to make divestitures

(i) Divestiture obligation capped by revenues (Example 1)

(e) Nothing contained in this Agreement requires Parent or Merger Sub to take, or cause to be taken, and neither Parent nor Merger Sub shall be required to take, or cause to be taken, any Divestiture Action with respect to any of the assets, businesses or product lines of the Company or any of its Subsidiaries, or of Parent or any of its Subsidiaries, or any combination thereof, if the overlapping assets, businesses or product lines required to be divested in order to obtain a Company Approval under any Regulatory Law represented in the aggregate in excess of $1.3 billion of revenue for the 12 months ending December 31, 2007 (excluding from such calculation any non-merchant revenues and any revenue of any non-overlapping assets, businesses or product lines which may be divested as part of the applicable Divestiture Action); *provided, however*, that other than in the case of the Company's assets, businesses and product lines of or marketed or otherwise conducted through the entity identified on Schedule 5.6(e), Parent shall not be required to divest any assets, businesses or product lines of the Company or any of its Subsidiaries. The parties agree that the calculation of revenue shall (x) be measured by reference to the lowest such revenue (excluding any non-merchant revenue) of Parent or the Company for each such overlapping asset, business or product line so required to be divested to obtain such Company Approval, regardless of which asset, business or product line Parent actually divests and (y) in the case of the entity identified on Schedule 5.6(e), only include the Company's portion of the revenue generated from or through such entity.

(ii) Divestiture obligation capped by revenues (Example 2)

(d) Notwithstanding the foregoing, and subject to the remainder of this Section 6.3(d) and Section 6.3(e), Parent shall and, shall cause its Subsidiaries to, propose, negotiate, offer to commit and effect (and if such offer is accepted, commit to and effect), by consent decree, hold separate order, or otherwise, the sale, divestiture or disposition of such assets or businesses of Parent or any of its Subsidiaries, or effective as of the Effective Time, the Company or its Subsidiaries, or otherwise offer to take or offer to commit to take any action (including any action that limits its freedom of action, ownership or control with respect to, or its ability to retain or hold, any of the businesses, assets, product lines, properties or services of Parent, any of its Subsidiaries, the Surviving Corporation or its Subsidiaries) which it is lawfully capable of taking and if the offer is accepted, take or commit to take such action, in each case, as may be required in order to avoid the commencement of any Action to prohibit the Merger or any other transaction contemplated by this Agreement, or if already commenced, to avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order or other order in any Action so as to enable the Closing to occur as soon as reasonably possible (and in any event, not later

than the Initial Termination Date, or if such date is extended pursuant to the terms of Section 8.1(b), the Termination Date). Notwithstanding the foregoing, neither Parent nor any of its Subsidiaries shall be required to propose, negotiate, commit to or effect any such sale, divestiture or disposition of assets or business of Parent or the Company, or any of their respective Subsidiaries, or offer to take or offer to commit to take any such action where such action, sale, divestiture or disposition, individually or in the aggregate, would be of assets or a business of the Company or its Subsidiaries or Parent or any of its Subsidiaries, and such action, sale, divestiture or disposition would result in the one year loss of net sales revenues (as measured by net 2008 sales revenue) in excess of $3,000,000,000. For purposes of calculating the loss of net sales revenue in the preceding sentence, the least amount of lost revenues (as measured by net 2008 sales revenue) as may be required to avoid the commencement of any Action to prohibit the Merger or any other transaction contemplated by this Agreement, or if already commenced, to avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order or other order in any Action, shall be used in the event that Parent elects to offer any action, sale, divestiture or disposition that would result in a higher loss of net sales revenue (as measured by net 2008 sales revenue) than reasonably required to achieve such result.

(iii) Divestiture obligation capped by revenues (Example 3)

[P]rovided , however , that nothing contained in this Agreement shall require Parent, the Company or a Merger Sub to take, or cause to be taken, any action with respect to any of the assets, businesses or product lines of the Company or any of its Subsidiaries, or of Parent or any of its Subsidiaries (including the Surviving Company), or any combination thereof, (x) that is not conditioned on the consummation of the Mergers or (y) if such action would require the divestiture or holding separate (or any other remedy) of or with respect to any assets of Parent, the Company or any of their Subsidiaries representing, in the aggregate, in excess of $2,000,000,000 of revenue generated between (and inclusive of) January 1, 2013 and December 31, 2013 (any such requirement set forth in clause (y), a " Burdensome Condition ").

(iv) Divestiture obligation capped by EBITDA of all divestitures

(d) Notwithstanding anything to the contrary in this Agreement, neither Parent nor any of its Affiliates shall be required to agree to any Divestiture Action(s) where such Divestiture Action(s), collectively, would result in a loss of EBITDA generated by Parent or the Company, or any of their respective Subsidiaries, collectively, in excess of $60.0 million based on the EBITDA calculations set forth in Schedule 6.09(d); *provided, however*, that any sale or other disposal, or holding separate and agreeing to sell or otherwise dispose, of assets required to comply with Wisconsin Statutes §§ 157.067(2) and 445.12(6) shall be disregarded for purposes of determining any loss of EBITDA pursuant to this

Section 6.09(d); *provided further* that nothing herein shall relieve Parent of its obligations under Section 8.03. Parent agrees to sell or otherwise dispose of, or hold separate and agree to sell or otherwise dispose of, such assets of Parent or the Company, or any of their respective Subsidiaries, to ensure compliance with such Wisconsin Statutes so as to enable the Closing to occur as promptly as reasonably practicable and in no event later than the Extended Outside Date; *provided, however*, that the consummation of any such sale or other disposal or hold separate shall be conditioned upon the Closing. To assist Parent in complying with its obligations set forth in this Section 6.09(d), at Parent's request the Company shall, and shall cause its Subsidiaries to, enter into one or more agreements prior to the Closing with respect to any such sale or other disposal or hold separate; provided, however, that the consummation of any such sale or other disposal or hold separate shall be conditioned upon the Closing.

(v) Divestiture obligation limited to acquiring company's assets and capped by revenues

Nothing in this Section 6.7 or in this Agreement will require Parent or Merger Sub to take any action, including entering into any consent decree, hold separate orders or other arrangements, that (i) requires the divestiture of any assets of any of the Company, Parent or Merger Sub or any of their Subsidiaries, (ii) limits Parent's or its Subsidiaries' freedom of action with respect to, or its or their ability to retain the Company and its Subsidiaries or any portion thereof or any of Parent's or its affiliates' other assets or businesses or (iii) in Parent's reasonable judgment would be expected to have a material adverse impact on any of its or its Subsidiaries' businesses or the businesses to be acquired by it pursuant to this Agreement either individually or in the aggregate; *provided, however*, that Parent shall agree to license or divest those of Parent's assets or businesses or products or product lines that individually or in the aggregate generated total worldwide revenues of up to the equivalent of USD $12,000,000 in the aggregate in 2003 if necessary to obtain any required regulatory approval prior to the Termination Date.

(vi) Divestiture obligation limited to acquiring company's assets and capped by percent of revenues

[P]rovided, however, that nothing in this Agreement, including this Section 6.5(a) or the "reasonable best efforts" or other similar standard generally, shall require, or be construed to require, Parent to proffer to, or agree to, or to permit the Company to proffer to or agree to, with respect to assets or businesses of Parent, the Company or their respective Subsidiaries, sell, divest, lease, license, transfer, dispose of or otherwise encumber or hold separate or agree to sell, divest, lease, license, transfer, dispose of or otherwise encumber before or after the Effective Time, any assets, licenses, operations, rights, product lines, businesses or interest therein of Parent, the Company or any of their respective Affiliates (or to consent to any sale, divestiture, lease, license, transfer, disposition or other encumberment by the Company of any of its assets, licenses, operations, rights, product

lines, businesses or interest therein or to any agreement by the Company to take any of the foregoing actions) or to agree to any material changes (including through a licensing arrangement) or restriction on, or other impairment of Parent's ability to own or operate, any such assets, licenses, operations, rights, product lines, businesses or interests therein or Parent's ability to vote, transfer, receive dividends or otherwise exercise full ownership rights with respect to the stock of the Surviving Company, *except that* Parent acknowledges that its reasonable best efforts under this Section 6.5(a)(i) include an obligation that Parent grant a license in respect of, dispose of or hold separate, or enter into an agreement or commitment to grant a license in respect of, dispose of or hold separate, assets, licenses, operations, rights, businesses or interests therein or business product lines of the Company and its Subsidiaries in connection with the performance of its obligations under this Section 6.5(a)(i), if, and only if, all of the following criteria are satisfied: (A) such license, disposal or hold separate (the "Consent Agreement") is required or imposed by a Governmental Entity to permit the consummation of the Merger or the other transactions contemplated by this Agreement under applicable Antitrust Laws and (B) the assets, licenses, operations, rights, businesses or interests therein or business product lines that would be divested or held separate or otherwise affected by all Consent Agreements collectively produced gross revenues in an amount that is less than 5% of the gross revenues of the Company and its Subsidiaries during the 2009 calendar year (the "Consent Cap").

(vii) Divestiture obligation proviso capped by diminished revenues, profits, or value

Neither Parent nor Merger Sub shall be required to make (or cause its applicable Affiliates or Subsidiaries to make) any such concessions or undertakings (x) unless such concessions or undertakings are conditioned on the consummation of the Merger, and (y) to the extent that, in the sole judgment of Parent, such concessions or undertakings would reasonably be expected to require Parent and its Affiliates (including, following the Merger, the Company and its Subsidiaries) to, directly or indirectly, incur costs, expenses, liabilities or losses of any kind, suffer any diminution of value, lose or forfeit any revenues, profits or expected benefits of the Merger, or diminish the combined value of Parent, the Company and their respective Subsidiaries following the Merger, in an aggregate amount in excess of $80,000,000.

(viii) Divestiture obligation proviso capped by multiple criteria

provided, however, that, Aristotle shall agree, consistent with the terms hereof, conditioned on the Closing, to the extent necessary to ensure satisfaction of the conditions set forth in Sections 6.1(c), 6.1(e) and 6.2(d) on or prior to the Outside Date (as the same may be extended) to (1) the divestiture or disposition of one mail order dispensing facility of Aristotle, Plato or any of their respective Subsidiaries, *provided* it shall not be the Aristotle

facility located in St. Louis, Missouri, (2) the divestiture or disposition of property, plant and equipment associated with specialty pharmacy dispensing or infusion facilities of Aristotle, Plato or any of their respective Subsidiaries having a net book value not in excess of $30 million in the aggregate, *provided* it shall not include any property, plant or equipment at the Aristotle facility located in Indianapolis, Indiana, (3) the divestiture, disposition, termination, expiration, assignment, delegation, novation or transfer of Contracts of Aristotle, Plato or their respective Subsidiaries which generated, collectively, EBITDA not in excess of $115 million during the most recently available twelve (12) calendar month period ending on the applicable date of such agreement relating to such divestiture, disposition, termination, expiration, assignment, delegation, novation or transfer; *provided, however*, with respect to this subclause (3), in no event shall, in the case of pharmacy benefits management customer Contracts of Aristotle, Plato or their respective Subsidiaries, the aggregate annual number of adjusted prescription drug claims subject to the foregoing obligation exceed 35 million (where "adjusted prescription drug claims" means (x) retail prescription drug claims, plus the product of (y)(i) mail prescription drug claims multiplied by (ii) three (3), such calculation to be performed using claims made during the preceding twelve (12) calendar month period); *provided, further*, as between Aristotle and Plato, the determination of how any of the actions specified in (1)-(3) above will be implemented shall be made by Aristotle. For purposes of this Section 5.8, "EBITDA" means EBITDA as calculated by Aristotle in a manner consistent with the methodology utilized in the earnings releases Aristotle has publicly filed with SEC.

(ix) Divestiture obligation capped by revenues and material adverse impact

(d) Notwithstanding anything to the contrary contained in this Section 5.6 or elsewhere in this Agreement, neither Parent nor Merger Sub shall have any obligation under this Agreement to: (i) dispose of, transfer or exclusively license or cause any of its Subsidiaries to dispose of, transfer or exclusively license any assets (including any technology, Software or other Intellectual Property or Intellectual Property Right) to any Person, or to commit to cause any of the Acquired Corporations to dispose of, transfer or exclusively license any assets (including any technology, Software or other Intellectual Property or Intellectual Property Right) to any Person; (ii) discontinue or cause any of its Subsidiaries to discontinue, or commit to cause any of the Acquired Corporations to discontinue, offering any product or service; (iii) non-exclusively license or otherwise make available, or cause any of its Subsidiaries to non-exclusively license or otherwise make available, to any Person any technology, Software or other Intellectual Property or Intellectual Property Right, or to commit to cause any of the Acquired Corporations to non-exclusively license or otherwise make available to any Person any technology, Software or other Intellectual Property or Intellectual Property Right; (iv) hold separate or cause any of its Subsidiaries to hold separate any assets or operations (either before or after the Closing Date), or to commit to cause any of the Acquired Corporations to hold separate any assets or operations;

or (v) make or cause any of its Subsidiaries to make any commitment, or to commit to cause any of the Acquired Corporations to make any commitment (to any Governmental Body or otherwise), regarding its future operations or the future operations of any of the Acquired Corporations; *provided, however*, that Parent shall be required to take the actions set forth in clauses (i) through (v) of this Section 5.6(d) if, but only if: (A) the parties are informed by the management of the Bureau of Competition of the FTC ("Bureau Management") that such actions are demanded and required as a condition to providing the Required Regulatory Approval; and (B) such actions, considered collectively, would not result in a Detriment. For purposes of this Section 5.6(d), an action so demanded and required by Bureau Management would be deemed to result in a "Detriment" if such action, considered together with all other actions so demanded and required by Bureau Management: (1) would have resulted in a reduction of the combined annual consolidated revenues of Parent, the Company and their respective Subsidiaries of at least $5,000,000 for the twelve-month period ended October 31, 2011 (any such reduction of at least $5,000,000, a "Specified Revenue Reduction") if such action had been taken immediately before such twelve-month period; or (2) would otherwise have an adverse impact that is material to the business of Parent or the business of the Acquired Corporations, taken as a whole. It is understood that, if the only actions so demanded and required by Bureau Management are actions of the type set forth in clause (i) or clause (ii) of the first sentence of this Section 5.6(d) ("Demanded Divestiture Actions"), then for purposes of clause (2) of the proviso to the preceding sentence, such Demanded Divestiture Actions will not be deemed to have an adverse impact that is material to the business of Parent or the business of the Acquired Corporations, unless such Demanded Divestiture Actions, considered collectively, would have resulted in a Specified Revenue Reduction had such Demanded Divestiture Actions been taken immediately before such 12-month period; *provided, however*, that it is also understood that (A) for purposes of determining whether a Detriment would occur, Demanded Divestiture Actions must be considered together with actions of the type set forth in clause (iii), clause (iv) and clause (v) of the first sentence of this Section 5.6(d), and (B) even if the Demanded Divestiture Actions would not themselves have resulted in a Specified Revenue Reduction, such Demanded Divestiture Actions may nonetheless be deemed to result in a Detriment when considered together with any actions of the type set forth in clause (iii), clause (iv) or clause (v) of the first sentence of this Section 5.6(d) that are demanded and required by Bureau Management.

(x) Divestiture obligation capped by definition of "reasonable best efforts"

(d) If any objections are asserted with respect to the transactions contemplated by this Agreement under any Antitrust Law (an "Antitrust Objection") or if any suit, action or proceeding is instituted (or threatened to be instituted) by any Governmental Entity or other Person challenging any of the transactions contemplated by this Agreement as violative of any Antitrust Law (an "Antitrust Challenge"), each of the parties shall use its reasonable

best efforts to resolve any such objections or challenges so as to permit consummation of the transactions contemplated by this Agreement. For purposes of this Section 4.05(d), "reasonable best efforts" by CVS shall include without limitation, CVS and/or the Purchaser (and, to the extent required by any Governmental Entity, their Subsidiaries and affiliates) entering into a settlement, undertaking, consent decree, stipulation or other agreement (a "Settlement") with a Governmental Entity regarding antitrust matters in connection with the transactions contemplated by this Agreement, including without limitation, entering into a Settlement that requires CVS or the Purchaser to hold separate (including by establishing a trust or otherwise) or to sell or otherwise dispose of particular assets and/or withdraw from doing business in particular geographic areas, to satisfy any Antitrust Objections or to settle any Antitrust Challenges, but, notwithstanding anything else contained in this Agreement, CVS or the Purchaser shall not be required to enter into any Settlement (i) that requires CVS or the Purchaser to hold separate (including by establishing a trust or otherwise) or to sell or otherwise dispose of or withdraw from stores of CVS or the Purchaser (and their Subsidiaries) or Southern Stores the aggregate revenues of which (for the most recent fiscal year) exceeded $500 million ("Antitrust Store Limit") or (ii) as a result of which the aggregate gross margin attributable to business of Pharmacare or PBM Business to be terminated or otherwise lost pursuant to such Settlement would be greater than 35% of the total gross margin attributable to such business for the most recently ended fiscal year ("Antitrust PBM Limit").

(xi) Divestiture obligation capped by a named business plus other assets capped by revenue

(c) For purposes of Section 6.03(a) and (b), Parent's "reasonable best efforts" shall include an obligation of Parent and its Subsidiaries to license, franchise, divest or hold separate any business locations or business lines of the Company, Parent or their respective Subsidiaries (including the Advantage business locations and business line owned by Parent and its Subsidiaries ("Advantage")), or to take any similar measure, reasonably necessary to secure HSR Approval or CBC Approval (a "Divestiture Action"). Notwithstanding the immediately preceding sentence, "reasonable best efforts" shall not require Parent or its Subsidiaries to license, franchise, divest or hold separate any business locations or business lines of the Company, Parent or their respective Subsidiaries other than (i) Advantage and (ii) in addition to Advantage, business locations or business lines that produced aggregate gross revenues in an amount not in excess of $175 million ("Divested Revenues") for Parent, the Company and their respective Subsidiaries during the 2009 calendar year, calculated in accordance with GAAP, on a basis consistent with the accounting principles used in preparing their respective 2009 financial statements included in the Company SEC Reports or Parent SEC Reports, as applicable. For the avoidance of doubt, in calculating Divested Revenues, only the business locations (or in the case of an entire business line, the business locations within such business line) for which a Divestiture Action is taken, shall be included. For example, if a Divestiture Action is required at an airport where the

Parent and the Company each have a business location (or multiple business locations), only the business location at such airport that is divested shall be included in the calculation of Divested Revenues.

(xii) Divestiture obligation capped by materiality (Example 1)

Notwithstanding anything herein to the contrary, Parent shall not be required to take or agree or commit to take any action, including any Divestiture Action, or to limit or agree to limit its freedom of action or that of the Company or of any Subsidiary, division or affiliate of either in any respect that would, in the reasonable good faith judgment of Parent, be reasonably likely to (1) give rise to a Parent Material Adverse Effect, (2) materially impair the benefits or advantages it expects to receive from the Merger and the transactions contemplated hereby, or (3) give rise to a material adverse effect on the business plan or business strategy of the combined company.

(xiii) Divestiture obligation capped by materiality (Example 2)

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, in no event shall Parent or Sub be obligated to, and the Company and its Subsidiaries shall not agree with a Governmental Entity without the prior written consent of Parent, to divest or hold separate, or enter into any licensing or similar arrangement with respect to, any material assets (whether tangible or intangible) or any material portion of any business of Parent, the Company or any of their respective Subsidiaries (any such action, an "Action of Divestiture").

(xiv) Divestiture obligation capped by materiality (Example 3)

(i) Without limiting Section 6.2(b)(i), Buyer shall take such actions as may be reasonably necessary to avoid or eliminate each and every impediment under any Antitrust Laws so as to enable the Closing to occur as soon as reasonably possible (and in any event no later than the Outside Date) by (i) proposing negotiating, committing to and effecting, by consent decree, hold separate order, or otherwise, the sale, divestiture or disposition of such businesses, product lines or assets of the Company that would not, in the aggregate, be material to the Company's business, and (ii) otherwise taking or committing to take actions that after the Closing Date would limit Buyer's or its subsidiaries' freedom of action with respect to, or its or their ability to retain, one or more of the businesses, product lines or assets of the Company that would not, in the aggregate, be material to the Company's business, in each case as may be required in order to avoid the entry of, or to effect the dissolution of, any preliminary or permanent injunction, in any Action under any Antitrust Laws, which would otherwise have the effect of preventing the Closing, and in that regard Buyer shall agree to divest, sell, dispose of, hold separate, or otherwise take or commit to

take any action that limits its freedom of action with respect to, or Buyer's or its subsidiaries' ability to retain, any of the businesses, product lines or assets of the Company that would not, in the aggregate, be material to the Company's business.

(xv) Divestiture obligation capped by materiality (Example 4)

Notwithstanding anything else contained herein, the provisions of this Section 6.3 shall not be construed to require United or any United Subsidiary or Continental or any Continental Subsidiary to undertake any efforts or to take any action if the taking of such efforts or action is or would reasonably be expected to result (after giving effect to any reasonably expected proceeds of any divestiture or sale of assets) in a Material Adverse Effect on either United or Continental, as applicable.

(xvi) Divestiture obligation capped by materiality (Example 5)

Without limiting any of its other obligations hereunder, Parent and Purchaser shall take all such further action as may be necessary to resolve such objections, if any, as the United States Federal Trade Commission, the Antitrust Division of the United States Department of Justice, state antitrust enforcement authorities or competition authorities of any other nation or other jurisdiction (including multinational or supernational), or any other person,[1] may assert under Regulatory Law with respect to the transactions contemplated hereby in order to assure satisfaction of the conditions to the Transactions, and to avoid or eliminate, and minimize the impact of, each and every impediment under any Law that may be asserted by any Governmental Entity with respect to the Merger, in each case so as to enable the Merger and the Transactions to occur no later than the Outside Date (any such action, a "Settlement Action"), including, without limitation by proposing, negotiating, committing to and effecting, by agreement, consent decree, hold separate order, trust or otherwise, (x) the sale, divestiture or disposition of such assets, businesses, services, products or product lines of Parent or the Company (or any of their respective Subsidiaries or affiliates) or behavioral limitations, conduct restrictions or commitments with respect to any such assets, businesses, services, products or product lines of Parent or the Company (or any of their respective Subsidiaries or affiliates), (y) the creation or termination of relationships, ventures, contractual rights or obligations of the Company or Parent or their respective Subsidiaries or affiliates and (z) any other actions that after the Closing would limit the freedom of Parent, the Company or any of their respective Subsidiaries' or affiliates' freedom of action with respect to, or its ability to retain, one or more of its or its Subsidiaries' (including the Company's or the Surviving Corporation's) or affiliates' assets, businesses, services, products or product lines, in each case as may be required under or in connection with Regulatory Laws in order to obtain all required Governmental Consents

1 NB: Not limited to Governmental Entities.

(including expirations or terminations of waiting periods whether imposed by Law or agreement) and to avoid the entry of, or to effect the dissolution of, any order in any suit or proceeding, which would otherwise have the effect of preventing the consummation of the Merger by the Outside Date; *provided* that, notwithstanding anything in this Agreement to the contrary, neither Parent nor Purchaser shall be required to take, or cause to be taken, any Settlement Action that, individually or in the aggregate, would reasonably be expected to have a material adverse effect on (i) the Company and its Subsidiaries, taken as a whole, (ii) Parent and its subsidiaries, taken as a whole, but deemed for this purpose to be the same size as the Company and its Subsidiaries, taken as a whole, or (iii) the Company, Parent and their respective Subsidiaries, taken as a whole, but deemed for this purpose to be the same size as the Company and its Subsidiaries, taken as a whole (any of the foregoing, a "Regulatory Material Adverse Effect"). The Company and its Subsidiaries shall not, without Parent's prior written consent discuss or commit to any extension of any waiting period under any Law or to any agreement not to consummate the Merger. If requested by Parent, the Company shall take any action or make any agreement required by any Governmental Entity under any Regulatory Law; *provided* that any such action or agreement is conditioned on the consummation of the Merger. The Company shall not take any action or make any agreement required by any Governmental Entity under any Regulatory Law without the written consent of Parent, in its sole discretion.

(xvii) Divestiture obligation capped by materiality (Example 6)

Acquiror shall use reasonable efforts to take, or cause to be taken, any and all steps and to make, or cause to be made, any and all undertakings necessary to avoid or eliminate each and every impediment under any antitrust, merger control, competition or trade regulation Law or any other Law applicable to the Company, any Company Subsidiary or the Merger that may be asserted by any Governmental Entity with respect to the Merger so as to enable the Effective Time and the Closing, respectively, to occur as promptly as practicable (and in any event, no later than the Extended Outside Date); provided, however, that Acquiror shall not be required to take any action which may have an adverse material effect on the value or economics (other than the costs and time associated with the exercise of reasonable efforts required by this Section 5.5(a), including responding to requests for additional information by Governmental Authorities) of the transaction for Acquiror.

(xviii) Divestiture obligation capped by a material adverse effect (with synergies considered) (Ex. 1)

Notwithstanding Section 8.01(a) or anything else in this Agreement to the contrary, nothing in this Agreement will obligate or require Parent or Merger Subsidiary to take or cause to be taken any action (or refrain or cause to refrain from taking any action) or agree or cause to agree to any term, condition or limitation as a condition to, or in connection with, (x) the expiration or termination of any applicable waiting period relating to the

Merger under the HSR Act, (y) any other Applicable Law that is designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or (z) obtaining any Required Governmental Authorization, in each case if such action (or refraining from such action), term, condition or limitation would have or would reasonably be expected to have, individually or in the aggregate, a Regulatory Material Adverse Effect on Parent or on the Company. "Regulatory Material Adverse Effect" means, with respect to any Person, any event, change, effect, development or occurrence, in each case resulting from or arising out of the matters contemplated by clauses (x) through (z) of the first sentence of this Section 8.01(b), that has a material adverse effect on the financial condition, business, revenue or EBITDA of such Person and its Subsidiaries, taken as a whole; *provided* that, for purposes of determining whether any action, term or condition would have or would reasonably be expected to have a Regulatory Material Adverse Effect on Parent, Parent and its Subsidiaries will collectively be deemed to be a company the size of (and with revenue and EBITDA equal to those of) the Company and its Subsidiaries, taken as a whole; *provided, further*, that, for purposes of determining whether any action, term or condition would have or would reasonably be expected to have a Regulatory Material Adverse Effect on Parent or on the Company, (i) impacts on the synergies expected to be realized from the Merger that are publicly disclosed by Parent will be taken into account and (ii) impacts on Parent, the Company or any of their respective Subsidiaries will be aggregated. "EBITDA" means, with respect to any Person, the sum of (1) consolidated net income, determined in accordance with GAAP, plus (2) without duplication and to the extent deducted in determining such consolidated net income, the sum of (I) consolidated interest expense, (II) consolidated income tax expense and (III) all amounts attributed to depreciation or amortization, in each case of such Person and its Subsidiaries.

(xix) Divestiture obligation capped by a material adverse effect (with synergies considered) (Ex. 2)

Except as provided in the immediately preceding sentence, nothing in this Agreement shall require, or be construed to require, (i) Parent or any of its Subsidiaries to take or refrain from taking any action (including any divestiture, holding separate any business or assets or other similar action) or to agree to any restriction or condition with respect to any assets, operations, business or the conduct of business of Parent or any of its Subsidiaries and (ii) Parent, the Company or any of their respective Subsidiaries to take or refrain from taking any action (including any divestiture, holding separate any business or assets or other similar action) or to agree to any restriction or condition with respect to any assets, operations, business or the conduct of business of the Company and its Subsidiaries, if, in the case of this clause (ii), any such action, failure to act, restriction, condition or agreement, individually or in the aggregate, would reasonably be likely to have a Company Material Adverse Effect (read without regard to the exceptions set forth therein and without giving effect to clause (A) thereof) (except as provided in the immediately preceding

sentence, the occurrence of any of the matters specified in clause (i) or clause (ii) above shall constitute a " Regulatory Material Adverse Effect"). In addition, in measuring whether a Regulatory Material Adverse Effect has occurred, the expected loss of any reasonably expected synergies (both cost and revenue) relating to any restriction or condition shall be taken into account as if the Company had an adverse effect to its financial condition and results of operations equal to the expected amount of applicable synergies affected by any such restriction or condition.

(xx) Divestiture obligation capped by materiality (with carve-out for specified business)

Notwithstanding anything to the contrary in this Agreement, in connection with any filing or submission required or action to be taken by either Parent or the Company to consummate the Offer and the Merger, in no event shall Parent or any of its Subsidiaries or Affiliates be obligated to propose or agree to accept any undertaking or condition, to enter into any consent decree, to make any divestiture or accept any operational restriction or take or commit to take any action related to (i) the Company or its Subsidiaries (A) the effectiveness or consummation of which is not conditional on the consummation of the Merger or (B) that individually or in the aggregate is or would reasonably be expected to be materially adverse (either before or after giving effect to the Offer or the Merger) to the business of the Company and its subsidiaries (taken as a whole) (with materiality, for purposes of this provision, being measured in relation to size of the Company and its Subsidiaries taken as a whole) or (ii) Parent or its Subsidiaries (A) the effectiveness or consummation of which is not conditional on the consummation of the Merger or (B) that individually or in the aggregate is or would reasonably be expected to be materially adverse (either before or after giving effect to the Offer or the Merger) to the business of Parent and its subsidiaries (taken as a whole) (with materiality, for purposes of this provision, being measured in relation to size of the Company and its Subsidiaries taken as a whole, *provided* that an undertaking, condition, consent decree, divestiture, restriction or other action involving gross revenue of $37,500,000 or less per year, individually or in the aggregate, shall not, in and of itself, be deemed materially adverse, solely for this purpose) (a "Materially Burdensome Condition"); *provided, however*, that an undertaking, condition, consent decree, divestiture, restriction or other action related to the Company's endoscopic vessel harvesting business (the "Company's EVH Business") shall not, in and of itself, be deemed a Materially Burdensome Condition. Any expenses incurred by the Company, Parent and Purchaser in connection with this Section 5.6(b) shall be borne by Parent and Purchaser.

(xxi) Divestiture obligation capped by materiality (with carve-out for specified business)

(a) Acquiror agrees that, if required to obtain the approvals or clearances described in paragraphs 1 and 3 of Schedule E hereto by the Outside Date, the sale, divestiture or

disposition of one oriented strand board (OSB) mill of either Company or Acquiror, or of one of their respective subsidiaries, that is operating as at the date of this Agreement, located in a province of Canada west of Manitoba and has a annual rated capacity of less than 450 MMSF (referred to hereinafter as a "Specified Mill") shall be deemed for purposes of Section 5.6(c) not to be likely to significantly and adversely affect the business, assets, properties, financial condition or results of the operations of Company, Acquiror or their respective subsidiaries. For greater certainty, the Parties agree that the sale, divestiture or disposition of anything else than one Specified Mill shall be deemed for purposes of Section 5.6(c) to be likely to significantly and adversely affect the business, assets, properties, financial condition or results of the operations of Company, Acquiror or their respective subsidiaries.

(b) For the purposes of this Section 9.5, a Specified Mill shall include all tangible and intangible assets, supply arrangements, access to fiber supply (including Tenures) and other arrangements or agreements required to operate the Specified Mill as an OSB production mill that any Government Entity may require in order to obtain the approvals or clearances described in paragraphs 1 and 3 of Schedule E hereto by the Outside Date. Notwithstanding the foregoing, or any anything else in this Agreement, in no event shall Aquiror be required to sell, divest, dispose of, hold separate or otherwise grant access to or grant rights in or to or for the use of any tangible or intangible assets used exclusively for the Acquiror's radiant barrier lamination line.

(xxii) Divestiture obligation capped by dollar thresholds and carve-outs

(d) For purposes of Section 7.02(c), except to the extent expressly waived in writing by ABI in its sole discretion, one or more Remedial Actions shall constitute a “Regulatory MAE” if and to the extent such Remedial Actions, individually or in the aggregate with all other Remedial Actions taken together, either

(i) would reasonably be expected to result (after giving effect to any net after-tax proceeds or other benefits reasonably expected to result from any such Remedial Action) in adverse valuation effects (measured on a net present value basis) to (A) the business, results of operations or financial condition of (x) the Company or its Subsidiaries, or (y) ABI or its Subsidiaries either before or after giving effect to the Merger and the Offer or (B) any anticipated benefits (net of any costs associated with or relating to such anticipated benefits so affected) reasonably expected to result to ABI, the Company and their respective Subsidiaries from the Merger or the Offer, that, in the case of (A) and (B), individually or in the aggregate exceed $3 billion or

(ii) would require ABI, the Company or any of their respective Subsidiaries or Affiliates to divest, sell, dispose, assign, split (with respect to asset, brand, brand family, trademarks or geography), license any rights with respect to or enter into a co-existence agreement or agreement providing for a covenant not to sue, or take or agree to other actions,

commitments or restrictions (including with respect to marketing) with respect to any Major Brand, any Major Brand Assets or a Major Brand Business. The following shall be deemed to constitute "Major Brands": the Budweiser, Bud Light, Michelob, Corona or Modelo trademarks, brands or brand families or any extension or derivative thereof reasonably considered to be within such trademark, brand or brand family. The following shall be deemed to constitute "Major Brand Assets": any tangible or intangible assets or property (including trademarks, trade names, trade dress and other intellectual property rights) and contract or other rights owned, used or held for use by ABI, the Company, Crown JV or any of their respective Subsidiaries primarily in connection with, or otherwise to the extent primarily relating to, the manufacture, marketing, sale and/or distribution of any product(s) sold under any Major Brand(s). "Major Brand Business" means: the operation of any of the Major Brands businesses.

(e) For purposes of the definition of "Regulatory MAE", adverse valuation effects shall include any losses, costs, fines, penalties, expenses or damages incurred or paid in connection with, or to the extent arising from, any Remedial Action (including any losses, costs, fines, penalties, expenses or damages incurred or paid in connection with or to the extent arising from (x) any current or future investigations, demands or claims against or involving the Company or its Subsidiaries by the Mexican Federal Competition Commission (Comisión Federal de Competencia) in respect of any actions, or failures to act, by the Company or any of its Subsidiaries, whether prior to or after the date hereof (the "Mexican Competition Matters") or (y) any claim by any third party that (A) the Company, ABI or any of their respective Subsidiaries has breached an obligation to such third party as a result of its compliance with the requirements of a Remedial Action or (B) its consent was required to effect a Remedial Action (in the case of clause (y), to the extent of losses, costs, fines, penalties, expenses or damages reasonably expected to be incurred or paid in connection therewith, or to the extent arising therefrom)). The parties understand and agree that a reasonable monetary estimate of qualitative effects of a Remedial Action, including without limitation, any reputational harm, competitive disadvantage, lost business opportunity or other qualitative harm, shall be included, without duplication, in the determination referenced in clause (i) of Section 7.02(d).

(xxiii) Divestiture obligation capped by definition of MAC defined in a disclosure letter

Nothing in this Agreement shall require, or be construed to require, Purchaser or Seller or their respective Subsidiaries to take any action or enter into any agreement with respect to any of its assets, business or operations (the sum of the aggregate positive and negative economic effects of all such actions and agreements on the value of the assets, business or operations of the Purchaser and their respective Subsidiaries (excluding synergies anticipated to be realized by Purchaser or Seller or their respective Subsidiaries from the Merger) and on the value of the assets, business or operations of Seller or their respective Subsidiaries, as applicable, as of the date of any determination being referred to herein as

the "Net Effects"), that would, individually or in the aggregate, reasonably be expected to result in the aggregate negative Net Effects being more than the Material Adverse Amount (as defined in Section [*] of the Disclosure Letter (a "Material Adverse Condition")). For purposes of calculating Net Effects with respect to the sale of a market or spectrum it is agreed that [details on calculations].

(xxiv) Divestiture obligation capped by a "Substantial Detriment"

Notwithstanding the foregoing or anything otherwise contained in this Agreement that may be to the contrary, (1) neither Parent nor the Company shall be required to take any Divestiture Action that is not conditioned upon consummation of the Merger, (2) the Company shall not agree to take any Divestiture Action without the consent of Parent, (3) none of Parent or any of its Affiliates shall be required to take or accept (or commit to take or accept) any action, condition, restriction, obligation or requirement (collectively, for purposes of this Section, "actions") in order to obtain any approval, exemption or other authorization of a Governmental Authority involving any business or asset of Parent or its Affiliates that would otherwise be required by Section 8.01 or this Section 8.02 unless there is no action (including a Divestiture Action) that would permit such approval, exemption or other authorization of a Governmental Authority to be obtained that involves solely businesses or assets of the Company and its Subsidiaries and to which Parent is required by Section 8.01 or this Section 8.02, or is otherwise willing in Parent's sole discretion, to agree, and (4) Parent shall not be required to take (pursuant to Section 8.01, this Section 8.02(b) or any other provision of this Agreement) any action (including a Divestiture Action) to the extent such action (including a Divestiture Action), individually or in the aggregate with all other actions (including Divestiture Actions), would reasonably be expected to result in a Substantial Detriment. "Substantial Detriment" means (i) any material limitation, restriction or prohibition on the ability of Parent or any of its Subsidiaries effectively to acquire, hold or exercise full rights of ownership (including with respect to voting) of the Shares or shares of the Surviving Corporation to be acquired or owned pursuant to the Merger or the assets of the Company and its Subsidiaries, (ii) a loss by Parent and its Affiliates of a material benefit or material benefits (including, without limitation, revenue or cost synergies), after taking into account the adverse effect of the proposed actions on Parent and its Affiliates (including, for these purposes, the Surviving Company and its Subsidiaries), arising from or relating to the Merger and the other transactions contemplated by this Agreement, (iii) an impact that is materially adverse to the assets, business, results of operation or financial condition of the Surviving Corporation and its Subsidiaries, or (iv) an impact that is materially adverse to the assets, business, results of operation or financial condition of the Parent and its Subsidiaries, assuming for purposes of this determination that the Parent and its Subsidiaries are of equivalent size to the Surviving Corporation and its Subsidiaries, taken as a whole.

(xxv) Divestiture obligation capped by a "Detriment Limit"

Without limiting the foregoing, Schlumberger and Merger Sub shall take all such action as may be necessary to resolve such objections, if any, that the United States Federal Trade Commission, the Antitrust Division of the United States Department of Justice, the European Commission, state antitrust enforcement authorities or competition authorities of any other nation or other jurisdiction, or any other person, may assert under Regulatory Laws with respect to the transactions contemplated hereby, and to avoid or eliminate, and minimize the impact of, each and every impediment under Regulatory Laws that may be asserted by any Governmental Entity with respect to the Merger so as to enable the Closing to occur as soon as reasonably possible (and in any event no later than the Termination Date); provided, however, that nothing contained in this Agreement requires Schlumberger, Merger Sub or Smith to take, or cause to be taken, any action with respect to any of the assets, businesses or product lines of Smith or any of its Subsidiaries, or of Schlumberger or any of its Subsidiaries (including the Surviving Entity), or any combination thereof, if such action would exceed the Detriment Limit. For purposes of this Agreement, the "Detriment Limit" would be exceeded if the assets, businesses or product lines required to be divested or held separate in order to obtain actions or nonactions, waivers, authorizations, expirations or terminations of waiting periods, clearances, consents and approvals from Governmental Entities under Regulatory Laws includes assets, business or product lines other than (i) the assets, businesses and product lines acquired by Smith in connection with its acquisition of W-H Energy Services, Inc. or corresponding assets, businesses or product lines of Schlumberger or its Subsidiaries overlapping with the assets, businesses or product lines acquired by Smith in connection with its acquisition of W-H Energy Services, Inc., and (ii) other assets, businesses and product lines accounting for not more than $190 million of revenue of either Schlumberger or Smith for the 12 months ending December 31, 2009, excluding from such calculation (A) assets, businesses or product lines described in clause (i) of this Section 7.6(d), and (B) assets, businesses or product lines of the Wilson business unit of Smith (which assets, businesses or product lines may be required to be divested or held separate and if so will not be deemed to exceed the Detriment Limit). If requested by Schlumberger, Smith will agree to any action contemplated by this Section 7.6(b), provided that any such agreement or action is conditioned on the consummation of the Merger. The parties agree that the calculation of revenue shall be measured by reference to the lowest such revenue of Schlumberger or Smith for each such overlapping asset, business or product line so required to be divested, regardless of which asset, business or product line Schlumberger actually divests. The foregoing agreement in this section is made solely to facilitate the closing of the Merger and does not constitute a representation or admission that the Merger, if consummated without any modification, would violate any Regulatory Laws or that agreeing to the divestitures, hold separate conditions or other restrictions permitted herein or suggested by

any person or authority acting under any Regulatory Law would not be harmful to the parties.

(xxvi) Divestiture obligation capped by a "Gross Economic Value" with arbitration of disputes

6.03(f) Notwithstanding anything to the contrary in this Agreement, Parent's obligations under this Agreement shall not include taking any action that, and Parent shall not be required to accept (and the Company and the Company Subsidiaries shall not accept without Parent's prior written consent) any undertaking or condition, to enter into any consent decree, to make any divestiture, to accept any operational restriction, or take any other action (each of the foregoing, a "Regulatory Requirement") that would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, financial condition or results of operations of (i) Parent and its subsidiaries, taken as a whole (excluding the Company and the Company Subsidiaries) or (ii) the Company and the Company Subsidiaries, taken as a whole. For purposes of the immediately preceding sentence, one or more Regulatory Requirements shall be deemed to constitute a "material adverse effect" if one or more of such Regulatory Requirements (X) would reasonably be expected to, individually or in the aggregate, have a Gross Economic Value, assuming the consummation of such Regulatory Requirement, equal to or greater than $131.0 million or (Y) would require Parent or its subsidiaries to license or otherwise make available television or online measurement data to any third party who intends to offer a service to customers incorporating such television or online measurement data to customers who do not also subscribe to the services provided by Parent or its subsidiaries related to such data.

For purposes of this Agreement, "Gross Economic Value" of each Regulatory Requirement shall be the Reduced EBITDA of either (A) Parent or the Company or (B) both Parent and the Company if any businesses, services or assets of both Parent and the Company (or their respective subsidiaries) are subject to such Regulatory Requirement, (X) in the case of clause (A), multiplied by the Parent Multiple or the Company Multiple (as the case may be) and (Y) in the case of clause (B), multiplied by the Parent Multiple or the Company Multiple, as the case may be.

For purposes of this Agreement, "EBITDA" means earnings before interest, taxes depreciation and amortization and after deducting stock based compensation expense, calculated in accordance with the past reporting practices of either Parent or the Company, as the case may be. For purposes of this Agreement, the "Reduced EBITDA" resulting from a Regulatory Requirement shall be determined by multiplying (X) any reduction in annual revenue for the fiscal year ended December 31, 2012 associated with any business, service or asset subject to a Regulatory Requirement under consideration that would have resulted from the action proposed under such Regulatory Requirement had such proposed

action been effective on January 1, 2012 and in effect until December 31, 2012 by (Y) the EBITDA Margin for such business, service or asset.

For purposes of this Agreement, "EBITDA Margin" shall mean the percentage resulting from dividing EBITDA for the fiscal year ended December 31, 2012 by the GAAP revenues for the fiscal year ending December 31, 2012. EBITDA Margin for a business, service or asset shall be (a) if Parent or the Company track for internal reporting purposes the EBITDA for the fiscal year ending December 31, 2012 associated with the business, service or asset, the percentage determined by dividing EBITDA for the fiscal year ending December 31, 2012 by the GAAP revenues for such business, service or asset, or otherwise (b) the EBITDA Margin for the fiscal year ending December 31, 2012 for Parent or the Company.[1]

6.03(g) In the event any Regulatory Requirement is proposed by any Governmental Entity or the Company requests that Parent propose such a Regulatory Requirement to a Governmental Entity, Parent or the Company (as applicable) shall promptly notify and provide details to the other party of such proposal and Parent shall determine within ten Business Days of such proposal (or within ten Business Days of receiving notice of, or a request to make, such proposal from the Company) (but in no event less than two Business Days prior to the Outside Date) of such proposal whether it is required pursuant to Section 6.03(f) to accept such Regulatory Requirement. Notwithstanding anything in this Agreement to the contrary, in the event that (i) Parent proposes a Regulatory Requirement or (ii) Parent determines that it is required pursuant to Section 6.03(f) to accept a Regulatory Requirement, the parties shall take any action necessary to satisfy such Regulatory Requirement. In the event that Parent determines within such period that it is not required pursuant to Section 6.03(f) to accept such Regulatory Requirement, Parent will promptly (and in any event within two Business Days of such determination) provide written notice to the Company setting forth in reasonable detail the basis for such determination and, if Parent determines that it is not required to accept such Regulatory Requirement as a result of clause (X) of the last sentence of the first paragraph of Section 6.03(f), such notice shall include Parent's calculation in reasonable detail of the Gross Economic Value, together with supporting materials. Parent shall provide the Company with reasonable access to Parent's experts and personnel and any other information that the Company reasonably requests in connection with its review of Parent's calculation of Gross Economic Value. In the event the Company disagrees with such calculation, the Company shall promptly (and in any event within two Business Days of such determination) notify Parent of and provide reasonable detail of such disagreement. Following the Company's notification to Parent, the parties shall use reasonable best efforts to attempt, as promptly as practicable, to mutually agree on the amount of the Gross Economic Value. In the event the parties cannot mutually agree upon the Gross Economic

[1] Company Multiple and Parent Multiple were defined in the agreement.

Value within five Business Days of first attempting to determine such amount, the parties shall jointly refer such dispute or controversy (the "Disputed Item") to PricewaterhouseCoopers LLP or to such other accounting firm or financial institution as mutually determined by the parties (the "Accounting Arbitrator"). The Accounting Arbitrator shall consider only the Disputed Item referred by the parties and shall be required to resolve the Disputed Item in accordance with the terms and provisions of this Agreement (the "Arbitration") as the exclusive remedy for such dispute. In connection with the resolution of the Disputed Item by the Accounting Arbitrator: (i) each of Parent and the Company shall furnish or cause to be furnished to the Accounting Arbitrator only the data, correspondence and other materials it presented to the other party pursuant to the first sentence of this Section 6.03(g), and no other materials; (ii) each of Parent and the Company shall be afforded the opportunity to make a presentation to the Accounting Arbitrator relating to the Disputed Item and to discuss such Disputed Item with the Accounting Arbitrator, in each case in the presence of the other party; (iii) no ex parte communications with the Accounting Arbitrator with respect to the Arbitration shall be permitted; (iv) the Accounting Arbitrator shall only decide the specific Disputed Item; and (v) the determination by the Accounting Arbitrator shall be delivered in a written report to both Parent and the Company within fifteen (15) days of the submission to the Accounting Arbitrator of the Disputed Item, and shall be the sole and binding determination with respect to the Disputed Item. Parent and the Company shall reasonably cooperate with the Accounting Arbitrator and respond on a timely basis to all reasonable requests for information or access to documents or personnel made by the Accounting Arbitrator or by the other party, all with the intent to fairly and in good faith resolve all disputes relating to the Disputed Item as promptly as reasonably practicable. The parties hereto agree that the Arbitration, and all matters relating thereto or arising thereunder, including the existence of the Arbitration or Disputed Item, the proceeding and all of its elements (including any documents or materials submitted or exchanged, any testimony or other oral submissions, and any decision of the Accounting Arbitrator), shall be subject to the Confidentiality Agreement. Each party hereto shall bear its own fees and costs in connection with the Arbitration; provided, however, that each such party shall pay one-half of any fees and expenses of the Accounting Arbitrator in connection with the Arbitration. Each party hereto shall use its best efforts to cause the Arbitration to be conducted in accordance with the procedures set forth in the foregoing provisions of this Section 6.03(g), and hereby further waives the right to object to the conduct of the Arbitration in accordance herewith (other than compliance with the terms hereof).

(xxvii) Divestiture obligation capped by "Burdensome Condition"

Notwithstanding anything in this Agreement to the contrary, the parties hereto understand and agree that "reasonable best efforts" shall not require Parent to (i) divest or otherwise hold separate (including by establishing a trust or otherwise) any businesses, assets or

properties of Parent or any of its Subsidiaries or any businesses, assets or properties of the Company or any of its Subsidiaries, (ii) accept any conditions or take any other actions that would apply to, or affect, any businesses, assets or properties of Parent or any of its Subsidiaries or any businesses, assets or properties of the Company or any of its Subsidiaries or (iii) litigate or participate in the litigation of any proceeding involving the FCC, the Federal Trade Commission or Department of Justice, whether judicial or administrative, in order to (A) oppose or defend against any action by any such Governmental Authority to prevent or enjoin the consummation of the Merger or any of the other transactions contemplated by this Agreement or (B) overturn any regulatory action by any such Governmental Authority to prevent consummation of the Merger or any of the other transactions contemplated by this Agreement, including by defending any suit, action or other legal proceeding brought by any such Governmental Authority in order to avoid the entry of, or to have vacated, overturned or terminated or appealing any order, except, in the case of this clause (iii), to the extent Parent determines in its reasonable good faith judgment that there is a reasonable prospect of success in relation to such litigation and that the participation by Parent in such litigation would not pose a material risk of the imposition of a Burdensome Condition; *provided, however*, that, (x) notwithstanding the preceding clause (i), Parent is prepared to divest up to approximately 3 million subscribers of the combined company and (y) Parent and its Subsidiaries shall be required, notwithstanding the preceding clause (ii), (A) to take the actions and accept the conditions described in the immediately preceding clause (ii) to the extent such actions are consistent in scope and magnitude with the conditions and actions (other than any condition that was subsequently suspended by the agency that imposed the condition) required or imposed by Governmental Authorities in connection with prior acquisitions of United States domestic Cable Systems consummated within the past twelve years with an aggregate purchase price of at least $500 million and (B) to implement the undertakings set forth on Section 8.01 of the Parent Disclosure Schedule (other than any undertaking to divest subscribers, the "Undertakings"), with such modifications to the Undertakings that, taken in the aggregate, are no more adverse to the businesses, assets and properties of Parent and its Subsidiaries, taken as a whole, or the businesses, assets and properties of the Company and its Subsidiaries, taken as a whole (each condition and action described in clause (i) or (ii) that Parent is not required to accept or take after giving effect to the proviso to this Section 8.01(e), a "Burdensome Condition").

In that regard, the Company agrees to work in good faith in connection with Parent's efforts to structure any divestitures (whether by sale, spin off or otherwise) in a manner that Parent believes in good faith is in the best interests of the combined company and its shareholders.

In addition, the Company shall not accept any of the conditions or take any of the foregoing actions (whether or not consistent in scope and magnitude with such prior conditions and actions) without Parent's prior written consent. Notwithstanding the

foregoing, no party shall be required to commit to or effect any action contemplated by this Section 8.01(e) that is not conditioned upon the consummation of the Merger.

(xxviii) Divestiture obligation with multiple carve-outs (including Substantial Detriment)

Parent shall, and shall cause its Subsidiaries to, propose, negotiate, offer to commit and effect (and if such offer is accepted, commit to and effect), by consent decree, hold separate order, or other agreement, the sale, divestiture or disposition of such assets or businesses of Parent or any of its Subsidiaries, or effective as of the Effective Time, the Surviving Corporation or its Subsidiaries, or otherwise offer to take or offer to commit to take any action (including any action that limits its freedom of action, ownership or control with respect to, or its ability to retain or hold, any of the businesses, assets, product lines, properties or services of Parent, the Surviving Corporation, or any of their respective Subsidiaries) which it is lawfully capable of taking and if the offer is accepted, take or commit to take such action, in each case as may be required so as to enable the Closing to occur as promptly as practicable (any of the foregoing, a "Divestiture Action").

Notwithstanding the foregoing or anything contained in this Agreement that may be to the contrary,

(1) neither Parent nor Company shall be required to take any Divestiture Action that is not conditioned upon consummation of the Merger,

(2) Company shall not agree to take any Divestiture Action without the consent of Parent,

(3) none of Parent or any of its Subsidiaries shall be required to take or accept (or commit to take or accept) any action, condition, restriction, obligation or requirement (each of the foregoing, for the purposes of this Section, an "action") in order to obtain any approval, exemption or other authorization of a Governmental Entity involving any business or asset of Parent or its Subsidiaries that would otherwise be required by this Section 5.5 unless there is no action (including a Divestiture Action) that would permit such approval, exemption or other authorization of a Governmental Entity to be obtained that involves solely businesses or assets of Company and its Subsidiaries and to which Parent is required by this Section 5.5, or is otherwise willing in Parent's sole discretion, to agree and

(4) Parent shall not be required to take (pursuant to this Section 5.5 or any other provision of this Agreement) any action (including a Divestiture Action) to the extent such action (including a Divestiture Action), individually or in the aggregate with all other actions (including Divestiture Actions), would reasonably be expected to result in a Substantial Detriment.

"Substantial Detriment" means (i) any material limitation, restriction or prohibition on the ability of Parent or any of its Subsidiaries effectively to acquire, hold or exercise full rights of ownership (including with respect to voting) of the Shares or shares of the Surviving

Corporation to be acquired or owned pursuant to the Merger or the assets of Company and its Subsidiaries, (ii) a loss by Parent and its Subsidiaries of a material benefit or material benefits (including synergies), after taking into account the adverse effect of the proposed actions on Parent and its Subsidiaries (including, for these purposes, the Surviving Corporation and its Subsidiaries), arising from or relating to the Merger and the other transactions contemplated by this Agreement, (iii) an impact that is adverse in a material manner to the assets, business, results of operation or financial condition of Parent and its Subsidiaries, assuming for purposes of this determination that Parent and its Subsidiaries are of equivalent size to the Surviving Corporation and its Subsidiaries, taken as a whole or (iv) an impact that is adverse in a material manner to the assets, business, results of operation or financial condition of the Surviving Corporation and its Subsidiaries, taken as a whole).

(xxix) No obligation to divest with carveouts (Example 1)

Nothing in this Agreement shall require, or be deemed to require, the Buyer (1) to agree to any limitation on its rights under this Agreement or any of the Ancillary Agreements or (2) to propose, negotiate, offer to commit or to effect (i) any sale, divestiture, license, hold separate or other disposition of assets or business of the Buyer or the Sellers, or their respective Subsidiaries or Affiliates, or (ii) any restrictions on the control or conduct of the Business or Buyer's other businesses; *except that*, to the extent necessary to obtain such Consents from any Governmental Entities, Buyer will agree to do the following and no more than the following: (1) license certain template trademarks as set forth in Exhibit J; (2) license certain intellectual property as set forth in Exhibit K; (3) divest certain production assets as set forth in Exhibit L; and (4) license and/or divest such other rights and/or assets of the Business (and not of the Buyer or any of its Subsidiaries or Affiliates) that are not material in the aggregate.

(xxx) No obligation to divest with carveouts (Example 2)

Notwithstanding anything to the contrary in this Agreement, neither Parent nor any of its Subsidiaries shall be required to dispose of or hold separate, or agree to dispose of or hold separate or restrict its ownership and operation of, all or any portion of the business or assets of the Company and its Subsidiaries or Parent and its Subsidiaries, except that Parent shall be required, if necessary to obtain any regulatory approval from any Governmental Entity necessary for consummation of the Merger, to divest its ALL SPORT beverage brand, without regard to consideration received, no later than the date which is 30 days prior to the date eight months from the date hereof.

(xxxi) Proviso excluding buyer's assets from divestiture obligation

Notwithstanding anything in this Agreement to the contrary, in no event shall Parent or its Affiliates be required to become subject, consent or agree to, or otherwise take any action with respect to, any Divestiture of assets or a business of Parent or its Subsidiaries.

(xxxii)Divestiture obligation with protected business

Without limiting this Section 8.7, but subject to the next sentence of this Section 8.7(b), each of the parties agrees to take, or to cause to be taken, any and all steps and to make any and all undertakings necessary to avoid or eliminate each and every impediment under any antitrust, merger control, competition or trade regulation Law that may be asserted by any Governmental Authority with respect to the Merger so as to enable the Closing to occur as soon as reasonably possible, including proposing, negotiating, committing to, and effecting, by consent decree, hold separate order, or otherwise, the sale, divestiture, licensing or disposition of such assets or businesses of Spinco (or the Spinco Subsidiaries) or Grizzly (or the Grizzly Subsidiaries), as applicable, or otherwise taking or committing to take actions that limit Spinco's or the Spinco Subsidiaries' or Grizzly's or the Grizzly Subsidiaries', as applicable, freedom of action with respect to, or their ability to retain, any of the businesses, product lines or assets of Spinco (or the Spinco Subsidiaries) or Grizzly (or the Grizzly Subsidiaries), in each case, as may be required in order to avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order, or other order in any suit or proceeding, which would otherwise have the effect of preventing the Closing; *provided* that the effectiveness of any such sale, divestiture, license or disposition or action or commitment shall be contingent on consummation of the Merger. Notwithstanding the foregoing, the obligations of this Section 8.7(b) (i) shall not apply to each of the parties if compliance with this Section 8.7(b) would result in, or would reasonably be expected to result in, a Material Adverse Effect on the Eagle Business and (ii) for the avoidance of doubt, shall not require Burgundy to agree to any sale, divestiture, licensing or disposition of any assets or businesses, or restriction or change in the ownership, conduct or operations of any assets or businesses, that are not included in the Eagle Business.

(xxxiii) Divestiture obligation as provided in a draft consent decree

SECTION 4.10 [Representations and Warranties]. *Consent Agreement*. Parent has provided to the Company a true and correct copy of the proposed consent agreement (the "Proposed Consent Agreement") currently under discussion between Parent and the staff of the United States Federal Trade Commission (the "FTC").

[SECTION 6.03](c) For purposes of Section 6.03(a) and (b), Parent's "reasonable best efforts" shall include an obligation of Parent and its Subsidiaries to take any and all actions required of Parent and its Subsidiaries pursuant to the Proposed Consent Agreement (each,

a "Consent Agreement Action"); *provided* that each Consent Agreement Action shall be conditioned upon the consummation of the Merger. Notwithstanding the immediately preceding sentence, "reasonable best efforts" shall not require Parent or its Subsidiaries to (i) sell, license, franchise, divest or otherwise dispose of, or hold separate and agree to sell or otherwise dispose of, any assets, categories of assets, business locations, business lines or businesses of the Company or Parent or their respective Subsidiaries; (ii) terminate any existing relationships, contractual rights or obligations of the Company or Parent or their respective Subsidiaries; (iii) terminate any venture or other arrangement; (iv) create any new relationships, contractual rights or obligations of the Company or Parent or their respective Subsidiaries or (v) effectuate any other change or restructuring of the Company or Parent or their respective Subsidiaries; other than, in each case, (A) such actions required of Parent and its Subsidiaries by the Proposed Consent Agreement and (B) other such actions which, individually or in the aggregate, are of a de minimis nature.

d. Seller cooperation in fashioning remedies

[T]he Company agrees to work in good faith in connection with Parent's efforts to structure any divestitures (whether by sale, spin off or otherwise) in a manner that Parent believes in good faith is in the best interests of the combined company and its shareholders.

e. Savings clause that divestiture obligations do not indicate antitrust violation

The foregoing agreement in this section is made solely to facilitate the closing of the Mergers and does not constitute a representation or admission that the Mergers, if consummated without any modification, would violate any Competition Laws or that agreeing to the divestitures, hold separate conditions or other restrictions permitted herein or suggested by any Person or authority acting under any Competition Law would not be harmful to the parties.

f. Buyer responsible for making settlement offers

Each Buyer shall be responsible for making any settlement offers and negotiating any consent decree or consent order with any Governmental Entity in order to permit the transactions contemplated by this Agreement to be consummated prior to the Termination Date. Each Buyer agrees that, at any time in an investigation, if a Governmental Entity suggests or proffers a settlement of the investigation to permit the transactions contemplated by this Agreement to close, the Buyer shall promptly (and in any event within one (1) Business Day) communicate the terms of the offer to the Sellers. The Buyer, in its sole discretion, may accept or reject any settlement of the investigation proposed by any Governmental Entity, *provided* that each Buyer's actions permit the transactions contemplated by this Agreement to be consummated prior to the Termination Date.

g. Seller responsible for settlement negotiations

(i) Example 1

Divestitures. In furtherance of the covenants set forth in Section 5.6(a) [commercially reasonable efforts], if any objections are asserted with respect to the transactions contemplated hereby under any domestic or foreign antitrust or competition Law or if any Action is instituted (or threatened to be instituted) by the Federal Trade Commission, the Department of Justice or any other applicable Governmental Authority challenging any of the transactions contemplated hereby or which would otherwise prohibit or materially impair or delay the consummation of the transactions contemplated hereby, the Company shall take all actions necessary to resolve any such objections or Actions (or threatened Actions) so as to permit consummation of the transactions contemplated hereby to close as soon as reasonably practicable, including, becoming subject to, consenting to or agreeing to, or otherwise taking any action with respect to, any requirement, condition, understanding, agreement or order to sell, to hold separate or otherwise dispose of, or to conduct, restrict, operate, invest or otherwise change its respective assets or business (including that of its Affiliates) in any manner (collectively, "Divestitures"); *provided*, that the obligations of the Company under this Section 5.6(c) shall be conditioned upon the occurrence of the Closing and *provided, further*, that the Company shall not take any of the foregoing actions without the prior written consent of Parent, other than Divestitures related to assets or a business of the Company or its Subsidiaries that are, individually or in the aggregate, immaterial to the Company. Notwithstanding anything in this Agreement to the contrary, in no event shall Parent or its Affiliates be required to become subject, consent or agree to, or otherwise take any action with respect to, any Divestiture of assets or a business of Parent or its Subsidiaries.

(ii) Example 2

Parent shall be entitled to direct any proceedings or negotiations with any Antitrust Authority or other Person relating to the Merger or filings under any Premerger Notification Rules, including any communications with any Antitrust Authority relating to any contemplated or proposed Divestiture Action, *provided*, that it shall afford the Company a reasonable opportunity to participate therein.

h. Timing for entering into consent settlement

(i) Consent negotiations must conclude to permit closing no later than Termination Date

Parent shall, subject to the Consent Cap and Section 7.2(c), propose, negotiate, offer to commit to and effect (and if such offer is accepted, commit to and effect), by consent

decree, hold separate order, or otherwise, the licensing, hold separate or disposition of such assets, licenses, operations, rights, businesses or interests therein or business product lines of the Company and its Subsidiaries so as to enable the Closing to occur as soon as reasonably possible (and in any event, not later than the Termination Date, or if such date is extended pursuant to the terms of Section 8.2(a), the extended Termination Date).

(ii) Consent negotiations must conclude to permit closing no later than Termination Date

Notwithstanding anything in this Agreement to the contrary, Parent shall have the right, but not the obligation, to oppose by refusing to consent to, through litigation or otherwise any request, attempt or demand by any Governmental Authority or other Person for any divestiture, hold separate condition or any other restriction with respect to any assets, businesses or product lines of either Parent or the Company and shall have the obligation to defend litigation instituted by such Governmental Authority or other Person with respect to the legality of the Mergers under applicable Competition Laws. Notwithstanding the foregoing, Parent shall take all actions required under this Section 5.5 , in a timely manner, as are necessary to achieve the clearance or approval of the Governmental Authority or other Person prior to the Termination Date, *provided , however*, that Parent shall not be required to take actions that would amount to a Burdensome Condition. If there is no decree, order or injunction restricting or prohibiting the Mergers but an appeal is pending, Parent shall not be obligated to proceed to close the Mergers until the Termination Date, as such date may be extended pursuant to Section 8.1(b), and if such appeal remains pending on such Termination Date, Parent shall be obligated to close the Mergers on such date, provided that on such date all other conditions to Closing have then been satisfied.

(iii) Delay to minimize scope of relief

Unless otherwise agreed and without limiting the obligations stated in this Section 5.4(b), Parent and the Company shall each use its reasonable best efforts to ensure the prompt expiration of any applicable waiting period under any Premerger Notification Rules and approval by any relevant Antitrust Authority; *provided*, that any reasonable action by Parent to resist or reduce the scope of a Divestiture Action (as defined below) shall be deemed consistent with such reasonable best effort, even if it delays such expiration to a date not beyond the Termination Date.

i. Right to oppose through litigation

(i) General right

Notwithstanding anything in this Agreement to the contrary, Schlumberger shall have the right, but not the obligation, to oppose by refusing to consent to, through litigation or

otherwise any request, attempt or demand by any Governmental Entity or other person for any divestiture, hold separate condition or any other restriction with respect to any assets, businesses or product lines of either Schlumberger or Smith and shall have the obligation to defend litigation instituted by such Governmental Entity or other person with respect to the legality of the Merger under applicable Regulatory Laws. In the event Schlumberger exercises its rights to oppose through litigation, including any appeals, a request, attempt or demand by any Governmental Entity or other person as provided in the preceding sentence, and (i) such proceedings conclude prior to the Termination Date with a decree, injunction or order restricting or prohibiting the Merger or (ii) no decree, order or injunction has been issued in such proceedings prior to the Termination Date, then Schlumberger shall take such actions, in a timely manner, as are necessary to achieve the clearance or approval of the Governmental Entity or other person prior to the Termination Date, *provided* that Schlumberger shall not be required to take actions that would exceed the Detriment Limit. If there is no decree, order or injunction restricting or prohibiting the Merger, but the decision of a Governmental Entity in litigation contemplated by this Section 7.6(e) is under appeal, Schlumberger shall have the right to elect, and Smith shall have the obligation upon such election by Schlumberger, to proceed to close the Merger if the other conditions to Closing have been satisfied.

(ii) Right subject to timing requirement to offer fix

Notwithstanding anything to the contrary in this Agreement, but subject to the immediately following proviso, it is understood and agreed that ABI (1) shall have the right, but not the obligation, in good faith, to oppose (through litigation, by refusing to accept or agree or consent to, or through other lawful means) any request, attempt or demand by any Governmental Authority or other Person for any Remedial Action with respect to any assets, brands, brand families, trademarks or other intellectual property rights, businesses, product lines (including production and distribution assets and rights relating thereto), contract rights or other tangible or intangible assets or property of ABI or the Company or their respective Subsidiaries or Affiliates, and (2) shall have the sole discretion and authority, in good faith and in consultation with the Company (as provided in Section 7.02(b)), to determine and implement the strategy and timing for making any offers or proposals for, or accepting or agreeing to, any such Remedial Action; *provided* that, notwithstanding the foregoing or anything to the contrary in this Agreement . . . to the extent necessary to obtain the Required Approvals and any other required Consents of any such Governmental Authority or to otherwise take the actions contemplated by Section 7.02(a)(ii) (with respect to Consents from any Governmental Authority) and clauses (i), (ii) and (iii) of the first sentence of this Section 7.02(c) sufficiently in advance of the Termination Date to permit the consummation of the Merger by the Termination Date, ABI shall use its reasonable best efforts to take such actions (including offering, proposing, negotiating, committing to, accepting and agreeing to any Remedial Action) at

least 90 days prior to the Termination Date (it being understood and agreed by the Company that, subject to ABI not taking any actions or failing to take any actions with the intention of making the Merger or the Offer not capable of receiving the Required Approvals prior to the Termination Date, and consulting with the Company as required hereunder, ABI shall not be in breach of its obligations under this Agreement solely by reason of the fact that it determines not to make offers or proposals for, or negotiate, commit to, accept or agree to, any such Remedial Action until 90 days prior to the Termination Date);

IX. Specific Performance

a. Simple provision

Subject to Section 8.3,[1] the parties agree that irreparable damage, for which monetary damages, even if available, would not be an adequate remedy, would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to an injunction or injunctions, specific performance and other equitable remedies to prevent and restrain breaches or threatened breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof in any court specified in Section 9.15 , in addition to any other remedy to which they are entitled at law or in equity. The parties hereby waive, in any action for specific performance, the defense of adequacy of a remedy at law and the necessity of demonstrating damages or posting any bond or other security in connection therewith.

IX. Antitrust Reverse Termination Fees

a. Reverse termination fee for failure to obtain clearance

(i) Simple provision (Example 1)

If this Agreement is terminated by: (i) Parent or the Company pursuant to Section 8.1(b) [failure of the antitrust conditions]; (ii) at the time of the termination of this Agreement, any Antitrust Condition was not satisfied, or waived by Parent; (iii) the failure of such Antitrust Condition to be satisfied did not result from any breach by the Company of any covenant or obligation set forth in this Agreement; (iv) at the time of the termination of this Agreement, each of the conditions in Section 6, other than the Antitrust Conditions in

[1] Section 8.3 provided for an antitrust reverse termination fee as liquated damages and the sole and exclusive remedy for the buyer's failure to satisfy the antitrust closing conditions.

Section 6 and the condition set forth in Section 6.4, was satisfied; and (v) the condition in Section 6.4 [receipt of a closing certificate] would be satisfied if the Closing were to occur on the End Date, then Parent shall pay to the Company a non-refundable fee in the amount of $30,000,000 (the "**Parent Termination Fee**").

(ii) Simple provision (Example 2)

In the event that (i) this Agreement has been terminated by either the Company or Parent pursuant to Section 8.01(b)(i) [election after Outside Date], Section 8.01(b)(ii) [final antitrust order] or, as a result of a material breach under Section 6.03 [antitrust efforts obligation], Section 8.01(d)[inaccuracies in reps and warranties] , and (ii) the condition set forth in the first sentence of Section 7.01(d) [regulatory approvals and waiting period], Section 7.01(f) (in the case of any Restraint arising out of any suit, action or proceeding brought by any person or Governmental Authority in respect of or under any Antitrust Law) or Section 7.02(d) [threatened or pending antitrust litigation] has not been satisfied as of the date of such termination but all other conditions to Closing set forth in Section 7.01 and Section 7.02 shall otherwise have been satisfied (other than those conditions that by their nature are to be satisfied at Closing, but which conditions would have been satisfied if the Closing Date were the date of such termination), then concurrently with such termination (in the case of a termination by Parent) or within three business days following such termination (in the case of a termination by the Company), Parent shall pay to the Company a fee equal to $44,600,000 (the "Parent Termination Fee") by wire transfer of immediately available funds to a bank account provided to Parent by the Company.

(iii) Simple provision (Example 3)

(c) If this Agreement is terminated by EchoStar pursuant to Section 7.1(b)(i)(A)(l) or by Hughes pursuant to Section 7.1(b)(i)(A)(l) or Section 7.1(c)(iv), EchoStar shall pay or cause to be paid to Hughes, in cash by wire transfer in immediately available funds to an account designated by Hughes, no later than one business day following such termination, if terminated by Hughes, or concurrently with such termination, if terminated by EchoStar, a termination fee and expense reimbursement in an amount equal to $600,000,000.00 (Six Hundred Million Dollars), which amount shall not be subject to offset or deduction of any kind by EchoStar; provided, that the payment of one-half of the Termination Fee shall not be required concurrently with such termination (and the parties may elect to resolve such dispute in accordance with Section 8.9) if Hughes' failure (or the failure of any of its Affiliates) to comply with Section 5.1(b) has been the cause of or resulted in the occurrence or non-occurrence which permitted termination under Section 7.1(b)(i)(A)(l) or 7.1(c)(iv). Notwithstanding anything to the contrary in this Section 7.2(c), if the parties have available to them, and EchoStar is willing to accept, a settlement, consent decree, stipulation or other agreement or resolution (each a "Settlement") with the Department of

Justice, the Federal Trade Commission or any other Governmental Authority, but Hughes terminates this Agreement pursuant to Section 7.1(b)(i)(A)(1) or Section 7.1(c)(iv) hereof then EchoStar shall not be required to pay Hughes the termination fee described in this Section 7.2(c).

(iv) Simple provision (Example 4)

(c) Parent and Merger Sub agree that in the event that

(i) (A) this Agreement has been terminated by either the Company or Parent pursuant to Section 8.01(b)(i)[1] and (B) the condition set forth in Section 7.01(b) or Section 7.01(c) has not been satisfied as of the date of such termination (other than as a result of any knowing and intentional breach of this Agreement by the Company) but all other conditions to the Merger set forth in Section 7.01 and Section 7.02 shall otherwise have been satisfied (other than those conditions that by their nature are to be satisfied at the Closing, but which conditions would have been satisfied if the Closing Date were the date of such termination);

(ii) (A) this Agreement has been terminated by either the Company or Parent pursuant to Section 8.01(b)(ii)[2] and (B) the condition set forth in Section 7.01(b) or Section 7.01(c) has not been satisfied as of the date of such termination (other than as a result of any knowing and intentional breach of this Agreement by the Company) but all other conditions to the Merger set forth in Section 7.01 and Section 7.02 that are capable of being satisfied as of such date shall otherwise have been satisfied (other than those conditions that by their nature are to be satisfied at the Closing, but which conditions would have been satisfied if the Closing Date were the date of such termination); or

(iii) the Company has terminated this Agreement pursuant to Section 8.01(d)(iii);

then, in any such case, Parent shall pay to the Company a fee equal to up to $75.0 million, of which $50.0 million shall be paid concurrently with such termination (in the case of a termination by Parent) or within two (2) Business Days following such termination (in the case of a termination by the Company) and an additional $25.0 million shall be payable

[1] Section 8.01(b)(i) provides for termination in the event that the transaction cannot close because the antitrust conditions have not been satisfied but in the absence of a final nonappealable order prohibiting the closing and antitrust grounds.

[2] Section 8.01(b)(ii) provides for termination in the event that there is a final nonappealable order prohibiting the closing and antitrust grounds, provided that the party seeking to terminate this Agreement under this Section 8.01(b)(ii) hascomplied in all material respects with its obligations under Section 6.09 [efforts obligations and risk-shifting covenants].

when and if required by Section 8.03(d) (collectively, the "Parent Termination Fee"), which amounts shall be payable in immediately available funds.

(v) Simple provision (Example 5)

(d) If this Agreement is terminated pursuant to:

(i) Section 8.1(b)(ii) in connection with a Judgment obtained or issued by a Governmental Entity with respect to Section 7 of the Clayton Antitrust Act of 1914 or any other applicable Antitrust Law (an "Antitrust Judgment");

(ii) Section 8.1(b)(i) and as of the Outside Date the Antitrust Condition shall not have been satisfied; or

(iii) Section 8.1(c)(i) due to Parent's or Purchaser's material breach of Section 6.4 (subject, for the avoidance of doubt, to the limitations set forth in Section 6.4(e));

then in each case of clauses (i), (ii) and (iii), Parent shall pay, without duplication, to the Company within two Business Days following termination of this Agreement a fee equal to $75,000,000 (the "Parent Termination Fee") by wire transfer in immediately available funds to an account specified by the Company.

(vi) Simple provision (Example 6)

(c) Zillow agrees that: . . .

(iii) in the event that this Agreement is terminated by, (A) either Zillow or Trulia pursuant to Section 8.01(c) in connection with any injunction, order, decree or ruling related to the HSR Act, any other applicable Competition Laws or related consents or approvals, . . . then Zillow shall pay to Trulia promptly (but in any event no later than one business day after such termination) a fee of $150 million (the "Regulatory Fee"), which amount shall be payable in immediately available funds (the payment of the Regulatory Fee by Zillow under this Section 8.03(c)(iii) shall not obviate the need for Trulia to pay the Termination Fee under Section 8.03(b)(iii) if the conditions for payment thereof have been satisfied[1]).

(vii) Sole and exclusive remedy (Example 1)

In the event that this Agreement (A) is terminated (x) by Parent or Company pursuant to Section 7.1(b)(i) due to the failure of any Antitrust Condition to be satisfied, or (y) by Parent or Company pursuant to Section 7.1(b)(ii) due to a final and nonappealable

1 Section 8.03(b)(iii) generally provides for the payment of a termination fee of $69.8 million in the event that Trulia enters into a definitive agreement to be acquired by a third party.

judgment, order, injunction, rule or decree or other final and nonappealable action enjoining or prohibiting or otherwise making illegal consummation of the Merger, in each case, under any Antitrust Law, or (z) by Parent pursuant to Section 7.1(c)(iii) [government litigation that imposed a Substantial Detriment], and (B) at the time of such termination each of the conditions set forth in Sections 6.1 and 6.2 have been satisfied or waived (other than (1) the Antitrust Conditions and (2) those other conditions that by their nature cannot be satisfied until the Closing Date, but which would be satisfied if the Closing Date were the date of such termination), then Parent shall pay to Company a termination fee of $100,000,000 (the "Parent Termination Fee") by wire transfer of same day funds at the time of termination in the case of a termination by Parent or within two Business Days after such termination in the case of a termination by Company, it being understood that in no event shall Parent be required to pay the Parent Termination Fee on more than one occasion. Notwithstanding anything in this Agreement to the contrary, except in the case of fraud or a willful and material breach of this Agreement, in the event that the Parent Termination Fee becomes payable, then payment to Company of the Parent Termination Fee, together with any amounts due under Section 7.3(d), shall be Company's sole and exclusive remedy as liquidated damages for any and all losses or damages of any nature against Parent and Merger Sub and each of their respective former, current and future directors, officers, employees, agents, general and limited partners, managers, members, shareholders, Affiliates and assignees and each former, current or future director, officer, employee, agent, shareholder, general or limited partner, manager, member, shareholder, Affiliate or assignee of any of the foregoing (collectively, the "Parent Parties") in respect of this Agreement, any agreement executed in connection herewith (other than Confidentiality Agreement), and the transactions contemplated hereby and thereby, including for any loss or damage suffered as a result of the termination of this Agreement, the failure of the Merger to be consummated or for a breach or failure to perform hereunder (whether intentionally, unintentionally, or otherwise) or otherwise, and upon payment of such Parent Termination Fee no Parent Party shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated hereby and thereby.

(viii) Sole and exclusive remedy (Example 2)

If this Agreement is terminated by either Parent or the Company pursuant to Section 9.1(b)(ii) due to the inability to obtain any required approval under any applicable Antitrust Law, then, (i) so long as the inability to obtain such required approval was not due to a breach of this Agreement by the Company and (ii) as of April 15, 2013, all conditions in Section 7.2 (other than Section 7.2(c) but which shall be capable of satisfaction at such time) were satisfied, Parent shall be obligated to and shall pay to the Company a fee in the amount equal to $100,000,000 by wire transfer of same-day funds on the second (2) Business Day following the date of such termination of this Agreement, which shall be the

sole and exclusive remedy of the Company, the Stockholders and their respective Affiliates against Parent, Merger Subsidiary and their respective Affiliates as a result of such termination or otherwise relating to this Agreement or the transactions contemplated hereby (whether framed in tort, contract or otherwise).

(ix) Sole and exclusive remedy proviso

The Company agrees that in the event that the Reverse Termination Fee is paid to the Company pursuant to this Section 8.3, (i) the payment of such Reverse Termination Fee shall be the sole and exclusive remedy of the Company, its equityholders and all of their Affiliates against Parent, the Merger Subs or any of their directors, officers and other Affiliates for, and (ii) in no event will the Company, its equityholders or any of their Affiliates be entitled to recover any other money damages or any other remedy based on a claim in law or equity with respect to, (1) any loss suffered as a result of the failure of the Mergers to be consummated, (2) the termination of this Agreement, (3) any liabilities or obligations arising under this Agreement, or (4) any claims or actions arising out of or relating to any breach, termination or failure of or under this Agreement, and upon payment to the Company of the Reverse Termination Fee in accordance with this Section 8.3(a) , neither Parent, the Merger Subs nor any of their directors, officers or other Affiliates shall have any further liability or obligation to the Company, its equityholders or any of their Affiliates relating to or arising out of this Agreement or the transactions contemplated hereby. Notwithstanding anything to the contrary in this Agreement, in any circumstance in which the Reverse Termination Fee is paid (whether due to any willful, intentional or unintentional breach by Parent or a Merger Sub, or for any other reason), then the Company's sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise) against Parent, the Merger Subs or any of their Affiliates, equityholders, controlling persons, stockholders, directors, officers, employees, agents or other representatives (the "Parent Related Parties") for any breach, loss or damage shall be to terminate this Agreement and receive payment of the Reverse Termination Fee, only to the extent provided for by this Section 8.3(a), and upon payment of such amount in accordance with this Section 8.3(a) no Person shall have any rights or claims against any of the Parent Related Parties under this Agreement, in respect of any oral representations made or alleged to be made in connection herewith, in respect of the transactions contemplated hereby, whether at law or equity, in contract, in tort or otherwise, and none of the Parent Related Parties shall have any further liability or obligation relating to or arising out of this Agreement, in respect of any oral representations made or alleged to be made in connection herewith or therewith, or in respect of the transactions contemplated hereby or thereby. Nothing herein shall limit the Company's rights under Section 8.4 prior to the termination of this Agreement or the Company's right to seek payment of and be paid the Reverse Termination Fee in accordance with this Agreement if the Company has pursued

alternative remedies hereunder in lieu of pursuing the Reverse Termination Fee and the Company ceases to pursue such remedies without having obtained them.

(x) Liquated damages (Example 1)

Each of the Company, Parent and each Merger Sub acknowledges that (i) the agreements contained in this Section 8.3 are an integral part of the transactions contemplated by this Agreement, (ii) the Reverse Termination Fee is not a penalty, but is liquidated damages, in a reasonable amount that will compensate the Company and its Affiliates in the circumstances in which such fee is paid for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision, and (iii) without these agreements, the parties would not enter into this Agreement.

(xi) Liquidated damages (Example 2)

(e) Each of Parent, Purchaser and the Company agrees that the provisions contained in this Section 8.2 [termination fees] are an integral part of the transactions contemplated hereby, that the damages resulting from the termination of this Agreement as set forth in Section 8.1 are uncertain and incapable of accurate calculation and that the amounts payable by the Company or Parent, as applicable, pursuant to this Section 8.2 are reasonable forecasts of the actual damages which may be incurred by the other party under such circumstances. The amounts payable pursuant to this Section 8.2 constitute liquidated damages and not a penalty. Notwithstanding anything to the contrary in this Agreement (subject to Section 9.13 and Section 8.2(g)), . . . (iii) if the Company receives or is entitled to receive the Parent Termination Fee [antitrust reverse breakup fee] pursuant to this Section 8.2, upon payment of the Parent Termination Fee, such payment shall be the sole and exclusive remedy of the Company against Parent and its Subsidiaries and their respective former, current or future officers, directors, partners, stockholders, managers, members, Affiliates, Financing Parties, and other financing sources and other Representatives (collectively, the "Parent Related Parties") and upon payment of the Parent Termination Fee, none of the Parent Related Parties shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated hereby, (iv) if the Company receives any payments from Parent or Purchaser in respect of any breach of this Agreement, and thereafter the Company is entitled to receive the Parent Termination Fee pursuant to this Section 8.2, the Parent Termination Fee payable pursuant to this Section 8.2 shall be reduced by the aggregate amount of any payments made by Parent or Purchaser to the Company in respect of any such breaches of this Agreement, . . . (vi) while the Company may pursue both a grant of specific performance in accordance with Section 9.13 and the payment of the Parent Termination Fee under Section 8.2(d)

under no circumstances shall the Company, be permitted or entitled to receive both a grant of specific performance to cause the consummation of the transactions contemplated hereby and money damages, including all or any portion of the Parent Termination Fee, with respect to the same matter at issue; . . . (viii) in no event shall Parent's and Purchaser's, taken together, liability to the Company Related Parties with respect to (A) any breach by Parent or Purchaser of Section 6.4 (whether willfully, intentionally, knowingly or otherwise) and (B) any failure of the parties to satisfy for any reason (x) the condition set forth in clause (iii) of Exhibit A as a result of an Antitrust Judgment or (y) the Antitrust Condition, in any case, exceed the Parent Termination Fee.

(xii) Provisions for collection of reverse termination fee

(c) In the event that

(i) Parent or the Company terminates this Agreement

(A) pursuant to Section 8.01(b)(i) or Section 8.01(c) and at the time of such termination

(1) any of the conditions set forth in Section 7.01(b) or Section 7.01(c) (due to any antitrust Law or Judgment issued by any Governmental Entity under any antitrust Law) has not been satisfied or

(2) litigation with any Governmental Agency of the U.S. Federal government that is challenging the consummation of the Merger under any antitrust Law has been commenced or threatened in writing or such litigation could reasonably be expected, or

(B) pursuant to Section 8.01(b)(ii) (due to any antitrust Law or Judgment issued by any Governmental Entity under any antitrust Law), or

(ii) the Company terminates this Agreement pursuant to Section 8.01(e) (as a result of Parent's or Merger Sub's material breach of its obligations under Section 6.03),

then Parent shall pay to the Company a non-refundable fee in the amount of $131.0 million (the "Reverse Termination Fee") by wire transfer of same-day funds, no later than two (2) Business Days following such termination.

Notwithstanding the foregoing, Parent shall not be required to pay the Reverse Termination Fee pursuant to clause (i) of the preceding sentence if

(X) there has been a Willful Breach by the Company of its obligations set forth in Section 5.01, which breach, individually or in the aggregate with any other Willful Breaches of Section 5.01, has resulted or would reasonably be expected to result in a Company Material Adverse Effect or

(Y) there has been a Willful Breach by the Company of its obligations set forth in Section 5.03, Section 6.01, Section 6.02, Section 6.03, Section 6.04(e) or Section 6.04(f);

provided, *however*, notwithstanding that there has been a Willful Breach, Parent shall be required to pay the Reverse Termination Fee unless Parent has promptly asserted, in a prior written notice delivered to the Company, any such Willful Breach and the Company has not cured by such Willful Breach prior to the earliest of (1) thirty (30) days after delivery of such written notice, (2) termination of this Agreement by the Company and (3) the Outside Date. Parent shall not deliver any notice of Willful Breach after either party delivers a notice of termination of this Agreement.

b. Antitrust reverse termination fee with recoupment

(c) DigitalGlobe shall pay to GeoEye a fee of $20,000,000 (the "DigitalGlobe Reverse Termination Fee") if:

(i) this Agreement is terminated by either DigitalGlobe or GeoEye (A)(1) pursuant to Section 8.01(b)(ii), only in connection with a Final Order obtained or issued by a Governmental Entity with respect to Section 7 of the Clayton Antitrust Act of 1914, the Communications Act or any other applicable U.S. antitrust or competition Laws, or (2) pursuant to Section 8.01(b)(i) and, in the case of this clause (2), at the time of such termination, the conditions set forth in Section 7.01(c)(i) or (c)(iii) or, solely with respect to U.S. antitrust or competition laws or the Communications Act, Section 7.01(d) shall not have been satisfied and (B) all other conditions to the obligations of DigitalGlobe, Merger Sub and Merger Sub 2 to consummate the Merger set forth in Section 7.01 and Section 7.03 have been satisfied or waived (and, in the case of those conditions that by their terms are to be satisfied at the Closing, such conditions would be satisfied if the Closing were to occur); *provided* that if DigitalGlobe pays the Reverse DigitalGlobe Termination Fee in accordance with this Section 6.06(c) and, prior to July 1, 2014, GeoEye enters into a definitive Contract to consummate a GeoEye Takeover Proposal or any GeoEye Takeover Proposal is consummated, GeoEye shall pay to DigitalGlobe a payment of $10,000,000 (the "Recoupment Payment").

c. Antitrust reverse termination fee equal to transaction costs (with cap)

(b) In the event that this Agreement is terminated by (i) either Parent or the Company pursuant to Section 8.01(b) and the only Offer Condition not satisfied or waived on or prior to the Outside Date is (x) the HSR Approval Condition and/or (y) clause (d)(ii) of Annex I as a result of any Restraint arising under the HSR Act or any other Antitrust Law applicable to the Offer or the Merger, (ii) either Parent or the Company pursuant to Section 8.01(b)(iii) [including failure to successfully negotiate consent order with FTC]; or (iii) the

Company pursuant to Section 8.01(d) as a result of Parent's material breach of its obligation to use its reasonable best efforts (as defined in Section 6.03) to obtain the HSR Approval, Parent shall pay to the Company an amount equal to the sum of the Company's documented Transaction Expenses by wire transfer of immediately available funds to a bank account designated to Parent by the Company, as promptly as reasonably practicable (and, in any event, within three business days after the Company provides Parent with an invoice for such amount and related documentation); *provided*, that in no event shall Parent be required to reimburse any Transaction Expenses incurred prior to August 2, 2012; and *provided, further*, that in no event shall Parent be required to reimburse the Company's Transaction Expenses in excess of $5,000,000 in the aggregate.

d. Reimbursement of expenses for collection

(d) With respect to any actions taken by the Company or Parent to collect the Termination Fee or Reverse Termination Fee (as applicable), the nonprevailing party shall promptly reimburse the prevailing party for all reasonable documented out-of-pocket fees and expenses incurred by the prevailing party (including the reasonable fees and expenses of all attorneys, consultants, economists and other experts retained by the prevailing party and all reasonable duplicating, travel and related expenses).

X. Damages for Breach

a. Willful breach

Effect of Termination. In the event of termination of this Agreement by either the Company or Parent as provided in Section 8.01, this Agreement shall forthwith become void and have no effect, without any liability or obligation on the part of Parent, Merger Sub or the Company, other than the second-to-last sentence of Section 6.02, Section 6.08, this Section 8.02 and Article IX, which provisions shall survive such termination; *provided, however*, that, except as set forth in Section 6.08(e), no such termination shall relieve any party hereto from any liability for damages incurred or suffered by a party (which the parties acknowledge and agree shall not be limited to reimbursement of expenses or out-of-pocket costs), to the extent such damages were the result of fraud or the Willful Breach by another party of any of its representations, warranties, covenants or other agreements set forth in this Agreement. For purposes of this Agreement, "Willful Breach" shall mean a material breach that is a consequence of an act undertaken, or a failure to act, which the breaching party knew, or reasonably should have known, would, or would reasonably be expected to, result in a breach of this Agreement.

XI. Ticking Fees

a. Example 1

> Section 2.1(b)(i). In the event that the Effective Time shall not have occurred by April 5, 2008 (the "Adjustment Date"), the $28.00 per share of Company Common Stock to be paid pursuant to the preceding sentence shall be increased for each day after the Adjustment Date, through and including the Closing Date, by adding thereto the excess (which shall not be less than zero) of (i) an amount equal to $0.006137 per day over (ii) any dividends or distributions (valued at the Closing Date using 8% simple interest per annum from the applicable date of payment) declared, made or paid (without duplication) on a share of Company Common Stock or Company Preferred Stock from and after the Adjustment Date through and including the Closing Date (the amount per share of Company Common Stock to be paid pursuant to this Section 2.1(b)(i) (rounding to the nearest cent) is referred to as the "Merger Consideration.").

b. Example 2

> If any of the Minimum Required Approvals has not been obtained by the Purchasers' Representative by December 31, 2011, the Purchasers' Representative shall promptly after such date (and in any event within two (2) Business Days thereafter) pay (or, to the extent permitted under the Escrow Agreement, duly direct the Escrow Agent to release (which shall satisfy the Purchasers' Representative's relevant obligations under this Section 10.5(c) only as and when the Escrow Agent actually releases)) to the Sellers' Representative a fee of €11,912,500 via wire transfer in immediately available funds. In addition, the Purchasers' Representative shall pay (or, to the extent permitted under the Escrow Agreement, duly direct the Escrow Agent to release (which shall satisfy the Purchasers' Representative's relevant obligations under this Section 10.5(c) only as and when the Escrow Agent actually releases)) to the Sellers' Representative a fee of €11,912,500 (less five percent (5.0%) of the Preferred Stock Offering Adjustment Amount, if any, divided by twelve (12)) for each additional monthly period after December 31, 2011 which expires before all such Minimum Required Approvals shall have been obtained. If the Purchasers' Representative fails to pay any of these such fees (each a "Ticking Fee"), the Sellers' Representative has the option to duly direct, via joint instruction, the Escrow Agent to release an amount equal to the Ticking Fee then due and payable to the Sellers' Representative. The Purchasers' Representative's obligations to pay such Ticking Fee under this Section 10.5(c) shall not be satisfied until, and only in so far as, the Escrow Agent actually releases such amount, and the Purchasers' Representative has complied with its obligation under Section 2.3(c) to deposit additional Eligible Collateral into the Escrow Account to the extent of any deficiency.

c. Example 3

> Subject to Section 2.1(d) and Section 2.1(e), each issued and outstanding share of Common Stock, par value $2.50 per share, of the Company outstanding immediately prior to the Effective Time (such shares collectively, "Company Common Stock" or "Shares" and each, a "Share"), other than any Cancelled Shares (as defined, and to the extent provided in, Section 2.1(b)) and any Dissenting Shares (as defined, and to the extent provided in, Section 2.1(e)), shall thereupon be converted into and shall thereafter represent the right to receive the sum of $78.00 in cash and the Additional Per Share Consideration, (together, rounded to the nearest penny, the "Merger Consideration"). The "Additional Per Share Consideration" shall not be less than zero and shall mean, (x) if the Effective Time shall occur after January 10, 2009 (the "Additional Consideration Date"), an amount in cash per share, equal to the excess, if any, of (I) $78.00 multiplied by the product of (A) 8% and (B) the Annualized Portion (as defined below), over (II) any dividends or distributions (valued at the Closing Date using 8% simple interest per annum from the applicable date of payment) declared on a share of Company Common Stock and having a record date during the Dividend Period and thereafter paid (it being understood that in no event shall the Additional Per Share Consideration be paid in respect of any period from and after July 10, 2009), or (y) if the Effective Time shall occur on or prior to the Additional Consideration Date, zero; provided that no adjustment shall be made for more than two quarterly dividends. The term "Annualized Portion" shall mean the quotient obtained by dividing the number of days elapsed during the Dividend Period by 365. The term "Dividend Period" means the period beginning on the Additional Consideration Date and ending on the earlier of July 10, 2009 and the Closing Date. All Shares that have been thus converted into the right to receive the Merger Consideration as provided in this Section 2.1 shall be automatically cancelled and shall cease to exist and the holders of certificates which immediately prior to the Effective Time represented such Shares ("Certificates") or holders of Shares represented by book entry ("Book-Entry Shares") shall cease to have any rights with respect to such Shares other than the right to receive the Merger Consideration, without interest thereon, upon surrender of such Certificates or Book-Entry Shares, as applicable, in accordance with this Article II.

d. Example 4

> SECTION 2.01 *Conversion of Securities*.
>
> (a) 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 of the following securities:
>
> (i) each share of Class A Common Stock (each "Class A Common Share ") and each share of Class B Common Stock (each "Class B Common Share" and in any case, each Class A Common Share or Class B Common Share, a "Share") issued and outstanding immediately prior to the Effective Time (other than any Share to be

canceled pursuant to Section 2.01(a)(ii) and any Dissenting Shares) shall be canceled and shall be converted automatically, subject to Section 2.02, into the right to receive $13.25 in cash, plus the Additional Per Share Consideration (if any), without interest (together, rounded to the nearest penny, the "Merger Consideration"), payable upon surrender, in the manner provided in Section 2.02, of the Certificate that formerly evidenced such Share, subject, however, to the Surviving Corporation's obligation to pay any dividends declared by the Company in accordance with the terms of this Agreement with a record date prior to the Effective Time that have not been paid by the Company prior to the Effective Time;

. . .

(b) "Additional Per Share Consideration" means, if the Closing Date occurs after the Outside Date, an amount in cash per Share, equal to (i) $0.002178 multiplied by (ii) the number of days elapsed during the Ticking Fee Period. The term "Ticking Fee Period" means, subject to Section 6.09(c), the period beginning on the calendar day following the Outside Date and ending on and including the Closing Date.

[SECTION 6.09] (c) . . . For purposes of determining the Additional Per Share Consideration (if any), the number of days included in the Ticking Fee Period shall be reduced by one day for each day following the later of (i) the sixtieth (60th) day from the date of service of the Second Request and (ii) the date on which Parent, but not the Company, has certified substantial compliance with a Second Request until, in each case, the day on which the Company certifies substantial compliance with such Second Request.

XII. "Take or Pay" Provisions

a. "Take or pay" covenant

(a) If any competent authority indicates formally or informally that an approval is likely to be granted subject to compliance with certain conditions and/or commitments, the Purchaser shall accept the imposition of such conditions and/or offer such commitments. If the Purchaser is unable to offer or comply with any such conditions or commitments or an approval has not been granted by [date], the Purchaser shall be obliged to pay the Closing Payment Amount in accordance with the terms of this Agreement on [date] contemporaneously with the transfer of the Target Shares to a party designated by the Purchaser and acceptable to the relevant antitrust authorities (hereinafter the "Third Party Buyer").

(b) If (i) the Purchaser fails to designate a Third Party Buyer; (ii) the transfer of any Target Shares or to a Third Party Buyer is legally not permissible; (iii) a Third Party Buyer does not accept title to any Target Shares; or (iv) any Target Shares cannot be transferred to a Third Party Buyer, the Purchaser shall be obliged to pay to the Sellers the Closing Payment Amount on [outside date], regardless of whether the conditions set forth in Sections 3.2(A), (B) and (C) have been fulfilled by such date or will be fulfilled at a later date. The Sellers shall as soon as reasonably practicable, but not earlier than [outside date plus 3-6 months], procure the sale to a third party of any Target Shares or assets which the Sellers do not transfer to a Third Party Buyer pursuant to this paragraph and shall promptly pay to the Purchaser an amount equal to any proceeds of such sale, net of any Taxes and fees, costs and expenses. In procuring such sale the Sellers shall act in good faith and in accordance with the advice of their financial advisers but shall not be obliged to accept any obligations in addition to those contained in this Agreement. The Sellers shall have no liability to the Purchaser in relation to the price obtained for such sale (other than to pay the proceeds (net of the items set out above) to the Purchaser) or in relation to any other term or condition of such sale and shall not in any circumstances act as a trustee or fiduciary for the Purchaser.

b. Business to be put in trust if clearance not obtained

In the event that the Closing shall not have occurred on or before the [31st/150th] day after the filing of the HSR Form pursuant to the HSR Act with respect to the transactions contemplated hereby,

(i) Buyer shall pay Seller the Purchase Price in the manner set forth in Article [**] hereof and assume the liabilities and indemnity obligations contemplated by this Agreement to be assumed by Buyer,

(ii) the post-closing audit adjustments provided for in Article [**] shall be calculated and paid as if the [31st/150th] day were the Closing Date,

(iii) all other references in this Agreement to the Closing Date shall be deemed to be references to the [31st/150th] day, and the covenants and other agreements contained herein shall be operative as if the Closing shall have occurred on the [31st/150th],

(iv) Seller shall place the shares into a Trust [defined term] pursuant to a Trust Agreement substantially in the form attached hereto which is reasonably acceptable to Buyer.

Seller and Buyer shall agree to any reasonable modifications suggested by a Governmental Antitrust Authority that, in the view of such authorities, are necessary to make the Trust comply with the U.S. antitrust laws. The Trust shall incorporate provisions with respect to the following:

(A) the Trustee shall have the right to appoint the directors of Target,

(B) the Trustee shall have the right to vote the shares on all matters for which shareholders of the Target are entitled to vote,

(C) if the Transaction has not closed within [180] days from the [31st/150th] day, the Trustee shall use its best efforts to sell the shares to a person not affiliated with either the Buyer or Seller. Proceeds from that sale shall first be used to pay fees and expenses of the Trustee, and then any expenses incurred by the Seller in connection with the transactions contemplated by this Agreement after the [31st/150th] day. The balance of proceeds shall be paid to Buyer.

XIII. Expenses

a. Bear own expenses

(i) Example 1

Whether or not the Mergers are consummated and except as otherwise provided in this Agreement or the other transaction documents to be entered into in connection with this Agreement and the transactions contemplated hereby, all expenses incurred in connection with this Agreement and the transactions contemplated hereby (including any applicable stock transfer or similar Taxes) shall be paid by the party incurring such expenses.

(ii) Example 2

Each party hereto shall bear its own Expenses in connection with any such filings and actions contemplated pursuant to this Section 5.5(d).

(ii) Example 3

Subject to Section 7.2 hereof, all Expenses incurred by the parties hereto (including, without limitation, any Expenses incurred in connection with obtaining any Third Party consents or any filings to be made pursuant to (i) the Exchange Act, the Securities Act or the rules and regulations of the NASDAQ, (ii) the HSR Act or other competition Laws or (iii) the DGCL or any Takeover Laws), shall be borne solely and entirely by the party which has incurred the same.

XIV. Termination Provisions

a. Failure to close by End Date or due to final prohibition order

(i) Example 1

Notwithstanding any provision in this Agreement to the contrary, if . . . (d) this Agreement is terminated by Parent or the Company pursuant to either Section 7.1(b) [failure to close by End Date for any reason] or Section 7.1(c) [probation order] (in the case of Section 7.1(c) to the extent arising in connection with any Regulatory Law) and, at the time of either such termination, all of the conditions to closing set forth in Sections 6.1 and 6.3 have been satisfied or waived in writing (or, if the Closing were to have taken place on the date of termination, such conditions would have been satisfied), other than the conditions set forth in Section 6.1(b)(if the injunction, restraint or prohibition relates to any Regulatory Law) or Section 6.1(c), then Parent shall pay to the Company an amount in cash equal to $750,000,000 (the "Reverse Termination Fee") within two (2) Business Days of such termination.

(ii) Example 2

Termination. This Agreement may be terminated and the Transaction abandoned at any time prior to the Second Effective Time:

(a) by the mutual written consent of the Company and Parent duly authorized by each of their respective Boards of Directors.

(b) by either of the Company or Parent:

(i) if the Transaction hall not have been consummated on or before June 30, 2012 (the "Walk-Away Date");

(ii) if any Restraint having the effect set forth in Section 6.1(c) [order or injunction] shall be in effect and shall have become final and nonappealable; *provided, however*, that the right to terminate this Agreement under this Section 7.1(b)(ii) shall not be available to a party if such Restraint was due to the failure of such party to perform any of its obligations under this Agreement; or

[Other termination provisions]

(iii) Example 3

Termination. This Agreement may be terminated and the Transactions may be abandoned at any time prior to the Effective Time by action taken or authorized by the board of

directors of the terminating party, notwithstanding any requisite approval of this Agreement and the Transactions by the shareholders of the Company, as follows:

. . .

(b) by either of the Company or Parent:

. . .

(ii) any Restraint having the effect set forth in Section 7.01(b) hereof shall have become final and nonappealable; *provided, however*, that the party seeking to terminate this Agreement under this Section 8.01(b)(ii) shall have complied in all material respects with its obligations under Section 6.09; or

[Other termination provisions]

b. Termination if FTC has not acted

Termination. This Agreement may be terminated . . . (b) by either Parent or the Company:

(i) at any time after the Outside Date, if the Acceptance Time shall not have occurred on or prior to the Outside Date; provided, however, that the right to terminate this Agreement under this Section 8.01(b)(i) shall not be available to any party whose failure to fulfill in any material respect any covenants or agreements of such party set forth in this Agreement has been a proximate cause of or materially contributed to the failure of the Acceptance Time to have occurred on or prior to the Outside Date;

(ii) if any Restraint having the effect of permanently restraining, enjoining, or otherwise prohibiting any of the Transactions shall be in effect and shall have become final and nonappealable; *provided* that the right to terminate this Agreement under this Section 8.01(b)(ii) shall not be available to any party that has not used its reasonable best efforts to contest, appeal and remove such Restraint; or

(iii) at any time after the Outside Date, if, (A) the FTC shall not have preliminarily accepted a consent agreement pursuant to Rule 2.34 of its Rules of Practice and (B) the FTC shall not have effected the early termination of the applicable waiting period under the HSR Act, and (C) the waiting period under the HSR Act (and any extensions thereof as reasonably agreed in writing by Parent and the Company) shall not have expired;

c. Termination on issuance of second request

Section 6.1. *Termination of Agreement*. This Agreement may be terminated at any time prior to the Closing Date as follows:

. . .

(d) by written notice of Seller to Buyer if a request for additional information and documentary material pursuant to the HSR Act has been received from either the Antitrust Division of the United States Department of Justice or the United States Federal Trade Commission or if an equivalent request has been received under any other antitrust or competition Laws (other than in the Excepted Jurisdictions);

d. Termination following prohibition of the transaction

(i) Example 1

Termination. This Agreement may be terminated and the transactions contemplated by this Agreement may be abandoned at any time prior to the Effective Time, as follows:

. . .

(b) by either Parent or the Company if:

. . .

(ii) any Restraint having the effect set forth in Section 8.01(c) [order] hereof shall have become final and nonappealable; *provided, however*, that the party seeking to terminate this Agreement shall have complied in all material respects with its obligations under Section 7.08 [efforts obligation]; or

(ii) Example 2

This Agreement may be terminated and the Merger may be abandoned at any time (notwithstanding adoption of the agreement of merger (as such term is used in Section 251 of the Corporation Law) contained in this Agreement by the Requisite Stockholder Approval) prior to the Effective Time (with any termination by Parent also being an effective termination by Merger Sub): . . .

(b) by either the Company or Parent, if any court of competent jurisdiction or other Governmental Entity shall have issued an Order, or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such Order or other action shall have become final and non-appealable; *provided*, that the party seeking to terminate this Agreement pursuant to this Section 7.01(b) shall have used its reasonable best efforts to contest, appeal and remove such Order or action and shall not be in violation of Section 5.04 or otherwise in material violation of this Agreement;

e. Extension if antitrust conditions have not been satisfied

(i) Extension at election of buyer

This Agreement may be terminated and the Merger may be abandoned at any time (notwithstanding adoption of the agreement of merger (as such term is used in Section 251 of the Corporation Law) contained in this Agreement by the Requisite Stockholder Approval) prior to the Effective Time (with any termination by Parent also being an effective termination by Merger Sub): . . .

(c) by either the Company or Parent, if the Effective Time shall not have occurred on or before August 15, 2012 (the "Outside Date"); *provided, however*, that if on the Outside Date at least one of the conditions set forth in Section 6.01(b) (as a result of an Order or Law under the Antitrust Laws) or Section 6.01(c) shall not have been satisfied, then, subject to the last paragraph of this Section 7.01, at the written election of Parent or the Company, the Outside Date may be extended no more than three (3) times in the aggregate, each time by a period of two (2) months (and in the case of such extension, any reference to the Outside Date in any other provision of this Agreement shall be a reference to the Outside Date, as extended); *provided, further, however*, that the Outside Date shall under no circumstance be extended beyond February 15, 2013; *provided, further*, that the right to terminate this Agreement under this Section 7.01(c) shall not be available to any party whose failure to fulfill in any material respect any covenants and agreements of such party set forth in this Agreement was the primary cause of the failure of the Effective Time to occur on or before the Outside Date;

(ii) Extension at election of seller

Section 8.01. *Termination*. This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

. . .

(b) by either Seller or Buyer if the Closing shall not have been consummated on or before 11:59 p.m. Pacific time on August 25, 2010 (the "Termination Date"); *provided however*, that (i) the failure to consummate the Closing on or before the Termination Date did not result principally from the failure of the Party seeking termination of this Agreement to fulfill any undertaking or commitment on its part provided for herein prior to Closing and (ii) in the sole discretion of Seller, in up to two successive elections and at any time prior to the Closing Date, the Termination Date may be extended by up to nine additional months after such date in connection with any Proceeding of any Governmental Authority with respect to regulatory matters pursuant to the HSR Act or other anti-trust related regulations or actions;

(iii) Extension at election of either buyer or seller (Example 1)

"End Date" means June 27, 2011; *provided, however*, that if on June 27, 2011, the conditions to Closing set forth in Section 6.01(b) [expiration of antitrust waiting periods] or 6.01(c) (in the case of Section 6.01(c), as a result of any Restraint or any pending or threatened suit, action or proceeding by any Governmental Entity, in each case arising under any competition, merger control, antitrust or similar law or regulation) shall not have been satisfied or waived but all other conditions to Closing shall have been satisfied or waived (or, in the case of conditions that by their nature are to be satisfied at the Closing, shall be capable of being satisfied on such date), then the End Date may be extended by either Parent or the Company to September 27, 2011;

(iv) Extension at election of either buyer or seller (Example 2)

Termination. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, notwithstanding approval thereof by the shareholders of Company, with any termination by Parent also being an effective termination by Merger Sub:

(a) by mutual written consent of Parent and Company; or

(b) by either Parent or Company:

(i) if the Merger shall not have been consummated on or before July 24, 2013(the "Outside Date"); provided, that if on July 24, 2013 any of the Antitrust Conditions shall not have been satisfied or duly waived by the party or parties entitled to the benefit of such condition but all the other conditions to Closing set forth in Article VI have been satisfied (other than those conditions that by their nature cannot be satisfied until the Closing Date), then either Parent or Company may elect to extend the Outside Date to (and including) October 24, 2013; provided, further, that the right to terminate this Agreement pursuant to this Section 7.1(b)(i) shall not be available to any party whose material breach of this Agreement shall have been the principal cause of, or resulted in, the failure of the Merger to be consummated by the Outside Date (as extended); or

(ii) if any Governmental Entity of competent jurisdiction shall have issued a judgment, order, injunction, rule or decree, or taken any other action enjoining or otherwise prohibiting or making illegal consummation of the Merger and such judgment, order, injunction, rule, decree or other action shall have become final and nonappealable; provided, that the party seeking to terminate this Agreement pursuant to this Section 7.1(b)(ii) shall have complied with Section 5.5; or

. . . .

(v) Extension at election of either buyer or seller (Example 3)

Termination. This Agreement may be terminated and the Transactions abandoned at any time prior to the Second Effective Time:

. . .

(c) by the mutual written consent of the Company and Parent duly authorized by each of their respective Boards of Directors.

(d) by either of the Company or Parent:

(i) if the Second Merger shall not have been consummated on or before June 30, 2012 (the "Walk-Away Date"); *provided, however*, that if, as of such date, the condition set forth in Section 6.1(b) [regulatory approval] or Section 6.1(c) [no order or injunction] shall not have been satisfied or duly waived by all parties entitled to the benefit of such condition, either the Company or Parent may, by written notice delivered to the other party, elect to extend the Walk-Away Date to December 31, 2012 (the "Extended Walk-Away Date"); *provided, further*, that the right to terminate this Agreement under this Section 7.1(b)(i) shall not be available (x) to a party if the inability to satisfy such condition was due to the failure of such party to perform any of its obligations under this Agreement or (y) to a party if the other party has filed (and is then pursuing) an action seeking specific performance as permitted by Section 8.8 or (z) to the Company if Parent or Merger Sub is pursuing an action in good faith to enforce, including against anticipatory breach, the obligations of the lenders to fund the Debt Financing under the Debt Commitment Letters or the definitive documents relating to the Debt Financing.

(vi) Extension at election of either buyer or seller (Example 4)

(b) By either the Company or Parent, if the Closing of the Mergers shall not have occurred on or before March 8, 2015 (the "Termination Date"); *provided, however*, that if all of the conditions to Closing, other than the conditions set forth in Section 6.3 or Section 7.3,[1] shall have been satisfied or shall be capable of being satisfied at such time, the Termination Date may be extended by either the Company or Parent from time to time by written notice to the other party, in each case for sixty days, up to a date not beyond September 8, 2015, the latest of any of which dates shall thereafter be deemed to be the Termination Date;

[1] Sections 6.3 and 7.3 are the HSR Act waiting period conditions precedent.

(vii) Extension at election of either buyer or seller (Example 5)

(b) by either the Company or Parent, if:

(i) if the Merger is not consummated on or before February 12, 2015 (the "End Date"); *provided, however,* that, if on such date any of the conditions set forth in Section 9.01(b),[1] Section 9.01(c)[2] and Section 9.01(d)[3] (solely on account of a temporary or preliminary order or injunction) are not satisfied, but all other conditions set forth in Article 9 shall have been satisfied (other than those conditions that have been waived by the Company and Parent, if and to the extent that such waiver is permitted by Applicable Law, and other than those conditions that by their nature can only be satisfied at or immediately prior to the Closing), then either the Company or Parent shall have the right, in its sole discretion, to extend the End Date by a period of six months, in which case the End Date shall be August 12, 2015; *provided, further,* that the right to terminate this Agreement pursuant to this Section 10.01(b)(i) shall not be available to any party whose breach of any provision of this Agreement results in the failure of the Merger to be consummated on or before the End Date (as extended, if applicable);

(viii) Extension on reasonable belief of extending party

(b) by either of the Company or Parent:

(i) the Merger shall not have been consummated by on or before May 31, 2010 (the "Outside Date"); *provided,* that the Outside Date may be extended (A) for a period not to exceed ninety (90) days by either party by written notice to the other party if the Merger shall not have been consummated as a result of the condition set forth in Section 6.1(b) [antitrust waiting periods and approvals] failing to have been satisfied but (1) the extending party reasonably believes that the relevant approvals will be obtained during such extension period and (2) each of the other conditions to the consummation of the Merger set forth in Article VI has been satisfied or waived or remains reasonably capable of satisfaction;

(ix) Extension where regulatory condition "reasonably capable of being satisfied" (Example 1)

Termination Events. This Agreement may be terminated at any time prior to the Closing:

. . .

[1] Antitrust approvals condition precedent

[2] FCC approval condition precedent

[3] No applicable law, order or injunction condition precedent.

(b) by either Buyer Parent or Parent if the Closing has not occurred on or before September 21, 2012 (the "Outside Date"); *provided, however*, that the Outside Date will automatically be extended up to and including December 21, 2012, in the event that all conditions to Closing other than those set forth in Sections 6.1(b) (the "Regulatory Conditions") have been or are capable of being satisfied at the time of such extension and the Regulatory Conditions have been or are reasonably capable of being satisfied on or prior to December 21, 2012; *provided, further* that neither Buyer Parent nor Parent shall be entitled to terminate this Agreement pursuant to this Section 10.1(b) if such Person's breach of this Agreement has prevented the consummation of the Transactions;

(x) Extension where regulatory condition "reasonably capable of being satisfied" (Example 2)

Termination. This Agreement may be terminated at any time prior to the Effective Time, whether before or after receipt of the Company Stockholder Approval (except as otherwise provided below):

. . .

(b) by either Parent or the Company:

(i) if the Merger shall not have been consummated on or before October 1, 2013 (as it may be extended, the "Outside Date"), unless the failure to consummate the Merger is the result of a material breach of this Agreement by the party seeking to terminate this Agreement (which, in the case of Parent, includes any breach by Merger Sub); provided, that if on the Outside Date (i) either of the conditions set forth in Section 7.01(b) or Section 7.01(c) has not been satisfied, or (ii) litigation with any Governmental Entity that is challenging the consummation of the Merger or the other Transactions contemplated hereby under the HSR Act or any other antitrust laws has been commenced or threatened, then, upon the request of Parent or the Company and with the written consent of the other party (such consent not to be unreasonably withheld) (provided, that the requesting party reasonably believes, after consultation with outside legal counsel, that approvals necessary to satisfy the conditions set forth in Sections 7.01(b) and 7.01(c) are reasonably likely to be obtained during such extension period or a subsequent permitted extension period and, in the event of a request by Parent, that the Parent Extension Conditions (as defined below) have been satisfied), the Outside Date then in effect shall be extended by no more than two (2) times in the aggregate, each time by a period of thirty-eight (38) calendar days (and in the case of such extension, any reference to the Outside Date in this or any other provision of this Agreement shall be a reference to the Outside Date, as extended);

(xi) Extension where regulatory condition "reasonably likely of being satisfied"

SECTION 8.01 Termination. This Agreement may be terminated and the Transactions may be abandoned at any time prior to the Effective Time by action taken or authorized by the board of directors of the terminating party, notwithstanding any requisite approval of this Agreement and the Transactions by the shareholders of the Company, as follows:

. . .

(b) by either Parent or the Company if:

(i) the Effective Time shall not have occurred on or before December 30, 2013 (the "Outside Date"); *provided, however*, that if on the Outside Date all of the conditions set forth in Section 7.01, Section 7.02 and Section 7.03 have been satisfied (or, with respect to the conditions that by their terms must be satisfied at the Closing would have been so satisfied if the Closing would have occurred) other than the conditions set forth in Section 7.01(b)[1] (to the extent such Restraint arises under any Antitrust Law and shall not have become final and nonappealable) or Section 7.01(c),[2] then either Parent or the Company may extend the Outside Date for an additional sixty (60) days (as extended, the "Extended Outside Date") by delivery of written notice of such extension to the other party not less than three (3) Business Days prior to the Outside Date if the party delivering such notice reasonably believes that the conditions in Sections 7.01(b) and 7.01(c) are reasonably likely to be satisfied on or before the Extended Outside Date; *provided, further*, that the right to terminate this Agreement under this Section 8.01(b)(i) shall not be available to any party whose knowing and intentional breach of this Agreement has been the principal cause of, or resulted in, the failure of the Effective Time to occur on or before the Outside Date or the Extended Outside Date, as applicable;

f. Accelerated termination by buyer

(i) Example 1

The Buyer agrees to promptly notify the Company in writing (such notification, an "Antitrust Notification") if at any time the Buyer determines in its sole reasonable

[1] Section 7.01(b). *No Restraints*. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order which is then in effect and has the effect of making the Merger illegal or otherwise prohibiting consummation of the Transactions (any such Order, a "*Restraint*").

[2] Section 7.01(c). *Antitrust Approvals and Waiting Periods*. Any waiting period (and any extension thereof) applicable to the consummation of the Merger under the HSR Act and any agreement with a Governmental Authority not to consummate the Transactions shall have expired or been terminated.

judgment (after consultation with Buyer's antitrust counsel) that there is no reasonable likelihood that Buyer will, by the Outside Date, agree to or satisfy conditions or requirements of the United States Federal Trade Commission and/or Antitrust Division of the United States Department of Justice or of any court to the receipt of any clearance required under the HSR Act or other Applicable Law for the consummation of the transactions contemplated by the terms of this Agreement; *provided , however* , that the foregoing shall in no way diminish or modify the Buyer's obligations pursuant to the other portions of this Section 4.3(a) [commercially reasonable efforts to obtain antitrust clearance] . The Buyer and the Company agree, within 15 days after the Company's receipt of an Antitrust Notification, to engage in discussions regarding the reasons for such Antitrust Notification and any appropriate course of action in light thereof. In the event the Buyer and the Company are unable to agree upon a mutually-acceptable course of action in such 15-day period, the Company may terminate this Agreement pursuant to Section 7.3(e) by notifying the Buyer in writing of such termination within seven days following the expiration of such 15-day period.

(ii) Example 2

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 or parties, and except as provided below, whether before or after the requisite approval of the stockholders of the Company:

. . .

(b) by either Parent or the Company, if the Merger shall not have been consummated on or before May 31, 2003 (which date shall be extended to September 30, 2003, in the event that all waiting periods (and any extension thereof) under the HSR Act relating to the Merger shall not have expired or been terminated on or prior to May 31, 2003) (the "END DATE"); *provided, however*, that the right to terminate this Agreement pursuant to this Section 7.1(b) shall not be available to any party whose action or failure to act has been the principal cause of or resulted in the failure of the Merger to occur on or before the End Date, and such action or failure to act constitutes a material breach of this Agreement;

(c) (i) by either the Company or Parent if any court of competent jurisdiction or other Government Entity shall have issued an order, decree, or ruling enjoining or otherwise prohibiting the transaction contemplated by this Agreement and such order, decree or ruling shall have become final and non-appealable (unless such order, decree, or ruling has been withdrawn, reversed, or otherwise made inapplicable); or

(ii) by the Company if any litigation or proceeding is pending before any court of competent jurisdiction or has been threatened to be instituted by any Person or

governmental body, which in the good faith judgment of the Board of Directors of the Company is reasonably likely to result in an order, decree, or ruling enjoining, prohibiting,