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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of The Securities Exchange Act of 1934

Date of Report: December 14, 2005 (December 8, 2005)
(Date of earliest event reported)

The Nasdaq Stock Market, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**000-32651**	**52-1165937**
(State of incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

One Liberty Plaza, New York, New York	**10006**
(Address of principal executive offices)	**(Zip Code)**

(212) 401-8700
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry Into a Material Definitive Agreement.

See Item 2.01, which is incorporated by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets.

Merger with Instinet. On December 8, 2005, The Nasdaq Stock Market, Inc. ("Nasdaq") completed the acquisition of Instinet Group Incorporated ("Instinet") under an Agreement and Plan of Merger, dated as April 22, 2005, by and among, Nasdaq, Instinet and a wholly-owned merger subsidiary of Nasdaq. Under the merger agreement, Nasdaq acquired all outstanding shares of Instinet for an aggregate purchase price of approximately $1.878 billion in cash. Nasdaq paid total cash consideration of approximately $934.5 million, which is subject to certain post-closing adjustments, and approximately another $207.5 million of the purchase price came from an affiliate of Silver Lake Partners II, L.P., a private equity firm, pursuant to the sale of Instinet's Institutional Broker division (as described below). The balance of the $1.878 billion reflects, in part, Instinet's available cash and, in part, a cash dividend (of approximately $109.0 million), which Instinet previously paid to its stockholders from the net after-tax proceeds of the sale of Instinet's Lynch, Jones & Ryan, Inc. brokerage subsidiary. The merger agreement provided for a merger subsidiary of Nasdaq to merge with and into Instinet. As a result of the merger and the sale of Instinet's Institutional Broker division, Nasdaq owns INET ECN.

Nasdaq funded the Instinet acquisition through the sale of Instinet's Institutional Broker division, a credit facility, and the previous issuance of convertible notes and warrants to Silver Lake Partners and Hellman & Friedman Capital Partners IV, LP (another private equity firm, which has been an investor in Nasdaq since 2001), as described more fully below, and with cash on hand from Nasdaq and Instinet.

Sale of Instinet's Institutional Broker Division. Following the merger closing, pursuant to the transaction agreement, dated as of April 22, 2005, by and among Nasdaq, Nasdaq's merger subsidiary, and an acquisition subsidiary of Silver Lake Partners, Nasdaq sold Instinet's Institutional Broker division to an affiliate of Silver Lake Partners for $207.5 million in cash. Although Silver Lake Partners is an affiliate of Nasdaq (as a result of Nasdaq's issuance of the convertible notes and warrants to Silver Lake Partners), they negotiated the terms and conditions of the transaction agreement at arms-length.

In connection with Nasdaq's sale of Instinet's Institutional Broker division to Silver Lake Partners, on December 8, 2005, Nasdaq and its affiliates, and affiliates of Silver Lake Partners, entered into several transition agreements, including a transition services agreement, amendment to a clearing agreement, co-location agreement, license agreement and an assignment and support agreement. These agreements are in place to allow for continuity of operations, including the clearing of brokerage transactions and the license of intellectual property related to the brokerage business. In addition, on December 8, 2005, prior to closing, Nasdaq and a subsidiary of Nasdaq and Silver Lake Partners entered into a letter agreement amending several provisions of the transaction agreement, including the working capital adjustment and certain tax matters.

Funding of Acquisition. In order to fund a portion of Nasdaq's consideration for the merger, on April 22, 2005, Nasdaq issued to an affiliate of Silver Lake Partners and Hellman & Friedman $205.0 million aggregate principal amount of 3.75% Series A Convertible Notes and Series A Warrants to purchase 2,209,052 shares of common stock under a securities purchase agreement, dated April 22, 2005. The Series A Notes will be convertible at a price of $14.50 per share into 14,137,931 shares of common stock, subject to certain specified adjustments and conditions. The Series A Warrants have an exercise price of $14.50 per share. Silver Lake Partners and its affiliates have voting and dispositive control over $145.0 million aggregate principal amount of the Series A Notes and Series A Warrants to purchase 1,562,500 shares of common stock. Hellman & Friedman and its affiliates have voting and dispositive control over $60.0 million aggregate principal amount of the Series A Notes and Series A Warrants to purchase 646,552 shares of common stock. Hellman & Friedman and its affiliates also have voting and dispositive control over $240.0 million aggregate principal amount of Nasdaq's 3.75% Series B Convertible Notes due 2012 and Series B Warrants to purchase 2,753,448 shares of common stock. On

April 22, 2005, Nasdaq entered into an Indenture with Law Debenture Trust Company of New York, as trustee. The Indenture governs the terms of the Series A and Series B Notes. The terms and conditions of the Series A Notes and Series A Warrants were determined through arms-length negotiations among the parties.

In addition, on April 22, 2005, Nasdaq entered into an amended and restated securityholders agreement under which Silver Lake Partners and its affiliates are entitled to (1) have a representative nominated to Nasdaq's Board of Directors, and (2) obtain additional information about Nasdaq, and consultation rights and information rights with respect to Nasdaq; provided that Silver Lake Partners and its affiliates maintain a certain specified level of ownership. Glenn Hutchins was appointed to Nasdaq's Board of Directors as the representative of Silver Lake Partners. Also, holders of the Series A Notes and Series A Warrants will be entitled to the benefits of a registration rights agreement, dated April 22, 2005, nine months after the merger closing. Under the registration rights agreement, Nasdaq has, among other things, agreed to file registration statements to cover the resale of the Series A Notes and the shares of common stock issuable upon conversion of the Series A Notes and exercise of the Series A Warrants at the request of their holders and to permit their holders to include their common stock if Nasdaq files registration statements to register its common stock. No material relationships exist between Silver Lake Partners and its affiliates, on the one hand, and Nasdaq and its affiliates, on the other hand, other than with respect to the merger agreement, the transaction agreement, the securities purchase agreement, the indenture, the registration rights agreement, the amended securityholders agreement and the agreements related thereto to which Silver Lake Partners or their affiliates are a party.

Copies of the amendment to the transaction agreement, transition services agreement, license agreement, co-location agreement, assignment and support agreement and amendment to clearing agreement, are attached as Exhibits 2.1, 99.2, 99.3, 99.4, 99.5, and 99.6, respectively, and are incorporated by reference.

The merger agreement, the transaction agreement, the securities purchase agreement, the indenture, the registration rights agreement and the amended securityholders agreement were attached as exhibits to Nasdaq's Current Report on Form 8-K filed on April 28, 2005 and are incorporated by reference to this Item 2.01.

The Credit Agreement. Simultaneously with the closing of the merger, Nasdaq entered into a credit agreement dated as of December 8, 2005, among the financial institutions that are or may from time to time become parties thereto, JPMorgan Chase Bank, N.A., as administrative agent for the lenders, Merrill Lynch, Pierce, Fenner & Smith Incorporated as syndication agent for the lenders, and J.P. Morgan Securities Inc. and Merrill, as Joint Bookrunners and Co-Lead Arrangers for the lenders. The credit agreement provides for credit of up to $825.0 million of senior secured financing. The $825.0 million available under the credit agreement includes (1) a five-year $75.0 million revolving credit facility, with a letter of credit subfacility and swingline loan subfacility, and (2) a six-year $750.0 million senior term loan facility. The interest rate on loans made under the credit agreement is expected to be either (1) a rate per annum equal to the greater of (a) the rate announced from time to time by JPMorgan as its "prime rate" and (b) the federal funds effective rate plus 1/2 of 1% or (2) at the "Adjusted LIBO Rate" used by JPMorgan, in each case, plus an applicable margin that varies depending upon Nasdaq's leverage ratio. Nasdaq has also agreed to pay customary fees and expenses related to the credit facility and to provide customary indemnities. On December 8, 2005, Nasdaq drew the full $750.0 million under the senior term loan facility.

Nasdaq's obligations under the credit facility are secured by a security interest in and liens upon substantially all of the assets of Nasdaq and its subsidiaries. All Nasdaq's domestic subsidiaries are guarantors of Nasdaq's obligations under the credit agreement (excluding the regulated broker-dealer subsidiaries and the insurance-related subsidiaries).

The credit agreement contains customary covenants, which, among other things, restrict Nasdaq's ability to take on new debt, sell assets, issue stock, make loans, and declare dividends. The credit agreement also requires Nasdaq to maintain a minimum interest

expense coverage ratio and a maximum leverage ratio. The credit agreement also contains customary events of default, as well as cross-defaults with the subordinated debt, which are described fully in the credit agreement.

A copy of the credit agreement is attached as Exhibit 99.1 and is incorporated by reference.

Indenture. On December 8, 2005, Nasdaq executed and delivered the First Supplemental Indenture, dated as of December 8, 2005, between Nasdaq and Law Debenture Trust Company of New York, as trustee, for the purpose of amending the definition of credit facility in the indenture to reflect Nasdaq's new credit agreement, described above. A copy of the first supplemental indenture is attached as Exhibit 4.1 and is incorporated herein by reference.

ITEM 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

See Item 2.01, which is incorporated by reference.

ITEM 9.01 Financial Statements and Exhibits

(c) Exhibits

The following exhibit is furnished as part of this Current Report on Form 8-K.

Exhibit No.	Exhibit Description
2.1	Amendment to the Transaction Agreement, dated as of December 8, 2005, by and among The Nasdaq Stock Market, Inc, and Iceland Acquisition Corp.
4.1	First Supplemental Indenture, dated as of December 8, 2005, by The Nasdaq Stock Market, Inc. to Law Debenture Trust Company of New York.
99.1	Credit Agreement, dated as of December 8, 2005, among The Nasdaq Stock Market, Inc. and the other parties thereto.
99.2	Transition Services Agreement, dated as of December 8, 2005, by and among The Nasdaq Stock Market, Inc., Instinet Holdings Incorporated f/k/a Iceland Acquisition Corp., and Norway Acquisition Corp. f/k/a Instinet Group.
99.3	License Agreement, dated as of December 8, 2005, by and between Instinet Holdings Incorporated f/k/a Iceland Acquisition Corp. and Norway Acquisition Corp. f/k/a Instinet Group Incorporated.
99.4	Co-Location Agreement, dated as of December 8, 2005, by and between The Nasdaq Stock Market, Inc., Instinet Holdings Incorporated, f/ka/ Iceland Acquisition Corp. and Norway Acquisition Corp/ f/k/a/ Instinet Group Incorporated.
99.5	Brace Assignment and Support Agreement, dated as of December 8, 2005, by and between The Nasdaq Stock Market, Inc., Instinet Clearing Services, Inc. and INET ATS, Inc.
99.6	Amendment No. 1 to Fully Disclosed Clearing Agreement, dated as of December 8, 2005, between Instinet Clearing Services, Inc. and INET ATS, Inc.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: December 14, 2005

THE NASDAQ STOCK MARKET, INC.

By: /s/ Adena Friedman

Adena Friedman,
Executive Vice President

EXHIBIT 2.1

FINAL

December 8, 2005

Instinet Holdings Incorporated
f/k/a Iceland Acquisition Corp.
c/o Silver Lake Partners
2725 Sand Hill Road, Suite 150
Menlo Park, CA 94025

Re: Transaction Agreement

Ladies and Gentlemen:

Reference is hereby made to the Transaction Agreement (the "Agreement"), dated as of April 22, 2005, by and among The Nasdaq Stock Market, Inc., a Delaware corporation, the Company and Iceland Acquisition Corp., a Delaware corporation, as amended and in effect as of the date hereof. Capitalized terms used but not defined herein shall have the meanings set forth in the Agreement.

This letter agreement will confirm the parties' agreement and consent that:

1. Section 1.1 of the Agreement is hereby amended by replacing the phrase,

   ""Closing Date" means the date on which the Merger is consummated, provided that all of the conditions set forth in Section 9.1 have been satisfied or waived by the applicable party or parties, which date shall be the first business day following the last day of an Instinet fiscal month end unless another date is agreed upon by the parties."

   with the phrase,

   ""Closing Date" means December 1, 2005."

2. Section 1.1 of the Agreement is hereby amended by deleting the phrase "as provided in Section 6.18 of the Merger Agreement" from the defined term "Retained Business Price".

3. Section 1.1 of the Agreement is hereby amended by (a) replacing the amount "$40,527,476" with the amount "39,677,476" and (b) deleting the phrase "as provided in Section 6.18 of the Merger Agreement" from the defined term "Target Retained Business Working Capital Amount".

4. Notwithstanding anything in this letter agreement or the Agreement to the contrary, for all purposes under the Agreement, the phrase "Closing Date" shall be deleted and replaced with the phrase "date of the Closing" in:

   (a) The defined terms: "Newco Assets, " "Newco Economic Tax Period," "Newco Employees, " "Newco Liabilities," "Post-Closing Shared Transaction Liabilities," "Post-Closing Unallocated Undisclosed Liabilities," "Pre-Closing LJR Adjusted Liabilities,"

"Pre-Closing Shared Transaction Liabilities," "Pre-Closing Unallocated Undisclosed Liabilities," "Restructuring Deduction," "Retained Business Price," "Retained Liabilities," "Undisclosed Liabilities;" and "VAB Tax Attributes;"

(b) Section 2.3, Section 2.4, and the first occurrence of the phrase "Closing Date" in Section 2.7(a), Section 2.7(c);

(c) Section 3.2(e) and Section 3.3(e);

(d) Article IV;

(e) Article V;

(f) Article VI (other than Section 6.3);

(g) Article VIII (other than Section 8.3); and

(h) Article IX.

5. Section 2.7(b) of the Agreement is hereby amended to read as follows:

"The Working Capital Statements shall be prepared in accordance with GAAP applied on a basis consistent with the preparation of the Reference Balance Sheets, except that irrespective of GAAP, the method of preparation of the Reference Balance Sheets and/or the Company's policies, the Working Capital Statements shall be adjusted (i) to reflect the reversal of all inter-company receivables, payables, loans and other accounts (and settling with equity) through the final day of the month ending immediately prior to the Closing Date; (ii) to reflect any inter-company dividend payments between the close of business on the final day of the month ending immediately prior to the Closing Date and the Closing; (iii) to reflect the reversal (and settlement with equity) of all long-term "non-cash" liabilities and contra-assets (which, for the avoidance of doubt, includes deferred tax liabilities and deferred tax contra-assets including those associated with the Nasdaq investments, amortization, or intangibles); and (iv) to reflect zero taxes payable (i.e., settling with equity all accruals for taxes payable that appeared on the Working Capital Statements prior to giving effect to such settlement)."

6. (a) Notwithstanding anything in this letter agreement or the Agreement to the contrary, to the extent not previously paid, Newco and Parent each agrees that it shall pay (or cause to be paid) to the other (or one of its Affiliates) by wire transfer of immediately available funds, all intercompany receivables, payables, loans and other accounts (but not tax accounts) which arise in the ordinary course during the period commencing on the Closing Date and continuing until the Closing between the ECN Entities, on the one hand, and the Company and the Newco Entities, on the other hand.

(b) Any payments set forth in Section 6(a) shall (i) be netted against each other (if more than one such payment exists) and (ii) be paid on the date payment is made with respect to the Retained Business Working Capital Adjustment, against which the net payment determined according to clause (i) hereof shall be further netted.

7. Notwithstanding anything in this letter agreement or the Agreement to the contrary, for all purposes under the Agreement, the parties agree that the defined term "Newco Liabilities" set forth in the Agreement shall include, without limitation, the following Liabilities:

   (a) termination fees in connection with the termination of the AT&T Master Agreement, dated as of July 3, 2003, between Instinet Corporation and AT&T Corp., not to exceed $1,184,758.07;

   (b) insurance costs in connection with reissuing stock certificates of Parent to Instinet and its Subsidiaries prior to the Closing, not to exceed $410,000.00;

   (c) corporate retention bonuses of Instinet, not to exceed $240,750.00; and

   (d) transaction fees relating to SEC filing fees, RR Donnelley printing fees and Mellon Investor Services, not to exceed $147,692.35.

   In consideration of the foregoing and in connection with the Company's reduction in revenues prior to the Closing with respect to the National Stock Exchange, at Closing, Parent shall pay to Newco by wire transfer of immediately available funds an amount equal to $2,916,600.21.

8. Newco acknowledges that in connection with the Second Amendment to Sublease ("Second Amendment"), dated the date hereof, by and between REUTERS C LLC (f/k/a Reuters C Corp. and prior thereto as Instinet Corporation) ("Sublessor"), and Instinet, Newco (as assignee of the Sublease and the Second Amendment) shall deliver a letter of credit to Sublessor pursuant to the terms of the Second Amendment in an amount not to exceed $49,330,000.

9. Notwithstanding anything in this letter agreement or the Agreement to the contrary, for all purposes under the Agreement, the parties agree that the defined term "Retained Assets" set forth in the Agreement shall include, without limitation, the Assets set forth on Schedule A attached hereto. In consideration of the foregoing, at Closing, Parent shall pay to Newco by wire transfer of immediately available funds an amount equal to $272,325.00.

10. Tax Matters:

   (a) Section 1.1 of the Agreement is hereby amended by replacing the definition "Archipelago Offset Amount" with the following defined term:

   ""Archipelago Offset Loss" shall have the meaning set forth in definition of "VAB Tax Attribute"."

   (b) Section 1.1 of the Agreement is hereby amended by replacing the definition of "Archipelago Tax Benefit" with the following:

   ""Archipelago Tax Benefit" means the economic benefit resulting from the application of the Archipelago Offset Loss against the net capital gain recognized on the Archipelago Sale pursuant to Section 4.5(b) or 4.5(c)."

(c) Section 1.1 of the Agreement is hereby amended by adding the following definition between the definitions of "Indemnitee" and "INET Embedded Refund":

""Indemnity Attributes" shall have the meaning set forth in Section 5.3."

(d) Section 1.1 of the Agreement is hereby amended by adding the following phrase between the words "the" and "Final" in the first line of the definition of "INET Embedded Refund":

"Retained Business Working Capital Amount as reflected on the"

(e) Section 1.1 of the Agreement is hereby amended by adding the following definitions between the definitions of "Neutral Auditors" and "Newco":

"" New Jersey Tax Attribute" means any Tax Attribute pertaining to New Jersey Taxes in the event that such Tax Attribute would not have existed if losses, deductions, or credits recognized by the Company or any of its Subsidiaries in the taxable year in which the Closing occurs for New Jersey Tax purposes had been permitted by Law to offset income recognized by such persons in such period to the extent necessary to permit such persons to obtain a refund of Relevant New Jersey Estimated Payments."

""New Jersey Tax Benefits" shall have the meaning set forth in Section 4.17. "

(f) Section 1.1 of the Agreement is hereby amended by adding the following definition between the definitions of "Newco Business Price" and "Newco Business Working Capital Amount":

""Newco Business Taxes" shall have the meaning set forth in Section 4.1."

(g) Section 1.1 of the Agreement is hereby amended by adding the following phrase between the words "period" and "beginning" in the definition of "Newco Economic Tax Period":

"or partial taxable period"

(h) Section 1.1 of the Agreement is hereby amended by adding the following phrase after the word "Attributes" in the second line of the definition of "Parent Tax Attributes":

", the New Jersey Tax Attributes, and the Indemnity Attributes"

(i) Section 1.1 of the Agreement is hereby amended by replacing the definition of "Pro Forma Loss Amount" with the following defined term:

"Pro Forma Loss Amount" means, for each taxable year beginning on or after January 1, 2005 and ending on or prior to the date of the Closing and the pre-Closing portion (as determined below) of any

taxable period beginning before and ending after the date of the Closing, the excess, if any, of (x) the aggregate amount of deductions taken by the consolidated federal income tax group of which Instinet is the common parent for the federal income tax year in which the LJR Sale occurs over (y) the gross income of such consolidated federal income tax group for such federal income tax year under Section 61 of the Code; it being understood that if Instinet has not filed its federal Tax Return for such tax year as of the date of the Closing, Instinet shall estimate in good faith the amount of the Pro Forma Loss Amount, and such estimate shall be adjusted when Instinet actually files such Tax Return. In the case of taxable periods that begin before and end after the Closing, the Pro Forma Loss Amount shall include only those amounts attributable to the portion of such taxable period ending on and including the date of the Closing, determined on an "interim closing of the books" as of such date. For purposes of clause (x) and (y) above, the aggregate amount of deductions taken by the Instinet consolidated group shall be calculated without regard to any item or amount described in clauses (a), (c), (d) and (e) of the definition of VAB Tax Attribute. For purposes of clauses (x) and (y) above, the aggregate amount of deductions taken and income realized by the Instinet consolidated group shall be calculated without regard to any item or amount described in clauses (a), (c), (d), (e)(x) of the definition of VAB Tax Attributes, the LJR Gain, and the net capital gain recognized on the Archipelago Sale."

(j) Section 1.1 of the Agreement is hereby amended by adding the following definition after the definition of "Reference Balance Sheet":

""Relevant New Jersey Estimated Payments" shall have the meaning set forth in Section 4.2."

(k) Section 1.1 of the Agreement is hereby amended by adding the following definition between the definitions of "Retained Business Price" and "Retained Business Working Capital Amount":

""Retained Business Taxes" shall have the meaning set forth in Section 4.1."

(l) Section 1.1 of the Agreement is hereby amended by replacing the last clause in the definition of "VAB Tax Attributes",

"it being further understood that neither the LJR Offset Loss nor the Archipelago Offset Loss shall be deemed to be a VAB Tax Attribute."

with the phrase,

"it being further understood that none of the LJR Offset Loss, the Archipelago Offset Loss, or the New Jersey Tax Attributes and the

Indemnity Attributes shall be deemed to be a VAB Tax Attribute; and it being further understood (for the avoidance of doubt) that in the event that the Purchase Price is treated as adjusted pursuant to this Agreement, the Net VAB Transaction Loss shall be adjusted accordingly."

(m) Section 1.1 of the Agreement is hereby amended by adding the following phrase between the words "benefit" and "resulting" in the first line of the definition of "VAB Tax Benefits":

"realized by Parent, the Company, or any of their respective Subsidiaries, in any taxable period or partial period beginning after the date of the Closing (including any benefits attributable to a carryback from such period or partial period)"

(n) Section 2.3(c) of the Agreement is hereby amended by adding the word "in" between the words "Assets" and "an" in the second line.

(o) Section 2.6 of the Agreement is hereby amended by replacing the fifth sentence,

"Newco shall prepare and deliver IRS Form 8594 to the Company within ninety (90) days the Final Retained Business Working Capital Statement shall have become final and binding on the parties pursuant to Section 2.7 to be filed with the IRS."

with the sentence,

"Newco shall prepare and deliver IRS Form 8594 to the Company within ninety (90) days after the Final Retained Business Working Capital Statement shall have become final and binding on the parties pursuant to Section 2.7 to be filed with the IRS."

(p) Section 4.1 of the Agreement is hereby amended by replacing the third sentence:

"Newco and the Company shall each use its reasonable best efforts to recover any Retained Business Taxes or Newco Business Taxes from any Taxing Authority or any third party with respect to which either Newco of the Company has a tax-sharing, tax allocation or similar agreement, and any such recovered Retained Business Taxes shall be for the account of the company and any such recovered Newco Business Taxes shall be for the account of Newco."

with

"Newco and the Company shall each use its reasonable best efforts to recover any Retained Business Taxes or Newco Business Taxes from any Taxing Authority or any third party with respect to which either Newco or the Company has a tax-sharing, tax allocation or similar agreement, and any such recovered Taxes shall be shared in accordance with Section 4.2(c)."

(q) Section 4.2(a) of the Agreement is hereby amended by inserting the phrase "(other than Tax Returns described in Section 4.5(b)(x) and (y))" in the third sentence after the phrase "draft of such Consolidated Return."

(r) Section 4.2 of the Agreement is hereby amended by replacing Section 4.2(c)(iii) with the following:

"any refund resulting from the carry back of the LJR Offset Loss shall be for the account of Parent, and any refund resulting from the carry back of the Archipelago Offset Loss shall be for the account of Newco, neither of which shall be treated as a VAB Tax Benefit;"

(s) Section 4.2 of the Agreement is hereby amended by adding to the end thereof the following sentence:

"Notwithstanding the foregoing, any refund of estimated payments of New Jersey Corporation Business Tax or Alternative Minimum Assessment made by the Company or any of its Subsidiaries during the Short Federal Tax Year ("Relevant New Jersey Estimated Payments") shall be for the account of Newco."

(t) Section 4.4 of the Agreement is hereby amended by replacing Section 4.4(f):

"acknowledge the strong mutual interest of Parent and Newco to maximize the value of VAB Tax Attributes and utilize the VAB Tax Attributes as expeditiously as possible to create VAB Tax Benefits, and share all information that Parent reasonably determines to be relevant to identifying and utilizing VAB Tax Attributes; specifically, (i) Parent shall provide Newco with a copy of any filed Tax Return that includes Parent or the Company excluding any portion of any such Tax Return that Parent reasonably determines does not relate to any VAB Tax Attribute and (ii) Parent and Newco agree to consult with each other in good faith to explore strategic and structural initiatives, including during Parent's annual review of potential strategic and structural initiatives with its tax advisors, to maximize the value and utilization rate of the VAB Tax Attributes; provided, however, that Parent shall have the sole discretion to determine whether or not to pursue any such strategic and structural initiatives; and"

with:

"acknowledge the strong mutual interest of Parent and Newco to maximize the value of Indemnity Attributes, VAB Tax Attributes, and New Jersey Tax Attributes, and utilize such attributes as expeditiously as possible to create Tax benefits, and share all information that Parent reasonably determines to be relevant to identifying and utilizing such Tax Attributes; specifically, (i) Parent shall provide Newco with a copy of any filed Tax Return that includes Parent or the Company excluding any portion of any such Tax Return that Parent reasonably determines does not relate to any such Tax Attribute and (ii) Parent and Newco agree to consult with each other in good faith to explore strategic and structural initiatives, including during Parent's annual review of potential strategic and structural initiatives with its tax advisors, to maximize the value and utilization rate of such Tax Attributes; provided, however, that Parent shall have the sole discretion to determine whether or not to pursue any such strategic and structural initiatives; and"

(u) Section 4.4 of the Agreement is hereby amended by replacing Section 4.4(e) with the following:

"use reasonable best efforts and cooperate with each other to file for any available refund of Taxes as promptly as practicable including without limitation any Relevant New Jersey Estimated Payments;"

(v) Section 4.5(b) of the Agreement is hereby amended by inserting the following at the end the first sentence of such Section: As soon as practicable after the filing of any Tax Return pursuant to Section 4.5(b)(x) or (y), the Company shall deliver to Newco a copy of such Tax Return.

(w) Section 4.5 of the Agreement is hereby amended by replacing the final sentence of Section 4.5(b) with the following:

"To the extent Quick State-Local Filings are not available to recover any overpaid state or local estimated taxes, Parent, the Company or their respective Subsidiaries, as applicable, shall file their state and local income tax returns for the state or local taxable year in which the Closing occurs as soon as practicable, but in any event within 150 days of the first day on which such returns may be filed under applicable law; it being understood that the LJR Offset Loss (if the Company agrees to file its Tax Return for the Short Federal Tax year reporting both the Closing and the LJR Sale as occurring in the Short Federal Tax Year pursuant to Section 4.16(a)) shall be given priority over any Tax Attribute in offsetting the LJR Gain and the Archipelago Offset Loss shall be given priority over any Tax Attributes in offsetting the net capital gain recognized on the Archipelago Sale."

(x) Section 4.5 of the Agreement is hereby amended by replacing the Section 4.5(c) with the following:

"As soon as practicable, but in any event within 150 days of the close of the Short Federal Tax Year and 180 days of the close of the first tax year in which Parent and the Company are members of the same federal income tax consolidated group (the "First Parent Year") (or, in the case of state and local taxes, and corresponding state or local tax year), as applicable, Parent, the Company or their respective Subsidiaries, as applicable, shall carry back any VAB Tax Attributes so available to be carried back (it being understood that the LJR Offset Loss and the Archipelago Offset Loss, which are not VAB Tax Attributes, will be carried back to offset the LJR Gain and the net capital gain recognized on the Archipelago Sale, respectively, prior to the Net VAB Transaction Loss, and any refund obtained from the carryback of the LJR Offset Loss and the Archipelago Offset Loss shall be for the account of Parent and

Newco respectively, and neither the LJR Offset Loss nor the Archipelago Offset Loss shall be deemed to be the realization of a VAB Tax Attribute).”

(y) Section 4.5 of the Agreement is hereby amended by replacing the first sentence of Section 4.5(d) with the following:

“If the Closing is not considered to occur for federal income tax purposes within the same taxable year in which the LJR Sale occurs, subject to applicable limitations under applicable Laws, the Net VAB Transaction Loss, to the extent not carried back pursuant to Section 4.5(c), shall be applied to reduce Taxes that would otherwise be payable by Parent, the Company or their respective Subsidiaries, as applicable, in the taxable year in which such Net VAB Transaction Loss is incurred (the “VAB Loss Year”), as determined on a modified with and without basis with regard to any items of income or loss incurred in such VAB Loss Year, treating any net operating losses, net capital losses or tax credits incurred in such VAB Loss Year and any VAB Tax Attributes carried into such VAB Loss Year as utilized prior to the utilization of any New Jersey Tax Attributes or Parent Tax Attributes but after the utilization of any Indemnity Attributes incurred in or carried into such VAB Loss Year.”

(z) Section 4.6(c) of the Agreement is hereby amended by inserting the following phrase between the words “plus” and “Pro Forma Loss Amount”:

“the product of (i) forty percent (40%) multiplied by (ii)”.

(aa) Section 4.7(a) of the Agreement is hereby amended by replacing the third sentence,

“With respect to any VAB Tax Benefit realized with respect to (x) a Net VAB Transaction Loss that reduces any estimated tax payment in the First Parent Year (or any corresponding state or local tax year) or (y) a Restructuring Deduction that reduces any estimated tax payment in any Restructuring Year (or any corresponding state or local tax year), such VAB Tax Benefit shall be realized on the due date of such estimated tax payment.”

with the sentence,

“With respect to any VAB Tax Benefit realized with respect to a Net VAB Transaction Loss that reduces any estimated tax payment in the First Parent Year (or any corresponding state or local tax year), such VAB Tax Benefit shall be realized on the due date of such estimated tax payment.”

(bb) Section 4.7(b) of the Agreement is hereby amended by adding the word “the” between the words “to” and “Archipelago” in the first sentence.

(cc) Section 4.11 of the Agreement is hereby amended by replacing the last sentence of such section with the following:

"The parties agree that any payments among the Company or Parent on the one hand and Newco on the other pursuant to this Article IV will be treated for Tax purposes as an adjustment to the Purchase Price, unless otherwise required by applicable Law."

(dd) Section 4.12 of the Agreement is hereby amended by adding the words ", Section 5.3" between the words "Article IV" and "and".

(ee) Section 4.16(a) of the Agreement is hereby amended to read in its entirety as follows:

"If Parent and Newco agree, at least 45 days prior to the Closing, that the Closing and the LJR Sale are more likely than not to be treated as occurring in the same taxable year for federal income tax purposes, (i) the Company shall file its Tax Return for the Short Federal Tax Year reporting both the Closing and the LJR Sale as occurring in the Short Federal Tax Year (unless there has been a subsequent change in Law which prohibits such treatment, in which case section 4.16(b) shall apply) and (ii) immediately prior to the Closing, Parent shall contribute to the capital of the Company an amount of cash equal to any payments of federal, state and local estimated taxes made by the Company with respect to such taxable year (other than Relevant New Jersey Estimated Payments), and the Company shall be entitled to file for a refund of such overpaid estimated taxes to the extent of such contribution (it being understood that in no event shall Newco be liable to reimburse Parent for any such amount if such refund is unavailable)."

(ff) A new Section 4.17 of the Agreement shall be added to read in its entirety as follows:

"Section 4.17. New Jersey Tax Attributes. Parent shall pay cash to Newco in the amount of the New Jersey Tax benefit received by Parent, the Company, or any of their Subsidiaries after the Closing as a result of the utilization of New Jersey Tax Attributes ("New Jersey Tax Benefits") within five business days after receiving such benefit. For purposes of determining when New Jersey Tax Benefits are deemed to be received by Parent, the Company, or any of their respective Subsidiaries, (x) each such person shall carry back or carry forward any New Jersey Tax Attributes of such person, subject to applicable limitations under applicable Laws, to offset, in each Carry Year, any taxable income or gain with respect to which such person would be liable for New Jersey Taxes, it being understood that any New Jersey Tax Attributes shall be deemed utilized in a Carry Year after the utilization of any Indemnity Attributes or VAB Tax Attributes but prior to the utilization of any Parent Tax Attributes in such Carry Year, and (y) a Tax benefit shall be deemed to be actually recognized or received on the date that (i) a refund of any Taxes paid is actually received by any such person, (ii) any such person is required to make, or would otherwise be required to make, a payment of Taxes and the amount of such payment is reduced or offset by New Jersey Tax Attributes, or (iii) the amount of New Jersey Tax actually payable for the taxable year in which the Closing occurs in excess of the Relevant New Jersey Estimated Payments is determined to be less than $1.2 million; it being understood that, notwithstanding anything else in this Agreement to the contrary, such determination shall be deemed to be the receipt of a New Jersey Tax Benefit."

(gg) Section 5.3 of the Agreement is hereby amended to read in its entirety as follows:

"Section 5.3 Reduction of Indemnifiable Losses for Tax Benefits and Insurance Benefits Received. For purposes of Section 4.1, this Article V, Section 8.2 and Section 8.5, the calculation of any Tax-related payment under Section 4.1 or any Indemnifiable Loss will reflect (i) the amount of any Tax benefit actually recognized by the Indemnitee for United States federal, state or local income tax purposes in respect of such Tax-related payment or Indemnifiable Loss (net of any tax incurred by the Indemnitee for United States federal, state or local income tax purposes arising from the receipt of any indemnification payment hereunder in respect of such Tax-related payment or Indemnifiable Loss (grossed up to reflect such increase), it being understood that in no event shall any adjustment to the Purchase Price resulting from such receipt be deemed to give rise to a tax cost for this purpose, and that the offset of any taxable income realized as a result of such Purchase Price adjustment by any deduction or Tax Attribute shall not constitute the realization of a VAB Tax Benefit), in each case, in the year in which such Tax benefit is recognized and (ii) the amount of any insurance proceeds or indemnification payments received by the Indemnitee in respect of such Indemnifiable Loss (net of all reasonable costs and expenses incurred by the Indemnitee in recovering such insurance proceeds). Each Indemnitee shall use its commercially reasonable efforts to recover from its insurers or other sources or reimbursement or recovery the maximum portion of any Indemnifiable Loss that is recoverable from such sources. For purposes of determining the Tax benefit recognized by Parent, the Company, or any of their respective Subsidiaries in respect of a Tax-related payment or Indemnifiable Loss, (x) each such person shall carry back or carry forward any Tax Attributes of such person in respect of such Tax-related payment or Indemnifiable Loss (collectively, together with any losses, deductions or credits in respect of such Taxes available for utilization in the current period, "Indemnity Attributes"), subject to applicable limitations under applicable Laws, to offset, in each Carry Year, any taxable income or gain with respect to which such person would be liable for Taxes, it being understood that any Indemnity Attributes shall be deemed utilized in a Carry Tax Year prior to the utilization of any VAB Tax Attributes, New Jersey Tax Attributes or any Parent Tax Attributes in such Carry Year, and (y) a Tax benefit shall be deemed to be actually recognized or received on the date that (i) a refund of any Taxes paid is actually received by the Indemnified Party, or (ii) the Indemnified Party is required to make, or would otherwise be required to make, a payment of Taxes and the amount of such payment is reduced or offset by Indemnity Attributes. For the avoidance of doubt, the amount of any indemnification payment that is required to be made pursuant to this Agreement shall be calculated without regard to any Tax

benefits to be received by the Indemnified Party unless the Indemnified Party has recognized or received such Tax benefit prior to receiving such indemnification payment. In the event any indemnification payment is made by an Indemnifying Party to an Indemnitee in respect of a Tax-related payment or Indemnifiable Loss and the Indemnitee thereafter receives such Tax benefit, net insurance proceeds or indemnification payments, the Indemnitee shall promptly reimburse such Indemnifying Party an amount equal to the amount of such Tax benefit, net insurance proceeds or indemnification payments."

(hh) Any payments made pursuant to this letter agreement will be treated for Tax purposes as an adjustment to the Purchase price, unless otherwise required by applicable Law.

11. Section 6.7(b) of the Agreement is hereby amended by replacing the amount "3,500,000" with the amount "2,150,000".

12. Parent and Newco hereby acknowledge that the preliminary working capital statement furnished by the Company to Parent and Newco on the date hereof was created in good faith and is not a representation or warranty by the Company as to what the final working capital will be as of November 30, 2005 or as to the financial condition of the Company at any time after November 30, 2005.

13. Parent and Newco hereby agree that the Closing and the LJR Sale are more likely than not to be treated as occurring in the same taxable year for federal income tax purposes.

Except as specifically provided in this letter agreement, this letter agreement shall not be deemed to amend or alter any other terms, obligations or conditions set forth in the Agreement or any of the documents referred to therein. Wherever the Agreement is referred to in the Agreement or in any other agreements, documents, instruments, certificates, such reference shall be to the Agreement as amended hereby. Except as expressly amended hereby, the terms and conditions of the Agreement shall continue in full force and effect.

This letter agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This letter agreement and all claims and Actions arising from or relating to this letter agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware without reference to such State's principles of conflict of laws.

Sincerely,

THE NASDAQ STOCK MARKET, INC.

By: /s/ Adena Friedman

Name: Adena Friedman
Title: Executive Vice President

NORWAY ACQUISITION CORP.

By: /s/ Ronald Hassen

Name: Ronald Hassen
Title: Controller

Agreed as of the date and year first above written:

INSTINET HOLDINGS INCORPORATED
f/k/a Iceland Acquisition Corp.

By: /s/ John Osnoss

Name: John Osnoss
Title: Vice President

[Signature Page to Letter Agreement by and among Instinet Holdings Incorporated, The Nasdaq Stock Market, Inc. and Norway Acquisition Corp.]

EXHIBIT 4.1

EXECUTION COPY

THE NASDAQ STOCK MARKET, INC.

TO

LAW DEBENTURE TRUST COMPANY OF NEW YORK,

as Trustee

FIRST SUPPLEMENTAL INDENTURE

Dated as of

December 8, 2005

TO

INDENTURE

Dated as of

April 22, 2005

3.75% Convertible Notes due 2012

FIRST SUPPLEMENTAL INDENTURE

THIS FIRST SUPPLEMENTAL INDENTURE (the "First Supplemental Indenture"), dated as of December 8, 2005, between The Nasdaq Stock Market, Inc., a Delaware corporation (hereinafter called the "Company"), having its principal office at One Liberty Plaza, New York, NY 10006 and Law Debenture Trust Company of New York, as trustee under the Original Indenture hereinafter referred to (hereinafter called the "Trustee").

WITNESSETH

WHEREAS, the Company has heretofore executed and delivered an indenture, dated as of April 22, 2005 (the "Original Indenture"), between the Company and the Trustee, pursuant to which the Company has issued $205,000,000 aggregate principal amount of its 3.75% Series A Convertible Notes due 2012 (the "Series A Notes") and $240,000,000 aggregate principal amount of its 3.75% Series B Convertible Notes due 2012 (the "Series B Notes", together with the Series A Notes, the "Notes");

WHEREAS, the Company seeks to increase the maximum amount of Designated Senior Indebtedness that it may incur in connection with the Credit Facility;

WHEREAS, Section 11.02 of the Original Indenture provides that, with the consent (evidenced as provided in Article 9 of the Original Indenture) of the holders of a majority in aggregate Principal Amount of the Notes at the time outstanding, the Company, when authorized by resolutions of the Board of Directors, and the Trustee may enter into an indenture supplemental to the Original Indenture for the purpose, among other things, of changing in any manner any of the provisions of the Original Indenture or modifying in any manner the rights of the holders of the Notes as in said Section provided;

WHEREAS, holders holding not less than a majority in aggregate Principal Amount of the outstanding Notes have, pursuant to Section 11.02 of the Original Indenture, consented to the amendment to the Original Indenture as set forth herein and to the execution and delivery of this First Supplemental Indenture by the Trustee;

WHEREAS, the Company has delivered to the Trustee resolutions of the Board of Directors of the Company authorizing the execution and delivery of this First Supplemental Indenture;

WHEREAS, the Company has filed with the Trustee consents (evidenced as provided in Article 9 of the Indenture) of the requisite percentage of holders in aggregate Principal Amount of the outstanding Notes to the amendment of the Original Indenture as set forth herein and to the execution and delivery of this First Supplemental Indenture by the Trustee;

WHEREAS, the Company has requested the Trustee to join it in the execution and delivery of this First Supplemental Indenture; and

WHEREAS, all conditions precedent related to the entering of this First Supplemental Indenture have been satisfied.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and the Trustee for the benefit of each other and for the equal and proportionate benefit of the holders of the Notes agree as follows:

ARTICLE 1

DEFINITIONS

Terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Original Indenture.

ARTICLE 2

AMENDMENT OF THE INDENTURE

Section 3.01. Amendment of Definitions. Subject to Article 3 hereof, the Original Indenture is hereby amended by amending the definition of "Credit Facility" in Article 1 by replacing "$800,000,000" with "$825,000,000".

ARTICLE 3

EFFECTIVENESS OF AMENDMENT

Upon the execution and delivery of this First Supplemental Indenture by the Company and the Trustee, this First Supplemental Indenture shall become effective and the Original Indenture shall be amended and supplemented in accordance herewith, and the rights of the holders of the Notes modified hereby, and this First Supplemental Indenture shall form a part of the Original Indenture for all purposes, and every holder of Notes authenticated and delivered under the Original Indenture shall be bound hereby.

ARTICLE 4

MISCELLANEOUS

Section 4.01. Execution as Supplemental Indenture. This First Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture and, as provided in the Original Indenture, this First Supplemental Indenture forms a part thereof. Except as herein expressly otherwise defined, the use of the terms and expressions herein is in accordance with the definitions, uses and constructions contained in the Original Indenture.

Section 4.02. No Other Amendments. Except as expressly amended hereby, the Original Indenture shall continue in full force and effect in accordance with the provisions thereof.

Section 4.03. Trustee. The recitals contained herein are those of the Company and not the Trustee, and the Trustee assumes no responsibility for the correctness of same. The Trustee makes no representations as to the validity or sufficiency of this First Supplemental Indenture. All rights, protections, privileges, indemnities and benefits granted or afforded to the Trustee under the Original Indenture shall be deemed incorporated herein by this reference and shall be deemed applicable to all actions taken, suffered or omitted by the Trustee under this First Supplemental Indenture.

Section 4.04. Provisions Binding on the Company's Successors. Any covenants and agreements contained in this First Supplemental Indenture made by the Company shall bind its successors and assigns whether so expressed or not.

Section 4.05. Governing Law. This First Supplemental Indenture shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of the State of New York (including Section 5-1401 of the New York General Obligations Law or any successor to such statute).

Section 4.06. Execution and Counterparts. This First Supplemental Indenture may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

Section 4.07. Headings. The article and section headings herein are for convenience only and shall not affect the construction hereof.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed as of the date first written above.

THE NASDAQ STOCK MARKET, INC.

By: /s/ Adena Friedman

Name: Adena Friedman
Title: Executive Vice President

LAW DEBENTURE TRUST COMPANY OF NEW YORK, as Trustee

By: /s/ Adam Berman

Name: Adam Berman
Title: Vice President

EXHIBIT 99.1

EXECUTION COPY

CREDIT AGREEMENT

dated as of

December 8, 2005,

among

THE NASDAQ STOCK MARKET, INC.,
as Borrower,

The Lenders Party Hereto,

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

and

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
as Syndication Agent

J.P. MORGAN SECURITIES INC. and MERRILL LYNCH, PIERCE,
FENNER & SMITH INCORPORATED,
as Joint Bookrunners and Co-Lead Arrangers

[CS&M Ref. 6701-491]

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CREDIT AGREEMENT dated as of December 8, 2005 (this "Agreement"), among THE NASDAQ STOCK MARKET, INC., the LENDERS party hereto, JPMORGAN CHASE BANK, N.A., as Administrative Agent and MERRILL LYNCH CAPITAL CORPORATION, as Syndication Agent.

Pursuant to (a) an Agreement and Plan of Merger (the "Merger Agreement") dated as of April 22, 2005, among The Nasdaq Stock Market, Inc., a Delaware corporation (the "Borrower"), Norway Acquisition Corp., a Delaware corporation ("Merger Sub") that is a direct wholly-owned subsidiary of the Borrower, and Instinet Group Incorporated, a Delaware corporation (the "Seller") that is the parent of Inet Holding Company, Inc. (the "Company"), Merger Sub will merge with and into the Seller, with the Seller surviving such merger as a wholly owned subsidiary of the Borrower (the "Acquisition"), and (b) a Transaction Agreement (the "VAB Transaction Agreement") dated as of April 22, 2005, among the Borrower, Merger Sub and Iceland Acquisition Corp., a Delaware corporation ("VAB Acquisition Sub") all the capital stock of which is owned by affiliates of Silver Lake Partners ("SLP"), the Borrower will, immediately upon completion of the Acquisition, sell the assets, liabilities and capital stock of the subsidiaries of the Seller that comprise its VAB business to VAB Acquisition Sub (the "VAB Sale"). In addition, in connection with the foregoing, on April 22, 2005, SLP, VAB Acquisition Sub and the Borrower entered into the VAB Commitment Letters (with such term and each other capitalized term used but not defined in this preamble having the meaning assigned thereto in Article I).

In order to obtain a portion of the financing for the Acquisition, on April 22, 2005, the Borrower issued $205,000,000 aggregate principal amount of Series A Convertible Notes, together with the Warrants, to Norway Acquisition SPV, LLC, a Delaware limited liability corporation (the "Convertible Notes Investor") all the outstanding equity interests of which are owned by Norway Holdings SPV, LLC, a Delaware limited liability corporation ("Convertible Notes Holdings") all the outstanding equity interests of which are owned by the Sponsors or Sponsor Affiliates, for an aggregate purchase price of $205,000,000 in cash, the proceeds of which were deposited in a blocked account. In connection with the Convertible Notes Investor's purchase of the Series A Convertible Notes and the Warrants, the Convertible Notes Investor obtained $205,000,000 aggregate principal amount of secured term loans pursuant to a Secured Term Loan Agreement (the "SPV Loan Agreement") dated as of April 22, 2005, among Convertible Notes Holdings, the Convertible Notes Investor, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, Merrill Lynch, Pierce, Fenner & Smith Incorporated, as Syndication Agent, and J.P. Morgan Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated as Co-Lead Arrangers and Joint Bookrunners. The loans under the SPV Loan Agreement were guaranteed by the Borrower pursuant to a Guarantee Agreement (the "Guarantee Agreement") dated as of April 22, 2005, among the Borrower, the Convertible Notes Investor and JPMorgan Chase Bank, N.A. In addition, in connection with the foregoing, on April 22, 2005, the Sponsors, Convertible Notes Holdings and the Convertible Notes Investor entered into the Convertible Notes Commitment Letters.

On the Effective Date, (a) the Convertible Notes Investor will use the amounts received pursuant to the Convertible Notes Commitment Letters, together with cash previously deposited by the Convertible Notes Investor in an account with JPMorgan Chase Bank, N.A. and additional cash of the Borrower from the blocked account referred to above as necessary, to repay in full all obligations under the SPV Loan Agreement (the "SPV Loan Refinancing"), (b) all remaining cash from the blocked account referred to above will be released to the Borrower, (c) VAB Acquisition Sub will pay the purchase price for the VAB Business, as set forth in the VAB Transaction Agreement and (d) the Borrower desires to (i) repay in full all obligations under the SunTrust Note and (ii) consummate the Acquisition and the VAB Sale.

The Borrower has requested that (a) the Tranche B Lenders extend credit in the form of Tranche B Term Loans on the Effective Date in an aggregate principal amount not in excess of $750,000,000 and (b) the Revolving Lenders extend credit in the form of Revolving Loans, the Swingline Lender extend credit in the form of Swingline Loans and the Issuing Bank issue Letters of Credit, in each case at any time and from time to time during the Revolving Availability Period such that the aggregate Revolving Exposures will not exceed $75,000,000 at any time. In addition, the Borrower may request that prospective Additional Lenders agree to make available Incremental Term Loans pursuant to Section 2.20 from time to time after the Effective Date in an aggregate amount not to exceed $250,000,000. The proceeds of the Tranche B Term Loans will be used, together with the proceeds referred to above from the Convertible Notes Investor and VAB Acquisition Sub and not less than $47,500,000 of cash-on-hand of the Borrower, to consummate the Acquisition, repay in full all obligations under the SunTrust Note and to pay the Transaction Costs. The proceeds of the Revolving Loans after the Effective Date and of the Swingline Loans will be used only for general corporate purposes (including Permitted Acquisitions). Letters of Credit will be used only for general corporate purposes.

The Lenders are willing to extend such credit to the Borrower, and the Issuing Bank is willing to issue Letters of Credit for the account of the Borrower, on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"ABR", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"Acquisition" has the meaning assigned to such term in the preamble to this Agreement.

"Acquisition Documents" means the Merger Agreement, the VAB Transaction Agreement, the VAB Commitment Letters, all other agreements to be entered into in connection with the Acquisition or the VAB Sale and all schedules, exhibits and annexes to each of the foregoing and all side letters, instruments and agreements affecting the terms of the foregoing or entered into in connection therewith.

"Additional Lenders" has the meaning assigned to such term in Section 2.20(c).

"Additional Subordinated Debt" means unsecured Indebtedness of the Borrower that (a) does not require any scheduled payment of principal (including pursuant to a sinking fund obligation) or mandatory redemption or redemption at the option of the holders thereof (except for redemptions in respect of (i) in the case of convertible Indebtedness, changes in control on terms that are determined in good faith by senior management of the Borrower to be market terms on the date of issuance or (ii) in the case of other Indebtedness, asset sales and changes in control on terms that are determined in good faith by senior management of the Borrower to be market terms on the date of issuance) prior to the date that is 180 days after the Tranche B Maturity Date or, if such Indebtedness is incurred after the Borrower has obtained any Incremental Term Loans or while any Commitments from Additional Lenders to make Incremental Term Loans remain in effect, 180 days after the maturity date for such Incremental Term Loans, unless all such Incremental Term Loans have been repaid in full and all Commitments in respect thereof have been terminated, (b) contains subordination provisions and, if Guaranteed, Guarantee release provisions, in each case that are determined in good faith by senior management of the Borrower to be market terms on the date of issuance, (c) contains covenants and events of default that (i) in the case of convertible Indebtedness, are not less favorable to the Lenders than the comparable terms of the Convertible Notes as determined in good faith by senior management of the Borrower or (ii) in the case of other Indebtedness, are determined in good faith by senior management of the Borrower to be market terms on the date of issuance, provided that such covenants and events of default are not materially more restrictive than the covenants and events of default contained in this Agreement (as determined in good faith by senior management of the Borrower) and do not require the maintenance or achievement of any financial performance standards other than as a condition to the taking of specified actions, (d) bears interest at a fixed rate that is a market rate of interest on the date of issuance of such Indebtedness as determined by the Borrower's board of directors in good faith and (e) at the option of the Borrower, may contain market optional redemption provisions.

"Adjusted LIBO Rate" means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Administrative Agent" means JPMorgan Chase Bank, N.A., in its capacity as administrative agent for the Lenders hereunder, and its successors in such capacity as provided in Article VIII.

"Administrative Questionnaire" means an administrative questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified, provided, however, that for purposes of Section 6.09, the term "Affiliate" shall also include any person that directly, or indirectly through one or more intermediaries, owns 5% or more of any class of Equity Interests of the Person specified or that is an officer or director of the Person specified.

"Alternate Base Rate" means, for any day, a rate per annum equal to the greater of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%. Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective from and including the effective date of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"Applicable Percentage" means, at any time with respect to any Revolving Lender, the percentage of the aggregate Revolving Commitments represented by such Lender's Revolving Commitment at such time. If the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Revolving Commitments most-recently in effect, giving effect to any assignments of Revolving Loans, LC Exposures and Swingline Exposures that occur after such termination or expiration.

"Applicable Rate" means (a) for any day with respect to any Loan that is a Tranche B Term Loan, 0.50% in the case of any ABR Loan and 1.50% in the case of any Eurodollar Loan, and (b) for any day with respect to any Loan that is a Revolving Loan, the applicable rate per annum set forth below under the caption "Revolving Loan ABR Spread" or "Revolving Loan Eurodollar Spread", as the case may be, based upon the Leverage Ratio as of the most recent determination date, provided that until the delivery to the Administrative Agent pursuant to Sections 5.01(b) and (c) of the Borrower's consolidated financial statements and related certificate of a Financial Officer, respectively, for the first fiscal quarter of the Borrower beginning after the Effective Date, the "Applicable Rate" shall be the applicable rate per annum set forth below in Category 1:

Leverage Ratio:	**Revolving Loan ABR Spread**	**Revolving Loan Eurodollar Spread**
Category 1 Greater than or equal to 4.00 to 1.00	0.50%	1.50%
Category 2 Less than 4.00 to 1.00 but greater than or equal to 3.00 to 1.00	0.25%	1.25%
Category 3 Less than 3.00 to 1.00	0.00%	1.00%

For purposes of the foregoing, (a) the Leverage Ratio shall be determined as of the end of each fiscal quarter of the Borrower's fiscal year based upon the Borrower's consolidated financial statements delivered pursuant to Section 5.01(a) or (b) and (b) each change in the Applicable Rate resulting from a change in the Leverage Ratio shall be effective during the period commencing on and including the date of delivery to the Administrative Agent of such consolidated financial statements and related certificate of a Financial Officer indicating such change and ending on the date immediately preceding the effective date of the next such change, provided that the Leverage Ratio shall be deemed to be in Category 1 (i) at any time that an Event of Default has occurred and is continuing or (ii) at the option of the Administrative Agent or at the request of the Required Lenders if the Borrower fails to deliver the consolidated financial statements or related certificate of a Financial Officer required to be delivered by it pursuant to Section 5.01(a) or (b) and Section 5.01(c), as the case may be, during the period from the expiration of the time for delivery thereof until such consolidated financial statements and related certificate of a Financial Officer are delivered.

"Approved Fund" has the meaning assigned to such term in Section 9.04(b).

"Arrangers" means J.P. Morgan Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as Co-Lead Arrangers.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Borrower" has the meaning assigned to such term in the preamble to this Agreement.

"Borrowing" means (a) Loans of the same Class and Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect, or (b) a Swingline Loan.

"Borrowing Request" means a request by the Borrower for a Borrowing in accordance with Section 2.03.

"Broker Dealer Subsidiary" means any Subsidiary that is registered as a broker dealer pursuant to Section 15 of the Exchange Act (as in effect from time to time) or that is regulated as a broker dealer or underwriter under any foreign securities law.

"Business" has the meaning assigned to such term in the Merger Agreement.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed, provided that, when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"Capital Expenditures" means, for any period, (a) the additions to property, plant and equipment and other capital expenditures of the Borrower and the Subsidiaries that are (or should be) set forth in a consolidated statement of cash flows of the Borrower for such period prepared in accordance with GAAP and (b) Capital Lease Obligations incurred by the Borrower and the Subsidiaries during such period, but excluding in each case any such expenditure (i) made to restore, replace or rebuild property to the condition of such property immediately prior to any damage, loss, destruction or condemnation of such property, to the extent such expenditure is made with, or subsequently reimbursed out of, actually received insurance proceeds, indemnity payments, condemnation awards (or payments in lieu thereof) or damage recovery proceeds relating to any such damage, loss, destruction or condemnation, (ii) constituting reinvestment of the Net Proceeds of any event described in clause (a) or (b) of the definition of the term "Prepayment Event", to the extent permitted by Section 2.11(c) and (iii) made by the Borrower or any Subsidiary to effect leasehold improvements to any property leased by the Borrower or such Subsidiary as lessee, to the extent that such expenses have been reimbursed by the landlord.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Change in Control" means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Exchange Act, and the rules of the SEC thereunder as in effect on the date hereof), of Equity Interests representing more than 35% of either the aggregate ordinary voting power or the aggregate equity value represented by the issued and outstanding Equity Interests in the Borrower, provided that, until the first day after the Effective Date that the NASD's ownership of aggregate ordinary voting power of the issued and outstanding Equity Interests in the Borrower is less than 35%, the ownership by the NASD of more than 35% of aggregate ordinary voting power of the issued and outstanding Equity Interests in the Borrower shall be deemed not to be a Change in Control unless such voting power is at any time greater than the NASD's ownership of aggregate ordinary voting power of the issued and outstanding Equity Interests in the Borrower on the Effective Date, (b) the occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who are not Continuing Directors, or (c) the occurrence of a "Change of Control" (or similar event, however denominated), as defined in any Subordinated Debt Documents, any indenture or agreement in respect of Material Indebtedness of the Borrower or any Subsidiary or any certificate of designations (or other provision of the organizational documents of the Borrower) relating to any Qualified Equity Interests.

"Change in Law" means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender's or the Issuing Bank's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Tranche B Term Loans, Incremental Term Loans or Swingline Loans and, when used in reference to any Commitment, refers to whether such Commitment is a Revolving Commitment, Tranche B Commitment or a commitment in respect of any Incremental Term Loans. Incremental Term Loans that have different terms and conditions (together with the Commitments in respect thereof) shall be construed to be in different Classes.

"Class", when used in reference to any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class.

"CLO" has the meaning assigned to such term in Section 9.04(b).

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means any and all "Collateral", as defined in any applicable Security Document, and shall also include the Mortgaged Properties.

"Collateral Agreement" means the Guarantee and Collateral Agreement among the Borrower, the Subsidiary Loan Parties and the Administrative Agent, substantially in the form of Exhibit C.

"Collateral and Guarantee Requirement" means, at any time, the requirement that:

(a) the Administrative Agent shall have received from each Loan Party (i) either (x) a counterpart of the Collateral Agreement duly executed and delivered on behalf of such Loan Party or (y) in the case of any Person that becomes a Loan Party after the Effective Date, a supplement to the Collateral Agreement, in the form specified therein, duly executed and delivered on behalf of such Loan Party and (ii) with respect to any Loan Party that directly owns Equity Interests of a Foreign Subsidiary, a counterpart of each Foreign Pledge Agreement that the Administrative Agent determines, based on the advice of counsel, to be necessary or advisable in connection with the pledge of, or the granting of security interests in, Equity Interests of such Foreign Subsidiary, in each case duly executed and delivered on behalf of such Loan Party and such Foreign Subsidiary;

(b) all outstanding Equity Interests of each Subsidiary and all other Equity Interests, in each case owned by or on behalf of any Loan Party, shall have been pledged pursuant to the Collateral Agreement or a Foreign Pledge Agreement (except that the Loan Parties shall not be required to pledge (i) more than 65% of the outstanding voting Equity Interests of any Foreign Subsidiary or (ii) Equity Interests of Subsidiaries that are not directly held by such Loan Parties) and the Administrative Agent shall have received certificates or other instruments representing all such Equity Interests, together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank;

(c) all Indebtedness of the Borrower and each Subsidiary that is owing to any Loan Party shall be evidenced by a promissory note and shall have been pledged pursuant to the Collateral Agreement and the Administrative Agent shall have received all such promissory notes, together with undated instruments of transfer with respect thereto endorsed in blank;

(d) all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Administrative Agent to be filed, registered or recorded to create the Liens intended to be created by the Collateral Agreement and the Foreign Pledge Agreements and perfect such Liens to the extent required by, and with the priority required by, the Collateral Agreement and the Foreign Pledge Agreements, shall have been filed, registered or recorded or delivered to the Administrative Agent for filing, registration or recording;

(e) the Administrative Agent shall have received (i) counterparts of a Mortgage with respect to each Mortgaged Property duly executed and delivered

by the record owner of such Mortgaged Property, (ii) a policy or policies of title insurance issued by a nationally recognized title insurance company insuring the Lien of each such Mortgage as a valid first Lien on the Mortgaged Property described therein, free of any other Liens except as expressly permitted by Section 6.02, together with such endorsements, coinsurance and reinsurance as the Administrative Agent or the Required Lenders may reasonably request, and (iii) such surveys, abstracts, appraisals, legal opinions and other documents as the Administrative Agent or the Required Lenders may reasonably request with respect to any such Mortgage or Mortgaged Property; and

(f) each Loan Party shall have obtained all consents and approvals required to be obtained by it in connection with the execution and delivery of all Security Documents to which it is a party, the performance of its obligations thereunder and the granting by it of the Liens thereunder.

"Commitment" means (a) with respect to any Lender, such Lender's Revolving Commitment, Tranche B Commitment or commitment in respect of any Incremental Term Loans or any combination thereof (as the context requires) and (b) with respect to the Swingline Lender, its Swingline Commitment.

"Company" has the meaning assigned to such term in the preamble to this Agreement.

"Company Material Adverse Effect" has the meaning assigned to such term in Schedule 1.01.

"Consolidated Cash Interest Expense" means, for any period, the excess of (a) the sum of (i) the interest expense (including imputed interest expense in respect of Capital Lease Obligations) of the Borrower and the Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP, (ii) any interest accrued during such period in respect of Indebtedness of the Borrower or any Subsidiary that is required to be capitalized rather than included in consolidated interest expense for such period in accordance with GAAP and (iii) any cash payments made during such period in respect of obligations referred to in clause (b)(ii) below that were amortized or accrued in a previous period, minus (b) the sum of (i) to the extent included in such consolidated interest expense for such period, non-cash amounts attributable to amortization of financing costs paid in a previous period, (ii) to the extent included in such consolidated interest expense for such period, non-cash amounts attributable to amortization of debt discounts or accrued interest payable in kind for such period, (iii) any premium or penalty paid on the Effective Date in connection with the prepayment of the SunTrust Note and (iv) any break funding payment made pursuant to Section 2.16. Consolidated Cash Interest Expense shall be deemed to be (a) for the four fiscal quarter period ended March 31, 2006, Consolidated Cash Interest Expense for the fiscal quarter ended March 31, 2006, multiplied by four, (b) for the four fiscal quarter period ended June 30, 2006, Consolidated Cash Interest Expense for the two fiscal quarters ended June 30, 2006, multiplied by two, and (c) for the four fiscal quarter period ended September 30,

2006, Consolidated Cash Interest Expense for the three fiscal quarters ended September 30, 2006, multiplied by 4/3.

"Consolidated EBITDA" means, for any period, Consolidated Net Income for such period plus (a) without duplication and to the extent deducted in determining such Consolidated Net Income, the sum of (i) consolidated interest expense for such period, (ii) consolidated income tax expense for such period, (iii) all amounts attributable to depreciation and amortization for such period (excluding amortization expense attributable to a prepaid cash item that was paid in a prior period), (iv) any non-recurring non-cash charges for such period, (v) non-recurring fees and expenses incurred during such period in connection with the Transactions in an aggregate amount not to exceed $45,000,000, (vi) non-recurring charges incurred during such period in respect of restructurings, headcount reductions or other similar actions, including severance charges in respect of employee terminations, in an amount not to exceed $30,000,000 during the term of this Agreement and $15,000,000 during any one fiscal year of the Borrower, (vii) non-cash expenses resulting from the grant of stock options or other equity-related incentives to any director, officer or employee of the Borrower or any Subsidiary pursuant to a written plan or agreement approved by the board of directors of the Borrower, (viii) non-cash charges attributable to impairment of goodwill or other intangible assets or impairment of long-lived assets and (ix) premium, fees and other costs and expenses paid in connection with the redemption of the Series C Preferred Stock in an aggregate amount not to exceed $7,500,000 during the term of this Agreement and minus (b) without duplication and (except in the case of clause (i) to the extent included in determining such Consolidated Net Income, the sum of (i) any cash disbursements during such period that relate to non-cash charges or losses added to Consolidated Net Income pursuant to clause (a)(iv) or (a)(vii) of this paragraph in any prior period, (ii) any extraordinary gains for such period, (iii) any non-cash gains for such period that represent the reversal of any accrual in a prior period for, or the reversal of any cash reserves established in a prior period for, anticipated cash charges, (iv) any income relating to defined benefits pension or post-retirement benefit plans and (v) all gains during such period resulting from the sale or disposition of any asset of the Borrower or any Subsidiary outside the ordinary course of business, all determined on a consolidated basis in accordance with GAAP. Consolidated EBITDA shall be deemed to be (a) for the four fiscal quarter period ended March 31, 2006, Consolidated EBITDA for the fiscal quarter ended March 31, 2006, multiplied by four, (b) for the four fiscal quarter period ended June 30, 2006, Consolidated EBITDA for the two fiscal quarters ended June 30, 2006, multiplied by two, and (c) for the four fiscal quarter period ended September 30, 2006, Consolidated EBITDA for the three fiscal quarters ended September 30, 2006, multiplied by 4/3.

"Consolidated Net Income" means, for any period, the net income or loss of the Borrower and the Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, provided that there shall be excluded (a) the income of any Subsidiary (other than any Broker Dealer Subsidiary) to the extent that the declaration or payment of dividends or other distributions by such Subsidiary of that income is not at the time permitted by any of its Organizational Documents, a Requirement of Law or any agreement or instrument applicable to such Subsidiary, except to the extent of the amount

of cash dividends or other cash distributions actually paid to the Borrower or any Subsidiary (unless the income of such Subsidiary would be excluded from Consolidated Net Income pursuant to this proviso) during such period, (b) the income of any Broker Dealer Subsidiary (i) to the extent that the declaration or payment of dividends or other distributions by such Broker Dealer Subsidiary of that income is not at the time permitted by any of its Organizational Documents or any agreement or instrument applicable to such Broker Dealer Subsidiary (other than any agreement or instrument with such Broker Dealer Subsidiary's applicable Governmental Authorities) and (ii) other than to the extent that such Broker Dealer Subsidiary reasonably believes, in good faith, that such income could be distributed, declared and paid as a dividend or similar distribution without causing such Broker Dealer Subsidiary's capital to be at or below the highest level at which dividends by such Broker Dealer Subsidiary may be restricted, other activities undertaken by such Broker Dealer Subsidiary may be limited or other regulatory actions with respect to such Broker Dealer Subsidiary may be taken, in each case by applicable Governmental Authorities based upon such capital and (c) the income of any Person (other than the Borrower or any Subsidiary) in which the Borrower or any Subsidiary owns an Equity Interest, except to the extent of the amount of cash dividends or other cash distributions actually paid to the Borrower or any Subsidiary (unless the income of such Subsidiary would be excluded from Consolidated Net Income pursuant to this proviso) during such period. For purposes of calculating a Broker Dealer Subsidiary's capital at any time pursuant to clause (b)(ii) of this definition, receivables that are less than 30 days old at such time and are reasonably expected to be collected shall be deemed to be cash in an amount equal to 80% of the balance sheet value of such receivables.

"Continuing Director" means (a) any member of the Board of Directors of the Borrower who was a member of the Board of Directors of the Borrower on the Effective Date and (b) any individual who becomes a member of the Board of Directors of the Borrower after the Effective Date if such individual was appointed, elected or nominated for election to the Board of Directors of the Borrower with the affirmative vote of at least a majority of the directors then still in office.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies, or the dismissal or appointment of the management, of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Convertible Notes" means the Series A Convertible Notes and the Series B Convertible Notes.

"Convertible Notes Commitment Letters" means the subscription agreements dated as of April 22, 2005, between each of the Sponsors and Convertible Notes Holdings, and Convertible Notes Holdings and the Convertible Notes Investor, in each case for the benefit of the Borrower, pursuant to which the Sponsors commit to provide Convertible Notes Holdings, and Convertible Notes Holdings commits to provide to the Convertible Notes Investor, funds necessary to repay the aggregate principal

amount of the loans under the SPV Loan Agreement upon consummation of the Acquisition.

"Convertible Notes Documents" means the Convertible Notes Indenture and all side letters, instruments, agreements and other documents evidencing or governing the Convertible Notes, providing for any right in respect thereof, affecting the terms thereof or entered into in connection therewith and all schedules, exhibits and annexes to each of the foregoing.

"Convertible Notes Holdings" has the meaning assigned to such term in the preamble to this Agreement.

"Convertible Notes Indenture" means the Indenture dated as of April 22, 2005, between the Borrower and Law Debenture Trust Company of New York, as trustee, in respect of the Convertible Notes.

"Convertible Notes Investor" has the meaning assigned to such term in the preamble to this Agreement.

"Default" means any event or condition that constitutes an Event of Default or that upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Disclosed Matters" means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06.

"Disqualified Equity Interests" means Equity Interests that (a) require the payment of any dividends (other than dividends payable solely in shares of Qualified Equity Interests), (b) mature or are mandatorily redeemable or subject to mandatory repurchase or redemption or repurchase at the option of the holders thereof, in whole or in part and whether upon the occurrence of any event, pursuant to a sinking fund obligation, on a fixed date or otherwise, prior to the date that is 180 days after the Tranche B Maturity Date or, if such Equity Interests are issued after the Borrower has obtained any Incremental Term Loans or while any Commitments from Additional Lenders to make Incremental Term Loans remain in effect, 180 days after the maturity date for such Incremental Term Loans, unless all such Incremental Term Loans have been repaid in full and all Commitments in respect thereof shall have been terminated (other than (i) upon payment in full of the Loan Document Obligations, reduction of the LC Exposure to zero and termination of the Commitments or (ii) upon a "change in control", provided that any payment required pursuant to this clause (ii) is contractually subordinated in right of payment to the Loan Document Obligations on terms reasonably satisfactory to the Administrative Agent and such requirement is not applicable in more circumstances than pursuant to the change of control provisions in the Convertible Notes Documents), (c) require the maintenance or achievement of any financial performance standards other than as a condition to the taking of specific actions or provide remedies to holders thereof (other than voting and management rights and increases in pay-in-kind dividends) or (d) are convertible or exchangeable, automatically or at the option of any

holder thereof, into any Indebtedness, Equity Interests or other assets other than Qualified Equity Interests.

"dollars" or "$" refers to lawful money of the United States of America.

"Domestic Subsidiary" means any Subsidiary incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia.

"Effective Date" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

"Environmental Laws" means all treaties, laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by or with any Governmental Authority, relating in any way to the environment, the preservation or reclamation of natural resources, the generation, management, Release or threatened Release of any Hazardous Material or to health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of medical monitoring, costs of environmental remediation or restoration, administrative oversight costs, consultants' fees, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Law or permit, license or approval issued thereunder, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived), (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived, (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of

the minimum funding standard with respect to any Plan, (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan, (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"Eurodollar", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"Event of Default" has the meaning assigned to such term in Article VII.

"Excess Cash Flow" means, for any fiscal year of the Borrower, the sum (without duplication) of:

(a) the consolidated net income (or loss) of the Borrower and the Subsidiaries for such fiscal year, adjusted to exclude any gains or losses attributable to Prepayment Events; plus

(b) depreciation, amortization and other non-cash charges or losses (including non-cash expenses with respect to the issuance of stock options and deferred income taxes) deducted in determining such consolidated net income (or loss) for such fiscal year; plus

(c) the sum of (i) the amount, if any, by which Net Working Capital decreased during such fiscal year (except as a result of (x) the reclassification of items from short-term to long-term or vice-versa or (y) the reduction of Closing Date Receivables (as defined in the VAB Transaction Agreement) the proceeds of which are paid to VAB Acquisition Sub pursuant to the VAB Transaction Agreement), (ii) the net amount, if any, by which the consolidated deferred revenues of the Borrower and the Subsidiaries increased during such fiscal year and (iii) the net amount, if any, by which the consolidated accrued long-term asset accounts of the Borrower and the Subsidiaries decreased during such fiscal year; minus

(d) the sum of (i) any non-cash gains included in determining such consolidated net income (or loss) for such fiscal year, (ii) the amount, if any, by which Net Working Capital increased during such fiscal year (except as a result of the reclassification of items from long-term to short-term or vice-versa), (iii) the net amount, if any, by which the consolidated deferred revenues of the Borrower

and the Subsidiaries decreased during such fiscal year and (iv) the net amount, if any, by which the consolidated accrued long-term asset accounts of the Borrower and the Subsidiaries increased during such fiscal year; minus

(e) the sum of (i) Capital Expenditures made in cash for such fiscal year (except to the extent attributable to the incurrence of Capital Lease Obligations or otherwise financed by incurring Long-Term Indebtedness (excluding Indebtedness in respect of the Revolving Loans), by issuing Equity Interests (other than to the Borrower or any Subsidiary), through the receipt of capital contributions (other than capital contributions made by the Borrower or any Subsidiary) or using the proceeds of any disposition of assets outside the ordinary course of business or other proceeds not included in Consolidated EBITDA) and (ii) cash consideration paid during such fiscal year to make Permitted Acquisitions (except to the extent financed by incurring Long-Term Indebtedness (excluding Indebtedness in respect of the Revolving Loans), by issuing Equity Interests (other than to the Borrower or any Subsidiary), through the receipt of capital contributions (other than capital contributions made by the Borrower or any Subsidiary) or using the proceeds of any disposition of assets outside the ordinary course of business or other proceeds not included in Consolidated EBITDA); minus

(f) the aggregate principal amount of Long-Term Indebtedness repaid or prepaid by the Borrower and the Subsidiaries during such fiscal year, excluding (i) Indebtedness in respect of Revolving Loans and Letters of Credit or other revolving credit facilities (unless there is a corresponding reduction in the aggregate Revolving Commitments or the commitments in respect of such other revolving credit facilities, as the case may be), (ii) Term Loans prepaid pursuant to Section 2.11(a), (c) or (d) and (iii) repayments or prepayments of Long-Term Indebtedness financed (A) by incurring other Long-Term Indebtedness, to the extent that repayments or prepayments in respect of such other Long-Term Indebtedness would, pursuant to this clause (f), be deducted in determining Excess Cash Flow when made, (B) by issuing Equity Interests (other than to the Borrower or any Subsidiary), (C) through the receipt of capital contributions (other than capital contributions made by the Borrower or any Subsidiary) or (D) using the proceeds of any disposition of assets outside the ordinary course of business or other proceeds not included in Consolidated EBITDA; minus

(g) the aggregate amount of (i) Restricted Payments made by the Borrower in cash during such fiscal year pursuant to clause (iii) and clause (iv) of Section 6.08(a) and (ii) premium, fees and other costs and expenses associated with the redemption of the Series C Preferred Stock.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exchange LLC" means the limited liability company that will be, upon receipt of Exchange Registration, registered as a national securities exchange under the Exchange Act.

"Exchange Registration" means the receipt of SEC approval of the Borrower's application to register as a national securities exchange under the Exchange Act.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction described in clause (a) above and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.19(b)), any withholding tax that (i) is in effect and would apply to amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to any withholding tax pursuant to Section 2.17(a), or (ii) is attributable to such Foreign Lender's failure to comply with Section 2.17(e).

"Fair Labor Standards Act" means the Fair Labor Standards Act, 29 U.S.C. ss.201 et seq.

"Federal Funds Effective Rate" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Financial Officer" means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Pledge Agreement" means a pledge or charge agreement with respect to the Collateral that constitutes Equity Interests of a Foreign Subsidiary, in form and substance reasonably satisfactory to the Administrative Agent.

"Foreign Subsidiary" means any Subsidiary that is organized under the laws of a jurisdiction other than the United States of America, any State thereof or the District of Columbia.

"GAAP" means generally accepted accounting principles in the United States of America.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Granting Lender" has the meaning assigned to such term in Section 9.04(e).

"Guarantee" of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation, provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

"Guarantee Agreement" has the meaning assigned to such term in the preamble to this Agreement.

"Hazardous Materials" means all explosive or radioactive substances, materials or wastes and all hazardous or toxic substances, materials, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances, materials or wastes of any nature regulated pursuant to any Environmental Law.

"Incremental Facility Amendment" has the meaning assigned to such term in Section 2.20(c).

"Incremental Facility Closing Date" has the meaning assigned to such term in Section 2.20(c).

"Incremental Term Loans" has the meaning assigned to such term in Section 2.20(a).

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding trade accounts payable and other accrued obligations, in each case incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. Notwithstanding the foregoing, in connection with any Permitted Acquisition, the term "Indebtedness" shall not include contingent post-closing purchase price adjustments or earn-outs to which the seller in such Permitted Acquisition may become entitled.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Information Memorandum" means the Confidential Information Memorandum dated October 2005, relating to the Borrower and the Transactions.

"Interest Coverage Ratio" means, on any date, the ratio of (a) Consolidated EBITDA to (b) Consolidated Cash Interest Expense for the period of four consecutive fiscal quarters of the Borrower ended on such date (or, if such date is not the last day of a fiscal quarter, ended on the last day of the fiscal quarter of the Borrower most-recently ended prior to such date).

"Interest Election Request" means a request by the Borrower to convert or continue a Revolving Borrowing or Term Borrowing in accordance with Section 2.07.

"Interest Payment Date" means (a) with respect to any ABR Loan (including a Swingline Loan), the last day of each March, June, September and December and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months' duration, each day prior to the last day

of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period.

"Interest Period" means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter (or nine or twelve months thereafter if, at the time of the relevant Borrowing, all Lenders participating therein agree to make an interest period of such duration available), as the Borrower may elect, provided, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Issuing Bank" means JPMorgan Chase Bank, N.A., in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.05(i). The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Bank, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"LC Disbursement" means a payment made by the Issuing Bank pursuant to a Letter of Credit.

"LC Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time and (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate LC Exposure at such time.

"Lenders" means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to Section 9.04, other than any such Person that ceases to be a party hereto pursuant to Section 9.04. Unless the context otherwise requires, the term "Lenders" includes the Swingline Lender.

"Letter of Credit" means any letter of credit issued pursuant to this Agreement.

"Leverage Ratio" means, on any date, the ratio of (a) Total Indebtedness as of such date minus the lesser of (i) cash and cash equivalents (determined in accordance with GAAP) of the Borrower and the Subsidiaries, other than cash and cash equivalents not readily available for use by the Borrower and the Subsidiaries in their

discretion (including customer-segregated cash and cash equivalents and cash and cash equivalents required by applicable law or regulatory requirement to be maintained as such by the Borrower or any Subsidiary), and (ii) $75,000,000, to (b) Consolidated EBITDA for the period of four consecutive fiscal quarters of the Borrower ended on such date (or, if such date is not the last day of a fiscal quarter, ended on the last day of the fiscal quarter of the Borrower most-recently ended prior to such date).

"LIBO Rate" means, with respect to any Eurodollar Borrowing for any Interest Period, the rate appearing on Page 3750 of the Dow Jones Market Service (or on any successor or substitute page of such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided on such page of such Service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the "LIBO Rate" with respect to such Eurodollar Borrowing for such Interest Period shall be the rate at which dollar deposits of an amount comparable to the amount of such Eurodollar Borrowing and for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

"Loan Document Obligations" has the meaning assigned to such term in the Collateral Agreement.

"Loan Documents" means this Agreement, any Incremental Facility Amendment, the Collateral Agreement and the other Security Documents.

"Loan Parties" means the Borrower and the Subsidiary Loan Parties.

"Loans" means the loans made by the Lenders to the Borrower pursuant to this Agreement.

"Long-Term Indebtedness" means any Indebtedness (excluding Indebtedness permitted by Section 6.01(a)(iv)) that, in accordance with GAAP, constitutes (or, when incurred, constituted) a long-term liability.

"Margin Stock" has the meaning assigned thereto in Regulation U of the Board.

"Material Adverse Effect" means a material adverse effect on (a) the business, operations, properties, results of operations or condition (financial or otherwise) of the Borrower and the Subsidiaries, taken as a whole, (b) the ability of any Loan Party to perform any of its material obligations under any Loan Document or (c) the rights of or remedies available to the Lenders under any Loan Document.

"Material Indebtedness" means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the Borrower and the Subsidiaries in an aggregate principal amount exceeding $15,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

"Merger Agreement" has the meaning assigned to such term in the preamble to this Agreement.

"Merger Sub" has the meaning assigned to such term in the preamble to this Agreement.

"Moody's" means Moody's Investors Service, Inc.

"Mortgage" means a mortgage, deed of trust, assignment of leases and rents, leasehold mortgage or other security document granting a Lien on any Mortgaged Property to secure the Obligations. Each Mortgage shall be reasonably satisfactory in form and substance to the Administrative Agent.

"Mortgaged Property" means, initially, each parcel of real property and the improvements thereto owned by a Loan Party and identified on Schedule 1.03, and includes each other parcel of real property and the improvements thereto owned by a Loan Party with respect to which a Mortgage is granted pursuant to Section 5.12 or 5.13.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"NASD" means the National Association of Securities Dealers, Inc.

"Net Proceeds" means, with respect to any event, (a) the cash proceeds received in respect of such event, including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment or earn-out, but excluding (x) any reasonable interest payments and (y) the portion of any tax refund received that is payable to SLP pursuant to Sections 4.6 and 4.7 of the VAB Transaction Agreement), but only as and when received, (ii) in the case of a casualty, insurance proceeds, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, minus (b) the sum of (i) all customary fees and out-of-pocket expenses paid by the Borrower and the Subsidiaries to third parties

(other than Affiliates) in connection with such event, (ii) in the case of a sale, transfer or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments that are permitted hereunder and are made by the Borrower and the Subsidiaries as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event, and (iii) the amount of all taxes paid (or reasonably estimated to be payable) by the Borrower and the Subsidiaries, and the amount of any reserves established by the Borrower and the Subsidiaries to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer), provided that any reduction at any time in the amount of any such reserves (other than as a result of payments made in respect thereof) shall be deemed to constitute the receipt by the Borrower at such time of Net Proceeds in the amount of such reduction.

"Net Working Capital" means, at any date, (a) the consolidated current assets of the Borrower and the Subsidiaries as of such date (excluding cash (including proceeds from the exercise of stock options), Permitted Investments and receivables representing (i) tape fees payable to the Borrower or any Subsidiary under the Borrower's Unlisted Trading Privileges Plan or (ii) transaction fees payable to the Borrower or any Subsidiary under Exchange Act Rule 31(a)) minus (b) the consolidated current liabilities of the Borrower and the Subsidiaries as of such date (excluding deferred income tax liabilities, current liabilities in respect of Indebtedness and payables representing (i) tape fees payable by the Borrower or a Subsidiary under the Borrower's Unlisted Trading Privileges Plan or (ii) transaction fees payable by the Borrower or any Subsidiary under Exchange Act Rule 31(a)). Net Working Capital at any date may be a positive or negative number. Net Working Capital increases when it becomes more positive or less negative and decreases when it becomes less positive or more negative.

"Non-Consenting Lender" has the meaning assigned to such term in Section 9.02(c).

"Obligations" has the meaning assigned to such term in the Collateral Agreement.

"Organizational Documents" means, with respect to any Person, the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person.

"Other Taxes" means any and all present or future recording, stamp, documentary, excise, transfer, sales, property or similar taxes, charges or levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

"Participant" has the meaning assigned to such term in Section 9.04(c).

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Perfection Certificate" means a certificate in the form of Exhibit D or any other form approved by the Administrative Agent.

"Permitted Acquisition" means any acquisition by the Borrower or a wholly-owned Subsidiary Loan Party of all the outstanding Equity Interests (other than directors' qualifying shares) in, all or substantially all the assets of, or all or substantially all the assets constituting a division or line of business of, a Person if (a) such acquisition was not preceded by, or consummated pursuant to, a hostile offer (including a proxy contest), (b) each of such Person and its subsidiaries (in the case of an acquisition of Equity Interests) is organized under the laws of, and substantially all its assets (or the assets of such division or line of business, as the case may be) are located in, the United States of America, any State thereof or the District of Columbia, (c) no Default has occurred and is continuing or would result therefrom, (d) such acquisition and all transactions related thereto are consummated in accordance with applicable laws, (e) all actions required to be taken with respect to such acquired or newly formed Subsidiary or such acquired assets under Sections 5.12 and 5.13 shall have been taken, (f) the Borrower is in compliance, on a Pro Forma Basis after giving effect to such acquisition as of the last day of the most-recently ended fiscal quarter of the Borrower, with the covenants contained in Sections 6.12 and 6.13, (g) after giving effect to such acquisition, there shall be no less than $25,000,000 of aggregate unused and available Revolving Commitments, (h) the business of such Person or such assets (other than assets to be retired or disposed of), as the case may be, constitutes a business permitted by Section 6.03(b), (i) the Leverage Ratio, calculated on a Pro Forma Basis after giving effect to such acquisition as of the last day of the most-recently ended fiscal quarter of the Borrower, is either (x) less than 3.50 to 1.00 or (y) less than the Leverage Ratio set forth in the most recent certificate of a Financial Officer delivered pursuant to Section 5.01(c), provided that this clause (y) may only be relied upon with respect to acquisitions for which the aggregate purchase price (which shall be deemed to exclude any Qualified Equity Interests issued in payment of any portion of such purchase price but which shall be deemed to include (A) any amounts actually paid pursuant to any post-closing payment adjustments, earn-outs or non-compete payments and (B) the principal amount of Indebtedness that is assumed pursuant to Section 6.01(a)(vii) or otherwise incurred in connection with such acquisition) is less than $50,000,000 individually and $175,000,000 in the aggregate, and (j) the Borrower has delivered to the Administrative Agent a certificate of a Financial Officer to the effect set forth in clauses (a), (b), (c), (d), (e), (f), (g), (h) and (i) above, together with all relevant financial information for the Person or assets to be acquired and setting forth reasonably detailed calculations demonstrating compliance with clauses (f) and (i) above (which calculations shall, if made as of the last day of any fiscal quarter of the Borrower for which the Borrower has not delivered to the Administrative Agent the financial statements and certificate of a Financial Officer required to be delivered by Section 5.01(a) or (b) and Section 5.01(c), respectively, be accompanied by a reasonably detailed calculation of Consolidated EBITDA and Consolidated Cash Interest Expense for the relevant period).

"Permitted Encumbrances" means:

(a) Liens imposed by law for taxes, assessments or other governmental charges that are not yet due or are being contested in compliance with Section 5.05;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's, landlords' and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.05;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII;

(f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary; and

(g) Liens arising from Permitted Investments described in clause (d) of the definition of the term "Permitted Investments",

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

"Permitted Investments" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(c) investments in certificates of deposit, banker's acceptances and time or demand deposits maturing within 180 days from the date of acquisition thereof

issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than $500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;

(e) investments in "money market funds" within the meaning of Rule 2a-7 of the Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (a) through (d) above; and

(f) investments that comply with the Investment Policy set forth on Schedule 1.04.

"Person" means any natural person or entity, including any corporation, limited liability company, trust, joint venture, association, company, partnership or Governmental Authority or other entity.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Preferred Stock" means (a) the Series B Preferred Stock, (b) the Series C Preferred Stock, and (c) the Series D Preferred Stock.

"Prepayment Event" means:

(a) any sale, transfer or other disposition (including by way of merger or consolidation) of any property or asset of the Borrower or any Subsidiary, other than (i) dispositions permitted by clauses (a), (b), (c), (e), (f), (g) and (h) of Section 6.05 and (ii) other dispositions resulting in aggregate Net Proceeds not exceeding $5,000,000 during any fiscal year of the Borrower;

(b) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of the Borrower or any Subsidiary with a fair market value immediately prior to such event equal to or greater than $1,000,000; or

(c) the incurrence by the Borrower or any Subsidiary of any Indebtedness, other than Indebtedness permitted under Section 6.01 or permitted by the Required Lenders pursuant to Section 9.02.

"Prime Rate" means the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A. as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

"Pro Forma Basis" means, with respect to the calculation of the Leverage Ratio or the Interest Coverage Ratio for purposes of determining the prepayments required pursuant to Section 2.11(d) and for purposes of determining compliance with the financial covenants contained in Sections 6.12 and 6.13, that such calculation shall give pro forma effect to all Permitted Acquisitions, all issuances, incurrences or assumptions of Indebtedness (with any such Indebtedness being deemed to be amortized over the applicable testing period in accordance with its terms) and all sales, transfers or other dispositions of any material assets outside the ordinary course of business that have occurred during (or, if such calculation is being made for the purpose of determining whether any proposed acquisition will constitute a Permitted Acquisition, since the beginning of) the four consecutive fiscal quarter period of the Borrower most-recently ended on or prior to such date as if they occurred on the first day of such four consecutive fiscal quarter period (including cost savings resulting from headcount reductions, facility closings or similar restructurings to the extent such cost savings (a) would be permitted to be reflected in pro forma financial information complying with the requirements of GAAP and Article XI of Regulation S-X under the Securities Act of 1933, as amended, as interpreted by the Staff of the SEC, and as certified by a Financial Officer or (b) have been realized or for which the steps necessary for realization have been taken or are reasonably expected to be taken within 365 days following such Permitted Acquisition or sale, transfer or other disposition, and as certified by a Financial Officer, provided that adjustments pursuant to clause (b) shall not constitute more than 20% of Consolidated EBITDA for any four fiscal quarter period, and provided, further, that, in the case of clause (b), if cost savings are included in any pro forma calculations based on the reasonable expectation that steps necessary for realization of such cost savings will be taken within 365 days of a Permitted Acquisition or a sale, transfer or other disposition, then on and after the date that is 365 days after the date of such Permitted Acquisition or sale, transfer or other disposition, such pro forma calculations shall not give effect to such cost savings to the extent that the steps necessary for realization were not actually taken during such 365-day period).

"Proposed Change" has the meaning assigned to such term in Section 9.02(c).

"Qualified Equity Interests" means Equity Interests of the Borrower other than Disqualified Equity Interests.

"Register" has the meaning assigned to such term in Section 9.04(b).

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents, trustees and advisors of such Person and such Person's Affiliates.

"Release" means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within or upon any building, structure, facility or fixture.

"Required Lenders" means, at any time, Lenders having Revolving Exposures, Term Loans and unused Commitments (other than Swingline Commitments) representing more than 50% of the aggregate Revolving Exposures, outstanding Term Loans and unused Commitments (other than Swingline Commitments) at such time.

"Required Percentage" means, with respect to any fiscal year of the Borrower, (a) 50%, if the Leverage Ratio at the end of such fiscal year is greater than or equal to 3.50 to 1.00, (b) 25%, if the Leverage Ratio at the end of such fiscal year is greater than or equal to 2.00 to 1.00 but less than 3.50 to 1.00 and (c) 0%, if the Leverage Ratio at the end of such fiscal year is less than 2.00 to 1.00.

"Requirement of Law" means, with respect to any Person, any statute, law, treaty, rule, regulation, order, decree, writ, injunction or determination of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancelation or termination of any Equity Interests in the Borrower or any Subsidiary or any option, warrant or other right to acquire any such Equity Interests in the Borrower or any Subsidiary, or any other payment (including any payment under any Swap Agreement) that has a substantially similar effect to any of the foregoing.

"Restructuring" means the reorganization of the Borrower into a new holding company structure through the transfer of all or substantially all of its assets and liabilities to one or more Subsidiary Loan Parties, including Exchange LLC, as set forth on Schedule 1.05.

"Revolving Availability Period" means the period from and including the Effective Date to but excluding the earlier of the Revolving Maturity Date and the date of termination of the Revolving Commitments.

"Revolving Commitment" means, with respect to each Lender, the commitment, if any, of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum possible aggregate amount of such Lender's Revolving Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 and (b) reduced or increased from time to time pursuant to

assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender's Revolving Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Revolving Commitment, as the case may be. The initial aggregate amount of the Lenders' Revolving Commitments is $75,000,000.

"Revolving Exposure" means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans and its LC Exposure and Swingline Exposure at such time.

"Revolving Lender" means a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

"Revolving Loan" means a Loan made pursuant to clause (b) of Section 2.01.

"Revolving Maturity Date" means December 8, 2010.

"S&P" means Standard & Poor's Ratings Group, Inc.

"SEC" means the Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

"Security Documents" means the Collateral Agreement, the Foreign Pledge Agreements, the Mortgages and each other security agreement or other instrument or document executed and delivered pursuant to Section 5.12 or 5.13 to secure any of the Obligations.

"Seller" has the meaning assigned to such term in the preamble to this Agreement.

"Series A Convertible Notes" means the $205,000,000 aggregate principal amount of 3.75% Series A Convertible Notes due 2012 issued by the Borrower to the Convertible Notes Investor on April 22, 2005.

"Series B Convertible Notes" means the $240,000,000 aggregate principal amount of 3.75% Series B Convertible Notes due 2012 issued by the Borrower to Hellman & Friedman LLC on April 22, 2005.

"Series B Preferred Stock" means the one share of Series B Preferred Stock of the Borrower outstanding on the Effective Date.

"Series C Preferred Stock" means the 953,470 shares of Series C Preferred Stock of the Borrower outstanding on the Effective Date.

"Series D Preferred Stock" means the one share of Series D Preferred Stock of the Borrower issued in exchange for the Series B Preferred Stock, the terms of

which are identical to the Series B Preferred Stock, except that the Series D Preferred Stock shall be redeemable only upon the first date on which the Borrower and the Subsidiaries are no longer operating in any respect pursuant to authority delegated by NASD to its subsidiaries under the Plan of Allocation and Delegation of Functions.

"SLP" has the meaning assigned to such term in the preamble to this Agreement.

"SPV" has the meaning assigned to such term in Section 9.04(e).

"SPV Loan Agreement" has the meaning assigned to such term in the preamble to this Agreement.

"SPV Loan Refinancing" has the meaning assigned to such term in the preamble to this Agreement.

"Sponsor" means each of SLP and Hellman & Friedman LLC.

"Sponsor Affiliate" means any Affiliate of a Sponsor other than (a) the Borrower and the Subsidiaries and (b) any other operating company or a Person controlled by such an operating company.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subordinated Debt Documents" means (a) the Convertible Notes Documents and (b) the indenture or indentures under which any Additional Subordinated Debt is issued, all side letters, instruments, agreements and other documents evidencing or governing any Additional Subordinated Debt, providing for any Guarantee or other right in respect thereof, affecting the terms of the foregoing or entered into in connection therewith and all schedules, exhibits and annexes to each of the foregoing.

"Subordinated Refinancing Indebtedness" means any Additional Subordinated Debt issued to refinance, redeem or repurchase (collectively, "refinance") all or any portion of the Convertible Notes or any other Additional Subordinated Debt, provided that such Additional Subordinated Debt is in an aggregate principal amount not more than the aggregate principal amount of the Convertible Notes or Additional

Subordinated Debt being refinanced (plus any accrued but unpaid interest or premium thereon (provided that such premium is either payable by the terms of the Convertible Notes or Additional Subordinated Debt being refinanced or is not more than a market premium at the time as determined in good faith by the Borrower) and reasonable expenses associated therewith).

"subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Subsidiary" means any subsidiary of the Borrower. For purposes of the representations and warranties made herein on the Effective Date, the term "Subsidiary" includes the Company and its subsidiaries.

"Subsidiary Loan Party" means any Subsidiary that is not a Foreign Subsidiary or a Broker Dealer Subsidiary, other than the Subsidiaries set forth on Schedule 1.06.

"SunTrust Note" shall mean the Promissory Note, dated May 19, 1997, made by the Borrower in the original principal amount of $25,000,000 and made payable to SunTrust Bank.

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Swap Agreement.

"Swingline Commitment" means the commitment of the Swingline Lender to make Swingline Loans.

"Swingline Exposure" means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Lender at any time shall be its Applicable Percentage of the Swingline Exposure at such time.

"Swingline Lender" means JPMorgan Chase Bank, N.A., in its capacity as lender of Swingline Loans hereunder.

"Swingline Loan" means a Loan made pursuant to Section 2.04.

"Syndication Agent" means Merrill Lynch, Pierce, Fenner & Smith Incorporated, in its capacity as Syndication Agent under this Agreement, and its successors in such capacity.

"Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"Term Loans" mean the Tranche B Term Loans and any Incremental Term Loans.

"Total Indebtedness" means, as of any date, the aggregate principal amount of Indebtedness of the Borrower and the Subsidiaries outstanding as of such date, provided that the term "Indebtedness" shall not include contingent obligations of the Borrower or any Subsidiary as an account party or applicant in respect of any letter of credit or letter of guaranty unless such letter of credit or letter of guaranty supports an obligation that constitutes Indebtedness.

"Tranche B Commitment" means, with respect to each Lender, the commitment, if any, of such Lender to make a Tranche B Term Loan hereunder on the Effective Date, expressed as an amount representing the maximum principal amount of the Tranche B Term Loan to be made by such Lender hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender's Tranche B Commitment is set forth on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Tranche B Commitment, as the case may be. The initial aggregate amount of the Lenders' Tranche B Commitments is $750,000,000.

"Tranche B Lender" means a Lender with a Tranche B Commitment or an outstanding Tranche B Term Loan.

"Tranche B Maturity Date" means December 8, 2011.

"Tranche B Term Loan" means a Loan made pursuant to clause (a) of Section 2.01.

"Transactions" means (a) the execution, delivery and performance by each Loan Party of the Loan Documents to which it is to be a party, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit hereunder, (b) the Acquisition, the VAB Sale and the other transactions contemplated by the Acquisition Documents, (c) the repayment in full of all obligations under the SunTrust Note, (d) the SPV Loan Refinancing and the release of all liens in respect of the obligations under the SPV Loan Agreement and (e) the payment of the Transaction Costs.

"Transaction Costs" means all fees, costs and expense incurred or payable by the Borrower or any Subsidiary in connection with the Transactions.

"Trumbull Property" means the property owned by the Borrower and located at 80 Merritt in Trumbull, Connecticut.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

"VAB Acquisition Sub" has the meaning assigned to such term in the preamble to this Agreement.

"VAB Business" has the meaning assigned to such term in the Merger Agreement.

"VAB Commitment Letters" means the equity commitment letter between SLP and VAB Acquisition Sub, and the contingency letter agreement among SLP, VAB Acquisition Sub and the Borrower, each dated as of April 22, 2005, pursuant to which SLP and VAB Acquisition Sub have committed to provide to the Borrower the cash necessary to pay the purchase price for the VAB business as set forth in the VAB Transaction Agreement.

"VAB Sale" has the meaning assigned to such term in the preamble to this Agreement.

"VAB Subsidiaries" has the meaning assigned to such term in the Merger Agreement.

"VAB Transaction Agreement" has the meaning assigned to such term in the preamble to this Agreement.

"Warrants" shall mean the Series A Warrants issued by the Borrower to the Convertible Notes Investor on April 22, 2005.

"wholly-owned Subsidiary" means, with respect to any Person at any date, a subsidiary of such Person of which securities or other ownership interests representing 100% of the Equity Interests (other than directors' qualifying shares) are, as of such date, owned, controlled or held by such Person or one or more wholly-owned Subsidiaries of such Person or by such Person and one or more wholly-owned Subsidiaries of such Person.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a "Revolving Loan") or by Type (e.g., a "Eurodollar Loan") or by Class and Type (e.g., a "Eurodollar Revolving Loan"). Borrowings also may be classified and referred to by Class (e.g., a

"Revolving Borrowing") or by Type (e.g., a "Eurodollar Borrowing") or by Class and Type (e.g., a "Eurodollar Revolving Borrowing").

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time, provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision (including any definition) hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

SECTION 1.05. Pro Forma Calculations. With respect to any period during which any Permitted Acquisition or any sale, transfer or other disposition of any material assets outside the ordinary course of business occurs, for purposes of determining the prepayment required pursuant to Section 2.11(d) for such period and for purposes of determining compliance with the financial covenants contained in Sections 6.12 and 6.13, the calculation of the Leverage Ratio and Interest Coverage Ratio with respect to such period shall be made on a Pro Forma Basis.

ARTICLE II

The Credits

SECTION 2.01. Commitments. Subject to the terms and conditions set forth herein, each Lender agrees (a) to make a Tranche B Term Loan to the Borrower on the Effective Date in a principal amount not exceeding its Tranche B Commitment and (b) to make Revolving Loans to the Borrower from time to time during the Revolving Availability Period in an aggregate principal amount that will not result in such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans. Amounts repaid or prepaid in respect of Term Loans may not be reborrowed.

SECTION 2.02. Loans and Borrowings. (a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder, provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.14, each Revolving Borrowing and Term Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Swingline Loan shall be an ABR Loan. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan, provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of $1,000,000 and not less than $5,000,000. At the time that each ABR Revolving Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of $1,000,000 and not less than $5,000,000. Each Swingline Loan shall be in an amount that is an integral multiple of $100,000 and not less than $500,000. Borrowings of more than one Type and Class may be outstanding at the same time, provided that there shall not at any time be more than a total of 25 Eurodollar Borrowings outstanding. Notwithstanding anything to the contrary herein, an ABR Revolving Borrowing or a Swingline Loan may be in an aggregate amount that is equal to the entire unused balance of the aggregate Revolving Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e).

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Revolving Maturity Date or the Tranche B Maturity Date, as the case may be.

SECTION 2.03. Requests for Borrowings. To request a Revolving Borrowing or Term Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 12:00 p.m., New York City time, three Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 12:00 p.m., New York City time, one Business Day before the date of the proposed Borrowing, provided that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e) may be given not later than 11:00 a.m., New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information:

(i) whether the requested Borrowing is to be a Revolving Borrowing, a Tranche B Term Borrowing or a Borrowing of any Incremental Term Loan;

(ii) the aggregate amount of such Borrowing;

(iii) the date of such Borrowing, which shall be a Business Day;

(iv) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;

(v) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term “Interest Period”;

(vi) the location and number of the Borrower’s account to which funds are to be disbursed, which shall comply with the requirements of Section 2.06; and

(vii) that as of such date Sections 4.02(a) and (b) are satisfied.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Revolving Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender’s Loan to be made as part of the requested Borrowing.

SECTION 2.04. Swingline Loans. (a) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Borrower from time to time during the Revolving Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding $10,000,000 or (ii) the aggregate Revolving Exposures exceeding the aggregate Revolving Commitments, provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an

outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans.

(b) To request a Swingline Loan, the Borrower shall notify the Administrative Agent of such request by telephone (confirmed by telecopy), not later than 12:00 noon, New York City time, on the day of such proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Borrower. The Swingline Lender shall make each Swingline Loan available to the Borrower by means of a wire transfer of immediately available funds to an account of the Borrower at a bank or financial institution designated in writing by the Borrower (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.05(e), by remittance to the Issuing Bank or, to the extent that the Revolving Lenders have made payments pursuant to Section 2.05(e) to reimburse the Issuing Bank, to such Lenders and the Issuing Bank as their interests may appear) by 3:00 p.m., New York City time, on the requested date of such Swingline Loan.

(c) The Swingline Lender may by written notice given to the Administrative Agent not later than 12:00 noon, New York City time, on any Business Day require the Revolving Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Swingline Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Swingline Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative

Agent shall be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear, provided that any such payment so remitted shall be repaid to the Swingline Lender or the Administrative Agent, as the case may be, if and to the extent such payment is required to be refunded to the Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

SECTION 2.05. Letters of Credit. (a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit for its own account (or for the account of any Subsidiary so long as the Borrower and such Subsidiary are co-applicants), in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Revolving Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, the Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension, (i) the LC Exposure shall not exceed $10,000,000 and (ii) the aggregate Revolving Exposures shall not exceed the aggregate Revolving Commitments.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date that is one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Revolving Maturity Date; provided, however, that a Letter of Credit may, upon the request of the Borrower, include a provision whereby such Letter of Credit shall be renewed automatically for additional consecutive periods of one year or less (but not

beyond the date that is five Business Days prior to the Revolving Maturity Date) unless the Issuing Bank notifies the beneficiary thereof at least 30 days prior to the then-applicable expiration date that such Letter of Credit will not be renewed.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 3:00 p.m., New York City time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., New York City time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than (i) 3:00 p.m., New York City time, on the Business Day that the Borrower receives such notice, if such notice is received prior to 10:00 a.m., New York City time, on the day of receipt, or (ii) 12:00 noon, New York City time, on the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to 10:00 a.m., New York City time, on the day of receipt, provided that, if such LC Disbursement is not less than $500,000, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.04 that such payment be financed with an ABR Revolving Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing or Swingline Loan. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 shall apply, mutatis mutandis, to the payment obligations

of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank, provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or wilful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse

to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit, and any such acceptance or refusal shall be deemed not to constitute gross negligence or wilful misconduct.

(g) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder, provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement in accordance with paragraph (e) of this Section.

(h) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans, provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.13(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Replacement of the Issuing Bank. The Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term “Issuing Bank” shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day on which the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing greater than 50% of the LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the

Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon, provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in paragraph (h) or (i) of Article VII. The Borrower also shall deposit cash collateral pursuant to this paragraph as and to the extent required by Section 2.11(b). Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense (provided that such cash collateral shall be invested solely in investments that provide for preservation of capital), such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing greater than 50% of the LC Exposure), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived. If the Borrower is required to provide an amount of cash collateral hereunder pursuant to Section 2.11(b), such amount (to the extent not applied as aforesaid) shall be returned to the Borrower as and to the extent that, after giving effect to such return, the Borrower would remain in compliance with Section 2.11(b) and no Default shall have occurred and be continuing.

SECTION 2.06. Funding of Borrowings. (a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time, to the account of the Administrative Agent most-recently designated by it for such purpose by notice to the Lenders, provided that Swingline Loans shall be made as provided in Section 2.04. The Administrative Agent will make such Loans available to the Borrower by wire transfer of the amounts so received, in immediately available funds, to an account of the Borrower at a bank or financial institution designated by the Borrower in the applicable Borrowing Request, provided that ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.05(e) shall be remitted by the Administrative Agent to the Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to Section 2.05(e) to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption and in its sole discretion, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 2.07. Interest Elections. (a) Each Revolving Borrowing and Term Borrowing initially shall be of the Type specified in the applicable Borrowing Request or designated by Section 2.03 and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request or designated by Section 2.03. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings, which may not be converted or continued.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the

information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.08. Termination and Reduction of Commitments. (a) Unless previously terminated, (i) the Tranche B Commitments shall terminate at 5:00 p.m., New York City time, on the Effective Date and (ii) the Revolving Commitments shall terminate on the Revolving Maturity Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments of any Class, provided that (i) each reduction of the Commitments of any Class shall be in an amount that is an integral multiple of $1,000,000 and not less than $5,000,000 and (ii) the Borrower shall not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, the aggregate Revolving Exposures (excluding, in the case of any termination of the Revolving Commitments, the portion of the Revolving Exposures attributable to outstanding Letters of Credit if and to the extent that the Borrower has made arrangements satisfactory to the Administrative Agent and the Issuing Bank with respect to such Letters of Credit and the Issuing Bank has released the

Revolving Lenders from their participation obligations with respect to such Letters of Credit) would exceed the aggregate Revolving Commitments.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable, provided that a notice of termination of the Commitments of any Class delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or the receipt of proceeds from the issuance of other Indebtedness, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments of any Class shall be permanent. Each reduction of the Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Commitments of such Class.

SECTION 2.09. Repayment of Loans; Evidence of Debt. (a) The Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan of such Lender on the Revolving Maturity Date, (ii) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Term Loan of such Lender as provided in Section 2.10 and (iii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of the Revolving Maturity Date and the first date after such Swingline Loan is made that is the 15th or last day of a calendar month and is at least two Business Days after such Swingline Loan is made, provided that on each date that a Revolving Borrowing is made, the Borrower shall repay all Swingline Loans that were outstanding on the date such Borrowing was requested.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein, provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any

manner affect the obligation of the Borrower to repay the Loans and pay interest thereon in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans of any Class made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.10. Amortization of Term Loans. (a) Subject to adjustment pursuant to paragraph (c) of this Section, the Borrower shall repay Tranche B Term Borrowings on each date set forth below in the aggregate principal amount set forth opposite such date:

Date	Amount
March 31, 2006	$ 1,875,000
June 30, 2006	$ 1,875,000
September 30, 2006	$ 1,875,000
December 31, 2006	$ 1,875,000
March 31, 2007	$ 1,875,000
June 30, 2007	$ 1,875,000
September 30, 2007	$ 1,875,000
December 31, 2007	$ 1,875,000
March 31, 2008	$ 1,875,000
June 30, 2008	$ 1,875,000
September 30, 2008	$ 1,875,000
December 31, 2008	$ 1,875,000
March 31, 2009	$ 1,875,000
June 30, 2009	$ 1,875,000
September 30, 2009	$ 1,875,000
December 31, 2009	$ 1,875,000
March 31, 2010	$ 1,875,000
June 30, 2010	$ 1,875,000
September 30, 2010	$ 1,875,000
December 31, 2010	$ 1,875,000
March 31, 2011	$ 1,875,000
June 30, 2011	$ 1,875,000
Tranche B Maturity Date	$708,750,000

(b) To the extent not previously paid, all Tranche B Term Loans shall be due and payable on the Tranche B Maturity Date.

(c) Any prepayment of a Term Borrowing of any Class shall be applied to reduce the subsequent scheduled repayments of the Term Borrowings of such Class to be made pursuant to this Section or, except as otherwise provided in any Incremental Facility Amendment, pursuant to the corresponding section of such Incremental Facility Amendment, (i) in the case of prepayments made pursuant to Section 2.11(a), at the direction of the Borrower and (ii) in the case of prepayments made pursuant to Section 2.11(c) or (d), ratably to the remaining amortization payments set forth in paragraph (a) above.

(d) Prior to any repayment of any Term Borrowings of any Class hereunder, the Borrower shall select the Borrowing or Borrowings of the applicable Class to be repaid and shall notify the Administrative Agent by telephone (confirmed by telecopy) of such election not later than 12:00 p.m., New York City time, three Business Days before the scheduled date of such repayment. Each repayment of a Borrowing shall be applied ratably to the Loans included in the repaid Borrowing. Repayments of Term Borrowings shall be accompanied by accrued interest on the amount repaid.

SECTION 2.11. Prepayment of Loans. (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to the requirements of this Section.

(b) In the event and on such occasion that the aggregate Revolving Exposures exceed the aggregate Revolving Commitments, the Borrower shall prepay Revolving Borrowings or Swingline Borrowings (or, if no such Borrowings are outstanding, deposit cash collateral in an account with the Administrative Agent pursuant to Section 2.05(j)) in an aggregate amount equal to such excess.

(c) In the event and on each occasion that any Net Proceeds are received by or on behalf of the Borrower or any Subsidiary in respect of any Prepayment Event, the Borrower shall, within three Business Days after such Net Proceeds are received, prepay Term Borrowings in an aggregate amount equal to 100% of the amount of such Net Proceeds, provided that, in the case of any event described in clause (a) or (b) of the definition of the term "Prepayment Event", if the Borrower and the Subsidiaries apply the Net Proceeds from such event (or a portion thereof) within 270 days after receipt of such Net Proceeds and at a time when no Default has occurred and is continuing, to acquire real property, equipment or other tangible assets to be used in the business of the Borrower and the Subsidiaries (provided that the Borrower has delivered to the Administrative Agent within three Business Days after such Net Proceeds are received a certificate of a Financial Officer stating its intention to do so and certifying that no Default has occurred and is continuing), then no prepayment shall be required pursuant to this paragraph in respect of the Net Proceeds in respect of such event (or the portion of such Net Proceeds specified in such certificate, if applicable) except to the extent of any such Net Proceeds therefrom that have not been so applied by the end of such 270-day period, at which time a prepayment shall be required in an amount equal to such Net Proceeds that have not been so applied, provided, further, that in the case of any sale, transfer or other disposition of the Trumbull Property prior to the second anniversary of

the Effective Date, the Borrower shall be permitted to retain any Net Proceeds in respect of such sale, transfer or other disposition that are not in excess of $15,000,000.

(d) Following the end of each fiscal year of the Borrower, commencing with the fiscal year ending December 31, 2006, the Borrower shall prepay Term Borrowings in an aggregate amount equal to the Required Percentage of Excess Cash Flow for such fiscal year, provided that such amount shall be reduced by the aggregate amount of prepayments of Term Loans made pursuant to Section 2.11(a) during such fiscal year. Each prepayment pursuant to this paragraph shall be made on or before the date on which financial statements are delivered pursuant to Section 5.01 with respect to the fiscal year for which Excess Cash Flow is being calculated (and in any event within 90 days after the end of such fiscal year).

(e) Prior to any optional or mandatory prepayment of Borrowings hereunder, the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (f) of this Section. In the event of any optional or mandatory prepayment of Term Borrowings made at a time when Term Borrowings of more than one Class remain outstanding, the Borrower shall select Term Borrowings to be prepaid so that the aggregate amount of such prepayment is allocated between Tranche B Term Borrowings and, to the extent provided in the Incremental Facility Amendment for any Class of Incremental Term Loans, the Borrowings of such Class pro rata based on the aggregate principal amount of outstanding Borrowings of each such Class.

(f) The Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 12:00 p.m., New York City time, three Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Borrowing, not later than 12:00 p.m., New York City time, one Business Day before the date of prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 1:00 p.m., New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment, provided that a notice of optional prepayment may state that such notice is conditional upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness, in which case such notice of prepayment may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified date) if such condition is not satisfied. Promptly following receipt of any such notice (other than a notice relating solely to Swingline Loans), the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13.

SECTION 2.12. Fees. (a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at a rate equal to 0.50% per annum on the average daily unused amount of the Revolving Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which the Revolving Commitments terminate. Accrued commitment fees shall be payable in arrears on the third Business Day following the last day of March, June, September and December of each year and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing commitment fees, a Revolving Commitment of a Lender shall be deemed to be used to the extent of the outstanding Revolving Loans and LC Exposure of such Lender (and the Swingline Exposure of such Lender shall be disregarded for such purpose).

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Eurodollar Revolving Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the Issuing Bank a fronting fee, which shall accrue at a rate equal to 0.25% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the Effective Date, provided that all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the

case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders entitled thereto. Fees paid shall not be refundable under any circumstances.

SECTION 2.13. Interest. (a) The Loans comprising each ABR Borrowing (including each Swingline Loan) shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.00% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2.00% plus the rate applicable to ABR Revolving Loans as provided in paragraph (a) of this Section.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Revolving Commitments, provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Revolving Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.14. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

SECTION 2.15. Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or the Issuing Bank (except any such reserve requirement reflected in the Adjusted LIBO Rate); or

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or

amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.16. Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Revolving Loan or Term Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(f) and is revoked in accordance therewith) or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19 or Section 9.02(c), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate that such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.17. Taxes. (a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes, provided that if the Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or Issuing Bank (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Without limiting the provisions of paragraph (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Borrower shall indemnify the Administrative Agent, each Lender and the Issuing Bank, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender or the Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower under any Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The written demand shall include the original or a copy of a receipt, if available, issued by such Governmental Authority evidencing such payment or other evidence of such payment reasonably satisfactory to the Borrower and the Administrative Agent (as applicable), together with a certificate setting forth the amount of such Indemnified Taxes or Other Taxes and, in reasonable detail, the calculation and basis for such Indemnified Taxes or Other Taxes.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt, if available, issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) The Administrative Agent (as applicable) and each Lender shall furnish from time to time to the Borrower and the Administrative Agent (as applicable), or to such other Person(s) as the Borrower or the Administrative Agent may designate, such forms, certificates and documentation (including Internal Revenue Service Forms W-8 and W-9) that the Administrative Agent or Lender is able to furnish and as may be necessary or appropriate to obtain any reduction of or exemption from any withholding or other Tax imposed by any Governmental Authority on payments made under any Loan Document. Each Lender and the Administrative Agent shall provide such forms,

certificates and documentation at the following times: (i) prior to becoming a party to this Agreement; (ii) prior to the expiration of any previously delivered form; (iii) upon a change in law or circumstances requiring or making appropriate a new or additional form, certificate or documentation; and (iv) when reasonably requested by the Borrower or the Administrative Agent (as applicable).

(f) If the Administrative Agent, the Issuing Bank or a Lender determines, in its reasonable discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent, the Issuing Bank or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided, that the Borrower, upon the request of the Administrative Agent, the Issuing Bank or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, the Issuing Bank or such Lender in the event the Administrative Agent, the Issuing Bank or such Lender is required to repay such refund to such Governmental Authority. This Section shall not be construed to require the Administrative Agent, the Issuing Bank or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

SECTION 2.18. Payments Generally; Pro Rata Treatment; Sharing of Setoffs. (a) The Borrower shall make each payment required to be made by it under any Loan Document (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 3:00 p.m., New York City time), on the date when due, in immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 270 Park Avenue, New York, New York, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans, Term Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans, Term Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans, Term Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans, Term Loans and participations in LC Disbursements and Swingline Loans, provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary or other Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption and in its sole discretion, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date

such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(c), 2.05(d) or (e), 2.06(a) or (b), 2.18(d) or 9.03(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.19. Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not be inconsistent with its internal policies or otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender defaults in its obligation to fund Loans hereunder, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent (and, if a Revolving Commitment is being assigned, the Issuing Bank and Swingline Lender), which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (iii) the Borrower or such assignee shall have paid to the Administrative Agent the processing and recordation fee specified in Section 9.04(b) and (iv) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a material reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such

Lender or otherwise (including as a result of any action taken by such Lender under paragraph (a) above), the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 2.20. Incremental Term Loans. (a) At any time and from time to time prior to the Tranche B Maturity Date, subject to the terms and conditions set forth herein, the Borrower may, by notice to the Administrative Agent (whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders), request to add one or more additional tranches of term loans (the "Incremental Term Loans"), provided that at the time of each such request and upon the effectiveness of each Incremental Facility Amendment, (A) no Default has occurred and is continuing or shall result therefrom, (B) the Borrower shall be in compliance on a Pro Forma Basis with the covenants contained in Sections 6.12 and 6.13 recomputed as of the last day of the most-recently ended fiscal quarter of the Borrower and (C) the Borrower shall have delivered a certificate of a Financial Officer to the effect set forth in clauses (A) and (B) above, together with all calculations relevant thereto, including reasonably detailed calculations demonstrating compliance with clause (B) above (which calculations shall, if made as of the last day of any fiscal quarter of the Borrower for which the Borrower has not delivered to the Administrative Agent the financial statements and certificate of a Financial Officer required to be delivered by Section 5.01(a) or (b) and Section 5.01(c), respectively, be accompanied by a reasonably detailed calculation of Consolidated EBITDA and Consolidated Cash Interest Expense for the relevant period). Notwithstanding anything to contrary herein, the aggregate principal amount of the Incremental Term Loans shall not exceed $250,000,000. Each tranche of Incremental Term Loans shall be in an integral multiple of $1,000,000 and be in an aggregate principal amount that is not less than $100,000,000, provided that such amount may be less than $100,000,000 if such amount represents all the remaining availability under the aggregate principal amount of Incremental Term Loans set forth above.

(b) The Incremental Term Loans (i) shall rank pari passu or junior in right of payment in respect of the Collateral and with the Obligations in respect of the Revolving Commitments and the Tranche B Term Loans, (ii) for purposes of prepayments, shall be treated substantially the same as (and in any event no more favorably than) the Tranche B Term Loans and (iii) other than amortization, pricing or maturity date, shall have the same terms as the Tranche B Term Loans, provided that (A) if the Applicable Rate (which, for such purposes only, shall be deemed to include all upfront or similar fees or original issue discount payable to all Lenders providing such Incremental Term Loans) relating to any Incremental Term Loan exceeds the Applicable Rate (which, for such purposes only, shall be deemed to include all upfront or similar fees or original issue discount payable to all Lenders providing the Tranche B Term Loans) relating to the Tranche B Term Loans immediately prior to the effectiveness of the applicable Incremental Facility Amendment by more than 0.25%, the Applicable Rate relating to the Tranche B Term Loans shall be adjusted to be equal to the Applicable Rate (which, for such purposes only, shall be deemed to include all upfront or similar fees or original issue discount payable to all Lenders providing such Incremental Term Loans) relating to such Incremental Term Loans minus 0.25%, (B) any Incremental Term Loan shall not have a final maturity date earlier than the Tranche B Maturity Date, and (C) any

Incremental Term Loan shall not have a weighted average life that is shorter than the weighted average life of the then-remaining Tranche B Term Loans.

(c) Each notice from the Borrower pursuant to this Section shall set forth the requested amount and proposed terms of the relevant Incremental Term Loans. Any additional bank, financial institution, existing Lender or other Person that elects to extend Incremental Term Loans shall be reasonably satisfactory to the Borrower and the Administrative Agent (any such bank, financial institution, existing Lender or other Person being called an "Additional Lender") and, if not already a Lender, shall become a Lender under this Agreement pursuant to an amendment (an "Incremental Facility Amendment") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, such Additional Lender and the Administrative Agent. No Lender shall be obligated to provided any Incremental Term Loans, unless it so agrees. Commitments in respect of any Incremental Term Loans shall become Commitments under this Agreement. An Incremental Facility Amendment may, without the consent of any other Lenders, effect such amendments to any Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the provisions of this Section (including to provide for voting provisions applicable to the Additional Lenders comparable to the provisions of clause (B) of the second proviso of Section 9.02(b)). The effectiveness of any Incremental Facility Amendment shall, unless otherwise agreed to by the Administrative Agent and the Additional Lenders, be subject to the satisfaction on the date thereof (each, an "Incremental Facility Closing Date") of each of the conditions set forth in Section 4.02 (it being understood that all references to "the date of such Borrowing" in Section 4.02 shall be deemed to refer to the Incremental Facility Closing Date). The proceeds of any Incremental Extensions of Credit will be used only for general corporate purposes.

ARTICLE III

Representations and Warranties

The Borrower represents and warrants to the Lenders that:

SECTION 3.01. Organization; Powers. Each of the Borrower and the Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted, to execute, deliver and perform its obligations under each Loan Document to which it is a party and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

SECTION 3.02. Authorization; Enforceability. The Transactions to be entered into by each Loan Party are within such Loan Party's corporate powers and have been duly authorized by all necessary corporate or other action and, if required, action by the holders of such Loan Party's Equity Interests. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document

to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of the Borrower or such Loan Party (as the case may be), enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except filings necessary to perfect Liens created under the Loan Documents, (b) will not violate the Organizational Documents of the Borrower or any Subsidiary, (c) will not violate any Requirement of Law applicable to the Borrower or any Subsidiary, (d) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower or any Subsidiary or their respective assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any Subsidiary or give rise to a right of, or result in, termination, cancelation or acceleration of any obligation thereunder, and (e) will not result in the creation or imposition of any Lien on any asset of the Borrower or any Subsidiary, except Liens created under the Loan Documents, except, in the case of clauses (c) and (d), for any such violations or defaults that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.04. Financial Condition; No Material Adverse Change. (a) The Borrower has heretofore furnished to the Lenders (i) its and the Company's consolidated balance sheet as of the end of the fiscal years ended December 31, 2003 and 2004 and consolidated statements of income, stockholders' equity and cash flows for the fiscal years ended December 31, 2002, December 31, 2003 and December 31, 2004, in each case reported on by, in the case of the Borrower, Ernst & Young LLP, independent public accountants for the Borrower, and, in the case of the Company, PricewaterhouseCoopers LLP, independent public accountants for the Company, (ii) its consolidated balance sheet and consolidated statements of income, stockholders' equity and cash flows as of and for the fiscal quarters and the portion of the fiscal year ended March 31, 2005 and June 30, 2005 (and comparable periods for the prior fiscal year), certified by its chief financial officer and (iii) the Company's consolidated balance sheet and consolidated statement of income as of and for the portion of the fiscal year ended June 30, 2005 (and a consolidated statement of income for the comparable period for the prior fiscal year), certified by the Borrower's chief financial officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of (x) the Borrower and the Subsidiaries (other than the Company and its subsidiaries) and (y) the Company and its subsidiaries, respectively, as of such dates and for such periods in accordance with GAAP consistently applied, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clauses (ii) and (iii) above.

(b) The Borrower has heretofore furnished to the Lenders its pro forma consolidated balance sheet as of June 30, 2005, prepared giving effect to the Transactions

as if the Transactions had occurred on such date, and its pro forma consolidated statement of income for the twelve-month period ended as of such date, prepared giving effect to the Transactions as if the Transactions had occurred on the first day of such twelve-month period. Such pro forma consolidated financial statements (i) have been prepared in good faith based on the same assumptions used to prepare the pro forma financial statements included in the Information Memorandum (which assumptions are believed by the Borrower to be reasonable on the Effective Date), (ii) are based on the best information available to the Borrower after due inquiry and (iii) present fairly, in all material respects, the pro forma financial position and results of operations of the Borrower and the Subsidiaries as of, and for the twelve-month period ended as of, June 30, 2005, as if the Transactions had occurred on such dates.

(c) Except as disclosed in the financial statements referred to above or the notes thereto or in the Information Memorandum and except for the Disclosed Matters, after giving effect to the Transactions, none of the Borrower or the Subsidiaries has, as of the Effective Date, any material direct or contingent liabilities or unusual long-term commitments.

(d) With respect to any credit event following the Effective Date, no event, change or condition has occurred that has had, or could reasonably be expected to have, a material adverse effect on the business, operations, properties, results of operations or condition (financial or otherwise) of the Borrower and the Subsidiaries, taken as a whole, whether or not covered by insurance, since December 31, 2004.

SECTION 3.05. Properties. (a) Each of the Borrower and the Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business (including the Mortgaged Properties), except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or as proposed to be conducted or to utilize such properties for their intended purposes.

(b) Each of the Borrower and the Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by the Borrower and the Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(c) Schedule 3.05 sets forth the address of each real property that is owned or leased by the Borrower or any Subsidiary as of the Effective Date after giving effect to the Transactions.

SECTION 3.06. Litigation and Environmental Matters. (a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against the Borrower or any Subsidiary (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected,

individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve any of the Loan Documents or the Transactions.

(b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any Subsidiary (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

SECTION 3.07. Compliance with Laws and Agreements. Each of the Borrower and the Subsidiaries is in compliance with (a) its Organizational Documents, (b) all Requirements of Law applicable to it or its property and (c) all indentures, agreements and other instruments binding upon it or its property, except, in the case of clauses (b) and (c) of this Section, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.08. Investment and Holding Company Status. None of the Borrower or any Subsidiary is (a) an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) a “holding company” as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

SECTION 3.09. Taxes. Each of the Borrower and the Subsidiaries (a) has timely filed or caused to be filed all Tax returns and reports required to have been filed, except to the extent that failure to do so could not reasonably be expected to result in a Material Adverse Effect, and (b) has paid or caused to be paid all Taxes required to have been paid by it, except any Taxes that are being contested in good faith by appropriate proceedings, provided that the Borrower or such Subsidiary, as the case may be, has set aside on its books adequate reserves therefor and the failure to pay such Taxes would not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The minimum funding standards of ERISA and the Code with respect to each Plan have been satisfied. The present value of all accumulated benefit obligations under all underfunded Plans (determined for each Plan based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans by an amount

that, if required to be paid by the Borrower and the Subsidiaries, could reasonably be expected to have a Material Adverse Effect.

SECTION 3.11. Disclosure. Neither the Information Memorandum nor any of the other reports, financial statements, certificates or other information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of any Loan Document or delivered thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, provided that, with respect to projected financial information, the Borrower represents only that such information was prepared based upon good faith assumptions believed by it to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date (it being understood that such forecasts and projections are subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, that no assurance can be given that forecasts or projections will be realized, and that actual results may differ from projections and such difference may be material).

SECTION 3.12. Subsidiaries. Schedule 3.12 sets forth the name of, and the ownership interest of the Borrower and each Subsidiary in, each Subsidiary and identifies each Subsidiary that is a Subsidiary Loan Party, in each case as of the Effective Date.

SECTION 3.13. Insurance. The Borrower believes that the insurance maintained by or on behalf of the Borrower and the Subsidiaries is in such amounts (with no greater risk retention) and against such risks as is (i) customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (ii) adequate.

SECTION 3.14. Labor Matters. As of the Effective Date, there are no strikes or lockouts or any other material labor disputes against the Borrower or any Subsidiary pending or, to the knowledge of the Borrower, threatened. Except as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (a) the hours worked by and payments made to employees of the Borrower and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters, and (b) all payments due from the Borrower or any Subsidiary on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Borrower or such Subsidiary. There is no organizing activity involving the Borrower or any Subsidiary pending or, to the knowledge of the Borrower or any Subsidiary, threatened by any labor union or group of employees, except those that, in the aggregate, would not reasonably be expected to have a Material Adverse Effect. There are no representation proceedings pending or, to the knowledge of the Borrower or any Subsidiary, threatened with the National Mediation Board, and no labor organization or group of employees of the Borrower or any Subsidiary has made a pending demand for recognition, except those that, in the aggregate, would not

reasonably be expected to have a Material Adverse Effect. There are no material complaints or charges against the Borrower or any Subsidiary pending or, to the knowledge of the Borrower or any Subsidiary, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment by the Borrower or any Subsidiary of any individual, except those that, in the aggregate, would not reasonably be expected to have a Material Adverse Effect. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which the Borrower or any Subsidiary is bound.

SECTION 3.15. Solvency. Immediately after the consummation of the Transactions to occur on the Effective Date, (a) the fair value of the assets of each Loan Party, at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise, (b) the present fair saleable value of the property of each Loan Party will be greater than the amount that will be required to pay the liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become matured, (c) each Loan Party will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become matured, and (d) each Loan Party will not have unreasonably small capital with which to conduct the business.

SECTION 3.16. Federal Reserve Regulations. (a) The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) Taking into account all of the Transactions, no part of the proceeds of the Loans will be used for any purpose that violates the provisions of the Regulations of the Board, including Regulation T, U or X.

SECTION 3.17. Senior Indebtedness. The Obligations constitute “Senior Indebtedness” and “Designated Senior Indebtedness” under and as defined in the Convertible Notes Documents.

ARTICLE IV

Conditions

SECTION 4.01. Effective Date. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which

may include telecopy transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of each of (i) Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Borrower and the Subsidiaries, substantially in the form of Exhibit B, and (ii) local counsel in each jurisdiction where a Subsidiary Loan Party is organized or incorporated or a Mortgaged Property is located, in form and substance reasonably satisfactory to the Administrative Agent, and, in the case of each such opinion required by this paragraph, covering such other matters relating to the Loan Parties, the Loan Documents or the Transactions as the Administrative Agent shall reasonably request. The Borrower hereby requests such counsel to deliver such opinions.

(c) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of each Loan Party, the authorization of the Transactions and any other legal matters relating to the Loan Parties, the Loan Documents or the Transactions, all in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(d) The Administrative Agent shall have received a certificate, dated the Effective Date and signed by a Financial Officer or the President or a Vice President of the Borrower, confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.02.

(e) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced at least two Business Days prior to the Effective Date, reimbursement or payment of all out-of-pocket expenses (including fees, charges and disbursements of counsel) required to be reimbursed or paid by any Loan Party under any Loan Document.

(f) The Collateral and Guarantee Requirement shall have been satisfied (other than with respect to the requirements of Sections 3.04 and 4.04(b) of the Collateral Agreement applicable to the limited liability company and limited partnership interests set forth on Schedule VII and the deposit accounts set forth on Schedule VI, as the case may be) and the Administrative Agent shall have received a completed Perfection Certificate dated the Effective Date and signed by a Financial Officer or legal officer of the Borrower, together with all attachments contemplated thereby, including the results of a search of the Uniform Commercial Code (or equivalent) filings made with respect to the Loan Parties in the jurisdictions contemplated by the Perfection Certificate and copies of the financing statements (or similar documents) disclosed by such search and evidence reasonably satisfactory to the Administrative Agent that the Liens indicated by such financing statements (or similar documents) are permitted by

Section 6.02 or have been or will contemporaneously with the initial funding of Loans on the Effective Date be released.

(g) The Administrative Agent shall have received evidence that the insurance required by Section 5.07 and the Security Documents is in effect.

(h) The Lenders shall have received a pro forma consolidated balance sheet of the Borrower as of June 30, 2005, and related pro forma consolidated statement of income of the Borrower for the twelve-month period ended as of such date, in each case after giving effect to the Transactions, which pro forma financial statements shall not be materially inconsistent with the forecasts previously provided to the Lenders.

(i) The Lenders shall have received (i) audited consolidated balance sheets of the Borrower and the Company for each of the fiscal years ended December 31, 2003 and 2004, and related statements of income, stockholders' equity and cash flows of each of the Borrower and the Company for the fiscal years ended December 31, 2002, 2003 and 2004, (ii) unaudited consolidated balance sheets and related statements of income, stockholders' equity and cash flows of the Borrower as of and for the fiscal quarters and portion of the fiscal year ended March 31, 2005 and June 30, 2005 (and for the comparable periods for the prior fiscal year) and (iii) unaudited consolidated balance sheets and related statement of income of the Company as of and for the portion of the fiscal year ended June 30, 2005 (and a consolidated statement of income for the comparable period for the prior fiscal year), in each case prepared in accordance with GAAP consistently applied (subject to year-end audit adjustments and the absence of footnotes) and certified by a Financial Officer, which financial statements described in clauses (i), (ii) and (iii) shall not be materially inconsistent with the financial statements previously provided to the Lenders.

(j) The Transactions shall have been consummated or shall be consummated simultaneously with the initial funding of Loans on the Effective Date in accordance with applicable law, the Merger Agreement, the VAB Transaction Agreement and all other related documentation (without giving effect to any amendments or waivers to or of such documents that are adverse to the Lenders). The Transactions shall have been consummated in a manner consistent with the sources and uses shown on Annex II to the term sheet included in the Information Memorandum.

(k) After giving effect to the Transactions, the Borrower and the Subsidiaries shall have outstanding no Indebtedness or preferred stock other than (i) the Loans, (ii) $205,000,000 aggregate principal amount of Series A Convertible Notes, (iii) $240,000,000 aggregate principal amount of Series B Convertible Notes, (iv) one share of issued and outstanding Series B Preferred Stock, (v) 953,470 shares of issued and outstanding Series C Preferred Stock and (vi) other debt securities reasonably satisfactory to the Arrangers. The Indebtedness and Preferred Stock set forth in the foregoing clauses (ii) through (v)

shall be as disclosed to the Arrangers prior to the date hereof (which terms and conditions shall not have been modified in any manner that is adverse to the Lenders without the approval of the Arrangers).

(l) The Lenders shall have received a customary certificate from a financial officer of the Borrower, together with such other evidence reasonably requested by the Lenders, confirming the solvency of the Borrower and the Subsidiaries on a consolidated basis after giving effect to the Transactions.

(m) The Lenders shall have received a detailed business plan of the Borrower and the Subsidiaries for the fiscal years 2005 through 2010 (including quarterly projections for the first four fiscal quarters ending after the Effective Date).

(n) The holders of the Preferred Stock shall have granted their consent to the incurrence of the Loans, including the terms of the Loans and the use of proceeds in accordance with Section 5.11.

(o) There shall have been no (i) event, occurrence, fact, condition, change or effect that has had or could reasonably be expected to have a material adverse effect on the business, operations, properties, condition (financial or otherwise) or results of operations of the Borrower and its subsidiaries, taken as a whole, or (ii) Company Material Adverse Effect.

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.02) at or prior to 5:00 p.m., New York City time, on December 31, 2005 (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

SECTION 4.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to receipt of the request therefor in accordance herewith and to the satisfaction of the following conditions:

(a) The representations and warranties of each Loan Party set forth in the Loan Documents (other than, on the Effective Date, the representation and warranty set forth in Section 3.04(d)) shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as the case may be (except to the extent that any representation and warranty expressly relates to an earlier date, in which case such representation and warranty shall have been true and correct as of such earlier date).

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as the case may be, no Default shall have occurred and be continuing.

Each Borrowing (provided that a conversion or a continuation of a Borrowing shall not constitute a "Borrowing" for purposes of this Section) and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

ARTICLE V

Affirmative Covenants

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable under any Loan Document shall have been paid in full and all Letters of Credit shall have expired or been terminated and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 5.01. Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent on behalf of each Lender:

(a) within 90 days after the end of each fiscal year of the Borrower, its audited consolidated balance sheet and audited consolidated statements of income, stockholders' equity and cash flows as of the end of and for such year, and related notes thereto, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Ernst & Young LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and the Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, its unaudited consolidated balance sheet and unaudited consolidated statements of income, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer as presenting fairly in all material respects the financial condition and results of operations of the Borrower and the Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under paragraph (a) or (b) above, a certificate of a Financial Officer (i) stating that, except as set forth in such certificate, such Financial Officer has no knowledge of any Default having occurred and, if a Default has occurred, specifying the details

thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations (A) demonstrating compliance with the covenants contained in Sections 6.12 and 6.13 and (B) in the case of financial statements delivered under paragraph (a) above, beginning with the financial statements for the fiscal year of the Borrower ending December 31, 2006, of Excess Cash Flow and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the Borrower's audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(d) concurrently with any delivery of financial statements under paragraph (a) above, a certificate of the accounting firm that reported on such financial statements stating whether they obtained knowledge during the course of their examination of such financial statements of any Default under Section 6.12 or 6.13 and, if such knowledge has been obtained, describing such Default (which certificate may be limited to the extent required by accounting rules or guidelines);

(e) within 30 days after the commencement of each fiscal year of the Borrower, a detailed consolidated budget for such fiscal year (including a projected consolidated balance sheet and consolidated statements of projected income and cash flows as of the end of and for such fiscal year and setting forth the assumptions used for purposes of preparing such budget) and, promptly when available, any significant revisions of such budget;

(f) promptly after the same become publicly available, copies of all periodic reports, proxy statements and other material filings (as reasonably determined by the Borrower) filed by the Borrower or any Subsidiary with the SEC or with any national securities exchange, or distributed by the Borrower to the holders of its Equity Interests generally; and

(g) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request.

Information required to be delivered pursuant to clauses (a), (b) and (f) shall be deemed to have been delivered on the date on which the Borrower provides notice to the Lenders that such information has been posted on the Borrower's website on the Internet at www.nasdaq.com/investorrelations/ir_home.stm, at www.sec.gov/edgar/searchedgar/webusers.htm or at another website identified in such notice and accessible by the Lenders without charge, provided that (i) such notice may be included in a certificate delivered pursuant to clause (c) and (ii) the Borrower shall deliver paper copies of the information required to be delivered pursuant to clauses (a), (b) and (f) to any Lender that requests such delivery.

SECTION 5.02. Notices of Material Events. The Borrower will furnish to the Administrative Agent (for distribution to each Lender through the Administrative Agent) prompt written notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or, to the knowledge of a Financial Officer or another executive officer of the Borrower or any Subsidiary, affecting the Borrower or any Affiliate thereof that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(c) within three Business Days after the Borrower becomes aware of the occurrence of any ERISA Event or any fact or circumstance that gives rise to a reasonable expectation that any ERISA Event will occur that, in either case, alone or together with any other ERISA Events that have occurred or are reasonably expected to occur, could reasonably be expected to result in material liability of the Borrower and the Subsidiaries;

(d) any change in the ratings of the credit facilities made available under this Agreement by S&P or Moody's, or any notice from either such agency indicating its intent to effect such a change or to place the Borrower or such credit facilities on a "CreditWatch" or "WatchList" or any similar list, in each case with negative implications, or its cessation of, or its intent to cease, rating such credit facilities; and

(e) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a written statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03. Information Regarding Collateral. (a) The Borrower will furnish to the Administrative Agent prompt written notice of any change (i) in any Loan Party's corporate name, (ii) in the jurisdiction of incorporation or organization of any Loan Party or (iii) in any Loan Party's organizational identification number. The Borrower agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral. The Borrower also agrees promptly to notify the Administrative Agent if any material portion of the Collateral is damaged or destroyed.

(b) At the time of delivery of financial statements pursuant to Section 5.01(a), the Borrower shall deliver to the Administrative Agent a certificate executed by a Financial Officer or chief legal officer of the Borrower (i) setting forth the

information required pursuant to Sections 7, 8, 9, 11, 12, 13 and 14 of the Perfection Certificate or confirming that there has been no change in such information since the date of the Perfection Certificate delivered on the Effective Date or the date of the most recent certificate delivered pursuant to this Section and (ii) certifying that all Uniform Commercial Code financing statements (including fixture filings, as the case may be) or other appropriate filings, recordings or registrations, including all refilings, rerecordings and reregistrations, containing a description of the Collateral have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified pursuant to clause (i) above to the extent necessary to protect and perfect the security interests under the Collateral Agreement for a period of not less than 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period).

SECTION 5.04. Existence; Conduct of Business. The Borrower will, and will cause each Subsidiary to, do or cause to be done all things necessary to obtain, preserve, renew and keep in full force and effect (a) its legal existence and (b) the rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business, except, in the case of clause (b), to the extent that failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.05. Payment of Obligations. The Borrower will, and will cause each Subsidiary to, pay its material obligations (other than Indebtedness and any obligations in respect of any Swap Agreements), including Tax liabilities that, if unpaid, could result in a Lien on any of its material assets or properties, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.06. Maintenance of Properties. The Borrower will, and will cause each Subsidiary to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.07. Insurance. The Borrower will, and will cause each Subsidiary to, maintain, with financially sound and reputable insurance companies, (a) insurance in such amounts (with no greater risk retention) and against such risks as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all other insurance as may be required by law or any other Loan Document. The Borrower will furnish to the Lenders, upon request of the Administrative Agent, information in reasonable detail as to the insurance so maintained. The Borrower will cause all property and casualty insurance policies to be endorsed or otherwise amended to include a “standard” or “New York”

lender's loss payable endorsement, in form and substance reasonably satisfactory to the Administrative Agent, which endorsement shall provide that, from and after the Effective Date, if the insurance carrier shall have received written notice from the Administrative Agent of the occurrence of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to the Borrower or the other Loan Parties under such policies directly to the Administrative Agent.

SECTION 5.08. Casualty and Condemnation. The Borrower will furnish to the Administrative Agent (for distribution to each Lender through the Administrative Agent) prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of or any material interest in the Collateral under power of eminent domain or by condemnation or similar proceeding.

SECTION 5.09. Books and Records; Inspection and Audit Rights. The Borrower will, and will cause each Subsidiary to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Subject to Section 9.12, the Borrower will, and will cause each Subsidiary to, permit any representatives designated by the Administrative Agent or any Lender (which shall be coordinated through the Administrative Agent), upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested, provided that, excluding any such visits and inspections during the continuation of an Event of Default, the Administrative Agent and the Lenders shall not exercise such rights more often than two times during any calendar year absent the existence of an Event of Default.

SECTION 5.10. Compliance with Laws. The Borrower will, and will cause each Subsidiary to, comply with all Requirements of Law with respect to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.11. Use of Proceeds and Letters of Credit. The proceeds of the Tranche B Term Loans, together with $205,000,000 of proceeds from the Convertible Notes Investor, the proceeds of the VAB Sale and not less than $47,500,000 of cash-on-hand of the Borrower, will be used to consummate the Acquisition, repay in full all obligations under the SunTrust Note and pay the Transaction Costs. The proceeds of the Revolving Loans and Swingline Loans drawn after the Effective Date will be used only for general corporate purposes (including Permitted Acquisitions). No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X. Letters of Credit will be used only for general corporate purposes.

SECTION 5.12. Additional Subsidiaries. If any additional Subsidiary is formed or acquired after the Effective Date, the Borrower will, within three Business Days after such Subsidiary is formed or acquired, notify the Administrative Agent and

the Lenders thereof and cause the Collateral and Guarantee Requirement to be satisfied with respect to such Subsidiary (if it is a Subsidiary Loan Party) and with respect to any Equity Interest in or Indebtedness of such Subsidiary owned by or on behalf of any Loan Party.

SECTION 5.13. Further Assurances. (a) The Borrower will, and will cause each Subsidiary Loan Party to, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), that may be required under any applicable law, or that the Administrative Agent or the Required Lenders may reasonably request, to cause the Collateral and Guarantee Requirement to be and remain satisfied, all at the expense of the Loan Parties. The Borrower also agrees to provide to the Administrative Agent, from time to time upon request, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) If any material assets (including any real property or improvements thereto or any interest therein with a fair market value in excess of $2,500,000) are acquired by the Borrower or any Subsidiary Loan Party after the Effective Date (other than assets constituting Collateral under the Collateral Agreement that become subject to the Lien created by the Collateral Agreement upon acquisition thereof), the Borrower will notify the Administrative Agent and the Lenders thereof and, if requested by the Administrative Agent or the Required Lenders, the Borrower will cause such assets to be subjected to a Lien securing the Obligations and will take, and cause the Subsidiary Loan Parties to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section, all at the expense of the Loan Parties.

(c) Notwithstanding the provision of clauses (a) and (b) of this Section 5.13, the Administrative Agent shall not take a security interest in those assets with respect to which the Administrative Agent and the Borrower determine that the cost of granting any such Lien on any such assets is excessive in relation to the benefit to the Lenders afforded by such Lien on such assets.

SECTION 5.14. Interest Rate Protection. As promptly as practicable, and in any event within 90 days after the Effective Date, the Borrower will enter into, and thereafter will maintain in effect until the earlier of (a) the second anniversary of the Effective Date and (b) the date on which the aggregate principal amount of outstanding Convertible Notes and outstanding Term Loans is less than 50% of the aggregate principal amount of Convertible Notes outstanding on the dates of issuance thereof and Term Loans outstanding on the Effective Date, one or more Swap Agreements with one or more Lenders (or Affiliates thereof), the effect of which is that at least 25% of the aggregate principal amount of the Convertible Notes and the Term Loans will be subject to interest at a fixed rate or the interest cost in respect of which will be fixed or capped, in each case on terms and conditions reasonably acceptable to the Administrative Agent.

SECTION 5.15. Rated Credit Facilities. The Borrower will use commercially reasonable efforts to cause the credit facilities made available under this Agreement to be continuously rated by S&P and Moody's.

SECTION 5.16. Post-Closing Matters. (a) On or prior to the date that is 30 days after the Effective Date (or such later date as is acceptable to the Administrative Agent in its sole discretion), the Borrower will, or will cause the Subsidiaries to, comply with the requirements of Section 3.04 of the Collateral Agreement with respect to the limited liability company and limited partnership interests set forth on Schedule VII to the Collateral Agreement.

(b) On or prior to the date that is 60 days after the Effective Date (or such later date as is acceptable to the Administrative Agent in its sole discretion), the Borrower will, or will cause the Subsidiaries to, comply with the requirements of Section 4.04(b) of the Collateral Agreement with respect to the Deposit Accounts set forth on Schedule VI to the Collateral Agreement.

ARTICLE VI

Negative Covenants

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable (other than contingent amounts not yet due) under any Loan Document have been paid in full and all Letters of Credit have expired or been terminated and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 6.01. Indebtedness; Certain Equity Securities. (a) The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Indebtedness, except:

(i) Indebtedness created under the Loan Documents;

(ii) (A) the Convertible Notes and (B) Subordinated Refinancing Indebtedness in respect of the Convertible Notes or Additional Subordinated Debt incurred pursuant to this clause (B);

(iii) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and refinancings, extensions, renewals and replacements of any such Indebtedness, provided that such refinancing, extending, renewal or replacement Indebtedness (A) shall not be Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being refinanced, extended, renewed or replaced, (B) shall not be in a principal amount that exceeds the principal amount of the Indebtedness being refinanced, extended, renewed or replaced (plus any accrued but unpaid interest and premium or penalty payable by the terms of such Indebtedness thereon and reasonable fees and expenses associated therewith), (C) shall not have an earlier maturity date or shorter weighted average life than the Indebtedness being refinanced, extended, renewed or replaced and (D) if the

Indebtedness being refinanced, extended, renewed or replaced is subordinated to the Obligations, such Indebtedness shall be subordinated to the Obligations on the same terms as the Indebtedness being refinanced, extended, renewed or replaced;

(iv) Indebtedness of the Borrower to any Subsidiary and of any Subsidiary to the Borrower or any other Subsidiary (other than Indebtedness of any Broker Dealer Subsidiary to a Subsidiary that is not a Loan Party), provided that (A) Indebtedness of any Subsidiary that is not a Loan Party to the Borrower or any Subsidiary Loan Party shall be subject to Section 6.04 and (B) Indebtedness of the Borrower to any Subsidiary and Indebtedness of any Subsidiary Loan Party to any Subsidiary that is not a Subsidiary Loan Party shall be subordinated to the Obligations on terms reasonably satisfactory to the Administrative Agent;

(v) Guarantees by the Borrower of Indebtedness of any Subsidiary and by any Subsidiary (other than any Broker Dealer Subsidiary) of Indebtedness of the Borrower or any other Subsidiary, provided that (A) the Indebtedness so Guaranteed is permitted by this Section (other than clause (a)(iii) or (a)(vii)), (B) Guarantees by the Borrower or any Subsidiary Loan Party of Indebtedness of any Subsidiary that is not a Loan Party shall be subject to Section 6.04, (C) Guarantees permitted under this clause (v) shall be subordinated to the Obligations of the applicable Subsidiary to the same extent and on the same terms as the Indebtedness so Guaranteed is subordinated to the Obligations and (D) none of the Convertible Notes or Additional Subordinated Debt shall be Guaranteed by any Subsidiary, unless, in the case of any Additional Subordinated Debt, such Subsidiary is a Loan Party that has Guaranteed the Obligations pursuant to the Collateral Agreement;

(vi) (A) Indebtedness of the Borrower or any Subsidiary (other than any Broker Dealer Subsidiary) incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed by the Borrower or any Subsidiary in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, provided that such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, and (B) extensions, renewals and replacements of any such Indebtedness so long as the principal amount of such refinancings, extensions, renewals and replacements does not exceed the principal amount of the Indebtedness being refinanced, extended, renewed or replaced (plus any accrued but unpaid interest and premium or penalty payable by the terms of such Indebtedness thereon and reasonable fees and expenses associated therewith), provided that the aggregate principal amount of Indebtedness permitted by this clause (vi) shall not exceed $20,000,000 at any time outstanding;

(vii) Indebtedness of any Person that is merged or consolidated with and into the Borrower or any Subsidiary (other than a Broker Dealer Subsidiary) or of any Person that otherwise becomes a Subsidiary (other than a Broker Dealer

Subsidiary) after the date hereof, provided that such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary, and extensions, renewals and replacements of any such Indebtedness so long as the principal amount of such extensions, renewals and replacements does not exceed the principal amount of the Indebtedness being extended, renewed or replaced (plus any accrued but unpaid interest and redemption premium payable by the terms of such Indebtedness thereon), provided that the aggregate principal amount of Indebtedness permitted by this clause (vii) shall not exceed $10,000,000 at any time outstanding;

(viii) other unsecured Indebtedness of the Borrower and the Subsidiaries (other than the Broker Dealer Subsidiaries) in an aggregate principal amount not exceeding $20,000,000 at any time outstanding, provided that the aggregate principal amount of Indebtedness of the Subsidiaries that are not Subsidiary Loan Parties permitted by this clause (viii) shall not exceed $5,000,000 at any time outstanding;

(ix) Indebtedness owed to any Person (including obligations in respect of letters of credit for the benefit of such Person) providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(x) Indebtedness of the Borrower or any Subsidiary (other than any Broker Dealer Subsidiary) in respect of performance bonds, bid bonds, appeal bonds, surety bonds, performance and completion guarantees and similar obligations (other than in respect of other Indebtedness), in each case provided in the ordinary course of business;

(xi) Indebtedness in respect of Swap Agreements permitted by Section 6.07;

(xii) (A) Additional Subordinated Debt that is issued for cash payable on the date of issuance thereof or as consideration for a Permitted Acquisition, provided that (1) if such Additional Subordinated Debt is issued for cash, the Net Proceeds of such Additional Subordinated Debt are used, promptly after such Net Proceeds are received by the Borrower, (x) to consummate one or more Permitted Acquisitions or (y) to prepay Term Loans pursuant to Section 2.11(a), (2) no Default has occurred and is continuing or would result therefrom and (3) the Borrower is in compliance on a Pro Forma Basis after giving effect to the incurrence of such Additional Subordinated Debt with the covenants contained in Sections 6.12 and 6.13 recomputed as of the last day of the most-recently ended fiscal quarter of the Borrower prior to the issuance of such Additional Subordinated Debt and has delivered to the Administrative Agent a certificate of a Financial Officer to such effect, together with all relevant financial information reasonably requested by the Administrative Agent, including reasonably detailed

calculations demonstrating compliance with clause (3) above (which calculations shall, if made as of the last day of any fiscal quarter of the Borrower for which the Borrower has not delivered to the Administrative Agent the financial statements and certificate of a Financial Officer required to be delivered by Section 5.01(a) or (b) and Section 5.01(c), respectively, be accompanied by a reasonably detailed calculation of Consolidated EBITDA and Consolidated Cash Interest Expense for the relevant period) and (B) Subordinated Refinancing Indebtedness in respect of Additional Subordinated Debt issued pursuant to clause (A) above or this clause (B); and

(xiii) Indebtedness arising from the honoring by a bank or financial institution of a check or similar instrument drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness is repaid within five Business Days.

(b) The Borrower will not, nor will it permit any Subsidiary to, issue any preferred Equity Interests or any Disqualified Equity Interests, except in the case of the Borrower, (i) preferred Equity Interests that are Qualified Equity Interests and (ii) preferred Equity Interests issued and outstanding on the Effective Date and set forth on Schedule 6.01(b), (iii) preferred Equity Interests (x) having terms that, taken as a whole, are no less favorable to the Lenders than those of the Series C Preferred Stock, as determined in good faith by senior management of the Borrower, (y) the proceeds of which are used to redeem, repurchase or retire the outstanding shares of Series C Preferred Stock and (z) the aggregate liquidation preference of which is no greater than that of the shares of Series C Preferred Stock being redeemed, repurchased or refinanced and (iv) the Series D Preferred Stock.

SECTION 6.02. Liens. The Borrower will not, nor will it permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens created under the Loan Documents;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of the Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02, provided that (A) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary and (B) such Lien shall secure only those obligations that it secures on the date hereof and refinancings, extensions, renewals and replacements thereof so long as the principal amount of such refinancings, extensions, renewals and replacements does not exceed the principal amount of the obligations being refinanced, extended, renewed or replaced (plus any accrued but unpaid interest and premium or penalty payable by the terms of such obligations thereon and reasonable fees and expenses associated therewith);

(d) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary (other than any Broker Dealer Subsidiary) or existing on any property or asset of any Person that becomes a Subsidiary (other than any Broker Dealer Subsidiary) after the date hereof prior to the time such Person becomes a Subsidiary, provided that (A) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (B) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary and (C) such Lien shall secure only those obligations that it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be, and refinancings, extensions, renewals and replacements thereof so long as the principal amount of such refinancings, extensions, renewals and replacements does not exceed the principal amount of the obligations being refinanced, extended, renewed or replaced (plus any accrued but unpaid interest and premium or penalty payable by the terms of such obligations thereon and reasonable fees and expenses associated therewith);

(e) Liens on fixed or capital assets acquired, constructed or improved (including any such assets made the subject of a Capital Lease Obligation incurred) by the Borrower or any Subsidiary, provided that (A) such Liens secure Indebtedness incurred to finance such acquisition, construction or improvement and permitted by clause (vi)(A) of Section 6.01(a) or to extend, renew or replace such Indebtedness and permitted by clause (vi)(B) of Section 6.01(a), (B) such Liens and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement (provided that this clause (B) shall not apply to any Indebtedness permitted by clause (vi)(B) of Section 6.01(a) or any Lien securing such Indebtedness), (C) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital asset and (D) such Liens shall not apply to any other property or assets of the Borrower or any Subsidiary;

(f) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the Uniform Commercial Code in effect in the relevant jurisdiction covering only the items being collected upon;

(g) Liens representing any interest or title of a licensor, lessor or sublicensor or sublessor under any lease or license permitted by this Agreement;

(h) Liens not otherwise permitted by this Section to the extent that neither (A) the aggregate outstanding principal amount of the obligations secured thereby nor (B) the aggregate fair market value (determined as of the date such Lien is incurred) of the assets subject thereto exceeds $10,000,000 at any time outstanding; and

(i) Liens granted by a Subsidiary that is not a Loan Party in favor of the Borrower or another Loan Party in respect of Indebtedness or other obligations owed by such Subsidiary to such Loan Party.

SECTION 6.03. Fundamental Changes. (a) The Borrower will not, nor will it permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve,

except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing (i) any Person may merge into the Borrower in a transaction in which the Borrower is the surviving corporation, (ii) any Person (other than the Borrower) may merge into any Subsidiary in a transaction in which the surviving entity is a Subsidiary and, if any party to such merger is a Subsidiary Loan Party, is a Subsidiary Loan Party and (iii) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders, provided that any such merger involving a Person that is not a wholly-owned Subsidiary immediately prior to such merger shall not be permitted unless also permitted by Sections 6.04 and 6.05.

(b) The Borrower will not, nor will it permit any Subsidiary to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and the Subsidiaries on the Effective Date and businesses reasonably related thereto.

SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions. The Borrower will not, nor will it permit any Subsidiary to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly-owned Subsidiary prior to such merger) any Equity Interests in or evidences of Indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit, except:

(a) Permitted Investments;

(b) Permitted Acquisitions;

(c) investments existing on the date hereof and set forth on Schedule 6.04;

(d) investments by the Borrower and the Subsidiaries in Equity Interests of their respective Subsidiaries, provided that (i) any such Equity Interests held by a Loan Party shall be pledged pursuant to the Collateral Agreement (subject to the limitations applicable to Equity Interests of a Foreign Subsidiary referred to in the definition of the term "Collateral and Guarantee Requirement"), (ii) the aggregate amount of investments made pursuant to this clause (ii) by Loan Parties in Subsidiaries (other than Broker Dealer Subsidiaries) that are not Loan Parties (together with outstanding intercompany loans permitted under clause (ii) to the proviso to paragraph (e) of this Section and outstanding Guarantees permitted under the proviso to paragraph (f) of this Section) shall not exceed $5,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs) and (iii) the aggregate amount of any investment made pursuant to this clause (iii) by Loan Parties in any Broker Dealer Subsidiary shall not exceed the amount that is required at the time of such investment to cause such Broker Dealer Subsidiary's capital to be above the highest level at which dividends by

such Broker Dealer Subsidiary may be restricted, other activities undertaken by such Broker Dealer Subsidiary may be limited or other regulatory actions with respect to such Broker Dealer Subsidiary may be taken, in each case by applicable Governmental Authorities based upon such capital, plus amounts not to exceed $5,000,000 in any fiscal year;

(e) loans or advances made by the Borrower to any Subsidiary and made by any Subsidiary to the Borrower or any other Subsidiary, provided that (i) any such loans and advances made by a Loan Party shall be evidenced by a promissory note pledged pursuant to the Collateral Agreement, (ii) the amount of such loans and advances made pursuant to this clause (ii) by Loan Parties to Subsidiaries (other than Broker Dealer Subsidiaries) that are not Loan Parties (together with investments permitted under clause (ii) of the proviso to paragraph (d) of this Section and outstanding Guarantees permitted under the proviso to paragraph (f) of this Section) shall not exceed $5,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs) and (iii) the amount of any loan or advance made pursuant to this clause (iii) by Loan Parties to any Broker Dealer Subsidiary shall not exceed the amount that is required at the time of such loan or advance to cause such Broker Dealer Subsidiary's capital to be above the highest level at which dividends by such Broker Dealer Subsidiary may be restricted, other activities undertaken by such Broker Dealer Subsidiary may be limited or other regulatory actions with respect to such Broker Dealer Subsidiary may be taken, in each case by applicable Governmental Authorities based upon such capital, in each case by applicable Governmental Authorities, plus amounts not to exceed $5,000,000 in any fiscal year;

(f) Guarantees of Indebtedness of the Borrower or any Subsidiary that are permitted by Section 6.01, provided that the aggregate principal amount of Indebtedness of Subsidiaries that are not Loan Parties that is Guaranteed by any Loan Party (together with investments permitted under clause (ii) of the proviso to paragraph (d) of this Section and intercompany loans permitted under clause (ii) to the proviso to paragraph (e) of this Section) shall not exceed $5,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs);

(g) loans or advances to employees, officers and directors of the Borrower or any Subsidiary made in the ordinary course of business of the Borrower or any Subsidiary not exceeding $5,000,000 in the aggregate outstanding at any time (determined without regard to any write-downs or write-offs of such loans or advances), provided that no such loans or advances to any single employee, officer or director shall exceed $2,000,000 in the aggregate outstanding at any time (determined without regard to any write-downs or write-offs of such loans or advances);

(h) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses of the Borrower

or any Subsidiary for accounting purposes and that are made in the ordinary course of business;

(i) investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(j) investments in the form of Swap Agreements permitted by Section 6.07;

(k) investments of any Person existing at the time such Person becomes a Subsidiary or consolidates or merges with the Borrower or any Subsidiary (including in connection with a Permitted Acquisition) so long as such investments were not made in contemplation of such Person becoming a Subsidiary or of such consolidation or merger;

(l) investments resulting from pledges or deposits described in clause (c) or (d) of the definition of the term "Permitted Encumbrance";

(m) investments received in connection with the disposition of any asset permitted by Section 6.05;

(n) receivables or other trade payables owing to the Borrower or a Subsidiary if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms, provided that such trade terms may include such concessionary trade terms as the Borrower or any Subsidiary deems reasonable under the circumstances; and

(o) other investments, loans and advances by the Borrower or any Subsidiary in an aggregate amount, as valued at cost at the time each such investment, loan or advance is made and including all related commitments for future investments, loans or advances (and the principal amount of any Indebtedness that is assumed or otherwise incurred in connection with such investment, loan or advance), not exceeding $15,000,000 in the case of any single such investment, or $50,000,000 in the aggregate for all such investments, made or committed to be made from and after the Effective Date plus an amount equal to any returns of capital or sale proceeds actually received in cash in respect of any such investments (which amount shall not exceed the amount of such investment valued at cost at the time such investment was made),

provided that this Section 6.04 shall not prohibit any repurchase of Indebtedness or Equity Interests of the Borrower by the Borrower, or any repurchase of Equity Interests or Indebtedness of any Subsidiary by such Subsidiary, in each case to the extent such repurchase is otherwise permitted by this Agreement.

SECTION 6.05. Asset Sales. The Borrower will not, nor will it permit any Subsidiary to, sell, transfer, license, lease or otherwise dispose of any asset, including any Equity Interest owned by it (other than pursuant to the VAB Sale on the Effective

Date), nor will the Borrower permit any Subsidiary to issue any additional Equity Interest in such Subsidiary (other than directors' qualifying shares and Equity Interests issued to the Borrower or another Subsidiary in compliance with Section 6.04(d)), except:

(a) sales, transfers, leases and other dispositions of (i) inventory, (ii) used or surplus equipment and (iii) Permitted Investments, in each case in the ordinary course of business;

(b) sales, transfers, leases and other dispositions to the Borrower or a Subsidiary, provided that any such sales, transfers, leases or other dispositions involving a Loan Party and a Subsidiary that is not a Loan Party shall be made in compliance with Section 6.09;

(c) sales, transfers and other dispositions of accounts receivable in connection with the compromise, settlement or collection thereof consistent with past practice;

(d) sales, transfers, leases and other dispositions of property to the extent that such property constitutes an investment permitted by clause (i), (k), (m) or (o) of Section 6.04 or another asset received as consideration for the disposition of any asset permitted by this Section (in each case, other than Equity Interests in a Subsidiary, unless all Equity Interests in such Subsidiary are sold);

(e) sale and leaseback transactions permitted by Section 6.06;

(f) leases entered into in the ordinary course of business, to the extent that they do not materially interfere with the business of the Borrower or any Subsidiary;

(g) licenses or sublicenses of intellectual property in the ordinary course of business, to the extent that they do not materially interfere with the business of the Borrower or any Subsidiary;

(h) dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of the Borrower or any Subsidiary;

(i) the sale, transfer, lease or disposition of the Trumbull Property; and

(j) sales, transfers and other dispositions of assets (other than Equity Interests in a Subsidiary unless all Equity Interests in such Subsidiary are sold) that are not permitted by any other clause of this Section, provided that the aggregate fair market value of all assets sold, transferred or otherwise disposed of in reliance upon this clause (j) shall not exceed $25,000,000 during any fiscal year of the Borrower.

provided that all sales, transfers, leases and other dispositions permitted hereby (other than those permitted by clause (b)) shall be made for fair value and (other than those

permitted by clause (b) (unless the disposition is by a Loan Party to a Subsidiary that is not a Loan Party), (d) or (h)) for at least 75% cash consideration payable at the time of such sale, transfer or other disposition.

SECTION 6.06. Sale and Leaseback Transactions. The Borrower will not, nor will it permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred, except for (i) any such sale of any fixed or capital assets by the Borrower or any Subsidiary that is made for cash consideration in an amount not less than the fair value of such fixed or capital asset and is consummated within 90 days after the Borrower or such Subsidiary acquires or completes the construction of such fixed or capital asset and (ii) the sale and leaseback of the Trumbull Property, provided that, if any such sale and leaseback results in a Capital Lease Obligation, such Capital Lease Obligation is permitted by Section 6.01(a)(vi) and any Lien made the subject of such Capital Lease Obligation is permitted by Section 6.02(e).

SECTION 6.07. Swap Agreements. The Borrower will not, nor will it permit any Subsidiary to, enter into any Swap Agreement, except Swap Agreements (a) required by Section 5.14, (b) entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has actual exposure (other than those in respect of shares of capital stock or other equity ownership interests of the Borrower or any Subsidiary) or (c) entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Subsidiary.

SECTION 6.08. Restricted Payments; Certain Payments of Indebtedness. (a) The Borrower will not, nor will it permit any Subsidiary to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except (i) the Subsidiaries may declare and pay dividends ratably with respect to their Equity Interests, (ii) the Borrower may declare and pay dividends with respect to its Equity Interests payable solely in shares of Qualified Equity Interests, (iii) scheduled dividends payable with respect to the outstanding shares of Series C Preferred Stock pursuant to the terms thereof in existence on the Effective Date, (iv) the Borrower may make Restricted Payments not exceeding $10,000,000 during any fiscal year pursuant to and in accordance with stock option plans, employment agreements or other benefit plans approved by the Borrower's board of directors for management, directors, former directors, employees and former employees of the Borrower and the Subsidiaries, (v) if the Borrower or any Subsidiary is granted registration as a national securities exchange under the Exchange Act by the SEC, the Borrower may exchange the outstanding share of Series B Preferred Stock for the Series D Preferred Stock, and, if the Borrower or any Subsidiary subsequently becomes an operational national securities exchange under the Exchange Act, the Borrower may redeem the outstanding share of Series D Preferred Stock, (vi) the Borrower may redeem, repurchase or retire the outstanding shares of Series C Preferred Stock with the proceeds of (A) common Equity Interests of the Borrower or (B) preferred Equity Interests of the

Borrower having terms determined in good faith by senior management of the Borrower to be no less favorable to the Lenders than those of the Series C Preferred Stock, (vii) on or after the delivery of the financial statements and the certificate of a Financial Officer pursuant to Section 5.01(a) and Section 5.01(c), respectively, for the Borrower's fiscal year ended December 31, 2006, the Borrower may repurchase, redeem or retire its Equity Interests in an aggregate amount in any fiscal year not to exceed 50% of Excess Cash Flow for the immediately preceding fiscal year, provided that (x) at the time of any such payment, no Default shall have occurred and be continuing or would result therefrom, (y) any amounts required to be applied to prepay Term Loans pursuant to Section 2.11(d) shall have been so applied and (z) the Borrower has delivered to the Administrative Agent a certificate of a Financial Officer, together with all relevant financial information reasonably requested by the Administrative Agent, demonstrating the calculation of such Excess Cash Flow, and (viii) the Borrower may make additional repurchases, redemptions and retirements of its Equity Interests in an aggregate amount not to exceed $25,000,000 during the term of this Agreement.

(b) The Borrower will not, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancelation or termination of any Indebtedness, or any other payment (including any payment under any Swap Agreement) that has a substantially similar effect to any of the foregoing, except:

(i) payment or prepayment of Indebtedness created under the Loan Documents;

(ii) payment of regularly scheduled interest and principal payments as, in the form of payment and when due in respect of any Indebtedness, other than payments in respect of the Convertible Notes and Additional Subordinated Debt prohibited by the subordination provisions thereof;

(iii) refinancings of Indebtedness to the extent permitted by Section 6.01; and

(iv) payment of secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness.

SECTION 6.09. Transactions with Affiliates. The Borrower will not, nor will it permit any Subsidiary to, sell, lease, license or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (i) transactions in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (ii) transactions between or among the Borrower and the Subsidiary Loan Parties (or, in the case of intellectual property licenses, between

or among the Borrower and the Subsidiaries) not involving any other Affiliate, (iii) loans or advances to employees permitted under Section 6.04(g), (iv) payroll, travel and similar advances to cover matters permitted under Section 6.04(h), (v) the payment of reasonable fees to directors of the Borrower or any Subsidiary who are not employees of the Borrower or any Subsidiary, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Borrower or the Subsidiaries in the ordinary course of business, (vi) any issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans approved by the Borrower's board of directors, (vii) employment and severance arrangements entered into in the ordinary course of business between the Borrower or any Subsidiary and any employee thereof and approved by the Borrower's board of directors, (viii) any Restricted Payment permitted by Section 6.08, (ix) transactions with the NASD of the type described on Schedule 6.09 and (x) any issuance of common stock of the Borrower to any holder of Convertible Notes upon conversion of such holder's Convertible Notes in accordance with the terms of the Convertible Notes Documents.

SECTION 6.10. Restrictive Agreements. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary, provided that (i) the foregoing shall not apply to restrictions and conditions imposed by (A) law or (B) any Loan Document, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.10 (but shall apply to any extension or renewal of, or any amendment, modification or replacement of, any such restriction or condition unless it is determined in good faith by senior management of the Borrower that any such extension, renewal, amendment, modification or replacement does not expand the scope of such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any assets pending such sale, provided that such restrictions and conditions apply only to the Subsidiary or assets that is or are to be sold or the proceeds thereof and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by (A) any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness or (B) any Subordinated Debt Documents, (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof, (vi) the foregoing shall not apply to any restrictions or conditions set forth in any agreement in effect at any time any Person becomes a Subsidiary (but shall apply to any extension or renewal of, or any amendment, modification or replacement of, any such restriction or condition unless it is determined in good faith by senior management of the Borrower that any such extension, renewal, amendment, modification or replacement does not expand the scope of such restriction or condition), provided that such agreement was not entered into in contemplation of such

Person becoming a Subsidiary and the restriction or condition set forth in such agreement does not apply to the Borrower or any other Subsidiary and (viii) clause (a) of the foregoing shall not apply to any negative pledge provision of any joint venture agreements, stockholder or partnership agreements or other organizational documents relating to joint ventures or partnerships.

SECTION 6.11. Amendment of Material Documents. The Borrower will not, nor will it permit any Subsidiary to, amend, modify, waive, terminate or release (a) its Organizational Documents, (b) any certificate of designations or similar document governing the Preferred Stock or any preferred Equity Interests issued pursuant to Section 6.01(b)(ii), (c) any Acquisition Document, (d) any Subordinated Debt Documents, or (e) the Indebtedness permitted under Section 6.01(a)(iii), in each case unless senior management of the Borrower determines in good faith that the effect of such amendment, modification, waiver, termination or release is not materially adverse to the Borrower, any Subsidiary or the Lenders.

SECTION 6.12. Interest Expense Coverage Ratio. The Borrower will not permit the Interest Coverage Ratio for any period of four consecutive fiscal quarters of the Borrower ending on or about any date during any period set forth below, to be less than the ratio set forth below opposite such period:

Period	Ratio
January 1, 2006 to September 30, 2006	2.75 to 1.00
October 1, 2006 to December 31, 2006	3.00 to 1.00
January 1, 2007 to March 31, 2007	3.25 to 1.00
April 1, 2007 to June 30, 2007	3.50 to 1.00
July 1, 2007 to September 30, 2007	3.75 to 1.00
October 1, 2007 to December 31, 2007	4.00 to 1.00
January 1, 2008 to March 31, 2008	4.25 to 1.00
April 1, 2008 to September 30, 2008	4.75 to 1.00
Thereafter	5.00 to 1.00

SECTION 6.13. Leverage Ratio. The Borrower will not permit the Leverage Ratio as of any date during any period set forth below to exceed the ratio set forth below opposite such period:

Period	Ratio
January 1, 2006 to March 31, 2006	5.75 to 1.00
April 1, 2006 to September 30, 2006	5.50 to 1.00
October 1, 2006 to December 31, 2006	5.00 to 1.00
January 1, 2007 to March 31, 2007	4.25 to 1.00
April 1, 2007 to June 30, 2007	4.00 to 1.00
July 1, 2007 to September 30, 2007	3.75 to 1.00
October 1, 2007 to December 31, 2007	3.50 to 1.00
January 1, 2008 to March 31, 2008	3.25 to 1.00
April 1, 2008 to December 31, 2008	3.00 to 1.00
January 1, 2009 to September 30, 2009	2.75 to 1.00
Thereafter	2.50 to 1.00

SECTION 6.14. Changes in Fiscal Periods. The Borrower will neither (a) permit its fiscal year or the fiscal year of any Subsidiary to end on a day other than December 31, nor (b) change its method of determining fiscal quarters.

SECTION 6.15. Regulatory Capital. The Borrower will not permit any Broker Dealer Subsidiary's capital to be at or below the highest level at which dividends by such Broker Dealer Subsidiary may be restricted, other activities undertaken by such Broker Dealer Subsidiary may be limited or other regulatory actions taken with respect to

such Broker Dealer Subsidiary may be taken, in each case by applicable Governmental Authorities based upon such capital, for a period of more than three consecutive Business Days after the date that a Financial Officer becomes aware that such capital is below such level (or, in the case of interpretation of any applicable law by a Governmental Authority with retroactive effect, after the date the Borrower receives notice from such Governmental Authority).

ARTICLE VII

Events of Default

If any of the following events (any such event, an "Event of Default") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in paragraph (a) of this Article) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five Business Days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall, if qualified by materiality, prove to have been incorrect or, if not so qualified, prove to have been incorrect in any material respect, in each case when made or deemed made;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, 5.04 (with respect to the existence of the Borrower), 5.11 or 5.16 or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraph (a), (b) or (d) of this Article), and such failure shall continue unremedied for a period of 30 days after notice thereof from any Lender or the Administrative Agent to the Borrower;

(f) the Borrower or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable or within any applicable grace period;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, provided that this paragraph (g) shall not apply to secured Indebtedness that becomes due as a result of the sale, transfer or other disposition (including as a result of a casualty or condemnation event) of the property or assets securing such Indebtedness (to the extent such sale, transfer or other disposition is not prohibited under this Agreement);

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in paragraph (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Borrower or any Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of $15,000,000 shall be rendered against the Borrower, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any Subsidiary to enforce any such judgment;

(l) an ERISA Event shall have occurred that, in the reasonable opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(m) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any Collateral with a fair value in excess of $1,000,000, with the priority required by the applicable Security Document, except (i) as a result of the sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents or (ii) as a result of the Administrative Agent's failure to (A) maintain possession of any stock certificates, promissory notes or other instruments delivered to it under the Collateral Agreement or (B) file Uniform Commercial Code continuation statements;

(n) any Loan Document or any Guarantee of the Loan Document Obligations shall for any reason be asserted in writing by any Loan Party not to be a legal, valid and binding obligation of any Loan Party that is a party thereto;

(o) the Guarantees of the Loan Document Obligations by the Subsidiary Loan Parties pursuant to the Collateral Agreement shall cease to be in full force and effect (in each case, other than in accordance with the terms of the Loan Documents);

(p) (i) the Convertible Notes, any Additional Subordinated Debt or any Guarantee thereof shall cease, for any reason, to be, or shall be asserted by any Loan Party or the holders of at least 25% in aggregate principal amount of the Convertible Notes or any series of Additional Subordinated Debt not to be, validly subordinated to the Loan Document Obligations or the obligations of the Subsidiary Loan Parties in respect of their Guarantees under the Collateral Agreement, as the case may be, as provided in the Subordinated Debt Documents or (ii) the Loan Document Obligations shall cease to constitute, or shall be asserted by any Loan Party or the holders of at least 25% in aggregate principal amount of the Convertible Notes or any series of Additional Subordinated Debt not to constitute, "Senior Indebtedness" or "Designated Senior Indebtedness" (or the equivalent thereof) under the subordination provisions of any Subordinated Debt Document;

(q) (i) the SEC shall have revoked or suspended the status of the Borrower, or any Subsidiary with total capital in excess of $1,000,000, as a national securities exchange under the Exchange Act (if such status has been granted) or as a broker or dealer under the Exchange Act, or (ii) the Securities Investor Protection Corporation shall have applied for a protective decree with respect to the Borrower or any Subsidiary with total capital in excess of $1,000,000; or

(r) a Change in Control shall occur;

then, and in every such event (other than an event with respect to the Borrower described in paragraph (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in paragraph (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

ARTICLE VIII

The Administrative Agent

Each of the Lenders and the Issuing Bank hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Bank, and the Borrower shall not have rights as a third party beneficiary of any of such provisions.

The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary or believed by the Administrative Agent in good faith to be necessary under the circumstances as provided in Section 2.05(j) or Section 9.02, and

(c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any Subsidiary that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 2.05(j) or Section 9.02) or in the absence of its own gross negligence or wilful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed or sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time upon notice to the Lenders, the Issuing Bank and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no successor shall have been so appointed by the Required

Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent that shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from all its duties and obligations under the Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Each Lender and the Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this any Loan Document or any related agreement or any document furnished thereunder.

Notwithstanding anything herein to the contrary, none of the Joint Bookrunners, the Co-Lead Arrangers or the Syndication Agent listed on the cover page hereof shall have any powers, duties or responsibilities under any Loan Document, except in its capacity, as applicable, as the Administrative Agent, a Lender or the Issuing Bank hereunder.

ARTICLE IX

Miscellaneous

SECTION 9.01. Notices. Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(a) if to the Borrower, to it at 9600 Blackwell Road, Rockville, Maryland 20850, Attention of General Counsel (Telecopy No. (301) 978-8472);

(b) if to the Administrative Agent, to JPMorgan Chase Bank, N.A., Loan and Agency Services Group, 1111 Fannin, 10th Floor, Houston, Texas 77002, Attention of Carla Kinney (Telecopy No.: (713) 750-2666), with a copy to JPMorgan Chase Bank, N.A., 270 Park Avenue, New York, New York 10017, Attention of Thomas H. Mulligan (Telecopy No. (646) 534-1720);

(c) if to an Issuing Bank or Swingline Lender other than the Administrative Agent, to it at the address or telecopy number set forth separately in writing; and

(d) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. Notices and other communications to the Lenders and the Issuing Bank hereunder may also be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the Issuing Bank pursuant to Article II if such Lender or the Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

SECTION 9.02. Waivers; Amendments. (a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or the issuance, amendment, renewal or extension of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(b) Except as provided in Section 2.20 with respect to any Incremental Facility Amendment, neither any Loan Document nor any provision thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the consent of the Required Lenders, provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the maturity of any Loan, or the date of any scheduled payment of the principal amount of any Term Loan under Section 2.10 or the applicable Incremental Facility Amendment, or the required date of reimbursement of any LC Disbursement, or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.18(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender adversely affected thereby, (v) change any of the provisions of this Section or the percentage set forth in the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (or each Lender of such Class, as the case may be) (it being understood that, other than pursuant to any Incremental Facility Amendment (the consent requirements for which are set forth in Section 2.20), with the consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Term Loans and Revolving Commitments on the date hereof), (vi) release any material Subsidiary Loan Party from its Guarantee under the Collateral Agreement (except as expressly provided in the Collateral Agreement), or limit its liability in respect of such Guarantee, without the written consent of each Lender, (vii) release all or substantially all the Collateral from the Liens of the Security Documents, without the written consent of each Lender, (viii) change any provisions of any Loan Document in a manner that by its terms adversely affects the rights in respect of payments due to Lenders holding Loans of any Class differently than those holding Loans of any other Class, without the written consent of Lenders holding a majority in interest of the outstanding Loans and unused Commitments of each affected Class or (ix) modify the protections afforded to an SPV pursuant to the provisions of Section 9.04(e) without the written consent of such SPV; provided further that (A) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank or the Swingline Lender without the prior written consent of the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be, and (B) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments

of any other Class) may be effected by an agreement or agreements in writing entered into by the Borrower and requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time.

(c) In connection with any proposed amendment, modification, waiver or termination (a "Proposed Change") requiring the consent of all Lenders or all affected Lenders, if the consent of the Required Lenders (and, to the extent any Proposed Change requires the consent of Lenders holding Loans of any Class pursuant to clause (v) or (viii) of paragraph (b) of this Section, the consent of a majority in interest of the outstanding Loans and unused Commitments of such Class) to such Proposed Change is obtained, but the consent to such Proposed Change of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in paragraph (b) of this Section being referred to as a "Non-Consenting Lender"), then, so long as the Lender that is acting as Administrative Agent is not a Non-Consenting Lender, the Borrower may, at its sole expense and effort, upon notice to such Non-Consenting Lender and the Administrative Agent, require such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that (a) the Borrower shall have received the prior written consent of the Administrative Agent (and, if a Revolving Commitment is being assigned, the Issuing Bank and Swingline Lender), which consent shall not unreasonably be withheld, (b) such Non-Consenting Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (c) the Borrower or such assignee shall have paid to the Administrative Agent the processing and recordation fee specified in Section 9.04(b).

SECTION 9.03. Expenses; Indemnity; Damage Waiver. (a) The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, the Issuing Bank or any Lender, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket

expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) The Borrower shall indemnify the Administrative Agent, the Syndication Agent, the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee"), against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee by any third party or by the Borrower or any Subsidiary arising out of, in connection with, or as a result of (i) the execution or delivery of any Loan Document or any other agreement or instrument contemplated thereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated thereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on, at, to or from any Mortgaged Property or any other property currently or formerly owned or operated by the Borrower or any Subsidiary, or any other Environmental Liability related in any way to the Borrower or any Subsidiary, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any Subsidiary and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final judgment to have resulted from the gross negligence or wilful misconduct of such Indemnitee.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent or the Issuing Bank under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent or the Issuing Bank, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or the Issuing Bank in its capacity as such. For purposes hereof, a Lender's "pro rata share" shall be determined based upon its share of the aggregate Revolving Exposures, outstanding Term Loans and unused Commitments at the time. The obligations of the Lenders under this paragraph (c) are subject to the last sentence of Section 2.02(a) (which shall apply mutatis mutandis to the Lenders' obligations under this paragraph (c)).

(d) To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Loan Document

or any agreement or instrument contemplated thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable not later than five Business Days after written demand therefor.

SECTION 9.04. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) subject to paragraph (f) below, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of (A) the Borrower, provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund (as defined below) or, if an Event of Default has occurred and is continuing, any other assignee, (B) the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund and (C) the Issuing Bank, provided that no consent of the Issuing Bank shall be required for an assignment of all or any portion of a Term Loan or Term Commitment.

(ii) Assignments shall be subject to the following additional conditions: (A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the trade date specified in the Assignment and Assumption with respect to such assignment or, if no trade date is so specified, as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 or, in the case of a Term Loan, $1,000,000, unless the Borrower and the Administrative Agent otherwise consent (such consent not to be unreasonably withheld or delayed), provided that (1) no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing and (2) contemporaneous assignments of two or more

Approved Funds of a single Lender shall be treated as a single assignment for purposes of this clause (A), (B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, provided that this clause (B) shall not be construed to prohibit assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans, (C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500, provided that assignments made pursuant to Section 2.19(b) or Section 9.02(c) shall not require the signature of the assigning Lender to become effective, and (D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required by Section 2.17(e).

For purposes of paragraph (b) of this Section, the term "Approved Fund" and "CLO" have the following meanings:

"Approved Fund" means (a) a CLO and (b) with respect to any Lender that is a fund that invests in bank loans and similar extensions of credit, any other fund that invests in bank loans and similar extensions of credit and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"CLO" means an entity (whether a corporation, partnership, trust or otherwise) that is engaged in making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its activities and is administered or managed by a Lender or an Affiliate of such Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03 and to any fees payable hereunder that have accrued for such Lender's account but have not yet been paid). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c)(i) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the

"Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and any tax forms required by Section 2.17(e) (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) The words "execution", "signed", "signature" and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act.

(c) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent, the Issuing Bank or the Swingline Lender, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it), provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents, provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a

Lender, provided that such Participant agrees to be subject to Section 2.18(c) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.15 or Section 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.17 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.17(e) as though it were a Lender.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest, provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPV"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement, provided that (i) nothing herein shall constitute a commitment by any SPV to make any Loan and (ii) if an SPV elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPV hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPV shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPV, such party will not institute against, or join any other person in instituting against, such SPV any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 9.04, any SPV may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and Administrative Agent) providing liquidity or credit support to or for the account of such SPV to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans

to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPV.

(f) Upon consummation of the Restructuring, the Borrower may assign or otherwise transfer its rights and obligations under Article II hereof to Exchange LLC, provided that, at the time of such assignment or transfer, (i) the Borrower Guarantees the Obligations by executing the Collateral Agreement as a guarantor thereunder, (ii) each other Subsidiary Loan Party enters into a reaffirmation of its Guarantee of the Obligations and (iii) the Borrower and the Subsidiary Loan Parties shall execute any and all further documents, and take all such further actions, that may be reasonably requested by the Administrative Agent in connection with such assignment or transfer. Thereafter, (A) all references to "the Borrower" in Article II (other than (x) the first, third and fourth references to "the Borrower" in the first sentence of Section 2.11(c), (y) the first reference to "the Borrower" in the first sentence of Section 2.11(d) and (z) all references to "the Borrower" in the proviso to the first sentence of Section 2.20(a)) and (B) all references to "the Borrower" in the definition of the terms "Borrowing Request", "Excluded Taxes", "Foreign Lender", "Interest Election Request", "Interest Period", "LC Exposure" and "Loans", shall be deemed to be references to Exchange LLC, provided that the reference to "the Borrower" in the proviso to the first sentence of Section 2.05(j) shall be deemed to be a reference to both the Borrower and Exchange LLC. Upon consummation of such assignment or transfer, the Borrower shall no longer be entitled to exercise any of the rights vested in "the Borrower" pursuant to Article II.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to any Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent or the syndication of the Loans and Commitments constitute the entire contract

among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Bank and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the Issuing Bank or any such Affiliate to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender or the Issuing Bank, irrespective of whether or not such Lender or the Issuing Bank shall have made any demand under this Agreement and although such obligations may be unmatured or are owed to a branch or office of such Lender or Issuing Bank different from the branch or office holding such deposit or obligated on such Indebtedness. The applicable Lender and the Issuing Bank shall notify the Borrower and the Administrative Agent of such setoff and application, provided that any failure to give or any delay in giving such notice shall not affect the validity of any such setoff and application under this Section. The rights of each Lender, the Issuing Bank and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Bank and their respective Affiliates may have.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process. (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and

unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in any Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to any Loan Document against the Borrower or their respective properties in the courts of any jurisdiction.

(c) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in any Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Confidentiality. Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be

informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to any Loan Document or the enforcement of rights thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (ii) any pledge referred to in Section 9.04(d) or (iii) any actual or prospective counterparty (or its advisors) to any Swap Agreement relating to any Loan Party and its obligations under the Loan Documents, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis from a source other than the Borrower. For the purposes of this Section, "Information" means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by the Borrower, provided that, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 9.13. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan or participation in any LC Disbursement, together with all fees, charges and other amounts that are treated as interest on such Loan or LC Disbursement or participation therein under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan or LC Disbursement or participation therein in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan or LC Disbursement or participation therein but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or LC Disbursement or participation therein or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.14. USA Patriot Act. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

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

THE NASDAQ STOCK MARKET, INC.,

By: /s/ David Warren
Name: David Warren
Title: Executive Vice President and
Chief Financial Officer

JPMORGAN CHASE BANK, N.A.,
individually and as Administrative Agent,

By: /s/ Thomas Mulligan
Name: Thomas Mulligan
Title: Managing Director

MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED,
individually and as Syndication Agent,

By: /s/ Sheilla McGillicuddy
Name: Sheilla McGillicuddy
Title: Director

SIGNATURE PAGE TO THE CREDIT AGREEMENT DATED AS OF DECEMBER 8, 2005, AMONG THE NASDAQ STOCK MARKET, INC., THE LENDERS PARTY THERETO, JPMORGAN CHASE BANK, N.A., AS ADMINISTRATIVE AGENT, AND MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, AS SYNDICATION AGENT.

Name of Institution: MERRILL LYNCH CAPITAL CORPORATION

By: /s/ John C. Rowland
Name: John C. Rowland
Title: Vice President

SIGNATURE PAGE TO THE CREDIT AGREEMENT DATED AS OF DECEMBER 8, 2005, AMONG THE NASDAQ STOCK MARKET, INC., THE LENDERS PARTY THERETO, JPMORGAN CHASE BANK, N.A., AS ADMINISTRATIVE AGENT, AND MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, AS SYNDICATION AGENT.

Name of Institution: BANK LEUMI USA

By: /s/ Joung Hee Hong
Name: Joung Hee Hong
Title: Vice President

SIGNATURE PAGE TO THE CREDIT AGREEMENT DATED AS OF DECEMBER 8, 2005, AMONG THE NASDAQ STOCK MARKET, INC., THE LENDERS PARTY THERETO, JPMORGAN CHASE BANK, N.A., AS ADMINISTRATIVE AGENT, AND MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, AS SYNDICATION AGENT.

Name of Institution: SUNTRUST BANK

By: /s/ Mark A. Flatin

Name: Mark A. Flatin
Title: Managing Director

SIGNATURE PAGE TO THE CREDIT AGREEMENT DATED AS OF DECEMBER 8, 2005, AMONG THE NASDAQ STOCK MARKET, INC., THE LENDERS PARTY THERETO, JPMORGAN CHASE BANK, N.A., AS ADMINISTRATIVE AGENT, AND MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, AS SYNDICATION AGENT.

Name of Institution: BANK OF TOKYO-MITSUBISHI TRUST COMPANY

By: /s/ Karen A. Brinkman
Name: Karen A. Brinkman
Title: Vice President

SIGNATURE PAGE TO THE CREDIT AGREEMENT DATED AS OF DECEMBER 8, 2005, AMONG THE NASDAQ STOCK MARKET, INC., THE LENDERS PARTY THERETO, JPMORGAN CHASE BANK, N.A., AS ADMINISTRATIVE AGENT, AND MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, AS SYNDICATION AGENT.

Name of Institution: BANK OF NEW YORK

By: /s/ John Ciaccierelli
Name: John Ciaccierelli
Title: Managing Director

SIGNATURE PAGE TO THE CREDIT AGREEMENT DATED AS OF DECEMBER 8, 2005, AMONG THE NASDAQ STOCK MARKET, INC., THE LENDERS PARTY THERETO, JPMORGAN CHASE BANK, N.A., AS ADMINISTRATIVE AGENT, AND MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, AS SYNDICATION AGENT.

Name of Institution: PNC BANK, NATIONAL ASSOCIATION

By: /s/ Rita M. Cahill
Name: Rita M. Cahill
Title: Vice President

SIGNATURE PAGE TO THE CREDIT AGREEMENT DATED AS OF DECEMBER 8, 2005, AMONG THE NASDAQ STOCK MARKET, INC., THE LENDERS PARTY THERETO, JPMORGAN CHASE BANK, N.A., AS ADMINISTRATIVE AGENT, AND MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, AS SYNDICATION AGENT.

Name of Institution: COMMERZBANK AG, New York and Grand Cayman branches

By: /s/ Gerar A. Araw
Name: Gerar A. Araw
Title: Assistant Treasurer

SIGNATURE PAGE TO THE CREDIT AGREEMENT DATED AS OF DECEMBER 8, 2005, AMONG THE NASDAQ STOCK MARKET, INC., THE LENDERS PARTY THERETO, JPMORGAN CHASE BANK, N.A., AS ADMINISTRATIVE AGENT, AND MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, AS SYNDICATION AGENT.

Name of Institution: COMMERZBANK AG, New York and Grand Caymen branches

By: /s/ Michael P. McCarthy
Name: Michael P. McCarthy
Title: Vice President

EXHIBIT 99.2

TRANSITION SERVICES AGREEMENT

This Transition Services Agreement ("Agreement"), dated as of December 8, 2005, by and between Instinet Holdings Incorporated f/k/a Iceland Acquisition Corp., a Delaware corporation ("Newco"), Norway Acquisition Corp. f/k/a Instinet Group Incorporated, a Delaware corporation ("Company") and The Nasdaq Stock Market, Inc., a Delaware corporation ("Parent").

WHEREAS, Company entered into that certain Agreement and Plan of Merger, dated as of April 22, 2005, by and among Instinet Group Incorporated, a Delaware corporation ("Iceland"), Parent and Company, pursuant to which, among other things, Company merged with and into Iceland (the "Merger");

WHEREAS, concurrently therewith, Newco, Company and Parent entered into that certain Transaction Agreement dated as of April 22, 2005 (the "Transaction Agreement"), pursuant to which Parent and Company agreed to sell to Newco all of the Newco Assets;

WHEREAS, the Transaction Agreement provides that the parties shall enter into certain Ancillary Agreements, including this Agreement; and

WHEREAS, pursuant to the Transaction Agreement and in order to ensure an orderly transition of Company following the Merger and sale of the Newco Assets, Newco and Company are entering into this Agreement, pursuant to which each of Newco and the Company will provide or cause to be provided certain transition services to the other party and its subsidiaries following the Closing Date.

NOW, THEREFORE, in consideration of the Transaction Agreement, the premises and of the mutual covenants, representations, warranties and agreements contained herein and therein, the parties hereto agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

Section 1.01 Capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Transaction Agreement.

ARTICLE II

SERVICES

Section 2.01 Services.

(a) Newco Services. From and after the Closing Date, on the terms and subject to the conditions contained herein, Newco shall provide, or shall cause its permitted assigns to provide, to the Company and its Subsidiaries (collectively, "Newco Services

Recipients") the services set forth in Exhibit A (the "Newco Services"). The Newco Services will be provided in all respects with the same frequency, performance capability, functionality, capacity and accuracy as such services were provided by Iceland during the six (6) month period prior to the effective date of the Transaction Agreement (or, as explicitly set forth herein, the Closing Date) (except to the extent any reduction in the frequency, performance, capability, functionality, capacity and accuracy of such services is not, individually or in the aggregate with all reductions to any services, materially adverse to the conduct of Newco Services Recipients' business or Newco Services Recipients' relationship with any customer, and provided that such reduction is consistent with a reduction in the frequency, performance, capability, functionality, capacity and accuracy of such services with respect to Newco's business), provided that the Newco Services shall be provided at all times in accordance with applicable Law. In the event that any Newco Service was routinely provided by Iceland, but was not provided during the six (6) month period prior to the effective date of the Transaction Agreement (e.g., an annual service), such service shall be provided with substantially the same frequency, performance capability, functionality, capacity and accuracy as such service was previously provided by Iceland (except to the extent any reduction in the frequency, performance, capability, functionality, capacity and accuracy of such services is not, individually or in the aggregate with all reductions to any services, materially adverse to the conduct of Newco Services Recipients' business or Newco Services Recipients' relationship with any customer, and provided that such reduction is consistent with a reduction in the frequency, performance, capability, functionality, capacity and accuracy of such services with respect to Newco's business).

(b) Company Services. From and after the Closing Date, on the terms and subject to the conditions contained herein, Company shall provide, or shall cause its permitted assigns to provide, to Newco and its Subsidiaries (collectively, "Company Services Recipients" and, together with the Newco Services Recipients, the "Services Recipients") the services set forth in Exhibit B (the "Company Services" and, together with the Newco Services, the "Services"). The Company Services will be provided in all respects with the same frequency, performance capability, functionality, capacity and accuracy as such services were provided by Company during the six (6) month period prior to the effective date of the Transaction Agreement (or, as explicitly set forth herein, the Closing Date) (except to the extent any reduction in the frequency, performance, capability, functionality, capacity and accuracy of such services is not, individually or in the aggregate with all reductions to any services, materially adverse to the conduct of Company Services Recipients' business or Company Services Recipients' relationship with any customer, and provided that such reduction is consistent with a reduction in the frequency, performance, capability, functionality, capacity and accuracy of such services with respect to Company's business), provided that the Company Services shall be provided at all times in accordance with applicable Law. In the event that any Company Service was routinely provided by Company, but was not provided during the six (6) month period prior to the effective date of the Transaction Agreement (e.g., an annual service), such service shall be provided with substantially the same frequency, performance capability, functionality, capacity and accuracy as such service was previously provided by Company (except to the extent any reduction in the frequency, performance, capability, functionality, capacity and accuracy of such services is not, individually or in the aggregate with all reductions to any services, materially adverse to the conduct of Company Services Recipients' business or Company Services

Recipients' relationship with any customer, and provided that such reduction is consistent with a reduction in the frequency, performance, capability, functionality, capacity and accuracy of such services with respect to Company's business).

(c) Service Providers. For purposes of this Agreement, "Service Providers" shall refer to both Newco and the Company, and "Service Provider" shall refer to either Newco or the Company, when acting in such capacity.

Section 2.02 Additional Services

(a) Service Requests. In the event that the Services, in combination with the other services provided pursuant to other Ancillary Agreements, are not sufficient to allow Services Recipients to conduct their business in substantially the same manner in which they were conducting business in the six (6) months prior to the effective date of the Transaction Agreement, subject to Section 6.1(a) of the Transaction Agreement, Services Recipients may request, and the relevant Service Provider may agree to provide such additional services ("Additional Service"), at a reasonable price to be mutually agreed, required to allow the applicable Services Recipients to so conduct their business during the Term. Upon the agreement of the parties for the provision of any Additional Service, such Additional Service shall be deemed for purposes of this Agreement to be (i) if provided by Newco, a Newco Service or (ii) if provided by Company, a Company Service.

(b) Use and Occupancy of Real Property. From and after the Closing Date, on the terms and subject to the conditions contained herein and the obtaining by Newco of any necessary consents, Newco hereby grants to Newco Services Recipients an exclusive license to use and occupy the office space set forth on Exhibit A, and a non-exclusive license to use the common areas of the Harborside Financial Center (the "Building"), including general parking areas (designated for employees), common entrances, common elevators and common bathrooms, subject to such reasonable rules and regulations as exist in connection with such areas as of the Closing Date. Newco Services Recipients shall be entitled to use and operate the furniture and equipment in such office space (i) as such furniture and equipment was used and operated by Iceland during the six (6) months prior to the effective date of the Transaction Agreement and (ii) as is otherwise permitted under that certain Sublease, dated as of December 18, 2001, by and between Charles Schwab & Co, Inc., as Sublandlord, and Instinet Services, L.L.C. (successor-in-interest to Instinet Group Incorporated), as Subtenant (as amended from time to time, the "Sublease"). The foregoing license is subject to compliance by the Newco Services Recipients and their employees and other invitees with (a) the terms of the Sublease and (b) use of the premises in accordance with applicable Law. Company hereby acknowledges that the Newco Services Recipients have inspected the Building and the furniture and equipment in such office space and agree to accept the same in its "as is" condition as of the Closing Date. Company further acknowledges and agrees that the Newco Services Recipients and their employees and other representatives shall use due care in their use of the Building, the furniture and equipment provided hereunder and keep the same in good working order and condition, subject to ordinary wear and tear.

Section 2.03 License for Fix Interface and SmartRouter. From and after the Closing Date, on the terms and subject to the conditions contained herein, Newco hereby grants to Newco Services Recipients a non-exclusive, royalty-free, fully paid-up license to use the software in object code form described in Schedule 1 ("Fix Interface" and "SmartRouter," respectively) for customer access to order routing substantially in the way it is used as of the Closing Date until such time as the software described on Schedule 2 ("RASH") is fully implemented by Company. Newco Services Recipients acknowledge and agree that Fix Interface and SmartRouter are licensed to it on an "AS IS, WHERE IS" basis in its current condition. Newco makes no representations or warranties whatsoever in connection with Fix Interface and SmartRouter, and Newco expressly disclaims all representations and warranties, whether express or implied including any warranty as to merchantability, fitness for a particular purpose or non-infringement. It is understood and agreed that no maintenance or other support shall be provided to the Newco Services Recipients in connection with the foregoing licensed software. For purposes of this Agreement, RASH shall be deemed to be fully implemented by the Company at such time that fewer than an average of five million shares per day over the course of ten (10) trading days of Newco Services Recipients' customer flow (defined as flow for which Newco Service Recipients are billing those customers directly but not including customer flow sent over the Instinet Trading Portal to SmartRouter by Newco Services Recipients' customers) are sent to destinations other than Newco using SmartRouter.

Section 2.04 Service Coordinators; Dispute Resolution

(a) Newco and Company shall each nominate a representative to act as the primary contact person with respect to the performance of the Services (each, a "Service Coordinator"). Unless otherwise agreed by the parties, all communications relating to this Agreement and to the Services provided hereunder shall be directed to the Service Coordinators. The initial Service Coordinators for Newco and Company are set forth in Section 7.05, as may be modified by either party from time to time upon prior written notice to the other.

(b) In the event of any dispute arising out of or related to this Agreement, one party shall notify the other of its request to resolve a dispute. The Service Coordinators shall then meet on the telephone or in person to attempt to reach a mutually satisfactory resolution to the dispute. If the Service Coordinators are unable to reach a mutually satisfactory resolution to the dispute after ten (10) Business Days, the dispute shall be referred to an executive committee comprised of senior executive officers of each of Newco and Company. Such executive committee shall meet on the telephone or in person to attempt to reach a mutually satisfactory resolution to the dispute. If the executive committee is unable to reach a mutually satisfactory resolution to the dispute after ten (10) Business Days, each party may pursue any and all remedies available to it at law or equity, subject to the provisions of Section 7.12. The foregoing shall not preclude a party from seeking any temporary or preliminary injunctive relief from a court of competent jurisdiction while the parties undertake such dispute resolution proceedings.

ARTICLE III

PAYMENT

Section 3.01 Fees. In consideration for each of the Newco Services, Company shall pay to Newco the applicable fee set forth on Exhibit A. In consideration for each of the Company Services, Newco shall pay to Company the applicable fee set forth on Exhibit B.

Section 3.02 Billing and Payment Terms. Except to the extent otherwise explicitly set out in Exhibit A or Exhibit B, any amounts due under this Agreement shall be billed and paid for in the following manner: (a) each Service Provider shall invoice Newco or Company, as applicable, on a monthly basis (such invoice to set forth a description of the Services provided and such other supporting documentation and other information as reasonably requested by Newco or Company) for all Services delivered during the preceding month and any sales, use or similar taxes imposed on such Services; and (b) each such invoice shall be payable within forty-five (45) days after receipt thereof.

ARTICLE IV

ACCESS

Section 4.01 Access. Newco Services Recipients and their invitees shall have access to the Building and the office space provided hereunder in substantially the same manner and on substantially the same basis as provided to Newco Services Recipients during the six (6) month period prior to the Closing (except to the extent any reduction in the manner or basis of the provision of such access is not, individually or in the aggregate with all reductions to any services, materially adverse to the conduct of Newco Services Recipients' business or Newco Services Recipients' relationship with any customer, and provided that such reduction is consistent with a reduction in such access with respect to Newco's business).

Section 4.02 Facilities Security. Newco shall employ the same facility security methods employed by Iceland within the six (6) month period prior to the Closing (except to the extent any reduction in the manner or basis of the provision of such facilities security is not, individually or in the aggregate with all reductions to any services, materially adverse to the conduct of Newco Services Recipients' business or Newco Services Recipients' relationship with any customer, and provided that such reduction is consistent with a reduction in such facility security with respect to Newco's business).

Section 4.03 Records and Inspection Rights. During the Term and for three (3) years thereafter, each Service Provider will maintain accurate records arising from or related to any Service provided by it hereunder, including accounting records and documentation produced in connection with the provision of any such Service and, upon reasonable notice from any Services Recipient, shall make such records available for inspection and copying (at such Services Recipient's expense) during regular business hours.

Section 4.04 Confidential Information. All Confidential Information of one party ("Disclosing Party") received by the other party ("Receiving Party") in connection with this Agreement or by reason of the provision of Services pursuant hereto, shall be held in confidence, and the Receiving Party shall take all steps reasonably necessary to preserve the confidentiality thereof. Without limiting the generality of the foregoing, the Receiving Party shall hold such information in confidence with the same degree of care with respect to such Confidential Information as the Receiving Party would take to preserve the confidentiality of its own similar information. One party's Confidential Information shall not be used or disclosed by the other party for any purpose except as necessary to implement or perform this Agreement or the provision of Services pursuant hereto, or except as required by applicable Law, provided that to the extent permitted under applicable Law the Disclosing Party is given a reasonable opportunity to obtain a protective order. The Receiving Party shall limit its use of and access to the Disclosing Party's Confidential Information to only those of its employees and other representatives whose responsibilities require such use or access. The Receiving Party shall advise all such employees and other representatives of the confidential nature of the Confidential Information and require them to abide by the terms of this Agreement. The Receiving Party shall be liable for any breach of this Agreement by any of its employees and other representatives. Notwithstanding anything otherwise set forth herein, a Receiving Party may disclose Confidential Information: (a) to the extent revealed to a government agency with regulatory or oversight jurisdiction over one or more of the Services Recipients; or (b) in the course of fulfilling any of the Receiving Party's regulatory responsibilities, including responsibilities over members and associated persons under the Exchange Act or other applicable law. "Confidential Information" of a Disclosing Party means all business information disclosed by the Disclosing Party to the Receiving Party in connection with this Agreement or the provision of Services pursuant hereto unless it is or later becomes publicly available through no breach of the terms hereof by the Receiving Party, or it was or later is rightfully developed or obtained by the Receiving Party from independent sources free from any duty of confidentiality. Confidential Information shall include the terms of this Agreement, but not the fact that this Agreement has been signed, the identity of the parties hereto or the identity of Services.

ARTICLE V

TERM AND TERMINATION

Section 5.01 Term and Termination

(a) Subject to Sections 5.01(b) and 5.01(c), the term of this Agreement begins on the Closing Date and shall continue for six (6) months (the "Initial Term"). If any Newco Services Recipient fails to vacate the Office Space (as defined on Schedule A), this Agreement shall automatically renew on a month-to-month basis solely with respect to the Office Space Service until such time as such Newco Services Recipient vacates the Office Space. In consideration of each such automatic renewal month or portion thereof, Company shall pay to Newco the fee for such Office Space applicable to such extended occupation of the Office Space set forth on Exhibit A. "Term" means the Initial Term together with any such renewal term and continuation pursuant to Section 5.01(b) and 5.01(c).

(b) If RASH has not been fully implemented during the Term, this Agreement shall thereafter continue in effect only with respect to the SmartRouter Services (as defined on Exhibit A) until the earlier of (A) such time as RASH is fully implemented by the Company and (B) one year from the Closing Date.

(c) Company may, for convenience, terminate any Newco Service other than the Office Space Service at any time upon thirty (30) days' prior written notice to Newco. Newco may, for convenience, terminate any Company Service at any time upon thirty (30) days' prior written notice to Company. Subject to Section 2.04, either party may terminate this Agreement immediately in the event that the other breaches any of its obligations under this Agreement and does not cure such breach within thirty (30) days after written notice thereof.

ARTICLE VI

INDEMNIFICATION; LIMITATION OF LIABILITY

Section 6.01 Indemnification by Company. Company shall indemnify, defend and hold harmless the Newco Indemnitees from and against any and all losses, Liabilities, claims, damages, obligations, payments, costs and expenses (including the costs and expenses of any and all Actions, demands, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys' fees and expenses in connection therewith) (collectively, "Losses") suffered by the Newco Indemnitees arising out of or resulting from, directly or indirectly:

(a) any breach of this Agreement by Company; or

(b) damages to or loss or destruction of any property (including property of Newco or any Services Recipient or any of their employees or other representatives), injury to or death of any person (including employees or other representatives of Newco or any Services Recipient) or claims by customers or other third parties, which are the result of any Services Recipient's or its respective employee's or other representative's negligent acts or omissions in connection with this Agreement.

Section 6.02 Indemnification by Newco. Newco shall indemnify, defend and hold harmless the Company Indemnitees from and against any and all Losses suffered by the Company Indemnitees arising out of or resulting from, directly or indirectly:

(a) any breach of this Agreement by Newco; or

(b) damages to or loss or destruction of any property (including property of Newco or any Services Recipient or any of their employees or other representatives), injury to or death of any person (including employees or other representatives of Newco or any Services Recipient) or claims by customers or other third parties, which are the result of Newco's or its employee's or other representative's negligent acts or omissions in connection with this Agreement.

Section 6.03 Indemnification Procedures. If a Third Party Claim with respect to which Newco or the Company, as the case may be, may be obligated to provide indemnification, such Indemnitee shall give such Indemnifying Party prompt notice thereof after becoming aware of such Third Party Claim; provided that the failure of any Indemnitee to give notice as provided in this Section 6.03 shall not relieve the related Indemnifying Party of its obligations under this Article VI, except to the extent that such Indemnifying Party is actually prejudiced by such failure to give notice. Such notice shall describe the Third Party Claim in reasonable detail, and, if practicable, shall indicate the estimated amount of the Loss that has been or may be sustained by such Indemnitee. If an Indemnitee gives notice of a Third Party Claim to an Indemnifying Party, the Indemnifying Party shall have thirty (30) days after receipt of notice to elect, at its option, to assume and control the defense of, at its own expense and by its own counsel, any such Third Party Claim and shall be entitled to assert any and all defenses available to the Indemnitee to the fullest extent permitted by applicable law. If the Indemnifying Party shall undertake to compromise or defend any such Third Party Claim, it shall promptly notify the Indemnitee of its intention to do so, and the Indemnitee agrees to cooperate fully with the Indemnifying Party and its counsel in the compromise of, or defense against, any such Third Party Claim; provided, however, that the Indemnifying Party shall not settle, compromise or discharge, or admit any liability with respect to, any such Third Party Claim without the prior written consent of the Indemnitee (which consent will not be unreasonably withheld or delayed) unless the relief consists solely of money damages and includes a provision whereby the plaintiff or claimant in the matter releases the Indemnitees from all liability with respect thereto. Notwithstanding an election to assume the defense of such Action, the Indemnitee shall have the right to employ separate counsel and to participate in the defense of such action or proceeding, and the Indemnifying Party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the Indemnitee shall have determined in good faith that an actual or potential conflict of interest makes representation by the same counsel or the counsel selected by the Indemnifying Party inappropriate or (ii) the Indemnifying Party shall have authorized the Indemnitee to employ separate counsel at the Indemnifying Party's expense. In any event, the Indemnitee and Indemnifying Party and their counsel shall cooperate in the defense of any Third Party Claim and keep such persons informed of all developments relating to any such Third Party Claim, and provide copies of all relevant correspondence and documentation relating thereto. All costs and expenses incurred in connection with the Indemnitee's cooperation shall be borne by the Indemnifying Party. In any event, the Indemnitee shall have the right at its own expense to participate in the defense of such asserted liability. If the Indemnifying Party receiving such notice of Third Party Claim does not elect to defend such Third Party Claim or does not defend such Third Party Claim in good faith, the Indemnitee shall have the right, in addition to any other right or remedy it may have hereunder, at the Indemnifying Party's expense, to defend such Third Party Claim; provided, however, that (i) the Indemnitee shall not have any obligation to participate in the defense of, or defend, any such Third Party Claim; (ii) the Indemnitee's defense of or participation in the defense of any such claim shall not in any way diminish or lessen the obligations of the Indemnifying Party under this Article VI; and (iii) the Indemnitee shall not settle, compromise or discharge, or admit any liability with respect to, any such Third Party Claim without the written consent of the Indemnifying Party (which consent will not be unreasonably withheld or delayed.

Section 6.04 Consequential Damages. EXCEPT WITH RESPECT TO CLAIMS ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY, AND CLAIMS THAT ARISE OUT OF A BREACH OF SECTION 4.04, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS OR ANY INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND (COLLECTIVELY, "CONSEQUENTIAL DAMAGES"), WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, AND WHETHER OR NOT FORESEEABLE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR THE SAKE OF CLARITY, THIS SECTION 6.04 SHALL NOT LIMIT THE PARTIES' INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTIONS 6.01 AND 6.02, EXCEPT THAT NEITHER PARTY SHALL BE ENTITLED TO ASSERT A CLAIM FOR CONSEQUENTIAL DAMAGES AGAINST THE OTHER PURSUANT TO SECTION 6.01 OR 6.02. WITH RESPECT TO CLAIMS FOR CONSEQUENTIAL DAMAGES PERMITTED UNDER THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY FOR ALL SUCH CLAIMS HEREUNDER EXCEED $500,000.

ARTICLE VII

GENERAL PROVISIONS

Section 7.01 Force Majeure. Except for the payment of money, neither party shall be liable for, nor shall either party be considered in breach of this Agreement due to, any delays or failure to form its obligations under this Agreement as a result of a cause, condition or event beyond its control, including any act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications (including the Internet or other networked environment) power or other utility, labor problem, unavailability of supplies, or any other cause, whether similar or dissimilar to any of the foregoing (each, a "Force Majeure Event"), which could not reasonably have been prevented by the non-performing party. To the extent a Service Provider has a right to terminate any agreement necessary for such Service Provider's provisioning of Services because of a Force Majeure Event (whether or not it exercises such right of termination), the other party shall have the same option to immediately terminate its receipt of the applicable Services hereunder.

Section 7.02 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto, but any such assignment by any party hereto shall not relieve such assigning party of any of its obligations or agreements hereunder unless expressly agreed to in writing by each other party hereto in its sole discretion; provided, however, that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto. Notwithstanding the foregoing, upon written notice to the other party, (i) the Company may assign its rights and/or delegate its obligations hereunder to any one or more of its Subsidiaries and (ii) Newco may assign its rights and/or delegate its obligations hereunder to any one or more of its Subsidiaries; provided, that no such assignment or delegation shall relieve Newco or the Company of its obligations hereunder without the written consent of the other.

Section 7.03 No Waiver. No waiver by either party hereto of any breach of any covenant, agreement, representation or warranty hereunder shall be deemed a waiver of any preceding or succeeding breach of the same. The exercise of any right granted to either party herein shall not operate as a waiver of any default or breach on the part of the other party hereto. Each and all of the several rights and remedies of either party hereto under this Agreement shall be construed as cumulative and no one right as exclusive of the others.

Section 7.04 Entire Agreement; Amendments. This Agreement (together with the documents and instruments referred to herein, including the Transaction Agreement (a) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, and (b) is not intended to confer upon any person other than the parties hereto and thereto any rights or remedies; provided, however, that the Indemnitees are intended to be third party beneficiaries of the provisions of Article VI and each of such persons shall have the right to enforce such provisions as if they were parties hereto.

Section 7.05 Notices. All notices, requests and demands to or upon the respective parties hereto, and all statements, accountings and payments given or required to be given hereunder, shall be made by personal service, or sent by certified mail, return receipt requested, postage prepaid, or by facsimile addressed as follows, or to such other address as may hereafter be designated in writing by the respective parties hereto, and shall be deemed received when delivered to the designated address:

if to Newco, to:

Alex Goor
Co-President
Instinet Group, LLC
3 Times Square - 8th Floor
New York, New York 10036

with a copy to:

Instinet Group, LLC
Office of the General Counsel
3 Times Square - 7th Floor
New York, New York 10036

if to Company, to:

Sue Ann Gillespie
Vice President
The Nasdaq Stock Market, Inc.
80 Merritt Blvd.
Trumbull, Connecticut 06611

with a copy to:

The Nasdaq Stock Market, Inc.
Office of the General Counsel - Contracts Group
9600 Blackwell Road
Rockville, Maryland 20850

Section 7.06 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without reference to such State's principles of conflict of laws.

Section 7.07 Expenses. Except as otherwise expressly provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the party hereto incurring such expenses.

Section 7.08 Severability. If any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as neither the economic nor legal substance of the transactions contemplated herein is affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner.

Section 7.09 Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, agency, trust or other association of any kind, each party being individually responsible only for its obligations as set forth in this Agreement. Notwithstanding the terms of this Agreement, each party retains responsibility for the management and operation of all aspects of their respective business, that the role of each Service Provider as it relates to the Services is that of a service provider, and that such Service Provider does not assume any general management or operational responsibility for any aspect of the applicable Services Recipients' business.

Section 7.10 Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 7.11 Specific Performance. The parties agree that if for any reason any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached, immediate and irreparable harm or injury would be caused for which money damages would not be an adequate remedy. Accordingly, each party agrees that, in addition to any other available remedy at law or equity, each party shall be entitled to an injunction restraining any violation or threatened violation of the provisions of this Agreement without the necessity of posting a bond or other form of security. In the event that any Action should be brought in equity to enforce the provisions of this Agreement, no party will allege, and each party hereby waives the defense, that there is an adequate remedy at law.

Section 7.12 Jurisdiction; Venue; Waiver of Jury Trial. Each of the parties hereto (a) consents to submit itself to the exclusive personal jurisdiction of the Delaware Court of Chancery or any Federal court located in the State of Delaware in the event of any Action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (c) agrees that it will not bring any Action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the Delaware Court of Chancery or a Federal court sitting in the State of Delaware. In any Action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, each party irrevocably and unconditionally waives and agrees not to assert by way of motion, as a defense or otherwise any claims that it is not subject to the jurisdiction of the above courts, that such Action is brought in an inconvenient forum or that the venue of such Action is improper. Each of the parties also hereby agrees that any final and unappealable judgment against a party in connection with any such Action shall be conclusive and binding on such party and that such award or judgment may be enforced in any court of competent jurisdiction, either within or outside of the United States. A certified or exemplified copy of such judgment shall be conclusive evidence of the fact and amount of such judgment. To the fullest extent permitted by law, each of the parties irrevocably waives all right to trial by jury in any Action or counterclaim arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement.

Section 7.13 Survival. Article I, Section 4.03 and 4.04, Article VI, and Sections 7.02, 7.03, 7.04, 7.05, 7.06, 7.07, 7.08, 7.09, 7.12 and this Section shall survive termination of this Agreement for the period of time set forth therein or, to the extent not specified, indefinitely.

Section 7.14 Newco Services Recipient Obligations. Notwithstanding anything to the contrary contained in this Agreement, Parent guarantees all Company’s payment and indemnification obligations hereunder.

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

INSTINET HOLDINGS INCORPORATED

By: /s/ Michael Bingle

Name: Michael Bingle
Title: Managing Director

NORWAY ACQUISITION CORP.

By: /s/ David Warren

Name: David Warren
Title: Chief Financial Officer

THE NASDAQ STOCK MARKET, INC.

By: /s/ Adena Friedman

Name: Adena Friedman
Title: Executive Vice President

EXHIBIT 99.3

LICENSE AGREEMENT

This License Agreement ("Agreement") is dated as of December 8, 2005, by and between Instinet Holdings Incorporated f/k/a Iceland Acquisition Corp., a Delaware corporation ("Licensee"), and Norway Acquisition Corp. f/k/a Instinet Group Incorporated, a Delaware corporation ("Licensor").

WHEREAS, Licensee, Licensor and The Nasdaq Stock Market, Inc. ("Parent") entered into that certain Transaction Agreement dated as of April 22, 2005 (the "Transaction Agreement"), pursuant to which Parent and Licensor agreed to sell to Licensee all of the Newco Assets;

WHEREAS, the Transaction Agreement provides that Licensor shall enter into this Agreement with Licensee.

NOW, THEREFORE, in consideration of the Transaction Agreement, the premises and of the mutual covenants, representations, warranties and agreements contained herein and therein, the parties hereto agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

Section 1.01 Capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Transaction Agreement.

ARTICLE II

LICENSE

Section 2.01 License

(a) Licensor hereby grants to Licensee a non-exclusive right and license to use, reproduce and modify the software described in Schedule 1 (the "Software") in both object and source code form. Licensee may exercise its rights to the Software in connection with the conduct of its business, which includes providing services to customers who may be provided with components of the Software to receive such services.

(b) Licensee may grant sublicenses under its rights to the Software to its Subsidiaries and Affiliates.

Section 2.02 Delivery. Within ten (10) days after the Closing Date, and again six (6) months thereafter, Licensor shall deliver one (1) then-current copy of the Software, in both source and object code format, to Licensee at Licensee's address set forth in Section 8.04. Until the date six (6) months following the Closing Date ("Software Services Termination Date"), Licensor will reasonably co-operate with Licensee's efforts to render the Software operational

within Licensee's environment, provided that Licensee will compensate Licensor for any such co-operation provided on a time and materials basis at the Hourly Services Rate stated in Schedule 1.

Section 2.03 Provisioning of Interim Services. Until the Software Services Termination Date, Licensor will provide Licensee with access to and use of the Software from Licensor's facilities, including providing the electronic files generated by such access and use of IFS to Licensee, consistent with (i) with respect to IFS, Licensee's access to and use of such Software in the six (6) months before the Closing (except to the extent any reduction to such access and use is not, individually or in the aggregate, materially adverse to the conduct of Licensee's business or Licensee's relationship with any customer, and provided that such reduction is consistent with a reduction in such access and use with respect to Licensor's business) and, (ii) with respect to VTE, the manner in which Iceland provided such Software to its customers in the six (6) months before the Closing. The base cost of such access and use is included within the annual fees for the Software stated in Schedule 1. Until the Software Services Termination Date, subject to Section 6.01(a) of the Transaction Agreement, Licensee may request, and Licensor may agree, to provide additional services with respect to the Licensed Software. Licensee will compensate Licensor for Licensor's performance of any such additional services on a time and materials basis at the Hourly Services Rates stated in Schedule 1, except for additional services that constitute enhancements to the Software, the terms of which shall be separately negotiated and agreed by the parties.

Section 2.04 Disclaimer of Warranties; Sole Risk

(a) EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 2.02 AND 2.03, LICENSEE ACKNOWLEDGES AND AGREES THAT THE SOFTWARE IS LICENSED TO IT AND THE PROVISION OF ALL SERVICES AND OTHER ASSISTANCE ON AN "AS IS, WHERE IS" BASIS, AND THAT LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER IN CONNECTION WITH THE SOFTWARE OR THE SERVICES, AND LICENSOR EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED INCLUDING ANY WARRANTY AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

(b) EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 2.02 AND 2.03, LICENSEE ACKNOWLEDGES AND AGREES THAT ITS USE OF THE SOFTWARE AND SERVICES IS AT ITS SOLE RISK.

ARTICLE III

INTELLECTUAL PROPERTY RIGHTS

Section 3.01 Licensor Ownership. Licensee acknowledges that Licensor owns all right, title and interest in and to the Software and any modifications to the Software made by Licensor or on its behalf, and no right or title to the Software is transferred to Licensee by virtue of this Agreement other than as stated in this Agreement.

Section 3.02 Licensee Ownership. Licensee shall own all modifications of the Software made by Licensee or by third parties on its behalf ("Modifications"). Any such modification or attempted modification shall be at Licensee's sole risk and expense.

ARTICLE IV

PAYMENT

Section 4.01 Fees. In consideration of all rights granted herein, Licensee shall pay to Licensor an annual fee for each component of Software for each year commencing with the date of the Closing as stated in Schedule 1.

Section 4.02 Billing and Payment Terms. Any amounts due under this Agreement shall be billed and paid for in the following manner: (a) on the Closing, Licensee shall pay to Licensor the annual fee for the upcoming year and any sales, use or similar taxes imposed on Licensee's use of the Software which Licensor is obligated to and does collect and pay; (b) thereafter, Licensor shall invoice Licensee on an annual basis, measured from the Closing Date, for the amount of the annual fee for the upcoming year and any such sales, use or similar taxes imposed on Licensee's use of the Software which Licensor is obligated to and does collect and pay; and (c) each such invoice shall be payable within thirty (30) days after the Licensee's receipt of the invoice, but no earlier than the renewal anniversary date.

ARTICLE V

CONFIDENTIAL INFORMATION

Section 5.01 Confidential Information. All Confidential Information of one party ("Disclosing Party") received by the other party ("Receiving Party") in connection with this Agreement or by reason of the provision of services pursuant hereto, shall be held in confidence, and the Receiving Party shall take all steps reasonably necessary to preserve the confidentiality thereof. Without limiting the generality of the foregoing, the Receiving Party shall hold such information in confidence with the same degree of care with respect to such Confidential Information as the Receiving Party would take to preserve the confidentiality of its own similar information. One party's Confidential Information shall not be used or disclosed by the other party for any purpose except as necessary to implement or perform this Agreement or the provision of services pursuant hereto, or except as required by applicable Law, provided that to the extent permitted under applicable Law the Disclosing Party is given a reasonable opportunity to obtain a protective order. The Receiving Party shall limit its use of and access to the Disclosing Party's Confidential Information to only those of its employees and other representatives whose responsibilities require such use or access. The Receiving Party shall advise all such employees and other representatives of the confidential nature of the Confidential Information and require them to abide by the terms of this Agreement. The Receiving Party shall be liable for any breach of this Agreement by any of its employees and other representatives. Notwithstanding anything otherwise set forth herein, a Receiving Party may disclose Confidential Information: (a) to the extent revealed to a government agency with regulatory or oversight jurisdiction over the Receiving Party; or (b) in the course of fulfilling any of the Receiving Party's regulatory responsibilities, including responsibilities over members and

associated persons under the Exchange Act or other applicable law. “Confidential Information” of a Disclosing Party means all business information disclosed by the Disclosing Party to the Receiving Party in connection with this Agreement or the provision of services pursuant hereto unless it is or later becomes publicly available through no breach of the terms hereof by the Receiving Party, or it was or later is rightfully developed or obtained by the Receiving Party from independent sources free from any duty of confidentiality. Confidential Information shall include the terms of this Agreement, but not the fact that this Agreement has been signed, the identity of the parties hereto or the identity of services.

ARTICLE VI

TERM AND TERMINATION

Section 6.01 Term. The initial term of this Agreement begins on the Closing Date and shall continue for six (6) years (the “Initial Term”). Thereafter, this Agreement shall not renew unless Licensee has given notice pursuant to Section 6.02.

Section 6.02 Termination and Renewal. Licensee may renew this Agreement following the Initial Term for successive one-year terms by providing Licensor with written notice at least thirty (30) days before the end of the then-current term. “Term” means the Initial Term together with any such renewal term. For the sake of clarity, except for the termination rights contained in this Section 6.02, the earliest effective date of any such termination is six (6) years following the Closing Date. Licensor may terminate this Agreement immediately in the event that Licensee materially breaches any of its obligations under this Agreement and does not cure the breach within thirty (30) days after written notice thereof. In addition, Licensor may terminate this Agreement immediately upon notice in the event of any Third Party Claim or Claims brought against Licensor arising out of or related to Licensee’s, its customers’, its Subsidiaries’ or its Affiliates’ use of the Software that is or are reasonably likely to result, either individually or in the aggregate, in Licensor incurring material Losses. Licensee shall be entitled to a pro rata refund of any pre-paid annual fee for any period that follows any termination in accordance with the preceding sentence or (ii) for Licensor’s material breach not materially cured in accordance with this section. Notwithstanding the foregoing, if Licensor materially breaches its obligation to provide services under Section 2.03, Licensee shall be entitled to a refund of the annual fees paid by it for the first year of this Agreement, but will not otherwise have the right to terminate this Agreement; for avoidance of doubt, if such breach occurs, Newco will remain obligated as provided in this Agreement to pay all fees for the remainder of the Term and the software license will remain in effect.

ARTICLE VII

INDEMNIFICATION; LIMITATION OF LIABILITY

Section 7.01 Indemnification by Licensee. Licensee shall indemnify, defend and hold harmless the Company Indemnitees from and against any and all losses, Liabilities, claims, damages, obligations, payments, costs and expenses (including the costs and expenses of any and all Actions, demands, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys’ fees and expenses in connection therewith) (collectively,

"Losses") suffered by the Company Indemnitees arising out of or resulting from, directly or indirectly, (i) any breach of this Agreement by Licensee, and (ii) any claim by any third party that any Modification infringes or otherwise violates the intellectual property rights of such third party.

Section 7.02 Indemnification by Licensor. Licensor shall indemnify, defend and hold harmless Licensee, Licensee's parent, and each of their respective directors, officers, partners, members, employees and other representatives, advisors and agents (collectively, "Representatives"), Subsidiaries and Affiliates and all direct and indirect Representatives of such Representatives, Subsidiaries and Affiliates (collectively, the "Newco Indemnitees") from and against any and all Losses suffered by the Newco Indemnitees arising out of or resulting from, directly or indirectly, any breach of this Agreement by Licensor.

Section 7.03 Indemnification Procedures

(a) As used herein, "Indemnitor" and "Indemnitee" shall mean (i) Licensee and a Company Indemnitee, respectively, for indemnification covered by Section 7.01 and (ii) Licensor and Newco Indemnitee, respectively, for indemnification covered by Section 7.02.

(b) If an Indemnitee shall receive notice of a Third Party Claim with respect to which Indemnitor may be obligated to provide indemnification, such Indemnitee shall give Indemnitor prompt notice thereof after becoming aware of such Third Party Claim; provided that the failure of any Indemnitee to give notice as provided in this Section 7.03 shall not relieve Indemnitor of its obligations under this Article VII, except to the extent that Indemnitor is actually prejudiced by such failure to give notice. Such notice shall describe the Third Party Claim in reasonable detail, and, if practicable, shall indicate the estimated amount of the Loss that has been or may be sustained by such Indemnitee.

(c) If an Indemnitee gives notice of a Third Party Claim to Indemnitor, Indemnitor shall have thirty (30) days after receipt of notice to elect, at its option, to assume and control the defense of, at its own expense and by its own counsel, any such Third Party Claim and shall be entitled to assert any and all defenses available to the Indemnitee to the fullest extent permitted by applicable law. If Indemnitor shall undertake to compromise or defend any such Third Party Claim, it shall promptly notify the Indemnitee of its intention to do so, and the Indemnitee agrees to cooperate fully with Indemnitor and its counsel in the compromise of, or defense against, any such Third Party Claim; provided, however, that Indemnitor shall not settle, compromise or discharge, or admit any liability with respect to, any such Third Party Claim without the prior written consent of the Indemnitee (which consent will not be unreasonably withheld or delayed) unless the relief consists solely of money damages and includes a provision whereby the plaintiff or claimant in the matter releases the Indemnitee from all liability with respect thereto. Notwithstanding an election to assume the defense of such Action, the Indemnitee shall have the right to employ separate counsel and to participate in the defense of such action or proceeding, and Indemnitor shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the Indemnitee shall have determined in good faith that an actual or potential conflict of interest makes representation by the same counsel or the counsel selected by Indemnitor inappropriate or (ii) Indemnitor shall have authorized the Indemnitee to employ

separate counsel at Indemnitor's expense. In any event, the Indemnitee and Indemnitor and their counsel shall cooperate in the defense of any Third Party Claim and keep such persons informed of all developments relating to any such Third Party Claim, and provide copies of all relevant correspondence and documentation relating thereto. All costs and expenses incurred in connection with the Indemnitee's cooperation shall be borne by Indemnitor. In any event, the Indemnitee shall have the right at its own expense to participate in the defense of such asserted liability. If Indemnitor does not elect to defend such Third Party Claim or does not defend such Third Party Claim in good faith, the Indemnitee shall have the right, in addition to any other right or remedy it may have hereunder, at Indemnitor's expense, to defend such Third Party Claim; provided, however, that (i) the Indemnitee shall not have any obligation to participate in the defense of, or defend, any such Third Party Claim; (ii) the Indemnitee's defense of or participation in the defense of any such claim shall not in any way diminish or lessen the obligations of Indemnitor under this Article VII; and (iii) the Indemnitee shall not settle, compromise or discharge, or admit any liability with respect to, any such Third Party Claim without the written consent of Indemnitor (which consent will not be unreasonably withheld or delayed).

Section 7.04 Consequential Damages. EXCEPT WITH RESPECT TO CLAIMS ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY, AND CLAIMS THAT ARISE OUT OF A BREACH OF SECTION 5.01, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS OR ANY INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND (COLLECTIVELY, "CONSEQUENTIAL DAMAGES"), WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, AND WHETHER OR NOT FORESEEABLE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR THE SAKE OF CLARITY, THIS SECTION 7.04 SHALL NOT LIMIT THE PARTIES' INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTIONS 7.01 AND 7.02, EXCEPT THAT NEITHER PARTY SHALL BE ENTITLED TO ASSERT A CLAIM FOR CONSEQUENTIAL DAMAGES AGAINST THE OTHER PURSUANT TO SECTION 7.01 OR 7.02. WITH RESPECT TO CLAIMS FOR CONSEQUENTIAL DAMAGES PERMITTED UNDER THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY FOR ALL SUCH CLAIMS HEREUNDER EXCEED $500,000.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.01 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto, but any such assignment by any party hereto shall not relieve such assigning party of any of its obligations or agreements hereunder unless expressly agreed to in writing by each other party hereto in its sole discretion; provided, however, that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto. Notwithstanding the foregoing, upon written notice to the other party, (i) Licensee may assign its rights and/or delegate its obligations hereunder to any one or more of its

Subsidiaries and (ii) Licensor may assign its rights and/or delegate its obligations hereunder to any one or more of its Subsidiaries; provided, that no such assignment or delegation shall relieve Licensee or Licensor of its obligations hereunder without the written consent of the other.

Section 8.02 No Waiver. No waiver by either party hereto of any breach of any covenant, agreement, representation or warranty hereunder shall be deemed a waiver of any preceding or succeeding breach of the same. The exercise of any right granted to either party herein shall not operate as a waiver of any default or breach on the part of the other party hereto. Each and all of the several rights and remedies of either party hereto under this Agreement shall be construed as cumulative and no one right as exclusive of the others.

Section 8.03 Entire Agreement; Amendments. This Agreement (together with the documents and instruments referred to herein, including the Transaction Agreement) (a) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, and (b) is not intended to confer upon any person other than the parties hereto and thereto any rights or remedies; provided, however, that the Indemnitees are intended to be third party beneficiaries of the provisions of Article VII and each of such persons shall have the right to enforce such provisions as if they were parties hereto.

Section 8.04 Notices. All notices, requests and demands to or upon the respective parties hereto, and all statements, accountings and payments given or required to be given hereunder, shall be made by personal service, or sent by certified mail, return receipt requested, postage prepaid, or by facsimile addressed as follows, or to such other address as may hereafter be designated in writing by the respective parties hereto, and shall be deemed received when delivered to the designated address:

if to Licensee, to:

Instinet Group, LLC
Office of the General Counsel
3 Times Square - 7th Floor
New York, New York 10036

if to Licensor, to:

The Nasdaq Stock Market, Inc.
Office of the General Counsel - Contracts Group
9600 Blackwell Road
Rockville, Maryland 20850

Section 8.05 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without reference to such State’s principles of conflict of laws.

Section 8.06 Expenses. Except as otherwise expressly provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the party hereto incurring such expenses.

Section 8.07 Severability. If any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as neither the economic nor legal substance of the transactions contemplated herein is affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner.

Section 8.08 Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, agency, trust or other association of any kind, each party being individually responsible only for its obligations as set forth in this Agreement. Notwithstanding the terms of this Agreement, each party retains responsibility for the management and operation of all aspects of their respective business, that the role of Licensor as it relates to the services is that of a service provider, and that Licensor does not assume any general management or operational responsibility for any aspect of the Licensee's business.

Section 8.09 Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 8.10 Specific Performance. The parties agree that if for any reason any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached, immediate and irreparable harm or injury would be caused for which money damages would not be an adequate remedy. Accordingly, each party agrees that, in addition to any other available remedy at law or equity, each party shall be entitled to an injunction restraining any violation or threatened violation of the provisions of this Agreement without the necessity of posting a bond or other form of security. In the event that any Action should be brought in equity to enforce the provisions of this Agreement, no party will allege, and each party hereby waives the defense, that there is an adequate remedy at law.

Section 8.11 Jurisdiction; Venue; Waiver of Jury Trial. Each of the parties hereto (a) consents to submit itself to the exclusive personal jurisdiction of the Delaware Court of Chancery or any Federal court located in the State of Delaware in the event of any Action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (c) agrees that it will not bring any Action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the Delaware Court of Chancery or a Federal court sitting in the State of Delaware. In any Action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, each party irrevocably and unconditionally waives and agrees not to assert by way of motion, as a defense or otherwise any claims that it is not

subject to the jurisdiction of the above courts, that such Action is brought in an inconvenient forum or that the venue of such Action is improper. Each of the parties also hereby agrees that any final and unappealable judgment against a party in connection with any such Action shall be conclusive and binding on such party and that such award or judgment may be enforced in any court of competent jurisdiction, either within or outside of the United States. A certified or exemplified copy of such judgment shall be conclusive evidence of the fact and amount of such judgment. To the fullest extent permitted by law, each of the parties irrevocably waives all right to trial by jury in any Action or counterclaim arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement.

Section 8.12 Survival. Articles I and III, Section 5.01, Article VII, and Sections 8.04, 8.05 and 8.10 shall survive termination of this Agreement for any reason.

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

NORWAY ACQUISITION CORP.

By: /s/ David Warren

Name: David Warren
Title: Chief Financial Officer

INSTINET HOLDINGS INCORPORATED

By: /s/ Michael Bingle

Name: Michael Bingle
Title: Managing Director

EXHIBIT 99.4

CO-LOCATION AGREEMENT

This Co-location Agreement ("Agreement"), dated as of December 8, 2005, by and between Instinet Holdings Incorporated f/k/a Iceland Acquisition Corp., a Delaware corporation ("Newco"), Norway Acquisition Corp. f/k/a Instinet Group Incorporated, a Delaware corporation ("Company") and The Nasdaq Stock Market, Inc., a Delaware corporation ("Parent").

WHEREAS, Company entered into that certain Agreement and Plan of Merger, dated as of April 22, 2005, by and among Instinet Group Incorporated, a Delaware corporation ("Iceland"), Parent and Company, pursuant to which, among other things, Company merged with and into Iceland (the "Merger");

WHEREAS, concurrently therewith, Newco, Company and Parent entered into that certain Transaction Agreement dated as of April 22, 2005 (the "Transaction Agreement"), pursuant to which Parent and Company agreed to sell to Newco all of the Newco Assets;

WHEREAS, the Transaction Agreement provides that Newco and Company shall enter into certain Ancillary Agreements, including this Agreement; and

WHEREAS, pursuant to the Transaction Agreement and in order to ensure an orderly transition of Company following the Merger and sale of the Newco Assets, Newco and Company are entering into this Agreement, pursuant to which Newco will provide or cause to be provided certain co-location services to Company and its Subsidiaries following the Closing Date.

NOW, THEREFORE, in consideration of the Transaction Agreement, the premises and of the mutual covenants, representations, warranties and agreements contained herein and therein, the parties hereto agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

Section 1.01 Capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Transaction Agreement.

ARTICLE II

LICENSE

Section 2.01 Co-Location Space Use

(a) Co-Location Services. From and after the Closing Date, on the terms and subject to the conditions contained herein and the obtaining by Newco of any necessary consents, Company and its Subsidiaries (collectively, "Services Recipients") may use,

within the existing data center space designated on Exhibit A (the "Licensed Space"), up to that amount of segregated space and consume up to that amount of power resources designated on Exhibit A for the purpose of hosting computer and communication equipment of Services Recipients and their customers. The Newco resources required to support Services Recipients use of Licensed Space shall be consistent with the resources and intensity of use of those resources provided Services Recipients' predecessor in the six months before the effective date of the Transaction Agreement (except to the extent any reduction to such resources is not, individually or in the aggregate with all reductions to any services, materially adverse to the conduct of Services Recipients' business or Services Recipients' relationship with any customer, and provided such reduction is consistent with a reduction in such resources with respect to Newco's business).

(b) Common Area Access. From and after the Closing Date, on the terms and subject to the conditions contained herein and the obtaining by Newco of any necessary consents, Services Recipients may enter and use the common areas of the Harborside Financial Center Data Center (the "Building"), including general parking areas (designated for employees), common entrances, common elevators and common bathrooms, in a manner consistent with the access to such common areas Services Recipients predecessor had and the intensity of their use of such common areas before the Closing (except to the extent any reduction to such access is not, individually or in the aggregate with all reductions to any services, materially adverse to the conduct of Services Recipients' business or Services Recipients' relationship with any customer, and provided that such reduction is consistent with a reduction in such access with respect to Newco's business), and subject to such reasonable rules and regulations as exist in connection with such areas as of the Closing Date and any restrictions imposed by the owner or operator of the Building.

(c) Customer Co-location. From and after the Closing Date, on the terms and subject to the conditions contained herein and the obtaining by Newco of any necessary consents, Services Recipients are permitted to allow their customers to co-locate with the Licensed Space or common areas provided that (i) such co-location is consistent with any restrictions imposed by the owner or operator of the Building; (ii) with each new co-located customer following the Closing, Services Recipients shall enter into a written agreement that incorporates the conditions and restrictions set forth herein with respect to use of the Licensed Space; and (iii) any amendment to any Existing Co-Location Agreement (as defined below) shall incorporate the conditions and restrictions set forth herein with respect to use of the Licensed Space.

(d) Telecommunications. At the request of the Services Recipients and subject to obtaining any necessary consents, Newco will take necessary steps, at Company's cost and expense, to transfer telecommunications contracts for lease lines relating solely to the Services Recipients' business and will take reasonable steps to allow the Services Recipients to continue to use shared circuits if needed to conduct business in a pre-Closing manner with Services Recipients bearing half the costs of any such shared circuits.

Section 2.02 Services. In addition, Newco shall provide from time to time upon the request of Services Recipients the support services set forth in Exhibit A (the "Support Services" and, together with the provision of the Licensed Space, the "Services"). The Support

Services will be provided in all respects with the same frequency, performance capability, functionality, capacity and accuracy as such services were provided by Iceland during the six (6) month period prior to the Closing (except to the extent any reduction in the frequency, performance capability, functionality, capacity and accuracy of such services is not, individually or in the aggregate with all reductions to any services, materially adverse to the conduct of Services Recipients' business or Services Recipients' relationship with any customer, and provided that such reduction is consistent with a reduction in the frequency, performance capability, functionality, capacity and accuracy of such services with respect to Newco's business), provided that the Services shall be provided at all times (a) to Services Recipients in accordance with applicable law; and (b) to Services Recipients' co-located customers that are parties to a co-location agreement set forth on Exhibit B (collectively, the "Existing Co-location Agreements"), in accordance with the terms of the respective Existing Co-location Agreement.

Section 2.03 Equipment Installation and Removal. Prior to the end of the Term, Services Recipients shall remove from the Licensed Space all of their property and the property of their customers, and shall repair any damage to the Licensed Space or the Building resulting from the installation, use or removal of such property.

Section 2.04 Condition of Licensed Space. Services Recipients hereby acknowledge that they have inspected the Licensed Space and agree to accept same in its "as is" condition as of the Closing Date, provided that Newco agrees to maintain the Licensed Space in such condition for the Term. Company further acknowledges and agrees that the Services Recipients, co-located customers and their employees and other representatives shall use due care in their use of the Licensed Space and any common areas, the fixtures and other existing structures in such locations.

Section 2.05 Alterations. Services Recipients, at their expense, shall have the right to make installations, repairs, alterations, improvements, changes, decorations or additions in or to the Licensed Space, provided that Services Recipients will not make any alterations that (i) are structural in nature; (ii) affect the exterior of any structural portions or components of the Building; or (iii) negatively affect Newco, any of its co-located customers, or any equipment of Newco or its co-located customers.

Section 2.06 TCP/IP Addresses. Upon termination or expiration of this Agreement for any reason, Newco, at the cost and expense of Services Recipients, shall take all steps and execute all documents to transfer all registered TCP/IP addresses used by Services Recipients or their customers to the Company or its designee(s).

Section 2.07 Service Coordinators; Dispute Resolution

(a) Newco and Company shall each nominate a representative to act as the primary contact person with respect to the performance of the Services (each, a "Service Coordinator"). Unless otherwise agreed by the parties, all communications relating to this Agreement and to the Services provided hereunder shall be directed to the Service Coordinators. The initial Service Coordinators for Newco and Company are set forth on Exhibit C, as may be modified by either party from time to time upon prior written notice to the other.

(b) In the event of any dispute arising out of or related to this Agreement, one party shall notify the other of its request to resolve a dispute. The Service Coordinators shall then meet on the telephone or in person to attempt to reach a mutually satisfactory resolution to the dispute. If the Service Coordinators are unable to reach a mutually satisfactory resolution to the dispute after ten (10) Business Days, the dispute shall be referred to an executive committee comprised of senior executive officers of each of Newco and Company. Such executive committee shall meet on the telephone or in person to attempt to reach a mutually satisfactory resolution to the dispute. If the executive committee is unable to reach a mutually satisfactory resolution to the dispute after ten (10) Business Days, each party may pursue any and all remedies available to it at law or equity, subject to Section 7.12. The foregoing shall not preclude a party from seeking any temporary or preliminary injunctive relief from a court of competent jurisdiction while the parties undertake such dispute resolution proceedings.

ARTICLE III PAYMENT

Section 3.01 Fees. In consideration for the each of the Services, Company shall pay to Newco the applicable fee set forth on Exhibit A. In addition, Services Recipients are responsible for and shall pay (a) a pro-rata portion of all expenses and increased costs resulting from improvements made during the Term for the common benefit of Services Recipients, their customers, and Newco, which pro-rata portion shall reflect 30% of such improvements during the Term upon mutual agreement of the parties, it being understood that Services Recipients are also responsible for and shall pay any related pro-rata portion of amortization expense; (b) all expenses and increased costs resulting from any improvements requested by and made for the sole benefit of the Services Recipients or their customers, and (c) a pro-rata portion of all expenses and increased costs resulting from improvements made during the Term as necessary to maintain the Services in accordance with the requirements of this Agreement, which pro-rata portion shall reflect 30% of such improvements during the Term, it being understood that Services Recipients are also responsible for and shall pay any related pro-rata portion of amortization expense.

Section 3.02 Billing and Payment Terms. Any amounts due under this Agreement shall be billed and paid for in the following manner: (a) Newco shall invoice Company on a monthly basis (such invoice to set forth a description of the Services provided and such other supporting documentation and other information as reasonably requested by Company) for all Services delivered during the preceding month and any sales, use or similar taxes imposed on such Services; and (b) each such invoice shall be payable within thirty (30) days after Company's receipt of the invoice.

ARTICLE IV ACCESS

Section 4.01 Access. On the terms and subject to the conditions contained herein, Services Recipients and their customers may have access to the Licensed Space twenty-four (24) hours per day for each day of the Term. At all times during the Term, the Services

Recipients shall provide Newco personnel providing the Support Services reasonable ingress to and egress from the Licensed Space for any purpose reasonably connected with the delivery of Support Services hereunder. In addition, Newco or the authorized agents of Newco shall have the right to enter the Licensed Space in the case of an emergency, or to make repairs or other alterations and additions thereto or to any other portion of the Building.

Section 4.02 Facilities Security. Newco shall employ the same facility security methods employed by Iceland within the six (6) month period prior to the Closing (except to the extent any reduction in the manner or basis of the provision of such facilities security is not, individually or in the aggregate with all reductions to any services, materially adverse to the conduct of Services Recipients' business or Services Recipients' relationship with any customer, and provided that such reduction is consistent with a reduction in such facilities security with respect to Newco's business).

Section 4.03 Equipment Security. Newco acknowledges that, as a result of the proximity of the Licensed Space to other areas of the Building, Newco or its invitees may have access to Services Recipients' and their customers' equipment. Newco will not access, disable, service, interfere with or tamper with, and will ensure that its invitees will not access, disable, service, interfere with or tamper with, such equipment. Likewise, Services Recipients will not access, disable, service, interfere with or tamper with, and will ensure that their invitees will not access, disable, service, interfere with or tamper with, any computer or communications equipment not controlled by Services Recipients or their customers. If Newco, a Services Recipient or a Services Recipient customers determines or is notified that any of its personnel or invitees have accessed, disabled, serviced, interfered with or tampered with such equipment, such Person shall immediately terminate such personnel's access to the Building. The parties acknowledge that certain equipment in the Licensed Space is shared equipment, which may be accessed, serviced or disabled by Newco, or as agreed by Newco, by Services Recipients.

Section 4.04 Records and Inspection Rights. During the Term and for three (3) years thereafter, Newco will maintain accurate records arising from or related to any Service provided hereunder, including (a) accounting records and documentation produced in connection with the provision of any Service and (b) records with respect to improvements under Section 3.01 and, upon reasonable notice from any Services Recipient, shall make such records available for inspection and copying (at such Services Recipient's expense) during regular business hours.

Section 4.05 Confidential Information. All Confidential Information of one party ("Disclosing Party") received by the other party ("Receiving Party") in connection with this Agreement or by reason of the provision of Services pursuant hereto, shall be held in confidence, and the Receiving Party shall take all steps reasonably necessary to preserve the confidentiality thereof. Without limiting the generality of the foregoing, the Receiving Party shall hold such information in confidence with the same degree of care with respect to such Confidential Information as the Receiving Party would take to preserve the confidentiality of its own similar information. One party's Confidential Information shall not be used or disclosed by the other party for any purpose except as necessary to implement or perform this Agreement or the provision of Services pursuant hereto, or except as required by applicable Law, provided that to the extent permitted under applicable Law the Disclosing Party is given a reasonable opportunity to obtain a protective order. The Receiving Party shall limit its use of and access to the

Disclosing Party's Confidential Information to only those of its employees and other representatives whose responsibilities require such use or access. The Receiving Party shall advise all such employees and other representatives of the confidential nature of the Confidential Information and require them to abide by the terms of this Agreement. The Receiving Party shall be liable for any breach of this Agreement by any of its employees and other representatives. Notwithstanding anything otherwise set forth herein, a Receiving Party may disclose Confidential Information: (a) to the extent revealed to a government agency with regulatory or oversight jurisdiction over one or more of the Services Recipients; or (b) in the course of fulfilling any of the Receiving Party's regulatory responsibilities, including responsibilities over members and associated persons under the Exchange Act or other applicable law. "Confidential Information" of a Disclosing Party means all business information disclosed by the Disclosing Party to the Receiving Party in connection with this Agreement or the provision of Services pursuant hereto unless it is or later becomes publicly available through no breach of the terms hereof by the Receiving Party, or it was or later is rightfully developed or obtained by the Receiving Party from independent sources free from any duty of confidentiality. Confidential Information shall include the terms of this Agreement, but not the fact that this Agreement has been signed, the identity of the parties hereto or the identity of Services.

ARTICLE V

TERM AND TERMINATION

Section 5.01 Term and Termination

(a) The initial term of this Agreement begins on the Closing Date and shall continue for six (6) months (the "Initial Term"). "Term" means the Initial Term together with any Renewal Terms (as defined below) and automatic renewals in accordance with Section 5.01(b).

(b) At the conclusion of the Initial Term, this Agreement shall be renewable, at Company's option subject to the terms of this Section 5.01(b) for no more than two (2) additional six (6) month terms (each a "Renewal Term"). Within three (3) months after the Closing Date, Company shall provide notice to Newco of its renewal of this Agreement for an initial Renewal Term. Prior to the end of the Initial Term, Company shall provide notice to Newco of its renewal of this Agreement for a second Renewal Term. If Services Recipients or their customers fail to vacate the Licensed Space or to comply with Section 2.03 by the end of the Initial Term or any Renewal Term, then this Agreement shall automatically renew on a month-to-month basis until such time as Services Recipients and their customers vacate the Licensed Space and comply with Section 2.03. In consideration of each such automatic renewal month or portion thereof, Company shall pay to Newco the fee set forth on Exhibit A for such month-to-month renewal.

(c) Subject to Section 2.07, either party may terminate this Agreement immediately in the event that the other breaches any of its obligations under this Agreement and does not cure the breach within thirty (30) days after written notice thereof.

ARTICLE VI

INDEMNIFICATION; LIMITATION OF LIABILITY

Section 6.01 Indemnification by Company. Company shall indemnify, defend and hold harmless the Newco Indemnitees from and against any and all losses, Liabilities, claims, damages, obligations, payments, costs and expenses (including the costs and expenses of any and all Actions, demands, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys' fees and expenses in connection therewith) (collectively, "Losses") suffered by the Newco Indemnitees arising out of or resulting from, directly or indirectly:

(a) any breach of this Agreement by Company; or

(b) damages to or loss or destruction of any property (including property of Newco or any Services Recipient or any of their employees or other representatives), injury to or death of any person (including employees or other representatives of Newco or any Services Recipient) or claims by customers or other third parties, which are the result of any Services Recipient's or its respective employee's or other representative's negligent acts or omissions in connection with this Agreement.

Section 6.02 Indemnification by Newco. Newco shall indemnify, defend and hold harmless the Company Indemnitees from and against any and all Losses suffered by the Company Indemnitees arising out of or resulting from, directly or indirectly:

(a) any breach of this Agreement by Newco; or

(b) damages to or loss or destruction of any property (including property of Newco or any Services Recipient or any of their employees or other representatives), injury to or death of any person (including employees or other representatives of Newco or any Services Recipient) or claims by customers or other third parties, which are the result of Newco's or its employee's or other representative's negligent acts or omissions in connection with this Agreement.

Section 6.03 Indemnification Procedures

(a) If a Third Party Claim with respect to which Newco or the Company, as the case may be, may be obligated to provide indemnification, such Indemnitee shall give such Indemnifying Party prompt notice thereof after becoming aware of such Third Party Claim; provided that the failure of any Indemnitee to give notice as provided in this Section 6.03 shall not relieve the related Indemnifying Party of its obligations under this Article VI, except to the extent that such Indemnifying Party is actually prejudiced by such failure to give notice. Such notice shall describe the Third Party Claim in reasonable detail, and, if practicable, shall indicate the estimated amount of the Loss that has been or may be sustained by such Indemnitee.

(b) If an Indemnitee gives notice of a Third Party Claim to an Indemnifying Party, the Indemnifying Party shall have thirty (30) days after receipt of notice to

elect, at its option, to assume and control the defense of, at its own expense and by its own counsel, any such Third Party Claim and shall be entitled to assert any and all defenses available to the Indemnitee to the fullest extent permitted by applicable law. If the Indemnifying Party shall undertake to compromise or defend any such Third Party Claim, it shall promptly notify the Indemnitee of its intention to do so, and the Indemnitee agrees to cooperate fully with the Indemnifying Party and its counsel in the compromise of, or defense against, any such Third Party Claim; provided, however, that the Indemnifying Party shall not settle, compromise or discharge, or admit any liability with respect to, any such Third Party Claim without the prior written consent of the Indemnitee (which consent will not be unreasonably withheld or delayed) unless the relief consists solely of money damages and includes a provision whereby the plaintiff or claimant in the matter releases the Indemnitees from all liability with respect thereto. Notwithstanding an election to assume the defense of such Action, the Indemnitee shall have the right to employ separate counsel and to participate in the defense of such action or proceeding, and the Indemnifying Party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the Indemnitee shall have determined in good faith that an actual or potential conflict of interest makes representation by the same counsel or the counsel selected by the Indemnifying Party inappropriate or (ii) the Indemnifying Party shall have authorized the Indemnitee to employ separate counsel at the Indemnifying Party's expense. In any event, the Indemnitee and Indemnifying Party and their counsel shall cooperate in the defense of any Third Party Claim and keep such persons informed of all developments relating to any such Third Party Claim, and provide copies of all relevant correspondence and documentation relating thereto. All costs and expenses incurred in connection with the Indemnitee's cooperation shall be borne by the Indemnifying Party. In any event, the Indemnitee shall have the right at its own expense to participate in the defense of such asserted liability. If the Indemnifying Party receiving such notice of Third Party Claim does not elect to defend such Third Party Claim or does not defend such Third Party Claim in good faith, the Indemnitee shall have the right, in addition to any other right or remedy it may have hereunder, at the Indemnifying Party's expense, to defend such Third Party Claim; provided, however, that (i) the Indemnitee shall not have any obligation to participate in the defense of, or defend, any such Third Party Claim; (ii) the Indemnitee's defense of or participation in the defense of any such claim shall not in any way diminish or lessen the obligations of the Indemnifying Party under this Article VI; and (iii) the Indemnitee shall not settle, compromise or discharge, or admit any liability with respect to, any such Third Party Claim without the written consent of the Indemnifying Party (which consent will not be unreasonably withheld or delayed).

Section 6.04 Consequential Damages. EXCEPT WITH RESPECT TO CLAIMS ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY, AND CLAIMS THAT ARISE OUT OF SECTION 4.04, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS OR ANY INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND (COLLECTIVELY, "CONSEQUENTIAL DAMAGES"), WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, AND WHETHER OR NOT FORESEEABLE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR THE SAKE OF CLARITY, THIS SECTION 6.04 SHALL NOT LIMIT THE PARTIES' INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTIONS 6.01 AND 6.02, EXCEPT THAT NEITHER PARTY SHALL BE ENTITLED TO ASSERT A

CLAIM FOR CONSEQUENTIAL DAMAGES AGAINST THE OTHER. WITH RESPECT TO CLAIMS FOR CONSEQUENTIAL DAMAGES PERMITTED UNDER THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY FOR ALL SUCH CLAIMS HEREUNDER EXCEED $500,000.

ARTICLE VII

GENERAL PROVISIONS

Section 7.01 Force Majeure. Except for the payment of money, neither party shall be liable for, nor shall either party be considered in breach of this Agreement due to, any delays or failure to form its obligations under this Agreement as a result of a cause, condition or event beyond its control, including any act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications (including the Internet or other networked environment) power or other utility, labor problem, unavailability of supplies, or any other cause, whether similar or dissimilar to any of the foregoing (each, a "Force Majeure Event"), which could not reasonably have been prevented by the non-performing party. To the extent Newco has a right to terminate any agreement necessary for Newco's provisioning of Services because of a Force Majeure Event (whether or not it exercises such right of termination), Company shall have the same option to immediately terminate Services hereunder.

Section 7.02 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto, but any such assignment by any party hereto shall not relieve such assigning party of any of its obligations or agreements hereunder unless expressly agreed to in writing by each other party hereto in its sole discretion; provided, however, that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto. Notwithstanding the foregoing, upon written notice to the other party, (i) the Company may assign its rights and/or delegate its obligations hereunder to any one or more of its Subsidiaries and (ii) Newco may assign its rights and/or delegate its obligations hereunder to any one or more of its Subsidiaries; provided, that no such assignment or delegation shall relieve Newco or the Company of its obligations hereunder without the written consent of the other.

Section 7.03 No Waiver. No waiver by either party hereto of any breach of any covenant, agreement, representation or warranty hereunder shall be deemed a waiver of any preceding or succeeding breach of the same. The exercise of any right granted to either party herein shall not operate as a waiver of any default or breach on the part of the other party hereto. Each and all of the several rights and remedies of either party hereto under this Agreement shall be construed as cumulative and no one right as exclusive of the others.

Section 7.04 Entire Agreement; Amendments. This Agreement (together with the documents and instruments referred to herein, including the Transaction Agreement) (a) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, and (b) is not intended to confer upon any person other than the parties hereto and thereto any rights or remedies; provided, however, that the Indemnitees are intended to be third party beneficiaries of the provisions of Article VI and each of such persons shall have the right to enforce such provisions as if they were parties hereto.

Section 7.05 Notices. All notices, requests and demands to or upon the respective parties hereto, and all statements, accountings and payments given or required to be given hereunder, shall be made by personal service, or sent by certified mail, return receipt requested, postage prepaid, or by facsimile addressed as follows, or to such other address as may hereafter be designated in writing by the respective parties hereto, and shall be deemed received when delivered to the designated address:

if to Newco, to:

Alex Goor
Co-President
Instinet Group, LLC
3 Times Square - 8th Floor
New York, New York 10036

with a copy to:

Instinet Group, LLC
Office of the General Counsel
3 Times Square - 7th Floor
New York, New York 10036

if to Company, to:

Sue Ann Gillespie
Vice President
The Nasdaq Stock Market, Inc.
80 Merritt Blvd.
Trumbull, Connecticut 06611

with a copy to:

The Nasdaq Stock Market, Inc.
Office of the General Counsel, Contracts Group
9600 Blackwell Road
Rockville, Maryland 20850

Section 7.06 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without reference to such State's principles of conflict of laws.

Section 7.07 Expenses. Except as otherwise expressly provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the party hereto incurring such expenses.

Section 7.08 Severability. If any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as neither the economic nor legal substance of the transactions contemplated herein is affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner.

Section 7.09 Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, agency, trust or other association of any kind, each party being individually responsible only for its obligations as set forth in this Agreement. Notwithstanding the terms of this Agreement, each party retains responsibility for the management and operation of all aspects of their respective business, that the role of Newco as it relates to the Services is that of a service provider, and that Newco does not assume any general management or operational responsibility for any aspect of the Services Recipients' business.

Section 7.10 Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 7.11 Specific Performance. The parties agree that if for any reason any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached, immediate and irreparable harm or injury would be caused for which money damages would not be an adequate remedy. Accordingly, each party agrees that, in addition to any other available remedy at law or equity, each party shall be entitled to an injunction restraining any violation or threatened violation of the provisions of this Agreement without the necessity of posting a bond or other form of security. In the event that any Action should be brought in equity to enforce the provisions of this Agreement, no party will allege, and each party hereby waives the defense, that there is an adequate remedy at law.

Section 7.12 Jurisdiction; Venue; Waiver of Jury Trial. Each of the parties hereto (a) consents to submit itself to the exclusive personal jurisdiction of the Delaware Court of Chancery or any Federal court located in the State of Delaware in the event of any Action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (c) agrees that it will not bring any Action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the Delaware Court of Chancery or a Federal court sitting in the State of Delaware. In any Action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, each party irrevocably and unconditionally waives and agrees not to assert by way of motion, as a defense or otherwise any claims that it is not

subject to the jurisdiction of the above courts, that such Action is brought in an inconvenient forum or that the venue of such Action is improper. Each of the parties also hereby agrees that any final and unappealable judgment against a party in connection with any such Action shall be conclusive and binding on such party and that such award or judgment may be enforced in any court of competent jurisdiction, either within or outside of the United States. A certified or exemplified copy of such judgment shall be conclusive evidence of the fact and amount of such judgment. To the fullest extent permitted by law, each of the parties irrevocably waives all right to trial by jury in any Action or counterclaim arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement.

Section 7.13 Survival. Article 1, Sections 4.04 and 4.05, Article VI, and Sections 7.02, 7.03, 7.04, 7.05, 7.06, 7.07, 7.08, 7.09, 7.12 and this Section shall survive termination of this Agreement for the period of time set forth therein or, to the extent not specified, indefinitely.

Section 7.14 Services Recipient Obligations. Notwithstanding anything to the contrary contained in this Agreement, Parent guarantees all Company's payment and indemnification obligations.

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

INSTINET HOLDINGS INCORPORATED

By: /s/ Michael Bingle

Name: Michael Bingle
Title: Managing Director

NORWAY ACQUISITION CORP.

By: /s/ David Warren

Name: David Warren
Title: Chief Financial Officer

THE NASDAQ STOCK MARKET, INC.

By: /s/ Adena Friedman

Name: Adena Friedman
Title: Executive Vice President

BRACE ASSIGNMENT and SUPPORT AGREEMENT

This BRACE Assignment and Support Agreement ("Agreement") is dated as of December 8, 2005, by and between Instinet Clearing Services, Inc. ("ICS"), The Nasdaq Stock Market, Inc. ("Nasdaq"), and INET ATS, Inc. ("INET").

WHEREAS, Instinet Group Incorporated, Nasdaq and Norway Acquisition Corp. ("Norway") entered into that certain Agreement and Plan of Merger dated as of April 22, 2005 ("Merger Agreement");

WHEREAS, pursuant to the Merger Agreement, INET will become a subsidiary of Nasdaq as of the Closing Date;

WHEREAS, Iceland Acquisition Corp., Norway and Nasdaq entered into that certain Transaction Agreement dated as of April 22, 2005 ("Transaction Agreement"), pursuant to which Nasdaq and Norway agreed to sell to Iceland Acquisition Corp. all of the Newco Assets, including ownership of ICS;

WHEREAS, ICS and INET have entered into that certain Fully Disclosed Clearing Agreement dated as of January 10, 2003, as amended as of the date hereof ("Clearing Agreement");

WHEREAS, ICS has developed and currently uses a transaction processing system known as Beehive, which includes the functionality set forth on Exhibit 1 ("Beehive");

WHEREAS, certain INET personnel are developing on behalf of ICS a transaction processing system currently known as BRACE, which includes the functionality set forth on Exhibit 2 ("BRACE"), and the parties desire that such development and certain support of BRACE continue on the terms set forth herein; and

WHEREAS, capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Transaction Agreement.

NOW, THEREFORE, in consideration of the Transaction Agreement, the Clearing Agreement, the premises and of the mutual covenants, representations, warranties and agreements contained herein and therein, ICS, Nasdaq and INET agree as follows:

1. Development. Nasdaq agrees that it will cause INET to continue to develop BRACE in accordance with the specifications provided by ICS and attached hereto as Exhibit 3. Such development shall be deemed complete, and Nasdaq and INET shall have no further development obligations, as of the date that BRACE has been used in production by INET and ICS to submit, in the aggregate, one million trades to the National Securities Clearing Corporation ("Production"). INET acknowledges that the goal of the parties is to reach Production within four (4) months after Closing.

2. Delivery. Within three (3) business days after Production, INET shall deliver to ICS a master copy of the BRACE software in source code form.

3. Support. INET agrees that it will provide to ICS certain support services for BRACE, which support services are set forth on Exhibit 4, for four (4) months following Production.

4. Assignment of Intellectual Property Interest by INET. INET hereby assigns to ICS a one-half undivided interest in all intellectual property rights in and to BRACE as the same now exists and as developed, modified and supplemented by INET in accordance with Exhibit 3. For the sake of clarity, neither party shall receive any interest hereunder in or to any developments, modifications or supplements to BRACE developed by or on behalf of the other party following Production. Neither party shall have any duty to account to the other for the exploitation of its interest in and to BRACE.

5. Assignment of Intellectual Property Interest by ICS. ICS hereby assigns to INET a one-half undivided interest in all intellectual property rights in and to Beehive as the same exists as of Closing. For the sake of clarity, neither party shall receive any interest hereunder in or to any developments, modifications or supplements to Beehive developed by or on behalf of the other party following Closing. Neither party shall have any duty to account to the other for the exploitation of its interest in and to Beehive.

6. Development Incentive. Within ten (10) business days after Production, ICS shall pay to INET (i) the applicable aggregate amount payable to the employees set forth on Exhibit 5 and (ii) an amount equal to all Taxes payable by INET and Nasdaq with respect to the payments contemplated by this Section 6, such that INET and Nasdaq are not liable for any Taxes arising out of INET's fulfillment of the obligations set forth in this Section 6. INET shall distribute such amounts in accordance with Exhibit 5, provided that, if any INET employee set forth on Exhibit 5 is no longer an INET employee at Production, ICS shall have no obligation to pay INET any amount with respect to such employee, and INET shall have no obligation to pay any amount to such employee pursuant to this Section 6.

7. NO WARRANTY. EACH OF ICS, INET AND NASDAQ ACKNOWLEDGES AND AGREES THAT THE INTELLECTUAL PROPERTY CREATED AND ASSIGNED HEREUNDER, AND THE SUPPORT SERVICES PROVIDED HEREUNDER, ARE PROVIDED ON AN "AS IS, WHERE IS" BASIS, AND THAT ICS, NASDAQ AND INET MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER IN CONNECTION WITH SUCH INTELLECTUAL PROPERTY AND SERVICES, AND ICS, NASDAQ AND INET EXPRESSLY DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. NASDAQ, INET AND ICS ACKNOWLEDGE AND AGREE THAT THEIR USE OF THE SOFTWARE AND SERVICES IS AT THEIR SOLE RISK.

8. LIMITATION OF LIABILITY. EXCEPT WITH RESPECT TO CLAIMS ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY, NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS OR ANY INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, AND WHETHER OR NOT FORESEEABLE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Termination. Nasdaq and INET may terminate Section 3 hereof upon a material breach by ICS of the obligations set forth in Section 6 that remains uncured for thirty (30) days, provided that all other provisions of this Agreement shall survive any such termination.

10. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto, but any such assignment by any party hereto shall not relieve such assigning party of any of its obligations or agreements hereunder unless expressly agreed to in writing by each other party hereto in its sole discretion. This is freely assignable by any party.

11. Entire Agreement; Amendments. This Agreement (together with the documents and instruments referred to herein, including the Transaction Agreement and the Clearing Agreement) (a) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, and (b) is not intended to confer upon any person other than the parties hereto and thereto any rights or remedies.

12. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of New York without reference to such State's principles of conflict of laws.

13. Expenses. All costs and expenses incurred in connection with this Agreement shall be paid by the party hereto incurring such expenses.

14. Severability. If any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as neither the economic nor legal substance of the transactions contemplated herein is affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner.

15. Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, agency, trust or other association of

any kind, each party being individually responsible only for its obligations as set forth in this Agreement. Notwithstanding the terms of this Agreement, each party retains responsibility for the management and operation of all aspects of their respective business, that the role of Nasdaq as it relates to the support services is that of a service provider, and that Nasdaq does not assume any general management or operational responsibility for any aspect of ICS's business.

16. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

17. Jurisdiction; Venue; Waiver of Jury Trial. Each of the parties hereto (a) consents to submit itself to the exclusive personal jurisdiction of any state or federal court located in the State of New York in the event of any Action arising out of or related to this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion o other request for leave from any such court, and (c) agrees that it will not bring any Action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the state or federal courts located in the State of New York. In any Action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, each party irrevocably and unconditionally waives and agrees not to assert by way of motion, as a defense or otherwise any claims that it is not subject to the jurisdiction of the above courts, that such Action is brought in an inconvenient forum or that the venue of such Action is improper. Each of the parties also hereby agreed that any final and unappealable judgment against a party in connection with any such Action shall be conclusive and binding on such party and that such award or judgment may be enforced in ay court of competent jurisdiction, either within or outside of the United States. A certified or exemplary copy of such judgment shall be conclusive evidence of the fact and amount of such judgment. To the fullest extent permitted by law, each of the parties irrevocably waives all right to trial by jury in any Action or counterclaim arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement.

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

The Nasdaq Stock Market, Inc.

By: /s/ Adena Friedman

Name: Adena Friedman
Title: Executive Vice President

INET ATS, Inc.

By: /s/ Adena Friedman

Name: Adena Friedman
Title: Executive Vice President

Instinet Clearing Services, Inc.

By: /s/ Alex Post

Name: Alex Post
Title: COO

EXHIBIT 1

Beehive

6

EXHIBIT 99.6

AMENDMENT NO. 1 TO FULLY DISCLOSED CLEARING AGREEMENT

AMENDMENT NO. 1 dated as of December 8, 2005 (this "Amendment"), to the FULLY DISCLOSED CLEARING AGREEMENT (the "Clearing Agreement"), dated as of January 10, 2003, between INSTINET CLEARING SERVICES, INC. ("ICS"), and INET ATS, INC. (f/k/a Island ECN, Inc.) ("Correspondent").

A. ICS provides execution and clearing services (the "Services") to Correspondent pursuant to the Clearing Agreement, a copy of which is attached as Exhibit A hereto.

B. Pursuant to that certain Transaction Agreement dated as of April 22, 2005 among Iceland Acquisition Corp., a Delaware corporation ("Newco"), Norway Acquisition Corp. a Delaware corporation ("Company") and The Nasdaq Stock Market, Inc., a Delaware corporation ("Parent") (the "Transaction Agreement"), ICS and Correspondent have agreed to amend the Clearing Agreement to extend the Services by ICS to Correspondent for an additional period of time not to exceed twelve (12) months after the Closing (as defined in the Transaction Agreement).

C. Capitalized terms used and not otherwise defined herein shall have the meanings assigned thereto in the Clearing Agreement, as amended hereby.

Accordingly, in consideration of the Transaction Agreement and the mutual agreements herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and subject to the conditions set forth herein, the parties hereto agree as follows:

SECTION 1. Amendment to Section IX. Section IX.B of the Clearing Agreement is hereby amended by deleting it in its entirety and replacing it with the following:

> 'Correspondent agrees to pay ICS on a monthly basis (1) the greater of (A) the fee set forth across from the term "Minimum fee" on Schedule B (the "Minimum Fee") and (B) the fee per uncompressed ticket set forth across from the term "Clearing fee" on Schedule B hereto multiplied by the number of uncompressed tickets cleared in the given month and (2) other additional amounts set forth on Schedule B hereto (including the cost of capital charges and the NSCC pass through charges) for the execution, clearing and related services to be provided under this Agreement during the Term. All such amounts due and owing to ICS shall be billed monthly and paid within thirty (30) days of receipt by Correspondent of an invoice for such fee. Schedule B is hereby incorporated in and made an integral part of this Agreement.'

SECTION 2. Amendment to Section X. Section X.B of the Clearing Agreement is hereby amended by replacing the text "$ 0" thereof with "$ 2,000,000".

SECTION 3. Amendment to Section XVIII. Section XVIII of the Clearing Agreement is hereby amended by:

(a) Deleting Section XVIII.A in its entirety and replacing it with the following:

'The initial term of this Agreement shall continue until June 8, 2006 (the "Initial Term"). In the event that Correspondent wishes to renew this Agreement, Correspondent shall so notify ICS in writing at least thirty (30) days prior to the expiration of the Initial Term. Within ten (10) days after receipt of such notice, ICS shall provide written notice of its acceptance or rejection of such renewal. If ICS rejects such renewal, this Agreement shall expire at the conclusion of the Initial Term. If ICS accepts such renewal, this Agreement shall automatically renew for a maximum of six (6) successive renewal terms of thirty (30) days each. The Initial Term plus any renewal term(s) is referred to as the "Term." Notwithstanding the foregoing, Correspondent may terminate this Agreement pursuant to Section II.A hereof at any time during the Term by providing thirty (30) days' prior written notice to ICS, subject to payment of all amounts due and payable pursuant to this Section XVIII.A. The end of the Term is referred to as the "Expiration Date." Within forty five (45) days after delivery of such termination notice to ICS by the Correspondent, Correspondent agrees to pay ICS, without set-off or deduction of any kind, the sum of the following: (i) all fees and expenses due and payable through the end of the month in which services were terminated and (ii) if applicable, the Minimum Fee for each month remaining in the Initial Term prior to termination by Correspondent.';

(b) In Section XVIII.B, (i) deleting the first sentence; (ii) deleting "In addition:" from the second sentence; and (iii) replacing the first occurrence of the text "ten (10) business days" with the text "thirty (30) days"; and

(c) Deleting Section XVIII.D in its entirety.

SECTION 4. Definitions. All references in the Clearing Agreement to "Initial Term" are hereby amended to "Term." All references in the Clearing Agreement to "Initial Expiration Date" are hereby amended to "Expiration Date."

SECTION 5. Amendment to Schedule B. Schedule B of the Clearing Agreement is hereby amended by deleting it in its entirety and replacing it with Schedule B attached hereto.

SECTION 6. Notices. The parties hereto agree that in accordance with Section XX of the Clearing Agreement, addresses for notice are amended as set forth on the signature pages hereto.

SECTION 7. Representations and Warranties.

(a) Correspondent represents and warrants to ICS that this Amendment has been duly authorized, executed and delivered by Correspondent and constitutes a valid and binding obligation of Correspondent, enforceable against Correspondent in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) ICS represents and warrants to Correspondent that this Amendment has been duly authorized, executed and delivered by ICS and constitutes a valid and binding obligation of ICS, enforceable against ICS in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 8. No Modification. Except as expressly set forth herein, this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of Correspondent or ICS under the Clearing Agreement, and shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Clearing Agreement, all of which are ratified and affirmed in all respects and shall continue in full force and effect. After the date this Amendment becomes effective, any reference to the Clearing Agreement shall mean the Clearing Agreement as modified hereby.

SECTION 9. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 10. Counterparts. This Amendment may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

SECTION 11. Headings. The headings contained herein have been inserted for convenience and ease of reference only and shall not be construed to affect the meaning, construction or effect of this Amendment.

SECTION 12. Enforceability. If any provision or condition of this Amendment is held to be invalid or unenforceable by any court, arbitration tribunal or regulatory or self-regulatory agency or body, the validity of the remaining provisions and conditions shall not be affected thereby and this Agreement shall be carried out as if any such invalid of unenforceable provision or condition were not contained herein.

SECTION 13. Correspondent Obligations. Notwithstanding anything to the contrary contained in this Agreement, Parent guarantees Correspondent's performance under Section IX.B of the Clearing Agreement.

SECTION 14. Replacement Services. In addition to all other remedies that Correspondent may have at law or equity, in the event that ICS fails to provide the services set forth in Section II.A of the Clearing Agreement during the Term (as defined in the Clearing Agreement, as amended hereby) in any material respect for a period of twenty (20) consecutive business days and after such period Correspondent obtains replacement services from a third party, ICS will reimburse Correspondent within thirty (30) days after Correspondent provides a true and correct accounting in writing of the calculation of (i) Similar Fees paid by Correspondent for such replacement services through the remaining Term minus (ii) the fees that would have been payable by Correspondent pursuant to Section IX.B of the Clearing Agreement (as hereby amended) through the remaining Term, if such difference is greater than zero. Correspondent shall use commercially reasonable best efforts to mitigate the cost and expense of such replacement Services. For purposes of this Section 13, "Similar Fees" shall include clearing fees, cost of capital charges and NSCC pass through charges; which are the equivalent of the type of fees being charged to Correspondent as set forth on Schedule B hereto.

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

INET ATS, INC.

By: /s/ Adena Friedman

Name: Adena Friedman
Title: Executive Vice President

Address: One Liberty Plaza
New York, NY 10006

INSTINET CLEARING SERVICES, INC.

By: /s/ Alex Post

Name: Alex Post
Title: Chief Operating Officer

Address: 3 Times Square
New York, NY 10036

THE NASDAQ STOCK MARKET, INC.

By: /s/ Adena Friedman

Name: Adena Friedman
Title: Executive Vice President

Address: One Liberty Plaza
New York, NY 10006

EXHIBIT A

FULLY DISCLOSED CLEARING AGREEMENT

BETWEEN INSTINET CLEARING SERVICES, INC.

-and-

ISLAND ECN, INC.

This agreement (the "Agreement"), dated as of January 10, 2003, between Instinet Clearing Services, Inc. ("ICS") and Island ECN, Inc. ("Correspondent"), sets forth the terms and conditions under which ICS shall provide execution and clearing services, on a fully disclosed basis, to Correspondent and its customers. ICS shall provide such services only to the extent required by this Agreement, and shall not be responsible for any duties or obligations not specifically allocated to ICS by this Agreement.

I. APPLICABLE LAWS AND RULES AND APPROVAL BY NASD

This Agreement and the obligations of the parties hereunder are subject to all applicable provisions of federal, state and local laws, rules and regulations and the constitution, by-laws, rules, regulations and stated policies of the National Association of Securities Dealers ("NASD"), and any other securities exchange or association or regulatory or self-regulatory organization vested with authority over the parties and/or the transactions contemplated hereby (collectively, the "Laws and Rules"). This Agreement shall be submitted for approval by the NASD, by ICS or Correspondent, as required, and shall become effective upon such approval. In the event of disapproval, the parties shall bargain in good faith to obtain the requisite approval.

II. SERVICES

A. Services That Shall be Performed by ICS

Subject to compliance by Correspondent with its obligations under this Agreement and the Laws and Rules, ICS shall perform the following services:

1. ICS shall execute orders for Correspondent's customers (the "Customers") whose cash or margin accounts have been accepted by ICS (the "Accounts"), but only insofar as such orders are transmitted by Correspondent to ICS or are transmitted by a Customer to ICS in accordance with Section V.A. of this Agreement.

2. ICS shall prepare and distribute confirmations respecting transactions in each of the Accounts in accordance with Section VII.A. of this Agreement, and ICS shall provide duplicates of such confirmations to Correspondent; provided, however, that ICS may, in its sole discretion, delegate such responsibilities to Correspondent. In the event that such responsibilities are delegated to Correspondent, Correspondent shall have sole and exclusive responsibility for confirmations and for their compliance with the Laws and Rules.

3. ICS shall prepare and distribute summary monthly statements (or quarterly statements if no activity in any Account occurs during any quarter covered by such statement) to Accounts in accordance with Section VII.A. of this Agreement, and ICS shall provide duplicates of such statements to Correspondent.

4. ICS shall settle contracts and transactions in securities (including options to buy or sell

securities) (a) between Correspondent and other brokers and dealers, (b) between Correspondent and the Accounts, and (c) between Correspondent and persons other than the Accounts or other brokers and dealers.

5. ICS shall engage in cashiering functions for the Accounts, including the receipt, delivery and transfer of securities purchased, sold, borrowed and loaned, receiving and distributing payment therefore, holding in custody and safekeeping all securities and payments so received, the handling of margin accounts, including paying and charging of interest, the receipt and distribution of dividends and other distributions, and the processing of exchange offers, rights offerings, warrants, tender offers and redemptions. To the extent that any cashiering functions with respect to the receipt of securities and the making and receiving of payments therefore may be relinquished to Correspondent, Correspondent shall have full responsibility for such functions.

6. ICS shall construct and maintain books and records of all transactions executed or cleared through it and not specifically assigned to Correspondent pursuant to the terms of this Agreement, including a daily record of required margin and other information required by NASD Rule 2520, or by similar provisions of the Laws and Rules.

Any additional services to be performed shall be subject to the mutual agreement of the parties. Such additional services shall be set forth with related fees on Schedule A hereto. Schedule A is hereby incorporated in and made an integral part of this Agreement.

B. **Services That Shall Not be Performed by ICS**

Unless otherwise agreed to in a writing executed by the parties hereto, ICS shall not engage in any of the following services on behalf of Correspondent, the responsibility for which shall be solely that of Correspondent:

1. Accounting, bookkeeping or recordkeeping, cashiering, or any other services with respect to commodity transactions, and/or any transaction other than securities transactions.

2. Preparation of Correspondent's payroll records, financial statements or any analysis or review thereof or any recommendations relating thereto.

3. Preparation or issuance of checks in payment of Correspondent's expenses, other than expenses incurred by ICS on behalf of Correspondent pursuant to this Agreement.

4. Payment of commissions, salaries or other remuneration to Correspondent's salespersons or any other employees of Correspondent.

5. Preparation and filing of reports with the Securities and Exchange Commission (the "SEC"), any state securities commission, any national securities exchange registered under the Securities Exchange Act of 1934, as amended (the "1934 Act"), or other securities exchange or securities association or any other regulatory or self-regulatory body or agency with which Correspondent is associated and/or by which it is regulated. ICS shall, at the request of Correspondent, furnish Correspondent with any necessary information and data contained in books and records kept by ICS and not otherwise reasonably available to Correspondent if such information is required in connection with the preparation and filing of such reports by Correspondent.

6. Making and maintaining reports and records required to be kept by Correspondent by the

Currency and Foreign Transactions Reporting Act of 1970, and the regulations promulgated pursuant thereto, or any similar laws or regulations enacted or adopted hereafter.

7. Verification of the address changes of any Account.

8. Verification of the authority of, or changes in the identity or address, of any person holding any power of attorney over any Account.

9. Verification of the validity of, or proper authorization for, any orders or instructions received by ICS from Correspondent or from any Customer in connection with an Account.

10. Delivering or causing to deliver prospectuses in connection with public offerings of securities (both initial public and secondary offerings) and sales of mutual funds.

11. Obtaining and verifying new account information, and ensuring that such information meets the requirements of NASD Rule 3110, and any other applicable provision of the Laws and Rules.

12. Maintaining a record of all personal and financial information concerning any Account and all orders received therefrom, and maintaining all documents and agreements executed by any Account.

13. Holding for safekeeping the securities of any Account registered in the name of the Account.

14. Holding restricted or control securities in compliance with all SEC rules and regulations, and any other applicable provision of the Laws and Rules.

15. Accepting deposits from Correspondent in the form of coin or currency of the United States or of any other country, postal money orders, or bank checks.

16. Compliance with the reporting, disclosure or record keeping requirements of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or any rules or regulations promulgated thereunder.

III. OPENING AND SUPERVISION OF ACCOUNTS

A. Account Documentation

Correspondent shall be responsible for obtaining and verifying all required information and the identity of each potential Customer. Correspondent shall be responsible for the maintenance and retention of all account applications and Correspondent hereby acknowledges its obligation to retain account applications in an easily accessible place in accordance with the Laws and Rules and agrees to provide the original application to ICS by overnight delivery within 24 hours of a request from ICS. All account documentation shall be on the forms provided by ICS for that purpose, or, alternatively, prepared by Correspondent at its expense and approved in writing by ICS, in either case in a format compatible with ICS' computerized accounting and records maintenance systems. In accordance with ICS' procedures, Correspondent shall notify ICS promptly of any changes or corrections in any information, instructions or documents previously

forwarded to ICS. Correspondent shall be responsible for obtaining, updating, and maintaining correct customer addresses, and ICS may for all purposes rely, without verification, on the accuracy of such addresses and all other information and documents furnished by Correspondent to ICS regarding any Account. Correspondent shall be solely and exclusively responsible for complying with the requirements of Rule 15g-9 under the 1934 Act, if applicable. Correspondent shall also promptly furnish ICS with such additional information or documentation as ICS may request from time to time.

B. **Knowledge of Customer and Customer's Investment Objectives**

Correspondent shall be solely and exclusively responsible through a general partner, a principal executive officer or a person designated for supervisory responsibilities to use due diligence to learn the essential facts relative to every Customer and Account, every order for any Account, and every person holding power of attorney over any Account, and to supervise diligently all Accounts handled by Correspondent's registered representatives so as to be in full compliance with all Laws and Rules. The preparation or possession of surveillance records, exception reports and other similar data by ICS shall not obligate ICS to establish policies, practices or procedures relating to such materials. Correspondent shall be solely and exclusively responsible for ensuring that the Customers are not minors and do not otherwise lack the capacity to enter into a contract and are not prohibited from opening a securities account under the Laws and Rules.

C. **Acceptance of Accounts**

Each Account accepted and approved by Correspondent and opened with ICS shall be subject to ICS' acceptance (which shall not be construed to include any due diligence on the part of ICS). Correspondent shall not approve any Account unless all information required in Section III.A. of this Agreement has been received and due diligence as set forth in Section III.B. has been performed by Correspondent. **ICS reserves the absolute right, exercisable in its sole discretion, without prior notice to Correspondent or to the Customer, to reject any account that Correspondent may offer as an Account, to terminate any account previously accepted by it as an Account, or to reject any order that may be transmitted to ICS for execution or clearing in any Account.** Without limiting the generality of the foregoing, ICS shall be under no obligation to accept any Account as to which any documentation or information required to be submitted to ICS or maintained by Correspondent pursuant to Sections III.A. and III.B. of this Agreement is incomplete. No action taken by ICS or any of its employees, including, without limitation, clearing a trade in any Account, shall be deemed to be or shall constitute acceptance of such Account. Without limiting the generality of any of the foregoing, in the event that any information or documentation requested by ICS regarding an Account is not promptly provided to ICS, ICS may, without prior notice to Correspondent or to the Customer, reject or terminate such account as an Account or refuse to execute or clear any further transactions therein. If ICS nevertheless accepts or continues to execute or clear transactions in such Account, it shall not be deemed a waiver of ICS's right to receive such information or documentation or to later terminate or refuse to execute or clear transactions in such Account.

D. **Supervision of Orders and Accounts**

Correspondent shall be solely and exclusively responsible for the conduct and supervision of the Accounts and all transactions therein and their compliance with the Laws and Rules, including, without limitation, any Laws and Rules relating to Correspondent's fiduciary responsibility to Customers under ERISA. Correspondent's responsibilities shall include, without limitation, the following:

10. using due diligence to learn and on a continuing basis to know the essential facts relative to each Customer and each order in an Account, including verifying the address changes of each Customer, knowing all persons holding power of attorney over any Account and obtaining appropriate documentation from each Account in accordance therewith, being familiar with each order in any Account and otherwise complying fully with all of the requirements of NASD Rule 3110, any interpretations thereof and all similar provisions of the Laws and Rules;

11. selecting, investigating, training, and supervising all personnel of Correspondent who open, approve or authorize transactions in the Accounts;

12. establishing written procedures for the conduct of the Accounts and ongoing review of all transactions in Accounts, and maintaining compliance and supervisory personnel adequate to implement such procedures;

13. knowing the investment objectives of each Customer and determining the suitability of all transactions in the Accounts;

14. ensuring that there is a reasonable basis for any recommendations made by Correspondent to Customers;

15. determining the appropriateness of the frequency of trading in an Account;

16. determining that each transaction in an Account has been duly authorized;

8. authenticating any instructions of the Customer, and forwarding such instructions to ICS;

9. obtaining and maintaining all documents necessary for the performance of Correspondent's responsibilities under this Agreement and retaining such documents in accordance with the Laws and Rules;

10. complying, to the extent applicable to any transaction in an Account (and whether or not such transaction is executed by ICS), with the "three quote rule" as set forth by the NASD;

11. complying with all "Blue Sky" requirements applicable to any transaction in an Account; and

12. informing ICS of the location of the securities which are the subject of any order transmitted to ICS for execution so that ICS may comply with applicable provisions of the Laws and Rules.

E. **Accounts of Employees of Member Organizations, Self-Regulatory Organizations and Financial Institutions**

In each case in which a Customer is an employee of a member organization, a self-regulatory organization or financial institution, the approval of which is necessary to the opening and maintenance of such Customer's Account, Correspondent shall be solely and exclusively responsible for obtaining the approval of such employer, and otherwise complying with NASD Rule 3050.

F. **Prime Brokerage**

No Account in connection with which Correspondent is to act as an executing broker in a prime brokerage arrangement shall be opened without the prior written authorization by ICS and the execution of appropriate documentation by the parties to such arrangement, including, without limitation, an agreement in substantially the same form as the Addendum annexed hereto.

G. **Customers**

Each Customer shall remain the customer of Correspondent and nothing herein shall cause any Customer to be construed as or deemed to be a customer of ICS for any purpose whatsoever, except that, for the purposes of the Securities Investor Protection Act and the "financial responsibility" rules of the SEC, Customers shall be deemed to be customers of ICS as Correspondent's clearing firm, but only to the extent required by applicable Laws and Rules.

H. **Screening of Accounts**

ICS may in its discretion utilize at Correspondent's expense a third party service company to screen Customers and transactions in the Accounts, and the use thereof shall not relieve Correspondent of any of its obligations under this Agreement. Correspondent acknowledges that the preparation or possession of surveillance records or any other data, including exception reports, by ICS on behalf of or for the use of Correspondent shall neither obligate ICS to review such material nor make ICS responsible to know their contents.

I. **Discretionary Accounts**

Correspondent shall be solely and exclusively responsible for the handling and supervisory review of any Accounts over which Correspondent's partners, officers or employees have discretionary authority, as required by NASD Rule 2510, and any other provisions of the Laws and Rules. Correspondent shall furnish ICS with such documentation with respect thereto as may be requested by ICS. Correspondent hereby warrants that with regard to any orders or instructions given by Correspondent with respect to such discretionary Accounts, its partners, officers or employees shall have been fully and properly authorized relative thereto and that the execution of such orders shall not be in violation of the Laws and Rules.

J. **Option Accounts**

Before engaging in option trading for any Customer, Correspondent shall deliver to Customer a current disclosure statement of the Options Clearing Corporation, the Special Statement for Uncovered Option Writing, and any effective supplements. Correspondent shall obtain the required signatures on all option agreements, shall obtain proper approval for the opening of all option accounts, and shall otherwise comply with the Laws and Rules applicable to options accounts and options trading. Correspondent shall deliver to ICS a copy of a signed option agreement for each Customer approved by it for options trading in a form acceptable to ICS.

K. **Accounts for Which Agent Holds Power of Attorney**

Upon the opening of any Account for which an agent holds a power of attorney on behalf of a principal, Correspondent shall provide ICS with the name of each principal for whom such agent is acting and with written evidence of the agent's authority to act on the principal's behalf. Correspondent hereby warrants that any orders or instructions of such agent which are transmitted to ICS pursuant to this Agreement shall have been fully and properly authorized and that the execution of such instructions or orders shall not violate the Laws and Rules.

L. **Prospectus Delivery**

Correspondent shall be solely and exclusively responsible for delivering, or causing to be delivered, prospectuses in connection with public offerings of securities (both initial public and secondary offerings) and sales of mutual funds.

M. **Capital Treatment of Assets Held in Proprietary Accounts of Correspondent**

In accordance with the No-Action Letter issued by the SEC on November 3, 1998 (the "No-Action Letter"), Correspondent shall be permitted to include assets held in its proprietary accounts ("PAIB") as allowable assets in its net capital computations; provided, however, that ICS shall perform the PAIB calculation in accordance with the provisions, procedures and interpretations set forth in the No-Action Letter.

IV. EXTENSION OF CREDIT

A. **Margin Agreement**

Prior to the execution or clearance of any margin transaction in an Account, Correspondent shall obtain and provide ICS with a margin agreement, hypothecation agreement and consent to loan of securities (collectively, "margin agreement") executed by the Customer (or, in the case of any proprietary Account of Correspondent, executed by Correspondent), such agreement to be in form and substance satisfactory to ICS. ICS shall have all rights and remedies set forth in such margin agreement, in addition to those set forth in this Agreement, with respect to Accounts which are margin accounts. All transactions in an Account shall be considered cash transactions until ICS has determined, in its sole discretion, to accept margin transactions therein and the duly executed margin agreement has been received by ICS. ICS may cancel and rebook as cash transactions any margin transactions for an Account for which no such margin agreement has been received prior to settlement date, and all transaction costs associated with each such cancellation and rebooking shall be borne in their entirety by Correspondent. Correspondent shall be responsible for compliance with Rule 10b-16 under the 1934 Act. Correspondent shall obtain in advance of dissemination the written approval of ICS of any document to be provided to Customers in connection therewith.

B. **Margin Requirements**

Correspondent shall be responsible to ICS for the collection of initial margin and for maintenance at all times of margin in each Account sufficient to ensure compliance with Regulation T, promulgated by the Board of Governors of the Federal Reserve System pursuant to the 1934 Act, and any interpretations thereof, with any other margin or margin maintenance rules under the Laws and Rules, and with ICS' house margin rules. After initial margin has been received, maintenance margin calls shall be generated by ICS and made by ICS or by Correspondent at the instructions of ICS. Correspondent shall have sole and exclusive responsibility for any loss, liability, damage, claim, cost or expense, including but not limited to attorneys' fees, incurred or sustained by ICS as a result of the failure of any Customer timely to comply with any initial margin or margin maintenance requirements.

Correspondent understands and acknowledges that Accounts shall be subject to any house rules of ICS requiring initial margin or maintenance margin in amounts greater than would otherwise be

required under Regulation T or any other provisions of the Laws and Rules. ICS may at any time, in its sole discretion, and subject to market conditions and periods of extreme volatility, change its house margin requirements as they pertain to any Account or class of accounts or specific securities or class of securities. Such changes shall be effective immediately upon the provision of oral notice to Correspondent. Correspondent shall be responsible for advising the Customers of any such changes and for the prompt collection of any additional margin necessary to ensure compliance therewith.

C. **Interest on Margin Accounts**

ICS shall charge interest on Accounts that are margin accounts in accordance with the margin agreements applicable to such accounts, provided that such interest and other charges shall not exceed amounts that may be charged under applicable Laws and Rules. ICS may at any time, in its sole discretion, revise its credit terms and conditions. Correspondent shall have sole and exclusive responsibility for any loss, liability, damage, claim, cost or expense, including but not limited to attorneys' fees, incurred or sustained by ICS as a result of the failure of any Customer timely to pay such charges.

V. TRANSMISSION, ACCEPTANCE AND EXECUTION OF ORDERS

A. **Transmission of Orders**

All orders in Accounts shall be transmitted to ICS by Correspondent in accordance with such procedures as ICS may implement for that purpose. Customers shall not place orders directly with ICS. Notwithstanding the foregoing, ICS may, in its sole discretion, on a case-by-case basis, agree to accept orders directly from a particular Customer; provided, however, that in doing so ICS shall not assume or be deemed to have assumed any of the responsibilities for supervision of Accounts allocated to Correspondent under this Agreement. ICS shall have no duty of inquiry or investigation with respect to any orders transmitted to it for execution or clearance. Correspondent shall be responsible for the timely and accurate transmission of all orders to ICS, as well as for any errors or discrepancies therein.

B. **Acceptance of Orders**

Orders accepted by ICS for execution and clearance shall be executed and cleared in accordance with ICS' standard practices and the Laws and Rules. **ICS reserves the absolute right, exercisable in its sole discretion, without prior notice to Correspondent or to the Customer, to reject for execution and clearance any trades which exceed established limits or are otherwise unacceptable to ICS due to such factors as adverse market conditions, assumptions regarding the volatility and liquidity of the subject securities, current market price, the financial condition or credit worthiness of Correspondent or of the Customer, any regulatory problems of Correspondent or of the Customer, or for any reason whatsoever which, in the sole discretion of ICS, renders it advisable to reject a transaction. ICS also reserves the right, exercisable in its sole discretion, to restrict trading in Accounts in any manner, including but not limited to restricting trading to liquidating orders only or cash transactions only, or to prohibit certain trading strategies or trading of certain types of securities.**

C. **Over-the-Counter Transactions**

For all over-the-counter transactions, Correspondent shall furnish ICS with the names of the respective purchasing and selling broker-dealers (except as otherwise provided in the section

below), and the wholesale and retail purchase and sale prices necessary for confirmation in accordance with applicable Laws and Rules. Correspondent shall be solely and exclusively responsible for compliance with all rules relating to the Small Order Execution System, including, without limitation, prohibitions on proprietary trading and volume restrictions.

D. **Designation of Contra Brokers**

Whenever Correspondent directs ICS to route an order to a particular broker, dealer, or market for execution, including, without limitation, designating the contra broker in an over-the-counter transaction for an Account, Correspondent shall be responsible to ICS for all aspects of the transaction, including, without limitation, any duty of best execution or any failure by such contra broker or dealer to settle the transaction for any reason whatsoever, and Correspondent shall immediately reimburse ICS for any losses or expenses sustained by ICS in connection therewith.

E. **Short Sales**

Correspondent shall be responsible for determining and advising ICS whether each order for the sale of securities for an Account is "long" or "short" within the meaning of the Laws and Rules. Correspondent shall also be responsible for ensuring that each short sale for an Account complies with Rule 10a-1 under the 1934 Act, NYSE Rule 440B, all provisions relating to short sales under NASD rules and the interpretations of such rules, and any other applicable provisions of the Laws and Rules regarding short sales.

F. **Low Priced/Penny Stocks**

ICS shall execute orders for "reported" issues or new issues approved for listing on a "National Securities Exchange", as such terms are defined in SEC Rule 3a51-l. Correspondent shall not accept orders for transactions in securities that do not meet such criteria, and the disclosure requirements of Rule 3a51-l do not apply.

G. **Order Limits; Position and Credit Limits**

Correspondent shall be responsible for maintaining continuing familiarity and compliance with all limits on order size and all position and credit limits which have been or may be established by ICS with respect to transactions in the Accounts, which limits may be changed from time to time by ICS in its sole discretion. Correspondent agrees to notify ICS and obtain its approval prior to the entry of any trade in an Account which would exceed such limits.

H. **Delivery Versus Payment**

Correspondent agrees that its Customers shall utilize the facilities of a securities depository for the confirmation, acknowledgment, and book entry settlement of all depository eligible transactions in connection with delivery versus payment ("DVP") transactions, and that Correspondent shall be solely and exclusively responsible for causing any Customers engaging in such transactions to utilize such facilities. Correspondent further agrees to ensure that its Customers shall provide their agent with instructions in accordance with the requirements set forth in NASD Rule 11860.

I. **Buy-Ins and Sell-Outs; Interest Charges**

Upon the failure of any Customer (or Correspondent, in the case of Accounts which are proprietary accounts) to make timely payment for securities purchased or timely and good delivery of securities sold, or the failure timely to comply with any applicable margin requirements, ICS

shall be entitled, but not obligated, to take such remedial action, or direct Correspondent to take such remedial action, as ICS, in its sole discretion, deems appropriate, including but not limited to executing buy-ins or sell-outs for an Account. Checks shall not constitute payment until they have cleared and the proceeds have been collected by ICS' bank and credited to ICS. The taking of any such remedial action by ICS, or its failure to do so, shall not in any way affect or diminish Correspondent's indemnification, reimbursement, or payment obligations pursuant this Agreement.

To the extent permitted by Regulation T, Rule 15c3-3(m) under the 1934 Act, or any other provisions of the Laws and Rules, Correspondent may request, in a writing signed by an officer, partner or principal of Correspondent, that ICS defer a buy-in or sell-out for an Account. The grant or denial, in whole or in part, of any such request to defer a buy-in or sell-out, or of any application for an extension of time for any Account to make any payment required by Regulation T or any other provision of the Laws or Rules, shall remain within the sole discretion of ICS. Correspondent shall be liable to ICS for any loss or expense incurred by ICS in connection with such request, whether or not granted.

ICS may, at its option, charge Customers (and Correspondent, in the case of Accounts which are proprietary accounts) interest at the rate of 2% above the broker's call rate, or such other rate as may be agreed in writing by Correspondent and ICS, arising from any debit in an Account however arising, including, without limitation, for late payments or deliveries of securities. Correspondent shall be liable to ICS for such charges to the extent not paid by Customers.

J. **Option Assignments, Tender Offers, and Rights Offerings**

ICS may, in its sole discretion, either buy back in the cash market or borrow shares on the day ICS is notified of option assignments affecting shares which have been tendered and which have caused short positions in Accounts as of either the proration or withdrawal date. Shares purchased for cash or borrowed shall not be considered part of an Account's tendered position until such shares are in ICS' actual possession. ICS shall reduce the tender for Accounts by the size of the short or unreceived shares.

During a tender period in which there are competing and counter tender offers for a security, ICS shall tender only upon the written instructions of Correspondent or the Customer and only on a trade date basis the number of shares net long in the Account as of either the proration or withdrawal date, which number shall, at ICS' request, be confirmed in writing by Correspondent. At ICS' request, Correspondent shall also confirm in writing that such tender is being made upon the instructions of persons authorized to direct the disposition of the shares.

In connection with a rights offering, ICS shall exercise rights only upon the written instructions of Correspondent or the Customer and only on a trade date basis the number of rights relating to shares net long in the Account, which number shall, at ICS' request, be confirmed in writing by Correspondent. At ICS' request, Correspondent shall also confirm in writing that such exercise is being made upon the instructions of persons authorized to do so.

VI. RECEIPT AND DELIVERY OF FUNDS AND SECURITIES

A. **Receipt and Delivery in the Ordinary Course of Business**

ICS shall receive and deliver funds and securities for Accounts in accordance with Correspondent's instructions to ICS, provided that Correspondent shall be responsible for advising Customers of their obligations to deliver funds or securities in connection with each transaction in

an Account and shall be responsible for any failure by a Customer to satisfy such obligations. Correspondent agrees promptly to deliver to ICS any and all funds or securities received by Correspondent from Customers, together with such information as may be relevant or necessary to enable ICS properly to record such deliveries in the appropriate Accounts. ICS shall be responsible for the safeguarding of all funds and securities actually received and accepted by ICS, subject to count and verification by ICS. ICS shall not be responsible for any funds or securities delivered by a Customer to Correspondent or its agents or employees until such funds or securities are physically delivered to and accepted by ICS at its premises or deposited in ICS' bank accounts. It is expressly understood and agreed, however, that Correspondent shall be responsible for compliance with the Currency and Foreign Transactions Reporting Act (31 U.S.C. § 5311, et seq.) and the rules and regulations promulgated thereunder (31 C.F.R. § 103.11, as amended, et seq.).

B. **Lost, Stolen or Forged Securities**

Correspondent shall be responsible for any defect in title to any securities purchased, sold, borrowed, delivered or transferred under this Agreement which may have been forged, counterfeited, raised, altered, lost or stolen.

C. **Custody Services**

Whenever ICS has agreed to act as custodian of securities in any Account, or to hold securities in "safekeeping", ICS may hold the securities in the Customer's name ("Customer Name Securities"), or may cause such securities to be registered in the name of ICS or its nominee or in the names or nominees of any depository used by ICS. In connection with Customer Name Securities, ICS shall have no responsibility for, among other things, collecting and paying of dividends, transmitting and handling tenders or exchanges pursuant to tender offers and exchange offers, transmitting proxy materials and other shareholder communications, and handling exercises or expirations of rights and warrants or redemptions.

D. **Receipt and Delivery Pursuant to Special Instructions**

Upon special instructions from Correspondent or from a Customer, ICS shall endeavor to make such transfers of securities or Accounts as may be requested, consistent with the Laws and Rules. Any such special instructions shall be in writing.

E. **Restricted or Control Securities**

Correspondent shall be solely and exclusively responsible for determining whether any securities in Accounts are restricted or control securities within the meaning of Rule 144 under the 1933 Act, and for ensuring that any transactions in such securities are in compliance with the Laws and Rules. Prior to the time any such order shall be transmitted to ICS, Correspondent shall notify ICS and ICS may, in its discretion, charge such reasonable fees, in addition to the clearing charges described below, as it deems appropriate for handling such transactions.

VII. CONFIRMATIONS AND STATEMENTS

A. **Preparation and Transmission**

ICS shall prepare and mail to Customers (and to Correspondent for its proprietary accounts) confirmations and monthly or quarterly statements of account in connection with all transactions executed or cleared through ICS, on ICS' forms disclosing that the Accounts are carried on a fully

disclosed basis for Correspondent; provided, however, that ICS may, in its sole discretion, delegate such confirmation responsibilities to Correspondent. **In the event that such responsibilities are delegated to Correspondent, Correspondent shall have sole and exclusive responsibility for confirmations and for their compliance with the Laws and Rules. In the event that such responsibilities are not delegated to Correspondent, Correspondent acknowledges that such confirmations shall be prepared and delivered on Correspondent's behalf and at its direction, and that such confirmations shall remain, for all purposes, the confirmations of Correspondent. Correspondent further acknowledges that it shall have sole and exclusive responsibility for the content of such confirmations and for their compliance with the Laws and Rules. Accordingly, Correspondent shall provide in writing to ICS any information required by the Laws and Rules to be disclosed in its confirmations, including, without limitation, information with respect to the receipt of any payment for order flow**. ICS shall provide Correspondent with copies of all confirmations and statements sent by ICS to Customers in connection with the Accounts. Except as expressly provided in this Agreement, Correspondent shall not prepare or transmit confirmations or periodic account statements or other communications to Customers without the prior written consent of ICS.

B. **Examination and Notification of Errors**

Correspondent shall examine promptly all confirmations, monthly and quarterly statements of account, the Reconciliation Statements (as defined below in Section IX.C.) and any other statements or reports provided to Correspondent by ICS. All such confirmations, statements and reports shall be deemed accurate and correct, and Correspondent shall be deemed to have waived any claim with respect to the accuracy or correctness of the information therein, unless within ten (10) business days of receipt thereof Correspondent notifies ICS in writing of any alleged errors or discrepancies therein. Any notice of error shall be accompanied by such documentation as may be necessary to substantiate Correspondent's claim. Upon the request of ICS, Correspondent promptly shall provide any additional documentation ICS reasonably believes is necessary or desirable to substantiate and correct any such alleged error or discrepancy.

C. **Notations on Confirmations, Monthly and Quarterly Statements, and Notices**

ICS shall make reasonable efforts to indicate on confirmations, monthly and quarterly statements, and notices to Customers that Customers are customers of Correspondent. Occasional or inadvertent omission of such notations shall not be deemed to constitute a breach of this Agreement, and shall not affect the allocation of responsibilities between ICS and Correspondent pursuant to this Agreement.

VIII. BOOKS AND RECORDS

ICS shall prepare and maintain stock records and other prescribed books and records of the services performed and transactions effected by ICS for the Accounts on a basis consistent with generally accepted practices in the securities industry and with the Laws and Rules governing clearing brokers. Such books and records shall include, without limitation, records of daily margin requirements as required by NASD Rule 2520. ICS reserves the right, at its sole discretion, to amend its policies with respect to the retention of reports requested by or provided to Correspondent. Any reports relating to the Accounts that, under the Laws and Rules, are required to be prepared and filed with the SEC or any other regulatory or self-regulatory organization by Correspondent or ICS, respectively, shall remain the responsibility of the respective parties, and ICS and Correspondent each agrees promptly to provide the other with any information in its possession necessary to enable the other to prepare and file any such reports.

IX. COMMISSIONS AND CLEARING FEES

A. Commissions

Correspondent shall have sole discretion and responsibility for determining the amount of commissions, mark-ups and similar charges (collectively, "Commissions") to be charged to Customers for transactions in the Accounts, and ICS shall not exercise any control or influence over the amount of such Commissions. Correspondent shall be solely and exclusively responsible for the amounts of such Commissions and their compliance with the Laws and Rules, including, but not limited to, any disclosures to Customers or others required to be made in connection therewith. On or before the execution of this Agreement, Correspondent shall have provided ICS with a schedule (the "Commission Schedule") showing the amounts of Commissions to be charged to Customers. Correspondent may amend the Commission Schedule from time to time by written instructions to ICS. ICS shall debit and collect from Accounts the amounts shown on the Commission Schedule, but ICS shall be required to implement any amendments to the Commission Schedule only to the extent and over such time as is within the normal capabilities of ICS' data processing and operations systems. Notwithstanding anything herein to the contrary, ICS shall not be obligated to charge Customers any amounts which it believes to be violative of the Laws and Rules, but ICS shall have no obligation to determine whether any such charges are violative of the Laws and Rules.

B. Clearing Fees

Correspondent agrees to pay ICS a minimum monthly fee (the "Minimum Fee") as set forth in Schedule B for the execution, clearing and related services to be provided under this Agreement during the Initial Term (as defined herein) and any extended terms thereafter until this Agreement is terminated in accordance with Section XVIII here under. In addition to the Minimum Fee, Correspondent agrees to pay ICS the clearing fees and other amounts set forth in Schedule B hereto for the execution, clearing and related services to be provided under this Agreement (the "Clearing Fees"). Any Clearing Fees owed by Correspondent to ICS in any given month will count towards achievement of the Minimum Fee for such month and ICS shall deduct such Clearing Fees from the Minimum Fee for such month. If no time for payment is specified in Schedule B, the Minimum Fee shall be billed monthly and paid within fifteen (15) days of receipt by Correspondent of an invoice for such Minimum Fee. ICS may change the amount of the Minimum Fee, in its sole discretion, at any time on a minimum of thirty (30) days' prior written notice to Correspondent, or from time to time as may be agreed in writing by the parties. Schedule B is hereby incorporated in and made an integral part of this Agreement. Schedule B may be amended by ICS, in its sole discretion, at any time on a minimum of thirty (30) days' prior written notice to Correspondent, or from time to time as may be agreed in writing by the parties.

C. Collection and Remittance of Commissions

ICS shall collect all Commissions from the Accounts on behalf of Correspondent and shall deduct and retain the following amounts from such Commissions as shall be determined by ICS:

1. all amounts payable to ICS in accordance with Schedule B and any amendments thereto;
2. any expenses payable by ICS on Correspondent's behalf;
3. any loss, liability, damage, claim, cost or expense (including but not limited to attorneys' fees), as incurred, in respect of which any ICS Indemnitee (as defined below) is entitled to indemnification by Correspondent under this Agreement; and

4. all other amounts owed by Correspondent or by any Customer to ICS pursuant to this Agreement or any other agreement between ICS and Correspondent or between ICS and any Customer (including, without limitation, Customers' unsecured debit items, or unsecured or partially secured short positions).

As soon as practicable after the end of each month, ICS shall credit the Settlement Deposit Account (as defined in Section X.B.) with the amount of Commissions collected by ICS on Correspondent's behalf, net of all amounts to be deducted as set forth above and any other amounts due to ICS from Correspondent, however arising, as determined by ICS. If the amount due to ICS in any month exceeds the amount available in Correspondent's Settlement Deposit Account, Correspondent shall, in accordance with the provisions of Section X.A., immediately deposit with ICS additional cash so that the Settlement Deposit Account shall always have a zero or credit balance. If Correspondent fails to make such additional deposit, ICS shall have full rights of setoff, including, without limitation, the right to charge any other Account maintained by ICS for Correspondent or any other assets of Correspondent held by ICS, including, but not limited to, the Security Deposit (as defined in Section X.B.) and positions and balances in Accounts which are proprietary accounts of Correspondent, for the net amount due ICS. If ICS elects not to charge such other Accounts or assets, or such assets are insufficient to discharge the net amount due to ICS, any amount due to ICS shall be paid to ICS by Correspondent by check within ten (10) days of Correspondent's receipt of a statement (the "Reconciliation Statement") showing the amount due to ICS. If ICS does not receive payment within such period, ICS shall charge Correspondent interest at 1% above the broker's call rate, or such other rate as may be agreed in writing by ICS and Correspondent until paid. Any failure by ICS to charge the Settlement Deposit Account or any other Account or assets of Correspondent held by ICS shall not act as a waiver of ICS' right to demand payment of, or to charge Correspondent's Accounts for, the full amount due at any time.

X. SECURITY FOR OBLIGATIONS OF CORRESPONDENT

A. Lien and Security Interest

In order to secure the performance by Correspondent of all of its obligations under this Agreement, including but not limited to its liability to ICS for any failures by Customers timely to pay for or deliver securities purchased or sold and for any losses resulting from unsecured debit balances or short positions in Accounts, Correspondent hereby grants ICS a continuing lien, security interest in and right of setoff against (a) the Settlement Deposit Account and the Security Deposit (as such terms are defined below), (b) any Accounts which are proprietary accounts of Correspondent, and (c) any Commissions, funds, securities or other property of Correspondent held by ICS . Correspondent further agrees that ICS may debit any cash balances and/or liquidate any securities held in the Settlement Deposit Account or in any proprietary Account and credit the proceeds to ICS in such amounts as are necessary to satisfy Correspondent's obligations under this Agreement and at such times as ICS, in its sole discretion, deems appropriate. The lien, security interest and right of setoff created hereunder shall survive the termination of this Agreement until such time as, in the sole discretion of ICS, security for the performance of Correspondent's obligations is no longer required.

B. Settlement Deposit Account and Security Deposit

On or before the execution of this Agreement, Correspondent shall have established an account (the "Settlement Deposit Account") with ICS. The Settlement Deposit Account shall at all times

contain cash and/or securities issued or guaranteed as to principal and interest by the United States ("U.S. Government Securities") having an aggregate present value of at least $ 0 (the "Security Deposit"). ICS reserves the right, in its sole discretion, on written notice to Correspondent, at any time, to increase the amount of the Security Deposit required to be maintained by Correspondent. Correspondent shall immediately transfer to the Settlement Deposit Account sufficient cash and/or U.S. Government Securities to satisfy the increased amount of the Security Deposit. If Correspondent fails to transfer such additional cash or U.S. Government Securities to the Settlement Deposit Account, or if, for any other reason, including but not limited to the exercise of any right of setoff pursuant to the preceding section, the aggregate value of cash and U.S. Government Securities in the Settlement Deposit Account is less than the Security Deposit amount then in effect, ICS shall be entitled to deposit in the Settlement Deposit Account such Commissions, funds, securities or other property of Correspondent in ICS' possession as are necessary to satisfy the deficiency. Correspondent agrees that if this Agreement is terminated for any reason, ICS may deduct from the Security Deposit any amounts Correspondent owes ICS because of failure to meet any of Correspondent's obligations under this Agreement.

C. **Funds, Securities, and No Interest**

All funds transferred to the Settlement Deposit Account shall be in immediately available United States funds. All securities transferred to the Settlement Deposit Account (a) shall be in suitable form for transfer or shall be accompanied by duly executed instruments of transfer or assignment in blank and such other documentation as ICS may request, (b) shall be transferred on the book-entry system of a Federal Reserve Bank, or (c) shall be transferred by any other method acceptable to ICS. ICS shall not be obligated to pay interest to Correspondent on any cash held in the Settlement Deposit Account. Neither the Security Deposit nor the Settlement Deposit Account shall be deemed to be margin for any Account, nor shall they give rise to or constitute an ownership interest in ICS.

XI. INFORMATION TO BE SUPPLIED BY CORRESPONDENT

A. **Financial Statements and Other Reports**

On or before the execution of this Agreement, Correspondent shall have supplied ICS with copies of its most recent audited annual financial statements and its most recent unaudited quarterly financial statements. Throughout the term of this Agreement, Correspondent will, within five (5) business days after their preparation, continue to provide ICS with copies of its audited annual and unaudited quarterly financial statements, together with any amendments thereto, for each subsequent fiscal year and quarterly period. Correspondent shall advise ICS in writing of any material errors in or omissions from such financial statements, or of any material adverse change in its financial condition or business prospects, immediately upon becoming aware of such error, omission or change. In addition, simultaneously with their filing, Correspondent shall supply ICS with copies of all financial information and reports filed by Correspondent with the SEC, the NYSE, the NASD and any other national securities exchange or association of which it is a member, including but not limited to its monthly and quarterly Financial and Operational Combined Uniform Single ("FOCUS") Reports, any amendment or supplement to its Form BD, and any reports on Form U-4 or Form U-5 relating to Correspondent's principals, together with any amendments or supplements to any of the foregoing information or reports. Correspondent shall provide immediate oral and written notice to ICS in the event that Correspondent's capital becomes subject to the "early warning" provisions of SEC Rule 17a-11.

B. **Suspension or Restriction**

In the event that Correspondent learns that Correspondent or any employee of Correspondent may become subject to revocation, suspension, bar, restriction, censure or other formal disciplinary action by the SEC, NYSE, NASD, or any other regulatory or governmental body having jurisdiction over Correspondent or such employee, Correspondent shall notify ICS immediately and, in addition to such other rights and remedies as ICS may have under this Agreement and the Laws and Rules, Correspondent authorizes ICS to take such steps as may be necessary for ICS to maintain compliance by ICS with the Laws and Rules. Correspondent further authorizes ICS, in such event, to comply with directives or demands made upon ICS by any such exchange or regulatory body. In connection with such directives or demands, ICS may seek advice or legal counsel and Correspondent shall promptly reimburse ICS for the reasonable fees and expenses of such counsel, as incurred.

C. **Additional Information**

Correspondent shall promptly supply ICS, upon request, with such other information or reports reflecting or relating to Correspondent's financial integrity, including, without limitation, its aggregate indebtedness ratio and net capital; Correspondent's principals and representatives; and inquiries, investigations, or disciplinary action relating to Correspondent or its principals or representatives by the SEC, NYSE, NASD or any other regulatory or governmental body.

XII. COMMUNICATIONS WITH CUSTOMERS

Correspondent shall promptly notify its Customers in writing of the respective obligations of the parties under this Agreement and any other customer-related responsibilities of the parties in accordance with NASD Rule 3230, such notification to be in substantially the form of Exhibit A annexed hereto; provided, however, that ICS may, at its sole discretion, undertake such responsibilities on behalf of a Correspondent. Correspondent shall be responsible for the payment of all costs incurred in connection with the preparation and mailing of such notification.

ICS agrees to forward promptly to Correspondent a copy of any written inquiry, complaint or other correspondence received from a Customer with respect to any Account. Correspondent agrees to forward promptly to ICS a copy of all of Correspondent's filings pursuant to NASD Rule 3070. Correspondent shall also provide ICS with such additional information as ICS shall reasonably request, including, without limitation, a copy of any written inquiry, complaint or other correspondence from any Customer of Correspondent, whether or not such written inquiry, complaint or other correspondence was disclosed by Correspondent in its filings pursuant to NASD Rule 3070.

XIII. ERRORS, CONTROVERSIES AND ADDITIONAL INDEMNITIES

A. **Errors and Controversies**

Correspondent shall be solely responsible for any error, controversy, dispute or discrepancy between Correspondent, or any of its control persons, partners, shareholders, directors, officers, employees, agents, affiliates, successors or assigns (collectively, including Correspondent, the "Correspondent Parties"), and any of the Accounts. Correspondent shall indemnify, defend and hold ICS and its control persons, partners, shareholders, directors, officers, employees, agents, affiliates, successors and assigns (collectively, including ICS, the "ICS Indemnitees") harmless from and against any loss, liability, damage, claim, cost or expense (including but not limited to attorneys' fees), in each case as incurred, arising directly or indirectly from any such error,

controversy, dispute or discrepancy, and from any action or proceeding commenced by or against any of the Correspondent Parties by any Customer, or from the settlement of any such claim, action or proceeding.

B. **Additional Indemnities**

Correspondent hereby agrees to indemnify, defend and hold the ICS Indemnitees harmless from and against any loss, liability, damage, claim, cost or expense (including but not limited to attorneys' fees), in each case as incurred, arising directly or indirectly from or related to the Accounts or any transaction contemplated by this Agreement, or as a result of any inquiry or investigation conducted in connection therewith or in the defense or settlement of any threatened or pending action or proceeding brought by any regulatory or self-regulatory organization, governmental agency or private person arising out of or in connection with the same, unless such loss, liability, damage, claim, cost or expense, as finally determined by a court of competent jurisdiction, was caused solely by the fraudulent conduct or gross negligence of ICS. This indemnity is supplemental to any other obligation of Correspondent in this Agreement to pay or reimburse ICS for any fees, expenses, losses, or liabilities. Without limiting its generality, the foregoing indemnity is intended to include, among other things, any loss, liability, damage, claim, cost or expense (including but not limited to attorneys' fees) arising from or relating to any of the following:

1. the failure of any Customer to make timely payment for securities purchased or timely and good delivery of securities sold, the existence of an unsecured debit balance or unsecured short position in an Account, the failure of any Customer timely to comply with initial margin or margin maintenance requirements, or the failure of any Customer otherwise to fulfill any of its obligations in connection with any Account, whether or not such failure is within the control of Correspondent;

2. the failure of any of the Correspondent Parties fully and properly to discharge their obligations and responsibilities with respect to Accounts, it being understood and agreed that the participation of any of the ICS Indemnitees in any transaction shall not diminish, reduce or otherwise affect Correspondent's indemnification obligations hereunder, except to the extent that such participation has been finally determined by a court of competent jurisdiction to have been fraudulent or grossly negligent;

3. any willful misconduct or negligent act or omission on the part of any of the Correspondent Parties or any Customer, including but not limited to any dishonest, fraudulent or criminal act or omission;

4. any defect in title to any securities purchased, sold, borrowed, delivered or transferred under this Agreement (including, without limitation, those that may have been forged, counterfeited, raised, altered, lost or stolen), and any adverse claims with respect to any securities purchased, sold, borrowed, delivered or transferred under this Agreement, it being understood that ICS shall be deemed to be solely an intermediary between Correspondent and Customers with respect to such securities and shall be deemed to make no representations or warranties other than as provided with respect to intermediaries in Section 8-306(3) of the Uniform Commercial Code;

5. any claim by any contra broker or any other person arising from or relating to ICS' rejection of a transaction for clearance pursuant to the terms of this Agreement, or the failure by any contra broker designated by Correspondent to settle any transaction for an Account;

6. any errors or discrepancies in orders as transmitted by Correspondent to ICS;

7. the use of check-writing privileges in accordance with Section XXI.C. hereof;

8. any request by Correspondent to defer a buy-in or sell-out for an Account, or to extend the time for the making of a required margin payment by an Account, whether or not granted in whole or in part by ICS;

9. any guarantee by ICS of any signatures with respect to transactions in the Accounts;

10. the exercise by Correspondent Parties of discretionary authority over any Account;

11. any action or inaction by an agent holding a power of attorney for an Account on behalf of a principal; or

12. the breach by Correspondent of, or an untrue statement or omission in, any representation, warranty or covenant in this Agreement.

C. **Defense of Claims and Actions**

If any claim or action is asserted or commenced against any of the ICS Indemnitees in respect of which indemnity may be sought against Correspondent pursuant to this Agreement, such ICS Indemnitees shall notify Correspondent in writing, and Correspondent shall assume the defense of such claim or action, including the employment of counsel and payment of attorneys' fees and expenses, as incurred, on behalf of such ICS Indemnitees. Each ICS Indemnitee against whom such claim or action is asserted or commenced shall have the right to employ its own separate counsel, but the fees and expenses of such separate counsel shall be at the expense of such ICS Indemnitee unless: (1) the employment of such separate counsel shall have been authorized in writing by the Correspondent; (2) Correspondent shall not have employed counsel to conduct the defense of such ICS Indemnitee; or (3) such ICS Indemnitee shall have reasonably concluded that, as between such ICS Indemnitee and Correspondent or between such ICS Indemnitee and one or more of the other ICS Indemnitees, there may be a conflict of interest requiring separate counsel. In the event that any of the circumstances referred to in clauses (l)-(3) of the preceding sentence occurs, the fees and expenses of the separate counsel employed by such ICS Indemnitee shall be borne in their entirety by Correspondent, and Correspondent shall not have the right to direct the defense of such ICS Indemnitee. In any event, Correspondent shall cooperate in the defense of any such claim or action against a ICS Indemnitee, including, without limitation, in the effectuation of any settlement which such ICS Indemnitee, in its reasonable discretion, deems appropriate, the costs of which settlement shall be borne in their entirety by Correspondent.

D. **Survival of Indemnities**

All indemnification, reimbursement and payment for expense provisions of this Agreement shall survive the termination of the Agreement. Each indemnity under this Agreement shall also extend to the costs and expenses (including but not limited to attorneys' fees), if any, incurred by any of the ICS Indemnitees in enforcing such indemnity.

XIV. LIMITATION OF LIABILITY OF ICS

A. **Indirect or Consequential Damages**

In no event shall ICS be responsible to Correspondent, to any Customer or to any other person for

indirect or consequential damages arising from or relating to any actual or alleged failure by ICS to perform the functions or provide the services required by this Agreement, regardless of whether ICS has been advised of or might otherwise have anticipated the possibility of such damages. ICS' sole responsibility and liability for any such actual or alleged failure shall be to Correspondent, and notwithstanding anything to the contrary in this Agreement, ICS shall have no liability whatsoever for any losses, damages, costs or expenses which are not finally determined by a court of competent jurisdiction to have been caused solely by its own fraudulent conduct or gross negligence. ICS shall not be bound to make any investigation into the facts surrounding any transaction that it may have with Correspondent or that Correspondent may have with or on behalf of any Customers or other persons, nor shall ICS be responsible for compliance by Correspondent with the Laws and Rules in connection with any Account or the performance by Correspondent of its obligations under this Agreement. **Correspondent acknowledges and agrees that this Agreement significantly limits the liability of ICS and that such limitation is fair and reasonable in light of the limited responsibilities of ICS, and the amounts payable to ICS for its services, under this Agreement.**

B. **Third-Party Service Providers**

ICS may, in its discretion, use third party service companies to perform or assist it in the performance of selected services under this Agreement. ICS shall not be responsible to Correspondent, to any Customer or to any other person for any errors, omissions, systems failures, interruptions or delays caused by or resulting from the use of such service companies. ICS' sole responsibility shall be, to the extent practicable, to instruct such service companies to correct any such errors, omissions or system failures known to ICS and to deliver overdue services or work as soon as practicable. In any event, whether or not ICS has been advised of or might otherwise have anticipated the possibility of such damages, ICS shall not be responsible for any direct, special, indirect or consequential damages which Correspondent, any Customer or any other person may incur or experience as a result of any of the occurrences described in this Section.

C. **Systems and Communications Failures; Errors in Instructions**

ICS' sole responsibilities with respect to any systems or communications failures, or any interruptions or delays in the services provided or to be provided by ICS under this Agreement, shall be to use its best efforts to make such systems and services available as promptly as reasonably practicable. ICS shall have no responsibility whatsoever for the accuracy of, or any errors or omissions in, any databases or securities information and related market and statistical information displayed, carried or furnished by or through its equipment or systems. ICS shall have no responsibility whatsoever for any loss, expense or damage suffered by Correspondent, any Customer or any other person by reason of any interruption or delay in the transfer or receipt of funds or securities through the Federal Reserve Book Entry System, the Federal Funds Wire Transfer System or any similar system or from any clearing agent, issuer, broker, dealer or other third party. ICS shall have no responsibility whatsoever for any failures to execute or "DK's" directly or indirectly resulting from incorrect, incomplete or untimely instructions or any other failure by Correspondent, or any other person, to provide proper instructions.

XV. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS

A. **Representations, Warranties and Covenants of Correspondent**

Correspondent represents, warrants and covenants to ICS as follows:

1. Correspondent is and during the term of this Agreement shall be duly registered and in good

standing as a broker-dealer with the SEC, a member firm in good standing of the NASD, and a member in good standing of every national securities exchange and association of which it is a member.

2. Correspondent has all requisite authority in conformity with all Laws and Rules to enter into and perform this Agreement and has taken all necessary actions to authorize the execution of this Agreement and the performance of its obligations hereunder.

3. Correspondent and each of the other Correspondent Parties is and during the term of this Agreement shall remain in full compliance with the Laws and Rules, including but not limited to the registration, qualification, capital, financial reporting, customer protection, and similar requirements of the SEC, the NASD, any other securities exchange or association of which it is a member, and every state to which jurisdiction it is subject.

4. Correspondent has and during the term of this Agreement shall maintain excess net capital in an amount that is the greater of 120% of the amount required under the Law and Rules, or an amount specified in writing by ICS to Correspondent. Correspondent shall give prompt written notice to ICS in the event that Correspondent's excess net capital falls below 135% of the amount required under the Laws and Rules.

5. All orders and instructions transmitted to ICS by Correspondent shall be valid and shall have been duly and properly authorized.

6. There is no action, suit, investigation, inquiry or proceeding (formal or informal) pending or threatened against or affecting Correspondent or any of the other Correspondent Parties, by or before any court or other tribunal, arbitrator, governmental agency, instrumentality or authority or any self-regulatory or clearing organization, as to which ICS has not been informed and provided with copies of relevant documents. In the event any such action, suit, investigation, inquiry or proceeding is initiated or threatened at any time during the term of this Agreement, Correspondent shall promptly notify ICS in writing and provide it with copies of all relevant documents related thereto.

7. The services provided by ICS do not and during the term of this Agreement shall not give rise to a prohibited transaction within the meaning of Section 406 of ERISA, and all applicable Prohibited Transaction Class Exemptions shall have been complied with.

8. Correspondent has and during the term of this Agreement shall maintain blanket bond insurance policies satisfactory to ICS covering any and all acts, errors, and omissions of any of the Correspondent Parties and adequate fully to protect and indemnify ICS against any loss, liability, damage, claim, cost or expense (including but not limited to attorneys' fees) which ICS may suffer or incur directly or indirectly as a result of any such act, error, or omission. Coverage to be maintained under such policies shall be in an amount that is the greater of the amount required under NASD Rule 3020, or an amount specified in writing by ICS to Correspondent, and shall remain in effect during the term of this Agreement and include coverage for any claims discovered or made within at least ninety (90) calendar days following the termination of this Agreement. ICS shall be expressly named as the beneficiary of the errors and omissions policy required to be maintained by Correspondent pursuant hereto.

9. On or before the execution of this Agreement, Correspondent shall have identified in writing to ICS each of its lines of business and any securities in which Correspondent makes a market. Correspondent shall give ICS at least ten (10) business days' prior written notice

of any proposed changes in its market-making activities, including but not limited to any changes in the identity of securities in which it proposes to act as a market maker. ICS shall have the absolute right, in its sole discretion, to limit or prohibit Correspondent's market-making activities with respect to any security.

10. Correspondent shall give ICS at least ten (10) business days' prior written notice of any new lines of business that materially modify the mix of business that Correspondent is engaged in on the date of this Agreement. Such notice shall be required notwithstanding that such new business or different business mix does not affect the services to be performed by ICS under this Agreement. In connection with any such new business or different business mix, ICS shall have the absolute right, in its sole discretion, to request additional assurances from Correspondent, to require Correspondent to increase the amount of its Security Deposit, or to terminate this Agreement.

11. Correspondent's trade and reporting systems are designed to be used and shall, during the term of this Agreement, be designed to be used, prior to, during, and after calendar year 2000, and will operate during each such time period without error relating to date data, specifically including, without limitation, any error relating to, or the product of, date data that represent or reference different centuries or more than one century, calculations that accommodate same century and multi-century formulas and date values, and date data interface values that reflect the century.

B. **Representations, Warranties and Covenants of ICS**

ICS represents, warrants and covenants to Correspondent as follows:

1. ICS is and during the term of this Agreement shall remain duly registered and in good standing as a broker-dealer with the SEC, a member firm in good standing of the NASD, and a member in good standing of every national securities exchange and association of which it is a member.

2. ICS has all requisite authority in conformity with all Laws and Rules to enter into and perform this Agreement and has taken all necessary actions to authorize the execution of this Agreement and the performance of its obligations hereunder.

3. ICS has and during the term of this Agreement shall maintain net capital in an amount no less than that required by the Law and Rules.

XVI. NO PARTNERSHIP OR AGENCY; NO SPECIAL TREATMENT

Neither this Agreement nor any activity hereunder shall create a general or limited partnership, association, joint venture, branch or agency relationship between Correspondent and ICS. Correspondent shall not hold itself out as an agent of ICS or of any subsidiary or company controlled directly or indirectly by or affiliated with ICS, nor shall it employ ICS' name in any manner that creates the impression that the relationship created or intended between them is anything other than that of clearing broker and introducing broker. Correspondent shall not, without the prior written approval of ICS, place any advertisement in any newspaper, publication, periodical or any other media if such advertisement in any manner makes reference to ICS or to the execution and clearing arrangements contemplated by this Agreement. Should Correspondent in any way hold itself out as, advertise or otherwise represent that it is the agent of ICS, ICS shall have the right, at its option, in addition to such other rights and remedies as it may have, to terminate this Agreement and/or to obtain injunctive relief or any other provisional remedy in any New York federal or state court, and Correspondent shall be liable for any loss, liability, damage, claim, cost or expense

(including but not limited to attorneys' fees) sustained or incurred as a result of such representation of agency. No such application for a provisional remedy, however, nor any act by either party in furtherance of or in opposition to such application, shall constitute a relinquishment or waiver of any right to have the underlying dispute or controversy with respect to which such application is made settled by arbitration in accordance with Section XXI.L. of this Agreement.

This Agreement is not intended, nor shall it be construed, to bestow upon Correspondent any special treatment regarding any other arrangements, agreements or understandings that exist or may hereafter exist between the parties. Neither party shall have any obligation to deal with the other in any capacity other than as set forth in this Agreement.

XVII. CONFIDENTIALITY; EMPLOYEES

A. Confidentiality

Correspondent and ICS shall each keep confidential any information acquired as a result of this Agreement regarding the business and affairs of the other, except such information as may be required to be disclosed pursuant to subpoena, court order or in any regulatory or self-regulatory inquiry, investigation, proceeding or other matter (collectively, "Inquiry"). Except as otherwise prohibited by law, Correspondent and ICS shall each give the other prompt notice of the receipt of any Inquiry prior to such party's disclosing information in connection therewith. Correspondent agrees not to disclose the terms of this Agreement to any person or entity except to regulatory bodies with appropriate jurisdiction and to authorized employees of Correspondent on a need-to-know basis. Any other publication or disclosure of the terms of this Agreement may be made only with the prior written consent of ICS. The confidentiality provisions of this Agreement shall survive the termination of this Agreement.

B. Employees

Without ICS' prior written consent, Correspondent shall not solicit, or engage in negotiations with, any person who is, or within the preceding twelve (12) months has been, employed by ICS or by any affiliate of ICS.

XVIII. TERM AND TERMINATION

A. Termination by Correspondent

1. The initial term of this Agreement shall commence on the date of this Agreement and shall continue for a one-year period (the "Initial Term"). The end of the initial term is referred to as the "Initial Expiration Date." This Agreement shall be deemed to have been extended for additional successive one-year periods as of each anniversary of the Initial Expiration Date, unless Correspondent terminates this Agreement upon sixty (60) calendar days' prior written notice to ICS.

2. Correspondent may terminate this Agreement at any time, with or without cause, whether prior to or after the Initial Expiration Date, upon sixty (60) calendar days' prior written notice to ICS.

3. In the event this Agreement is terminated prior to the Initial Expiration Date pursuant to this Section XVIII A.2, Correspondent agrees to pay to ICS, without set-off or deduction of any kind,

within thirty (30) days of the effective date of the termination hereof, the aggregate of the following:

(i) the Termination Fee (as defined below);

(ii) all fees and expenses due and owing up to the effective date of termination; and

(iii) one-hundred percent (100%) of the Minimum Fee multiplied by the number of months remaining in the Initial Term, calculated from the effective date of the termination of this Agreement by Correspondent.

B. **Termination by ICS**

ICS may terminate this Agreement at any time, with or without cause, whether prior to or after the Initial Expiration Date, upon sixty (60) calendar days' prior written notice to Correspondent. In addition, ICS may terminate this Agreement, in accordance with the procedures set forth below, whether prior to or after the Initial Expiration Date, upon the occurrence of an "Event of Default". For purposes hereof, an "Event of Default" shall occur if:

1. Correspondent fails to perform or observe any term, covenant or condition to be performed hereunder and such failure continues unremedied for a period of ten (10) business days after receipt of written notice from ICS specifying the failure and demanding that Correspondent remedy its default;

2. any representation, warranty or covenant made by Correspondent proves to be incorrect at any time in any material respect;

3. Correspondent is enjoined, disabled, suspended, prohibited, or otherwise unable to engage in the securities business as a result of any administrative or judicial proceeding or action by the SEC, any state securities law administrator, any national securities exchange, or any self-regulatory organization or governmental body having jurisdiction over Correspondent; or

4. Correspondent is adjudicated bankrupt or insolvent or a trustee or similar creditors' representative is appointed by court order; or any property of Correspondent is sequestered by court order and such order remains in effect for more than thirty (30) calendar days; or a petition is filed by or against Correspondent either voluntarily or involuntarily under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) calendar days after such filing; or Correspondent makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee or liquidator for itself or for any property held by it.

Correspondent shall promptly advise ICS in writing upon the occurrence of any event which constitutes, or with the passage of time would constitute, an Event of Default under this Agreement. Upon the occurrence of an Event of Default under subsections (1) or (2) above, ICS may, at its option, by notice in writing to Correspondent, declare this Agreement terminated, and such termination shall be effective as of the date such notice is delivered or such later date as may be designated by ICS in such notice. Upon the occurrence of an Event of Default under subsections (3) or (4) above, this Agreement shall immediately and automatically terminate without notice or any further action by ICS.

C. **Changes in Control. Management or Business Mix**

Notwithstanding any provision hereof, this Agreement may be terminated immediately by ICS at any time, upon written notice to Correspondent, if there is a material change in the control or management of Correspondent, or in the scope, nature, or extent of the transactions effected in the Accounts or in the business mix of Correspondent, in each case without the prior written approval of ICS. For purposes hereof, a change in the business mix of Correspondent shall include, without limitation, a change in the market-making activities of Correspondent. Correspondent shall immediately advise ICS in writing upon the occurrence of any of the events described in this Section.

D. **Termination Fee**

In the event that this Agreement is terminated, for any reason whatsoever, prior to the Initial Expiration Date, Correspondent shall pay to ICS a termination fee (the "Termination Fee") equal to the sum of (1) the unamortized costs and expenses of ICS incurred in connection with establishing the systems, procedures and capacity for servicing the Accounts as contemplated by this Agreement, and (2) the costs and expenses of ICS incurred in connection with the conversion of Accounts pursuant to Section XVIII.E. of this Agreement. In no event shall the Termination Fee be less than $10,000. Correspondent shall pay the Termination Fee, in immediately available U.S. funds, within ten (10) calendar days of receipt of a written statement from ICS setting forth in reasonable detail the costs and expenses comprising the Termination Fee.

E. **Conversion of Accounts**

Upon termination of this Agreement for any reason, it shall be Correspondent's responsibility to arrange for the conversion of the Accounts to another broker for clearing and/or execution services. Correspondent shall promptly upon termination give ICS written notice of the name of such other broker, the anticipated date on which it shall commence acting as clearing broker with respect to the Accounts and the name of an individual within that organization whom ICS can contact to coordinate the conversion. Correspondent shall also provide ICS with Correspondent's written undertaking, in form and substance satisfactory to ICS, that such other broker shall accept on conversion all Accounts then maintained by ICS. If Correspondent fails to provide ICS with the notice and undertaking referred to above, ICS may, at the sole expense of Correspondent, give Customers such notice of termination of this Agreement as ICS deems appropriate and make such other arrangements as ICS deems appropriate for transfer or delivery of the Accounts. Correspondent shall promptly pay to ICS reasonable expenses incurred by ICS in processing the conversion.

F. **Survival**

Termination of this Agreement shall not affect any of the rights or liabilities of the parties relating to business transacted prior to the effective date of such termination. From the date of termination until transfer or delivery of all Accounts, the rights and liabilities of the parties relating to any business transacted after such termination shall be governed by the same terms as those set forth in this Agreement.

G. **No Obligation to Release Correspondent Accounts**

ICS shall not be required to release to Correspondent any securities or cash held by ICS for Correspondent in one or more Accounts of Correspondent until all amounts owing to ICS pursuant to the provisions of this Agreement are paid in full and Correspondent's outstanding obligations (including any disputed obligations) to ICS are determined and satisfied and any property of ICS in the possession of Correspondent is returned to ICS.

XIX. ACTIONS AGAINST CUSTOMERS

If Correspondent is unable or unwilling to pursue a claim against any Customer, ICS shall have the right, but not the obligation, in its sole discretion and at Correspondent's expense, to institute and prosecute in either its own name or, at ICS' option, in the name of Correspondent, any action or proceeding against any Customer as to any controversy or claim arising out of ICS' transactions with Correspondent or any Customer, and nothing contained in this Agreement shall be deemed or construed to impair or prejudice such right in any way whatsoever, nor shall the institution or prosecution of any such action or proceeding relieve Correspondent of any liability or responsibility which Correspondent would otherwise have under this Agreement. Correspondent hereby assigns to ICS such rights against Customers, and, upon the request of ICS, agrees to execute such other and further instruments or documents, as are reasonably necessary or appropriate to carry out the intent of this Section.

XX. NOTICES

Except as otherwise expressly provided herein, any notice or instruction required or permitted to be given under this Agreement shall be in writing, shall be effective upon receipt, and shall be delivered by hand, sent by overnight courier, confirmed facsimile transmission, electronic transmission or registered or certified mail, return receipt requested, postage prepaid, to the parties at the following addresses, or at such other address as to which notice in writing shall have been given:

If to ICS:

Instinet Clearing Services, Inc.
Harborside/11th Floor
Jersey City, New Jersey 10022
Fax No: 201-595-3338
Telephone: 201-595-3338
Email Address: kevin.murray@instinet.com
Attention: Kevin Murray, SVP
cc: ICS Legal & Compliance

If to Correspondent:

Island ECN, Inc.
50 Broad Street
New York, NY 10004
Fax No: 917-522-5909
Telephone: 212-231-5032
Email Address: Rodney @island.com
Attention: Rodney Faragalla, VP of Operations

XXI. MISCELLANEOUS

A. Exchange of Information

Each party shall promptly supply the other with all appropriate information in its possession necessary or appropriate to enable the other party properly to perform its obligations under this Agreement.

B. Exception and Other Reports

At the time of the execution of this Agreement, and annually thereafter, ICS shall provide to Correspondent a list of exception and other reports it can make available to Correspondent, and the cost therefor, which may assist Correspondent in complying with regulatory requirements, supervising and monitoring the Accounts, and meeting its obligations under this Agreement. Correspondent specifically acknowledges that such reports may not be inclusive of all of the exception and other reports necessary for Correspondent to comply with its regulatory obligations.

At each time specified in the paragraph above, Correspondent shall promptly designate in writing to ICS which, if any, of such reports Correspondent requires during the succeeding twelve months, and ICS shall thereafter provide such designated reports to Correspondent. It shall be the sole responsibility of Correspondent to determine whether additional reports are necessary for Correspondent to meet its regulatory obligations, and to obtain and use such reports.

ICS shall retain the data from which each of such reports was produced in a manner sufficient for ICS to reproduce the report.

Notwithstanding the foregoing, Correspondent shall itself maintain reports, records and regulatory filings required to be kept by Correspondent by this Agreement.

C. Check-Writing Authority

ICS may, but is not required to, authorize certain of Correspondent's employees to issue checks drawn against an ICS account to Customers for amounts due to, and requested by them, with respect to their Accounts. Correspondent shall provide ICS with a written representation that it has established, and shall maintain and enforce, supervisory procedures with respect to the issuance of negotiable instruments. Correspondent shall designate in writing the names of any employees it wishes to receive the authorization described in this section. All checks must be signed by two employees of Correspondent who have received authorization from ICS. No check or checks totaling more than $50,000 shall be provided to any Customer by Correspondent on the same business day. All expenses incurred in connection with the issuance of checks under the authority described in this section shall be charged to Correspondent. Correspondent remains responsible for the disbursement and delivery of such checks to its Customers. Any lien on the Customer's property granted by the Customer to Correspondent or ICS shall extend to any funds which may be segregated in a separate account in connection with the exercise of the authority described in this section.

D. Credit Investigations

Both ICS and Correspondent shall have the right to investigate, or to cause a third party to investigate, the other party's credit.

E. **Tape Recording**

Both ICS and Correspondent shall have the right to record telephone conversations between and among themselves, and both ICS and Correspondent waive any right to further notice of any such recording.

F. **No Third-Party Beneficiaries**

Except as otherwise provided in Section XXI.J hereof, this Agreement is between ICS and Correspondent only, and is not intended to confer any benefits or rights upon any Customers or other persons not expressly made parties hereto (other than ICS Indemnitees).

G. **Competition**

Nothing herein shall restrict or be deemed to restrict the right of ICS or any affiliate of ICS to compete with Correspondent in any or all aspects of Correspondent's business.

H. **Remedies Cumulative**

The enumeration herein of specific remedies shall not be exclusive of any other remedies. Any delay or failure by any party to this Agreement to exercise any right or remedy under this Agreement or under the Laws and Rules, or the single or partial exercise of any such right or remedy, shall not be construed to be a waiver of any such rights or remedies, or to limit the exercise of such rights or remedies.

I. **Merger; Amendment**

This Agreement represents the entire agreement between the parties and supersedes all other understandings and agreements between the parties with respect to the subject matter hereof. This Agreement may not be amended except by a writing signed by the parties hereto.

J. **Assignment**

This Agreement shall be binding upon and inure to the benefit of the respective successors and authorized assigns of the parties. Correspondent shall provide ICS with thirty (30) business days' prior written notice of any proposed change in control. Correspondent may not assign this Agreement, or assign or delegate any of its rights or obligations hereunder, without the prior written consent of ICS. ICS may assign this Agreement or assign or delegate any of its rights or obligations hereunder to any affiliate of ICS without Correspondent's consent if such affiliate executes and delivers to Correspondent an assumption agreement pursuant to which such affiliate assumes all such obligations of ICS under this Agreement as have been delegated to it. Correspondent consents and agrees to the assignment and transfer by ICS of its rights and obligations hereunder at any future time resulting from a merger, sale of assets, liquidation or otherwise of all Accounts covered by this Agreement (including all securities positions, credit and debit balances contained therein) to any such successor organization or assignee, including any registered broker and/or dealer that owns any of ICS' capital stock, and such assignment shall be binding upon the undersigned, its successors, and assigns.

K. **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws principles.

L. **Arbitration**

Any dispute or controversy arising out of or relating in any way to this Agreement shall be submitted to arbitration before the NASD (conducted pursuant to the Code of Arbitration of the NASD), or any other self-regulatory organization or exchange chosen by ICS that has jurisdiction over the dispute or controversy. Arbitration must be initiated by service upon the other party of a written demand for arbitration or notice of intention to arbitrate. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction.

M. **Customer Actions**

In the event of an arbitration or court action in which a Customer has asserted a claim against ICS, Correspondent agrees that (1) it shall submit to the jurisdiction of any such forum in which such claim is brought, and (2) it shall accept service of process for any such claim. Service of process in any such action or arbitration shall be sufficient if served on Correspondent by certified mail, return receipt requested, at the address provided for the delivery of notices under this Agreement.

N. **Temporary or Provisional Relief**

Notwithstanding the Section XXI.L. hereof, ICS may, at any time prior to an initial arbitration hearing with respect to any dispute or controversy relating to or arising out of this Agreement, obtain upon application to the United States District Court for the Southern District of New York or the Supreme Court of the State of New York for the County of New York any temporary or provisional relief or remedy that would be available in an action based upon such dispute or controversy in the absence of an agreement to arbitrate. The parties acknowledge and agree that it is their intention to have any such application for provisional or temporary relief decided by the court to which it is made and that such application shall not be referred to or settled by arbitration. Process in any such proceeding shall be sufficient if served on Correspondent by certified mail, return receipt requested, at the address provided above for the delivery of notices under this Agreement. In this connection, Correspondent expressly waives any defense (1) to personal jurisdiction, (2) to service of process in the manner set forth above, and (3) to venue. No such application to a court for provisional or temporary relief, nor any act or conduct by either party in furtherance of or in opposition to such application, shall constitute a relinquishment or waiver of any right to have the underlying dispute or controversy settled by arbitration in accordance with Section XXI.L. hereof.

O. **Force Majeure**

ICS shall not be liable for losses caused directly or indirectly by government restrictions, exchange or market rulings, suspension of trading, labor strike, war, act of civil or military authority, sabotage, epidemic, flood, earthquake, fire, or other natural disaster, or any other similar conditions or occurrences beyond ICS' reasonable control.

P. **Headings**

The headings contained herein have been inserted for convenience and ease of reference only and shall not be construed to affect the meaning, construction or effect of this Agreement.

Q. **Enforceability**

If any provision or condition of this Agreement is held to be invalid or unenforceable by any court,

arbitration tribunal or regulatory or self-regulatory agency or body, the validity of the remaining provisions and conditions shall not be affected thereby and this Agreement shall be carried out as if any such invalid or unenforceable provision or condition were not contained herein.

R. **Counterparts**

This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

INSTINET CLEARING SERVICES, INC.

By: /s/ Kevin Murray

Name: KEVIN MURRAY
Title: CHIEF OPERATING OFFICER

ISLAND ECN, INC.

By: /s/ Rodney Faraballa

Name: RODNEY FARABALLA
Title: VP OPERATIONS

SCHEDULE A

Additional Services

NONE

SCHEDULE B

Clearance Charges	
Broker-to Broker Ticket Fee	$.04/ticket

In addition to the amounts set forth above, ICS shall also charge Correspondent or Customers, as appropriate, any fees, charges or expenses incurred in connection with regulatory, clearing organization, exchange, self-regulatory organization, tax or other expenses and attributable to the clearance and servicing of transactions in the Accounts.