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

FORM 10-Q

x **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.**

For the quarterly period ended June 30, 2007

OR

¨ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.**

For the transition period from_____ to_____

Commission file number 0-14948

FISERV, INC.

(Exact Name of Registrant as Specified in Its Charter)

WISCONSIN	**39-1506125**
(State or Other Jurisdiction of Incorporation or Organization)	**(I. R. S. Employer Identification No.)**
255 FISERV DRIVE, BROOKFIELD, WI	**53045**
(Address of Principal Executive Offices)	**(Zip Code)**

(262) 879-5000
(Registrant's Telephone Number, Including Area Code)

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large Accelerated Filer x Accelerated Filer ¨ Non-Accelerated Filer ¨

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

As of July 31, 2007, there were 164,989,377 shares of common stock, $.01 par value, of the registrant outstanding.

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FISERV, INC. AND SUBSIDIARIES

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PART I. FINANCIAL INFORMATION

ITEM I. FINANCIAL STATEMENTS

FISERV, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(In thousands, except per share amounts)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Revenues:				
Processing and services	**$ 751,225**	$ 705,734	**$1,495,952**	$1,432,429
Product	**428,911**	351,760	**869,165**	687,384
Total revenues	**1,180,136**	1,057,494	**2,365,117**	2,119,813
Expenses:				
Cost of processing and services	**471,963**	465,148	**946,935**	928,216
Cost of product	**362,367**	278,209	**732,177**	550,303
Selling, general and administrative	**164,686**	137,569	**317,040**	277,804
Total expenses	**999,016**	880,926	**1,996,152**	1,756,323
Operating income	**181,120**	176,568	**368,965**	363,490
Interest expense, net	**(11,445)**	(10,351)	**(20,555)**	(18,494)
Income from continuing operations before income taxes	**169,675**	166,217	**348,410**	344,996
Income tax provision	**65,032**	61,639	**134,695**	129,604
Income from continuing operations	**104,643**	104,578	**213,715**	215,392
Income from discontinued operations, net of income taxes	**3,593**	13,091	**8,084**	18,488
Net income	**$ 108,236**	$ 117,669	**$ 221,799**	$ 233,880
Net income per share - basic:				
Continuing operations	**$ 0.63**	$ 0.60	**$ 1.27**	$ 1.22
Discontinued operations	**0.02**	0.07	**0.05**	0.10
Total	**$ 0.65**	$ 0.67	**$ 1.31**	$ 1.32
Net income per share - diluted:				
Continuing operations	**$ 0.62**	$ 0.59	**$ 1.25**	$ 1.20
Discontinued operations	**0.02**	0.07	**0.05**	0.10
Total	**$ 0.64**	$ 0.66	**$ 1.30**	$ 1.30
Shares used in computing net income per share:				
Basic	**167,392**	175,113	**168,709**	177,232
Diluted	**169,907**	177,551	**171,272**	179,667

See notes to condensed consolidated financial statements.

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FISERV, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(Dollars in thousands)
(Unaudited)

	June 30, 2007	December 31, 2006
ASSETS		
Cash and cash equivalents	**$ 151,580**	$ 149,440
Trade accounts receivable, net	**564,180**	578,498
Deferred income taxes	**32,535**	30,335
Prepaid expenses and other current assets	**156,278**	141,512
Assets of discontinued operations held for sale	**2,271,729**	2,113,455
Total current assets	**3,176,302**	3,013,240
Property and equipment, net	**238,246**	241,924
Intangible assets, net	**593,105**	592,801
Goodwill	**2,390,693**	2,361,485
Other long-term assets	**54,980**	42,248
Total assets	**$ 6,453,326**	$ 6,251,698
LIABILITIES AND SHAREHOLDERS' EQUITY		
Trade accounts payable	**$ 231,150**	$ 228,265
Accrued expenses	**301,925**	338,247
Deferred revenues	**249,922**	258,102
Customer funds held	**44,282**	51,736
Liabilities of discontinued operations held for sale	**2,102,985**	1,944,026
Total current liabilities	**2,930,264**	2,820,376
Long-term debt	**879,800**	747,256
Deferred income taxes	**196,718**	195,553
Other long-term liabilities	**54,546**	62,891
Total liabilities	**4,061,328**	3,826,076
Commitments and contingencies		
Shareholders' equity:		
Preferred stock, no par value: 25,000,000 shares authorized; none issued	**—**	—
Common stock, $0.01 par value: 450,000,000 shares authorized; 197,926,172 and 197,791,218 shares issued	**1,979**	1,978
Additional paid-in capital	**695,048**	700,103
Accumulated other comprehensive income (loss)	**335**	(131)
Accumulated earnings	**3,108,690**	2,886,891
Treasury stock, at cost, 31,050,723 and 26,699,943 shares	**(1,414,054)**	(1,163,219)
Total shareholders' equity	**2,391,998**	2,425,622
Total liabilities and shareholders' equity	**$ 6,453,326**	$ 6,251,698

See notes to condensed consolidated financial statements.

FISERV, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Six Months Ended June 30,	
	2007	**2006**
Cash flows from operating activities:		
Net income	**$ 221,799**	$ 233,880
Adjustment for discontinued operations	**(8,084)**	(18,488)
Adjustments to reconcile net income to net cash provided by operating activities from continuing operations:		
Deferred income taxes	**(8,800)**	8,520
Share-based compensation	**15,895**	18,734
Excess tax benefit from exercise of options	**(9,952)**	(3,278)
Depreciation and amortization	**101,256**	87,505
Changes in assets and liabilities, net of effects from acquisitions and dispositions of businesses:		
Trade accounts receivable	**13,237**	(13,478)
Prepaid expenses and other assets	**(6,535)**	(9,096)
Trade accounts payable and other liabilities	**(18,870)**	(16,386)
Deferred revenues	**(9,310)**	(12,007)
Net cash provided by operating activities from continuing operations	**290,636**	275,906
Cash flows from investing activities:		
Capital expenditures, including capitalization of software costs for external customers	**(81,839)**	(93,232)
Payment for acquisitions of businesses, net of cash acquired	**(45,449)**	(101,035)
Dividend from discontinued operations	**—**	28,000
Other investing activities	**(57)**	(2,031)
Net cash used in investing activities from continuing operations	**(127,345)**	(168,298)
Cash flows from financing activities:		
Proceeds from long-term debt, net	**127,457**	187,568
Issuance of common stock and treasury stock	**30,705**	18,255
Purchase of treasury stock	**(321,811)**	(349,539)
Excess tax benefit from exercise of options	**9,952**	3,278
Customer funds held	**(7,454)**	3,243
Net cash used in financing activities from continuing operations	**(161,151)**	(137,195)
Change in cash and cash equivalents	**2,140**	(29,587)
Beginning balance	**149,440**	169,532
Ending balance	**$ 151,580**	$ 139,945
Discontinued operations cash flow information:		
Net cash provided by operating activities	**$ 10,048**	$ 7,579
Net cash used in investing activities	**(77,471)**	(368,222)
Net cash provided by financing activities	**152,908**	357,738
Net cash provided by (used in) discontinued operations	**85,485**	(2,905)
Beginning balance - discontinued operations	**35,888**	14,939
Ending balance - discontinued operations	**$ 121,373**	$ 12,034

See notes to condensed consolidated financial statements.

FISERV, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Principles of Consolidation

The condensed consolidated financial statements for the three-month and six-month periods ended June 30, 2007 and 2006 are unaudited. In the opinion of management, all adjustments necessary for a fair presentation of the condensed consolidated financial statements have been included. Such adjustments consisted of normal recurring items. Interim results are not necessarily indicative of results for a full year. The condensed consolidated financial statements and accompanying notes are presented as permitted by Form 10-Q and do not contain certain information included in the annual consolidated financial statements and accompanying notes of Fiserv, Inc. and its subsidiaries (the "Company"). These interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and accompanying notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2006.

On May 24, 2007, the Company announced that it had signed definitive agreements to sell its investment support services segment ("Fiserv ISS") in two separate transactions. In accordance with Statement of Financial Accounting Standards ("SFAS") No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS 144"), the financial results of Fiserv ISS are reported as discontinued operations for all periods presented.

The condensed consolidated financial statements include the accounts of Fiserv, Inc. and all majority owned subsidiaries. All significant intercompany transactions and balances have been eliminated in consolidation. Certain amounts reported in prior periods have been reclassified to conform to the current presentation.

2. Recent Accounting Pronouncements

In September 2006, the Financial Accounting Standards Board ("FASB") issued SFAS No. 157, "Fair Value Measurements" ("SFAS 157"). SFAS 157 defines fair value, establishes a framework for measuring fair value in accordance with generally accepted accounting principles, and expands disclosures about fair value measurements. In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities" ("SFAS 159"). SFAS 159 permits entities to choose to measure many financial assets and financial liabilities at fair value. Both SFAS 157 and SFAS 159 are effective for fiscal years beginning after November 15, 2007. The Company is currently assessing the impact that the adoption of SFAS 157 and SFAS 159 will have on its financial statements.

3. Dispositions

On May 24, 2007, the Company signed definitive agreements (the "Agreements") to sell Fiserv ISS in two separate transactions. Consummation of the transactions is subject to customary conditions to closing, including receipt of regulatory approvals.

In one transaction, TD AMERITRADE Online Holdings Corp. ("TD AMERITRADE") has agreed to acquire Fiserv Trust Company and the accounts of the Company's institutional retirement plan and advisor services operations for $225 million in cash at closing plus contingent cash consideration of up to $100 million based on the achievement of revenue targets over the twelve months subsequent to closing. In addition, the Company will receive approximately $80 million for a portion of the net capital included in the business and excess capital.

In a separate transaction, Robert Beriault Holdings, Inc., an entity controlled by the current president of Fiserv ISS, has agreed to acquire the remaining accounts and net capital of Fiserv ISS, including the investment administration services business which provides back office and custody services for individual retirement accounts, for approximately $50 million in cash. The Company will retain a minority interest in this business.

The transactions are expected to close in the fourth quarter of 2007 or the first quarter of 2008. The Agreements provide that the Company will retain certain liabilities of Fiserv ISS, including, among others, any liabilities associated with the litigation discussed in Note 9. Pursuant to SFAS 144, the assets and liabilities, results of operations and cash flows of Fiserv ISS have been reported as discontinued operations in the accompanying condensed consolidated financial statements and all prior periods have been restated.

In 2005, the Company completed the sale of its securities clearing businesses to Fidelity Global Brokerage Group, Inc. ("Fidelity"). In the second quarter of 2006, the Company finalized and recognized a $10.6 million pre-tax gain related to a contingent payment that it received from Fidelity based on the securities clearing businesses' achievement of revenue targets established in the stock purchase agreement.

Summarized financial information for discontinued operations was as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
(In thousands)	2007	2006	2007	2006
Processing and services revenue	**$34,656**	$35,703	**$69,094**	$70,052
Income before income taxes	**5,177**	9,198	**11,423**	17,266
Income tax provision	**(1,584)**	(2,796)	**(3,339)**	(5,467)
Gain related to sale of securities clearing businesses, net of tax	—	6,689	—	6,689
Income from discontinued operations	**$ 3,593**	$13,091	**$ 8,084**	$18,488

Assets and liabilities of discontinued operations are presented separately as assets of discontinued operations held for sale and liabilities of discontinued operations held for sale within the accompanying condensed consolidated balance sheets and consisted of the following:

(In thousands)	June 30, 2007	December 31, 2006
Cash and cash equivalents	**$ 121,373**	$ 35,888
Trade accounts receivable, net	**22,970**	22,571
Prepaid expenses and other assets	**9,294**	9,095
Investments	**2,092,354**	2,016,175
Property and equipment, net	**4,369**	6,116
Intangible assets, net	**21,369**	23,610
Assets of discontinued operations held for sale	**$ 2,271,729**	$ 2,113,455
Trade accounts payable and other liabilities	**$ 16,944**	$ 9,447
Retirement account deposits	**2,086,041**	1,934,579
Liabilities of discontinued operations held for sale	**$ 2,102,985**	$ 1,944,026

The Company reports cash flows from continuing operations separate from cash flows from discontinued operations within its condensed consolidated statements of cash flows. Cash flows from discontinued operations include a $28 million dividend paid by Fiserv ISS to the Company in the second quarter of 2006.

4. Long-Term Debt

Senior notes payable, with a carrying value of $250 million at June 30, 2007, due in the second quarter of 2008 are included in long-term debt within the accompanying condensed consolidated balances sheets because the Company has the ability and intent to refinance such borrowings under its $900 million unsecured revolving credit facility.

5. Share-Based Compensation

The Company recognized $5.1 million and $15.9 million of share-based compensation during the three months and six months ended June 30, 2007, respectively, and $5.4 million and $18.7 million of share-based compensation during the three and six months ended June 30, 2006, respectively. The Company's annual grant of share-based awards generally occurs in the first quarter. During the six months ended June 30, 2007, the Company granted 941,000 stock options and 144,000 shares of restricted stock at weighted-average estimated fair values of $20.91 and $54.26, respectively. During the six months ended June 30, 2006, the Company granted 1,543,000 stock options and 295,000 shares of restricted stock at weighted-average estimated fair values of $13.34 and $40.11, respectively. During the six months ended June 30, 2007 and 2006, stock options to purchase 2,504,000 shares and 963,000 shares, respectively, were exercised.

6. Income Taxes

Effective January 1, 2007, the Company adopted FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes - an interpretation of FASB Statement No. 109" ("FIN 48"), which prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken, or expected to be taken, in a tax return, and provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. The adoption of FIN 48 did not result in a cumulative adjustment to the Company's accumulated earnings. The Company classifies interest and penalties related to income taxes as components of the income tax provision.

As of January 1, 2007, gross unrecognized tax benefits, which include interest and penalties, totaled approximately $29 million. Of this total, approximately $14 million (net of federal and state benefits) would affect the effective tax rate if recognized. Accrued interest and penalties of approximately $6 million were recorded as a liability as of January 1, 2007. There are no significant tax positions for which it is reasonably possible that the related unrecognized tax benefits will significantly change during the next twelve months. The Company's federal tax returns for 2004 through 2006 and tax returns in certain states and foreign jurisdictions for 2000 through 2006 remain subject to examination by taxing authorities.

7. Shares Used in Computing Net Income Per Share

The following table reconciles basic weighted-average outstanding shares to diluted weighted-average outstanding shares used in calculating net income per share:

	Three Months Ended June 30,		Six Months Ended June 30,	
(In thousands)	2007	2006	2007	2006
Weighed-average outstanding shares - Basic	**167,392**	175,113	**168,709**	177,232
Common stock equivalents	**2,515**	2,438	**2,563**	2,435
Weighted-average outstanding shares - Diluted	**169,907**	177,551	**171,272**	179,667

For the three months and six months ended June 30, 2007, stock options for 0.9 million shares and 0.5 million shares, respectively, were excluded from the calculation of diluted weighted-average outstanding shares because their impact was anti-dilutive. For the three months and six months ended June 30, 2006, stock options for 1.5 million shares and 1.7 million shares, respectively, were excluded from the calculation of diluted weighted-average outstanding shares because their impact was anti-dilutive.

8. Comprehensive Income

Comprehensive income is comprised of net income, unrealized gains and losses on available-for-sale investments, fair market value adjustments on cash flow hedges, foreign currency translation, and pension actuarial gains and losses and was as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
(In thousands)	2007	2006	2007	2006
Net income	**$ 108,236**	$ 117,669	**$ 221,799**	$ 233,880
Components of other comprehensive income (loss), net	**749**	(895)	**466**	1,251
Comprehensive income	**$ 108,985**	$ 116,774	**$ 222,265**	$ 235,131

9. Litigation and Contingencies

In February 2007, a class was certified by the United States District Court for the Central District of California in a lawsuit against Fiserv Trust Company ("Fiserv Trust") alleging that Fiserv Trust, which serves as a custodian and administrator of investment accounts, knew or should have known that third parties were perpetrating an alleged Ponzi scheme and that it breached its contractual and common law duties and aided and abetted the scheme by not advising the plaintiffs to avoid investing in the alleged scheme. In May 2007, a petition for permission to appeal the class certification order was granted by the United States Court of Appeals for the Ninth Circuit, and the class certification is being appealed. The Company believes that the suit is without merit and intends to contest it vigorously. Nevertheless, the Company is unable to estimate or predict the ultimate outcome of this matter or to determine whether it will have a material adverse impact on the Company's results from discontinued operations or the Company's condensed consolidated financial statements. Accordingly, no amounts have been accrued in the condensed consolidated financial statements for the outcome of this matter. On July 6, 2007, a related action in California Superior Court in San Diego, California was dismissed with prejudice.

10. Segment Information

Revenues and operating income for the Company's reportable segments were as follows:

	Three Months Ended June 30,			Six Months Ended June 30,		
(In thousands)	Financial	Insurance	Total	Financial	Insurance	Total
2007						
Processing and services revenue	**$ 597,873**	**$ 153,352**	**$ 751,225**	**$ 1,188,281**	**$ 307,671**	**$ 1,495,952**
Product revenue	**155,893**	**273,018**	**428,911**	**332,735**	**536,430**	**869,165**
Total revenues	**$ 753,766**	**$ 426,370**	**$ 1,180,136**	**$ 1,521,016**	**$ 844,101**	**$ 2,365,117**
Operating income	**$ 165,581**	**$ 15,539**	**$ 181,120**	**$ 325,521**	**$ 43,444**	**$ 368,965**
2006						
Processing and services revenue	$ 560,777	$ 144,957	$ 705,734	$ 1,114,977	$ 317,452	$ 1,432,429
Product revenue	147,538	204,222	351,760	293,196	394,188	687,384
Total revenues	$ 708,315	$ 349,179	$ 1,057,494	$ 1,408,173	$ 711,640	$ 2,119,813
Operating income	$ 144,741	$ 31,827	$ 176,568	$ 274,917	$ 88,573	$ 363,490

11. Subsequent Events

On August 2, 2007, the Company entered into an agreement to acquire CheckFree Corporation ("CheckFree") for approximately $4.4 billion payable in cash at closing. CheckFree is a publicly traded provider of financial electronic commerce services and products. In addition to obtaining necessary regulatory approvals, the transaction is subject to customary closing conditions and approval by the stockholders of CheckFree. To finance the transaction, the Company has obtained a commitment for bridge financing of up to $5 billion, which is exercisable at the Company's option, and anticipates obtaining long-term financing prior to closing. The transaction is expected to close by the end of the fourth quarter of 2007 following the satisfaction of all closing conditions.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Overview

We provide integrated information management systems and services, including transaction processing, business process outsourcing, document distribution services, and software and systems solutions. Our continuing operations are primarily in the United States and consist of two business segments: Financial Institution Services ("Financial") and Insurance Services ("Insurance"). The Financial segment provides account and transaction processing systems and services to financial institutions and other financial intermediaries. The Insurance segment provides a wide range of services to insurance carriers, agents, distributors, third-party administrators and self-insured employers. On May 24, 2007, we signed definitive agreements to sell our Investment Support Services segment ("Fiserv ISS"). The financial results of Fiserv ISS are reported as discontinued operations for all periods presented.

Management's discussion and analysis of financial condition and results of operations is provided as a supplement to the accompanying unaudited condensed consolidated financial statements and accompanying notes to help provide an understanding of our results of operations, our financial condition and the changes in our financial condition. Our discussion is organized as follows:

- *Recent accounting pronouncements.* This section provides a discussion of recent accounting pronouncements that may impact our results of operations and financial condition in the future.

- *Non-GAAP financial measures.* This section provides a discussion of non-GAAP financial measures that we use in this report.
- *Results of operations*. In this section, we provide an analysis of the results of operations presented in the accompanying unaudited condensed consolidated statements of income by comparing the results for the three-month and six-month periods ended June 30, 2007 to the results for the three-month and six-month periods ended June 30, 2006.
- *Liquidity and capital resources.* In this section, we provide an analysis of our cash flows and outstanding debt as of June 30, 2007.

Recent Accounting Pronouncements

In September 2006, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standard ("SFAS") No. 157, "Fair Value Measurements" ("SFAS 157"). SFAS 157 defines fair value, establishes a framework for measuring fair value in accordance with generally accepted accounting principles ("GAAP"), and expands disclosures about fair value measurements. In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities" ("SFAS 159"). SFAS 159 permits entities to choose to measure many financial assets and financial liabilities at fair value. Both SFAS 157 and SFAS 159 are effective for fiscal years beginning after November 15, 2007. We are currently assessing the impact that the adoption of SFAS 157 and SFAS 159 will have on our financial statements.

Non-GAAP Financial Measures

In this report, we use two non-GAAP financial measures, internal revenue growth percentage and free cash flow. We use these measures to monitor and evaluate our performance, and they are presented in this report because we believe that they are useful to investors in evaluating our financial results. Non-GAAP financial measures should not be considered to be a substitute for the reported results prepared in accordance with GAAP. The methods that we use to calculate non-GAAP financial measures are not necessarily comparable to similarly titled measures presented by other companies.

We measure internal revenue growth percentage as the increase or decrease in total revenue for the current period less "acquired revenue from acquisitions" divided by total revenues from the prior year period plus "acquired revenue from acquisitions." "Acquired revenue from acquisitions" represents pre-acquisition revenue of acquired companies for the prior year period. "Acquired revenue from acquisitions" was $35.8 million ($17.8 million in the Financial segment and $18.0 million in the Insurance segment) in the second quarter of 2007 and $72.9 million ($36.5 million in the Financial segment and $36.4 million in the Insurance segment) for the six months end June 30, 2007. Internal revenue growth percentage is a non-GAAP financial measure that we believe is useful to investors because it allows them to see the portion of our revenue growth that is attributed to acquired companies as compared to internal revenue growth.

We measure free cash flow as net income, excluding discontinued operations, plus share-based compensation, depreciation and amortization, less capital expenditures, plus or minus changes in net working capital. Free cash flow is a non-GAAP financial measure that we believe is useful to investors because it shows our available cash flow after we have satisfied the capital requirements of our operations.

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Results of Operations

The following table presents, for the periods indicated, certain amounts included in our condensed consolidated statements of income, the relative percentage that those amounts represent to revenues, and the change in those amounts from year to year. This information should be read along with the condensed consolidated financial statements and accompanying notes.

Three months ended June 30, *(Dollars in millions)*	2007	2006	Percentage of Revenue 2007	Percentage of Revenue 2006	Increase $	Increase %
Revenues:						
Processing and services	$ 751.2	$ 705.7	63.7%	66.7%	$ 45.5	6%
Product	428.9	351.8	36.3%	33.3%	77.2	22%
Total revenues	1,180.1	1,057.5	100%	100%	122.6	12%
Expenses:						
Cost of processing and services (1)	472.0	465.1	62.8%	65.9%	6.8	1%
Cost of product (1)	362.4	278.2	84.5%	79.1%	84.2	30%
Sub-total (2)	834.3	743.4	70.7%	70.3%	91.0	12%
Selling, general and administrative (2)	164.7	137.6	14.0%	13.0%	27.1	20%
Total expenses (2)	999.0	880.9	84.7%	83.3%	118.1	13%
Operating income (2)	$ 181.1	$ 176.6	15.3%	16.7%	$ 4.6	3%

Six months ended June 30, *(Dollars in millions)*	2007	2006	Percentage of Revenue 2007	Percentage of Revenue 2006	Increase $	Increase %
Revenues:						
Processing and services	$1,496.0	$1,432.4	63.3%	67.6%	$ 63.5	4%
Product	869.2	687.4	36.7%	32.4%	181.8	26%
Total revenues	2,365.1	2,119.8	100%	100%	245.3	12%
Expenses:						
Cost of processing and services (1)	946.9	928.2	63.3%	64.8%	18.7	2%
Cost of product (1)	732.2	550.3	84.2%	80.1%	181.9	33%
Sub-total (2)	1,679.1	1,478.5	71.0%	69.7%	200.6	14%
Selling, general and administrative (2)	317.0	277.8	13.4%	13.1%	39.2	14%
Total expenses (2)	1,996.2	1,756.3	84.4%	82.9%	239.8	14%
Operating income (2)	$ 369.0	$ 363.5	15.6%	17.1%	$ 5.5	2%

(1) Each percentage of revenue equals the relevant expense amount divided by the related component of total revenues.

(2) Each percentage of revenue equals the relevant expense or operating income amount divided by total revenues.

Total Revenues

Total revenues increased $122.6 million, or 12%, in the second quarter of 2007 compared to 2006 and $245.3 million, or 12% in the first six months of 2007 compared to 2006. The internal revenue growth rate was 8% in the second quarter and first six months of 2007 with the remaining growth resulting from acquisitions. Overall internal revenue growth was primarily derived from sales to new clients, cross-sales to existing clients and increases in transaction volumes from existing clients. Internal revenue growth during the first six months of 2007 was negatively impacted by a $30.6 million decrease in flood claims processing revenues as compared to 2006.

Processing and services revenues increased 6% in the second quarter of 2007 compared to 2006 and 4% in the first six months of 2007 compared to 2006. These increases were primarily driven by sales to new clients, cross-sales to existing clients, increases in transaction volumes from existing clients and incremental revenue attributable to several acquisitions. Partially offsetting these increases in processing and services revenue for the first six months of 2007 was a $30.6 million decrease in flood claims processing revenues which were primarily earned in the first quarter of 2006.

Product revenues increased 22% in the second quarter of 2007 compared to 2006 and 26% in the first six months of 2007 compared to 2006. These increases were primarily due to sales to new clients and increases in transaction volumes from existing clients in the pharmacy management and workers' compensation businesses. The revenue growth in the pharmacy management and workers' compensation businesses was impacted significantly by the inclusion of prescription product costs in both revenues and expenses of $227 million and $166 million in the second quarters of 2007 and 2006, respectively, and $447 million and $320 million in the first six months of 2007 and 2006, respectively.

Total Expenses

Total expenses increased $118.1 million, or 13%, in the second quarter of 2007 compared to 2006 and $239.8 million, or 14%, in the first six months of 2007 compared to 2006. The decreases in cost of processing and services as a percentage of processing and services revenue in 2007 compared to the 2006 periods were primarily due to higher-margin revenues and improvements in operating efficiencies in our bank core processing and payments businesses and lower investment spending in our lending businesses in 2007. The increases in cost of product as a percentage of product revenue in 2007 compared to the 2006 periods were primarily due to the significant increase in prescription product costs discussed above. Selling, general and administrative expenses as a percentage of total revenues increased from 13% in the second quarter of 2006 to 14% in 2007. This increase of $27.1 million was due primarily to charges of $16.9 million in the second quarter of 2007 related to ceasing an investment in a new technology platform in our health plan management business and other facility shutdown and severance expenses in the Insurance segment.

Operating Income and Operating Margin

Operating income increased $4.6 million in the second quarter of 2007 compared to 2006 and $5.5 million in the first six months of 2007 compared to 2006. Operating margins decreased 1.3 percentage points and 1.5 percentage points in the second quarter and first six months of 2007, respectively, compared to the 2006 periods, primarily due to the operating results in our Insurance segment. Operating income and margins in the second quarter and first six months of 2007 as compared to the prior year periods were negatively impacted by a $30.6 million decrease in higher-margin flood claims processing revenues in our Insurance segment, which were primarily earned in the first quarter of 2006, charges of $16.9 million in the second quarter of 2007 related to ceasing an investment in a new technology platform in our health plan management business and other facility shutdown and severance expenses in the Insurance segment, and a significant increase in revenues in the pharmacy management and workers' compensation businesses, which generate operating margins in the low- to mid-single digits. The inclusion of prescription product costs in both revenues and expenses reduced operating margins by approximately 4 percentage points and 3 percentage points in the first six months of 2007 and 2006, respectively. Partially offsetting the Insurance segment operating results was strong performance and an increase in operating margins in our Financial segment. The increase in operating margins in the Financial segment were due primarily to increases in higher-margin revenues, including contract termination fees, improvements in operating efficiencies in our bank core processing and payments businesses, and lower investment spending in our lending businesses in 2007.

Segment Results

The following table presents, for the periods indicated, revenues, operating income and operating margin for our business segments.

(In millions)	Three Months Ended June 30,			Six Months Ended June 30,		
	Financial	Insurance	Total	Financial	Insurance	Total
Total revenues:						
2007	$ 753.8	$ 426.4	$1,180.1	$1,521.0	$ 844.1	$2,365.1
2006	708.3	349.2	1,057.5	1,408.2	711.6	2,119.8
Revenue growth	6%	22%	12%	8%	19%	12%
Operating income:						
2007	$ 165.6	$ 15.5	$ 181.1	$ 325.5	$ 43.4	$ 369.0
2006	144.7	31.8	176.6	274.9	88.6	363.5
Operating income growth (decline)	14%	(51%)	3%	18%	(51%)	2%
Operating margin:						
2007	22.0%	3.6%	15.3%	21.4%	5.1%	15.6%
2006	20.4%	9.1%	16.7%	19.5%	12.4%	17.1%
Operating margin growth (decline) (1)	1.5%	(5.5%)	(1.3%)	1.9%	(7.3%)	(1.5%)

(1) Represents the percentage point improvement or decline in operating margin.

Financial

Revenues in the Financial segment increased $45.5 million, or 6%, in the second quarter of 2007 compared to 2006 and $112.8 million, or 8%, in the first six months of 2007 compared to 2006. The internal revenue growth rate in the Financial segment was 4% and 5% in the three months and six months ended June 30, 2007, respectively, with the remaining growth resulting from acquisitions. Internal revenue growth in the Financial segment during the second quarter and first six months of 2007 was primarily driven by increased volumes, and new clients and cross-sales to existing clients in the bank core processing and payments businesses.

Operating income in the Financial segment increased $20.8 million, or 14%, in the second quarter of 2007 compared to 2006 and $50.6 million, or 18%, in the first six months of 2007 compared to 2006. Operating margins improved 1.5 percentage points to 22.0% in the second quarter of 2007 and 1.9 percentage points to 21.4% in the first six months of 2007 compared to the comparable periods in 2006. The increases in operating income and operating margins in the Financial segment resulted primarily from increased higher-margin revenues, including increased contract termination fees, operating efficiencies in our bank core processing and payments businesses, and lower investment spending in our lending businesses during the 2007 periods compared to the 2006 periods. Contract termination fees totaled $21.9 million and $9.6 million during the first six months of 2007 and 2006, respectively.

Insurance

Revenues in the Insurance segment increased $77.2 million, or 22%, in the second quarter of 2007 compared to 2006 and $132.5 million, or 19%, in the first six months of 2007 compared to 2006. The internal revenue growth rate in the Insurance segment was 16% and 13% in the three months and six months ended June 30, 2007, respectively, with the remaining growth resulting from acquisitions. Internal revenue growth was primarily driven by sales to new clients and increased volumes in the pharmacy management and workers' compensation businesses partially offset by a $30.6 million decrease in flood claims processing revenues which were primarily earned in the first quarter of 2006. Flood claims processing revenues were $1.7 million and $32.3 million in the six months ended June 30, 2007 and 2006, respectively.

Operating income in the Insurance segment decreased $16.3 million and $45.1 million in the three-month and six-month periods ended June 30, 2007 compared to the 2006 periods. Operating margins were 3.6% and 5.1% in the second quarter

and first six months of 2007, respectively, compared to 9.1% and 12.4% in the second quarter and first six months of 2006, respectively. The decreases in operating income and operating margins in the Insurance segment resulted primarily from a decrease in higher-margin flood claims processing revenues earned primarily in the first quarter of 2006 and charges of $16.9 million in the second quarter of 2007 related to ceasing an investment in a new technology platform in our health plan management business and other facility shutdown and severance expenses. Additionally, operating margins were negatively impacted by the significant increase in revenues in the pharmacy management and workers' compensation businesses, which generate operating margins in the low- to mid-single digits, and expenses in the health division associated with our consumer directed and business process outsourcing initiatives. The inclusion of prescription product costs in both revenues and expenses negatively impacted operating margins in the Insurance segment by approximately 6 percentage points in the first six months of 2007 and approximately 10 percentage points in the first six months of 2006.

Discontinued Operations

Income from discontinued operations was $3.6 million and $13.1 million in the second quarter of 2007 and 2006, respectively, and $8.1 million and $18.5 million in the first six months of 2007 and 2006, respectively. Income from discontinued operations related to Fiserv ISS decreased $2.8 million and $3.7 million in the three-month and six-month periods ended June 30, 2007, respectively, compared to the 2006 periods. These decreases were primarily the result of legal and other transaction costs associated with the sale of Fiserv ISS. Additionally, income from discontinued operations for the three-month and six-month periods ended June 30, 2006 include a $6.7 million after-tax gain related to the achievement of revenue targets by the securities clearing businesses' which we sold in 2005.

Interest Expense, Net

Interest expense increased $1.1 million and $2.1 million in the second quarter of 2007 and the first six months of 2007, respectively, as compared to the 2006 periods due primarily to rising interest rates and increased average borrowings outstanding.

Income Tax Provision

The effective income tax rate for continuing operations was 38.3% and 37.1% in the second quarter of 2007 and 2006, respectively, and 38.7% and 37.6% in the first six months of 2007 and 2006, respectively. The lower effective tax rate in the 2006 periods primarily resulted from a tax benefit of $3.1 million in the second quarter of 2006 created by a change in a state tax law during the quarter. We expect that the effective income tax rate for continuing operations for the remainder of 2007 will be 38.7%.

Diluted Net Income Per Share - Continuing Operations

Diluted net income per share from continuing operations was $0.62 and $0.59 in the second quarter of 2007 and 2006, respectively, and $1.25 and $1.20 in the first six months of 2007 and 2006, respectively. Diluted net income per share in the 2007 periods compared to 2006 was positively impacted by operating income growth in the Financial segment and negatively impacted by a decline in operating income in the Insurance segment, primarily due to a significant decrease in higher-margin flood claims processing revenues earned in the first quarter of 2006 and charges of $16.9 million in the second quarter of 2007 related to ceasing an investment in a new technology platform in our health plan management business and other facility shutdown and severance expenses.

Liquidity and Capital Resources

The following table summarizes our free cash flow:

Six months ended June 30, *(In millions)*	2007	2006
Net income	$221,799	$233,880
Adjustment for discontinued operations	(8,084)	(18,488)
Share-based compensation	15,895	18,734
Depreciation and amortization	101,256	87,505
Capital expenditures	(81,839)	(93,232)
Free cash flow before changes in working capital	249,027	228,399
Changes in working capital, net	(40,230)	(45,725)
Free cash flow	$208,797	$182,674

Free cash flow increased $26.1 million, or 14%, to $208.8 million in the first six months of 2007 compared to $182.7 million in the first six months of 2006. The increase in free cash flow was primarily due to a decrease in capital expenditures in 2007 and the favorable impact of net working capital items compared to 2006, due primarily to improved cash collections on accounts receivable during the second quarter of 2007.

In the first six months of 2007, we used our free cash flow and borrowings under our revolving credit facility and commercial paper program primarily to repurchase 6.0 million shares of our common stock for $321.8 million and to fund acquisition related payments of $45.4 million. On January 31, 2007, our board of directors authorized the repurchase of up to 10 million shares of our common stock. Share repurchases under this authorization are expected to be made through open market transactions as market conditions warrant. Shares repurchased have historically been held for issuance in connection with acquisitions and equity plans. Our current policy is to use our free cash flow to support future business opportunities and to repurchase shares of our common stock, rather than to pay dividends.

At June 30, 2007, we had $879.8 million of long-term debt of which $568.5 million was outstanding under our revolving credit and commercial paper facilities. We maintain a $500 million unsecured commercial paper program, which is exempt from registration under the Securities Act of 1933. Under this program, we may issue commercial paper with maturities of up to 397 days from the date of issuance. We also maintain a $900 million unsecured revolving credit facility with a syndicate of banks. We may increase the availability under this facility up to $1.25 billion, subject to a number of conditions, including the absence of any default under the credit agreement. The revolving credit facility supports 100% of our outstanding commercial paper. As a result, borrowings under the commercial paper program reduce the amount of credit available under the revolving credit facility. The revolving credit facility contains various restrictions and covenants. Among other requirements, our consolidated indebtedness is limited to no more than three and one-half times consolidated net earnings before interest, taxes, depreciation and amortization. The facility expires on March 24, 2011. We were in compliance with all debt covenants in 2007.

We believe that our cash flow from operations together with other available sources of funds will be adequate to meet our operating requirements, required operating lease payments, required repayments of long-term debt, and expected capital spending needs in 2007. At June 30, 2007, we had approximately $320 million available for borrowing under our credit and commercial paper facilities and $152 million of cash and cash equivalents. In connection with the pending acquisition of CheckFree Corporation, discussed in Note 11 to the condensed consolidated financial statements, we have obtained a commitment for bridge financing of up to $5 billion, which is exercisable at our option, and anticipate obtaining long-term financing prior to closing.

Historically, our growth has been accomplished, to a significant degree, through the acquisition of businesses that are complementary to our operations. We expect to continue to pursue acquisition candidates that we believe would enhance our competitive position.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The quantitative and qualitative disclosures about market risk required by this item are incorporated by reference to Item 7A of our Annual Report on Form 10-K for the year ended December 31, 2006 and have not materially changed since that report was filed.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of disclosure controls and procedures.

As required by Rule 13a-15(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), our management, with the participation of our chief executive officer and chief financial officer, evaluated the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based on this evaluation, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures were effective as of June 30, 2007.

Changes in internal controls over financial reporting.

There was no change in our internal control over financial reporting that occurred during the quarter ended June 30, 2007 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

In February 2007, a class was certified by the United States District Court for the Central District of California in a lawsuit against Fiserv Trust Company ("Fiserv Trust") alleging that Fiserv Trust, which serves as a custodian and administrator of investment accounts, knew or should have known that third parties were perpetrating an alleged Ponzi scheme and that it breached its contractual and common law duties and aided and abetted the scheme by not advising the plaintiffs to avoid investing in the alleged scheme. In May 2007, a petition for permission to appeal the class certification order was granted by the United States Court of Appeals for the Ninth Circuit, and the class certification is being appealed. We believe that the suit is without merit and intend to contest it vigorously. Nevertheless, we are unable to estimate or predict the ultimate outcome of this matter or to determine whether it will have a material adverse impact on our results from discontinued operations or our condensed consolidated financial statements. Accordingly, no amounts have been accrued in the condensed consolidated financial statements for the outcome of this matter. On July 6, 2007, a related action in California Superior Court in San Diego, California was dismissed with prejudice.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

The table below sets forth information with respect to purchases made by or on behalf of the company or any "affiliated purchaser" (as defined in Rule 10b-18(a)(3) under the Exchange Act) of shares of our common stock during the three months ended June 30, 2007:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1)	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs (1)
April 1-30, 2007	1,184,941	$ 54.31	1,184,941	6,494,059
May 1-31, 2007	1,155,000	53.16	1,155,000	5,339,059
June 1-30, 2007	1,015,000	57.52	1,015,000	4,324,059
Total	3,354,941		3,354,941	

(1) On January 31, 2007, our board of directors authorized the repurchase of up to 10 million shares of our common stock. The repurchase authorization does not expire.

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

We held our annual meeting of shareholders on May 23, 2007. The directors nominated for election by our board of directors, as set forth in our proxy statement, were elected for a three-year term as follows:

Nominee	For	Withheld
Kim M. Robak	150,675,411	2,494,754
Thomas C. Wertheimer	147,871,235	5,298,930

In addition, Donald F. Dillon, Gerald J. Levy, Glenn M. Renwick, Daniel P. Kearney and Jeffery W. Yabuki continued to serve on our board of directors after the annual meeting.

All of our other proposals, as set forth in our proxy statement, were approved by our shareholders as follows:

	For	Against	Abstain	Broker Non-Votes
Approval of amendment of our articles of incorporation to allow our by-laws to provide for a majority voting standard for the election of directors in uncontested elections	145,059,085	6,912,218	1,198,862	—
Approval of the Fiserv, Inc. 2007 Omnibus Incentive Plan	111,954,107	18,670,102	1,539,648	21,006,308
Ratification of the selection of Deloitte & Touche LLP to serve as our independent registered public accounting firm for 2007	148,167,796	3,814,720	1,187,649	—

ITEM 5. OTHER INFORMATION

On August 2, 2007, we entered into a release with Michael D. Gantt, former executive vice president and group president, Insurance group, in exchange for $150,000 of incentive compensation.

ITEM 6. EXHIBITS

The exhibits listed in the accompanying exhibit index are filed as part of this Quarterly Report on Form 10-Q.

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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 thereunto duly authorized.

FISERV, INC.

Date: August 1, 2007

By: /s/ Thomas J. Hirsch
Thomas J. Hirsch
Executive Vice President,
Chief Financial Officer,
Treasurer and Assistant Secretary

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Exhibit Index

Exhibit Number	Exhibit Description
2.1	Stock Purchase Agreement, dated as of May 24, 2007, between Fiserv, Inc. and TD Ameritrade Online Holdings Corp.
2.2	Stock Purchase Agreement, dated as of May 24, 2007, between Fiserv, Inc. and Robert Beriault Holdings, Inc.
2.3	Agreement and Plan of Merger, dated as of August 2, 2007, among Fiserv, Inc., Braves Acquisition Corp., and Check Free Corporation
3.1	Restated Articles of Incorporation (1)
3.2	Amended and Restated By-Laws (1)
10.1	Fiserv, Inc. 2007 Omnibus Incentive Plan (1)
10.2	Form of restricted stock agreement (non-employee director) (1)
10.3	Form of restricted stock agreement (employee) (1)
10.4	Form of option agreement (non-employee director) (1)
10.5	Form of option agreement (employee) (1)
31.1	Certification of the Chief Executive Officer, dated August 1, 2007
31.2	Certification of the Chief Financial Officer, dated August 1, 2007
32	Certification of the Chief Executive Officer and Chief Financial Officer, dated August 1, 2007
99.1	Press Release, dated August 2, 2007

(1) Previously filed as an exhibit to our Current Report on Form 8-K dated May 23, 2007 which is hereby incorporated by reference.

Exhibit 2.1

STOCK PURCHASE AGREEMENT

BETWEEN

FISERV, INC.

AND

TD AMERITRADE ONLINE HOLDINGS CORP.

DATED AS OF MAY 24, 2007

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STOCK PURCHASE AGREEMENT

STOCK PURCHASE AGREEMENT, dated as of May 24, 2007 (the "Agreement"), between FISERV, INC., a Wisconsin corporation ("Seller"), and TD AMERITRADE ONLINE HOLDINGS CORP., a Delaware corporation ("Buyer").

W I T N E S S E T H:

WHEREAS, Seller owns all of the outstanding capital stock of Fiserv Trust Company, a Colorado corporation ("Target Company");

WHEREAS, Buyer desires to purchase and Seller desires to sell all of the outstanding capital stock of the Target Company (the "Target Shares") on the terms and conditions described in this Agreement;

WHEREAS, Buyer and Seller desire to make certain representations, warranties, covenants and agreements in connection with the purchase and sale of the Target Shares and also to prescribe various conditions to the transaction;

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations, and warranties made herein and intending to be bound hereby, the parties hereto agree as follows:

ARTICLE I.
SALE AND PURCHASE OF TARGET SHARES

1.1. *Basic Transaction*. On and subject to the terms and conditions of this Agreement, at the Closing, Buyer shall purchase from Seller, and Seller shall sell to Buyer, the Target Shares free and clear of all Liens, for the consideration specified below in Section 1.2 (the "Stock Sale").

1.2. *Preliminary Purchase Price*. Buyer agrees to pay to Seller at the Closing for the Target Shares an amount (the "Preliminary Purchase Price") equal to (i) US $225,000,000 (the "Baseline Price"), plus (ii) the amount of Estimated Net Book Value of the Target Company at the Closing minus (iii) the Estimated Adjustment Amount. The Preliminary Purchase Price shall be paid in cash by wire transfer of immediately available funds on the Closing Date to an account specified by Seller. The Preliminary Purchase Price will be subject to post-Closing adjustment as set forth in Sections 1.7 and 1.8.

1.3. *The Closing*. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Sullivan & Cromwell LLP in New York, New York, commencing at 9:00 a.m. local time on the second Business Day following the satisfaction or waiver of all conditions to the obligations of the parties to consummate the transactions contemplated hereby (including, without limitation, the Stock Sale and the Reorganization) (other than conditions with respect to actions the respective parties will take at the Closing itself) or such other date as Buyer and Seller may mutually determine (the "Closing Date"), and shall be effective as of 11:59 p.m. on the Closing Date.

1.4. *Deliveries at the Closing.* At the Closing, (i) Seller will deliver to Buyer the certificates, consents, instruments and documents referred to in Section 4.2 below, (ii) Buyer will deliver to Seller the certificates, consents, instruments and documents referred to in Section 4.3 below, (iii) Seller will deliver to Buyer stock certificates representing the Target Shares, duly endorsed in blank or accompanied by duly executed assignment documents, in form and substance reasonably acceptable to Buyer, with any required transfer tax stamps affixed thereto, and (iv) Buyer will deliver to Seller the Preliminary Purchase Price.

1.5. *Preparation of Balance Sheets and Closing Statements.*

1.5.1. *Closing Statements.*

(a) *Initial Closing Statement.* Not later than ten Business Days prior to the Closing Date, Seller shall deliver to Buyer a statement (the "Initial Closing Statement") setting forth Seller's estimate of the Pre-Closing Net Asset Outflow and Estimated Adjustment Amount, and Seller's calculation of the Signing AUC. For illustrative purposes only, Seller has Disclosed on Section 1.5.1(a) of the Seller Disclosure Schedule a calculation of the fair market value of the Assets Under Custody with the Target Businesses as of May 22, 2007. During the ten Business Day period prior to the Closing Date, Buyer shall have the opportunity to review and comment in good faith upon the Initial Closing Statement prepared by Seller and Buyer and Seller shall work together in good faith to agree within such ten Business Day period to a final estimate of the Pre-Closing Net Asset Outflow (such agreed to amount or, if such amount is not agreed to within such ten Business Day period, the amount set forth on the Initial Closing Statement, the "Estimated Pre-Closing Net Asset Outflow"), Signing AUC (such agreed to amount or, if such amount is not agreed to within such ten Business Day period, the amount set forth on the Initial Closing Statement, the "Estimated Signing AUC"), and the Estimated Adjustment Amount (*provided*, that if Buyer and Seller do not agree upon the Estimated Adjustment Amount within such ten Business Day period, the Estimated Adjustment Amount shall be as set forth in the Initial Closing Statement).

(b) *Final Closing Statement.* As soon as reasonably practicable, but in no event later than ninety days following the Closing Date, Buyer shall prepare and deliver to Seller a statement (the "Final Closing Statement") setting forth Buyer's calculation of the actual Pre-Closing Net Asset Outflow, the actual Signing AUC and the Final Adjustment Amount.

1.5.2. *Balance Sheets*.

(a) *Initial Balance Sheet*. Not later than ten Business Days prior to the Closing Date, Seller shall deliver to Buyer an estimated unaudited balance sheet, as of immediately prior to the Closing, of the Target Businesses, from which the Estimated Net Book Value will be derived (the "Initial Balance Sheet"). The Initial Balance Sheet shall be prepared in accordance with GAAP with respect to the assets and liabilities set forth therein and in a manner and on a basis consistent in all respects with the February 28, 2007 unaudited balance sheet of the Target Businesses included in the Target Financial Statements, which balance sheet

shall reflect the impact of the Reorganization and shall not include or reflect any liabilities or accruals in respect of the Retained Litigation, Income Taxes or any deferred Tax assets or liabilities. During the ten Business Day period prior to the Closing Date, Buyer shall have the opportunity to review and comment in good faith upon the Initial Balance Sheet prepared by Seller and Buyer and Seller shall work together in good faith to agree within such ten Business Day period to a final estimate of Estimated Net Book Value; *provided*, that if Buyer and Seller do not agree upon the Estimated Net Book Value within such ten Business Day period, the Estimated Net Book Value shall be as derived from the Initial Balance Sheet.

(b) *Final Balance Sheet.* As soon as reasonably practicable, but in no event later than ninety days following the Closing Date, Buyer shall prepare and deliver to Seller an unaudited balance sheet, as of immediately prior to the Closing, of the Target Businesses, from which the Final Net Book Value will be derived (the "Final Balance Sheet"). The Final Balance Sheet shall be prepared in accordance with GAAP with respect to the assets and liabilities set forth therein and in a manner and on a basis consistent in all respects with the Initial Balance Sheet and the February 28, 2007 unaudited balance sheet of the Target Businesses included in the Target Financial Statements, which balance sheet shall reflect the impact of the Reorganization and shall not include or reflect any liabilities or accruals in respect of the Retained Litigation, Income Taxes or any deferred Tax assets or liabilities.

1.5.3. *Review of Final Closing Statement and Final Balance Sheet.* Seller shall have thirty (30) days to review each of the Final Balance Sheet and the Final Closing Statement after receipt of each respective statement. If Seller disagrees with either the Final Balance Sheet or the Final Closing Statement, Seller shall follow the procedures set forth in Section 1.5.4 hereof to notify Buyer of, and resolve, such disagreement. Following resolution of any such disagreements in accordance with the provisions described herein, Buyer shall deliver to Seller and Seller shall deliver to Buyer any payments pursuant to Section 1.8.

1.5.4. *Objections to Final Balance Sheet and Final Closing Statement.* Within thirty days after receiving the Final Balance Sheet or the Final Closing Statement, as the case may be, from Buyer, Seller may object to the contents of either by delivering to Buyer a written statement describing its objections (in the case of the Final Balance Sheet, the "Statement of Balance Sheet Objections", in the case of the Final Closing Statement, the 'Statement of AUC Objections", and each a "Statement of Objections"). Any Statement of Objections shall specify those items or amounts with which Seller disagrees, together with a detailed written explanation of the reasons for its disagreement with each such item or amount, and shall set forth Seller's position with respect to such items or amounts. To the extent not set forth in a Statement of Objections, Seller shall be deemed to have agreed with Buyer's calculation of all other items and amounts contained in the Final Balance Sheet and the Final Closing Statement. If Seller fails to deliver a Statement of Objections within such thirty days, the calculations set forth in either the Final Balance Sheet or the Final Closing Statement, as applicable, shall be final, conclusive and binding upon Buyer and Seller. If Seller delivers a Statement of Objections within such thirty days, Buyer and Seller will use commercially reasonable efforts to resolve any such objections themselves. If Buyer and Seller shall fail to reach an agreement with respect to any of the objections set forth in a Statement of Objections within thirty days after Buyer has received such Statement of Objections, then such unresolved objections shall be submitted for resolution to PricewaterhouseCoopers LLP (or if

PricewaterhouseCoopers LLP is not independent or able to act, such other nationally recognized accounting firm as may be reasonably satisfactory to Buyer and Seller) (PricewaterhouseCoopers LLP or such other firm, the "Accounting Firm"). The Accounting Firm will resolve any unresolved objections submitted to it within thirty days following its engagement. The Accounting Firm shall make a determination based solely on presentations by Seller and Buyer, and not by independent review, as to (and only as to) each of the items in dispute, and shall be instructed that, in resolving any such item in dispute, it must select a position with respect to (a) the Final Net Book Value, in the case of the Statement of Balance Sheet Objections, and (b) the Pre-Closing Net Asset Outflow, Signing AUC, and the Final Adjustment Amount, in the case of the Statement of AUC Objections, that is either exactly the position of Seller or exactly the position of Buyer or that is between such positions of Seller and Buyer. Absent manifest error by the Accounting Firm, the decision of the Accounting Firm shall be final, conclusive and binding on Seller and Buyer. Buyer will revise the Final Balance Sheet and/or the Final Closing Statement as appropriate to reflect the resolution of any objections thereto pursuant to this Section 1.5.4. The Final Balance Sheet as it may be revised pursuant to this Section 1.5.4, shall be used to determine the Final Net Book Value and any purchase price adjustment as contemplated by Section 1.8. Any resolution mechanism provided for in this Section 1.5.4 shall be subject to Section 1.11.

1.6. *Expenses.* In the event Buyer and Seller submit any unresolved objections to the Accounting Firm for resolution as provided in Section 1.5.4, Buyer and Seller will share responsibility for the fees and expenses of the Accounting Firm as follows:

1.6.1. *Low Value.* If the Accounting Firm resolves all of the remaining objections contained in the Statement of Balance Sheet Objections and/or the Statement of AUC Objections, as applicable, in favor of Buyer, Seller will be responsible for all of the fees and expenses of the Accounting Firm;

1.6.2. *High Value.* If the Accounting Firm resolves all of the remaining objections contained in the Statement of Balance Sheet Objections and/or the Statement of AUC Objections, as applicable, in favor of Seller, Buyer will be responsible for all of the fees and expenses of the Accounting Firm;

1.6.3. *Actual Value.* If the Accounting Firm resolves some of the remaining objections contained in the Statement of Balance Sheet Objections and/or the Statement of AUC Objections, as applicable, in favor of Buyer and the rest of the remaining objections in favor of Seller (the final amounts as determined by the Accounting Firm are referred to herein as the "Actual Value"), Seller will be responsible for a percentage of the fees and expenses of the Accounting Firm in connection with the resolution of such objections equal to (x) the difference between Seller's position on value set forth in the Statement of Balance Sheet Objections and/or the Statement of AUC Objections and the Actual Value over (y) the difference between Seller's position on value set forth in the Statement of Balance Sheet Objections and/or the Statement of AUC Objections, as applicable, and the Buyer's position on value set forth in the Final Balance Sheet or the Final Closing Statement, as applicable, and Buyer will be responsible for the remainder of the fees and expenses.

1.7. *Post-Closing Adjustments to Preliminary Purchase Price*. The Preliminary Purchase Price shall be adjusted as set forth in this Section 1.7:

1.7.1. *Net Book Value Adjustment.*

(a) *Higher Net Book Value.* If the Final Net Book Value exceeds the Estimated Net Book Value, Buyer will pay to Seller an amount equal to such excess by wire transfer or delivery of other immediately available funds within three Business Days after the date on which the Final Balance Sheet finally is determined pursuant to Section 1.5.4 above.

(b) *No True Up*. In the event that the Final Net Book Value is equal to Estimated Net Book Value, no payments will be made pursuant to this Section 1.7.1.

(c) *Lower Net Book Value.* If the Final Net Book Value is less than the Estimated Net Book Value, Seller will pay to Buyer an amount equal to such deficiency by wire transfer or delivery of other immediately available funds within three Business Days after the date on which the Final Balance Sheet finally is determined pursuant to Section 1.5.4 above.

1.7.2. *AUC Adjustment.*

(a) *Under Payment.* In the event that the Estimated Adjustment Amount exceeds the Final Adjustment Amount, Buyer shall pay to Seller an amount equal to such excess by wire transfer or delivery of other immediately available funds within three Business Days after the date on which the Final Closing Statement finally is determined pursuant to Section 1.5.4 above.

(b) *No True Up*. In the event that the Estimated Adjustment Amount is equal to the Final Adjustment Amount, no payments will be made pursuant to this Section 1.7.2.

(c) *Over Payment.* In the event that the Estimated Adjustment Amount is less than the Final Adjustment Amount, Seller shall pay to Buyer an amount equal to such deficiency by wire transfer or delivery of other immediately available funds within three Business Days after the date on which the Final Closing Statement finally is determined pursuant to Section 1.5.4 above.

1.7.3. *Interest*. Payments made pursuant to this Section 1.7 shall include interest accrued at the rate per annum equal to the Prime Rate as published in The Wall Street Journal, Eastern Edition in effect on the Closing Date during the period from the Closing Date until the date of payment.

1.8. *Recapture of Estimated Adjustment Amount* In the event that the Post-Closing Net Asset Inflow on the Recapture Statement (as defined below) exceeds an amount equal to the sum of (i) Final Pre-Closing Net Asset Outflow and (ii) 10% of Final Signing AUC, Buyer shall pay or cause to be paid to Seller an amount equal to the Final Adjustment Amount, as shown on the Final Closing Statement (the "Recapture Payment").

1.8.1. *Recapture Statement; Recapture Payment.* Within ninety days following the first anniversary of the Closing Date, Buyer will prepare or cause to be prepared and deliver to Seller an unaudited statement (the "Recapture Statement"), which shall set forth Buyer's calculation of the Post-Closing Net Asset Inflow. In the event that pursuant to the Recapture Statement Buyer owes the Recapture Payment to Seller, Buyer shall concurrently deliver the Recapture Payment to Seller by wire transfer of immediately available funds. Upon receipt of the Recapture Statement from Buyer, Seller shall have thirty (30) days to review the Recapture Statement. If Seller disagrees with Buyer's computation of Post-Closing Net Asset Inflow, Seller shall follow the procedures set forth in Section 1.10 hereof to notify Buyer of, and resolve, such disagreement. In the event Buyer and Seller determine through the procedures set forth in Section 1.10 that Seller is entitled to the Recapture Payment, Buyer shall deliver the Recapture Payment to Seller by wire transfer of immediately available funds within three Business Days of such determination along with interest thereon accrued at a rate per annum equal to the Prime Rate as published in The Wall Street Journal, Eastern Edition in effect on the date of delivery of the Recapture Statement by Buyer to Seller, during the period from the date of delivery of the Recapture Statement until the date of such payment.

1.9. *Earn-Out Payment.* As additional consideration for the Stock Sale, Buyer shall pay or cause to be paid to Seller the Earn-Out Payment (as defined below). For purposes of this Agreement:

1.9.1. *Definition of Earn-Out Payment.* "Earn-Out Payment" means the amount, if any, to be paid by Buyer to Seller in respect of the Earn-Out Payment Measurement Period and shall be calculated as follows:

(a) If the Earn-Out Payment Revenue for the Earn-Out Payment Measurement Period is less than or equal to $43,700,000, the Earn-Out Payment will be $0.

(b) If the Earn-Out Payment Revenue for the Earn-Out Payment Measurement Period is greater than $43,700,000 but less than $82,600,000, the Earn-Out Payment will be an amount equal to the product of (x) $100,000,000 and (y) an amount equal to (a) the difference between $43,700,000 and the amount of the Earn-Out Payment Revenue divided by (b) $38,900,000.

(c) If the Earn-Out Payment Revenue for the Earn-Out Payment Measurement Period is greater than or equal to $82,600,000, the Earn-Out Payment will be $100,000,000.

1.9.2. *Other Definitions*.

(a) For purposes of this Section 1.9, "Earn-Out Payment Revenue" means an aggregate amount equal to the sum of the Revenue from each of the Earn-Out Customers for the Earn-Out Payment Measurement Period, *provided, however*, that Revenue from those accounts opened up after the date hereof by or through a Shared Revenue Generator shall be credited only to the extent of an amount equal to the product of the aggregate amount of such Revenue earned during the Earn-Out Payment Measurement Period, multiplied by a fraction (x) the numerator of which is equal to Shared Target Company AUC and (y) the

denominator of which is the Shared Target Company AUC plus the fair market value of all Assets Under Custody with Buyer or an Affiliate of Buyer as of the close of business on the date hereof by the Shared Revenue Generator.

(b) For purposes of this Section 1.9, "Revenue" means, with respect to any Earn-Out Customer for any particular time period, all revenue derived from, attributable to or generated by such Earn-Out Customer in exchange for the provision of Investment Support Services for such time period, as such revenue is calculated in accordance with GAAP and included in the revenue reported in TD AMERITRADE Holding Corporation's periodic filings with the Commission for such time period, in each case on a basis consistent in all material respects with Buyer's past practices for calculating and reporting revenue, including net interest income revenue which, notwithstanding the foregoing, shall be calculated as set forth in Exhibit A. Revenue shall include, but shall not be limited to, the following revenue streams, if applicable: trust administration fees, sub-accounting and Rule 12b-1 fees to the extent not passed through to a third party, termination fees, checking interest income, net interest income, stable value termination fees, collective investment fund net management fees and commissions.

(c) For purposes of this Section 1.9, "Earn-Out Customer" means (i) any Pre-Closing Account Generator; (ii) any Person who opens an account with Buyer or any Affiliate of Buyer after the Closing through a Pre-Closing Account Generator; (iii) any Person (other than a Person who would be a Shared Revenue Generator if such Person were a Customer on the date hereof) who (A) is identified by Seller, in good faith, on a schedule to be delivered by Seller to Buyer at the Closing as a potential or prospective customer or client of the IRPS Business (such schedule not to consist of more than 10 such potential or prospective Persons) and (B) becomes a Customer during the ninety (90) day period following the Closing Date, and any Person who opens an account with Buyer or any Affiliate of Buyer through any such Person at any time.

(d) For the purposes of this Section 1.9, "Pre-Closing Account Generator" means any customer or client of the Target Businesses, including, without limitation, all registered investment advisors, third party administrators, other advisors, plan sponsors and all underlying customers and retail customers of such persons that are customers or clients of the Target Businesses at any time during the period beginning on the date hereof and ending on the Closing Date other than: (i) a Person that is identified in writing by Buyer as a Person who should be an Excluded Customer on the Closing Date and (x) such Person is so identified as a result of business activities, conduct or actions that occurred during the three-year period immediately preceding the Closing or (y) such Person is identified on a schedule to be delivered by Buyer to Seller on the Closing Date as potentially having engaged in Market Timing or who potentially had substantial or excessive licensing, regulatory or complaint issues against them, in each case prior to the three-year period immediately preceding the Closing; (ii) a Person who engaged in business activities, conduct or actions that would have caused such Person to be identified by Buyer as an Excluded Customer if such business activities, conduct or actions had been known by Buyer prior to the Closing and such business activities, conduct or actions occurred during the three-year period preceding the Closing; and (iii) a registered investment advisor who was a Customer on the Closing Date and who becomes an Excluded Customer as a result of such registered investment advisor engaging in Market Timing two or more times

during the Earn-Out Payment Measurement Period. On the Closing Date, Seller shall deliver to Buyer a list of all Pre-Closing Account Generators. Beginning promptly after the date hereof and continuing until Closing, Seller shall cooperate with Buyer and take such actions as Buyer may reasonably request to identify those Customers who should be Excluded Customers, including without limitation providing customer information to the extent permitted by Applicable Law.

(e) For the purposes of this Section 1.9, "Shared Revenue Generator" means those Pre-Closing Account Generators that were such as of the date hereof and that were also customers or clients of businesses that provide services substantially similar to those provided by the Target Businesses of Buyer or any of its Affiliates as of the date hereof.

(f) For purposes of this Section 1.9, "Shared Target Company AUC" means the fair market value of all Assets Under Custody with the Target Businesses as of the close of business on the date hereof by the Shared Revenue Generator.

1.9.3. *Miscellaneous Earn-Out Provisions.*

(a) During the Earn-Out Payment Measurement Period, the Customers shall be allowed to continue to pay for the Investment Support Services in accordance with the pricing schedule employed by the Target Businesses in charging its Customers for Investment Support Services as of January 1, 2007 that is Disclosed in Section 1.9.3 of the Seller Disclosure Schedule; *provided*, that this Section 1.9.3 shall not be construed to prevent (i) Buyer (or any of its Affiliates) from changing Buyer's (or such Affiliate's) pricing schedule or from accepting any accounts on to Buyer's platform from any Pre-Closing Account Generator and (ii) any Customer from electing to pay for Investment Support Services in accordance with Buyer's or any of its Affiliates' pricing schedule.

(b) During the Earn-Out Payment Measurement Period, Buyer agrees that it will (i) use commercially reasonable efforts to retain the accounts of any Earn-Out Customer, (ii) refrain from selling, transferring or terminating the accounts of any Earn-Out Customer and (iii) with respect to the accounts of any Earn-Out Customer, refrain from taking any action principally designed to prevent Seller from earning, in whole or in part, the Earn-Out Payment; *provided*, that the immediately preceding clauses (i) and (ii) are not intended to and shall not restrict in any manner Buyer's ability to terminate accounts owned, managed or administered by Customers who Buyer reasonably determines should be Excluded Customers.

1.9.4. *Earn-Out Statements.*

(a) *Interim Earn-Out Statements.* Within thirty (30) days following the end of each fiscal quarter of Buyer that ends during the Earn-Out Payment Measurement Period (each a "Buyer Quarter"), Buyer will prepare or cause to be prepared and deliver to Seller an unaudited statement (the "Interim Earn-Out Payment Statements") showing Buyer's calculation of Earn-Out Payment Revenue for the applicable Buyer Quarter and a list of those customers whom Buyer has identified as Excluded Customers.

(b) *Final Earn-Out Statement.* Within ninety (90) days after the closing of the Earn-Out Payment Measurement Period, Buyer will prepare or cause to be prepared and deliver to Seller an unaudited statement (the "Final Earn-Out Payment Statement"), which shall set forth Buyer's calculation of Earn-Out Payment Revenue for the Earn-Out Payment Measurement Period and a list of those customers whom Buyer has identified as Excluded Customers, together with the calculation of the Earn-Out Payment.

(c) *Review of Final Earn-Out Payment Statement.* Upon receipt of the Final Earn-Out Payment Statement from Buyer, Seller shall have thirty (30) days to review the Final Earn-Out Payment Statement. If Seller disagrees with any such statement, Seller shall follow the procedures set forth in Section 1.10 hereof to notify Buyer of, and resolve, such disagreement.

(d) *Payment.* Within five (5) Business Days after determination of any Final Earn-Out Payment, Buyer shall deliver the Final Earn-Out Payment to Seller by wire transfer of immediately available funds. For purposes of this Agreement, "Final Earn-Out Payment" means the Earn-Out Payment: (1) as shown in the Final Earn-Out Payment Statement delivered by Buyer to Seller, if no Statement of Earn-Out/Recapture Objections with respect thereto is timely delivered by Seller to Buyer pursuant to Section 1.10; or (2) if a Statement of Earn-Out/Recapture Objections is so delivered, (a) as agreed by Buyer and Seller pursuant to Section 1.10 or (b) in the absence of such agreement, as shown in the Accounting Firm's calculation delivered pursuant to Section 1.10.

(e) *Tax Treatment of Earn-Out Payment* The Earn-Out Payment shall, in accordance with Section 483 and Section 1274 of the Code and the regulations thereunder, be treated as part principal and part interest. The principal component of any payment shall be determined by discounting the payment of the lowest applicable federal rate from the date the payment is made to the Closing Date, and the interest component of any payment shall be equal to the amount by which such payment exceeds the amount determined to be principal. For this purpose, the applicable federal rate shall be the lower of (x) the lowest applicable federal rate in effect during the three month period ending with the month in which this Agreement is entered into or (y) the lowest applicable federal rate in effect during the three month period ending with the month in which the Closing Date occurs. The parties hereto agree to report consistently with the foregoing treatment for all federal, state and local income Tax purposes.

1.10. *Objections to Recapture Statement and Final Earn-Out Statement* If Seller disagrees with either the Recapture Statement or the Final Earn-Out Payment Statement, Seller shall deliver to Buyer a written statement describing such objections (the "Statement of Earn-Out/Recapture Objections") within thirty (30) days following receipt of such statement. Any Statement of Earn-Out/Recapture Objections shall specify those items or amounts with which Seller disagrees, together with a detailed written explanation of the reasons for its disagreement with each such item or amount, and shall set forth Seller's position with respect to such items or amounts to the extent not set forth in the Statement of Earn-Out/Recapture Objections, Seller shall be deemed to have agreed with Buyer's calculation of all other amounts and items contained in the Recapture Statement and the Final Earn-Out Payment Statement. If Seller fails

to deliver a Statement of Earn-Out/Recapture Objections within thirty days, no Statement of Earn-Out/Recapture Objections may be delivered and the Recapture Statement and/or Final Earn-Out Payment Statement, as applicable, shall be deemed final, conclusive and binding upon both Buyer and Seller. If Seller delivers the Statement of Earn-Out/Recapture Objections within such thirty days, Buyer and Seller will use commercially reasonable efforts to resolve any such objections themselves. If Buyer and Seller shall fail to reach an agreement with respect to any of the objections set forth in the Statement of Earn-Out/Recapture Objections within thirty days after Buyer has received such statement, then such unresolved objections shall be submitted for resolution to the Accounting Firm. The Accounting Firm will resolve any unresolved objections submitted to it within thirty days following its engagement. The Accounting Firm shall make a determination based solely on presentations by Seller and Buyer, and not by independent review, as to (and only as to) each of the items in dispute. Absent manifest error by the Accounting Firm, the decision of the Accounting Firm shall be final, binding and conclusive upon Buyer and Seller. Seller shall bear all fees and expenses in connection with the resolution of any objections over Post-Closing Net Asset Inflow referred to the Accounting Firm, while the fees and expenses of the Accounting Firm in connection with a dispute over the Final Earn-Out Payment Statement shall be borne by Buyer and Seller in inverse proportion as they may prevail on matters resolved by the Accounting Firm, which proportionate allocation shall also be determined by the Accounting Firm at the time of its determination of the merits of the matters submitted. Buyer will revise the Final Earn-Out Payment Statement as appropriate to reflect the resolution of any objections thereto pursuant to this Section 1.10. Any resolution mechanism provided for in this Section 1.10 shall be subject to Section 1.11.

1.11. *Work Papers*.

1.11.1. *Access to Work Papers*. Except to the extent prohibited by Applicable Laws related to privacy, Buyer will make the work papers and back-up materials used in preparing the Final Balance Sheet, Final Closing Statement, Recapture Statement and Final Earn-Out Statement (collectively, the "Buyer Statements"), and the books, records, and financial staff of Buyer, Target Company or any of Buyer's Affiliates involved in the preparation of the Buyer Statements, available to Seller and its Representatives at reasonable times and upon reasonable notice during (a) the preparation by Buyer of the Buyer Statements, (b) the review by Seller of the Buyer Statements, and (c) the resolution by Buyer and Seller of any objections thereto; *provided*, *however*, that in the event that Buyer determines in good faith that certain work papers and/or back-up materials requested by Seller contain nonpublic personal information as defined by Applicable Laws related to privacy and no exception exists that would allow disclosure of such materials to Seller, Buyer shall notify Seller of this fact. Upon receipt of such notice, Seller may select an accounting firm ("Work Papers Firm") registered with the Public Company Accounting Oversight Board that shall be retained jointly by Buyer and Seller solely for the purpose of reviewing the work papers and/or back-up materials requested by Seller from Buyer that relate to the Buyer Statements. Seller may unilaterally instruct the Work Papers Firm with respect to what nonpublic personal information to obtain from Buyer, how it is to analyze such information and how such information is to be used in connection with the review of the Buyer Statements. Seller may also unilaterally instruct the Work Papers Firm to prepare a report based on the work papers and/or back-up materials to be presented to Seller, Buyer and the Accounting Firm for final determination of any amounts under dispute in accordance with Section 1.10.

Notwithstanding the foregoing, Seller may not instruct the Work Papers Firm to, and the Work Papers Firm shall not, disclose to Seller any nonpublic personal information that Buyer informs the Work Papers Firm is prohibited from being disclosed to Seller by Buyer under Applicable Laws related to privacy. Upon receipt of an executed confidentiality agreement, engagement letter or other agreement reasonably acceptable to and executed by each of Buyer, the Work Papers Firm and Seller, Buyer shall promptly deliver to the Work Papers Firm copies of such work papers and/or back-up materials. Notwithstanding the foregoing, Buyer and Seller agree that the work papers and/or back-up materials remain the exclusive property of Buyer, and neither the Work Papers Firm nor Seller shall have any right, title or interest therein. Further, upon completion of its services, the Work Papers Firm will return to Buyer all such work papers and/or back-up materials. Buyer and Seller shall split fifty/fifty all fees and expenses of the Work Papers Firm in connection with the foregoing. Seller will make the work papers and back-up materials used in preparing the Initial Balance Sheet and Initial Closing Statement, and the books and records of Target Company and the financial staff of Seller, Target Company or any of Seller's Affiliates involved in the preparation of the Initial Balance Sheet and Initial Closing Statement, available to Buyer and its Representatives at reasonable times and upon reasonable notice at any time during (i) the preparation by Seller of the Initial Balance Sheet and Initial Closing Statement, (ii) the review by Buyer of the Initial Closing Statement, and (iii) the resolution by Buyer and Seller of any objections thereto.

1.11.2. *Review of Account Information*. The parties each acknowledge that, in reviewing the work papers and back-up materials of the other party, each party, or a Representative of the party, may have access to the nonpublic personal information of clients of the other party. Each party agrees to treat the nonpublic personal information of clients obtained in the course of reviewing the work papers and back-up materials of the other party as confidential information (except disclosure by a third party shall not remove the obligation to keep the information confidential) and, in connection with such review, further agrees to: (a) exercise the same diligence in protecting the nonpublic personal information of the clients of the other party with the same measure of care as the party would exercise with its own clients' and/or its own confidential information, but in any event not less than reasonable care; (b) use the nonpublic personal information only for the purpose intended by this Section 1.11 and for no other purpose, except as may be required by Applicable Law; (c) transmit nonpublic personal information only in encrypted format; and (d) ensure that any employee or representative of the party with access to nonpublic personal information was or is made aware of the confidentiality obligations and use limitations applicable thereto.

1.12. *Return of Acquired IAS Accounts.* After the Closing, in the event that Buyer discovers that any of the Acquired IAS Accounts do not meet the definition of Acquired IAS Accounts (the "Non-Conforming IAS Accounts") and, therefore, should have been assigned to Seller prior to Closing, Buyer shall assign and transfer to the recipient of assets in the Reorganization, and Seller shall cause such person to accept and assume from Buyer, the Non-Conforming IAS Accounts.

ARTICLE II.
REPRESENTATIONS AND WARRANTIES

2.1. *Disclosure Schedules*. On or prior to the date hereof, Seller has delivered to Buyer (the "Seller Disclosure Schedule"), and Buyer has delivered to Seller (the "Buyer Disclosure Schedule" and, together with the Seller Disclosure Schedule, the "Disclosure Schedules"), a schedule each setting forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof or as an exception to one or more representations or warranties contained in Article II or to one or more of the covenants contained in Article III; *provided*, that the mere inclusion of an item in the Seller Disclosure Schedule or Buyer Disclosure Schedule as an exception to a representation, warranty, covenant or agreement shall not be deemed an admission by a party that such item represents a material exception or fact, event or circumstance or that such item has had or is reasonably likely to result in a Material Adverse Effect with respect to the disclosing party; *provided*, *further*, that a disclosure in any section of the Seller Disclosure Schedule or Buyer Disclosure Schedule shall be deemed to be a disclosure for all other sections of the Seller Disclosure Schedule or Buyer Disclosure Schedule to the extent that it is reasonably apparent that such disclosure is applicable to such other section of the Seller Disclosure Schedule or Buyer Disclosure Schedule, as applicable.

2.2. *Representations and Warranties of Seller*. Seller represents and warrants to Buyer, except with respect to Excluded Customers, as follows:

2.2.1. *Organization, Authorization; No Conflicts; Status of Target Group, etc.*

(a) *Due Organization, etc*. Seller has Disclosed in Section 2.2.1(a) of the Seller Disclosure Schedule a correct and complete list of each jurisdiction in which the Target Company is qualified to do business. Each of Seller and Target Company is a corporation, duly organized, validly existing and in good standing under the laws of its respective jurisdiction of organization, with the requisite power and authority to carry on its business as now conducted and to own or lease and to operate its properties as and in the places where such business is now conducted and such properties are now owned, leased or operated. Target Company is duly qualified to do business and is in good standing as a foreign corporation in all jurisdictions in which it owns or leases property for its own account or conducts any business so as to require such qualification, except for those jurisdictions in which the failure to be so qualified, individually or in the aggregate, does not have, and would not reasonably be expected to have, a Material Adverse Effect on the Target Company. The Target Company is not a "bank" under the Bank Holding Company Act of 1956, as amended (the "BHC Act").

(b) *Authorization, etc*. Seller has all requisite corporate power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby to be consummated by it. The execution and delivery of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby, by Seller have been duly authorized by all requisite corporate action of Seller. This Agreement has been duly executed and delivered by Seller and constitutes the valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms.

(c) *No Conflicts.* Except as Disclosed in Section 2.2.1(c) of the Seller Disclosure Schedule, the execution and delivery of this Agreement by Seller, the performance by Seller of its obligations hereunder and the consummation by Seller of the transactions contemplated hereby will not, directly or indirectly and, in each case, with or without the giving of notice or lapse of time, or both, contravene, result in any violation of, loss of rights or default under, constitute an event creating rights of acceleration, termination, repayment or cancellation under, entitle any party to receive any payment or benefit pursuant to, or result in the creation of any Lien upon any of the properties or assets of Seller or Target Company under, (i) any provision of the Organizational Documents of Seller or Target Company, (ii) any Applicable Law or Governmental Approval applicable to Seller or Target Company or any of their respective properties or (iii) any agreement, contract or commitment to which Seller is a party or to which its properties or assets are bound or any Target Contract, except, in the case of clause (iii) for any such contraventions, violations, losses, defaults, accelerations, terminations, repayments, cancellations or Liens that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on Seller or on Target Company. Except as Disclosed in Section 2.2.1(c) of the Seller Disclosure Schedule and for the filing of applications and notices (and approval of such applications and notices), as applicable, with the Federal Deposit Insurance Corporation and the Colorado Division of Banking and as required by the HSR Act or any other applicable foreign filing obligation, no Governmental Approvals are necessary to be obtained or made by Seller or Target Company in connection with the execution and delivery of this Agreement by Seller, the performance by Seller of its obligations hereunder or the consummation by Seller of the transactions contemplated hereby. As of the date of this Agreement, to the Knowledge of Seller, no facts, circumstances or other reasons exist that would prevent the receipt of any Required Seller Approval for the transactions contemplated by this Agreement in a timely manner.

(d) *Organizational Documents, Minute Books, etc.* Seller has made available to Buyer complete and correct copies of the Organizational Documents, as in effect on the date hereof, of Seller and Target Company. The minute books of Target Company which pertain to the five year period ending on the date of this Agreement contain records of those meetings of, and that are accurate in all material respects and accurately reflect those actions taken by, the stockholders and the board of directors of Target Company and all the committees of the board of directors of Target Company required to be contained or reflected therein in all material respects.

2.2.2. *Capitalization.*

(a) *Target Company*. The authorized capital stock of Target Company consists of 500,000 shares of common stock, of which 50,488 shares as of the date hereof are issued and outstanding. All of the Target Shares have been duly authorized and validly issued and are fully paid and non-assessable, and are owned beneficially and of record by Seller. Seller has good and marketable title to the Target Shares, free and clear of any Liens.

(b) *Other Agreements with Respect to Common Stock* There are no preemptive or similar rights on the part of any Person with respect to the issuance of any securities or any other equity interests of Target Company. There are no subscriptions, options, warrants or other similar rights, agreements or commitments of any kind obligating Target

Company to issue or sell, or to cause to be issued or sold, or to repurchase or otherwise acquire, any of its own securities or any other equity interests or any securities convertible into or exchangeable for, or any options, warrants or other similar rights relating to, any such securities or any other equity interests. There are no voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Target Shares or any interests therein.

(c) *Other Investments.* Except as Disclosed in Section 2.2.2(c) of the Seller Disclosure Schedule and for investments in publicly traded securities acquired or held in the ordinary course of business as trading inventory, cash equivalents or in Customer accounts (for the benefit of such Customer), the Target Company does not hold any outstanding securities or other interests in any corporation, partnership, company, joint venture or other entity.

2.2.3. *Financial Information; Controls.*

(a) Seller has Disclosed in Section 2.2.3(a) of the Seller Disclosure Schedule to Buyer the Target Financial Statements. The Target Financial Statements have been prepared in accordance with generally accepted accounting principles in the United States ("GAAP") applied on a consistent basis throughout the periods presented in the Target Financial Statements; *provided*, *however*, that the unaudited Target Financial Statements lack footnotes and other presentation items and the unaudited interim financial statements are also subject to normal year end adjustments (which adjustments will not, individually or in the aggregate, be material in amount); *provided*, *further*, that with respect to the February 28, 2007 unaudited balance sheet of the Target Businesses included in the Target Financial Statements, this sentence shall only apply with respect to the items set forth on such balance sheet. The balance sheets of Target Company included in the Target Financial Statements present fairly in all material respects the financial position of Target Company as of the respective dates thereof; and the statements of operations, statements of changes in stockholders' equity and statements of cash flows of Target Company included in the Target Financial Statements present fairly in all material respects the results of operations, stockholders' equity and cash flows of Target Company for the respective periods indicated. The Target Company maintains a standard system of accounting established and administered in accordance with GAAP. The Target Financial Statements are based on the books and records of the Target Company which (i) are true and correct in all material respects and (ii) are maintained in accordance with good business and accounting practices and all Applicable Laws.

(b) Target Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that: (i) material transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements of the Target Company in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

2.2.4. *Undisclosed Liabilities*. Except as Disclosed in Section 2.2.4 of the Seller Disclosure Schedule, Target Company is not subject to any obligation or liability of any nature, whether absolute, accrued, contingent or otherwise and whether due or to become due, and, to the Knowledge of Seller, there is no existing condition, situation or set of circumstances that is reasonably expected to result in such an obligation or liability, other than (i) obligations and liabilities contemplated by or in connection with this Agreement or the transactions contemplated hereby, (ii) as and to the extent disclosed, reserved against or reflected in the audited balance sheet for the year ended December 31, 2006 included in the Target Financial Statements and (iii) obligations and liabilities incurred in the ordinary course of business consistent with past practices, that are not prohibited by this Agreement and that are not individually material in amount or in the aggregate reasonably expected to have a Material Adverse Effect on the Target Company.

2.2.5. *Absence of Changes.* Except as Disclosed in Section 2.2.5 of the Seller Disclosure Schedule, since December 31, 2006, (i) Target Company has conducted its business in the ordinary and usual course consistent with past practices, (ii) no event has occurred or fact or circumstance has arisen that, individually or taken together with all other events, facts, and circumstances, has had, or would reasonably be expected to have, a Material Adverse Effect on Target Company, (iii) no event has occurred or fact or circumstance has arisen or failed to arise, that if such event had occurred or fact or circumstance had arisen or failed to arise after the date hereof would result in a breach of Section 3.1.1 and (iv) there has not been any material damage, destruction or loss with respect to the tangible assets or properties of the Target Company, whether or not covered by insurance.

2.2.6. *Taxes.*

(a) *Filing of Target Tax Returns and Payment of Taxes.* Except as Disclosed in Section 2.2.6(a) of the Seller Disclosure Schedule, all material Seller Group Tax Returns and all material Target Tax Returns required to be filed on or before the date hereof have been filed with the proper Governmental Authorities and are true, correct and complete in all material respects, and all material Seller Group Tax Returns and all material Target Tax Returns required to be filed on or before the Closing Date will have been filed by the Closing Date with the proper Governmental Authority and will be true, correct and complete in all material respects. Except for Taxes Disclosed in Section 2.2.6(a) of the Seller Disclosure Schedule (which are being contested in good faith by appropriate proceedings), all material Taxes of Target Company (whether or not shown on an Target Tax Return or a Seller Group Tax Return) ("Target Taxes") due and payable on or before the Closing Date have (or, in the case of Taxes that become due after the date hereof and on or before the Closing Date, by the Closing Date will have) been duly paid or accrued. Except as Disclosed in Section 2.2.6(a) of the Seller Disclosure Schedule, all material Target Employment and Withholding Taxes required to be withheld and paid on or before the date hereof, and all material Target Employment and Withholding Taxes required to be withheld and paid on or before the Closing Date, have (or, in the case of such Target Employment and Withholding Taxes that are required to be withheld and paid after the date hereof and on or before the Closing Date, by the Closing Date will have) been duly paid (and in the case of Target Employment and Withholding Taxes required to be withheld on or before the Closing Date and paid after the Closing Date, will be properly set aside in accounts for such purpose).

(b) *Extensions, etc*. Except as Disclosed in Section 2.2.6(b) of the Seller Disclosure Schedule, with respect to open Tax periods, (i) there is no written agreement extending or waiving the period of assessment or collection of any Taxes in relation to Target Company, which extension or waiver is currently in force; (ii) there has been no request for any extension of time within which to file any Seller Group Tax Return that has not been filed within such extension period; (iii) there has been no request for any extension of time within which to file any Target Tax Return that has not been filed within such extension period; (iv) there are no requests for rulings in respect of any Taxes in relation to Target Company or any Seller Group that are pending with any Governmental Authority; and (v) Target Company has not received a ruling from any Governmental Authority regarding Taxes that remains in effect.

(c) *Tax Filing Groups.* Since December 31, 2002, except as Disclosed in Section 2.2.6(c) of the Seller Disclosure Schedule, Target Company (i) is not and has not been at any time a member of any affiliated, consolidated, combined or unitary group for Income Tax purposes other than Seller Group and (ii) has no liability for the Taxes of any person (other than another member of Seller Group) (A) under Section 1.1502 6 of the Treasury Regulations, or any similar provision of state or local law, (B) as a transferee, successor, indemnitor or guarantor, (C) by contract or (D) otherwise.

(d) *Copies of Target Tax Returns; Audits; etc.* Seller has made available to Buyer complete and accurate copies of all Target Tax Returns as filed that have been filed or will be filed (after giving effect to all valid extensions of time for filing) after December 31, 2002. Except as Disclosed in Section 2.2.6(d) of the Seller Disclosure Schedule, to the Knowledge of Seller, (i) no Target Taxes have been asserted in writing by any Governmental Authority to be due in respect of any open Tax period that have not been settled and fully paid as settled, (ii) no revenue agent's report or assessment for Target Taxes has been received in writing by Target Company or the common parent of Seller Group from any Governmental Authority for any open Tax period and (iii) no issue has been raised by any Governmental Authority in a writing received by Target Company or any member of Seller Group in the course of any audit that has not been completed with respect to Target Taxes.

(e) *Tax Sharing Agreements.* Except as Disclosed in Section 2.2.6(e) of the Seller Disclosure Schedule, Target Company is not a party to or bound by or has any contractual obligation under any Income Tax sharing agreement or arrangement.

(f) *Eligibility for Section 338(h)(10) Election.* Seller owns all of the interests in Target Company that are treated as equity for U.S. federal income tax purposes. Seller is and will on the Closing Date be the "common parent" (as defined in Treasury Regulations Section 1.1502 77(a)(1)(i)) of a U.S. federal consolidated return group that includes Seller and Target Company.

(g) *Assertions of Jurisdiction.* Seller has Disclosed in Section 2.2.6(g) of the Seller Disclosure Schedule a list of the states, territories and jurisdictions (foreign and domestic) to which any material Tax has been paid by Target Company indicating the type of Tax paid. No claim has been made in writing by any Governmental Authority (i) in any other state, territory or jurisdiction that Target Company is or may be subject to Tax in that jurisdiction

or (ii) in any such state, territory or jurisdiction that Target Company is or may be subject to a type of Tax not indicated for such jurisdiction as Disclosed in Section 2.2.6(g) of the Seller Disclosure Schedule.

(h) *Required Disclosure of Reportable Transactions.* Except as Disclosed in Section 2.2.6(h) of the Seller Disclosure Schedule, Target Company has not entered into any transaction that constitutes a "reportable transaction" within the meaning of Treasury Regulations Section 1.6011-4(b) or a "potentially abusive tax shelter" within the meaning of Section 6112(b) of the Code or which is required to be disclosed under provisions of state law similar to Treasury Regulations Section 1.6011-4.

2.2.7. *Properties and Assets*. Seller has Disclosed in Section 2.2.7 of the Seller Disclosure Schedule a complete and correct list of all real property leased by Target Company, including the names of each of the parties to such lease and the location of the applicable property and the applicable lease documents (including, without limitation, all amendments, supplements, waivers or modifications thereto). Seller has made available to Buyer for inspection complete and correct copies of all such lease documents. Target Company does not own any real property. Target Company has valid title to all material personal property owned by it for its own benefit, and valid leasehold interests in all real and material personal property leased by it, in each case free and clear of all Liens, except (i) Liens Disclosed in Section 2.2.7 of the Seller Disclosure Schedule or reflected in the Target Financial Statements, (ii) Liens for Taxes not yet delinquent or which are being contested in good faith by appropriate proceedings if adequate reserves with respect thereto are maintained on its books in accordance with GAAP, (iii) statutory Liens incurred in the ordinary course of business consistent with past practices that are not material in amount and (iv) Liens which do not, individually or in the aggregate, materially detract from the value or materially interfere with the use of the properties affected thereby (the exceptions described in the foregoing clauses (i), (ii), (iii) and (iv) being referred to collectively as "Target Permitted Encumbrances"). All rent, fees and other payments due under each lease have been fully paid. Each of the premises demised by a lease is in good condition and repair.

2.2.8. *Contracts.*

(a) *Schedule of Contracts, etc.* Seller has Disclosed in Section 2.2.8(a) of the Seller Disclosure Schedule a correct and complete list, as of the date hereof, of all Target Contracts. The term "Target Contracts" means all agreements, contracts, licenses and commitments, including oral agreements (*provided*, that if no dollar threshold is set forth in a subsection of this Section 2.2.8(a), the term "Target Contracts" with respect to oral agreements shall be those agreements, contracts, licenses and commitments involving aggregate consideration to or by the Company in excess of $50,000), of the following types to which Target Company is a party or by which Target Company or any of its properties (excluding any properties held by Target Company for the benefit of a Customer) is bound and which is currently in effect, as amended, supplemented, waived or otherwise modified as of the date hereof:

(i) any agreement, contract, license or commitment, if (x) the performance remaining thereunder involves aggregate consideration to or by Target Company in excess of $100,000 per annum, and (y) such agreement is not cancelable, without penalty, premium, fee or other liability, by the Target Company on ninety (90) days' or less notice;

(ii) any agreement, contract, license or commitment, that restricts in any respect or contains limitations on the ability of Target Company to compete in any line of business or carry on its business anywhere in the world;

(iii) any employment, retention, severance, termination, employee like consulting, independent contractor, change in control or retirement agreement, contract, license or commitment;

(iv) any agreement, contract, license or commitment that relates to Indebtedness, other than Indebtedness constituting Customer deposits;

(v) any mortgage, pledge, indenture or security agreement or similar agreement, contract, license or commitment constituting a Lien upon the assets or properties of Target Company;

(vi) any agreement, contract, license or commitment for the sale or purchase of personal property having a value individually, with respect to all sales or purchases thereunder, in excess of $500,000;

(vii) any agreement, contract, license or commitment for the sale or purchase of fixed assets or real estate having a value individually, with respect to all sales or purchases thereunder, in excess of $500,000;

(viii) any joint venture, partnership and similar agreements, contracts, licenses or commitments;

(ix) any stock purchase agreements, asset purchase agreements and other acquisition or divestiture agreements; and

(x) any other agreements, contracts, licenses or commitments that are not of the types otherwise contemplated in the immediately preceding clauses (i) through (ix) and that are material to the business, financial condition, results of operations or properties of the Target Businesses (other than agreements, contracts, licenses or commitments for commercially available software).

Seller has made available to Buyer for inspection complete and correct copies of all Target Contracts, including a description of any oral agreements.

(b) *No Defaults, etc.* Except as Disclosed in Section 2.2.8(b) of the Seller Disclosure Schedule, (i) each Target Contract is, in all material respects, in full force and effect and enforceable in accordance with its terms against the Target Company and, to the Knowledge of Seller, the other parties thereto, (ii) Target Company has complied in all material respects with and is in material compliance with, and to the Knowledge of Seller, all other parties

thereto have complied in all material respects with and are in material compliance with, provisions of each Target Contract and (iii) there does not exist under any Target Contract any uncured notice of default, any material breach or material default, or any event or condition that, after notice or lapse of time or both, would constitute a material breach or material default, on the part of Target Company or, to the Knowledge of Seller, on the part of any other party to any Target Contract.

2.2.9. *Intellectual Property.*

(a) *Schedule of Intellectual Property.* Seller has Disclosed in Section 2.2.9(a) of the Seller Disclosure Schedule a correct and complete list of all of the material registered Intellectual Property and the material software (other than off the shelf software programs that have not been customized for use by Target Company) that is owned by Target Company (the "Target Intellectual Property"). Except as Disclosed in Section 2.2.9(a) of the Seller Disclosure Schedule, all of the Target Intellectual Property is owned free and clear of any Liens, excluding non-exclusive licenses granted in the ordinary course of business. Except as Disclosed in Section 2.2.9(a) of the Seller Disclosure Schedule, to the Knowledge of the Seller, Target Company has sufficient rights to use the Target Intellectual Property and the material Intellectual Property licensed by the Target Company (other than off the shelf software programs that have not been customized for use by Target Company) in connection with the business as currently conducted by Target Company.

(b) *No Infringement, etc.* To the Knowledge of Seller, the business and operations of Target Company as currently conducted do not infringe or violate any rights of any Person in respect of any Intellectual Property and neither Seller nor Target Company has received written notice from any Person claiming that the operation or exploitation of the business and operations of Target Company infringes or otherwise violates any rights of any Person in respect of any Intellectual Property, except as Disclosed in Section 2.2.9(b) of the Seller Disclosure Schedule. To the Knowledge of Seller, none of the Target Intellectual Property is being materially infringed by any Person. None of the Intellectual Property owned by Target Company is subject to any outstanding judgment, injunction or order restricting the use thereof by Target Company with respect to its business or restricting the licensing thereof to any Person. Since 2004, Seller and Target Company have taken measures deemed reasonable by Target Company (including subjecting appropriate employees and contractors to confidentiality obligations) to protect the confidentiality of all material trade secrets that are owned, used or held by Target Company.

2.2.10. *Insurance*. Seller has Disclosed in Section 2.2.10 of the Seller Disclosure Schedule a correct and complete list of all material insurance policies and fidelity bonds maintained on the date hereof by or for the benefit of the Target Company. Seller has made available to Buyer complete and correct copies of all such policies and bonds, together with all riders and amendments thereto as of the date hereof. Such policies and bonds are in full force and effect, and all premiums due thereon have been paid. The Target Company has complied in all material respects with the terms and provisions of such policies and bonds. Except as Disclosed in Section 2.2.10 of the Seller Disclosure Schedule, there are no claims in excess of $1,000,000 by the Target Company pending as of the date hereof under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the

underwriters of such policies or bonds. Such policies and bonds (or other policies and bonds providing substantially similar insurance coverage) have been in effect since December 31, 2005 and are of the type and in amounts customarily carried by Persons conducting businesses similar to the businesses of Target Company.

2.2.11. Compliance with Laws and Other Instruments; Governmental Approvals.

(a) *Compliance with Laws, etc.* Except as Disclosed in Section 2.2.11(a) of the Seller Disclosure Schedule, Target Company is not in material violation of or material default under and has not at any time since December 31, 2004 materially violated or been in material default under, (i) any Applicable Law applicable to it or any of its properties or business or (ii) any provision of its Organizational Documents. Seller has Disclosed in Section 2.2.11(a) of the Seller Disclosure Schedule a correct and complete list of all consent decrees, cease and desist or other order or enforcement actions or memoranda of understanding or other similar agreements entered into by Target Company with any Governmental Authority currently in effect. No Governmental Authority has instituted, implemented, taken or threatened to take any other action the effect of which would be materially adverse to Target Company. There is no unresolved dispute, violation or exception by any Governmental Authority with respect to any report or statement relating to any examination, audit, inquiry or review of the Target Company. Target Company holds all material licenses, franchises, permits and authorizations necessary for the lawful conduct of its businesses. Target Company has properly satisfied, in all material respects, all of its obligations with respect to all accounts for which it acts as a fiduciary, including, without limitation, accounts for which it serves as a trustee, agent, custodian, personal representative, guardian or conservator in accordance with the terms of the governing documents and Applicable Law and the accountings for each such fiduciary account are current, true and correct in all material respects and accurately reflect the assets of such fiduciary account as determined pursuant to the Target Company's reporting policies. Target Company is a "well capitalized" institution (as defined in 12 C.F.R. Section 337.6) and has sufficient Regulatory Capital to satisfy all requirements of the Colorado Division of Banking and the FDIC (including, without limitation, any capital requirements to maintain such well capitalized status). To the Knowledge of Seller, as of the date hereof, there has not been any event or occurrence since January 1, 2004 that would result in a determination that Target Company is either not "well capitalized" and/or not "well managed" as a matter of U.S. federal banking law. As of the Closing, Target Company shall have Minimum Regulatory Capital.

(b) *Governmental Approvals.* Except as Disclosed in Section 2.2.11(b) of the Seller Disclosure Schedule, all material Governmental Approvals necessary for the conduct of the business and operations of Target Company have been duly obtained and are in full force and effect. There are no proceedings pending or, to the Knowledge of Seller, threatened that are reasonably expected to result in the revocation, cancellation or suspension, or any materially adverse modification, of any such Governmental Approval, and except as Disclosed in Section 2.2.11(b) of the Seller Disclosure Schedule, the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not result in any such revocation, cancellation, suspension or modification.

(c) *Filings*. Since December 31, 2004, Target Company has filed all material registrations, reports, statements, notices and other material filings (and all amendments required to be made with respect thereto) required to be filed with the Colorado Division of Banking, the FDIC, the Commission, and any other Governmental Authority by Target Company, to the extent applicable, including all required amendments or supplements to any of the above, except to the extent that failure to file is not, individually or in the aggregate, reasonably expected to have a Material Adverse Effect on Target Company (the "Target Filings"). The Target Filings complied in all material respects, where applicable, with the requirements of the Colorado Revised Statutes and any other Governmental Authority.

(d) *Retirement Plan Product Compliance*.

(i) Seller has made available to Buyer true, correct and complete copies of the governing plan documents and related agreements, forms and contracts provided to or made available to Customers for each retirement plan, arrangement and account, including traditional and Roth individual retirement accounts under Section 408 or 408(A) of the Code ("Traditional IRAs" and "Roth IRAs", respectively), Coverdell education savings accounts under Section 530 of the Code, savings incentive match plans for employees under Section 408(p) of the Code (both SIMPLE individual retirement accounts ("SIMPLE IRAs") and SIMPLE individual retirement account plans ('SIMPLE IRA Plans")), simplified employee pension plan individual retirement accounts under Section 408(k) of the Code ("SEP IRAs"), plans intended to be qualified under Section 401(a) of the Code, custodial accounts under Section 403(b) of the Code (each a "Plan" or collectively, the "Plans"), with respect to which Target Company acts as a custodian, directed trustee and/or prototype sponsor, and the governing plan documents and related agreements, and forms provided to or made available to Customers for the retirement plans, arrangements and accounts for which Target Company provides services, and other related agreements or materials provided to or made available to Customers. Except as Disclosed in Section 2.2.11(d)(i) of the Seller Disclosure Schedule, to the Knowledge of Seller, neither Seller, Target Company nor any ERISA Affiliate of Target Company has any liability with respect to any transaction involving a Plan in violation of Section 406 of ERISA or any "prohibited transaction" as defined in Section 4975(c)(1) of the Code, for which no exemption exists under Section 408 of ERISA or Section 4975(c)(2) of the Code or on which an excise tax could be payable under Section 4975 of the Code or a civil penalty under Section 502(i) of ERISA.

(ii) Target Company serves as custodian, directed trustee, issuer and/or prototype sponsor or has provided other services for plans intended to be qualified under Section 401(a) of the Code, employer simplified employee pension plans under Section 408(k) of the Code, plans intended to meet the requirements of Section 457 of the Code, health savings accounts under Section 223 of the Code, voluntary employees' beneficiary associates, custodial accounts under Section 403(b) of the Code and Traditional IRAs, SIMPLE IRAs, SEP IRAs and Roth IRAs, as well as Coverdell education savings accounts under Section 530 of the Code. To the extent applicable, Target Company has obtained a favorable opinion letter from the IRS on changes to the Code and Treasury regulations, including those made by the Economic Growth and Tax Relief Reconciliation Act of 2001 (or filed by applicable deadlines imposed by the IRS and are awaiting receipt of such opinion letter) and all prior legislation with respect to each Plan for which Target Company serves as a prototype sponsor. The Target Company has

not engaged in any act or omission and to the Knowledge of Seller, no event has otherwise occurred that would be reasonably likely to negatively impact reliance on such opinion letter. In addition, Seller represents and warrants to Buyer that on the Closing Date, Target Company shall be a "bank" (as defined in Section 408(n) of the Code).

(iii) Except as Disclosed in Section 2.2.11(d)(iii) of the Seller Disclosure Schedule, Target Company does not serve and during the past 8 years has not served as a custodian, directed trustee or issuer nor provided any other services to any retirement plan, arrangement or account other than those listed in Section 2.2.11(d)(ii) above, including, but not limited to, individual retirement annuities under Section 408(b) of the Code, qualified tuition programs under Section 529 of the Code, employee welfare benefit plans as defined under Section 3(1) of ERISA, Archer medical savings accounts under Section 220 of the Code, health reimbursement arrangements, flexible spending accounts, or cafeteria plans under Section 125 of the Code. In addition, except as Disclosed in Section 2.2.11(d)(iii) of the Seller Disclosure Schedule, Target Company does not serve and during the past 8 years has not served as a prototype sponsor of any Plan that is a SIMPLE IRA Plan, or a SIMPLE IRA. Except as Disclosed in Section 2.2.11(d)(iii) of the Seller Disclosure Schedule, Target Company does not serve and during the past 8 years has not served as a discretionary trustee of any retirement plan, arrangement or account, including, but not limited to, plans intended to be qualified under Section 401(a) of the Code, individual retirement accounts under Section 408(a) of the Code, or individual retirement annuities under Section 408(b) of the Code.

(iv) Except as Disclosed in Section 2.2.11(d)(iv) of the Seller Disclosure Schedule, the form of the Plans and the conduct of Seller, Target Company and each ERISA Affiliate of Target Company with respect to the Plans has been and is in compliance with Applicable Law, including, without limitation, ERISA and the Code, and Target Company has not incurred and is not reasonably expected to incur any liability under either ERISA or the Code relating to the Plans and all governmental reports required to be made by Target Company for acts completed prior to the Closing Date with respect to the Plans have been timely filed. In addition, Target Company has not received notice of or been advised of any investigations by any Governmental Authority with respect to any Plan and there are no other claims, suits or proceedings pending or threatened against Target Company with respect to any Plan.

(e) *Collective Investment Fund Compliance.*

(i) Target Company serves as trustee of a group trust established pursuant to the Declaration of Trust dated November 28, 2000, as amended (the "Group Trust") under which has been established the collective investment funds (each, a "Fund," and collectively, the "Funds") Disclosed in Section 2.2.11(e)(i) of the Seller Disclosure Schedule for participation solely by employee benefit plans, each of which is intended to qualify as a group trust under IRS Revenue Ruling 81 100, 1981 1 C.B. 326 ("Rev. Rul. 81 100"), as clarified or modified by any successor ruling, regulation or similar action. Seller has made available to Buyer true, correct and complete copies of the governing documents for the Group Trust and each of the Funds, along with any related agreements, forms, contracts or other materials provided to or made available to investors with respect thereto.

(ii) Each of the Group Trust and the Funds meets the criteria under Rev. Rul. 81 100, including that: (1) the Group Trust is adopted as a part of each adopting employer's plan or each adopting individual retirement account; (2) the Group Trust instrument expressly limits participation to retirement, pension, profit sharing, stock bonus or other employee benefit trusts which are exempt from federal income taxation under Section 501(a) of the Code by reason of qualifying under Section 401(a) of the Code and any governmental plan or unit which is described in Section 818(a)(6) of the Code; (3) the Group Trust instrument prohibits any part of its corpus or income that equitably belongs to any adopting entity from being used for or diverted to any purpose other than for the exclusive benefit of the employees (and the individual for whom an individual retirement account is maintained) and their beneficiaries who are entitled to benefits under such adopting entity; (4) the Group Trust instrument prohibits assignment by an adopting entity of any part of its equity or interest in the group trust; and (5) the Group Trust is created or organized in the United States and is maintained at all times as a domestic trust in the United States.

(iii) Target Company has obtained a favorable determination letter from the IRS that the Group Trust satisfies the requirements of Rev. Rul. 81 100. No event has occurred that would be reasonably likely to negatively impact reliance on such determination letter.

(iv) Target Company does not serve and has never served as a trustee to any other collective investment trust intended to qualify as a group trust under Rev. Rul. 81 100, other than those listed in Section 2.2.11(e)(i) above.

(v) Target Company has discharged its duties with respect to the Group Trust and each Fund in accordance with Section 404(a)(1) of ERISA. Neither Seller, Target Company nor any of its or their affiliates (including its or their respective principals, shareholders, partners, members, directors, officers and employees) has caused any Fund to engage in any non-exempt transaction prohibited under Section 406 of ERISA or upon which a penalty or excise tax would be payable under Section 4975 of the Code.

(vi) The conduct of Seller, Target Company and any of its or their affiliates (including its or their respective principals, shareholders, partners, members, directors, officers and employees) with respect to the Group Trust or any Fund has been and is in compliance with Applicable Law, including ERISA and the Code, and Target Company has not incurred and is not reasonably expected to incur any liability under either ERISA or the Code relating to the Group Trust or any Fund. In addition, Target Company has not received notice of or been advised of any investigations by any Governmental Authority with respect to the Group Trust or any Fund, and there are no other claims, suits or proceedings pending or threatened against Target Company in this regard.

(f) *Other Retirement Account Matters.*

(i) The conduct of Seller, Target Company and any of its or their Affiliates (including its or their respective principals, shareholders, partners, members, directors, officers and employees) with respect to its retirement account customers, their fiduciaries and advisors, and its disclosure, payment and/or retention of any fees (including, but

not limited to, any fee rebates, credits or offsets), has been and is in substantial compliance with ERISA, the Code and all Applicable Law, and the regulations and rulings thereunder, and Target Company has not incurred and is not reasonably expected to incur any liability under either ERISA or the Code in this regard.

(ii) Target Company has not received notice of or been advised of any investigations by any Governmental Authority with respect to the services it provides to its retirement account customers, or the disclosure, payment and/or retention of any fees (including, but not limited to, any fee rebates, credits or offsets), and there are no other material claims, suits or proceedings pending or threatened against Target Company in this regard.

2.2.12. *Affiliate Transactions*. Seller has Disclosed in Section 2.2.12 of the Seller Disclosure Schedule a correct and complete list of all agreements, arrangements, contracts or other commitments, other than brokerage accounts, in effect as of December 31, 2006 between the Target Company, on the one hand, and any officer, director or shareholder of the Target Company or any of its Affiliates, on the other hand, other than compensation or benefit agreements, arrangements and commitments Disclosed in Section 2.2.14(a) of the Seller Disclosure Schedule by Seller. Since December 31, 2006, except as Disclosed in Section 2.2.12 of the Seller Disclosure Schedule, the Target Company has not entered into any agreements, arrangements, contracts or other commitments, other than brokerage accounts and compensation or benefits agreements, arrangements and commitments, with any officer, director or shareholder of the Target Company or any of its Affiliates. Except as Disclosed in Section 2.2.12 of the Seller Disclosure Schedule, there are no inter company services provided to the Target Company by any Affiliate of the Target Company. All transactions between the Target Company and an Affiliate have been conducted in accordance with Applicable Law.

2.2.13. *Labor Matters, etc*. Target Company is not a party to or bound by any collective bargaining or other labor agreement. Except as Disclosed in Section 2.2.13 of the Seller Disclosure Schedule, Target Company is currently in compliance with and for the past four years has materially complied with all Applicable Laws pertaining to the employment or termination of employment of their employees, except for any failures to comply that, individually or in the aggregate, do not, and would not reasonably be expected to have a Material Adverse Effect on Target Company.

2.2.14. *ERISA*.

(a) *Schedule of Plans, etc.* Seller has Disclosed in Section 2.2.14(a) of the Seller Disclosure Schedule a true and complete list of each "employee benefit plan," within the meaning of Section 3(3) of ERISA (whether or not subject to ERISA), and each written bonus, incentive or deferred compensation, stock option or other equity based award, retention, change in control, severance, employment or other employee or retiree compensation or benefit plan, program or arrangement ("Benefit Plan") that is currently or has, in the past six years, been established, adopted or maintained or contributed to by Target Company or to which Target Company contributes or is obligated to contribute or with respect to which Target Company has or could have any liability (collectively, the "Target Plans"). Seller has Disclosed in Section 2.2.14(a) of the Seller Disclosure Schedule a correct and complete list of each Benefit Plan that currently exists or has, in the past six years, been established, sponsored, adopted or

maintained or contributed to by Seller or any ERISA Affiliate of Seller (other than the Target Company) that are applicable to individuals who perform services for Target Company ("Seller Plans") (Seller Plans and Target Plans collectively referred to herein as "Target Group Plans"). Seller has made available to Buyer true and complete copies of all Target Group Plans in which one or more current or former employees of Target Company is eligible to participate or entitled to benefits and, as applicable, all related trusts or other funding agreements, all amendments to such Target Group Plans, the most recent IRS Form 5500 filed in respect of any such Target Group Plan, the most recent summary plan description and summaries of material modifications of any such Target Group Plan and the most recent actuarial valuation prepared for any such Target Group Plan. Except as Disclosed in Section 2.2.14(a) of the Seller Disclosure Schedule, each Target Group Plan intended to be qualified under Section 401(a) of the Code has either (i) received a favorable determination letter from the IRS as to its qualification under the Code covering all Tax law changes prior to the Economic Growth and Tax Relief Reconciliation Act of 2001 or (ii) been submitted to the IRS for such determination letter within the applicable remedial amendment period under Section 401(b) of the Code and such determination letter application is still pending. No amendment has been made to any such Target Group Plan since the date of its most recent determination letter that is reasonably expected to result in the disqualification of such Target Group Plan and no other event has occurred with respect to any such Target Group Plan which is reasonably expected to adversely affect the qualification of such Target Group Plan.

(b) *No Minimum Target Funding Standards, etc.* Except as Disclosed in Section 2.2.14(b) of the Seller Disclosure Schedule, no Target Group Plan is subject to the minimum funding standards of Section 302 of ERISA or Section 412 of the Code, no Target Group Plan is a multi employer plan (as defined in Section 3(37) of ERISA) or a multiple employer plan and no Target Group Plan is maintained in connection with any trust described in Section 501(c)(9) of the Code. The "amount of unfunded benefit liabilities" within the meaning of Section 4001(a)(18) of ERISA does not exceed zero with respect to any Target Group Plan subject to Title IV of ERISA. No material liability has been incurred pursuant to the provisions of Title I or Title IV of ERISA by the Target Company or any ERISA Affiliate thereof and no condition or event exists or has occurred which is reasonably expected to result in any such material liability to any such Person, in each case, in respect of any Target Group Plan.

(c) *Operation of the Target Plans, etc.* Each of the Target Group Plans has been operated and administered in compliance with its terms and all Applicable Law, including but not limited to ERISA and the Code, except for any failure(s) to comply that, individually or in the aggregate, is not reasonably expected to have a Material Adverse Effect on Target Company or on any Target Group Plan. There are no claims, actions, or other litigation pending or, to the Knowledge of Seller, threatened against or with respect to any Target Group Plan or its assets (other than routine claims for benefits under the terms of any such Target Group Plan) and there are no facts or circumstances known to Seller, the Target Company or any Subsidiary that could reasonably be expected to give rise to such suit, action or other litigation. All contributions required to have been made to any Target Group Plan by Target Company or any ERISA Affiliate thereof pursuant to Applicable Law (including, without limitation, ERISA and the Code) or a plan document have been made within the time required by such Applicable Law or plan document or if not yet due, adequate accruals have been provided for in the financial statements.

(d) *No Prohibited Transactions*. Neither Target Company nor any ERISA Affiliate has engaged in any transaction involving a Target Group Plan in violation of Section 406 of ERISA or any "prohibited transaction," as defined in Section 4975(c)(1) of the Code, for which no exemption exists under Section 408 of ERISA or Section 4975(c)(2) or (d) of the Code, except for any such liability that, individually or in the aggregate, is not reasonably expected to have a Material Adverse Effect on Target Company. Neither Target Company nor any ERISA Affiliate has participated in a violation of Part 4 of Title I, Subtitle B of ERISA by any plan fiduciary of any Target Plan and has any unpaid civil liability under Section 502(1) of ERISA, except for any such violation or liability that, individually or in the aggregate, is not reasonably expected to have a Material Adverse Effect on Target Company. Except as Disclosed in Section 2.2.14(d) of the Seller Disclosure Schedule, there are no suits, investigations or other proceedings pending or, to the Knowledge of Seller, threatened in writing by any Governmental Authority against any Target Group Plan, the trustee of any assets held thereunder or Target Company, relating to the Target Plans.

(e) *Welfare Plans*. The Target Group Plans that are group health plans (as defined for the purposes of Section 4980B of the Code and Part 6 of Subtitle B of title I of ERISA and all regulations thereunder ("COBRA")) have complied with the requirements of COBRA to provide healthcare continuation coverage to qualified beneficiaries who have elected, or may elect to have, such coverage, except for any violation that, individually or in the aggregate, is not reasonably expected to have a Material Adverse Effect on Target Company. The Target Group Plans that are health plans (as defined in 45 CFR 160.103) and thereby are subject to the requirements of the Health Insurance Portability and Accountability Act of 1996 have been administered in compliance with such provisions. No Target Group Plan provides health or death benefit coverage beyond the termination of an employee's employment, except as required by COBRA or pursuant to any state laws requiring continuation of benefits coverage following termination of employment.

(f) *Reportable Event*. Except as Disclosed in Section 2.2.14(f) of the Seller Disclosure Schedule, no Target Group Plan that is a Target Pension Plan has been the subject of a reportable event as described in Section 4043 of ERISA, as to which notices would be required to be filed with the PBGC. For purposes of this Section 2.2.14, "Target Pension Plan" shall mean a funded employee pension benefit plan, as defined in Section 3(2) of ERISA, established or maintained by Target Company or any ERISA Affiliate that is not an individual account plan within the meaning of Section 3(34) of ERISA.

(g) *No Liability*. Except as Disclosed in Section 2.2.14(g) of the Seller Disclosure Schedule, neither the Target Company nor any ERISA Affiliate has incurred any liability for any tax imposed under Chapter 43 of the Code.

(h) *Required Contributions*. No Target Plan that is a Target Pension Plan has incurred any "accumulated funding deficiency" within the meaning of Section 302 of ERISA or Section 412 of the Code and no Target Plan that is a Target Pension Plan has requested or received a waiver of the minimum funding standards imposed by Section 412 of the Code.

(i) *No Termination.* There has been no termination or partial termination, as defined in Section 411(d) of the Code and the regulations thereunder, of any Target Group Plan that is a Target Pension Plan.

(j) *No Acceleration.* No benefit under any Target Group Plan, including, without limitation, any severance or parachute payment plan or agreement, will be established or become accelerated, vested or payable by reason of any transaction contemplated under this Agreement either alone or in conjunction with another event (e.g., termination of employment).

(k) *Deductibility*. The tax deductibility of any amount payable under any Target Group Plan will not be limited by operation of Section 162(m) or 280G of the Code.

(l) *Classification*. Each individual who renders services to Target Company who is classified as having the status of an independent contractor, intern or other non-employee status for any purpose (including for purposes of taxation and tax reporting and under Target Group Plans) is properly so characterized and treated.

(m) *WARN*. Target Company is and has been in compliance with all notice and other requirements under the Workers' Adjustment and Retraining Notification (WARN) Act and any similar state or local laws relating to plant closing and layoffs. Except as Disclosed on Section 2.2.14(m) of the Seller Disclosure Schedule, none of the employees of Target Company have suffered an "employment loss" (as defined in the WARN Act) during the 90 day period prior to the date of this Agreement. Seller shall update the listing on Section 2.2.14(m) of the Seller Disclosure Schedule at the Closing for employment losses occurring during the 90 day period prior to Closing.

(n) *Code Section 409A.* Each Target Group Plan that is a "nonqualified deferred compensation plan" (as defined under Section 409A(d)(1) of the Code) has been operated and administered in good faith compliance with Section 409A of the Code from the period beginning January 1, 2005 through the date hereof and has not been materially modified since October 3, 2004. There are no agreements in place that would entitle any participant in any such plan to reimbursement for any additional tax imposed by Section 409A of the Code.

2.2.15. *Environmental Matters.* Except as Disclosed in Section 2.2.15 of the Seller Disclosure Schedule:

(a) The Target Company and the Target Facilities are and have been in compliance with and have no liability under all Environmental Laws.

(b) To the Knowledge of Seller, the Target Company possesses and has possessed all permits, licenses, registrations, identification numbers, authorizations and approvals required under applicable Environmental Laws for the operation of its business as presently and previously conducted.

(c) The Target Company has not received any written claim, notice of violation or citation concerning any violation or alleged violation of any applicable Environmental Law with respect to the Target Company or the Target Facilities since January 1, 2004 or prior thereto for which the Target Company has any remaining liability.

(d) There are no writs, injunctions, decrees, orders or judgments outstanding, or any actions, suits or proceedings pending or, to the Knowledge of Seller, threatened, concerning compliance by the Target Company or the Target Facilities with any Environmental Law.

(e) There have been no Releases of Hazardous Materials and no Person has been exposed to any Hazardous Materials at, to, from, on or under any property currently or formerly operated or leased by the Target Company that could result in a liability to the Target Company under Environmental Laws.

(f) The Target Company has no liability under Environmental Laws relating to the transportation, treatment, storage or disposal of any Hazardous Materials.

2.2.16. *Litigation*. Seller has Disclosed in Section 2.2.16 of the Seller Disclosure Schedule a list, which is true and complete, of all judicial or administrative actions, suits, investigations, inquiries or proceedings pending or, to the Knowledge of Seller, threatened, (a) against, with respect to or involving Target Company, (b) that questions the validity of this Agreement or of any action taken or to be taken by Seller or Target Company in connection with this Agreement or the transactions contemplated hereby (including the Stock Sale and the Reorganization) or (c) that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No other judicial or administrative action, suit, investigation, inquiry or proceeding is pending against the Target Company and, to the Knowledge of Seller, no other such judicial or administrative action, suit, investigation, inquiry or proceeding has been threatened against the Target Company. For purposes of this Section 2.2.16, judicial or administrative actions, suits, investigations, inquiries or proceedings pending or threatened against Customers of Target Company (but not against the Target Company), or in respect of real or personal property held in the name of Target Company solely for the benefit of a Customer or Customers, are expressly excluded.

2.2.17. *Brokers, Finders, etc.* All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on without the participation of any Person acting on behalf of Seller or Target Company in such manner as to give rise to any claim against Seller or Target Company for any brokerage, investment banker or finder's commission, fee or similar compensation and no Person is otherwise entitled to any brokerage, investment banker or finder's commission, fee or similar compensation in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller, Target Company or any of their respective Affiliates, except for Credit Suisse Securities (USA), LLC (the fees and expenses of which will be paid for by Seller).

2.2.18. *Risk Management Instruments.* All Derivative Transactions, whether entered into for the account of the Target Company or for the account of a Customer of the Target Company were duly authorized and entered into in the ordinary course of business consistent with past practice and in accordance with prudent banking practice, Applicable Law and the investments, securities, commodities, management and other policies, practices and procedures employed by the Target Company, and with counterparties believed at the time to be financially responsible and able to understand (either alone or in consultation with their advisers) and bear the risks of such Derivative Transactions. All of such Derivative Transactions are legal, valid and binding obligations of the Target Company enforceable against it in accordance with their terms, and are in full force and effect. The Target Company has duly performed all of its obligations under the Derivative Transactions to the extent that such obligations to perform have accrued and to the Knowledge of Seller, there are no breaches, violations or defaults or allegations or assertions of such by any party thereupon.

2.2.19. *Investment Securities and Commodities.*

(a) Target Company has good title to all securities and commodities owned by it (except those sold under repurchase agreements or held in any fiduciary or agency capacity), free and clear of any Lien, except to the extent such securities or commodities are pledged in the ordinary course of business. Such securities and commodities are valued on the books of the Target Company in accordance with GAAP in all material respects.

(b) Target Company employs investment, securities, commodities, risk management and other policies, practices and procedures that the Target Company believes are prudent and reasonable in the context of its businesses.

2.2.20. *Customers*. At the time each Customer's account was opened, the Target Company obtained the valid, binding and enforceable documentation necessary to maintain such account and to perform services for such Customer in a manner consistent with the activities performed on behalf of such Customer. The Customer Account Information has been maintained in accordance with all Applicable Laws and is in a format that can generally be retrieved without unreasonable effort or expense in response to any Customer request or inquiry from any Governmental Authority for the period required by Applicable Law. With respect to each Customer, Seller has provided to Buyer a copy of all the agreements or contracts that have been entered into between such Customer and Seller.

2.3. *Representations and Warranties of Buyer*. Buyer represents and warrants to Seller as follows:

2.3.1. Authorization; No Conflicts; Status of Buyer, etc.

(a) *Due Organization, etc*. Buyer is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, with the requisite corporate power and authority to carry on its business as now conducted and to own or lease and to operate its properties as and in the places where such business is now conducted and such properties are now owned, leased or operated. Buyer is duly qualified to do business and is in good standing as a foreign corporation in all jurisdictions in which the failure to be so

qualified, individually or in the aggregate, would reasonably be expected to materially impair or delay the ability of Buyer to perform its obligations under this Agreement and to consummate the transactions contemplated hereby (including, without limitation, the Stock Sale and any payment obligations that arise pursuant to Section 1.9).

(b) *Authorization, etc*. Buyer has all requisite corporate power and authority to enter into this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby (including, without limitation, the Stock Sale). The execution and delivery of this Agreement by Buyer, the performance by Buyer of its obligations hereunder and the consummation by Buyer of the transactions contemplated hereby, have been duly authorized by all requisite corporate action of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes the valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

(c) *No Conflicts*. Except as Disclosed in Section 2.3.1(c) of the Buyer Disclosure Schedule, the execution and delivery of this Agreement by Buyer, the performance by Buyer of its obligations hereunder and the consummation by Buyer of the transactions contemplated hereby will not, directly or indirectly and, in each case, with or without the giving of notice or lapse of time, or both, contravene, result in any violation of, loss of rights or default under, constitute an event creating rights of acceleration, termination, repayment or cancellation under, entitle any party to receive any payment or benefit pursuant to, or result in the creation of any Lien upon any of the properties or assets of Buyer or any of its Affiliates under, (i) any provision of the Organizational Documents of Buyer, (ii) any Applicable Law or Governmental Approval applicable to Buyer or any of its Affiliates or any of their respective properties or (iii) any agreement, contract or commitment to which Buyer or any of its Affiliates is a party or to which any of its assets are bound (including, without limitation, the Buyer Credit Agreement), except for any such contraventions, violations, losses, defaults, accelerations, terminations, repayments, cancellations or Liens that, individually or in the aggregate, would not reasonably be expected to materially impair or delay the ability of Buyer to perform its obligations under this Agreement and to consummate the transactions contemplated hereby (including, without limitation, the Stock Sale, the Reorganization and any payment obligations that arise pursuant to Section 1.9). Except for the Required Buyer Approvals, no Governmental Approvals are necessary to be obtained or made by Buyer, its Affiliates and the Toronto-Dominion Bank and its affiliates in connection with the execution and delivery of this Agreement by Buyer, the performance by Buyer of its obligations hereunder or the consummation by Buyer of the transactions contemplated hereby (including, without limitation, the Stock Sale).

(d) *Status*. No Governmental Approval is required under the BHC Act or under Canadian law by Toronto-Dominion Bank or any of its Subsidiaries in connection with the transactions contemplated by this Agreement (other than any post-closing notice that may be required under the BHC Act).

2.3.2. *Litigation*. There is no judicial or administrative action, suit, investigation, inquiry or proceeding pending or, to the Knowledge of Buyer, threatened that (i) questions the validity of this Agreement or of any action taken or to be taken by Buyer in connection with this Agreement or the transactions contemplated hereby or (ii) that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this

Agreement, except in each case any such actions, suits, investigations, inquiries or proceedings that, individually or in the aggregate, would not reasonably be expected to materially impair or delay the ability of Buyer to perform its obligations under this Agreement and to consummate the transactions contemplated hereby (including, without limitation, the Stock Sale, the Reorganization and any payment obligations that arise pursuant to Section 1.9).

2.3.3. *Compliance with Laws, etc.* Except as Disclosed in Section 2.3.3 of the Buyer Disclosure Schedule, or as described in TD AMERITRADE Holding Corporation's most recent Annual Report on Form 10-K filed with the Commission or in the filings of TD AMERITRADE Holding Corporation with the Commission since the date of its most recent Annual Report on Form 10-K disclosed in Section 2.3.3 of the Buyer Disclosure Schedule and filed prior to the date hereof, none of Buyer, The Toronto-Dominion Bank or any of their respective Affiliates is in material violation of or material default under, or has at any time since December 31, 2004 materially violated or been in material default under, (i) any Applicable Law applicable to it or any of its properties or business, except for any such violation or default that would not reasonably be expected to have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby, or (ii) any provision of its Organizational Documents. Buyer has Disclosed in Section 2.3.3 of the Buyer Disclosure Schedule a correct and complete list of all consent decrees or other similar agreements entered into by Buyer or its Affiliates with any Governmental Authority that are currently in effect, except for such consent decrees or other similar agreements that would not reasonably be expected to have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby. No Governmental Authority has instituted, implemented, taken or, to the Knowledge of Buyer, threatened to take any other action the effect of which, individually or in the aggregate, is reasonably expected to have a material adverse effect on Buyer's or any of its Subsidiaries' ability to consummate the transactions contemplated hereby (including, without limitation, the Stock Sale, the Reorganization and any payment obligations that arise pursuant to Section 1.9).

2.3.4. *Financing.* Buyer has available, and as of the Closing will have available, sufficient cash, available lines of credit or other sources of immediately available funds to enable it to pay the Preliminary Purchase Price and pay any other amounts to be paid by it under this Agreement. Buyer's obligations hereunder are not subject to any condition regarding Buyer's ability to obtain financing for the consummation of the transactions contemplated hereunder.

2.3.5. *Brokers, Finders, etc.* All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on without the participation of any Person acting on behalf of Buyer in such manner as to give rise to any claim against Buyer for any brokerage, investment banker or finder's commission, fee or similar compensation and no Person is otherwise entitled to any brokerage, investment banker or finder's commission, fee or similar compensation in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer or any of its Affiliates, except for Banc of America Securities LLC (the fees and expenses of which will be paid for by Buyer).

2.3.6. *Investment*. The Target Shares will be acquired by Buyer for its own account for the purpose of investment and not with a view to their distribution within the meaning of Section 2(11) of the Securities Act. Buyer has not, directly or indirectly, offered the Target Shares to anyone or solicited any offer to buy the Target Shares from anyone, so as to bring such offer and sale of the Target Shares by Buyer within the registration requirements of the Securities Act. Buyer will not sell, convey, transfer or offer for sale any of the Target Shares except in compliance with the Securities Act and any applicable state securities laws or pursuant to an exemption therefrom.

2.3.7. *Absence of Certain Facts and Circumstances.* As of the date of this Agreement, to the Knowledge of Buyer, there are no facts, circumstances or other reason that would prevent the receipt of any Required Buyer Approval for the transactions contemplated by this Agreement in a timely manner.

2.3.8. *Portfolio Yield*. Buyer has Disclosed in Section 2.3.8 of the Buyer Disclosure Schedule the average gross yield received by Buyer on the Buyer's MMDA Portfolio at TD Bank USA for the quarter ended March 31, 2007.

2.4. *No Other Representations or Warranties.* Except for the representations and warranties expressly contained in this Agreement, none of Seller, Buyer or any other Person has made or makes any other express or implied representation or warranty either written or oral, on behalf of Seller or Buyer.

ARTICLE III.
COVENANTS

3.1. *Covenants of Seller*.

3.1.1. *Conduct of Business.* From the date hereof to the Closing Date, except (i) as contemplated by or in connection with this Agreement or the transactions contemplated hereby (including, but not limited to, the transfers contemplated by Section 3.1.5), (ii) as Disclosed in Section 3.1.1 of the Seller Disclosure Schedule, (iii) with the prior written consent of Buyer (such consent not to be unreasonably withheld or delayed), or (iv) with respect to activities of the Seller or Target Company that primarily relate to the operation and management of the Excluded Assets, Excluded Liabilities or the Excluded Business and that do not materially interfere with the operation of the Target Businesses after the Closing, Seller will cause Target Company to:

(a) carry on its business in the ordinary course, and use commercially reasonable efforts to:

(i) preserve intact its present business organization;

(ii) keep available the services of its executive officers and key employees;

(iii) preserve its relationships with Customers, suppliers and others having material business dealings with it;

(iv) maintain in full force and effect substantially the same levels of coverage of insurance and fidelity bonds with respect to its assets, operations and activities as are in effect as of the date hereof;

(v) comply with all Applicable Laws;

(vi) maintain in full force and effect and comply with any Governmental Approvals applicable to the Target Company;

(vii) collect its receivables and pay its payables only in the ordinary course consistent with past practices; and

(viii) maintain its Books and Records consistent with past practices and in accordance with GAAP and all Applicable Laws;

(b) not amend its Organizational Documents;

(c) not merge or consolidate with, or agree to merge or consolidate with, or purchase substantially all of the assets of, or otherwise acquire any business or any corporation, partnership, association or other business organization or division thereof;

(d) not repurchase, redeem or otherwise acquire any Target Shares;

(e) not issue or sell any Target Shares or any options, warrants or other similar rights, agreements or commitments of any kind to purchase any such shares or any securities convertible into or exchangeable for any such shares;

(f) not incur, assume, guarantee (including by way of any agreement to "keep well" or of any similar arrangement) or prepay any Indebtedness or amend the terms relating to any Indebtedness or issue or sell any debt securities, except for (i) any such incurrence, assumption, guarantee or prepayment of such Indebtedness or amendments of the terms of such Indebtedness in the ordinary course of business in an aggregate amount not exceeding $2,000,000, (ii) any Indebtedness constituting deposits or in connection with checks drawn on financial institutions which constitute a liability separate from deposits but arising out of the deposit obligation, or (iii) any such incurrence, assumption, guarantee or prepayment of such Indebtedness or amendments of the terms of such Indebtedness in the ordinary course of business consistent with the ALCO policy in connection with the management of investment portfolio liquidity;

(g) not sell, transfer, assign, convey, mortgage, pledge or otherwise subject to any Lien any of its properties or assets, tangible or intangible, except for Target Permitted Encumbrances or in the ordinary course of business;

(h) not grant any rights or licenses to use any computer software owned by the Target Company or enter into any licensing or similar agreements or arrangements, in each case other than in the ordinary course of business;

(i) not make any material changes in its material terms of sale or in its general policies or practices relating to the selling practices, discounts or other material terms of sale or accounting therefor other than in the ordinary course of business;

(j) not change in any material respect its accounting practices, policies, methods or principles, other than any such changes as may be required under GAAP or other generally accepted accounting principles of the applicable jurisdiction, or acquire or lease any material asset;

(k) not enter into any agreements, contracts or commitments for, or make any, capital expenditures that, in the aggregate, provide for total payments by Target Company of more than $500,000;

(l) not enter into any agreement, contract, license or commitment containing covenants binding on Target Company not to, or otherwise limiting the freedom of Target Company to, compete in any line of business, with any Person or in any geographic area, or hire any individual or group of individuals;

(m) not enter into any agreement, contract, license or commitment that would be a Target Contract if entered into prior to the date hereof, or modify, amend or terminate any Target Contract or waive, release, cancel or assign any material rights or claims thereunder, except that prior written consent of Buyer shall not be required for such actions in the ordinary course of business;

(n) not enter into any agreement, contract or commitment the intent of which is to outsource to an entity other than Seller and its Affiliates any of the services that Seller will be providing under the Transition Services Agreement , except for such agreements, contracts and commitments that, in the aggregate, provide for total payments by Seller and its Affiliates, of no more than $250,000;

(o) not take any action that would, or would reasonably be expected to, result in the Target Company not having Minimum Regulatory Capital as of the Closing;

(p) not authorize, agree or commit to do any of the foregoing referred to in clauses (a) - (o); and

(q) promptly advise Buyer of any fact, condition, occurrence or change known to Seller that is reasonably expected to have a Material Adverse Effect on Target Company or cause a breach of this Section 3.1.1.

3.1.2. *Access and Information*. From the date hereof to the Closing Date, Seller will, and will cause Target Company to, give to Buyer and Buyer's Representatives reasonable access during normal business hours to Target Company and its offices, properties, books, contracts, commitments, reports, records, directors, officers and employees, and to furnish them or provide them access to all such documents, financial data, records, information, directors, officers and employees with respect to the properties and businesses of Target Company as Buyer shall from time to time reasonably request; *provided*, that the

foregoing shall comply with all Applicable Laws, be under the general coordination of Seller and shall be subject to the confidentiality provisions set forth in Section 7.5.10.

3.1.3. *Subsequent Financial Statements and Filings*.

(a) *Governmental Authority Filings.* From the date hereof to the Closing Date, Seller will file, or cause to be filed, with the Colorado Division of Banking, the FDIC or other relevant Governmental Authority, and promptly thereafter make available to Buyer, copies of each material registration, report, statement, notice or other filing required to be filed by Target Company with the Colorado Division of Banking, the FDIC or any other Governmental Authority under Applicable Law. All such registrations, reports, statements, notices or other filings shall comply in all material respects with Applicable Law.

(b) *Tax Returns.* Seller shall duly and timely file all Seller Group Tax Returns, and shall cause Target Company to duly and timely file all Target Tax Returns, required to be filed on or before the Closing Date (including such Tax Returns filed pursuant to any valid extension of time to file). Seller shall prepare and duly and timely file all Seller Group Tax Returns that are due after the Closing Date with respect to periods ending on or before the Closing Date. Seller shall prepare and Buyer shall cause Target Company to duly and timely file all Target Tax Returns that are due after the Closing Date with respect to periods ending on or before the Closing Date. Such Seller Group Tax Returns and Target Tax Returns shall be prepared on a basis consistent with the prior Tax Returns for the same Person. Seller shall allow Buyer a reasonable opportunity to review and comment on such Seller Group Tax Returns (insofar as they relate to Target Company) and such Target Tax Returns. Seller shall prepare drafts of all Target Tax Returns that are due after the Closing Date with respect to taxable periods ending on or prior to the Closing Date and shall allow Buyer a reasonable opportunity to review and comment on such Tax Returns. Buyer shall cause Target Company to file such Target Tax Returns; *provided*, that such Target Tax Returns have been prepared on a basis consistent with prior Tax Returns of Target Company and do not reflect positions that Buyer reasonably determines are not supported by Applicable Law. Buyer shall prepare, on a basis consistent with prior Tax Returns of Target Company, all Target Tax Returns that relate to taxable periods beginning on or prior to the Closing Date and ending after the Closing Date. Target Company shall furnish Seller with such information as Seller may reasonably request in connection with the preparation of or for inclusion in Seller Group Tax Returns for the periods ending on or before the Closing Date. No election under Section 336(e) of the Code shall be made with respect to Target Company in connection with any transaction contemplated by this Agreement; *provided*, *however*, that any deemed election resulting from, or election required to make effective, the elections provided for in Section 3.3 hereof shall be permitted.

(c) *Amended Tax Returns.* Buyer agrees that Seller may prepare and file amended Seller Group Tax Returns for any period (including a period for which Target Company was included) and that Seller shall be entitled to keep any Tax refund or credit relating to any Seller Group Tax Return (unless it was taken into account in computing any adjustment to the Preliminary Purchase Price pursuant to Section 1.7), except to the extent that such credit or refund relates to or results from tax items of Target Company attributable to periods or portions of periods following the Closing Date. Buyer further agrees that Seller may prepare, and Buyer will cause Target Company to file (*provided*, that such amended tax returns have been prepared

in a manner consistent with past practice of Target Company and do not reflect positions which Buyer reasonably determines are not supported by Applicable Law) amended Tax returns with respect to any Tax of Target Company for any period ending on or prior to the Closing Date and that any Tax refund or credit (including any interest and penalty thereon) with respect to any Tax of Target Company for any period ending on or prior to the Closing Date shall be paid (unless such refund or credit was taken into account in computing any adjustments to the Purchase Price pursuant to Section 1.7 or relates to tax items of Target Company attributable to periods or portions of periods following the Closing Date), to Seller as promptly after it is received. After the Closing, Buyer shall not, and shall not permit Target Company or any Affiliate of Buyer to, amend any Tax return of Target Company for any period ending on or prior to or that includes the Closing Date, or to take a position inconsistent with any such Tax return, without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed.

3.1.4. *Public Announcements*. From the date hereof to the Closing Date, except as required by Applicable Law (in which case Seller shall use its commercially reasonable efforts to consult with Buyer before releasing any such information), Seller shall not, and shall cause Target Company and each of their respective Affiliates not to, make any public announcement in respect of this Agreement or the transactions contemplated hereby without the prior written consent of Buyer, which will not be unreasonably withheld or delayed. Seller will (and will cause Target Company to) cooperate with Buyer to develop all public communications and make appropriate members of management available at presentations related to the transactions contemplated hereby as reasonably requested by Buyer.

3.1.5. *Reorganization*.

(a) Prior to the Closing, Seller will use its commercially reasonable efforts to consummate the transactions set forth in the purchase and assumption agreement set forth on Exhibit B hereto (the "P&A Agreement"). The purpose and intent of the P&A Agreement is to (i) cause Target Company to assign and transfer to Seller or one of its Affiliates (other than Target Company) (such person, the "Assignee") all of Target Company's assets and properties other than the Customer-Related Assets (such assets and properties together with the Non-Conforming IAS Accounts, the "Excluded Assets") and (ii) cause the Assignee to assume all of Target Company's liabilities and obligations other than those liabilities and obligations arising from Buyer's performance of the Target Company's obligations under the Customer-Related Assets (such liabilities and obligations, the "Excluded Liabilities") (such assignment and assumption, the "Reorganization"). In connection with effecting the Reorganization, with respect to the investment portfolio securities, (A) the investment portfolio securities shall be assigned and transferred to Seller or one of its Affiliates, on the one hand, and retained by the Target Company, on the other hand, such that the aggregate mark-to-market losses are distributed pro rata between the two based on client deposit liabilities, (B) the mark-to-market pricing shall be performed by an independent third party (e.g. IDC) to be mutually agreed upon by Buyer and Seller, and (C) Buyer shall determine which investment portfolio securities shall be retained by the Target Company in accordance with the provisions set forth in the immediately preceding clauses (A) and (B). Seller, in consultation with Buyer, may modify the structure of the Reorganization, including the terms of the P&A Agreement, so long as such modifications do not materially affect the intended results of the Reorganization, *provided*, that Seller shall take under good faith consideration any reasonable comments timely received from Buyer relating to such modifications.

(b) Except as Disclosed in Section 3.1.5(b) of the Seller Disclosure Schedule, as part of the Reorganization (and prior to the Closing) all intercompany agreements, receivables, payables, loans and investments then existing between Seller or any of its Affiliates, on the one hand, and Target Company, on the other hand, (other than the Transition Services Agreement) shall be terminated, paid or otherwise eliminated prior to the Closing Date and no further rights or obligations of any party shall continue after the Closing thereunder.

(c) For the purposes of this Agreement, "Customer-Related Assets" means all of Target Company's right, title and interest in, to and of: the Customers, all Customer accounts (including, without limitation, all Assets Under Custody in such accounts and all deposits in and related to such accounts), all Customer Account Information, all documentation related to such Customer accounts, all contracts and agreements with such Customers (including, without limitation, program master service agreements and master services agreements with Customers), all accounts receivable and other current assets related to such Customer accounts, all of Target Company's Governmental Approvals, the Minimum Regulatory Capital, all Intellectual Property solely related to the Target Businesses (including, without limitation, the Target Intellectual Property), all Books and Records related to the Target Business, all Corporate Records, all goodwill of the Target Business as a going concern, any credits relating to deposit insurance assessments it is eligible to receive from the FDIC and all other assets and properties Disclosed in Section 3.1.5(c) of the Seller Disclosure Schedule.

3.1.6. *Acquisition Proposals*. Following the execution of this Agreement, Seller shall, and shall cause its Affiliates (including, without limitation, Target Company) and each of their respective Representatives to, immediately cease any existing discussions or negotiations with any Persons conducted heretofore with respect to any Acquisition Proposal, and shall not, and shall cause its Affiliates (including, without limitation, Target Company) and each of their respective Representatives to not, directly or indirectly, (a) initiate, facilitate, encourage or solicit the making of any Acquisition Proposal or take any other action to facilitate any inquiries or the making of any proposal that constitutes or may reasonably be expected to lead to an Acquisition Proposal from any Person, (b) provide any non-public information regarding Target Company to, or enter into or maintain or continue any discussions or negotiations with, any Person with respect to any proposal that constitutes or may reasonably be expected to lead to an Acquisition Proposal or (c) enter into any agreement providing for any Acquisition Proposal.

3.1.7. *Books and Records*. On the date of Conversion or as soon thereafter as reasonably practicable, Seller will deliver, or cause to be delivered, to Buyer (i) all Corporate Records and (ii) all Books and Records and Customer Account Information of the Target Company in the possession of Seller that relate to the Target Businesses, except for such Books and Records and Customer Account Information that date back to periods prior to 1999 and that exist only in a tangible, non-electronic or non-digital format, including, but not limited to, microfiche, microfilm, analog cassette tapes and paper records (collectively, the "Historical Records"). Seller shall, and shall cause its Affiliates and the acquiror of the

Excluded Business to, maintain the Historical Records in accordance with Applicable Law regarding record retention and its own internal record keeping policies, and shall make the Historical Records available to Buyer and its Representatives at any time and as promptly as practicable upon receiving a request for such access from Buyer, but in no event later than 2 days upon receipt of such request, at no cost to Buyer (other than photocopying expenses and reasonable out-of-pocket costs incurred in connection with making such Historical Records available).

3.1.8. *Further Actions.*

(a) *Generally*. From the date hereof to the Closing Date, Seller will, and will cause Target Company to, use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to fulfill Seller's obligations under this Agreement and to consummate and make effective as promptly as possible the transactions contemplated hereby (including the Stock Sale and the Reorganization).

(b) *Filings, etc.* From the date hereof to the Closing Date, Seller will, as promptly as practicable, but in no event later than 30 days following the date of this Agreement, file or supply, or cause to be filed or supplied, all applications, notifications and information required to be filed or supplied by or on behalf of Seller or Target Company pursuant to Applicable Law in connection with this Agreement or the consummation of the transactions contemplated hereby (including the Stock Sale and the Reorganization), including but not limited to filings pursuant to the HSR Act and all other Required Seller Approvals; *provided*, that Buyer will have sole responsibility for initiating communication with the FTC or the DOJ. Buyer will have the right to review in advance, and to the extent practicable Seller will consult with Buyer, in each case subject to Applicable Laws relating to the exchange of information, with respect to all material written information submitted to any third party or any Governmental Authority in connection with such filings; *provided*, that Seller's 4(c) documents may be shared on an outside counsel basis only. In exercising the foregoing right, each of the parties will act reasonably and as promptly as practicable. From the date hereof to the Closing Date, Seller, as promptly as practicable, will make, or cause to be made, all such other filings and submissions under any Applicable Law applicable to Seller or Target Company, as may be required for Seller to consummate the transactions contemplated hereby (including, without limitation, the Stock Sale and the Reorganization). Seller shall use its commercially reasonable efforts to promptly obtain any clearance required pursuant to the HSR Act or any other Governmental Approvals for the consummation of this transaction and shall keep Buyer apprised in all material respects of the status of any communications with, and any inquiries or requests for additional information from, any Governmental Authority and shall comply promptly with any such inquiry or request; *provided*, that Seller shall not be required to consent to the divestiture or other disposition of any of its or its Affiliates' assets or to consent to any other structural or conduct remedy and shall have no obligation to contest, administratively or in court, any ruling, order or other action of any Governmental Authority respecting the transactions contemplated by this Agreement.

(c) *Consents*. Seller, as promptly as practicable, will use commercially reasonable efforts to obtain, or cause to be obtained, the Consents Disclosed in Section 3.1.8 of the Seller Disclosure Schedule; *provided*, *however*, that, in connection with obtaining any such Consent, Target Company shall not be permitted to consent to any action or to make or offer to make any commitment or undertaking or incur any liability or obligation without the prior written consent of Buyer, which will not be unreasonably withheld or unduly delayed.

(d) *Other Actions*. Seller will, and will cause Target Company to, coordinate and cooperate with Buyer in exchanging such information and supplying such reasonable assistance as may be reasonably requested by Buyer in connection with the filings and other actions contemplated by Section 3.2.2. At any time or from time to time after the Closing, Seller shall execute and deliver to Buyer such other documents and instruments, provide such materials and information and take such other actions as Buyer may reasonably request to fulfill each of Seller's obligations under this Agreement and consummate the transactions contemplated hereby (including, without limitation, the Stock Sale and the Reorganization).

(e) *Notice of Certain Events*. From the date hereof to the Closing Date, Seller shall promptly notify Buyer of:

(i) any fact, condition, event or occurrence known to Seller that will or reasonably may be expected to result in the failure of any of the conditions contained in Sections 4.1 and 4.2 to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; and

(iii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement.

(f) *Tax Sharing Agreements*. Seller shall cause all Tax sharing agreements or similar arrangements to which Target Company is a party to be terminated with respect to the Target Company by the Closing Date, without any continuing liability of Target Company to any other party to such agreement or arrangement.

(g) *Dividends*. Notwithstanding anything to the contrary in this Agreement, from the date hereof to the Closing Date, Target Company may pay cash dividends so long as the Target Company maintains Minimum Regulatory Capital following the payment of such dividends.

(h) *Correct Date of Birth Information*. Prior to the Closing, Seller shall, and shall cause Target Company to, use commercially reasonable efforts to obtain and provide to Buyer correct date of birth information for all of the Acquired IAS Accounts.

(i) *Sale of Excluded Business*. Following the Closing, Seller shall not, and shall cause its Affiliates not to, consummate any sale of any material portion or majority control of the Excluded Business to any Person prior to Conversion.

(j) *Customer Account Documentation*. Prior to Closing, Seller shall cooperate with Buyer in good faith to identify those Customers whose agreements may not be assigned to Buyer without affirmative consent of the Customer or whose agreements may not be unilaterally amended by Seller, and for each Customer so identified Seller shall enter into a new agreement with such Customer that resolves such assignment or amendment issues to the reasonable satisfaction of Buyer.

3.1.9. *Restrictive Covenants*.

(a) *Non-Competition*. For a period of three (3) years following the Closing Date, Seller shall not, and Seller shall cause its Subsidiaries not to, directly or indirectly, in any capacity, engage in or have any direct or indirect ownership interest in, or permit its name to be used in connection with (other than those name permissions that are granted in the ordinary course of business), any business anywhere in the United States that is engaged, either directly or indirectly, in the AS Business or the IRPS Business (each of the foregoing being referred to herein as a "Competing Business"); *provided*, *however*, that the following shall not be deemed a violation of this Section 3.1.9(a).

(i) Ownership of stock of any corporation listed on a national securities exchange or traded over the counter so long as Seller and its Subsidiaries collectively do not own more than an aggregate of five percent (5%) of the voting stock of such corporation;

(ii) financing, lending or making extensions of credit to, or foreclosing on the collateral of, any Competing Business in the ordinary course of business, including, without limitation, acquiring any equity securities of any Person that has outstanding indebtedness to Seller or any of its Affiliates, or operating a Competing Business as a result of such acquisition, in each case, in satisfaction of a debt previously contracted that is in a distressed or troubled situation;

(iii) making any investment (or activity related thereto) in a fiduciary or agency capacity of any type and carried out on behalf of clients or other beneficiaries; or

(iv) the ownership of, an affiliation with, or the conduct of any other prohibited activity with respect to, a Person that conducts, either directly or indirectly, a Competing Business (any such Person, together with all of its Affiliates, a "Competing Person") that is the direct or indirect result of (A) the merger, consolidation, share exchange, sale or purchase of assets or similar business combination involving Seller or any of its Affiliates and any Competing Person or (B) the acquisition of any Competing Person by Seller or any of its Affiliates, if, in the case of either (A) or (B), at least 75% of the total consolidated assets or total consolidated revenues (including as revenues net interest income revenues with respect to a lending business) of such Competing Person in the calendar year prior to such ownership or affiliation does not relate to a Competing Business.

It is recognized that the Target Businesses are expected to be conducted throughout the United States and that more narrow geographical limitations of any nature on the covenants set forth in this Section 3.1.9 are, therefore, not appropriate.

(b) *Non-Solicitation.*

(i) For a period of three (3) years following the date hereof, Seller shall not, and Seller shall cause its Affiliates not to, directly or indirectly (A) solicit for employment (or any similar arrangement) or hire (or enter into any similar arrangement) any employee of Buyer or any of its Affiliates that has interacted with Seller, its Affiliates or their respective employees in connection with the transactions contemplated by this Agreement, (B) persuade, induce or attempt to persuade or induce any employee of Buyer or any of its Affiliates that has interacted with Seller, its Affiliates or their respective employees in connection with the transactions contemplated by this Agreement to leave his or her employment with Buyer or any of its Affiliates, or (C) disparage Buyer, any of its Affiliates or the Target Businesses to any Customer, or encourage any Customer to not continue or retain the services of Buyer or any of its Affiliates, except that this clause (C) shall not apply to the enforcement of this Agreement or to proceedings in any threatened or actual litigation matter in which Buyer and Seller and/or their respective Affiliates are opposing parties; *provided*, *however*, that this Section 3.1.9(b)(i) shall not prohibit (x) general solicitations for employment through advertisements not specifically targeted at any employee or employees of Buyer or any of its Affiliates that has been involved in the transactions contemplated by this Agreement, (y) a hiring that results from an inquiry made by an employee of Buyer or any of its Affiliates that has interacted with Seller, its Affiliates or their respective employees in connection with the transactions contemplated by this Agreement to Seller or its Affiliates regarding potential employment after the termination of such employee's employment with Buyer or its Affiliates or (z) hirings by Affiliates of Seller that are Competing Businesses that are acquired by Seller in accordance with the terms of Section 3.1.9(a).

(ii) Except as set forth in Section 3.2.3(b), for a period of three (3) years following the date hereof, Buyer shall not, and Buyer shall cause its Affiliates not to, directly or indirectly, (A) solicit for employment (or any similar arrangement) or hire (or enter into any similar arrangement with) any employee of (x) Target Company who was an employee of Target Company immediately prior to the Reorganization, or (y) Seller or any of its Affiliates that has interacted with Buyer, its Affiliates or their respective employees in connection with the transactions contemplated by this Agreement (each of the employees referred to in subsections (x) and (y) above is a "Covered Employee"), (B) persuade, induce or attempt to persuade or induce any Covered Employee to leave his or her employment with Seller or any of its Affiliates, or (C) disparage Seller or any of its Affiliates to any Customer, or encourage any Customer to not continue or retain the services of Seller or any of its Affiliates, except that this clause (C) shall not apply to the enforcement of this Agreement or to proceedings in any threatened or actual litigation matter in which Buyer and Seller, and/or their respective Affiliates are opposing parties; *provided*, *however*, that this Section 3.1.9(b)(ii) shall not prohibit general solicitations for employment through advertisements not specifically targeted at any or all Covered Employees, or a hiring that results from an inquiry made by a Covered Employee to Buyer or its Affiliates regarding potential employment after the termination of such Covered Employee's employment.

(c) *Modification of Covenant.* The parties hereto recognize that the Applicable Laws and public policies of the various States of the United States of America may differ as to the validity and enforceability of covenants similar to those set forth in this Section

3.1.9. It is the intention of the parties that the provisions of this Section 3.1.9 be enforced to the fullest extent permissible under Applicable Laws and policies of each jurisdiction in which enforcement may be sought, and that the unenforceability (or the modification to conform to such Applicable Laws or policies) of any provisions of this Section 3.1.9 shall not render unenforceable or impair the remainder of the provisions of this Section 3.1.9. Accordingly, if at the time of enforcement of any provision of this Section 3.1.9, a court of competent jurisdiction holds that the restrictions stated herein are unreasonable under circumstances then existing, the parties hereto agree that the maximum period, scope or geographic area reasonable under such circumstances shall be substituted for the stated period, scope or geographical area and that such court shall be allowed to revise the restrictions contained herein to cover the maximum period, scope and geographical area permitted by Applicable Law, it being understood that such maximum period, scope or geographic area shall not exceed the maximum period, scope or geographic area provided for herein.

(d) *Remedies*. Each of Buyer and Seller expressly acknowledge that the restrictive covenants set forth in this Section 3.1.9, including, without limitation, the geographic scope and duration of such covenants, are necessary in order to protect and maintain the proprietary interests and other legitimate business interests of Buyer and Seller, and that any violation thereof may result in irreparable injuries to Buyer or Seller that may not be readily ascertainable or compensable in terms of money, and therefore Buyer or Seller, as applicable, shall, notwithstanding anything to the contrary in this Agreement, be entitled to seek from any court of competent jurisdiction temporary, preliminary and permanent injunctive relief as well as damages, which rights shall be cumulative and in addition to any other rights or remedies to which it may be entitled. Each of Buyer and Seller further agrees that if it is determined that it has willfully breached the terms of this Section 3.1.9, Buyer shall be entitled to recover from Seller all costs and reasonable attorneys' fees incurred as a result of its attempts to redress such breach or to enforce its rights and protect its legitimate interests. In the event of a breach by Buyer or Seller of any covenant set forth in Section 3.1.9 the term of such covenants shall be extended by the period that such breach remains uncured.

(e) *Excluded Business.* Notwithstanding anything in this Agreement to the contrary, this Agreement shall not restrict Seller's or any of its Affiliate's ability to own and operate, or sell, the Excluded Business.

(f) *Termination*. Section 3.1.9 shall terminate immediately upon a Change in Control of Seller.

(g) *Excluded Business Non-Competition.* On the date hereof, Seller has entered into a non-competition agreement with Robert Beriault in a form satisfactory to Buyer. On the Closing Date, Seller shall assign, convey and transfer to Buyer all of its rights, and Buyer shall assume and agree to perform or discharge all of Seller's obligations, under the non-competition agreement with Robert Beriault referred to in the immediately preceding sentence.

3.2. *Covenants of Buyer.*

3.2.1. *Public Announcements.* From the date hereof to the Closing Date, except as required by Applicable Law (in which case Buyer shall use its commercially reasonable efforts to consult with Seller before releasing any such information), Buyer shall not, and shall cause its Affiliates not to, make any public announcement in respect of this Agreement or the transactions contemplated hereby without the prior consent of Seller, which will not be unreasonably withheld or delayed. Buyer will cooperate with Seller and Target Company to develop all public communications and make appropriate members of management available at presentations related to the transactions contemplated hereby as reasonably requested by Seller.

3.2.2. *Further Actions.*

(a) *Generally*. From the date hereof to the Closing Date, Buyer will use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to fulfill its obligations under this Agreement and to consummate and make effective as promptly as possible the transactions contemplated hereby.

(b) *Filings, etc.* From the date hereof to the Closing Date, Buyer will, as promptly as practicable, but in no event later than 30 days following the date of this Agreement, file or supply, or cause to be filed or supplied, all applications, notifications and information required to be filed or supplied by or on behalf of Buyer or its Affiliates pursuant to Applicable Law in connection with this Agreement or the consummation of the transactions contemplated hereby, including the Required Buyer Approvals set forth on Section 3.2.2(b) of the Buyer Disclosure Schedule and all other Governmental Approvals required for the transactions contemplated by this Agreement. Seller will have the right to review in advance, and to the extent practicable Buyer will consult with Seller, in each case subject to Applicable Laws relating to the exchange of information, with respect to all material written information submitted to any third party or any Governmental Authority in connection with the Required Buyer Approvals; *provided*, that Buyer's 4(c) documents may be shared on an outside counsel basis only. In exercising the foregoing right, each of the parties will act reasonably and as promptly as practicable. From the date hereof to the Closing Date, Buyer, as promptly as practicable, will make, or cause to be made, all such other filings and submissions under any Applicable Law applicable to Buyer or its Affiliates or otherwise use its commercially reasonable efforts as may be required for Buyer and its Affiliates to consummate the transactions contemplated hereby (including, without limitation, the Stock Sale and the Reorganization). Buyer shall use its commercially reasonable efforts to promptly obtain any clearance required pursuant to the HSR Act or any other Governmental Approvals for the consummation of this transaction and shall keep Seller apprised in all material respects of the status of any communications with, and any inquiries or requests for additional information from any Governmental Authority and shall comply promptly with any such inquiry or request; *provided*, that Buyer shall not be required to consent to the divestiture or other disposition of any of its or its Affiliates' assets or to consent to any other structural or conduct remedy and shall have no obligation to contest, administratively or in court, any ruling, order or other action of any Governmental Authority respecting the transactions contemplated by this Agreement.

(c) *Other Actions.* Buyer will, and will cause its Affiliates to, coordinate and cooperate with Seller in exchanging such information and supplying such reasonable assistance as may be reasonably requested by Seller in connection with the filings and other actions contemplated by Section 3.1.5 and Section 3.1.8. At any time or from time to time after the Closing, Buyer and/or the Target Company shall execute and deliver to Seller such other documents and instruments, provide such materials and information and take such other actions as Seller may reasonably request to fulfill each of Buyer's obligations under this Agreement and consummate the transactions contemplated hereby (including, without limitation, the Stock Sale and the Reorganization).

(d) *Notice of Certain Events*. From the date hereof to the Closing Date, Buyer shall promptly notify Seller of:

(i) any fact, condition, event or occurrence known to Buyer that will or reasonably may be expected to result in the failure of any of the conditions contained in Sections 4.1 and 4.3 to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; and

(iii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement.

3.2.3. *Employee Benefit Matters.*

(a) Except as provided in Section 3.2.3(b) with respect to Transferred Employees, prior to the Closing, Seller shall cause the employment of each employee, director, agent or independent contractor of the Target Company and its Subsidiaries ("Target Employees") to be transferred to Seller or any of its wholly owned subsidiaries (other than the Target Company). On and after the Closing, Seller shall provide the services of the Target Employees to Buyer pursuant to the Transition Services Agreement, to the extent that such Target Employees remain employees of Seller. Seller shall use its commercially reasonable efforts to retain such Target Employees during the period in which the Transition Services Agreement is effective, with such efforts including entering into appropriate retention agreements with such Target Employees.

(b) Buyer may offer post-Closing employment with Buyer or any of its Affiliates (including, without limitation, Target Company) to any Target Employee that is employed within the Product Operations (including Portfolio Accounting Services), Advisor Services and Sales divisions of the Target Company or that is an executive officer of the Target Company on such terms and conditions as it deems appropriate in its sole discretion. Seller shall (and, prior to the Closing, shall cause Target Company to) use its commercially reasonable efforts to assist Buyer in employing as new employees of Buyer or any of its affiliates (including, without limitation, Target Company), all Target Employees to whom Buyer has offered employment pursuant to this Section 3.2.3(b). Any Employees who accept Buyer's offer of employment and commence employment with Buyer shall be referred to, collectively, as "Transferred Employees."

(c) Seller shall retain and assume from Target Company, and neither Buyer nor any of its Affiliates (including the Target Company) shall have any responsibility for, any and all liabilities that have arisen or may arise with respect to (i) any Target Group Benefit Plan, (ii) any Target Employee, former employee, director, agent or independent contractor of Seller, Target Company or any Affiliate thereof, or (iii) any Transferred Employee that relate to events or circumstances arising during the period that such employee was employed by Seller or any of its Affiliates.

(d) Nothing in this Section 3.2.3, express or implied, shall confer upon any Transferred Employee, or legal representative or beneficiary thereof, any rights or remedies, including any right to employment or continued employment for any specified period, or compensation or benefits of any nature or kind whatsoever under this Agreement. Nothing in this Section 3.2.3, express or implied, shall be construed to prevent Buyer from terminating or modifying to any extent or in any respect any benefit plan that Buyer may establish or maintain.

3.2.4. *Target Company Software*. After Conversion, Buyer agrees that it will not and will not cause others to use, license or transfer the software set forth in Section 3.2.4 of the Buyer Disclosure Schedule.

3.2.5. *Change of Name.*

(a) Buyer acknowledges and agrees that (i) no title to, interest in or right to use the names Fiserv, Inc., Fiserv Trust Corporation, Fiserv Investment Support Services, First Trust Corporation, Peak Retirement Co., Retirement Accounts, Inc., Resources Trust Company, Lincoln Trust Company; the registered service marks Datalynx, LINCUP, Trustlynx, Sunrise Retirement Funds or Resources Trust (and design); the domains Disclosed in Section 3.2.5(a) of the Seller Disclosure Schedule; or any other name, logo, trademark, service mark, domain name or other source indicator owned by Seller or any of its Affiliates containing "Fiserv" or any derivative or variation thereof (the "Retained Names") is being transferred to the Buyer or retained by the Target Company following the Closing pursuant to the transactions contemplated herein except as set forth in this Section 3.2.5; and (ii) that as between the parties, any and all Retained Names are exclusively owned by Seller. Subject to Applicable Law and as soon as reasonably practicable after the Closing Date, Buyer shall cause Fiserv Trust Company to change its name to a name which has no references to "Fiserv" or any derivative or variation thereof, and to make all filings necessary to effect such name change (including existing applications for authority or qualifications to do business as a foreign corporation in any applicable jurisdictions).

(b) Except with respect to the use of Retained Names that are registered service marks in the Customer contracts and agreements, from the time the Target Company's name is changed pursuant to Section 3.2.5(a), Buyer shall not, and shall not permit any Affiliates, including the Target Company, to use the Retained Names or as part of any entity name, trade name, trademark, service mark, logo, domain name or otherwise. Notwithstanding the foregoing, for a period of up to 180 days after the Closing Date, Target Company shall have

the non-transferable right to use and deplete any existing inventory of materials that are in the possession of Target Company as of the Closing Date that contain the Retained Names, including brochures, advertising materials and packaging materials, but no new supply of any materials incorporating the Retained Names shall be ordered or accepted, nor shall new materials with the Retained Names be created, after the Closing Date and such use shall cease after the earlier of 180 days after the Closing Date or when such remaining inventory of any such materials has been exhausted. Target Company shall affix to all such materials a notice, reasonably satisfactory to Seller, the terms of which are to be agreed upon by the parties prior to the Closing Date indicating that Target Company is neither the owner of nor affiliated with the owner of the Retained Names. Buyer shall not and shall not cause any other Person to register or apply for registration of any trademarks, service marks, logos, trade names, domain names or other source indicators that are confusingly similar to the Retained Names in any jurisdiction.

(c) Buyer agrees that Seller shall have no responsibility for claims by third parties arising out of, or relating to, the use by Buyer of the Retained Names after the Closing Date.

3.3. *Section 338(h)(10) Election.*

3.3.1. *The Election.* As soon as practicable after the determination of the Preliminary Purchase Price (including all adjustments thereto pursuant to Section 1.6), but in any event within 165 days after the Closing Date, Seller and Buyer will (and to the extent necessary to effect the Section 338(h)(10) Election, each of Buyer and Seller shall cause its common parent, if any, to) make an election under Section 338(h)(10) of the Code (and any corresponding election under state, local and foreign Tax law) with respect to Target Company (the "Section 338(h)(10) Election").

3.3.2. *Filing Procedures*. Seller and Buyer (and the common parents of Buyer and Seller, if any) shall jointly prepare the Section 338 Forms (as defined below), including any amendment thereto, and shall timely make any required filings and take any and all other actions necessary to effect the Section 338(h)(10) Election. Without limiting the foregoing, Seller and Buyer shall cooperate fully, and in good faith, with each other in determining the "aggregated deemed selling price" ("ADSP") (as defined in Treasury Regulations Section 1.338 4) and the "adjusted grossed up basis" ("AGUB") (as defined in Treasury Regulations Section 1.338 5) for Target Company and allocating such amounts among the assets of Target Company, in each case such allocation shall be in accordance with Section 3.3.3. "Section 338 Forms" shall mean all Tax Returns, documents, statements, and other forms that are required to be submitted to the IRS or any state or local Governmental Authority by, or by a common parent of, the "selling consolidated return group" or a "selling affiliate" (within the meaning of Treasury Regulations Section 1.338(h)(10) 1(b)) or by, or by a common parent of, a "purchasing corporation" (as defined in Section 338(d)(1) of the Code) in connection with the Section 338(h)(10) Election, including, without limitation, the IRS Forms 8023 and 8883 (including, in each case, any schedules or attachments required to be attached thereto) and any other forms required to be filed by Treasury Regulations promulgated under Section 338(h)(10)(C) of the Code or instructions to the Tax Returns.

3.3.3. *Allocation of Purchase Price.*

(a) The Buyer and Seller agree to determine the amount of and allocate the total consideration transferred by Buyer to Seller pursuant to this Agreement (the "Consideration") in accordance with the fair market value of the assets and liabilities transferred. Within thirty (30) days after the adjustments set forth in Sections 1.5.1(a) and 1.5.2(a) are finally determined under such Sections, Buyer shall provide Seller with one or more schedules setting forth the total amount of the Consideration and its allocation among the assets of the Target Company (the "Proposed Allocation"), If such Proposed Allocation contains a material or manifest error, Seller may notify Buyer in writing of its disagreement with the Proposed Allocation to the extent of such material or manifest error within fifteen (15) days of Buyer's provision of the Proposed Allocation to Seller, and then Seller and Buyer shall negotiate in good faith and agree to a reasonable allocation of the Consideration. If such Proposed Allocation does not contain a material or manifest error of which Seller notifies Buyer as above, Seller and Buyer shall use it for all purposes as set forth in the first sentence of Section 3.3.3(b) below. To the extent there is any change in the Consideration, the Buyer and Seller agree to update the allocation determined under this Section 3.3.3 and file any necessary Section 338 Forms reflecting such change.

(b) Each party shall be bound by the allocations described in this Section 3.3.3 for all purposes, including determining any Tax, shall (and cause its common parent, if any, to) prepare and file all Tax Returns in a manner consistent with the Section 338(h)(10) Election and such allocations, and shall not take (or permit any Affiliate to take) any position inconsistent with the Section 338(h)(10) Election or such allocations in any Tax Return, any proceeding before a Governmental Authority, any proceeding before a court or otherwise. If Seller determines that Buyer's Proposed Allocation contains a material or manifest error and so notifies Buyer as set forth in Section 3.3.3(a) above, and Seller and Buyer cannot agree to a reasonable allocation of the Consideration negotiating in good faith, then Buyer or Seller may determine to use an allocation without the agreement of the other party, and in such case neither Buyer nor Seller shall be required to have a consistent allocation with the other pursuant to the first sentence of this Section 3.3.3(b) or prepare Section 338 Forms jointly with the other party to the extent they relate to allocation pursuant to Section 3.3.2.

(c) In the event the allocation is disputed by any Governmental Authority, the party receiving the notice of such dispute shall promptly notify and consult with the other parties concerning the resolution of such dispute, and shall keep the other parties appraised of the status of such dispute and the resolution thereof.

3.4. *Cooperation.*

(a) Seller and Buyer will, and, following the Closing, Buyer will cause Target Company to, provide the other party with such cooperation and information as the other party may reasonably request in filing any Tax return, in determining a liability for any Tax or a right to a refund or credit of any Tax, in defending an audit or in conducting any other proceeding in respect of any Tax, in determining any allocation of ADSP or AGUB hereunder or in investigating or enforcing any right or defending any obligation hereunder. Such cooperation shall include, but not be limited to, providing access to the books and records of Target Company, making employees of Buyer and of Target Company available on a mutually convenient basis to provide explanations of any documents or information provided hereunder or

as otherwise may be necessary or appropriate for any of the foregoing. Seller and Buyer shall, and, following the Closing, Buyer shall cause Target Company to, retain all Tax returns of Target Company, schedules and work papers and all other material records or documents relating thereto or to a member of Target Company's inclusion in Seller Group Tax returns for all Pre-Closing Periods until sixty (60) days after the expiration of the applicable statute of limitations (including any extensions and waivers thereof).

(b) Buyer shall promptly notify Seller in writing, but in no event later than thirty (30) days, after receipt by Buyer, any of its Affiliates or Target Company of notice of any pending or threatened federal, state, local or foreign Tax audit, proposed adjustment or assessment which may affect the Tax Liability of Target Company for which Seller would be required to indemnify Buyer pursuant to Article VI; *provided*, that failure of Buyer to timely notify Seller shall affect Buyer's rights hereunder only to the extent that such failure has a material prejudicial effect on the defenses or other rights available to Seller with respect to such matter. Seller shall have the right to represent Target Company in any Tax audit or administrative or court proceeding to the extent it relates to (i) a Tax period ending on or before the Closing Date, or (ii) a Tax period that includes the Closing Date if the only items at issue relate to the portion of the period prior to or including the Closing Date, to control such audit or proceedings, and to employ counsel of its choice at its expense; *provided*, *however*, that Seller shall permit Buyer to participate in such defense through counsel chosen by Buyer (*provided*, that the fees and expenses of such counsel shall be borne by Buyer) Notwithstanding the foregoing, Seller shall not be entitled to settle, either administratively or after the commencement of litigation, any claim for Taxes which would adversely affect Buyer or Target Company for any period after the Closing Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed; *provided*, *however*, that such consent shall not be necessary to the extent that Seller agrees in writing to indemnify Buyer against the effects of any such settlement.

(c) Seller shall be entitled to participate at its expense with counsel of its choice in the defense of any claim for Taxes which may be the subject of indemnification by Seller pursuant to Section 6.2 which is not subject to Seller's control pursuant to the prior paragraph. Neither Buyer, Target Company, nor any of their Affiliates may agree to settle or pay any Tax claim which may be the subject of indemnification by Seller under Section 6.2 without the prior written consent of Seller, which consent shall not unreasonably be withheld or delayed.

(d) Seller agrees that where an Affiliate or Affiliates of Seller, other than Target Company, act as a prototype sponsor of any Plan, such Affiliate shall continue to serve as prototype sponsor thereof, if so desired by Buyer, after the Closing Date until such date as is mutually agreed upon by Buyer and Seller. In addition, the parties hereto agree to cooperate with and assist each other in all reasonable respects in transitioning the prototype sponsorship of such Plans from Seller's Affiliate or Affiliates, if so desired by Buyer, to Buyer (or its designated Affiliate), effective as of such date as is mutually agreed upon by Buyer and Seller.

3.5. *Buyer Assignee*. At or prior to the Closing, notwithstanding anything to the contrary herein, Buyer may in its sole discretion assign to any of its Affiliates its right to purchase the Shares pursuant to the terms of this Agreement; *provided*, that no such assignment shall relieve Buyer of its obligations under this Agreement.

3.6. *Customer Communications*. Immediately after the date of this Agreement, Seller and Buyer shall jointly prepare, and Seller shall deliver, or cause Target Company to deliver, to each current Customer, a communication regarding the acquisition of Target Company by Buyer in accordance with the terms of this Agreement and the consequences of such transaction to such Customer. Subject to the next sentence, Seller and Buyer shall mutually agree upon and cooperate in Buyer's initial contact with each such Customer. Except as may otherwise be required by Applicable Law, prior to the Closing, neither Seller nor Buyer shall, or shall permit any agent or Affiliate to, send any other communication to any Customer regarding this Agreement or the transactions contemplated hereby without the mutual consent of Buyer and Seller, not to be unreasonably withheld or delayed.

3.7. *Transition Services Agreement.* At the Closing, each of Buyer and Seller shall execute and deliver a transition services agreement, substantially in the form of Exhibit D hereto (the "Transition Services Agreement").

ARTICLE IV.
CONDITIONS PRECEDENT

4.1. *Conditions to Obligations of Each Party.* The obligations of Buyer and Seller to effect the purchase and sale of the Target Shares and to consummate the other transactions contemplated hereby shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

4.1.1. *Required Approvals*. All Required Seller Approvals and Required Buyer Approvals shall have been obtained and shall remain in full force and effect and all statutory waiting periods in respect thereof shall have expired.

4.1.2. *No Injunction, etc.* Consummation of the transactions contemplated hereby shall not have been restrained, enjoined or otherwise prohibited by any Applicable Law, including any order, injunction, decree or judgment of any court or other Governmental Authority, and no action or proceeding brought by any Governmental Authority shall be pending on the Closing Date before any court or other Governmental Authority to restrain, enjoin or otherwise prevent the consummation of the transactions contemplated hereby, and there shall not have been promulgated, entered, issued or determined by any court or other Governmental Authority to be applicable to this Agreement any Applicable Law making illegal the consummation of the transactions contemplated hereby and no action or proceeding that shall have been brought by any Governmental Authority with respect to the application of any such Applicable Law shall be pending.

4.1.3. *Reorganization*. Target Company shall have consummated the Reorganization in accordance with Section 3.1.5 in all material respects, including without limitation the assignment and transfer to Seller or one of its Affiliates (other than the Target Company) of all accounts owned, managed or administered by any customer or client of the Excluded Business.

4.2. *Conditions to Obligations of Buyer*. The obligation of Buyer to effect the purchase and sale of the Target Shares and to consummate the other transactions contemplated hereby shall be subject to the fulfillment (or waiver by Buyer in its sole discretion) at or prior to the Closing Date of the following additional conditions:

4.2.1. *Representations and Warranties*.

(a) The representations and warranties set forth in Sections 2.2.1(a), 2.2.1(b), 2.2.2(a) and 2.2.2(b) shall be true and correct in all respects as of the Closing Date, with the same effect as though such representations and warranties had been made on and as of the Closing Date.

(b) Each of the representations and warranties of Seller set forth in this Agreement (other than the representations and warranties set forth in Sections 2.2.1(a), 2.2.1(b), 2.2.2(a) and 2.2.2(b)), which representations and warranties (other than the representations and warranties set forth in Section 2.2.5(ii)) shall be deemed for purposes of this Section 4.2.1(b) not to include any qualification or limitation with respect to materiality (whether by reference to "material," "Material Adverse Effect" or otherwise), shall be true and correct as of the Closing Date, with the same effect as though such representations and warranties had been made on and as of the Closing Date, except that such representations and warranties that are made as of a specific date shall only be made as of such date; *provided*, *however*, that notwithstanding anything herein to the contrary, this Section 4.2.1(b) shall be deemed to have been satisfied even if such representations and warranties are not true and correct unless the failure of such representations and warranties to be so true and correct, in the aggregate, has had a Material Adverse Effect on Target Company.

(c) Seller shall have delivered to Buyer a certificate, dated the Closing Date and signed by the President or a Vice President of Seller, to the effect set forth above in this Section 4.2.1.

4.2.2. *Covenants*. All of the covenants, agreements, undertakings and obligations that Seller or Target Company is required to perform or to comply with at or prior to Closing pursuant to this Agreement shall have been duly performed and complied with in all material respects. Seller shall have delivered to Buyer a certificate, dated the Closing Date and signed by the President or a Vice President of Seller, to the effect set forth above in Section 4.2.2.

4.2.3. *Resignations*. Buyer shall have received the resignations, effective as of the Closing, of all directors of Target Company and of each officer of Target Company.

4.2.4. *Proceedings*. All corporate and other proceedings of Seller that are required in connection with the transactions contemplated by this Agreement, and all documents and instruments incident to such proceedings, shall be reasonably satisfactory to Buyer and its counsel, and Buyer and such counsel shall have received all such documents and instruments, or copies thereof, certified if requested, as may be reasonably requested.

4.2.5. *No Material Adverse Effect.* Since December 31, 2006, no event shall have occurred or fact or circumstance shall have arisen that, individually or taken together with all other events, facts, and circumstances has had, or is reasonably expected to have, a Material Adverse Effect on the Target Company.

4.2.6. *Transition Services Agreement.* Seller shall have executed and delivered to Buyer the Transition Services Agreement.

4.2.7. *FIRPTA Compliance.* Seller shall have delivered to Buyer a properly prepared and executed certificate of non-foreign status in the form set forth in Treasury Regulations Section 1.1445 2(b)(2)(iv)(B).

4.2.8. *Minimum Regulatory Capital*. Target Company shall have Minimum Regulatory Capital as of immediately prior to the Closing and Seller shall have delivered to Buyer a certificate, dated the Closing Date and signed by the President or a Vice President of Seller, to such effect.

4.3. *Conditions to Obligations of Seller.* The obligation of Seller to effect the purchase and sale of the Target Shares and to consummate the other transactions contemplated hereby shall be subject to the fulfillment (or waiver by Seller in its sole discretion), at or prior to the Closing Date, of the following additional conditions:

4.3.1. *Representations and Warranties*.

(a) The representations and warranties set forth in Sections 2.3.1(a) and 2.3.1(b) shall be true and correct in all respects as of the Closing Date, with the same effect as though such representations and warranties had been made on and as of the Closing Date.

(b) Each of the representations and warranties of Buyer set forth in this Agreement (other than the representations and warranties set forth in Sections 2.3.1(a) and 2.3.1(b)), which representations and warranties shall be deemed for purposes of this Section 4.3.1 not to include any qualification or limitation with respect to materiality (whether by reference to "material," "Material Adverse Effect" or otherwise), shall be true and correct as of the Closing Date, with the same effect as though such representations and warranties had been made on and as of the Closing Date, except that such representations and warranties that are made as of a specific date shall only be made as of such date; *provided*, *however*, that notwithstanding anything herein to the contrary, this Section 4.3.1(b) shall be deemed to have been satisfied even if such representations and warranties are not true and correct unless the failure of such representations and warranties to be so true and correct, in the aggregate, has a material adverse affect on the ability of Buyer to consummate the transactions contemplated hereby (including, without limitation, the Stock Sale and the Reorganization).

(c) Buyer shall have delivered to Seller a certificate, dated the Closing Date and signed by the President or a Vice President of Buyer, to the effect set forth above in this Section 4.3.1.

4.3.2. *Covenants*. All of the covenants, agreements, undertakings and obligations that Buyer is required to perform or to comply with at or prior to Closing pursuant to this Agreement shall have been duly performed and complied with in all material respects. Buyer shall have delivered to Seller a certificate, dated the Closing Date and signed by the President or a Vice President of Buyer, to the effect set forth above in this Section 4.3.2.

4.3.3. *Proceedings*. All corporate and other proceedings of Buyer that are required in connection with the transactions contemplated by this Agreement, and all documents and instruments incident to such proceedings, shall be reasonably satisfactory to Seller and its counsel, and Seller and such counsel shall have received all such documents and instruments, or copies thereof, certified if requested, as may be reasonably requested.

4.3.4. *Transition Services Agreement.* Buyer shall have executed and delivered to Seller the Transition Services Agreement.

ARTICLE V.
TERMINATION

5.1. *Termination*. This Agreement may be terminated at any time prior to the Closing Date:

(a) by the written agreement of Buyer and Seller;

(b) by either Buyer or Seller, without liability to the terminating party on account of such termination if the Closing has not occurred (other than through the failure of the party seeking to terminate this Agreement to comply with its obligations hereunder) on or before the eight month anniversary of the date hereof;

(c) by Buyer, if Seller shall have breached any representation contained herein or any of the covenants or agreements contained herein, which breach or event would cause the conditions set forth in Section 4.1 or Section 4.2 not to be satisfied and which breach or event cannot be or has not been cured within thirty (30) days after the giving by Buyer of written notice to Seller of such breach; or

(d) by Seller, if Buyer shall have breached any representation contained herein or any of the covenants or agreements contained herein, which breach or event would cause the conditions set forth in Section 4.1 or Section 4.3 not to be satisfied and which breach or event cannot be or has not been cured within thirty (30) days after the giving by Seller of written notice to Buyer of such breach.

5.2. *Effect of Termination.* In the event of the termination of this Agreement pursuant to Section 5.1, this Agreement shall become void and have no effect, without any liability to any Person in respect hereof or of the transactions contemplated hereby on the part of any party hereto, or any of its respective Representatives or Affiliates, except for any liability resulting from any party's willful and intentional breach of this Agreement and except that the provisions of this Section 5.2 and the provisions of Article VII shall survive any such termination. The foregoing sentence shall not be construed to limit any party's obligations under Section 7.2.

ARTICLE VI.
SURVIVAL OF REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS; INDEMNIFICATION

6.1. *Survival of Representations, Warranties, Covenants and Agreements.* The representations and warranties made herein shall terminate as provided in this Section 6.1. Upon such termination, no party shall have any liability to the other party with respect to a claim of violation of a representation or warranty unless the party entitled to indemnification pursuant to this Article VI shall have complied with the provisions of Section 7.4 and shall have given appropriate notice to the party liable for indemnification pursuant to this Article VI (the "Indemnifying Party") before the termination of the relevant representation as provided in this section. The representations and the covenants and other obligations contained in this Agreement shall survive the Closing as follows: (a) the representations and warranties in Sections 2.2 (except those in Sections 2.2.1(a), 2.2.1(b), 2.2.2(a), 2.2.2(b), 2.2.6, 2.2.11(d), 2.2.11(e), 2.2.14 and 2.2.15) and 2.3 (except those in Sections 2.3.1(a) and 2.3.1(b)) will survive until 11:59 p.m. ET on the 18 month anniversary of the Closing; (b) the representations and warranties in Section 2.2.6, 2.2.11(d), 2.2.11(e), 2.2.14 and 2.2.15 shall survive until sixty (60) days after the applicable statute of limitations (including any extensions and waivers thereof) has expired; and (c) the representations and warranties in Sections 2.2.1(a), 2.2.1(b), 2.2.2(a), 2.2.2(b), 2.3.1(a), 2.3.1(b), 2.4 and the covenants and other obligations in this Agreement shall survive indefinitely.

6.2. *General Indemnity*.

6.2.1. *Seller Indemnity.*

(a) Subject to the other provisions of this Article VI, Seller hereby agrees that from and after the Closing it shall indemnify, defend and hold harmless Buyer, its Affiliates (including, without limitation, after the Closing, Target Company) and their respective Representatives (the "Buyer Indemnified Parties") from, against and in respect of any and all damages, losses, charges, liabilities, claims (including, without limitation, third party claims), demands, actions, suits, proceedings, payments, judgments, settlements, assessments, diminutions in value, costs, expenses, Taxes, interests and penalties (including, without limitation, reasonable attorneys' and other professional fees, reasonable out of pocket disbursements and the reasonable fees and costs incurred in enforcing rights under this Article VI) (collectively, "Losses") imposed on, sustained, incurred or suffered by, or asserted against, any of the Buyer Indemnified Parties, to the extent arising or resulting from or incurred in connection with or otherwise with respect to each of the following:

(i) any inaccuracy in or breach of any representation or warranty of Seller contained in or made pursuant to this Agreement or in any certificate delivered pursuant to this Agreement (reading such representations or warranties without regard to any materiality qualifier, including "Material Adverse Effect," contained therein (other than the representations and warranties set forth in Section 2.2.5(ii)));

(ii) any failure or breach of Seller to duly perform or observe any term, provision or covenant or agreement to be performed or observed by it pursuant to this Agreement;

(iii) all of the judicial or administrative actions, suits, investigations, inquiries or proceedings Disclosed in Section 2.2.16 of the Seller Disclosure Schedule and all other judicial or administrative actions, suits, investigations, inquiries or proceedings commenced on or prior to the Closing Date against, with respect to or involving Target Company (collectively, the "Retained Litigation");

(iv) any events, facts, circumstances or omissions (collectively, "Events") arising out of the ownership of Target Company or the operation or conduct of the business of Target Company or otherwise involving Target Company on or prior to the Closing Date, including, without limitation, any judicial or administrative actions, suits, investigations, inquiries, proceedings or taxes arising or resulting from or incurred in connection with, or otherwise with respect to Events arising out of such matters and occurring on or prior to the Closing Date, regardless of when such claim is asserted or when such actions, suits, investigations, inquiries or proceedings are commenced;

(v) the Excluded Assets, the Excluded Liabilities (regardless of whether or not Seller Disclosure Schedule discloses any such Excluded Liability) and the Reorganization;

(vi) any Tax imposed upon Seller, a Seller Group (except Target Company) or any Affiliate of Seller (except Target Company) for any period;

(vii) any Tax for a Pre-Closing Period for which Target Company may be liable (x) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), (y) as a transferee or successor or (z) by contract;

(viii) any Tax imposed on Target Company for a Pre-Closing Period (including the portion of any Tax imposed on Target Company for a Straddle Period that is allocable to the portion of such period ending at the close of the Closing Date (the "Pre-Closing Portion") or as a result of the Section 338(h)(10) Election);

(ix) any Tax imposed as a result of the Reorganization; and

(x) any Tax or penalty imposed as a result of a Tax Return not being timely filed or furnished and accurate, if such Tax Return (a) was required to be filed, furnished or prepared by a Seller Group or Target Company and was required to be filed or furnished prior to the Closing Date or (b) is a Tax Return that Seller is responsible for filing or furnishing under this Agreement.

In determining the Taxes for a Straddle Period allocable to the Pre-Closing Portion, except as provided in the next sentence, the allocation shall be made on the basis of an interim closing of the books as of the end of the Closing Date. In the case of (i) franchise Taxes based on capitalization, debt or shares of stock authorized, issued or outstanding, (ii) ad valorem Taxes and (iii) any Tax other than employment Taxes and Taxes based on or

related to income, the portion of such Taxes for a Straddle Period allocable to the Pre-Closing Portion shall be the amount of such Taxes for the Straddle Period (computed in accordance with past practice), multiplied by a fraction, the numerator of which is the number of such days in such taxable period ending on and including the Closing Date and the denominator of which is the aggregate number of days in such taxable period; *provided*, *however*, that if any property, asset or other right of Target Company is sold or otherwise transferred prior to the Closing, then ad valorem Taxes pertaining to such property, asset or other right shall be attributed entirely to the Pre-Closing Portion.

(b) Except with respect to the matters contained in Sections 2.2.1(a), 2.2.1(b), 2.2.1(c), 2.2.2(b), 2.2.6 and 2.2.11, Seller shall not be liable to the Buyer Indemnified Parties for any Losses with respect to the matters contained in Section 6.2.1(a)(i) unless the aggregate amount of all such Losses exceeds $3,000,000 and then only for Losses in excess of that amount. Except with respect to the matters contained in Sections 2.2.1(a), 2.2.1(b), 2.2.2(a), 2.2.2(b), 2.2.6 and 2.2.11, Seller shall not be liable to the Buyer Indemnified Parties for any Losses with respect to the matters contained in Section 6.2.1(a)(i) that exceed an aggregate amount equal to $50,000,000.

(c) Seller shall not be liable to the Buyer Indemnified Parties for any individual Loss of less than $25,000; *provided*, that (i) all repetitive Losses relating to a similar type of failure, action, inaction or violation of Applicable Law arising out of a substantially similar set of circumstances shall be treated as one Loss for purposes of the $25,000 de minimis limitation set forth in this Section 6.2.1(c) and (ii) it is understood that nothing in Section 6.2.1(b) or this Section 6.2.1(c) shall be deemed to establish in any way a materiality threshold for purposes of this Agreement.

6.2.2. *Buyer Indemnity*.

(a) Subject to the other provisions of Article VI, Buyer hereby agrees that it shall indemnify, defend and hold harmless Seller and its Affiliates and their respective Representatives (the "Seller Indemnified Parties" and, together with the Buyer Indemnified Parties, the "Indemnified Parties") from, against and in respect of any Losses imposed on, sustained, incurred or suffered by, or asserted against, any of the Seller Indemnified Parties, to the extent arising or resulting from or incurred in connection with or otherwise with respect to each of the following:

(i) any inaccuracy in or breach of any representation or warranty of Buyer contained in or made pursuant to this Agreement or in any certificate delivered pursuant to this Agreement (reading such representations or warranties without regard to any materiality qualifier, including "Material Adverse Effect," contained therein);

(ii) any Events arising out of the ownership of Target Company or the operation or conduct of the business of Target Company or otherwise involving Target Company after the Closing Date, including, without limitation, any judicial or administrative actions, suits, investigations, inquiries, proceedings or taxes arising or resulting from or incurred in connection with, or otherwise with respect to Events arising out of such matters and occurring

after the Closing Date, regardless of when such claim is asserted or when such actions, suits, investigations, inquiries or proceedings are commenced; *provided*, that the indemnity provided by Buyer pursuant to this Section 6.2.2(a)(ii) shall not apply to any Losses arising or resulting from or incurred in connection with or otherwise with respect to Section 1.9 or the Transition Services Agreement.

(iii) any failure or breach of Buyer to duly perform or observe any term, provision or covenant or agreement to be performed or observed by it pursuant to this Agreement; or

(iv) any Tax imposed on Target Company for a taxable year or period beginning after the Closing Date (including the portion of any Tax imposed for a Straddle Period after deducting amounts associated with the Pre-Closing Portion).

(b) Except with respect to the matters contained in Sections 2.3.1(a) and 2.3.1(b), and those Losses described in Section 6.2.2(a)(iv), Buyer shall not be liable to the Seller Indemnified Parties for any Losses with respect to the matters contained in Section 6.2.2(a)(i) unless the aggregate amount of all such Losses exceeds $3,000,000 and then only for Losses in excess of that amount. Except with respect to the matters contained in Sections 2.3.1(a) and 2.3.1(b), Buyer shall not be liable to the Seller Indemnified Parties for any Losses with respect to the matters contained in Section 6.2.2(a)(i) that exceed an aggregate amount equal to $50,000,000.

(c) Buyer shall not be liable to the Seller Indemnified Parties for any individual Loss of less than $25,000; *provided*, that (i) all repetitive Losses relating to a similar type of failure, action, inaction or violation of Applicable Law arising out of a substantially similar set of circumstances shall be treated as one Loss for purposes of the $25,000 de minimis limitation set forth in this Section 6.2.2(c) and (ii) it is understood that nothing in Section 6.2.2(b) or this Section 6.2.2(c) shall be deemed to establish in any way a materiality threshold for purposes of this Agreement.

6.2.3. *Exclusive Remedy*. The rights and remedies of Seller and Buyer under this Article VI are exclusive and in lieu of any and all other rights and remedies which Seller and Buyer may have under, or with respect to, this Agreement or otherwise against each other with respect to the transactions contemplated by this Agreement for monetary relief with respect to any breach of any representation or warranty or any failure to perform any covenant or agreement set forth in this Agreement (other than with respect to fraud or for specific performance of the terms of this Agreement or matters arising under the Transition Services Agreement, which shall be governed by the terms thereof).

6.2.4. *Further Limitations.* Except for actions required to be taken by Buyer or Target Company pursuant to this Agreement or otherwise contemplated by this Agreement, Seller shall not have any liability under any provision of this Agreement for any Losses to the extent the underlying liability was taken into account in computing any post-Closing adjustment to the Preliminary Purchase Price pursuant to Section 1.7 or 1.8.

6.3. *Third Party Claims.*

6.3.1. *General.*

(a) In the event that any written claim or demand for which an Indemnifying Party may have liability to any Indemnified Party hereunder is asserted against or sought to be collected from any Indemnified Party by a third party (a "Third Party Claim"), such Indemnified Party shall promptly, but in no event more than thirty (30) days following such Indemnified Party's receipt of a Third Party Claim, notify the Indemnifying Party in writing of such Third Party Claim, the amount or the estimated amount of damages sought thereunder to the extent then ascertainable (which estimate shall not be conclusive of the final amount of such Third Party Claim), any other remedy sought thereunder, any relevant time constraints relating thereto and, to the extent practicable, any other material details pertaining thereto (a "Claim Notice"); *provided*, *however*, that the failure to give a timely Claim Notice shall affect the rights of an Indemnified Party hereunder only to the extent that such failure has a material prejudicial effect on the defenses or other rights available to the Indemnifying Party with respect to such Third Party Claim. The Indemnifying Party shall have thirty (30) days (or such lesser number of days set forth in the Claim Notice as may be required by court proceeding in the event of a litigated matter) after receipt of the Claim Notice (the "Notice Period") to notify the Indemnified Party whether it shall defend the Indemnified Party against such Third Party Claim.

(b) In the event that the Indemnifying Party notifies the Indemnified Party within the Notice Period that it shall defend the Indemnified Party against a Third Party Claim, the Indemnifying Party shall have the right to defend the Indemnified Party by appropriate proceedings and shall have the sole power to direct and control such defense, with counsel of its choosing (*provided*, that such counsel shall be reasonably acceptable to the Indemnified Party), at its expense. Once the Indemnifying Party has duly assumed the defense of a Third Party Claim, the Indemnified Party shall have the right, but not the obligation, to participate in any such defense and to employ separate counsel of its choosing. The Indemnified Party shall participate in any such defense at its expense. Notwithstanding the foregoing, if counsel for the Indemnified Party reasonably determines that there is a conflict between the positions of the Indemnifying Party and the Indemnified Party in conducting the defense of such action or that there are legal defenses available to such Indemnified Party different from or in addition to those available to the Indemnifying Party, then counsel for the Indemnified Party shall be entitled, if the Indemnified Party so elects, to conduct the defense to the extent reasonably determined by such counsel to protect the interests of the Indemnified Party, at the expense of the Indemnifying Party. As soon as reasonably practicable, the Indemnifying Party shall provide the Indemnified Party with an opportunity to review and comment upon (i) any written agreement to settle or compromise any Third Party Claim that the Indemnifying Party intends to submit to or enter into with an adverse party with respect to any Third Party Claim, or (ii) any offer to settle or compromise any Third Party Claim that the Indemnifying Party intends to submit to or receives from any adverse party with respect to any Third Party Claim. The Indemnifying Party shall consider in good faith (A) any comments provided in a timely fashion by the Indemnified Party and (B) incorporating such comments into any such agreement or offer to settle or compromise any Third Party Claim; *provided*, *however*, that the Indemnifying Party shall not, without the prior written consent of the Indemnified Party, not to be unreasonably withheld or delayed, settle, compromise or offer to settle or compromise any Third Party Claim

on a basis that would result in (1) the imposition of a consent order, injunction or decree that would restrict in any significant respect the future activity or conduct of the Indemnified Party or any of its Affiliates, (2) a finding or admission by the Indemnified Party or any of its Affiliates of a violation of Applicable Law or a violation by the Indemnified Party or any of its Affiliates of the rights of any Person or (3) any monetary liability of the Indemnified Party that will not be paid or reimbursed in full by the Indemnifying Party within the time period for payment set by the proposed settlement.

(c) If the Indemnifying Party (A) elects not to defend the Indemnified Party against a Third Party Claim, whether by not giving the Indemnified Party timely notice of its desire to so defend or otherwise or (B) after assuming the defense of a Third Party Claim, fails to take reasonable steps necessary to defend diligently such Third Party Claim within 10 days after receiving written notice from the Indemnified Party to the effect that the Indemnifying Party has so failed, the Indemnified Party shall have the right but not the obligation to assume its own defense at the expense of the Indemnifying Party; it being understood that the Indemnified Party's right to indemnification for a Third Party Claim shall not be adversely affected by assuming the defense of such Third Party Claim. The Indemnified Party shall not settle a Third Party Claim without the consent of the Indemnifying Party (which shall not be unreasonably withheld or delayed).

(d) The Indemnified Party and the Indemnifying Party shall cooperate in order to ensure the proper and adequate defense of a Third Party Claim, including by providing access to each other's relevant business records and other documents, and employees.

(e) The Indemnified Party and the Indemnifying Party shall use commercially reasonable efforts to avoid production of confidential information (consistent with applicable Law), and to cause all communications among employees, counsel and others representing any party to a Third Party Claim to be made so as to preserve any applicable attorney client or work product privileges.

(f) This Section 6.3.1 shall not apply with respect to indemnification with respect to Retained Litigation, which matters will be governed by Section 6.3.2.

6.3.2. *Retained Litigation.*

(a) Following the Closing, Seller shall, at its own expense, (i) actively and diligently defend the Buyer Indemnified Parties (including, without limitation, Target Company) with respect to each Retained Litigation (regardless of whether such matter is set forth on Section 2.2.16 of the Seller Disclosure Schedule) by appropriate proceedings and (ii) have the sole power to direct and control such defense, with counsel of its choosing. Buyer Indemnified Parties shall have the right, but not the obligation, to participate in any such defense and to employ separate counsel of their own choosing and may participate in any such defense at their own expense. Notwithstanding the foregoing, if counsel for the Buyer Indemnified Parties reasonably determines that there is a conflict between the positions of Seller and the Buyer Indemnified Parties in conducting the defense of any such action or that there are legal defenses available to such Buyer Indemnified Parties different from or in addition to those available to Seller, then counsel for the Buyer Indemnified Parties shall be entitled, if the Buyer Indemnified

Parties so elect, to conduct the defense to the extent reasonably determined by such counsel to protect the interests of the Buyer Indemnified Parties, at the expense of Seller. As soon as reasonably practicable, Seller shall provide the Buyer with an opportunity to review and comment upon (A) any written agreement to settle or compromise any Retained Litigation that Seller intends to submit to or enter into with an adverse party with respect to any Retained Litigation or (B) any offer to settle or compromise any Retained Litigation that Seller intends to submit to or receives from any adverse party with respect to any Retained Litigation. Seller shall consider in good faith (1) any comments provided in a timely fashion by the Buyer and (2) incorporating such comments into any such agreement or offer to settle or compromise any Retained Litigation; *provided*, *however*, that the Indemnifying Party shall not, without the prior written consent of the Indemnified Party, not to be unreasonably withheld or delayed, settle, compromise or offer to settle or compromise any Third Party Claim on a basis that would result in (x) the imposition of a consent order, injunction or decree that would restrict in any significant respect the future activity or conduct of the Indemnified Party or any of its Affiliates, (y) a finding or admission by the Indemnified Party or any of its Affiliates of a violation of Applicable Law or a violation by the Indemnified Party or any of its Affiliates of the rights of any Person or (z) any monetary liability of the Indemnified Party that will not be paid or reimbursed in full by the Indemnifying Party within the time period for payment set by the proposed settlement.

(b) If Seller fails to take reasonable steps necessary to defend diligently any of the Retained Litigation within 10 days after receiving written notice from the Buyer to the effect that Seller has so failed, specifically detailing such failure, the Indemnified Party shall have the right but not the obligation to assume the defense of such Retained Litigation at the expense of Seller; it being understood that the Buyer Indemnified Parties' right to indemnification for such Retained Litigation shall not be adversely affected by assuming the defense of such Retained Litigation. The Buyer Indemnified Parties shall not settle any Retained Litigation without the consent of Seller (which shall not be unreasonably withheld or delayed).

(c) The Buyer Indemnified Parties and Seller shall cooperate in order to ensure the proper and adequate defense of the Retained Litigation, including by providing access to each other's relevant business records and other documents, and employees.

(d) The Buyer Indemnified Parties and Seller shall use commercially reasonable efforts to avoid production of confidential information (consistent with applicable Law), and to cause all communications among employees, counsel and others representing any party to a Retained Litigation to be made so as to preserve any applicable attorney client or work product privileges.

(e) To the extent Target Company is entitled to reimbursement under an insurance policy covering the Retained Litigation of the attorney's fees and expenses of Seller in respect of the Retained Litigation, Buyer shall assign and transfer such amounts to Seller upon receipt thereof (unless the Buyer Indemnified Party is conducting and controlling the settlements and defense of the Retained Litigation in accordance with clause (b) above).

6.4. *Consequential Damages*. Notwithstanding anything to the contrary contained in this Agreement, no Person shall be liable under this Article VI for any consequential, punitive, special, incidental or indirect damages, including lost profits, except to the extent awarded by a

court of competent jurisdiction in connection with a Third Party Claim, except to the extent the Loss arises out of an intentional or willful breach by the non-claiming party and the Loss was reasonably foreseeable.

6.5. *Payments*. The Indemnifying Party shall pay to the Indemnified Party, by wire transfer of immediately available funds, the amount of any Loss for which it is liable hereunder no later than three days following receipt by the Indemnifying Party from the Indemnifed Party of evidence reasonably satisfactory to the Indemnifying Party of such Loss; *provided*, *however*, that in the event that the Indemnifying Party disputes in good faith that such Loss is an indemnifiable Loss under this Article VI, then the amount of such Loss (including interest accrued from the date that is three days following the date on which evidence of such Loss is received by the Indemnifying Party at a rate per annum equal to the Prime Rate as published in the Wall Street Journal, Eastern Edition in effect on such date) shall be paid no later than three days following any final determination of such Loss and the Indemnifying Party's liability therefor. A "final determination" shall exist when (i) the Indemnifying Party and Indemnified Party have reached an agreement in writing, (ii) a court of competent jurisdiction shall have entered a final and non-appealable order or judgment, or (iii) an arbitration or like panel shall have rendered a final non-appealable determination with respect to disputes the parties have agreed to submit thereto.

6.6. *Adjustments to Losses*.

6.6.1. *Insurance*. In calculating the amount of any Loss, the proceeds actually received by the Indemnified Party or any of its Affiliates under any insurance policy or pursuant to any claim, recovery, settlement or payment by or against any other Person in each case relating to the Third Party Claim or other claim, net of any actual costs, expenses or premiums incurred in connection with securing or obtaining such proceeds, shall be deducted except to the extent that the adjustment itself would excuse, exclude or limit the coverage of all or part of such Loss; *provided*, that nothing in this Agreement shall be deemed to require an Indemnified Party to pursue and collect any recovery available under any third party insurance policy or pursuant to any claim, recovery, settlement or payment by or against any other Person. In the event that an Indemnified Party has any rights against an insurer or other third party with respect to any occurrence, claim or loss that results in a payment by an Indemnifying Party under this Article VI, such Indemnifying Party shall be subrogated to such rights to the extent of such payment; *provided*, that such subrogation is not prohibited by contract or Applicable Law. Without limiting the generality or effect of any provision hereof, each Indemnified Party and Indemnifying Party shall duly execute upon request all instruments reasonably necessary to evidence and perfect the subrogation and subordination rights detailed herein, and otherwise cooperate in the prosecution of such claims.

6.6.2. *Reimbursement*. If an Indemnified Party recovers an amount from a third party in respect of a Loss that is the subject of indemnification hereunder after all or a portion of such Loss has been paid by an Indemnifying Party pursuant to this Article VI, the Indemnified Party *shall* promptly remit to the Indemnifying Party the excess (if any) of (i) the amount paid by the Indemnifying Party in respect of such Loss, plus the amount received from the third party in respect thereof, less (ii) the full amount of such Loss, but in no event more than the aggregate amount previously paid by the Indemnifying Party to the Indemnified Party.

6.7. *Mitigation*. Each Indemnified Party has a common law duty to mitigate any indemnifiable Loss.

6.8. *Knowledge*. No right of indemnification hereunder shall be limited in any respect by any investigation by any Person, whether pre claim or post claim, or the knowledge of any Person of any breach hereunder or the decision by any Person to complete the Closing. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, payment of damages or liabilities or other remedy based on such representations, warranties, covenants, and obligations.

6.9. *Effect on the Preliminary Purchase Price*.

6.9.1. *Adjustment to Preliminary Purchase Price.* Any payment made under Article VI shall constitute an adjustment to the Preliminary Purchase Price for all purposes, including federal, state and local Tax as well as financial accounting purposes, except as otherwise required by GAAP for financial accounting purposes only.

6.9.2. *Tax Adjustments*. Any adjustment to the Preliminary Purchase Price shall be taken into account in recomputing the applicable ADSP and AGUB (and any comparable amounts required under Applicable Law) and allocations under Section 3.3.3. The parties shall cooperate with each other in determining such calculations and any changes to the allocations. If the parties cannot agree on such amounts or allocations within thirty (30) days, Seller's determination (which shall be reasonable) shall govern. Such determination shall be conclusive and binding on the parties. The parties shall duly and timely file any required Section 338 Forms in connection with any Preliminary Purchase Price adjustment and shall promptly furnish a copy thereof to the other parties. In the event the allocation of any adjustment is disputed by the IRS or any other Governmental Authority, the party receiving the notice of such dispute shall promptly notify and consult with the other parties concerning the resolution of such dispute, and shall keep the other parties apprised of the status of such dispute and the resolution thereof.

ARTICLE VII.
DEFINITIONS, MISCELLANEOUS

7.1. *Definition of Certain Terms.* The terms defined in this Section 7.1, whenever used in this Agreement (including in the Disclosure Schedules), shall have the respective meanings indicated below for all purposes of this Agreement. All references herein to a Section or Article are to a Section or Article of or to this Agreement, unless otherwise indicated.

Accounting Firm: as defined in Section 1.5.4.

Acquired IAS Accounts: means those accounts that (a) are part of the Target Company's investment administration services business, (b) contain date of birth information as provided by the Customer, (c) are not associated with a registered investment advisor, (d) do not hold non-standard assets, (e) are not involved in or related to any Retained Litigation as of the Closing, (f) do not have any Market Timing issues, (g) are not margin accounts and (h) do not have zero or negative balances.

Acquisition Proposal: means any inquiry, proposal or offer from any Person relating to (i) any merger, consolidation, recapitalization, tender offer, liquidation or business combination directly involving Target Company, (ii) any direct acquisition of, direct share exchange or direct exchange offer with respect to or other similar direct transaction involving, the capital stock of Target Company, or (iii) any direct acquisition, lease, license, purchase or other disposition of a substantial portion of the business or assets of Target Company; *provided*, that the foregoing shall not be applicable with respect to any Excluded Assets or Excluded Liabilities or retained business or any inquiry, proposal or offer from any Person relating to the Seller or any assets or business of the Seller that is not the Target Company or the Target Businesses.

Actual Value: as defined in Section 1.6.3.

ADSP: as defined in Section 3.3.2.

Affiliate: of a Person means a Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, the first Person, including but not limited to a Subsidiary of the first Person, a Person of which the first Person is a Subsidiary, or another Subsidiary of a Person of which the first Person is also a Subsidiary; *provided*, that with respect to Buyer, "Affiliate" shall not include The Toronto-Dominion Bank or any of its subsidiaries (which subsidiaries, for the avoidance of doubt, shall not include TD AMERITRADE Holding Corporation and its subsidiaries).

AGUB: as defined in Section 3.3.2.

Agreement: as defined in the introductory paragraph hereof.

Applicable Law: the common law and all applicable provisions of all (i) statutes, laws, rules, administrative codes, regulations or ordinances of any Governmental Authority, (ii) Governmental Approvals and (iii) orders, decisions, injunctions, judgments, awards and decrees of any Governmental Authority.

AS Business: the business of providing back office services (including, without limitation, asset custody, online transaction processing and client reporting services) to fee compensated investment advisors and institutional investment advisory firms, in each case as conducted by Target Company as of the date hereof.

Asset Inflow: means, for any given period, the aggregate fair market value of all Assets Under Custody that initially become Assets Under Custody with the Target Businesses during such period. For the purposes of clarity, the parties acknowledge that such Assets Under Custody are to be valued according to their fair market value as of the date they initially become Assets Under Custody with the Target Businesses.

Asset Outflow: means, for any given period, the aggregate fair market value of all Assets Under Custody that cease to be Assets Under Custody with the Target Businesses during such period. For the purposes of clarity, the parties acknowledge that (a) such Assets Under Custody are to be valued according to their fair market value as of the date they cease to be Assets Under Custody with the Target Businesses, (b) Asset Outflow shall not include Assets Under Custody that transfer from being Assets Under Custody with the Target Businesses to being Assets Under Custody with Buyer or an Affiliate of Buyer, and (c) Asset Outflow shall include the aggregate fair market value of the Assets Under Custody of all Customers identified by Buyer prior to Closing as Customers who should be Excluded Customers and such Customers' Assets Under Custody shall be deemed to cease to be Assets Under Custody with the Target Businesses immediately upon such Customer being identified by Buyer as an Excluded Customer.

Assets Under Custody: with respect to any party, the assets held on behalf of a customer or client (including, without limitation, a registered investment advisor, third party administrator, other advisor, plan sponsor or underlying retail customer) by such party pursuant to a relationship in which such party acts as custodian or trustee under applicable law for the assets.

Assignee: as defined in Section 3.1.5(a).

Baseline Price: as defined in Section 1.2.

Benefit Plan: as defined in Section 2.2.14(a).

BHC Act: as defined in Section 2.2.1(a).

Books and Records: means all books of account and other financial records, files, documents, data, instruments, controls, books and records relating to the Target Businesses, including, without limitation, any books and records required under the Exchange Act and other Applicable Law.

Business Day: a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York or Milwaukee, Wisconsin are authorized or required by law to close.

Buyer: as defined in the introductory paragraph of this Agreement.

Buyer Credit Agreement: that certain Credit Agreement, dated as of January 23, 2006, by and among TD AMERITRADE Holding Corporation (f/k/a AMERITRADE Holding Corporation) as Borrower, the Guarantors (as defined therein), the Lenders (as defined therein), the Issuing Banks (as defined therein), the Swing Line Bank (as defined therein), Citicorp North America, Inc., The Bank of New York, as co-administrative agent, Merrill Lynch, Pierce, Fenner & Smith Incorporated and UBS Securities LLC, as co-syndication agents and JPMorgan Chase Bank, N.A., as documentation agent, as amended.

Buyer Disclosure Schedule: as defined in Section 2.1.

Buyer Indemnified Parties: as defined in Section 6.2.1(a).

Buyer Quarter: as defined in Section 1.9.4(a).

Change in Control: the occurrence of any one of the following events:

(i) any "person" (as such term is defined in Section 3(a)(9) of the Exchange Act and as used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act) is or becomes a "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of Seller representing 50% or more of the combined voting power of Seller's then-outstanding securities eligible to vote for the election of Seller's directors (the "Voting Securities"); *provided*, *however*, that the event described in this paragraph (i) shall not be deemed to be a Change in Control by virtue of any of the following acquisitions: (A) by Seller or any Subsidiary thereof, (B) by any employee benefit plan (or related trust) sponsored or maintained by Seller or any Subsidiary thereof, (C) by any underwriter temporarily holding securities pursuant to an offering of such securities, or (D) pursuant to a Non-Qualifying Transaction (as defined in paragraph (ii)); or

(ii) the consummation of a merger, consolidation, statutory share exchange or similar form of corporate transaction involving Seller or any of its Subsidiaries that requires the approval of Seller's stockholders, whether for such transaction or the issuance of securities in the transaction (a "Business Combination"), unless immediately following such Business Combination: (A) more than 50% of the total voting power of (x) the corporation resulting from such Business Combination (the "Surviving Corporation"), or (y) if applicable, the ultimate parent corporation that directly or indirectly has beneficial ownership of at least 95% of the voting securities eligible to elect directors of the Surviving Corporation (the "Parent Corporation"), is represented by Voting Securities that were outstanding immediately prior to such Business Combination (or, if applicable, is represented by shares into which such Voting Securities were converted pursuant to such Business Combination), and such voting power among the holders thereof is in substantially the same proportion as the voting power of such Voting Securities among the holders thereof immediately prior to the Business Combination and (B) no person (other than any employee benefit plan (or related trust) sponsored or maintained by the Surviving Corporation or the Parent Corporation), is or becomes the beneficial owner, directly or indirectly, of 50% or more of the total voting power of the outstanding voting securities eligible to elect directors of the Parent Corporation (or, if there is no Parent Corporation, the Surviving Corporation) and (C) at least a majority of the members of the board of directors of the Parent Corporation (or, if there is no Parent Corporation, the Surviving Corporation) following the consummation of the Business Combination were incumbent directors at the time of the Board's approval of the execution of the initial agreement providing for such Business Combination (any Business Combination which satisfies all of the criteria specified in (A), (B) and (C) above shall be deemed to be a "Non-Qualifying Transaction"); or

(iii) the stockholders of Seller approve a plan of complete liquidation or dissolution of Seller or a sale of all or substantially all of Seller's assets.

Claim Notice: as defined in Section 6.3.1(a).

Closing: as defined in Section 1.3.

Closing Date: as defined in Section 1.3.

COBRA: as defined in Section 2.2.14(e).

Code: the United States Internal Revenue Code of 1986, as amended.

Commission: the Securities and Exchange Commission.

Competing Business: as defined in Section 3.1.9(a).

Competing Person: as defined in Section 3.1.9(a)(iv).

Consent: any consent, approval, authorization, waiver, permit, license, grant, exemption or order of, or registration, declaration or filing with, any Person, including but not limited to any Governmental Authority.

Consideration: as defined in Section 3.3.3(a).

Control: (including the terms "Controlled by" and "under common Control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of voting securities, by contract, as trustee or executor, or otherwise.

Conversion: as defined in the Transition Services Agreement.

Corporate Records: the corporate seals, certificate of incorporation, bylaws, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Target Company.

Covered Employee: as defined in Section 3.1.9(b)(ii).

Customers: all customers or clients of the Target Businesses (including, without limitation, all registered investment advisors, third party administrators, other advisors, plan sponsors and all underlying customers and retail customers of such persons), other than Excluded Customers.

Customer Account Information: any agreements, contracts, correspondence, electronic mails, data, documents, forms, statements, confirmations, records and information relating to Customers.

Customer-Related Assets: as defined in Section 3.1.5(c).

Derivative Transactions: any swap transaction, option, warrant, forward purchase or sale transaction, futures transaction, cap transaction, floor transaction or collar transaction relating to one or more currencies, commodities, bonds, equity securities, loans, interest rates, events or conditions, or any indices or any other similar transaction or combination of any of these transactions, and any collateralized debt obligations or other similar instruments or any debt or equity instruments evidencing or embedding any such types of transactions, and any related credit support, collateral or other similar arrangements related to such transactions.

Disclosed: information set forth by a party in the section of its Disclosure Schedule that corresponds to the relevant Section of this Agreement.

Disclosure Schedules: as defined in Section 2.1.

Earn-Out Customer: as defined in Section 1.9.2(c).

Earn-Out Payment: as defined in Section 1.9.1.

Earn-Out Payment Measurement Period: the one year period beginning at 12:01 a.m. New York time on the day immediately following the Closing Date.

Earn-Out Payment Revenue: as defined in Section 1.9.2(a).

Environmental Law: all federal, state, local and foreign statutes, ordinances, regulations, orders, directives, decrees and obligations arising under common law, concerning pollution or protection of the environment, Releases of or exposures to Hazardous Materials and worker health and safety.

ERISA: the Employee Retirement Income Security Act of 1974, as amended.

ERISA Affiliate: as to any Person, any other Person which, together with such Person, is or has been within the preceding six years treated as a single employer under Section 414(b), (c), (m) or (o) of the Code.

Estimated Adjustment Amount: (a) if Estimated Pre-Closing Net Asset Outflow is less than or equal to zero, an amount equal to zero, (b) if Estimated Pre-Closing Net Asset Outflow is (i) greater than zero and (ii) less than or equal to 10% of Estimated Signing AUC, an amount equal to zero, or (c) if Estimated Pre-Closing Net Asset Outflow is (i) greater than zero and (ii) greater than 10% of Estimated Signing AUC, an amount equal to (i) the Baseline Price multiplied by (ii) an amount equal to (A) the quotient of (x) Estimated Pre-Closing Net Asset Outflow divided by (y) Estimated Signing AUC, minus (B) 0.10.

Estimated Net Book Value: (w) total assets of the Target Businesses less (x) total liabilities of the Target Businesses, in each case, as set forth on the Initial Balance Sheet (with such changes as may be agreed upon by Buyer and Seller pursuant to Section 1.5.2(a), if any).

Estimated Pre-Closing Net Asset Outflow: as defined in Section 1.5.1(a).

Estimated Signing AUC: as defined in Section 1.5.1(a).

Events: as defined in Section 6.2.1(a)(iv).

Exchange Act: the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

Excluded Assets: as defined in Section 3.1.5(a).

Excluded Business: (i) the business of serving self directed IRA and defined contribution accounts (other than the Acquired IAS Accounts), including those accounts maintained pursuant to the Master Service Agreements with the counterparties listed in Section 2.2.8(a)(ii) of the Seller Disclosure Schedule relating to the Target Company Private Label product and the provision of self directed retirement products and services to such accounts and the facilitation of holding in such accounts of both traditional and alternative investments (such as real estate, notes, mortgages, publicly and privately held partnership interests, private stocks, bonds and limited liability investments), (ii) the balance forward business and (iii) the daily valuation business.

Excluded Customers: all (i) unregistered investment advisors, (ii) registered investment advisors that engage, or during the last six (6) months have engaged, in Market Timing (as defined solely for purposes of the transactions contemplated by this Agreement), (iii) registered investment advisors with substantial or excessive licensing, regulatory or complaint issues against them, (iv) registered investment advisors that either are located outside the United States or have underlying customers located outside the United States or (v) each Person Disclosed on Section 2.2.20 of the Seller Disclosure Schedule; *provided*, that the investment advisor's contractual relationship must be terminated by the Target Company; and *provided*, *further*, that the term "Excluded Customers" shall not include any Person or Persons that, prior to the Closing, Buyer provides Seller with written notice that such Person or Persons should not be considered an Excluded Customer.

Excluded Liabilities: as defined in Section 3.1.5(a).

FDIC: the Federal Deposit Insurance Corporation.

Final Adjustment Amount: (a) if Final Pre-Closing Net Asset Outflow is less than or equal to zero, an amount equal to zero, (b) if Final Pre-Closing Net Asset Outflow is (i) greater than zero and (ii) less than or equal to 10% of Final Signing AUC, an amount equal to zero, or (c) if Final Pre-Closing Net Asset Outflow is (i) greater than zero and (ii) greater than 10% of Final Signing AUC, an amount equal to (i) the Baseline Price *multiplied by* (ii) an amount equal to (A) the quotient of (x) Final Pre-Closing Net Asset Outflow, *divided by* (y) Final Signing AUC *minus* (B) 0.10.

Final Balance Sheet: as defined in Section 1.5.2(b).

Final Closing Statement: as defined in Section 1.5.1(b).

Final Earn-Out Payment: as defined in Section 1.9.4(d).

Final Earn-Out Payment Statement: as defined in Section 1.9.4(b).

Final Net Book Value: (w) total assets of the Target Businesses less (x) total liabilities of the Target Businesses, in each case, as set forth on the Final Balance Sheet (with such changes as may have been agreed to by the parties or determined by the Accounting Firm pursuant to Section 1.5.4, if any).

Final Pre-Closing Net Asset Outflow: the Pre-Closing Net Asset Outflow of the Target Businesses for the period beginning on the date hereof and ending as of the close of business on the Closing Date, as set forth on the Final Closing Statement (with such changes as may have been agreed to by the parties or determined by the Accounting Firm pursuant to Section 1.5.4, if any).

Final Signing AUC: the Signing AUC of the Target Businesses as set forth on the Final Closing Statement (with such changes as may have been agreed to by the parties or determined by the Accounting Firm pursuant to Section 1.5.4, if any).

Fund: as defined in Section 2.2.11(e)(i).

GAAP: as defined in Section 2.2.3.

Governmental Approval: any Consent of, with or to any Governmental Authority.

Governmental Authority: any nation or government, any state or other political subdivision thereof, including, without limitation, (i) any governmental agency, department, commission or instrumentality of the United States or any other foreign government, or any State of the United States, or (ii) any stock exchange or self regulatory agency or authority.

Group Trust: as defined in Section 2.2.11(e)(i).

Hazardous Material: petroleum, petroleum hydrocarbons or petroleum products, petroleum by products, radioactive materials, asbestos or asbestos containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, mold, lead or lead containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration that are defined as or included in the definition of "hazardous substances", "hazardous materials", "hazardous wastes", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "pollutants", "regulated substances", "solid wastes", or "contaminants" or words of similar import, under any Environmental Law or for which liability can be imposed under Environmental Laws.

Historical Records: as defined in Section 3.1.7.

HSR Act: the Hart Scott Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder.

Income Tax: any federal, state, local or foreign tax (a) based on, measured by or calculated with respect to net income or profits or (b) based on, measured by or calculated with respect to multiple bases (including without limitation corporate franchise taxes) if one or more of the bases on which such tax may be based is described in clause (a), in each case together with interest, additions to tax and penalties thereon, whether or not such item or amount is disputed.

Indebtedness: means, with respect to any Person, (a) all indebtedness of such Person, whether or not contingent, for borrowed money, (b) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (c) all indebtedness created

or arising under any conditional sale, sale leaseback or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (d) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (e) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities, (f) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock of such Person or any warrants, rights or options to acquire such capital stock, valued, in the case of redeemable preferred stock, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, and (g) all Indebtedness of others referred to in clauses (a) through (f) above guaranteed directly or indirectly in any manner by such Person or in effect guaranteed directly or indirectly by such Person.

Indemnified Parties: as defined in Section 6.2.2(a).

Indemnifying Party: as defined in Section 6.1.

Initial Balance Sheet: as defined in Section 1.5.2(a).

Initial Closing Statement: as defined in Section 1.5.1(a).

Intellectual Property: United States and foreign trademarks, service marks, trade names, logos, trade dress, domain names, copyrights, inventions, processes, designs, formulae, trade secrets, know how, confidential information, computer software (including, without limitation, source code and object code), manuals, data and documentation, customer service toll-free telephone numbers, letters patent and patent applications and all similar intellectual property rights, including registrations and applications to register or renew the registration of any of the foregoing.

Interim Earn-Out Payment Statements: as defined in Section 1.9.4(a).

Investment Support Services: means any service or product offered by the Target Businesses during the calendar quarter ended March 31, 2007, including deposits or investment products or services, or any substantially similar or substitute service or product offered by Buyer or any of its Affiliates after the Closing; *provided*, that Investment Support Services shall not include any Self-Directed Brokerage services for 401k plans, Designated Brokerage Services or application service provider services to 401k third-party administrators and custodians.

IRPS Business: the business of providing (i) back office services (including, without limitation, asset custody, directed trustee services, online transaction processing and client reporting services) for daily valued, defined benefit and defined contribution retirement plans and (ii) trustee and administrative services to collective investment funds, in the case of each of clauses (i) and (ii), as conducted by Target Company as of the date hereof; *provided*, that the IRPS Business shall not include the balance forward business, the daily valuation business or the business of servicing of health savings accounts.

IRS: the United States Internal Revenue Service.

Knowledge of Buyer: the actual knowledge of Tom Bradley, President, Institutional Services; Wayne Ferbert, Vice President - Business Development; Howard Possick, Senior Deputy General Counsel; Tom Nally, Managing Director, Institutional Brokerage Services; Gail Weiss, Managing Director and President of International Clearing Trust Company; and Mike Chochon, Managing Director of Finance and Treasurer; in each case together with such knowledge that such Persons would reasonably be expected to discover after due investigation and the actual knowledge of Ellen Koplow, Executive Vice President and General Counsel.

Knowledge of Seller: the actual knowledge of Bob Beriault, President; Daniel Bartlett Sr., Vice President of Finance and Treasurer; Joanne Ratkai, Vice President and General Counsel; Helen Cousins, Executive Vice President and CIO; Rhonda Kavanaugh, Senior Vice President and CFO; Skip Schweiss, Executive Vice President – Client Services; and Joan Manning, Executive Vice President – Operations; in each case together with such knowledge that such Persons would reasonably be expected to discover after due investigation and the actual knowledge of James Cox, Executive Vice President, M&A and Charles Sprague, Executive Vice President, General Counsel and Chief Administrative Officer.

Lien: any mortgage, pledge, option, right of first refusal, transfer or voting restriction, hypothecation, security interest, encumbrance, title retention agreement, lien (statutory or otherwise), charge or other similar right or restriction.

Losses: as defined in Section 6.2.1(a).

Market Timing: solely for purposes of the transactions contemplated by this Agreement, the buying and selling of one or more mutual funds in an account controlled by an investment advisor for their customers over a relatively short period of time, usually for the purpose of exploiting inefficiencies in fund pricing, contrary to the policy or policies of the fund as described in the fund's prospectus.

Material Adverse Effect: with respect to a Person (a) a material adverse change in, or a material adverse effect upon, the business, results of operations or financial condition of such Person and its Subsidiaries, taken as a whole, excluding any effect or change resulting from (1) events, conditions or trends in economic, business or financial conditions generally (including interest rates and equity or debt market conditions) or to the trust services business generally, (2) changes in Applicable Laws, regulations, interpretations of Laws or regulations, GAAP or regulatory accounting requirements applicable to trust companies generally, (3) changes, effects, events or occurrences arising out of the announcement or performance of this Agreement and the transactions contemplated hereby, (4) changes in national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon or within the United States, or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States, and (5) actions, or effects of actions, taken by Seller, or Target Company, either expressly required by or expressly contemplated in this Agreement or with the prior written consent of Buyer; or (b) with respect to a Person, a material and adverse effect on the ability of such Person to perform its obligations under this Agreement and to consummate the transactions contemplated hereby (including, without limitation, the Stock Sale and the Reorganization).

Minimum Regulatory Capital: the amount of Regulatory Capital required to be held by Target Company as of the Closing (but after giving effect to the Reorganization) to achieve "well capitalized" status (as defined in 12 C.F.R. Section 337.6) and such other capital levels as the Colorado Division of Banking and the FDIC require for the Target Company.

Non-Conforming IAS Accounts: as defined in Section 1.12.

Notice Period: as defined in Section 6.3.1(a).

Organizational Documents: as to any Person, if a corporation, its articles or certificate of incorporation or memorandum and articles of association, as the case may be, and bylaws; if a partnership, its partnership agreement; and if some other entity, its constituent documents.

P&A Agreement: as defined in Section 3.1.5(a).

Parent Group: the federal Income Tax consolidated return group of which Seller and Target Company are members and Seller is the "common parent" (as defined in Treasury Regulations Section 1.1502 77(a)(1)(i)) and any similar group of which Seller is parent within which the income of Seller and Target Company is reported on a combined, consolidated or unitary basis for the purposes of any state or local Income Tax.

PBGC: Pension Benefit Guaranty Corporation.

Person: any natural person or any firm, partnership, limited liability partnership, association, corporation, limited liability company, trust, business trust, Governmental Authority or other entity.

Plan: as defined in Section 2.2.11(d)(i).

Post-Closing Net Asset Inflow: means (a) Asset Inflow during the period beginning on the day immediately following the Closing Date and ending as of the close of business on the first anniversary of the Closing Date, *minus* (b) Asset Outflow during the period beginning on the day immediately following the Closing Date and ending as of the close of business on the first anniversary of the Closing Date, in each case calculated on a basis consistent with the valuation methodologies used by Seller during the twelve months immediately preceding the date hereof for purposes of reporting the fair market value of assets under custody on its customers' or clients' account statements.

Pre-Closing Account Generator: as defined in Section 1.9.2(d).

Pre-Closing Net Asset Outflow: means (i) Asset Outflow during the period beginning on the date hereof and ending as of the close of business on the Closing Date *minus* (ii) Asset Inflow during the period beginning on the date hereof and ending as of the close of business on the Closing Date, in each case calculated on a basis consistent with the valuation

methodologies used by Seller during the twelve months immediately preceding the date hereof for purposes of reporting the fair market value of assets under custody on its customers' or clients' account statements.

Pre-Closing Period: a Tax period that ends on or before the Closing Date or, in the case of a Tax period that begins on or before the Closing Date and ends after the Closing Date, the portion of the period through and including the Closing Date.

Pre-Closing Portion: as defined in Section 6.2.1(a)(viii).

Preliminary Purchase Price: as defined in Section 1.2.

Recapture Payment: as defined in Section 1.8.

Recapture Statement: as defined in Section 1.8.1.

Regulatory Capital: the capital held by the Target Company in order to meet the applicable statutory and regulatory capital requirements, including, without limitation, all requirements of the Colorado Division of Banking and of the FDIC.

Release: any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a Hazardous Material.

Reorganization: as defined in Section 3.1.5(a).

Representatives: the directors, officers, employees, agents, consultants, representatives, advisors and stockholders or Seller or Buyer, as applicable.

Required Buyer Approvals: the Governmental Approvals Disclosed in Section 3.2.2(b) of the Buyer Disclosure Schedule and the filing of any applications and notices (and approval of such applications and notices), as applicable, related thereto.

Required Seller Approvals: the Governmental Approvals Disclosed in Section 2.2.1(c) of the Seller Disclosure Schedule and the filing of any applications and notices (and approval of such applications and notices), as applicable, related thereto.

Retained Litigation: as defined in Section 6.2.1(a)(iii).

Retained Names: as defined in Section 3.2.5(a).

Rev. Rul. 81 100: as defined in Section 2.2.11(e)(i).

Revenue: as defined in Section 1.9.2(b).

Roth IRAs: as defined in Section 2.2.11(d)(i).

Section 338(h)(10) Election: as defined in Section 3.3.1.

Section 338 Forms: as defined in Section 3.3.2.

Securities Act: the Securities Act of 1933, as amended.

Seller: as defined in the introductory paragraph of this Agreement.

Seller Disclosure Schedule: as defined in Section 2.1.

Seller Indemnified Parties: as defined in Section 6.2.2(a).

Seller Group: the federal Income Tax consolidated return group of which Seller and Target Company are members and any similar group on which the income of Seller and Target Company is reported on a combined, consolidated or unitary basis for the purposes of any state or local Income Tax.

Seller Group Tax Return: any Tax Return of Seller Group that has included the Target Company (or any corporate predecessor thereof).

Seller Plans: as defined in Section 2.2.14(a).

SEP IRAs: as defined in Section 2.2.11(d)(i).

Shared Revenue Generator: as defined in Section 1.9.2(e).

Shared Target Company AUC: as defined in Section 1.9.2(f).

Signing AUC: the fair market value of the Assets Under Custody with the Target Businesses as of the close of business on the date hereof. For the purposes of clarity, the parties acknowledge that Signing AUC shall include the aggregate fair market value of all Excluded Customers' Assets Under Custody.

SIMPLE IRAs: as defined in Section 2.2.11(d)(i).

SIMPLE IRA Plans: as defined in Section 2.2.11(d)(i).

Statement of AUC Objections: as defined in Section 1.5.4.

Statement of Balance Sheet Objections: as defined in Section 1.5.4.

Statement of Objections: as defined in Section 1.5.4.

Statement of Earn-Out/Recapture Objections: as defined in Section 1.10.

Stock Sale: as defined in Section 1.1.

Straddle Period: a taxable year or period beginning before and ending after the Closing Date.

Subsidiary: each corporation or other Person in which a Person owns or controls, directly or indirectly, capital stock or other equity interests representing more than 50% of the outstanding voting stock or other equity interests.

Target Businesses: the AS Business, the IRPS Business, and the Acquired IAS Accounts, collectively.

Target Company: as defined in the preamble to this Agreement.

Target Contracts: as defined in Section 2.2.8(a).

Target Employees: as defined in Section 3.2.3(a).

Target Employment and Withholding Taxes: any federal, state, local or foreign employment, unemployment insurance, social security, disability, workers' compensation, payroll, health care, or other similar Tax, duty or other governmental charge or assessment or deficiencies thereof or any Tax required to be withheld by or on behalf of Target Company in connection with amounts paid or owing to any employee, independent contractor, creditor or other party (including, but not limited to, all interest, additions to Tax and penalties thereon, and additions thereto, and whether or not such item or amount is disputed).

Target Facilities: any property presently or previously operated by a Target Company.

Target Filings: as defined in Section 2.2.11(c).

Target Financial Statements: (i) the audited financial statements of Target Company as at and for the years ended December 31, 2006, 2005 and 2004, including a balance sheet, a statement of operations, a statement of changes in stockholders' equity and a statement of cash flows, (ii) the unaudited financial statements of Target Company as at and for the three month period ended March 31, 2007, including a balance sheet, a statement of operations and a statement of cash flows and (iii) the unaudited balance sheet of the Target Businesses (on a stand-alone basis) as at February 28, 2007.

Target Group Plans: as defined in Section 2.2.14(a).

Target Intellectual Property: as defined in Section 2.2.9(a).

Target Pension Plan: as defined in Section 2.2.14(f).

Target Permitted Encumbrances: as defined in Section 2.2.7.

Target Plans: as defined in Section 2.2.14(a).

Target Shares: as defined in the preamble to this Agreement.

Target Tax Return: any Tax Return (other than a Seller Group Tax Return) required to be filed by or on behalf of the Target Company.

Target Taxes: as defined in Section 2.2.6(a).

Tax or Taxes: means all federal, state, local and foreign income, profits, franchise, gross receipts, license, payroll, occupation, premium, windfall profits, environmental

(including taxes under Code §59A), customs duty, capital stock, severance, stamp, payroll, employment, social security (or similar), unemployment, disability, use, personal and real property, withholding, excise, production, sales, use, license, lease, service, service use, occupation, severance, energy, transfer, registration, alternative or add on minimum, value added, estimated, occupancy and other taxes, assessments, customs, duties, fees, levies or other governmental charges of any kind whatsoever, including any addition thereto, or interest or penalty thereon.

Tax Return: any return, report, declaration, form, claim for refund or credit or information statement relating to a Tax, including any Schedule or attachment thereto, and including any amendment thereof.

Traditional IRAs: as defined in Section 2.2.11(d)(i).

Transferred Employees: as defined in Section 3.2.3(b).

Transition Services Agreement: as defined in Section 3.7.

Treasury Regulations: the U.S. federal Income Tax regulations promulgated under the Code.

Work Papers Firm: as defined in Section 1.11.1.

Third Party Claim: as defined in Section 6.3.1.

7.2. *Expenses; Transfer Taxes*. Whether or not the transactions contemplated by this Agreement are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby (including, without limitation, fees and disbursements of counsel, financial advisors and accountants) shall be borne by the party which incurs such cost or expense; *provided*, that if this Agreement is terminated pursuant to Section 5.1(c) or 5.1(d), the non-terminating party shall pay the costs and expenses incurred by the other party in connection with this Agreement. Any sales, use, real estate transfer, stock transfer or similar transfer Tax payable in connection with the transactions contemplated by this Agreement shall be borne fifty percent (50%) by Seller and fifty percent (50%) by Buyer. Seller and Buyer shall cooperate in the preparation and filing of any Tax return relating to such Taxes. Buyer shall be responsible for the payment of any filing fee under the HSR Act and any similar foreign antitrust fee (if required).

7.3. *Severability*. If any provision of this Agreement is inoperative or unenforceable for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, Sections or subsections of this Agreement shall not affect the remaining portions of this Agreement.

7.4. *Notices*. All notices, requests, demands waivers, and other communications made in connection with this Agreement shall be in writing and shall be (a) mailed by first class,

registered or certified mail, return receipt requested, postage prepaid, (b) transmitted by hand delivery or reputable overnight delivery service or (c) sent by facsimile, addressed as follows:

if to Buyer, to:

TD AMERITRADE Online Holdings Corp.
6940 Columbia Gateway Drive, Suite 200
Columbia, MD 21046
Attention: Wayne Ferbert
Fax: 443.539.2209

with a copy to:

TD AMERITRADE Holdings Corporation
6940 Columbia Gateway Drive, Suite 200
Columbia, MD 21046
Attention: Ellen L.S. Koplow
Fax: 443.539.2206

with a copy to:

Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178
Attention: Robert G. Robison
Fax: 212.309.6001

if to Seller, to:

Fiserv, Inc.
225 Fiserv Drive
Brookfield, WI 53045
Attention: James W. Cox
Fax: 262.879.5245

with a copy to:

Fiserv, Inc.
225 Fiserv Drive
Brookfield, WI 53045
Attention: Charles W. Sprague
Fax: 262.879.5532

with a copy to:

Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
Attention: Mark J. Menting
Fax: 212.558.3588

or, in each case, at such other address as may be specified in writing to the other parties hereto.

All such notices, requests, demands, waivers and other communications shall be deemed to have been received (w) if by personal delivery on the day of such delivery, (x) if by first class, registered or certified mail, on the fifth Business Day after the mailing thereof, (y) if by reputable overnight delivery service, on the day delivered, (z) if by facsimile, on the day on which such facsimile was sent, *provided*, that a copy is also sent that day by a reputable overnight delivery service.

7.5. *Miscellaneous.*

7.5.1. *Headings, Interpretation*. The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement. As used herein, the singular includes the plural, the plural includes the singular, and words in one gender include the others. As used herein, the terms "herein", "hereunder" and "hereof" refer to the whole of this Agreement, and "include", "including" and similar terms are not words of limitation. No rule of construction against the draftsperson shall be applied in connection with the interpretation or enforcement of this Agreement, as this Agreement is the product of negotiation between sophisticated parties advised by counsel. Time is of the essence of this Agreement.

7.5.2. *Counterparts*. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

7.5.3. *Jurisdictional Matters.*

(a) *Governing Law*. THIS AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS, INCLUDING AS TO VALIDITY, INTERPRETATION AND EFFECT, BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

(b) *Jurisdiction*. BUYER AND SELLER HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF NEW YORK, IN EACH CASE IN THE BOROUGH OF MANHATTAN, SOLELY IN RESPECT OF THE INTERPRETATION AND ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT AND OF THE DOCUMENTS REFERRED TO IN THIS AGREEMENT, AND HEREBY WAIVE, AND AGREE NOT TO ASSERT, AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING FOR THE INTERPRETATION OR ENFORCEMENT HEREOF OR OF ANY SUCH DOCUMENT, (A) THAT IT IS NOT SUBJECT THERETO OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN SAID COURTS, (B) THAT THE VENUE

THEREOF MAY NOT BE APPROPRIATE OR (C) THAT THE INTERNAL LAWS OF THE STATE OF NEW YORK DO NOT GOVERN THE VALIDITY, INTERPRETATION OR EFFECT OF THIS AGREEMENT, AND THE PARTIES HERETO IRREVOCABLY AGREE THAT ALL DISPUTES WITH RESPECT TO SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH A STATE OR FEDERAL COURT. BUYER AND SELLER HEREBY CONSENT TO AND GRANT ANY SUCH COURT JURISDICTION OVER THE PERSON OF SUCH PARTIES AND OVER THE SUBJECT MATTER OF ANY SUCH DISPUTE AND AGREE THAT MAILING OF PROCESS OR OTHER PAPERS IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING IN THE MANNER PROVIDED IN SECTION 7.4, OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW, SHALL BE VALID AND SUFFICIENT SERVICE THEREOF.

7.5.4. *Waiver of Jury Trial.* EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) 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, (B) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.5.4.

7.5.5. *Specific Performance.* The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof and that the parties shall be entitled to seek specific performance of the terms hereof, in addition to any other remedy at law or equity.

7.5.6. *Litigation Expenses.* In the event litigation between Buyer and Seller arises out of this Agreement, the losing party will pay all reasonable costs and expenses incurred by the prevailing party in connection with the litigation, including without limitation, reasonable attorneys' fees and costs; *provided*, that this Section 7.5.6 shall not apply to any indemnity claims made by a party pursuant to Article VI or any claims made pursuant to Section 3.1.9(d).

7.5.7. *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns.

7.5.8. *Assignment*. Except as provided in Section 3.5, this Agreement shall not be assignable by any party hereto without the prior written consent of the other parties hereto.

7.5.9. *Third Party Beneficiaries*. Nothing in this Agreement shall confer any rights upon any person or entity other than the parties hereto and their respective heirs, successors and permitted assigns.

7.5.10. *Confidentiality*.

(a) Buyer and its Affiliates shall not disclose, directly or indirectly, or use for any purpose to the detriment of Seller any documents, work papers or other materials of a confidential or proprietary nature related to Seller (including, without limitation, any information obtained in connection with the entering into of this Agreement) and shall have all such information kept confidential; *provided*, that notwithstanding anything herein to the contrary, Buyer may use such information for any purpose expressly permitted by, or reasonably necessary to effectuate the transactions contemplated by, this Agreement, the Transition Services Agreement or the P&A Agreement; *provided*, *however*, that Buyer may disclose any such information (i) that is or becomes generally available to the public other than as a result of disclosure by Buyer or its Affiliates, (ii) that is or becomes available to Buyer on a non-confidential basis from a source that is not bound by a confidentiality obligation to Seller, any Affiliate of Seller or Target Company or (iii) with the prior written approval of Seller; *provided*, *further*, that to the extent that Buyer or its Affiliates may become legally compelled to disclose any such information by any Governmental Authority or if Buyer or its Affiliates receives an opinion of counsel that disclosure is required in order to avoid violating any laws, Buyer or its Affiliates may disclose such information but only after, if applicable or relevant, they have used all commercially reasonable efforts to afford Seller the opportunity to obtain an appropriate protective order, or other satisfactory assurance of confidential treatment, for the information required to be disclosed; *provided*, *further*, that after the Closing, this Section 7.5.10 shall not prohibit or restrict or otherwise limit the use or disclosure by Buyer and its Affiliates of any documents, work papers or other materials or information related solely to the Target Businesses; *provided*, *further*, that Buyer may disclose such information to the extent necessary to comply with Applicable Law, in connection with any required Tax disclosures or to enforce this Agreement.

(b) Seller and its Affiliates shall not disclose, directly or indirectly, or use for any purpose to the detriment of Buyer any documents, work papers or other materials of a confidential or proprietary nature related to Buyer and its Affiliates (which shall for the purposes of this Section 7.5.10(b) include, as of the Closing, the Target Businesses of the Target Company) (including, without limitation, any information obtained in connection with the entering into of this Agreement) and shall have all such information kept confidential; *provided*, that notwithstanding anything herein to the contrary, Seller may use such information for any purpose expressly permitted by, or reasonably necessary to effectuate the transactions contemplated by, this Agreement, the Transition Services Agreement or the P&A Agreement; *provided*, *however*, that Seller may disclose any such information (A) that is or becomes generally available to the public other than as a result of disclosure by Seller or its Affiliates, (B) that is or becomes available to Seller on a non-confidential basis from a source that is not bound by a confidentiality obligation to Buyer or (C) with the prior written approval of Buyer; *provided*, *further*, that to the extent that Seller or their Affiliates may become legally compelled to disclose any such information by any Governmental Authority or if Sellers or their Affiliates receives an opinion of counsel that disclosure is required in order to avoid violating any laws,

Seller or their Affiliates may disclose such information but only after, if applicable or relevant, they have used all commercially reasonable efforts to afford Buyer the opportunity to obtain an appropriate protective order, or other satisfactory assurance of confidential treatment, for the information required to be disclosed; *provided*, *further*, that Seller may disclose such information to the extent necessary to comply with Applicable Law, in connection with any required Tax disclosures or to enforce this Agreement.

(c) The terms of this Agreement, including the terms of this Section 7.5.10, shall supersede in all respects the terms of the Confidentiality Agreement, dated November 6, 2006 between Buyer and Seller.

7.5.11. *Amendment; Waivers*. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. Neither the waiver by any of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder.

7.5.12. *Entire Agreement.* This Agreement, including the Disclosure Schedules hereto and the other agreements and written understandings referred to herein or otherwise entered into by the parties hereto on the date hereof, constitute the entire agreement and understanding of the parties hereto and supersedes all other prior covenants, agreements, undertakings, obligations, promises, arrangements, communications and representations, whether oral or written, by any party hereto or by any director, manager, officer, employee, agent or representative of any party hereto. There are no covenants, agreements, undertakings or obligations with respect to the subject matter of this Agreement other than those expressly set forth or referred to herein.

7.5.13. *Right to Offset.* Buyer may offset any amounts payable to Buyer by Seller under this Agreement (including any accrued interest) against any amounts otherwise payable to Seller by Buyer pursuant to Sections 1.8 and 1.9. Interest calculated on any amounts outstanding and which are being offset pursuant to this Section 7.5.13 shall be calculated for the period beginning on the Business Day that the outstanding amount accrues in favor of Buyer until the Business Day on which any amounts payable to Seller, and against which offset under this Section 7.5.13 is being exercised, accrues in favor of Seller.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

FISERV, INC.

By: /s/ Jeffery W. Yabuki
Name: Jeffery W. Yabuki
Title: President and CEO

TD AMERITRADE ONLINE HOLDINGS CORP.

By: /s/ Joseph H. Moglia
Name: Joseph H. Moglia
Title: CEO

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Exhibits

A — Formula for Calculating Net Interest Income

B — Form of Purchase and Assumption Agreement

C — Intentionally Omitted

D — Form of Transition Services Agreement

Exhibit 2.2

STOCK PURCHASE AGREEMENT

between

FISERV, INC.

and

ROBERT BERIAULT HOLDINGS, INC.

Dated as of May 24, 2007

Execution Copy

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STOCK PURCHASE AGREEMENT

STOCK PURCHASE AGREEMENT, dated as of May 24, 2007 (the "Agreement"), between Fiserv, Inc., a Wisconsin corporation ("Seller"), and Robert Beriault Holdings, Inc., a Colorado corporation ("Buyer").

WITNESSETH:

WHEREAS, Seller owns all of the outstanding capital stock of Fiserv Affinity, Inc., a Colorado corporation ("Fiserv Affinity"), Trust Industrial Bank, a Colorado corporation ("TIB"), Fiserv Brokerage Services, Inc., a Colorado corporation ("Fiserv Brokerage", and each of Fiserv Affinity, TIB and Fiserv Brokerage are individually a "Target Company" and together the "Target Companies");

WHEREAS, Buyer desires to purchase and Seller desires to sell one hundred percent (100%) of the outstanding common stock of each of the Target Companies (the "Target Shares") on the terms and conditions described in this Agreement;

WHEREAS, Buyer desires that Seller retain 100% of the Preferred Stock (as hereinafter defined) of TIB to be created by the Recapitalization (as hereinafter defined) subject to the terms and conditions set forth herein, which Preferred Stock interest shall equal nineteen percent (19%) of TIB (on an as-converted basis); and

WHEREAS, Buyer and Seller desire to make certain representations, covenants and agreements in connection with the purchase and sale of the Target Shares and also to prescribe various conditions to the transaction.

NOW, THEREFORE, in consideration of the mutual promises, covenants and representations made herein and intending to be bound hereby, the parties hereto agree as follows:

ARTICLE I.
SALE AND PURCHASE OF TARGET SHARES

1.1. *Basic Transaction*. On and subject to the terms and conditions of this Agreement, Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, the Target Shares for the consideration specified below in Section 1.2. The Buyer and Seller acknowledge and agree that the Preferred Stock shall remain with the Seller.

1.2. *Preliminary Purchase Price*.

1.2.1. *Fiserv Affinity Preliminary Purchase Price*. Buyer agrees to pay to the Seller at the Closing the Fiserv Affinity Net Book Value as more fully described in Exhibit A to this Agreement for the common stock of Fiserv Affinity (the "Fiserv Affinity Preliminary Purchase Price") by delivery of cash payable by wire transfer of immediately available funds to an account specified by Seller. The Fiserv Affinity Preliminary Purchase Price will be subject to post-Closing adjustment as set forth in Section 1.6.1.

1.2.2. *TIB Preliminary Purchase Price.* Buyer agrees to pay to the Seller at the Closing the difference between (a) the TIB Net Book Value as more fully described on Exhibit A, less (b) $8,000,000, for the common stock of TIB (the "TIB Preliminary Purchase Price"). The TIB Preliminary Purchase Price will be subject to post-Closing adjustment as set forth in Section 1.6.2.

1.2.3. *Fiserv Brokerage Preliminary Purchase Price.* Buyer agrees to pay to the Seller at the Closing the Fiserv Brokerage Net Book Value as more fully described on Exhibit A for the common stock of Fiserv Brokerage (the "Fiserv Brokerage Preliminary Purchase Price"). The Fiserv Brokerage Preliminary Purchase Price will be subject to post-Closing adjustment as set forth in Section 1.6.3.

1.2.4. *Preliminary Purchase Price.* The "Preliminary Purchase Price" shall equal the sum of the Fiserv Affinity Preliminary Purchase Price, the TIB Preliminary Purchase Price and the Fiserv Brokerage Preliminary Purchase Price.

1.3. *The Closing.* The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Seller, 255 Fiserv Drive, Brookfield, Wisconsin 53045, commencing at 9:00 a.m. local time on the second Business Day following the satisfaction or waiver of all conditions to the obligations of the parties to consummate the transactions contemplated hereby (other than conditions with respect to actions the respective parties will take at the Closing itself) or such other date as Buyer and Seller may mutually determine (the "Closing Date"), and shall be effective as of 11:59 p.m. on the Closing Date.

1.4. *Deliveries at the Closing.* At the Closing, (i) Seller will deliver to Buyer the certificates referred to in Section 4.2.1 below, (ii) Buyer will deliver to Seller the certificates referred to in Section 4.3.1 below, (iii) Seller will deliver to Buyer stock certificates representing the Target Shares, endorsed in blank or accompanied by duly executed assignment documents, and (iv) Buyer will deliver to Seller the Preliminary Purchase Price.

1.5. *Preparation of Initial Balance Sheet and Final Balance Sheet.*

1.5.1. *Fiserv Affinity Initial Balance Sheet and Fiserv Affinity Final Balance Sheet.*

(a) Not later than three Business Days prior to the Closing Date, the Seller shall deliver to the Buyer an estimated unaudited balance sheet, as of immediately prior to the Closing, of Fiserv Affinity (the "Fiserv Affinity Initial Balance Sheet"), from which the Fiserv Affinity Estimated Net Book Value will be derived. The Fiserv Affinity Initial Balance Sheet shall be prepared in a manner and on a basis consistent in all respects with the December 31, 2006 audited balance sheet of the Target Companies, except that the Fiserv Affinity Initial Balance Sheet shall not include or reflect any liabilities or accruals in respect of the Retained Litigation, Income Taxes, deferred Tax liabilities, goodwill, contract rights, and other liabilities or accruals as agreed by the parties within 60 days of the date hereof.

(b) As soon as reasonably practicable, but in no event later than sixty days following the Closing Date, the Buyer shall prepare and deliver to the Seller an unaudited balance sheet, as of immediately prior to the Closing, of Fiserv Affinity (the "Fiserv Affinity Final Balance Sheet"), from which the Fiserv Affinity Final Net Book Value will be derived.

The Fiserv Affinity Final Balance Sheet shall be prepared in a manner and on a basis consistent in all respects with the Fiserv Affinity Initial Balance Sheet, and in a manner and on a basis consistent in all respects with the December 31, 2006 audited balance sheet of the Target Companies, except that the Fiserv Affinity Final Balance Sheet shall not include or reflect any liabilities or accruals in respect of the Retained Litigation, Income Taxes, deferred Tax liabilities, goodwill, contract rights, and other liabilities or accruals as agreed by the parties within 60 days of the date hereof.

1.5.2. *TIB Initial Balance Sheet and TIB Final Balance Sheet.*

(a) Not later than three Business Days prior to the Closing Date, the Seller shall deliver to the Buyer an estimated unaudited balance sheet, as of immediately prior to the Closing, of TIB (the "TIB Initial Balance Sheet"), from which the TIB Estimated Net Book Value will be derived. The TIB Initial Balance Sheet shall be prepared in a manner and on a basis consistent in all respects with the December 31, 2006 audited balance sheet of the Target Companies, except that the TIB Initial Balance Sheet shall not include or reflect any liabilities or accruals in respect of the Retained Litigation, Income Taxes, deferred Tax liabilities, goodwill, contract rights, and other liabilities or accruals as agreed by the parties within 60 days of the date hereof.

(b) As soon as reasonably practicable, but in no event later than sixty days following the Closing Date, the Buyer shall prepare and deliver to the Seller an unaudited balance sheet, as of immediately prior to the Closing, of TIB (the "TIB Final Balance Sheet"), from which the TIB Final Net Book Value will be derived. The TIB Final Balance Sheet shall be prepared in a manner and on a basis consistent in all respects with the TIB Initial Balance Sheet, and in a manner and on a basis consistent in all respects with the December 31, 2006 audited balance sheet of the Target Companies, except that the TIB Final Balance Sheet shall not include or reflect any liabilities or accruals in respect of the Retained Litigation, Income Taxes, deferred Tax liabilities, goodwill, contract rights, and other liabilities or accruals as agreed by the parties within 60 days of the date hereof.

1.5.3. *Fiserv Brokerage Initial Balance Sheet and Fiserv Brokerage Final Balance Sheet.*

(a) Not later than three Business Days prior to the Closing Date, the Seller shall deliver to the Buyer an estimated unaudited balance sheet, as of immediately prior to the Closing, of Fiserv Brokerage (the "Fiserv Brokerage Initial Balance Sheet"), from which the Fiserv Brokerage Estimated Net Book Value will be derived. The Fiserv Brokerage Initial Balance Sheet shall be prepared in a manner and on a basis consistent in all respects with the December 31, 2006 audited balance sheet of the Target Companies, except that the Fiserv Brokerage Initial Balance Sheet shall not include or reflect any liabilities or accruals in respect of the Retained Litigation, Income Taxes, deferred Tax liabilities, goodwill, contract rights, and other liabilities or accruals as agreed by the parties within 60 days of the date hereof.

(b) As soon as reasonably practicable, but in no event later than sixty days following the Closing Date, the Buyer shall prepare and deliver to the Seller an unaudited balance sheet, as of immediately prior to the Closing, of Fiserv Brokerage (the "Fiserv Brokerage Final Balance Sheet"), from which the Fiserv Brokerage Final Net Book Value will be derived. The Fiserv Brokerage Final Balance Sheet shall be prepared in a manner and on a basis consistent in all respects with the Fiserv Brokerage Initial Balance Sheet, and in a manner and on a basis consistent in all respects with the December 31, 2006 audited balance sheet of the Target Companies, except that the Fiserv Brokerage Final Balance Sheet shall not include or reflect any

liabilities or accruals in respect of the Retained Litigation, Income Taxes, deferred Tax liabilities, goodwill, contract rights, and other liabilities or accruals as agreed by the parties within 60 days of the date hereof.

1.5.4. *Objections.* Within thirty days after receiving the Fiserv Affinity Final Balance Sheet, the TIB Final Balance Sheet or the Fiserv Brokerage Final Balance Sheet, as applicable, Seller may object to the applicable statement by delivering to Buyer a written statement describing its objections (in the case of the Fiserv Affinity Final Balance Sheet, the "Fiserv Affinity Statement of Objections", in the case of the TIB Final Balance Sheet, the "TIB Statement of Objections," and in the case of the Fiserv Brokerage Final Balance Sheet, the "Fiserv Brokerage Statement of Objections") (the Fiserv Affinity Statement of Objections, the TIB Statement of Objections and the Fiserv Brokerage Statement of Objections are collectively, the "Statement of Objections"). If Seller fails to deliver a Statement of Objections within such thirty days, the calculations set forth in such applicable Statement of Objections shall be conclusive and binding upon Buyer and Seller. If Seller delivers a Statement of Objections within such thirty days, Buyer and Seller will use commercially reasonable efforts to resolve any such objections themselves. If Buyer and Seller shall fail to reach an agreement with respect to any of the objections set forth in a Statement of Objections within such thirty day period after Buyer has received such Statement of Objections, then such unresolved objections shall be submitted for resolution to PricewaterhouseCoopers LLP (or if PricewaterhouseCoopers LLP is not independent or able to act, such other nationally recognized accounting firm as may be reasonably satisfactory to Buyer and Seller) (PricewaterhouseCoopers LLP or such other firm, the "Accounting Firm"). The Accounting Firm will resolve any unresolved objections submitted to it within thirty days following its engagement. The Accounting Firm shall make a determination based solely on presentations by Seller and Buyer, and not by independent review, as to (and only as to) each of the items in dispute, and shall be instructed that, in resolving any such item in dispute, it must select a position with respect to (a) the Fiserv Affinity Final Net Book Value in the case of the Fiserv Affinity Final Balance Sheet, (b) the TIB Final Net Book Value in the case of the TIB Final Balance Sheet, or (c) the Fiserv Brokerage Final Net Book Value in the case of the Fiserv Brokerage Final Balance Sheet, in each case, that is either exactly the position of Seller or exactly the position of Buyer or that is between such position of Seller and Buyer. Buyer will revise the Fiserv Affinity Final Balance Sheet, and/or the TIB Final Balance Sheet, and/or the Fiserv Brokerage Final Balance Sheet as appropriate to reflect the resolution of any objections thereto pursuant to this Section 1.5.4. The Fiserv Affinity Final Balance Sheet, the TIB Final Balance Sheet and/or the Fiserv Brokerage Final Balance Sheet as each may be revised pursuant to this Section 1.5.4, shall be used to determine the Fiserv Affinity Final Net Book Value, the TIB Final Net Book Value and the Fiserv Brokerage Final Net Book Value, as applicable, and any purchase price adjustment as contemplated by Section 1.6.

1.5.5. *Expenses*. In the event Buyer and Seller submit any unresolved objections to the Accounting Firm for resolution as provided in Section 1.5.4, Buyer and Seller will share responsibility for the fees and expenses of the Accounting Firm as follows:

(a) if the Accounting Firm resolves all of the remaining objections contained in the Fiserv Affinity Statement of Objections and/or the TIB Statement of Objections and/or the Fiserv Brokerage Statement of Objections in favor of Buyer (the final amount as determined by the Accounting Firm is referred to herein as the "Low Value"), Seller will be responsible for all of the fees and expenses of the Accounting Firm;

(b) if the Accounting Firm resolves all of the remaining objections contained in the Fiserv Affinity Statement of Objections and/or the TIB Statement of Objections and/or the Fiserv Brokerage Statement of Objections in favor of Seller (the final amount as determined by the Accounting Firm is referred to herein as the "High Value"), Buyer will be responsible for all of the fees and expenses of the Accounting Firm; and

(c) if the Accounting Firm resolves some of the remaining objections contained in the Fiserv Affinity Statement of Objections and/or the TIB Statement of Objections and/or the Fiserv Brokerage Statement of Objections in favor of Buyer and the rest of the remaining objections in favor of Seller (the final amount as determined by the Accounting Firm is referred to herein as the "Actual Value"), Seller will be responsible for a percentage of the fees and expenses of the Accounting Firm in connection with the resolution of such objections equal to (x) the difference between the High Value and the Actual Value over (y) the difference between the High Value and the Low Value, and Buyer will be responsible for the remainder of the fees and expenses.

1.5.6. *Work Papers*. Buyer will make the work papers and back-up materials used in preparing the Fiserv Affinity Final Balance Sheet, the TIB Final Balance Sheet, and the Fiserv Brokerage Final Balance Sheet, and the books, records, and financial staff of the Target Companies and Buyer, available to Seller and its accountants and other representatives at reasonable times and upon reasonable notice at any time during (A) the preparation by Buyer of the Fiserv Affinity Final Balance Sheet, the TIB Final Balance Sheet and the Fiserv Brokerage Final Balance Sheet, (B) the review by Seller of the Fiserv Affinity Final Balance Sheet, the TIB Final Balance Sheet and the Fiserv Brokerage Final Balance Sheet, and (C) the resolution by Buyer and Seller of any objections thereto.

1.6. *Adjustment to Preliminary Purchase Price*.

1.6.1. *Fiserv Affinity Adjustment.* The Fiserv Affinity Preliminary Purchase Price will be adjusted as follows, and as so adjusted is referred to herein as the "Fiserv Affinity Purchase Price."

(a) If the Fiserv Affinity Final Net Book Value exceeds the Fiserv Affinity Estimated Net Book Value, Buyer will pay to Seller an amount equal to such excess by wire transfer or delivery of other immediately available funds within three Business Days after the date on which the Fiserv Affinity Final Balance Sheet finally is determined pursuant to Section 1.5 above.

(b) If the Fiserv Affinity Final Net Book Value is less than the Fiserv Affinity Estimated Net Book Value, Seller will pay to Buyer an amount equal to such deficiency by wire transfer or delivery of other immediately available funds within three Business Days after the date on which the Fiserv Affinity Final Balance Sheet finally is determined pursuant to Section 1.5 above.

1.6.2. *TIB Adjustment.* The TIB Preliminary Purchase Prices will be adjusted as follows, and as so adjusted is referred to herein as the TIB Purchase Price."

(a) If the TIB Final Net Book Value exceeds the TIB Estimated Net Book Value, Buyer will pay to Seller an amount equal to such excess by wire transfer or delivery of other immediately available funds within three Business Days after the date on which the TIB Final Balance Sheet finally is determined pursuant to Section 1.5 above.

(b) If the TIB Final Net Book Value is less than the TIB Estimated Net Book Value, Seller will pay to Buyer an amount equal to such deficiency by wire transfer or delivery of other immediately available funds within three Business Days after the date on which the TIB Final Balance Sheet finally is determined pursuant to Section 1.5 above.

1.6.3. *Fiserv Brokerage Adjustment.* The Fiserv Brokerage Preliminary Purchase Price will be adjusted as follows, and as so adjusted is referred to herein as the "Fiserv Brokerage Purchase Price."

(a) If the Fiserv Brokerage Final Net Book Value exceeds the Fiserv Brokerage Estimated Net Book Value, Buyer will pay to Seller an amount equal to such excess by wire transfer or delivery of other immediately available funds within three Business Days after the date on which the Fiserv Brokerage Final Balance Sheet finally is determined pursuant to Section 1.5 above.

(b) If the Fiserv Brokerage Final Net Book Value is less than the Fiserv Brokerage Estimated Net Book Value, Seller will pay to Buyer an amount equal to such deficiency by wire transfer or delivery of other immediately available funds within three Business Days after the date on which the Fiserv Brokerage Final Balance Sheet finally is determined pursuant to Section 1.5 above.

1.6.4. *Purchase Price.* The "Purchase Price" shall equal the sum of the Fiserv Affinity Purchase Price, the TIB Purchase Price and the Fiserv Brokerage Purchase Price.

ARTICLE II.
REPRESENTATIONS

2.1. *Representations of Seller.* Except for breaches that would not occur but for the taking of any actions contemplated by or in connection with this Agreement or the transactions contemplated hereby, Seller represents to Buyer as follows:

2.1.1. *Authorization; No Conflicts; Status of Target Companies, etc.*

(a) Due Organization, etc. Seller, Fiserv Affinity, TIB and Fiserv Brokerage are each a corporation, duly organized, validly existing and in good standing under the laws of the State of Wisconsin, the State of Colorado, the State of Colorado, and the State of Colorado, respectively, with the requisite corporate power and authority, as applicable, to carry on its business as now conducted and to own or lease and to operate its properties as and in the places where such business is now conducted and such properties are now owned, leased or operated. Each of the Target Companies is duly qualified to do business and is in good standing as a foreign corporation in all jurisdictions in which the failure to be so qualified, individually or in the aggregate, is reasonably expected to have a Material Adverse Effect on the such Target Company.

(b) Authorization, etc. Seller has all requisite corporate power and authority to enter into this Agreement, to perform its obligations hereunder and to

consummate the transactions contemplated hereby to be consummated by it. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, by Seller have been duly authorized by all requisite corporate action of Seller. This Agreement has been duly executed and delivered by Seller and constitutes the valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms.

(c) No Conflicts. The execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby will not contravene, result in any violation of, loss of rights or default under, constitute an event creating rights of acceleration, termination, repayment or cancellation under, entitle any party to receive any payment or benefit pursuant to, or result in the creation of any Lien upon any of the properties or assets of Seller or the Target Companies under, (i) any provision of the Organizational Documents of Seller or the Target Companies, or (ii) any Applicable Law applicable to Seller or the Target Companies or any of their respective properties, in each case except for any such contraventions, violations, losses, defaults, accelerations, terminations, repayments, cancellations or Liens that, individually or in the aggregate, are not reasonably expected to have a Material Adverse Effect on Seller or on any of the Target Companies. No Governmental Approval (other than pursuant to the Change in Bank Control Act, the Bank Merger Act, the Colorado Revised Statutes or as required by the Office of the Comptroller of the Currency ("OCC") or the Federal Deposit Insurance Corporation ("FDIC")) or other Consent is required to be obtained or made by the Target Companies in connection with the execution and delivery of this Agreement by Seller or the consummation by Seller of the transactions contemplated hereby.

2.1.2. *Capitalization*.

(a) *Target Companies*. The authorized capital stock of Fiserv Affinity consists of 1,000,000 shares of common stock, of which 25,000 shares as of the date hereof are issued and outstanding. The authorized capital stock of TIB consists of 10,000 shares of common stock, of which 10,000 shares as of the date hereof are issued and outstanding. The authorized capital stock of Fiserv Brokerage consists of 50,000 shares of common stock, of which 25,000 shares as of the date hereof are issued and outstanding. All of the Target Shares have been duly authorized and validly issued and are fully paid and non-assessable, and are owned beneficially and of record by Seller.

(b) *Other Agreements with Respect to Common Stock* (i) There are no preemptive or similar rights on the part of any Person with respect to the issuance of any shares of common stock or any other equity interests of the Target Companies, and (ii) there are no subscriptions, options, warrants or other similar rights, agreements or commitments of any kind obligating the Target Companies to issue or sell, or to cause to be issued or sold, or to repurchase or otherwise acquire, any shares of its common stock or any other equity interests or any securities convertible into or exchangeable for, or any options, warrants or other similar rights relating to, any such shares or any other equity interests.

2.1.3. *Absence of Changes.* Except with respect to actions taken in connection with the proposed sale of the trust business of Seller, including without limitation, the sale of the stock of Fiserv Trust Company, Affinity, TIB, and Fiserv Brokerage, or

otherwise in connection with the transactions contemplated by this Agreement, since December 31, 2006, (i) each of the Target Companies has conducted its business in the ordinary and usual course consistent with past practices and (ii) no event has occurred or fact or circumstance has arisen that, individually or taken together with all other events, facts, and circumstances has had, or is reasonably expected to have, a Material Adverse Effect on any of the Target Companies.

2.1.4. *Compliance with Laws.* None of the Target Companies is in material violation of or material default under, or has at any time since December 31, 2004 materially violated or been in material default under, (i) any Applicable Law applicable to it or any of its properties or business or (ii) any provision of its Organizational Documents. There are no consent decrees or other similar agreements entered into by the Target Companies with any Governmental Authority currently in effect. No Governmental Authority has instituted, implemented, taken or threatened to take any other action the effect of which, individually or in the aggregate, is reasonably expected to have a Material Adverse Effect on any of the Target Companies.

2.1.5. *Litigation.* There is no judicial or administrative action, suit, investigation, inquiry or proceeding pending or, to the Knowledge of Seller, threatened, or any reasonable basis therefore, that questions the validity of this Agreement or of any action taken or to be taken by Seller in connection with this Agreement or the transactions contemplated thereby.

2.1.6. *Smart 401(k) Plan*. The only employee benefit plan the sponsorship of which will be transferred to the Target Companies is the Smart 401(k) Plan which covers employees of the Target Companies. The Target Companies will cease to be employers whose employees are covered by any other employee benefit plan of the Seller effective as of the Closing. The Smart 401(k) Plan is a qualified plan and has been operated in accordance with the provisions of the Employee Retirement Income Security Act of 1974 in all material respects. To the Knowledge of Seller, there are no actions or omissions which would cause the plan not to be a qualified plan. The Seller has complied in all material respects with all reporting and disclosure requirements with respect to such plan, and to the Knowledge of Seller, there are no material defects in the Smart 401(k) Plan.

2.1.7. *Brokers, Finders, etc.* All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on without the participation of any Person acting on behalf of Seller in such manner as to give rise to any valid claim against Seller for any brokerage or finder's commission, fee or similar compensation.

2.2. *Representations of Buyer*. Buyer represents to Seller as follows:

2.2.1. *Authorization; No Conflicts; Status of Buyer, etc.*

(a) *Due Organization, etc*. Buyer is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, with the requisite corporate power and authority to carry on its business as now conducted and to own or lease and to operate its properties as and in the places where such business is now conducted and such properties are now owned, leased or operated. Buyer is duly qualified to do business and is in good standing as a foreign corporation in all jurisdictions in which the failure to be so qualified, individually or in the aggregate, is reasonably expected to have a Material Adverse Effect on Buyer.

(b) *Authorization, etc*. Buyer has all requisite corporate power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby to be consummated by it. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, by

Buyer have been duly authorized by all requisite corporate action of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes the valid and legally binding obligation of Buyer, enforceable against it in accordance with its terms.

(c) *No Conflicts.* The execution and delivery of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby will not contravene, result in any violation of, loss of rights or default under, constitute an event creating rights of acceleration, termination, repayment or cancellation under, entitle any party to receive any payment or benefit pursuant to, or result in the creation of any Lien upon any of the properties or assets of Buyer under, (i) any provision of the Organizational Documents of Buyer, (ii) any Applicable Law applicable to Buyer or any of its properties or (iii) any contract of Buyer, except for any such contraventions, violations, losses, defaults, accelerations, terminations, repayments, cancellations or Liens that, individually or in the aggregate, is not reasonably expected to have a Material Adverse Effect on Buyer. No Governmental Approval (other than pursuant to the Change in Bank Control Act, the Bank Merger Act, the Colorado Revised Statutes or as required by the OCC or FDIC) or other Consent is required to be obtained or made by Buyer in connection with the execution and delivery of this Agreement by Buyer or the consummation by Buyer of the transactions contemplated hereby.

2.2.2. *Litigation*. There is no judicial or administrative action, suit, investigation, inquiry or proceeding pending or, to the Knowledge of Buyer, threatened, or any reasonable basis therefor, that questions the validity of this Agreement or of any action taken or to be taken by Buyer in connection with this Agreement or the transactions contemplated thereby.

2.2.3. *Compliance with Laws, etc.* None of Buyer or its Subsidiaries or Affiliates is in material violation of or material default under, or has at any time since December 31, 2004 materially violated or been in material default under, (i) any Applicable Law applicable to it or any of its properties or business or (ii) any provision of its Organizational Documents. There are no consent decrees or other similar agreements entered into by Buyer or its Subsidiaries or Affiliates with any Governmental Authority currently in effect. No Governmental Authority has instituted, implemented, taken or threatened to take any other action the effect of which, individually or in the aggregate, is reasonably expected to have a Material Adverse Effect on Buyer or its Subsidiaries or Affiliates.

2.2.4. *Brokers, Finders, etc.* All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on without the participation of any Person acting on behalf of Buyer in such manner as to give rise to any valid claim against Buyer for any brokerage or finder's commission, fee or similar compensation.

2.2.5. *Investment.* The Target Shares will be acquired by Buyer for its own account for the purpose of investment and not with a view to their distribution within the meaning of Section 2(11) of the Securities Act. The Buyer has not, directly or indirectly, offered the Target Shares to anyone or solicited any offer to buy the Target Shares from anyone, so as to bring to such offer and sale of the Target Shares by the Buyer within the registration requirements of the Securities Act. The Buyer will not sell, convey, transfer or offer for sale any of the Target Shares except in compliance with the Securities Act and any applicable state securities laws or pursuant to an exemption therefrom.

2.2.6. *Absence of Certain Facts and Circumstances.* As of the date of this Agreement, neither the Buyer nor any Affiliate of the Buyer has any Knowledge of any facts, circumstances or other reason why the Requisite Regulatory Approvals will not be received in a timely manner.

2.3. *No Other Representations.* Except for the representations expressly contained in this Article II, none of the Seller, the Buyer or any other Person has made or makes any other express or implied representation either written or oral, on behalf of the Seller or the Buyer.

ARTICLE III.
COVENANTS

3.1. *Covenants of Seller.*

3.1.1. *Conduct of Business.* From the date hereof to the Closing Date, except as (i) contemplated by or in connection with this Agreement or the transactions contemplated hereby, (ii) reasonably necessary or desirable to effect the Recapitalization, (iii) reasonably necessary or desirable to effect the transfer and/or distribution of the net assets of the Emerald Publications business unit of Fiserv Affinity to Seller or one of its affiliates, or (iv) consented to by Buyer (such consent not to be unreasonably withheld or delayed), Seller will cause the Target Companies to:

(a) carry on its business in the ordinary course consistent with past practices, and use commercially reasonable efforts (to the extent consistent with good business judgment) to preserve intact its present business organization, keep available the services of its executive officers and key employees, and preserve its relationships with customers, clients, suppliers and others having material business dealings with it;

(b) not amend its Organizational Documents;

(c) not merge or consolidate with, or agree to merge or consolidate with, or purchase substantially all of the assets of, or otherwise acquire any business or any corporation, partnership, association or other business organization or division thereof;

(d) not issue or sell any Target Shares or any options, warrants or other similar rights, agreements or commitments of any kind to purchase any such shares or any securities convertible into or exchangeable for any such shares;

(e) not incur, assume, guarantee (including by way of any agreement to “keep well” or of any similar arrangement) or prepay any Indebtedness or amend the terms relating to any Indebtedness (including, without limitation, capital leases, payments in respect of the deferred purchase price of property, letters of credit, loan agreements and other agreements relating to the borrowing of money or extension of credit) or issue or sell any debt securities, except for (i) any such incurrence, assumption, guarantee or prepayment of such Indebtedness or amendments of the terms of such Indebtedness in the ordinary course of business

consistent with past practices in an aggregate amount not exceeding $2,000,000, (ii) any indebtedness constituting deposits or in connection with checks drawn on financial institutions which constitute a liability separate from deposits but arising out of the deposit obligation, or (iii) any such incurrence, assumption, guarantee or prepayment of such Indebtedness or amendments of the terms of such Indebtedness in the ordinary course of business consistent with past practices and the ALCO policy in connection with the management of investment portfolio liquidity;

(f) not sell, transfer, assign, convey, mortgage, pledge or otherwise subject to any Lien any of its properties or assets, tangible or intangible, except for Target Permitted Encumbrances or in the ordinary course of business consistent with past practices;

(g) not grant any rights or license under any of its trademarks or trade names or other Target Intellectual Property or enter into any licensing or similar agreements or arrangements other than in the ordinary course of business consistent with past practices;

(h) not sell any assets outside the ordinary course of business consistent with past practices;

(i) not enter into any agreements, contracts or commitments for capital expenditures other than in the ordinary course of business consistent with past practices or that provide for in the case of any single agreement or related agreements, annual payments by any Target Company of $3,000,000 or more;

(j) not agree or commit to do any of the foregoing referred to in clauses (a) - (i); and

(k) promptly advise Buyer of any fact, condition, occurrence or change known to Seller that is reasonably expected to have a Material Adverse Effect on the any Target Company or cause a breach of this Section 3.1.1.

3.1.2. *Access and Information.* From the date hereof to the Closing Date, Seller will, and will cause the Target Companies to, give to Buyer and Buyer's accountants, counsel and other representatives reasonable access during normal business hours to the Target Companies and the respective offices, properties, books, contracts, commitments, reports and records relating to the Target Companies, and to furnish them or provide them access to all such documents, financial data, records and information with respect to the properties and businesses of the Target Companies as Buyer shall from time to time reasonably request; provided that the foregoing shall be under the general coordination of Seller and shall be subject to the confidentiality provisions set forth in Section 7.5.10.

3.1.3. *Subsequent Financial Statements and Filings.*

(a) *Governmental Authority Filings.* From the date hereof to the Closing Date, Seller will file, or cause to be filed, with the Colorado Division of Banking, the FDIC, the Commission, the OCC, or other relevant Governmental Authority, and promptly

thereafter make available to Buyer, copies of each material registration, report, statement, notice or other filing required to be filed by the Target Companies with the Colorado Division of Banking, the FDIC, the Commission, the OCC or any other Governmental Authority under the Colorado Revised Statutes, the Exchange Act, the Securities Act or any other Applicable Law. All such registrations, reports, statements, notices or other filings shall comply in all material respects with Applicable Law.

(b) *Tax Returns.* Seller shall duly and timely file all material Seller Group Tax Returns, and shall cause the Target Companies to duly and timely file all material Target Tax Returns, required to be filed on or before the Closing Date (including such Tax Returns filed pursuant to any valid extension of time to file). Seller shall prepare and duly and timely file all material Seller Group Tax Returns that are due after the Closing Date with respect to periods ending on or before the Closing Date. Seller shall prepare and Buyer shall cause the Target Companies to duly and timely file all material Target Tax Returns that are due after the Closing Date with respect to periods ending on or before the Closing Date. Such Seller Group Tax Returns and Target Tax Returns shall be prepared on a basis consistent with the prior Tax Returns for the same Person. The Target Companies shall furnish information to Seller for inclusion in the Seller Group Tax Returns for the periods ending on or before the Closing Date in accordance with the past customs and practices of such members and shall file Target Tax Returns for periods beginning after the Closing Date in accordance with such customs and practices. No election under Section 336(e) of the Code shall be made with respect to the Target Companies in connection with any transaction contemplated by this Agreement.

(c) *Amended Tax Returns.* Buyer agrees that Seller may prepare and file amended Seller Group Tax Returns for any period (including a period for which any Target Company was included) and that Seller shall be entitled to keep any Tax refund or credit relating to any Seller Group Tax Return (unless it was taken into account in computing any adjustment to the Purchase Price pursuant to Section 1.6). Buyer further agrees that Seller may prepare, and Buyer will cause the Target Companies to file, amended Tax returns with respect to any Tax of the Target Companies for any period ending on or prior to the Closing Date and that any Tax refund or credit (including any interest and penalty thereon) with respect to any Tax of the Target Companies for any period ending on or prior to the Closing Date shall be paid (unless taken into account in computing any adjustment to the Purchase Price pursuant to Section 1.6) to Seller as additional Purchase Price promptly after it is received. After the Closing, Buyer shall not, and shall not permit the Target Companies or any Affiliate of Buyer or the Target Companies to, amend any Tax return of the Target Companies for any period ending on or prior to or that includes the Closing Date, or to take a position inconsistent with any such Tax return, without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed.

(d) *338(h)(10) Election*. As promptly as practicable and in any event no later than sixty (60) days following the date hereof, Buyer and Seller shall work together in good faith to determine whether or not Seller and Buyer will (and to the extent necessary to effect the Section 338(h)(10) Election, each of Buyer and Seller shall cause its common parent, if any, to) make an election under Section 338(h)(10) of the Code (and any corresponding election under state, local, and foreign Tax law) with respect to (x) the purchase and sale of the stock of the Target Companies hereunder (the "Election"). In the event Buyer

and Seller agree to make the Election, Buyer and Seller shall promptly amend this Agreement in writing to incorporate all provisions relevant to such Election. In the event Buyer and Seller shall not agree during such sixty (60) day period, no Election shall be made.

3.1.4. *Public Announcements.* From the date hereof to the Closing Date, except as required by Applicable Law, Seller shall not, and shall not permit the Target Companies to, make any public announcement in respect of this Agreement or the transactions contemplated hereby without the prior consent of Buyer, which will not be unreasonably withheld or delayed. The Seller and the Target Companies will cooperate with the Buyer to develop all public communications and make appropriate members of management available at presentations related to the transactions contemplated hereby as reasonably requested by the Buyer.

3.1.5. *Further Actions.*

(a) *Generally*. From the date hereof to the Closing Date, Seller will, and will cause the Target Companies to, use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated hereby.

(b) *Filings, etc.* From the date hereof to the Closing Date, Seller will, as promptly as practicable, file or supply, or cause to be filed or supplied, all applications, notifications and information required to be filed or supplied by or on behalf of Seller or the Target Companies pursuant to Applicable Law in connection with this Agreement or the consummation of the transactions contemplated hereby.

(c) *Other Actions.* Seller will, and will cause the Target Companies to, coordinate and cooperate with Buyer in exchanging such information and supplying such reasonable assistance as may be reasonably requested by Buyer in connection with the filings and other actions contemplated by Section 3.2.3.

3.2. *Covenants of Buyer*.

3.2.1. *Public Announcements.* From the date hereof to the Closing Date, except as required by Applicable Law, Buyer shall not, and shall cause its Affiliates not to, make any public announcement in respect of this Agreement or the transactions contemplated hereby without the prior consent of Seller, which will not be unreasonably withheld or delayed. The Buyer will cooperate with the Seller and the Target Companies to develop all public communications and make appropriate members of management available at presentations related to the transactions contemplated hereby as reasonably requested by Seller.

3.2.2. *Financing.* Within 60 days following the date hereof, the Buyer shall use best efforts to obtain sufficient cash, available lines of credit or other sources of immediately available funds to enable it to pay the Purchase Price and pay any other amounts to be paid by it under this Agreement. The Buyer's obligations hereunder are not subject to any condition regarding the Buyer's ability to obtain financing for the consummation of the transactions contemplated hereunder.

3.2.3. *Further Actions.*

(a) *Generally*. From the date hereof to the Closing Date, Buyer will use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated hereby.

(b) *Filings, etc.* From the date hereof to the Closing Date, Buyer will, as promptly as practicable, but in no event later than fifteen days following the date of this Agreement, file or supply, or cause to be filed or supplied, all applications, notifications and information required to be filed or supplied by or on behalf of Buyer or its Affiliates pursuant to Applicable Law in connection with this Agreement or the consummation of the transactions contemplated hereby (the "Requisite Regulatory Approvals"), including but not limited to filings pursuant to the Change in Bank Control Act, the Bank Merger Act, and the Colorado Revised Statutes, or as required by the OCC or the FDIC. The Seller will have the right to review in advance, and to the extent practicable Buyer will consult with the Seller, in each case subject to applicable laws relating to the exchange of information, with respect to all material written information submitted to any third party or any Governmental Authority in connection with the Requisite Regulatory Approvals. In exercising the foregoing right, each of the parties will act reasonably and as promptly as practicable. From the date hereof to the Closing Date, Buyer, as promptly as practicable, will make, or cause to be made, all such other filings and submissions under any Applicable Law applicable to Buyer or its Affiliates and give such undertakings or otherwise use its reasonable best efforts as may be required for Buyer and its Affiliates to consummate the transactions contemplated hereby.

(c) *Other Actions.* Buyer will, and will cause its Affiliates to, coordinate and cooperate with Seller in exchanging such information and supplying such reasonable assistance as may be reasonably requested by Seller in connection with the filings and other actions contemplated by Section 3.1.5.

3.2.4. *Employee Benefit Matters.*

(a) On or prior to the Closing Date Buyer shall offer employment to certain employees of each Target Company. In the event any such employees remain employees of such Target Company following the Closing ("Target Employees"), such employment shall be employment at will.

(b) With respect to the Target Employees, Buyer agrees: (i) to waive any limitations regarding pre-existing conditions, waiting periods and actively at work requirements under any new health benefit plan maintained by the Buyer (and/or any of its Affiliates) for the benefit of Target Employees to the extent such condition, period or requirement was satisfied under any existing health benefit plans in which Target Employees participate; (ii) for all purposes (other than benefit accrual under a defined benefit pension plan) under all benefit plans and policies, to treat all service by Target Employees with such Target Company before the Closing Date as service with Buyer and its Subsidiaries; (iii) to recognize, for each Target Employee, any unused vacation days that the Target Employee has accrued as of the Closing Date for purposes of Buyer's vacation plan or policies; and (iv) to give effect, in

determining any deductible and maximum out-of-pocket limitations with respect to welfare benefit plans maintained by Buyer (and/or any of its Affiliates) in which Target Employees participate, to claims incurred and amounts paid by, and amounts reimbursed to, Target Employees with respect to similar plans maintained by such Target Company for their benefit immediately prior to the Closing Date.

(c) Except as otherwise required by any Applicable Law, Buyer shall provide, or cause Target Companies to provide, severance benefits, determined in accordance with the Target Companies' severance payment schedule, to any Target Employee whose employment is terminated during the one (1) year period beginning on the Closing Date other than for cause (within the meaning of such schedule).

(d) In the event that on the Closing Date any employee of any Target Company is not actively at work due to disability, such employee shall remain the employee of the Seller. In the event that any such employee returns to work on or before the six-month anniversary of the Closing Date, such employee shall be eligible to post for any open positions. If the employee is the successful candidate then the employee would be considered a Target Employee as of the effective date of the resumption of such employee's employment. If an employee is an unsuccessful candidate, then the employee would be eligible for severance to be paid by Seller.

(e) Seller shall pay the matching portion of the Smart 401(k) Plan for employees of Seller and the Target Companies that are employees of Seller or any Target Company on December 31, 2007 in accordance with the terms of the Smart 401(k) Plan. Seller agrees that it shall obtain the prior written consent of Buyer prior to amending the Smart 401(k) Plan in any material respect from the date hereof until the Closing Date.

3.3. *Cooperation*.

(a) Seller and Buyer will, and Buyer will cause the Target Companies to, provide the other party with such cooperation and information as the other party may request in filing any Tax return, in determining a liability for any Tax or a right to a refund or credit of any Tax, in defending an audit or in conducting any other proceeding in respect of any Tax, in each case in connection with a Tax of the Target Companies (including as a result of being included in a Seller Group) for a Tax period that ends on or before the Closing Date or, in the case of a Tax period that begins on or before the Closing Date and ends after the Closing Date, the portion of the period through and including the Closing Date (such full or partial period is a "Pre-Closing Period"), or in investigating or enforcing any right or defending any obligation hereunder. Such cooperation shall include, but not be limited to, providing access to the books and records of the Target Companies, making employees of Buyer and of the Target Companies available on a mutually convenient basis to provide explanation of any documents or information provided hereunder or as otherwise may be necessary or appropriate for any of the foregoing. Seller and Buyer shall, and Buyer shall cause the Target Companies to, retain all Tax returns of the Target Companies, schedules and work papers and all other material records or documents relating thereto or to the Target Companies' inclusion in Seller Group Tax returns for all Pre-Closing Periods until 60 days after the expiration of the applicable statute of limitations (including any extensions and waivers thereof), and at the expiration of such period each party shall have the right to dispose of any such Tax returns or other documents or records after providing thirty (30) days written notice to the other party, unless the other party requests that such Tax returns or other documents or records be delivered to it or be retained.

(b) Buyer shall promptly notify Seller in writing within ten (10) days after receipt by Buyer, any of its Affiliates or the Target Companies of notice of any pending or threatened federal, state, local or foreign Tax audit, proposed adjustment or assessment which may affect the Tax Liability of the Target Companies for which Seller would be required to indemnify Buyer pursuant to Section 6.2.1. Failure of Buyer to promptly notify Seller shall be deemed a waiver of Buyer's right to indemnification under Section 6.2.1. Seller shall have the sole right to represent the Target Companies in any Tax audit or administrative or court proceeding to the extent it relates to (i) a Tax period ending on or before the Closing Date, or (ii) a Tax period that includes the Closing Date if the only items at issue relate to the portion of the period prior to or including the Closing Date, to control such audit or proceedings, and to employ counsel of its choice at its expense. Notwithstanding the foregoing, Seller shall not be entitled to settle, either administratively or after the commencement of litigation, any claim for Taxes which would adversely affect Buyer or the Target Companies for any period after the Closing Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed; *provided*, *however* that such consent shall not be necessary to the extent that Seller agrees to indemnify Buyer against the effects of any such settlement.

Seller shall be entitled to participate at its expense with counsel of its choice in the defense of any claim for Taxes which may be the subject of indemnification by Seller pursuant to Section 6.2.1 which is not subject to Seller's control pursuant to the prior paragraph. Neither Buyer, the Target Companies, nor any of their Affiliates may agree to settle or pay any Tax claim which may be the subject of indemnification by Seller under Section 6.2.1 without the prior written consent of the Seller, which consent shall not unreasonably be withheld, delayed or conditioned.

3.4. *Settlement and Defense of Litigation.* After the Closing Date, the Seller shall continue to conduct and control the settlement and defense of the Retained Litigation in its sole discretion, through counsel of its choosing and at its own expense, through the binding settlements of or receipt of final judgments (the time for appeal having expired and no appeal having been perfected) for claims in respect of such litigation (the aggregate amount of any and all such settlements and judgments, the "Retained Litigation Liability"); *provided* that:

(i) to the extent any Target Company is entitled to reimbursement under an insurance policy covering the Retained Litigation of the attorney's fees and expenses of Seller in respect of the Retained Litigation, the Buyer shall assign and transfer such amounts to the Seller upon receipt thereof; and

(ii) the Seller may consent to entry of any order or judgment or entry into any settlement unless: (A) there is a finding or admission of any violation of law, or (B) any such order, judgment or settlement does not provide to the Buyer and its Subsidiaries, Affiliates and agents an unconditional release from all liability with respect to the claims or the facts underlying the Retained Litigation from the claimant or claimants covered by such order or judgment or furnishing the release; in which case the Seller shall obtain the prior written consent of Buyer.

The Buyer shall, and shall cause the Target Companies to, provide the Seller with full cooperation and assistance in the defense of the Retained Litigation, including without limitation, full access to the records and personnel of Buyer and the Target Companies as requested by Seller in connection with the defense of the Retained Litigation. On the Closing Date, the Target Companies shall assign to the Seller or an entity designated by the Seller any and all right, title and interest of the Target Companies to sue and/or to make a claim or otherwise seek recovery of any amounts against any third party (including any insurer under an insurance policy covering the Retained Litigation) arising from the Retained Litigation and, in connection therewith, any payment received at any time by the Target Companies or the Buyer from any insurer under the insurance policies covering the Retained Litigation and arising from the Retained Litigation shall be paid to the Seller except to the extent such payment is to be used to reduce, and paid over to a claimant with respect to, the Retained Litigation Liability. The Seller shall bear the expense of all Retained Litigation Liability.

3.5. *Recapitalization*.

3.5.1. Following the date hereof, Seller shall use commercially reasonable efforts to recapitalize TIB as follows such that TIB issues shares of participating and redeemable preferred stock to Seller ("Preferred Stock"). The Preferred Stock shall equal nineteen percent (19%) of the outstanding shares (on an as-converted basis) of TIB at the time of issuance of the Preferred Stock. The Preferred Stock shall provide such rights to Seller as is customary for preferred stock of a closely held corporation, including, without limitation, the rights described in Section 3.5.2 below. The actions referred to in this Section 3.5 are collectively referred to herein as the "Recapitalization."

3.5.2. On or prior to the Closing Date, Seller shall file an amendment to the articles of incorporation of TIB which amendment shall set forth the rights of the Preferred Stock, which rights are substantially set forth in Exhibit B, and include: (i) the right to receive dividends annually and on a cumulative basis in the amount of nine percent (9%) of each share of Preferred Stock's original issue price (as set forth in the amendment); (ii) at anytime prior to but in any event no later than the 3rd anniversary of the Closing, each share of Preferred Stock will be redeemed by TIB in exchange for an amount of cash equal to two hundred percent (200%) of the original issue price of the Preferred Stock (which shall, in the aggregate, equal $16 million) and such amounts shall be paid as follows: (x) $8 million shall be paid upon redemption of the Preferred Stock and (y) $8 million shall be paid at any time between the redemption of the Preferred Stock and the 3rd anniversary of the Closing; (iii) provide Seller with one seat on the Board of Directors of TIB; (iv) require TIB to obtain the prior written consent of the Preferred Stock before, among other matters, (A) (B) approving a sale of all or substantially all of the assets of TIB, Affinity or Brokerage, the sale of all or substantially all of the stock of TIB, Affinity or Brokerage, a merger involving TIB, Affinity or Brokerage, or any other similar change of control or corporate reorganization, and (B) approval of (i) material changes to or termination of the investment policy of Fiserv Affinity in effect as of the date hereof, or (ii) implementation of an investment policy for TIB and/or Fiserv Brokerage, and (vii) shall include all such other rights, terms and conditions as are reasonable and customary for a shareholder's agreement governing preferred and other forms of stock of a closely held corporation.

3.6. *Other Accounting Matters*.

3.6.1. As promptly as practicable and in any event no later than sixty (60) days following the date hereof, Buyer and Seller shall work together in good faith to prepare Exhibit A which shall set forth (i) such assets and liabilities of each Target Company that shall be transferred to Buyer on the Closing Date; provided that for clarity, any assets and liabilities not transferred to Buyer on the Closing Date shall be retained or disposed of by Seller, and (ii) the Preliminary Purchase Price.

3.6.2. In the event any of the Target Companies is required to recapitalize and/or make any adjustment in accordance with a mark to market adjustment, or other similar adjustment required by Applicable Law, in connection with the transactions contemplated by this Agreement, (i) Seller agrees to use commercially reasonable efforts to prevent any such recapitalization and/or adjustment from occurring, including without limitation, negotiating in good faith with Buyer to prepare and execute a mutually agreeable amendment to Exhibit B or other agreement designed to hedge the temporary value differences in Buyer's portfolio in order to avoid such recapitalization and/or adjustment, and (ii) Buyer agrees to use commercially reasonable efforts to incur all costs associated with such recapitalization and/or adjustment.

3.6.3. Buyer agrees that for a period of three (3) years from the Closing Date, neither it nor any of the corporate entities related to Buyer shall sell, transfer or otherwise distribute any material assets from TIB to Affinity, Brokerage or any third party, without the prior written consent of Seller.

3.6.4. On or prior to the Closing Date, Seller may cause Affinity to pay Seller or one of its Affiliates a dividend and/or distribution of the net assets of the Emerald Publications business unit of Affinity.

3.7. *Proposals*. For a period of sixty (60) days following the date hereof, Seller shall, and shall cause its Affiliates (including without limitation, the Target Companies) and each of their respective Representatives to, not (i) initiate or solicit the making of any Acquisition Proposal from any Person, or (ii) enter into any agreement providing for any Acquisition Proposal. In the event Buyer has (A) fulfilled its obligations under Section 3.2.2 above and has provided Seller with reasonable proof thereof, and (B) Buyer and Seller have made the determinations set forth in Section 3.6.1 above, in each case, during the sixty (60) day period following the date hereof, the prohibition set forth in the previous sentence shall extend through the Closing.

3.8. *Noncompetition Agreement*. On the date hereof, Buyer shall enter into the Noncompetition Agreement in the form of Exhibit C to this Agreement.

ARTICLE IV.
CONDITIONS PRECEDENT

4.1. *Conditions to Obligations of Each Party*. The obligations of Buyer and Seller to effect the purchase and sale of the Target Shares and to consummate the other transactions contemplated hereby shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

4.1.1. *Regulatory Approvals*. All Requisite Regulatory Approvals shall have been obtained and shall remain in full force and effect and all statutory waiting periods in respect thereof shall have expired.

4.1.2. *No Injunction, etc.* Consummation of the sale contemplated hereby shall not have been restrained, enjoined or otherwise prohibited by any Applicable Law, including any order, injunction, decree or judgment of any court or other Governmental Authority, and there shall not have been promulgated, entered, issued or determined by any court or other Governmental Authority to be applicable to this Agreement any Applicable Law making illegal the consummation of the transactions contemplated hereby.

4.2. *Conditions to Obligations of Buyer.* The obligation of Buyer to effect the purchase and sale of the Target Shares and to consummate the other transactions contemplated hereby shall be subject to the fulfillment (or waiver by Buyer) at or prior to the Closing Date of the following additional conditions:

4.2.1. *Representations.*

(a) The representations set forth in Sections 2.1.1(a), 2.1.1(b), 2.1.2(a) and 2.1.2(b) shall be true and correct in all respects as of the Closing Date, with the same effect as though such representations had been made on and as of the Closing Date.

(b) Each of the representations of Seller set forth in this Agreement (other than the representations set forth in Sections 2.1.1(a), 2.1.1(b), 2.1.2(a) and 2.1.2(b)), which representations shall be deemed for purposes of this Section 4.2.1 not to include any qualification or limitation with respect to materiality (whether by reference to "material," "Material Adverse Effect" or otherwise), shall be true and correct as of the Closing Date, with the same effect as though such representations had been made on and as of the Closing Date, except that such representations that are made as of a specific date need only be true in all material respects as of such date; *provided*, *however*, that notwithstanding anything herein to the contrary, this Section 4.2.1(b) shall be deemed to have been satisfied even if such representations are not true and correct unless the failure of such representations to be so true and correct, in the aggregate, has had a Material Adverse Effect on any Target Company.

(c) Seller shall have delivered to Buyer a certificate, dated the Closing Date and signed by the President or a Vice President of Seller, to the effect set forth above in this Section 4.2.1.

4.2.2. *Covenants*. All of the covenants, agreements, undertakings and obligations that Seller is required to perform or to comply with at or prior to Closing pursuant to this Agreement shall have been duly performed and substantially complied with in all material respects or if breached, shall have been remedied, cured or waived at or prior to the Closing; *provided*, *however*, that notwithstanding anything herein to the contrary, this Section 4.2.2 shall be deemed to have been satisfied even if such covenants, agreements, undertakings and obligations have not been duly performed and substantially complied with in all material respects unless the failure of such covenants, agreements, undertakings and obligations to have been duly performed and substantially complied with, in the aggregate, has had a Material Adverse Effect on any Target Company.

4.2.3. *Recapitalization of TIB.* Seller shall have consummated the Recapitalization of TIB and, simultaneously with the Closing, Seller shall have received 80,000 shares of Series A Preferred Stock of TIB.

4.2.4. *TIB Amendment.* Seller shall have caused TIB to amend its Articles of Incorporation and such amendment shall be in substantial conformity to Exhibit B.

4.2.5. *Noncompetition Agreement.* Buyer shall have executed and delivered the Noncompetition Agreement in the form of Exhibit C.

4.2.6. *Proceedings.* All corporate and other proceedings of Seller that are required in connection with the transactions contemplated by this Agreement, and all documents and instruments incident to such proceedings, shall be reasonably satisfactory to Buyer and its counsel, and Buyer and such counsel shall have received all such documents and instruments, or copies thereof, certified if requested, as may be reasonably requested.

4.2.7. *No Material Adverse Effect.* Since December 31, 2006, no event shall have occurred or fact or circumstance shall have arisen that, individually or taken together with all other events, facts, and circumstances has had, or is reasonably expected to have, a Material Adverse Effect on the Target Companies.

4.3. *Conditions to Obligations of Seller.* The obligation of Seller to effect the purchase and sale of the Target Shares and to consummate the other transactions contemplated hereby shall be subject to the fulfillment (or waiver by Seller), at or prior to the Closing Date, of the following additional conditions:

4.3.1. *Representations*.

(a) The representations set forth in Sections 2.2.1(a) and 2.2.1(b) shall be true and correct in all respects as of the Closing Date, with the same effect as though such representations had been made on and as of the Closing Date.

(b) Each of the representations of Buyer set forth in this Agreement (other than the representations set forth in Sections 2.2.1(a) and 2.2.1(b)), which representations shall be deemed for purposes of this Section 4.3.1 not to include any qualification or limitation with respect to materiality (whether by reference to "material," "Material Adverse Effect" or otherwise), shall be true and correct as of the Closing Date, with the same effect as though such representations had been made on and as of the Closing Date, except that such representations that are made as of a specific date need only be true in all material respects as of such date; *provided*, *however*, that notwithstanding anything herein to the contrary, this Section 4.3.1 shall be deemed to have been satisfied even if such representations are not true and correct unless the failure of such representations to be so true and correct, in the aggregate, has had, or is reasonably likely to have, a Material Adverse Effect on Buyer.

(c) Buyer shall have delivered to Seller a certificate, dated the Closing Date and signed by the President or a Vice President of Buyer, to the effect set forth above in this Section 4.3.1.

4.3.2. *Covenants*. All of the covenants, agreements, undertakings and obligations that Buyer is required to perform or to comply with at or prior to Closing pursuant to this Agreement shall have been duly performed and substantially complied with in all material respects or if breached, shall have been remedied, cured or waived at or prior to Closing; *provided*, *however*, that notwithstanding anything herein to the contrary, this Section 4.3.2 shall

be deemed to have been satisfied even if such covenants, agreements, undertakings and obligations have not been duly performed and substantially complied with in all material respects unless the failure of such covenants, agreements, undertakings and obligations to have been duly performed and substantially complied with, in the aggregate, has had a Material Adverse Effect on the Buyer.

4.3.3. *Recapitalization of TIB.* Seller shall have consummated the Recapitalization of TIB and, simultaneously with the Closing, Seller shall have received 80,000 shares of Series A Preferred Stock of TIB.

4.3.4. *TIB Amendment.* Seller shall have caused TIB to amend its Articles of Incorporation and such amendment shall be in substantial conformity to Exhibit B.

4.3.5. *Noncompetition Agreement.* Buyer shall have executed and delivered the Noncompetition Agreement in the form of Exhibit C.

4.3.6. *Proceedings.* All corporate and other proceedings of Buyer that are required in connection with the transactions contemplated by this Agreement, and all documents and instruments incident to such proceedings, shall be reasonably satisfactory to Seller and its counsel, and Seller and such counsel shall have received all such documents and instruments, or copies thereof, certified if requested, as may be reasonably requested.

ARTICLE V.
TERMINATION

5.1. *Termination.* This Agreement may be terminated at any time prior to the Closing Date:

(a) by the written agreement of Buyer and Seller;

(b) by either Buyer or Seller, without liability to the terminating party on account of such termination if the Closing has not occurred (other than through the failure of the party seeking to terminate this Agreement to comply with its obligations hereunder) on or before June 30, 2008;

(c) by Buyer, if the Seller shall have breached any representation contained herein or any of the covenants or agreements contained herein, which breach or event would cause the conditions set forth in Section 4.1 or Section 4.2 not to be satisfied and which breach or event cannot be or has not been cured within 45 days after the giving by the Buyer of written notice to the Seller of such breach;

(d) by Seller, if the Buyer shall have breached any representation contained herein or any of the covenants or agreements contained herein, which breach or event would cause the conditions set forth in Section 4.1 or Section 4.3 not to be satisfied and which breach or event cannot be or has not been cured within 45 days after the giving by the Seller of written notice to the Buyer of such breach;

(e) by Seller in the event that the Stock Purchase Agreement by and among Fiserv, Inc. and TD Ameritrade Online Holdings Corp. dated as of May 24, 2007 ("TD Agreement") shall have terminated in accordance with its terms or if the closing the transactions contemplated thereby shall have not occurred on or before June 30, 2008;

(f) by Buyer if the covenants set forth in Sections 3.2.2 and 3.6.1 shall not have been fulfilled on or prior to the sixtieth day following the date hereof; provided that Buyer may only terminate this Agreement if Buyer has not breached such covenants and has not cured such breach within 60 days of the date hereof;

(g) by Seller in the event that Seller does not in connection with the execution of the TD Agreement and/or the transactions contemplated by the TD Agreement receive a fairness opinion or such opinion is negative.

5.2. *Effect of Termination.* In the event of the termination of this Agreement pursuant to Section 5.1, this Agreement shall become void and have no effect, without any liability to any Person in respect hereof or of the transactions contemplated hereby on the part of any party hereto, or any of its directors, officers, employees, agents, consultants, representatives, advisors, stockholders or Affiliates, except for any liability resulting from any party's willful and intentional breach of this Agreement and except that the provisions of this Section 5.2 and the provisions of Article VII shall survive any such termination. The foregoing sentence shall not be construed to limit any party's obligations under Section 7.2.

ARTICLE VI.
SURVIVAL OF REPRESENTATIONS AND COVENANTS; INDEMNIFICATION

6.1. *Survival of Representations and Covenants.* The representations made herein shall terminate as provided in this Section 6.1. Upon such termination, no party shall have any liability to the other party with respect to a claim of violation of a representation unless the party entitled to indemnification pursuant to this Article VI (the "Indemnified Party") shall have complied with the provisions of Section 7.4 and shall have given appropriate notice to the party liable for indemnification pursuant to this Article VI (the "Indemnifying Party") before the termination of the relevant representation as provided in this section. The representations and the covenants and other obligations contained in this Agreement shall survive the Closing as follows: (a) the representations in Sections 2.1 (except those in Sections 2.1.1(a), 2.1.1(b), 2.1.2(a), 2.1.2(b)) and 2.2 (except those in Sections 2.2.1(a) and 2.2.1(b)) will survive until June 30, 2009; and (b) the representations in Sections 2.1.1(a), 2.1.1(b), 2.1.2(a), 2.1.2(b), 2.2.1(a), 2.2.1(b), and the covenants and other obligations in this Agreement shall survive indefinitely.

6.2. *General Indemnity.*

6.2.1. *Seller Indemnity.* (a) Subject to the other provisions of this Article VI, Seller hereby agrees that from and after the Closing it shall indemnify, defend and hold harmless Buyer, its Affiliates (including without limitation, after the Closing, the Target Companies) (the "Buyer Indemnified Parties") from, against and in respect of any damages, losses, charges, liabilities, claims (including, without limitation, third party claims), demands, actions, suits, proceedings, payments, judgments, settlements, assessments, diminutions in value, costs, expenses, Taxes, interests and penalties (including, without limitation, reasonable attorneys' and other professional fees, reasonable out-of-pocket disbursements and the reasonable fees and costs incurred in enforcing rights under this Article VI), but excluding any Retained Litigation Liability that is paid by the Seller or by any insurer pursuant to the requirements of Section 3.5) (collectively, "Losses") imposed on, sustained, incurred or suffered by, or asserted against, any of the Buyer Indemnified Parties, to the extent arising or resulting from or incurred in connection with:

(i) any inaccuracy in or breach of any representation or warranty of Seller contained in or made pursuant to this Agreement or in any certificate delivered pursuant to this Agreement (reading such representations or warranties without regard to any materiality qualifier, including "Material Adverse Effect," contained therein (other than the representations and warranties set forth in Section 2.1.4(ii));

(ii) any failure or breach of Seller to duly perform or observe any term, provision or covenant or agreement to be performed or observed by it pursuant to this Agreement;

(iii) all of the judicial or administrative actions, suits, investigations, inquiries or proceedings set forth on Exhibit D hereto and all other judicial or administrative actions, suits, investigations, inquiries or proceedings commenced on or prior to the Closing Date against, with respect to or involving Target Company ("Retained Litigation");

(iv) any events, facts, circumstances or omissions (collectively, "Events") arising out of the ownership of the Target Companies or the operation or conduct of the business of Target Companies or otherwise involving the Target Companies on or prior to the Closing Date, including, without limitation, any judicial or administrative actions, suits, investigations, inquiries, proceedings or taxes arising or resulting from or incurred in connection with, or otherwise with respect to Events arising out of such matters and occurring on or prior to the Closing Date, regardless of when such claim is asserted or when such actions, suits, investigations, inquiries or proceedings are commenced;

(v) any Losses brought by former employees of the Target Companies related to events occurring or actions taken in connection with termination of employment of any such employee by Seller during the period from the date hereof until 60 days after the Closing Date; provided, however, the foregoing indemnity shall only apply to the extent such Loss relates to or arises out of actions taken or not taken by Seller in connection with the termination of such third party's employment with a Target Company by Seller; and provided further, that the foregoing indemnity shall not apply to the extent such Loss arises out of actions taken or not taken by Buyer in violation of Applicable Law, actions by Buyer that were not authorized by Seller, or actions that were taken outside of the ordinary course of Buyer's employment and authority as an employee with Seller.

(vi) any Tax imposed upon Seller, a Seller Group (except the Target Companies) or any Affiliate of Seller for any period;

(vii) any Tax for a Pre-Closing Period for which the Target Companies may be liable (x) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), (y) as a transferee or successor or (z) by contract;

(viii) any Tax imposed on the Target Companies for a Pre-Closing Period (including the portion of any Tax imposed on the Target Companies for a Straddle Period that is allocable to the portion of such period ending at the close of the Closing Date (the "Pre-Closing Portion"); or

(ix) any Tax or penalty imposed as a result of a Tax Return not being timely filed or furnished and accurate, if such Tax Return (a) was required to be filed, furnished or prepared by Seller Group or a Target Company and was required to be filed or furnished prior to the Closing Date or (b) is a Tax Return that Seller is responsible for filing or furnishing under this Agreement.

In determining the Taxes for a Straddle Period allocable to the Pre-Closing Portion, except as provided in the next sentence, the allocation shall be made on the basis of an interim closing of the books as of the end of the Closing Date. In the case of (i) franchise Taxes based on capitalization, debt or shares of stock authorized, issued or outstanding, (ii) ad valorem Taxes and (iii) any Tax other than employment Taxes and Taxes based on or related to income, the portion of such Taxes for a Straddle Period allocable to the Pre-Closing Portion shall be the amount of such Taxes for the Straddle Period (computed in accordance with past practice), multiplied by a fraction, the numerator of which is the number of such days in such taxable period ending on and including the Closing Date and the denominator of which is the aggregate number of days in such taxable period; *provided*, *however*, that if any property, asset or other right of Target Company is sold or otherwise transferred prior to the Closing, then ad valorem Taxes pertaining to such property, asset or other right shall be attributed entirely to the Pre-Closing Portion.

(b) Except with respect to the matters contained in Sections 2.1.1(a), 2.1.1(b), 2.1.2(a) and 2.1.2(b), Seller shall not be liable to the Buyer Indemnified Parties for any Losses with respect to the matters contained in Section 6.2.1(a)(i) unless the Losses therefrom exceed an aggregate amount equal to $1 million and then only for Losses in excess of that amount. Except with respect to the matters contained in Sections 2.1.1(a), 2.1.1(b), 2.1.2(a) and 2.1.2(b), Seller shall not be liable to the Buyer Indemnified Parties for any Losses with respect to the matters contained in Section 6.2.1(a)(i) that exceed an aggregate amount equal to 5% of the Purchase Price.

(c) Seller shall not be liable to the Buyer Indemnified Parties for any individual Loss of less than $10,000; provided, that (i) all repetitive Losses relating to a similar type of failure, action, inaction or violation of Applicable Law arising out of a substantially similar set of circumstances shall be treated as one Loss for purposes of the $10,000 de minimis limitation set forth in this Section 6.2.1(c) and (ii) it is understood that nothing in Section 6.2.1(b) or this Section 6.2.1(c) shall be deemed to establish in any way a materiality threshold for purposes of this Agreement.

6.2.2. *Buyer Indemnity.* (a) Subject to the other provisions of Article VI, Buyer hereby agrees that it shall indemnify, defend and hold harmless Seller and its Affiliates and their respective Representatives (the "Seller Indemnified Parties") from, against and in respect of any Losses imposed on, sustained, incurred or suffered by, or asserted against, any of the Seller Indemnified Parties, from, against and in respect of any Losses imposed on, sustained, incurred or suffered by, or asserted against, any of the Seller Indemnified Parties, to the extent arising or resulting from or incurred in connection with or otherwise with respect to each of the following:

(i) any inaccuracy in or breach of any representation or

warranty of Buyer contained in or made pursuant to this Agreement or in any certificate delivered pursuant to this Agreement (reading such representations or warranties without regard to any materiality qualifier, including "Material Adverse Effect," contained therein);

(ii) any Events arising out of the ownership of Target Company or the operation or conduct of the business of Target Company or otherwise involving Target Company after the Closing Date, including, without limitation, any judicial or administrative actions, suits, investigations, inquiries, proceedings or taxes arising or resulting from or incurred in connection with, or otherwise with respect to Events arising out of such matters and occurring after the Closing Date, regardless of when such claim is asserted or when such actions, suits, investigations, inquiries or proceedings are commenced; provided, that the indemnity provided by Buyer pursuant to this Section 6.2.2(a)(ii) shall not apply to any Losses arising or resulting from or incurred in connection with or otherwise with respect to Section 1.9 or the Transition Services Agreement; and

(iii) any failure or breach of Buyer to duly perform or observe any term, provision or covenant or agreement to be performed or observed by it pursuant to this Agreement; or

(iv) any Tax imposed on Target Company for a taxable year or period beginning after the Closing Date (including the portion of any Tax imposed for a Straddle Period after deducting amounts associated with the Pre-Closing Portion.

(b) Except with respect to the matters contained in Sections 2.2.1(a) and 2.2.1(b), Buyer shall not be liable to the Seller Indemnified Parties for any Losses with respect to the matters contained in Section 6.2.2(a)(i) unless the Losses therefrom exceed an aggregate amount equal to $1 million and then only for Losses in excess of that amount. Except with respect to the matters contained in Sections 2.2.1(a) and 2.2.1(b), Buyer shall not be liable to the Seller Indemnified Parties for any Losses with respect to the matters contained in Section 6.2.2(a)(i) that exceed an aggregate amount equal to 5% of the Purchase Price.

(c) Buyer shall not be liable to the Seller Indemnified Parties for any individual Loss of less than $10,000; provided, that (i) all repetitive Losses relating to a similar type of failure, action, inaction or violation of Applicable Law arising out of a substantially similar set of circumstances shall be treated as one Loss for purposes of the $10,000 de minimis limitation set forth in this Section 6.2.2(c) and (ii) it is understood that nothing in Section 6.2.2(b) or this Section 6.2.2(c) shall be deemed to establish in any way a materiality threshold for purposes of this Agreement.

6.2.3. *Exclusive Remedy.* The rights and remedies of Seller and Buyer under this Article VI are exclusive and in lieu of any and all other rights and remedies which Seller and Buyer may have under, or with respect to, this Agreement or otherwise against each other with respect to the transactions contemplated by this Agreement for monetary relief with respect to any breach of any representation or any failure to perform any covenant or agreement set forth in this Agreement and Buyer and Seller each expressly waives any and all other rights or causes of action it or its Affiliates may have against the other party or its Affiliates now or in the future under any Applicable Law with respect to the subject matter hereof.

6.2.4. *Further Limitations*. Except for actions required to be taken by Buyer or the Target Companies pursuant to this Agreement or otherwise contemplated by this Agreement, Seller shall not have any liability under any provision of this Agreement for any Losses (a) to the extent that such Losses relate to actions taken or not taken by Buyer or the Target Companies after the Closing Date, or (b) to the extent the underlying liability was taken into account in computing any adjustment to the Purchase Price pursuant to Section 1.6.

6.3. *Third Party Claims*.

(a) In the event that any written claim or demand for which an Indemnifying Party may have liability to any Indemnified Party hereunder is asserted against or sought to be collected from any Indemnified Party by a third party (a "Third Party Claim"), such Indemnified Party shall promptly, but in no event more than fifteen days following such Indemnified Party's receipt of a Third Party Claim, notify the Indemnifying Party in writing of such Third Party Claim, the amount or the estimated amount of damages sought thereunder to the extent then ascertainable (which estimate shall not be conclusive of the final amount of such Third Party Claim), any other remedy sought thereunder, any relevant time constraints relating thereto and, to the extent practicable, any other material details pertaining thereto (a "Claim Notice"); *provided*, *however*, that the failure to give a timely Claim Notice shall affect the rights of an Indemnified Party hereunder only to the extent that such failure has a prejudicial effect on the defenses or other rights available to the Indemnifying Party with respect to such Third Party Claim. The Indemnifying Party shall have 30 days (or such lesser number of days set forth in the Claim Notice as may be required by court proceeding in the event of a litigated matter) after receipt of the Claim Notice (the "Notice Period") to notify the Indemnified Party that it desires to defend the Indemnified Party against such Third Party Claim.

(b) In the event that the Indemnifying Party notifies the Indemnified Party within the Notice Period that it desires to defend the Indemnified Party against a Third Party Claim, the Indemnifying Party shall have the right to defend the Indemnified Party by appropriate proceedings and shall have the sole power to direct and control such defense, with counsel of its choosing, at its expense. Once the Indemnifying Party has duly assumed the defense of a Third Party Claim, the Indemnified Party shall have the right, but not the obligation, to participate in any such defense and to employ separate counsel of its choosing. The Indemnified Party shall participate in any such defense at its expense. The Indemnifying Party shall not, without the prior written consent of the Indemnified Party, not to be unreasonably withheld or delayed, settle, compromise or offer to settle or compromise any Third Party Claim on a basis that would result in (i) the imposition of a consent order, injunction or decree that would materially restrict the future activity or conduct of the Indemnified Party or any of its Affiliates, (ii) a finding or admission of a violation of Applicable Law or violation of the rights of any Person by the Indemnified Party or any of its Affiliates or (iii) any monetary liability of the Indemnified Party that will not be promptly paid or reimbursed by the Indemnifying Party.

(c) If the Indemnifying Party (i) elects not to defend the Indemnified Party against a Third Party Claim, whether by not giving the Indemnified Party timely notice of its desire to so defend or otherwise or (ii) after assuming the defense of a Third Party Claim, fails to take reasonable steps necessary to defend diligently such Third Party Claim

within 30 days after receiving written notice from the Indemnified Party to the effect that the Indemnifying Party has so failed, the Indemnified Party shall have the right but not the obligation to assume its own defense; it being understood that the Indemnified Party's right to indemnification for a Third Party Claim shall not be adversely affected by assuming the defense of such Third Party Claim. The Indemnified Party shall not settle a Third Party Claim without the consent of the Indemnifying Party.

(d) The Indemnified Party and the Indemnifying Party shall cooperate in order to ensure the proper and adequate defense of a Third Party Claim, including by providing access to each other's relevant business records and other documents, and employees.

(e) The Indemnified Party and the Indemnifying Party shall use commercially reasonable efforts to avoid production of confidential information (consistent with applicable Law), and to cause all communications among employees, counsel and others representing any party to a Third Party Claim to be made so as to preserve any applicable attorney-client or work-product privileges.

6.4. *Consequential Damages*. Notwithstanding anything to the contrary contained in this Agreement, no Person shall be liable under this Article VI for any consequential, punitive, special, incidental or indirect damages, including lost profits, except to the extent awarded by a court of competent jurisdiction in connection with a Third Party Claim, except to the extent the Loss arises out of an intentional or willful breach by the non-claiming party and the Loss was reasonably foreseeable.

6.5. *Payments*. The Indemnifying Party shall pay to the Indemnified Party, by wire transfer of immediately available funds, the amount of any Loss for which it is liable hereunder no later than three days following any final determination of such Loss and the Indemnifying Party's liability therefor. A "final determination" shall exist when (i) the Indemnifying Party and Indemnified Party have reached an agreement in writing, (ii) a court of competent jurisdiction shall have entered a final and non-appealable order or judgment, or (iii) an arbitration or like panel shall have rendered a final non-appealable determination with respect to disputes the parties have agreed to submit thereto.

6.6. *Adjustments to Losses*.

6.6.1. *Insurance*. In calculating the amount of any Loss, the proceeds actually received by the Indemnified Party or any of its Affiliates under any insurance policy or pursuant to any claim, recovery, settlement or payment by or against any other Person in each case relating to the Third Party Claim or other claim, net of any actual costs, expenses or premiums incurred in connection with securing or obtaining such proceeds, shall be deducted, except to the extent that the adjustment itself would excuse, exclude or limit the coverage of all or part of such Loss. In the event that an Indemnified Party has any rights against an insurer or other third party with respect to any occurrence, claim or loss that results in a payment by an Indemnifying Party under this Article VI, such Indemnifying Party shall be subrogated to such rights to the extent of such payment. Without limiting the generality or effect of any other provision hereof, each Indemnified Party and Indemnifying Party shall duly execute upon request all instruments reasonably necessary to evidence and perfect the subrogation and subordination rights detailed herein, and otherwise cooperate in the prosecution of such claims.

6.6.2. *Taxes*. In calculating the amount of any Loss, there shall be deducted an amount equal to any net Tax benefit to the party claiming such Loss from being able to claim a Tax loss or Tax credit as a result of such Loss, and there shall be added an amount equal to any Tax cost to the party receiving such indemnity payment from recognizing taxable income as a result of receiving such payment. The amount of any such net Tax benefit and Tax cost shall be the present value of the Tax benefit or cost as of the date of any indemnification payment (using the interest rate determined under Section 6621(a)(2) of the Code for the period in which the payment is made, and assuming the Indemnified Party has sufficient Taxable income or other Tax attributes to permit the utilization of any such Tax benefit at the earliest possible time), and assuming that the Indemnified Party's applicable combined effective Tax rate is 40% for each period.

6.6.3. *Reimbursement*. If an Indemnified Party recovers an amount from a third party in respect of a Loss that is the subject of indemnification hereunder after all or a portion of such Loss has been paid by an Indemnifying Party pursuant to this Article VI, the Indemnified Party shall promptly remit to the Indemnifying Party the excess (if any) of (i) the amount paid by the Indemnifying Party in respect of such Loss, plus the amount received from the third party in respect thereof, less (ii) the full amount of Loss.

6.7. *Mitigation*. Each Indemnified Party shall use its commercially reasonable efforts to mitigate any indemnifiable Loss. In the event an Indemnified Party fails to so mitigate an indemnifiable Loss, the Indemnifying Party shall have no liability for any portion of such Loss that reasonably could have been avoided had the Indemnified Person made such efforts.

6.8. *Effect on the Purchase Price*. Any payment made under Article VI shall constitute an adjustment to the Purchase Price for all purposes, including federal, state and local Tax as well as financial accounting purposes, except as otherwise required by GAAP for financial accounting purposes only.

ARTICLE VII.
DEFINITIONS, MISCELLANEOUS

7.1. *Definition of Certain Terms.* The terms defined in this Section 7.1, whenever used in this Agreement (including in any Exhibit), shall have the respective meanings indicated below for all purposes of this Agreement. All references herein to a Section or Article are to a Section or Article of or to this Agreement, unless otherwise indicated.

Accounting Firm: as defined in Section 1.5.4.

Acquisition Proposal: means any inquiry, proposal or offer from any Person relating to (i) any merger, consolidation, recapitalization, tender offer, liquidation or business combination directly involving the Target Companies, (ii) any direct acquisition of, direct share exchange or direct exchange offer with respect to or other similar direct transaction involving, the capital stock of the Target Companies, or (iii) any direct acquisition, lease, license, purchase or other disposition of a substantial portion of the business or assets of Target Companies; *provided*, that the foregoing shall not be applicable with respect to any retained business or any inquiry, proposal or offer from any Person relating to the Seller or any assets or business of the Seller that is not one of the Target Companies.

Actual Value: as defined in Section 1.5.5.

Affiliate: of a Person means a Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, the first Person, including but not limited to a Subsidiary of the first Person, a Person of which the first Person is a Subsidiary, or another Subsidiary of a Person of which the first Person is also a Subsidiary.

Agreement: as defined in the introductory paragraph hereof.

Applicable Law: the common law and all applicable provisions of all (i) statutes, laws, rules, administrative codes, regulations or ordinances of any Governmental Authority, (ii) Governmental Approvals and (iii) orders, decisions, injunctions, judgments, awards and decrees of any Governmental Authority.

Business Day: a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York or Milwaukee, Wisconsin are authorized or required by law to close.

Buyer: as defined in the introductory paragraph of this Agreement.

Buyer Indemnified Parties: as defined in Section 6.2.1(a).

Claim Notice: as defined in Section 6.3(a).

Closing: as defined in Section 1.3.

Closing Date: as defined in Section 1.3.

Code: the United States Internal Revenue Code of 1986, as amended.

Commission: the Securities and Exchange Commission.

Consent: any consent, approval, authorization, waiver, permit, license, grant, exemption or order of, or registration, declaration or filing with, any Person, including but not limited to any Governmental Authority.

Control: (including the terms “Controlled by” and “under common Control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of voting securities, by contract, as trustee or executor, or otherwise.

Election: as defined in Section 3.1.3(d).

Exchange Act: the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

FDIC: as defined in Section 2.1.1(c).

Fiserv Affinity: as defined in the Preamble.

Fiserv Affinity Estimated Net Book Value: (x) total assets less (y) total liabilities, in each case as set forth on the Fiserv Affinity Initial Balance Sheet.

Fiserv Affinity Final Balance Sheet: as defined in Section 1.5.1.

Fiserv Affinity Final Net Book Value: (x) total assets of Fiserv Affinity less (y) total liabilities of Fiserv Affinity, in each case as set forth on the Fiserv Affinity Final Balance Sheet (with such changes as may have been agreed to by the parties or determined by the Accounting Firm pursuant to Section 1.5.4, if any).

Fiserv Affinity Initial Balance Sheet: as defined in Section 1.5.1.

Fiserv Affinity Preliminary Purchase Price: as defined in Section 1.2.1.

Fiserv Affinity Purchase Price: as defined in Section 1.6.1.

Fiserv Affinity Statement of Objections: as defined in Section 1.5.4.

Fiserv Brokerage: as defined in the Preamble.

Fiserv Brokerage Estimated Net Book Value: (x) total assets less (y) total liabilities, in each case as set forth on the Fiserv Brokerage Initial Balance Sheet.

Fiserv Brokerage Final Balance Sheet: as defined in Section 1.5.3.

Fiserv Brokerage Final Net Book Value: (x) total assets of Fiserv Brokerage less (y) total liabilities of Fiserv Brokerage, in each case as set forth on the Fiserv Final Balance Sheet (with such changes as may have been agreed to by the parties or determined by the Accounting Firm pursuant to Section 1.5.4, if any).

Fiserv Brokerage Initial Balance Sheet: as defined in Section 1.5.3.

Fiserv Brokerage Preliminary Purchase Price: as defined in Section 1.2.3.

Fiserv Brokerage Purchase Price: as defined in Section 1.6.3.

Fiserv Brokerage Statement of Objections: as defined in Section 1.5.4.

GAAP: as defined in Section 2.1.3.

Governmental Approval: any Consent of, with or to any Governmental Authority.

Governmental Authority: any nation or government, any state or other political subdivision thereof, including, without limitation, (i) any governmental agency, department, commission or instrumentality of the United States, or any State of the United States, or (ii) any stock exchange or self-regulatory agency or authority.

High Value: as defined in Section 1.5.5.

Income Tax: any federal, state, local or foreign tax (a) based on, measured by or calculated with respect to net income or profits or (b) based on, measured by or calculated with respect to multiple bases (including without limitation corporate franchise taxes) if one or more of the bases on which such tax may be based is described in clause (a), in each case together with interest, additions to tax and penalties thereon, whether or not such item or amount is disputed.

Indebtedness: as applied to any Person, obligations relating to capital leases, payments in respect of the deferred purchase price of property, letters of credit, loan agreements and other agreements relating to the borrowing of money or extension of credit.

Intellectual Property: United States and foreign trademarks, service marks, trade names, logos, trade dress, domain names, copyrights, inventions, processes, designs, formulae, trade secrets, know-how, confidential information, computer software, data and documentation, letters patent and patent applications and all similar intellectual property rights, including registrations and applications to register or renew the registration of any of the foregoing.

IRS: the United States Internal Revenue Service.

Knowledge of Seller: the actual knowledge of James Cox, Executive Vice President, M&A and Charles Sprague, Executive Vice President, General Counsel and Chief Administrative Officer.

Knowledge of Buyer: the actual knowledge, after reasonable due inquiry, of Robert Beriault.

Lien: any mortgage, pledge, option, right of first refusal, transfer or voting restriction, hypothecation, security interest, encumbrance, title retention agreement, lien (statutory or otherwise), charge or other similar right or restriction.

Low Value: as defined in Section 1.5.5.

Losses: as defined in Section 6.2.1(a).

Material Adverse Effect: (a) With respect to a Person, a material adverse change in, or a material adverse effect upon, the business, results of operations or financial condition of such Person and its Subsidiaries, taken as a whole, excluding any effect or change attributable to or resulting from (1) events, conditions or trends in economic, business or financial conditions generally (including interest rates and equity or debt market conditions) or to the trust services business generally, (2) changes in Applicable Laws, regulations, interpretations of Laws or regulations, GAAP or regulatory accounting requirements applicable to trust companies generally, (3) changes, effects, events or occurrences arising out of the announcement or

performance of this Agreement and the transactions contemplated hereby, (4) changes in national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon or within the United States, or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States, and (5) actions, or effects of actions, taken by the Seller, or any of the Target Companies, either required by or expressly contemplated in this Agreement or with the prior written consent of the Buyer; or (b) with respect to a Person, a material impairment of such Person's ability to perform its material obligations under this Agreement. Any reference in this Agreement to "Material Adverse Effect on the Target Companies" shall mean a Material Adverse Effect on the Target Companies, collectively taken as a whole.

Notice Period: as defined in Section 6.3(a).

OCC: as defined in Section 2.1.1(c).

Organizational Documents: as to any Person, if a corporation, its articles or certificate of incorporation or memorandum and articles of association, as the case may be, and bylaws; if a partnership, its partnership agreement; and if some other entity, its constituent documents.

Person: any natural person or any firm, partnership, limited liability partnership, association, corporation, limited liability company, trust, business trust, Governmental Authority or other entity.

Pre-Closing Period: as defined in Section 3.3.

Preferred Stock: as defined in Section 3.5.

Preliminary Purchase Price: as defined in Section 1.2.4.

Purchase Price: as defined in Section 1.6.4.

Recapitalization: as defined in Section 3.5.1.

Requisite Regulatory Approvals: as defined in Section 3.2.3.

Retained Litigation: as defined in Section 6.2.1.

Retained Litigation Liability: as defined in Section 3.4.

Securities Act: the Securities Act of 1933, as amended.

Seller: as defined in the introductory paragraph of this Agreement.

Seller Indemnified Parties: as defined in Section 6.2.2.

Seller Group: the federal Income Tax consolidated return group of which Seller and Target Companies are members and any similar group on which the income of Seller and Target Companies is reported on a combined, consolidated or unitary basis for the purposes of any state or local Income Tax.

Seller Group Tax Return: any Tax Return of the Seller Group.

Statement of Objections: as defined in Section 1.5.4.

Subsidiary: each corporation or other Person in which a Person owns or controls, directly or indirectly, capital stock or other equity interests representing more than 50% of the outstanding voting stock or other equity interests.

Target Company or Target Companies: each as defined in the preamble to this Agreement.

Target Employees: as defined in Section 3.2.4.

Target Intellectual Property: means material registered trademarks, service marks, copyrights, patents and other Intellectual Property (other than off-the-shelf software programs that have not been customized for use by Target Companies) owned or licensed by Target Companies as of the date hereof.

Target Permitted Encumbrances: means (i) Liens for Taxes not yet delinquent or which are being contested in good faith by appropriate proceedings if adequate reserves with respect thereto are maintained on its books in accordance with GAAP, (ii) statutory Liens incurred in the ordinary course of business consistent with past practices that are not material in amount and (iii) Liens which do not, individually or in the aggregate, materially detract from the value or materially interfere with the use of the properties affected thereby.

Target Tax Return: any Tax Return (other than a Seller Group Tax Return) required to be filed by or on behalf of the Target Companies.

Tax or Taxes: means all federal, state, local and foreign income, profits, franchise, gross receipts, license, payroll, occupation, premium, windfall profits, environmental (including taxes under Code §59A), customs duty, capital stock, severance, stamp, payroll, sales, employment, social security (or similar), unemployment, disability, use, personal and real property, withholding, excise, production, sales, transfer, registration, alternative or add-on minimum, value added, estimated, occupancy and other taxes of any kind whatsoever, including any addition thereto, or interest or penalty thereon.

Tax Return: any return, report, declaration, form, claim for refund or credit or information statement relating to an Income Tax, including any Schedule or attachment thereto, and including any amendment thereof.

TD Agreement: as defined in Section 5.2(e).

Treasury Regulations: the U.S. federal Income Tax regulations promulgated under the Code.

Third Party Claim: as defined in Section 6.3(a).

TIB: as defined in the Preamble.

TIB Estimated Net Book Value: (x) total assets less (y) total liabilities, in each case as set forth on the TIB Initial Balance Sheet.

TIB Final Balance Sheet: as defined in Section 1.5.2.

TIB Final Net Book Value: means (x) total assets of TIB less (y) total liabilities of TIB, in each case as set forth on the TIB Final Balance Sheet (with such changes as may have been agreed to by the parties or determined by the Accounting Firm pursuant to Section 1.5.4, if any).

TIB Initial Balance Sheet: as defined in Section 1.5.2.

TIB Preliminary Purchase Price: as defined in Section 1.2.2.

TIB Purchase Price: as defined in Section 1.6.2.

TIB Statement of Objections: as defined in Section 1.5.4.

7.2. *Expenses; Transfer Taxes.* Whether or not the transactions contemplated by this Agreement are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby (including, without limitation, fees and disbursements of counsel, financial advisors and accountants) shall be borne by the party which incurs such cost or expense. Any sales, use, real estate transfer, stock transfer or similar transfer Tax payable in connection with the transactions contemplated by this Agreement shall be borne solely by Buyer. Buyer shall duly and timely prepare and file any Tax return relating to such Taxes. Buyer shall give Seller a copy of each such Tax return for its review and comments prior to filing and shall give Seller a copy of such Tax return as filed, together with proof of payment of the Taxes shown thereon to be payable.

7.3. *Severability*. If any provision of this Agreement is inoperative or unenforceable for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, Sections or subSections of this Agreement shall not affect the remaining portions of this Agreement.

7.4. *Notices*. All notices, requests, demands waivers, and other communications made in connection with this Agreement shall be in writing and shall be (a) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, (b) transmitted by hand delivery or reputable overnight delivery service or (c) sent by telecopy, addressed as follows:

if to Buyer, to:

Robert H. Beriault
717 17th Street, Suite 2600
Denver, Colorado 80202

with a copy to:

Sherman & Howard L.L.C.
633 Seventeenth Street, Suite 3000
Denver, Colorado 80202

Attention: John H. Birkeland
Telephone Number: 303-299-8225
Fax:

if to Seller, to:

Fiserv, Inc.
255 Fiserv Drive
Brookfield, WI 53045

or

P.O. Box 979
Brookfield, WI 53008-0979

Telephone Number: 262-879-5000
FAX: 262-879-5245

Attention: James W. Cox

With a copy to:

Charles W. Sprague
Fiserv, Inc.
255 Fiserv Drive
Brookfield, WI 53045

or

P.O. Box 979
Brookfield, WI 53008-0979

Telephone Number: 262-879-5517
FAX: 262-879-5532

or, in each case, at such other address as may be specified in writing to the other parties hereto.

All such notices, requests, demands, waivers and other communications shall be deemed to have been received (w) if by personal delivery on the day of such delivery, (x) if by first-class, registered or certified mail, on the fifth Business Day after the mailing thereof, (y) if by reputable overnight delivery service, on the day delivered, (z) if by telecopy, on the day on which such telecopy was sent, *provided* that a copy is also sent that day by a reputable overnight delivery service.

7.5. *Miscellaneous*.

7.5.1. *Headings, Interpretation*. The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement. As used herein, the singular includes the plural, the plural includes the singular, and words in one gender include the others. As used herein, the terms "herein", "hereunder" and "hereof" refer to the whole of this Agreement, and "include", "including" and similar terms are not words of limitation. No rule of construction against the draftsperson shall be applied in connection with the interpretation or enforcement of this Agreement, as this Agreement is the product of negotiation between sophisticated parties advised by counsel. Time is of the essence of this Agreement.

7.5.2. *Counterparts*. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement.

7.5.3. *Jurisdictional Matters*.

(a) *Governing Law*. THIS AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS, INCLUDING AS TO VALIDITY, INTERPRETATION AND EFFECT, BY THE INTERNAL LAWS OF THE STATE OF COLORADO.

(b) *Jurisdiction*. BUYER AND SELLER HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF COLORADO AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF COLORADO, SOLELY IN RESPECT OF THE INTERPRETATION AND ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT AND OF THE DOCUMENTS REFERRED TO IN THIS AGREEMENT, AND HEREBY WAIVE, AND AGREE NOT TO ASSERT, AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING FOR THE INTERPRETATION OR ENFORCEMENT HEREOF OR OF ANY SUCH DOCUMENT, (A) THAT IT IS NOT SUBJECT THERETO OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN SAID COURTS, (B) THAT THE VENUE THEREOF MAY NOT BE APPROPRIATE OR (C) THAT THE INTERNAL LAWS OF THE STATE OF NEW YORK DO NOT GOVERN THE VALIDITY, INTERPRETATION OR EFFECT OF THIS AGREEMENT, AND THE PARTIES HERETO IRREVOCABLY AGREE THAT ALL DISPUTES WITH RESPECT TO SUCH ACTION OR PROCEEDING SHALL BE HEARD

AND DETERMINED IN SUCH A STATE OR FEDERAL COURT. BUYER AND SELLER HEREBY CONSENT TO AND GRANT ANY SUCH COURT JURISDICTION OVER THE PERSON OF SUCH PARTIES AND OVER THE SUBJECT MATTER OF ANY SUCH DISPUTE AND AGREE THAT MAILING OF PROCESS OR OTHER PAPERS IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING IN THE MANNER PROVIDED IN SECTION 7.4, OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW, SHALL BE VALID AND SUFFICIENT SERVICE THEREOF.

7.5.4. *Waiver of Jury Trial*. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) 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, (B) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.5.4.

7.5.5. *Specific Performance.* The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof and that the parties shall be entitled to seek specific performance of the terms hereof, in addition to any other remedy at law or equity.

7.5.6. *Litigation Expenses.* In the event litigation between Buyer and Seller arises out of this Agreement, the losing party will pay all reasonable costs and expenses incurred by the prevailing party in connection with the litigation, including without limitation, reasonable attorneys' fees and costs.

7.5.7. *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns.

7.5.8. *Assignment*. This Agreement shall not be assignable by any party hereto without the prior written consent of the other parties hereto.

7.5.9. *Third Party Beneficiaries*. Nothing in this Agreement shall confer any rights upon any person or entity other than the parties hereto and their respective heirs, successors and permitted assigns.

7.5.10. *Confidentiality*.

(a) The Buyer and its Affiliates shall not disclose, directly or indirectly, any documents, work papers or other materials of a confidential or proprietary nature related to the Seller (including, without limitation, any information obtained in connection with the entering into of this Agreement) and shall have all such information kept confidential; *provided*, *however*, that the Buyer may disclose any such information (A) that is or becomes generally available to the public other than as a result of disclosure by the Buyer or its Affiliates, (B) that is or becomes available to the Buyer on a non-confidential basis from a source that is not

bound by a confidentiality obligation to the Seller, any Affiliate of the Seller or the Target Companies or (C) with the prior written approval of the Seller; *provided*, *further*, that to the extent that the Buyer or its Affiliates may become legally compelled to disclose any such information by any Governmental Authority or if the Buyer or its Affiliates receives an opinion of counsel that disclosure is required in order to avoid violating any laws, the Buyer or its Affiliates may disclose such information but only after, if applicable or relevant, they have used all commercially reasonable efforts to afford the Seller the opportunity to obtain an appropriate protective order, or other satisfactory assurance of confidential treatment, for the information required to be disclosed; and *provided*, *further*, that after the Closing, this Section 7.5.10 shall not prohibit or restrict or otherwise limit the use or disclosure by the Buyer and its Affiliates of any documents, work papers or other materials or information related to the Target Companies.

(b) The Seller and its Affiliates shall not disclose, directly or indirectly, any documents, work papers or other materials of a confidential or proprietary nature related to the Buyer and its Affiliates (which shall for the purposes of this Section 7.5.10(b) include, as of the Closing, the Target Companies) (including, without limitation, any information obtained in connection with the entering into of this Agreement) and shall have all such information kept confidential; *provided*, *however*, that the Seller may disclose any such information (A) that is or becomes generally available to the public other than as a result of disclosure by the Seller or its Affiliates, (B) that is or becomes available to the Seller on a non-confidential basis from a source that is not bound by a confidentiality obligation to the Buyer or (C) with the prior written approval of the Buyer; *provided*, *further*, that to the extent that the Seller or their Affiliates may become legally compelled to disclose any such information by any Governmental Authority or if the Sellers or their Affiliates receives an opinion of counsel that disclosure is required in order to avoid violating any laws, the Seller or their Affiliates may disclose such information but only after, if applicable or relevant, they have used all commercially reasonable efforts to afford the Buyer the opportunity to obtain an appropriate protective order, or other satisfactory assurance of confidential treatment, for the information required to be disclosed; *provided, further,* that Seller may disclose such information to the extent necessary to comply with applicable law or regulation, in connection with any required Tax disclosures or to enforce its obligations under this Agreement.

7.5.11. *Amendment; Waivers*. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. Neither the waiver by any of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder.

7.5.12. *Entire Agreement.* This Agreement, including the Exhibits hereto and the other agreements and written understandings referred to herein or otherwise entered into by the parties hereto on the date hereof, constitutes the entire agreement and understanding and

supersedes all other prior covenants, agreements, undertakings, obligations, promises, arrangements, communications and representations, whether oral or written, by any party hereto or by any director, manager, officer, employee, agent or representative of any party hereto. There are no covenants, agreements, undertakings or obligations with respect to the subject matter of this Agreement other than those expressly set forth or referred to herein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

FISERV, INC.

By: /s/ Jeffery W. Yabuki
Name: Jeffery W. Yabuki
Title: President and CEO

ROBERT BERIAULT HOLDINGS, INC.

By: /s/ Robert Beriault
Name: Robert Beriault
Title: President

Exhibits

A — Net Value of the Target Companies

B — TIB Preferred Stock Terms

C — Form of Noncompletion Agreement

D — Retained Litigation

Exhibit 2.3

AGREEMENT AND PLAN OF MERGER

among

FISERV, INC.,

BRAVES ACQUISITION CORP.

and

CHECKFREE CORPORATION

Dated as of August 2, 2007

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AGREEMENT AND PLAN OF MERGER, dated as of August 2, 2007 (this "Agreement"), among FISERV, INC., a Wisconsin corporation ("Parent"), BRAVES ACQUISITION CORP., a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), and CHECKFREE CORPORATION, a Delaware corporation (the "Company").

W I T N E S S E T H :

WHEREAS, the parties intend that Merger Sub be merged with and into the Company, with the Company surviving that merger on the terms and subject to the conditions set forth in this Agreement (the "Merger");

WHEREAS, the Board of Directors of the Company has (i) determined that it is in the best interests of the Company and its stockholders, and declared it advisable, to enter into this Agreement, (ii) approved the execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby, including the Merger, and (iii) resolved to recommend adoption of this Agreement by the stockholders of the Company;

WHEREAS, the Board of Directors of Parent and the Board of Directors of Merger Sub have each approved this Agreement and declared it advisable for Parent and Merger Sub, respectively, to enter into this Agreement;

WHEREAS, Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and the transactions contemplated by this Agreement and also to prescribe certain conditions to the Merger as specified herein; and

WHEREAS, simultaneously with the execution and delivery of this Agreement, in connection with the transactions contemplated hereby, the Company has entered into employment agreements (the "Employment Agreements") with each of Peter J. Kight, Michael P. Giannoni, David E. Mangum, Alex Hart, Stephen Olsen, Randal A. McCoy and Jardon Bouska (the "Key Employees") with respect to their employment with the Company following the Closing (as defined below).

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained herein, and intending to be legally bound hereby, Parent, Merger Sub and the Company hereby agree as follows:

ARTICLE I
THE MERGER

Section 1.1 The Merger. At the Effective Time (as hereinafter defined), upon the terms and subject to the conditions set forth in this Agreement and in accordance with the applicable provisions of the Delaware General Corporation Law (the "DGCL"), Merger Sub shall be merged with and into the Company, whereupon the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving company in the Merger (the "Surviving Corporation") and a wholly owned subsidiary of Parent.

Section 1.2 Closing. The closing of the Merger (the "Closing") shall take place at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York at 10:00 a.m., local time, on a date to be specified by the parties (the "Closing Date") which shall be no later than the second Business Day after the satisfaction or waiver (to the extent permitted by applicable Law (as hereinafter defined)) of the conditions set forth in ARTICLE VI (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), or at such other place or at such other date or time as the parties hereto may mutually agree.

Section 1.3 Effective Time. On the Closing Date, the Company shall cause the Merger to be consummated by executing, delivering and filing a certificate of merger (the "Certificate of Merger") with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL and other applicable Delaware Law. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary of State of the State of Delaware, or at such later date or time as may be agreed by Parent and the Company in writing and specified in the Certificate of Merger in accordance with the DGCL (such time as the Merger becomes effective is referred to herein as the "Effective Time").

Section 1.4 Effects of the Merger. The Merger shall have the effects set forth in this Agreement and the applicable provisions of the DGCL.

Section 1.5 Certificate of Incorporation and By-laws of the Surviving Corporation.

(a) The certificate of incorporation of Merger Sub, as in effect immediately prior to the Effective Time, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with the provisions thereof, hereof and applicable Law, in each case consistent with the obligations set forth in Section 5.9.

(b) The by-laws of Merger Sub, as in effect at the Effective Time, shall be the by-laws of the Surviving Corporation until thereafter amended in accordance with the provisions thereof, hereof and applicable Law, in each case consistent with the obligations set forth in Section 5.9.

Section 1.6 Directors. Subject to applicable Law, the directors of Merger Sub immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation and shall hold office until their respective successors are duly elected and qualified, or their earlier death, resignation or removal.

Section 1.7 Officers. The officers of the Company immediately prior to the Closing Date shall be the initial officers of the Surviving Corporation and shall hold office until their respective successors are duly elected and qualified, or their earlier death, resignation or removal.

Section 1.8 Reservation of Right to Revise Structure. Notwithstanding anything to the contrary contained in this Agreement, before the Effective Time, Parent may revise the structure of the Merger or otherwise revise the method of effecting the Merger and related transactions, in any such case in its sole discretion; *provided*, *however*, that no such revision shall

(a) alter or change the amount or kind of the Merger Consideration or alter or change adversely the treatment of the holders of Company Common Stock or Company Stock Options, (b) alter or change Parent's or the Company's obligations hereunder, or (c) materially impede or delay consummation of the transactions contemplated by this Agreement. In the event Parent makes such an election, Parent shall provide the Company with reasonable notice of such revision and the parties shall execute an appropriate amendment to this Agreement in order to reflect such revision.

ARTICLE II

CONVERSION OF SHARES; EXCHANGE OF CERTIFICATES

Section 2.1 Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of the Company, Parent, Merger Sub or the holders of any securities of the Company, Parent or Merger Sub:

(a) Parent Common Stock. Each share of common stock, par value $0.01 per share, of Parent (the "Parent Common Stock") issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding and shall not be affected by the Merger.

(b) Conversion of Company Common Stock. Subject to Sections 2.1(c), 2.1(e) and 2.1(f), each issued and outstanding share of common stock, par value $0.01, of the Company outstanding immediately prior to the Effective Time (such shares, collectively, "Company Common Stock", and each, a "Share") together with the associated Rights (as defined herein), other than any Cancelled Shares (as defined, and to the extent provided in Section 2.1(c)) and any Dissenting Shares (as defined, and to the extent provided in Section 2.1(f)), shall thereupon be automatically converted into the right to receive $48.00 in cash, without interest (the "Merger Consideration"). All Shares, together with the associated Rights, that have been converted into the right to receive the Merger Consideration as provided in this Section 2.1(b) shall be automatically cancelled and shall cease to exist, and the holders of certificates which immediately prior to the Effective Time represented such Shares (and associated Rights) shall cease to have any rights with respect to such Shares and Rights other than the right to receive the Merger Consideration.

(c) Cancelled Shares. Each Share that is owned, directly or indirectly, by Parent or Merger Sub immediately prior to the Effective Time, if any, or held by the Company or any Subsidiary of the Company immediately prior to the Effective Time (in each case, other than any such Shares held on behalf of third parties) (the "Cancelled Shares") shall, by virtue of the Merger and without any action on the part of the holder thereof, be cancelled and retired and shall cease to exist, and no consideration shall be delivered in exchange for such cancellation and retirement.

(d) Merger Sub Common Stock. At the Effective Time, each share of common stock, par value $0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid and non-assessable share of common stock, par value $0.01, of the Surviving Corporation and shall constitute the only outstanding shares of capital stock of the Surviving Corporation. From and after the Effective Time, all certificates representing the common stock of Merger Sub shall be deemed for all purposes to represent the number of shares of common stock of the Surviving Corporation into which they were converted in accordance with the immediately preceding sentence.

(e) Adjustments. If at any time during the period between the date of this Agreement and the Effective Time any change in the outstanding shares of capital stock of the Company, or in the securities convertible or exchangeable into or exercisable for shares of capital stock, shall occur as a result of any reclassification, recapitalization, stock split (including a reverse stock split) or subdivision or combination, exchange or readjustment of shares, or any stock dividend or stock distribution with a record date during such period, merger or other similar transaction, the Merger Consideration shall be equitably adjusted to reflect such change; *provided* that nothing in this Section 2.1(e) shall be construed to permit the Company to take any action with respect to its securities that is prohibited by the terms of this Agreement.

(f) Dissenters' Rights. Notwithstanding anything in this Agreement to the contrary, shares of Company Common Stock that are issued and outstanding immediately prior to the Effective Time and which are held by a stockholder who did not vote in favor of the Merger (or consent thereto in writing) and who is entitled to demand and properly demands appraisal of such shares pursuant to, and who complies in all respects with, the applicable provisions of Section 262 of the DGCL (the "Dissenting Stockholders"), shall not be converted into or be exchangeable for the right to receive the Merger Consideration (the "Dissenting Shares"), but instead such holder shall be entitled to payment for such shares in accordance with the applicable provisions of the DGCL (and at the Effective Time, such Dissenting Shares shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and such holder shall cease to have any rights with respect thereto, except the right to receive the appraised value of such Dissenting Shares in accordance with the applicable provisions of the DGCL), unless and until such holder shall have failed to perfect or shall have effectively withdrawn or lost rights to appraisal under the DGCL. If any Dissenting Stockholder shall have failed to perfect or shall have effectively withdrawn or lost such right, such holder's shares of Company Common Stock shall thereupon be treated as if they had been converted into and become exchangeable for the right to receive, as of the Effective Time, the Merger Consideration for each such share of Company Common Stock, in accordance with Section 2.1(b), without any interest thereon. The Company shall give Parent (i) prompt notice of any written demands for appraisal of any shares of Company Common Stock, attempted withdrawals of such demands and any other instruments served pursuant to the DGCL and received by the Company relating to stockholders' rights of appraisal and (ii) the opportunity to participate in negotiations and proceedings with respect to demands for appraisal under the DGCL. The Company shall not, except with the prior written consent of Parent, voluntarily make any payment with respect to, or settle, or offer or agree to settle, any such demand for payment.

Section 2.2 Exchange of Certificates.

(a) Exchange Agent. At or prior to the Effective Time, Parent shall deposit, or shall cause to be deposited, with a U.S. bank, trust company or registrar and transfer agent that shall be appointed by Parent and approved in advance by the Company (such approval not to be unreasonably withheld) to act as a exchange agent hereunder (the "Exchange Agent") immediately available funds equal to the aggregate Merger Consideration (the "Exchange Fund") and Parent shall instruct the Exchange Agent to timely pay the Merger Consideration in accordance with this Agreement.

(b) Delivery of Merger Consideration.

(i) As soon as reasonably practicable after the Effective Time and in any event not later than the second Business Day following the Effective Time, the Exchange Agent shall mail to each holder of record of Shares whose Shares (together with associated Rights) were converted into the Merger Consideration pursuant to Section 2.1, (A) a letter of transmittal which shall specify that delivery shall be effected, and risk of loss and title to the certificates that immediately prior to the Effective Time represented Shares ("Certificates") shall pass, only upon delivery of Certificate(s) (or affidavits of loss in lieu of such Certificates) to the Exchange Agent and shall be substantially in such form and have such other provisions as specified by Parent and the Exchange Agent (the "Letter of Transmittal") and (B) instructions for use in surrendering Certificate(s) or non-certificated Shares represented by book-entry ("Book-Entry Shares") in exchange for the Merger Consideration upon surrender of such Certificate or Book-Entry Shares.

(ii) Upon surrender to the Exchange Agent of its Certificate or Certificates (or effective affidavits of loss and customary security bonds, to the extent required by Parent's then-current policies, in lieu thereof) or Book-Entry Shares, accompanied by a properly completed Letter of Transmittal, a holder of Company Common Stock will be entitled to receive promptly after the Effective Time (after giving effect to any required Tax withholdings) the Merger Consideration in respect of the shares of Company Common Stock represented by its Certificate or Certificates or Book-Entry Shares. No interest will be paid or accrued on any amount payable upon due surrender of Certificates or Book-Entry Shares. Until so surrendered, each such Certificate or Book-Entry Shares shall represent after the Effective Time, for all purposes, only the right to receive the Merger Consideration upon surrender of such Certificate or Book-Entry Shares in accordance with this ARTICLE II.

(iii) The Surviving Corporation, Parent and the Exchange Agent shall be entitled to deduct and withhold from the Merger Consideration such amounts as are required to be withheld or deducted under the Internal Revenue Code of 1986, as amended (the "Code"), or any provision of U.S. state, local or foreign Tax Law with respect to the making of such payment. To the extent that amounts are so withheld or deducted and paid over to the applicable Governmental Entity (as hereinafter defined), such withheld or deducted amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the Shares in respect of which such deduction and withholding were made.

(iv) In the event of a transfer of ownership of a Certificate representing Company Common Stock that is not registered in the stock transfer records of the Company, the proper amount of cash shall be paid to a person other than the person in whose name the Certificate so surrendered is registered if the Certificate formerly representing such Company Common Stock shall be properly endorsed or otherwise be in proper form for transfer and the person requesting such payment or issuance shall pay any transfer or other similar Taxes required by reason of the payment or issuance to a person other than the registered holder of the Certificate or establish to the satisfaction of Parent that the Tax has been paid or is not applicable.

(c) Closing of Transfer Books. At the Effective Time, the stock transfer books of the Company shall be closed, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the Shares that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation or Parent for transfer, they shall be cancelled and exchanged for the Merger Consideration to be issued or paid in consideration therefor in accordance with the procedures set forth in this Article II.

(d) Termination of Exchange Fund. Any portion of the Exchange Fund (including the proceeds of any investments thereof) that remains undistributed to the former holders of Shares for one year after the Effective Time shall be delivered to the Surviving Corporation upon demand, and any former holders of Shares who have not surrendered their Shares in accordance with this Section 2.2 shall thereafter look only to the Surviving Corporation for payment of their claim for the Merger Consideration, without any interest thereon, upon due surrender of their Shares.

(e) No Liability. Notwithstanding anything herein to the contrary, none of the Company, Parent, Merger Sub, the Surviving Corporation, the Exchange Agent or any other person shall be liable to any former holder of Shares for any amount properly delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(f) Investment of Exchange Fund. The Exchange Agent shall invest all cash included in the Exchange Fund in cash, cash equivalents and investment funds investing primarily in government securities as reasonably directed by Parent; *provided, however,* that no such investment or loss thereon shall affect the amounts payable to holders of Certificates or Book-Entry Shares pursuant to this ARTICLE II. Any interest and other income resulting from such investments shall be paid to the Surviving Corporation pursuant to Section 2.2(d).

(g) Lost Certificates. In the case of any Certificate that has been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent or the Exchange Agent, the posting by such person of an indemnity agreement with respect to such Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the Merger Consideration deliverable in respect thereof pursuant to this Agreement.

Section 2.3 Effect of the Merger on Company Stock Options, Company Restricted Shares and Deferred Equity Units; ASPP. Except for Company Stock Options and Company Restricted Shares (each, as defined below) as to which the treatment in the Merger has been or is hereafter separately agreed by Parent and the holder thereof, which Company Stock Options and Company Restricted Shares shall be treated as so agreed:

(a)(i) With respect to the holders of any outstanding options to purchase Shares (each, a "Company Stock Option") under the Company Stock Plans who are Key Employees, at the Effective Time, each then unvested Company Stock Option held by such Key Employee, shall be converted into an option to acquire a number of shares of Parent Common Stock equal to the product (rounded down to the nearest whole number) of (x) the number of Shares subject to such Company Stock Option immediately prior to the Effective Time and

(y) the Conversion Number, at an exercise price per share (rounded up to the nearest whole cent) equal to (A) the exercise price per Share of such Company Stock Option immediately prior to the Effective Time divided by (B) the Conversion Number; *provided*, *however*, that the exercise price and the number of shares of Parent Common Stock purchasable pursuant to such Company Stock Options shall be determined in a manner consistent with the requirements of Section 409A of the Code; *provided*, *further*, that in the case of any Company Stock Option to which Section 422 of the Code applies, the exercise price and the number of shares of Parent Common Stock purchasable pursuant to such option shall be determined in accordance with the foregoing, subject to such adjustments as are necessary in order to satisfy the requirements of Section 424(a) of the Code. Except as specifically provided above, following the Effective Time, each converted Company Stock Option shall continue to be governed by the same terms and conditions as were applicable under such Company Stock Option immediately prior to the Effective Time. "Conversion Number" means the quotient of (1) $48.00 and (2) the average, rounded to the nearest tenth of a cent, of the closing sale prices of Parent Common Stock on the Nasdaq Stock Market as reported by The Wall Street Journal for the five full trading days immediately preceding (but not including) the date of the Effective Time.

(ii) Except as specifically provided above, any other Company Stock Option, whether or not then vested or exercisable, that is outstanding immediately prior to the Effective Time shall, as of the Effective Time, become fully vested (based on a deemed achievement of performance awards at the maximum level) and, subject to the terms of the Company Stock Plans, be converted into the right to receive a payment in cash, payable in U.S. dollars and without interest, equal to the product of (i) the excess, if any, of (x) the Merger Consideration over (y) the exercise price per share of Company Common Stock subject to such Company Stock Option, multiplied by (ii) the number of shares of Company Common Stock for which such Company Stock Option shall not theretofore have been exercised, whether or not then vested or exercisable. The Surviving Corporation shall pay the holders of Company Stock Options the cash payments described in this Section 2.3(a) on or as soon as reasonably practicable after the Closing Date, but in any event within three (3) Business Days following the Closing Date.

(b)(i) With respect to the holders of any award of restricted or performance restricted Company Common Stock (each, a "Company Restricted Share") who are Key Employees, each Company Restricted Share held by such Key Employee which is outstanding immediately prior to the Effective Time shall be converted into restricted shares of Parent Common Stock determined by multiplying the number of Company Restricted Shares by the Conversion Number. Such restricted shares of Parent Common Stock shall be subject to the same terms and conditions as were applicable under such Company Restricted Share. The Company shall take all necessary actions to ensure that, from and after the Effective Time, the Parent (or its assignee) shall be entitled to exercise any repurchase option, vesting schedule or other rights set forth in the restricted stock agreements, vesting schedules or any other agreement. (ii) Except as expressly provided above, any other award of Company Restricted Shares and any accrued stock dividends shall vest in full (based on a deemed achievement of performance awards at the maximum level) and be converted into the right to receive the Merger Consideration as provided in Section 2.1(b). The Surviving Corporation will vest and pay all cash dividends accrued but unpaid on such Company Restricted Shares to the holders thereof within three (3) Business Days after the Effective Time.

(c) The Surviving Corporation shall be entitled to deduct and withhold from the amounts otherwise payable pursuant to this Section 2.3 to any holder of Company Stock Options or Company Restricted Shares such amounts as the Surviving Corporation is required to deduct and withhold with respect to the making of such payment under the Code, or any provision of state, local or foreign Tax Law, and the Surviving Corporation shall make any required filings with and payments to Tax authorities relating to any such deduction or withholding. To the extent that amounts are so deducted and withheld by the Surviving Corporation, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the Company Stock Options or Company Restricted Shares in respect of which such deduction and withholding was made by the Surviving Corporation.

(d) No later than seven days prior to the Effective Time, the then-current Offering Period (as defined in the Company's Associate Stock Purchase Plan (the "ASPP")) shall terminate (the "Final Date") and each participant therein shall be entitled to apply the payroll deductions of such participant accumulated as of the Final Date for the then-current Offering Period to the purchase of whole shares of Company Common Stock in accordance with the terms of the ASPP, which number of shares shall be canceled and be converted into the right to receive the Merger Consideration as provided in Section 2.1(b).

(e) Immediately prior to the Effective Time, all amounts held in participant accounts and denominated in Company Common Stock either under the Company's Nonqualified Deferred Compensation Plan (as amended through the date hereof) or pursuant to individual deferred compensation agreements, shall vest in full and be converted into the right to receive the Merger Consideration, based on the number of shares of Company Common Stock deemed held in such participant accounts ("Deferred Equity Units"). Such obligation shall be payable or distributable in accordance with the terms of the agreement, plan or arrangement relating to such Deferred Equity Units and prior to the time of any distribution, such deferred amounts shall be permitted to be deemed invested in another investment option under the applicable agreement, plan or arrangement.

(f) Prior to or at the Effective Time, the Compensation Committee of the Board of Directors of the Company shall make such adjustments and determinations and shall adopt any resolutions and take any corporate actions with respect to the Company Stock Options, Company Restricted Shares, the ASPP and Deferred Equity Units to implement the foregoing provisions of this Section 2.3. The Company shall take all actions necessary to ensure that after the Effective Time, neither Parent nor the Surviving Corporation will be required to deliver shares of Company Common Stock or other capital stock of the Company to any person pursuant to or in settlement of Company Stock Options, Company Restricted Shares, Deferred Equity Units or any other stock-based award.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except (i) as disclosed in, and reasonably apparent from, any report, schedule, form or other document filed with, or furnished to, the SEC and publicly available since June 30, 2004 and prior to the date of this Agreement (excluding, in each case, any disclosures set forth in

any risk factor section and in any section relating to forward-looking statements to the extent that they are cautionary, predictive or forward-looking in nature) (collectively, the "Filed SEC Documents"); or (ii) as disclosed in the like-numbered section of the disclosure letter delivered by the Company to Parent contemporaneously with the execution of this Agreement (the "Company Disclosure Letter", it being agreed that disclosure of any item in any section of the Company Disclosure Letter shall also be deemed disclosure with respect to any other section of this Agreement to which the relevance of such item is reasonably apparent), the Company represents and warrants to Parent and Merger Sub as follows:

Section 3.1 Qualification, Organization, Subsidiaries, etc.

(a) Each of the Company and each of its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization. Each of the Company and each of its Subsidiaries has all requisite corporate, partnership or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted, except when the failure to have such power or authority would not, individually or in the aggregate, have a Company Material Adverse Effect. True, complete and correct copies of the certificate of incorporation of the Company (the "Company Charter") and the by-laws of the Company (the "Company By-laws"), as in effect as of the date of this Agreement, were made available to Parent prior to the date of this Agreement and the Company Charter and Company By-laws are in effect in such form.

(b) Each of the Company and each of its Subsidiaries is qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Company Material Adverse Effect. Prior to the date of this Agreement, the Company has made available to Parent a correct and complete list of each jurisdiction where the Company and its Subsidiaries are organized and qualified to do business. The organizational or governing documents of the Company and each of its Subsidiaries, as provided to Parent prior to the date of this Agreement, are in full force and effect and neither the Company nor any Subsidiary is in violation of its organizational or governing documents in any material respect.

(c) As used in this Agreement, any reference to any fact, circumstance, event, change, effect or occurrence having a "Company Material Adverse Effect" means any fact, circumstance, event, change, effect or occurrence that, individually or in the aggregate with all other facts, circumstances, events, changes, effects or occurrences, (1) has had or is reasonably likely to have a material adverse effect on the business, results of operation or financial condition of the Company and its Subsidiaries taken as a whole, or (2) that prevents the Company from consummating, or materially impairs the ability of the Company to consummate, the Merger, but, in the case of the foregoing clause (1), shall not include the following facts, circumstances, events, changes, effects or occurrences: (i) those generally affecting the industries in which the Company and its Subsidiaries operate, or the economy or the general financial, credit or securities markets in the United States, including effects on such industries, economy or markets resulting from (A) any regulatory and political conditions or developments, or (B) any outbreak or escalation of hostilities, declared or undeclared acts of war or terrorism; (ii) those reflecting or

resulting from changes or proposed changes in Law or GAAP (or the interpretation thereof) generally applicable to companies engaged in the industries in which the Company and its Subsidiaries operate; (iii) those resulting from actions or omissions of the Company or any of its Subsidiaries which Parent has requested or to which Parent has consented, in each case in writing; (iv) those which the Company demonstrates through specific evidence to have resulted proximately from the announcement of the Merger or this Agreement or the transactions contemplated hereby (including any loss or departure of employees or adverse developments in relationships with customers, suppliers, distributors, financing sources, strategic partners or other business partners, to the extent but only to the extent so resulting); or (v) any decline in the market price or trading volume of the equity securities of the Company or any failure, in and of itself, of the Company to meet any internal or public projections, forecasts or estimates of revenues or earnings (*provided* that the exception in this clause (v) shall not prevent or otherwise affect a determination that any fact, circumstance, event change, effect or occurrence underlying such decline or failure has resulted in, or contributed to, a Company Material Adverse Effect); *provided* that with respect to clauses (i) and (ii) any such fact, circumstance, event, change, effect or occurrence does not disproportionately adversely affect the Company and its Subsidiaries compared to other companies operating in the industries in which the Company and its Subsidiaries operate.

Section 3.2 Capital Stock.

(a) The authorized capital stock of the Company consists of 500,000,000 shares of Company Common Stock, 48,500,000 shares of preferred stock, par value $0.01 per share ("Authorized Preferred Stock"), and 1,500,000 shares of Series A Junior Participating Cumulative Preferred Stock, par value $0.01 (the "Series A Preferred Stock", and together with the Authorized Preferred Stock, the "Company Preferred Stock") reserved for issuance in connection with the rights (the "Rights") issued under the Rights Agreement, dated as of December 16, 1997, by and between the Company and The Fifth Third Bank, as amended (the "Company Rights Agreement"). As of July 31, 2007, (i) 88,042,324 shares of Company Common Stock were issued and outstanding, (ii) no shares of Company Common Stock were held in treasury, (iii) 2,925,251 shares of Company Common Stock were reserved for issuance pursuant to the outstanding Company Stock Options, (iv) 798,995 shares of Company Common Stock were reserved for issuance pursuant to unvested restricted stock awards, (iv) no shares were reserved for issuance under the ASPP, (v) 7,500,000 shares of Company Common Stock were reserved for issuance in connection with warrants issued by the Company to third parties (the "Warrants"), and (vi) no shares of Company Preferred Stock were issued or outstanding. All outstanding shares of Company Common Stock, and all shares of Company Common Stock reserved for issuance as noted in clauses (iii), (iv) and (v) of the foregoing sentence, when issued in accordance with the respective terms thereof, are or will be duly authorized, validly issued, fully paid and non-assessable and free of preemptive rights (and have not been, and will not be, issued in violation of any preemptive rights). Section 3.2(a) of the Company Disclosure Letter lists each outstanding Warrant, the number of shares of Company Common Stock issuable upon the exercises thereof, and the exercise price per share thereof.

(b) Except as set forth in subsection (a) above, as of the date hereof, (i) the Company does not have any shares of its capital stock issued or outstanding other than shares of Company Common Stock that have become outstanding after July 31, 2007 under the ASPP or

upon exercise of Company Stock Options or Warrants outstanding as of such date and (ii) there are no outstanding subscriptions, options, warrants, calls, convertible securities or other similar rights, agreements or commitments relating to the issuance of capital stock or other equity interests to which the Company or any of its Subsidiaries is a party obligating the Company or any of its Subsidiaries to (A) issue, transfer or sell any shares of capital stock or other equity interests of the Company or any of its Subsidiaries or securities convertible into or exchangeable for such shares or equity interests, (B) grant, extend or enter into any such subscription, option, warrant, call, convertible securities or other similar right, agreement or arrangement, (C) redeem or otherwise acquire any such shares of capital stock or other equity interests or (D) provide a material amount of funds to, or make any material investment (in the form of a loan, capital contribution or otherwise) in, any Subsidiary. No shares of Company Common Stock are held by any Subsidiary of the Company.

(c) Except as set forth in subsection (a) or (b) above, neither the Company nor any of its Subsidiaries has outstanding bonds, debentures, notes or other obligations, the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the stockholders of the Company on any matter.

(d) There are no stockholder agreements, voting trusts or other agreements or understandings to which the Company or any of its Subsidiaries is a party with respect to the voting of the capital stock or other equity interest of the Company or any of its Subsidiaries.

(e) Except as disclosed in the Filed SEC Documents, no holder of securities in the Company or any of its Subsidiaries has any right to have such securities or the offering or sale thereof registered under or pursuant to any securities Laws by the Company or any of its Subsidiaries.

(f) To the Knowledge of the Company, each Company Stock Option (A) was granted in compliance with all applicable Laws and all of the terms and conditions of the Company Stock Plans pursuant to which it was issued, (B) has an exercise price per share of Company Common Stock equal to or greater than the fair market value of a share of Company Common Stock on the date of, or the date immediately preceding, such grant, (C) has a grant date identical to the date on which the Company's Board of Directors or Compensation Committee actually awarded such Company Stock Option, and (D) qualifies for the tax and accounting treatment afforded to such Company Stock Option in the Company's Tax Returns (as hereinafter defined) and the financial statements included in the Company SEC Documents (as hereinafter defined), respectively.

Section 3.3 Subsidiaries. Section 3.3 of the Company Disclosure Letter sets forth a complete and correct list of each Subsidiary of the Company. Section 3.3 of the Company Disclosure Letter also sets forth the percentage of outstanding equity interests (including partnership interests and limited liability company interests) owned by the Company or its Subsidiaries of each of its Subsidiaries. All equity interests (including partnership interests and limited liability company interests) of the Company's Subsidiaries held by the Company or by any other Subsidiary have been duly and validly authorized and are validly issued, fully paid and non-assessable and were not issued in violation of any preemptive or similar rights, purchase option, call or right of first refusal or similar rights. All such equity interests owned by the

Company or its Subsidiaries are owned free and clear of any Lien or other limitation or restriction (including any restriction on the right to vote, sell, or otherwise dispose of such equity interests), other than restrictions imposed by applicable Law.

Section 3.4 Corporate Authority Relative to This Agreement; No Violation

(a) The Company has the requisite corporate power and authority to enter into this Agreement and, subject to receipt of the Company Stockholder Approval (as hereinafter defined), to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Board of Directors of the Company, and, except for (i) the Company Stockholder Approval and (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, no other corporate proceedings on the part of the Company are necessary to authorize the consummation of the transactions contemplated hereby. As of the date hereof, the Board of Directors of the Company has (A) determined that this Agreement and the transactions contemplated hereby are fair to and in the best interests of the Company's stockholders, (B) approved and adopted this Agreement and the transactions contemplated hereby and (C) unanimously resolved to recommend that the Company's stockholders adopt this Agreement and the transactions contemplated hereby (the "Recommendation"). This Agreement has been duly and validly executed and delivered by the Company and, assuming this Agreement constitutes the valid and binding agreement of Parent and Merger Sub, constitutes the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally and general equitable principles (whether considered in a proceeding in equity or at Law).

(b) Other than in connection with or in compliance with (i) the DGCL, (ii) the Securities Exchange Act of 1934 (the "Exchange Act"), (iii) the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"), (iv) any antitrust, competition or similar laws of any foreign jurisdiction, (v) the filing with the Securities and Exchange Commission (the "SEC") of a proxy statement in definitive form relating to the meeting of the Company's stockholders to be held in connection with this Agreement and the transactions contemplated by this Agreement (the "Proxy Statement"), (vi) such filings and approvals as are required to be made or obtained under the money transmitter or money services business Laws of various states, and (vii) the approvals set forth on Section 3.4(b) of the Company Disclosure Letter (collectively, the "Company Approvals"), no authorization, consent or approval of, or filing with, any United States or foreign governmental or regulatory agency, commission, court, body, entity or authority (each, a "Governmental Entity") is necessary, under applicable Law, for the consummation by the Company of the transactions contemplated hereby, except for such authorizations, consents, approvals or filings that, if not obtained or made, would not, individually or in the aggregate, have a Company Material Adverse Effect.

(c) The execution, delivery and performance by the Company of this Agreement, and the consummation of the transactions contemplated hereby and compliance with the provisions hereof by the Company do not and will not, (i) result in any violation of, breach or default (with or without notice or lapse of time, or both) under, require consent under, or give rise to any modification under or right of termination, cancellation, penalty or acceleration of any

obligation or remedy, or to the loss of any benefit or any additional payment under any loan, guarantee of indebtedness or credit agreement, note, bond, mortgage, indenture, lease, agreement, contract, instrument, permit, Company Permit, concession, franchise, right, license, arrangement or other obligation to which the Company or any of its Subsidiaries is a party or to which their respective properties and assets are bound, or result in the creation of any liens, claims, mortgages, encumbrances, pledges, security interests, equities or charges of any kind (each, a "Lien") upon any of the properties or assets of the Company or any of its Subsidiaries, (ii) contravene, conflict with or result in any violation of any provision of the Company Charter or Company By-laws or other equivalent organizational document of the Company's Subsidiaries or (iii) assuming that the consents and approvals referred to in Section 3.4(b) are duly obtained, contravene, conflict with or result in any violation of any applicable Law, other than, in the case of clauses (i), (ii) (to the extent relating to Subsidiaries) and (iii), as would not, individually or in the aggregate, have a Company Material Adverse Effect.

Section 3.5 Reports and Financial Statements.

(a) The Company and its Subsidiaries have filed all forms, documents, statements and reports required to be filed prior to the date hereof by them with the SEC since June 30, 2004 (the forms, documents, statements and reports filed with the SEC since June 30, 2004 and those filed with the SEC subsequent to the date of this Agreement, if any, including any amendments thereto, the "Company SEC Documents"). As of their respective dates, or, if amended or superseded by a subsequent filing, as of the date of the last such amendment or superseded filing prior to the date hereof, the Company SEC Documents complied, and each of the Company SEC Documents filed subsequent to the date of this Agreement will comply, in all material respects with the requirements of the Securities Act of 1933, as amended (the "Securities Act"), the Exchange Act and the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), as the case may be, and the applicable rules and regulations promulgated thereunder. As of the time of filing with the SEC, none of the Company SEC Documents so filed or that will be filed subsequent to the date of this Agreement contained or will contain, as the case may be, any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except to the extent that the information in such Company SEC Document has been amended or superseded by a later Company SEC Document filed prior to the date hereof.

(b) The financial statements (including all related notes and schedules) of the Company and its Subsidiaries included in the Company SEC Documents fairly present (or will fairly present) in all material respects the financial position of the Company and its Subsidiaries on a consolidated basis, as at the respective dates thereof, and the consolidated results of operations, changes in stockholders' equity and cash flows for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments consistent with past experience and to any other adjustments described therein, including the notes thereto) in conformity in all material respects with United States generally accepted accounting principles ("GAAP") (except, in the case of the unaudited statements or foreign Subsidiaries, as permitted by the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto). The books and records of the Company and its Subsidiaries have been, and are being, maintained in all material respects in accordance with GAAP and any other applicable legal or accounting requirements and reflect only actual transactions.

(c) The Company has established and maintains disclosure controls and procedures (as defined in Rule 13a-15 under the Exchange Act). Such disclosure controls and procedures are designed to ensure that material information relating to the Company, including its consolidated Subsidiaries, is recorded or made known on a timely basis to the Company's principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which periodic reports required under the Exchange Act are being prepared. Such disclosure controls and procedures are effective in timely alerting the Company's principal executive officer and principal financial officer to material information required to be included in the Company's periodic reports required under the Exchange Act.

(d) The Company and its Subsidiaries have established and maintained a system of internal control over financial reporting (as defined in Rule 13a-15 under the Exchange Act ("Internal Controls"). Such Internal Controls are sufficient to provide reasonable assurance regarding the reliability of the Company's financial reporting and preparation of Company financial statements for external purposes in accordance with GAAP. The Company has disclosed, based on its most recent evaluation of Internal Controls prior to the date hereof, to the Company's auditors and audit committee (x) any significant deficiencies and material weaknesses in the design or operation of Internal Controls which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in Internal Controls. The Company has made available to Parent a summary of any such disclosure made by management to the Company's auditors and audit committee since June 30, 2005.

(e) There are no outstanding loans or other extensions of credit made by the Company or any of its Subsidiaries to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of the Company other than those made in the ordinary course of the Company's business and on substantially the same terms as those prevailing at the time for comparable transactions with persons not related to the Company. The Company has not, since enactment of the Sarbanes-Oxley Act, taken any action prohibited by Section 402 of the Sarbanes-Oxley Act.

Section 3.6 No Undisclosed Liabilities. Neither the Company nor any Subsidiary of the Company has any material liability or obligation of any nature, whether or not accrued, contingent or otherwise, whether known or unknown and whether due or to become due, except (i) as reflected or reserved against in the Company's consolidated balance sheets (or the notes thereto) included in the Company SEC Documents filed prior to the date of this Agreement, (ii) for this Agreement and the transactions contemplated hereby, and (iii) for liabilities incurred in the ordinary course of business consistent with past practice since June 30, 2006.

Section 3.7 Compliance with Law; Permits.

(a) The Company and each of its Subsidiaries is, and since the later of June 30, 2004 and its respective date of formation or organization has been, in compliance with and is not

in default under or in violation of any applicable federal, state, local or foreign or provincial law, statute, ordinance, rule, regulation, judgment, order, injunction, decree, award, settlement or agency requirement of or undertaking to or agreement with any Governmental Entity, including common law (collectively, "Laws" and each, a "Law"), except where such non-compliance, default or violation would not, individually or in the aggregate, have a Company Material Adverse Effect.

(b) The Company and its Subsidiaries are in possession of all franchises, tariffs, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Entity necessary for the Company and its Subsidiaries to own, lease and operate their properties and assets or to carry on their businesses as they are now being conducted (the "Company Permits"), except where the failure to have any of the Company Permits would not, individually or in the aggregate, have a Company Material Adverse Effect. All Company Permits are in full force and effect, except where the failure to be in full force and effect would not, individually or in the aggregate, have a Company Material Adverse Effect. The Company and its Subsidiaries are not, and since June 30, 2004 have not been, in violation or breach of, or default under, any material Company Permit.

(c) Neither the Company nor any of its Subsidiaries maintains or conducts, and since June 30, 2004 has maintained or conducted, any business, investment, operation or other activity in or with: (i) any country or person targeted by any of the economic sanctions of the United States of America administered by the United States Treasury Department's Office of Foreign Assets Control; (ii) any person appearing on the list of Specially Designated Nationals and Blocked Persons issued by the United States Treasury Department's Office of Foreign Assets Control; or (iii) any country or person designated by the United States Secretary of the Treasury pursuant to the USA PATRIOT Act as being of "primary money laundering concern".

Section 3.8 Environmental Laws and Regulations.

(a) Except as set forth in Section 3.8(a) of the Company Disclosure Letter (i) the Company and each of its Subsidiaries have conducted their respective businesses in material compliance with all applicable Environmental Laws (as hereinafter defined), (ii) there has been no release of any Hazardous Substance (as hereinafter defined) by the Company or any of its Subsidiaries in any manner that could reasonably be expected to give rise to any material remedial obligation or corrective action requirement under applicable Environmental Laws, (iii) neither the Company nor any of its Subsidiaries has received in writing any claims, notices, demand letters or requests for information (except for such claims, notices, demand letters or requests for information the subject matter of which has been resolved prior to the date of this Agreement) from any federal, state, local or foreign or provincial Governmental Entity or private party asserting that the Company or any of its Subsidiaries is in material violation of, or liable under, any Environmental Law, in each case in a manner that would be material to the Company and its Subsidiaries, (iv) to the Company's Knowledge no Hazardous Substance has been disposed of, released or transported in violation of any applicable Environmental Law, or in a manner giving rise to any material liability under Environmental Law, from any properties while owned or operated by the Company or any of its Subsidiaries or as a result of any operations or activities of the Company or any of its Subsidiaries and (v) neither the Company, its Subsidiaries nor any of their respective properties are, or, to the Knowledge of the Company, threatened to

become, subject to any material liabilities relating to any suit, settlement, court Order, regulatory requirement, judgment or written claim asserted or arising under any Environmental Law or any agreement relating to environmental liabilities.

(b) As used herein, "Environmental Law" means any Law relating to (i) the protection, preservation or restoration of the environment (including air, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or (ii) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of Hazardous Substances, in each case as in effect at the date hereof.

(c) As used herein, "Hazardous Substance" means any substance regulated under any Environmental Law including those listed, defined, designated, classified or regulated as a waste, pollutant or contaminant or as hazardous, toxic, radioactive or dangerous or any other term of similar import under any Environmental Law, including petroleum compounds and mold.

Section 3.9 Employee Benefit Plans.

(a) Section 3.9(a) of the Company Disclosure Letter sets forth a true and complete list of each Company Benefit Plan (other than Company Non-U.S. Benefit Plans). For purposes of this Agreement, the term "Company Benefit Plan" shall mean any material employee or director benefit plan, arrangement or agreement, including, without limitation, any such plan that is an employee welfare benefit plan within the meaning of Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), an employee pension benefit plan within the meaning of Section 3(2) of ERISA (whether or not such plan is subject to ERISA) or a bonus, incentive, deferred compensation, vacation, stock purchase, stock option, stock-based severance, employment, change of control or fringe benefit plan, program or agreement that is sponsored or maintained by the Company or any of its Subsidiaries to or for the benefit of the current or former employees, independent contractors or directors of the Company and its Subsidiaries. The fifth Recital to this Agreement is true and accurate.

(b) The Company has heretofore made available to Parent true and complete copies of each of the Company Benefit Plans (other than Company Non-U.S. Benefit Plans) and (i) each writing constituting a part of such Company Benefit Plan, including all amendments thereto; (ii) the most recent (A) Annual Reports (Form 5500 Series) and accompanying schedules, if any, (B) audited financial statements and (C) actuarial valuation reports; (iii) the most recent determination letter from the Internal Revenue Service ("IRS") (if applicable) for such Company Benefit Plan; and (iv) any related trust agreement or funding instrument now in effect or required in the future as a result of the transactions contemplated by this Agreement.

(c) Other than with respect to Company Non-U.S. Benefit Plans, (i) each of the Company Benefit Plans has been established, operated and administered in all material respects with applicable Laws, including, but not limited to, ERISA, the Code and, in each case, the regulations thereunder; (ii) each of the Company Benefit Plans intended to be "qualified" within the meaning of Section 401(a) of the Code has received a favorable determination letter from the IRS, and to the Knowledge of the Company, there are no existing circumstances or events that have occurred that would reasonably be expected to result in the revocation of such

letter; (iii) no Company Benefit Plan is subject to Title IV of ERISA; (iv) no Company Benefit Plan provides health, life insurance or disability benefits (whether or not insured), with respect to current or former employees or directors of the Company or its Subsidiaries beyond their retirement or other termination of service, other than (A) coverage mandated by applicable Law or (B) death benefits or retirement benefits under any "employee pension plan" (as such term is defined in Section 3(2) of ERISA); (v) no material liability under Title IV of ERISA has been incurred by the Company, its Subsidiaries or any ERISA Affiliate of the Company that has not been satisfied in full, and, to the Knowledge of the Company, no condition exists that presents a risk to the Company, its Subsidiaries or any ERISA Affiliate of the Company of incurring a material liability thereunder; (vi) no Company Benefit Plan is a "multiemployer pension plan" (as such term is defined in Section 3(37) of ERISA) or a plan that has two or more contributing sponsors at least two of whom are not under common control, within the meaning of Section 4063 of ERISA; (vii) all material contributions or other material amounts payable by the Company or its Subsidiaries as of the date hereof with respect to each Company Benefit Plan in respect of current or prior plan years have been paid or accrued in accordance with GAAP; (viii) neither the Company nor its Subsidiaries has engaged in a transaction in connection with which the Company or its Subsidiaries would reasonably be expected to be subject to either a material civil penalty assessed pursuant to Section 409 of ERISA or a material Tax imposed pursuant to Section 4975 of the Code; and (ix) there are no material pending, threatened or, to the Knowledge of the Company, anticipated claims (other than routine claims for benefits) by, on behalf of or against any of the Company Benefit Plans or any trusts related thereto which would reasonably be expected to result in any liability of the Company or any of its Subsidiaries. "ERISA Affiliate" means, with respect to any entity, trade or business, any other entity, trade or business that is a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes the first entity, trade or business, or that is a member of the same "controlled group" as the first entity, trade or business pursuant to Section 4001(a)(14) of ERISA.

(d) No Company Benefit Plan exists that as a result of the consummation of the transactions contemplated by this Agreement will, either alone or in combination with another event, (i) entitle any employee or officer of the Company or any of its Subsidiaries to severance pay or any increase in severance pay, unemployment compensation or any other payment, except as expressly provided in this Agreement or as required by applicable Law, (ii) accelerate the time of payment or vesting, or result in any payment or funding of compensation or benefits, or increase the amount of compensation or benefits due to any such employee, consultant or officer, except as expressly provided in this Agreement, (iii) result in payments which would not be deductible under Section 162(m) or Section 280G of the Code, or (iv) limit or restrict the right to merge, amend or terminate any of the Company Benefit Plans.

(e) Except as would not have a Company Material Adverse Effect, (i) all Company Benefit Plans maintained outside of the U.S. primarily for the benefit of employees working outside of the U.S. (such Company Benefit Plans, "Company Non-U.S. Benefit Plans") comply with applicable local Law, (ii) the Company and its Subsidiaries have no unfunded liabilities with respect to any such Company Non-U.S. Benefit Plan and (iii) as of the date of this Agreement, there is no pending or, to the knowledge of the Company, threatened litigation relating to Company Non-U.S. Benefit Plans. As soon as practicable following the date hereof (but no later than 30 days after the date hereof), the Company shall provide to Parent a list of all Company Non-U.S. Benefit Plans.

(f) The Company has used reasonable efforts to maintain and administer, in good faith compliance with the requirements of Section 409A of the Code and any regulations or other guidance issued thereunder, all Company Benefit Plans that are "nonqualified deferred compensation plans" (within the meaning of Section 409A of the Code).

(g) Except for any amendments entered into on the date hereof and previously provided to Parent, the retention agreements that the Company entered into on July 27, 2007, as set forth on Section 3.9(a) of the Company Disclosure Letter, have not been amended or restated from the versions entered into on July 27, 2007.

Section 3.10 Absence of Certain Changes or Events. Since June 30, 2006, except as otherwise required or contemplated by this Agreement, (a) the business of the Company and its Subsidiaries has been conducted, in all material respects, in the ordinary course of business consistent with past practice and (b) there have not been any facts, circumstances, events, changes, effects or occurrences that have had or would, individually or in the aggregate, have a Company Material Adverse Effect.

Section 3.11 Investigations; Litigation.

(a) There are no (i) actions, claims, suits, oppositions, cancellations, arbitrations, objections, investigations or proceedings (each, an "Action") pending (or, to the Knowledge of the Company, threatened) against or affecting the Company or any of its Subsidiaries, or any of their respective properties, at Law or in equity (and, to the Knowledge of the Company, no basis for any such Action exists), or (ii) Orders of any Governmental Entity against the Company or any of its Subsidiaries, in each case of clause (i) or (ii), which would, individually or in the aggregate, have a Company Material Adverse Effect. As of the date hereof, there is no Action pending against (or, to the Knowledge of the Company, threatened) the Company that in any manner challenges or seeks to prevent, enjoin, alter or materially delay the Merger.

(b) Neither the Company nor any of its Subsidiaries is subject to any cease-and-desist or other Order or enforcement action issued by, or is a party to any written agreement, consent agreement or memorandum of understanding with, or is party to any commitment letter or similar undertaking to, or is subject to any Order or directive by, or has been since January 1, 2005, a recipient of any supervisory letter from, or has been ordered to pay any material civil money penalty by, or since January 1, 2005, has adopted any policies, procedures or board resolutions at the request or suggestion of any Governmental Entity, in each case that currently restricts in any material respect the conduct of its business or that in any material manner relates to its capital adequacy, its ability to pay dividends, its credit or risk management policies, its management or its business (each, whether or not set forth in the Company Disclosure Letter, a "Company Regulatory Agreement"), nor has the Company or any of its Subsidiaries been advised since January 1, 2005, by any Governmental Entity that it is considering issuing, initiating, ordering or requesting any such Company Regulatory Agreement.

Section 3.12 Company Information. The Proxy Statement will not at the time of the mailing of the Proxy Statement to the stockholders of the Company, at the times of the Company Meeting, and at the time of any amendments thereof or supplements thereto, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided* that no representation is made by the Company with respect to information supplied by or related to or the sufficiency of disclosures related to, Parent, Merger Sub or any Affiliate or representative of Parent or Merger Sub. The Proxy Statement will comply as to form in all material respects with the requirements of the Exchange Act, except that no representation is made by the Company with respect to information supplied by or related to Parent, Merger Sub or any Affiliate or representative of Parent or Merger Sub.

Section 3.13 Tax Matters.

(a)(i) The Company and each of its Subsidiaries have prepared and timely filed (taking into account any valid extension of time within which to file) all material Tax Returns required to be filed by any of them and all such Tax Returns are complete and accurate in all material respects,

(ii) the Company and each of its Subsidiaries have timely paid all material Taxes that are required to be paid by any of them (whether or not shown on any Tax Return), except with respect to matters contested in good faith through appropriate proceedings and for which adequate reserves have been established on the financial statements of the Company and its Subsidiaries in accordance with GAAP,

(iii) the U.S. consolidated federal income Tax Returns of the Company through the Tax year ending June 30, 2004 have been examined and the U.S. consolidated federal income Tax Return of the Company for the Tax year ending June 30, 2005 is as of the date hereof being examined by the IRS (or the period for assessment of the Taxes in respect of which such Tax Return was required to be filed has expired),

(iv) all assessments for material Taxes due with respect to completed and settled examinations or any concluded litigation have been fully paid,

(v) no Taxing authority has asserted any adjustment that would result in an additional material Tax on the Company or any of its Subsidiaries which has not been fully paid,

(vi) there is no material pending audit, examination, investigation, dispute, proceeding or claim relating to any Tax on the Company or any of its Subsidiaries (collectively, a "Proceeding"),

(vii) there are no Liens for material Taxes on any of the assets of the Company or any of its Subsidiaries other than statutory Liens for Taxes not yet due and payable or Liens for Taxes that are being contested in good faith through appropriate proceedings and for which adequate reserves have been established on the financial statements of the Company and its Subsidiaries in accordance with GAAP,

(viii) none of the Company or any of its Subsidiaries has been a "controlled corporation" or a "distributing corporation" in any distribution that was purported or intended to be governed by Section 355 of the Code (or any similar provision of state, local or foreign Law) occurring during the two-year period ending on the date hereof,

(ix) the Company and its Subsidiaries have withheld or collected and paid over to the appropriate Taxing authority or deposited in accordance with applicable Laws all material Taxes required to have been withheld or collected and paid or deposited in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party,

(x) except as disclosed in Section 3.13(a)(x) of the Company Disclosure Letter, neither the Company nor any of its Subsidiaries has executed any outstanding waiver of any statute of limitations on or extension of the period for the assessment or collection of any Tax, and no such waivers of statutes of limitation or extensions have been requested from the Company or any Subsidiary,

(xi) neither the Company nor any of its Subsidiaries (a) has ever been a member of an affiliated group (within the meaning of Section 1504(a) of the Code) filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company), (b) owes any material amount under any Tax sharing, indemnification or allocation agreement (other than a written agreement between or among the Company and its Subsidiaries), (c) is or has ever been a party to any Tax sharing or Tax allocation agreement, arrangement or understanding (other than a written agreement, written arrangement or written understanding between or among the Company and its Subsidiaries) or (d) has any material liability for the Taxes of any Person (other than the Company or any of its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar Law),

(xii) no closing agreements, private letter rulings, technical advance memoranda or similar agreement or rulings have been entered into or issued by any taxing authority with respect to the Company or any Subsidiary, and neither the Company nor any of its Subsidiaries have outstanding any ruling request, request for consent to change a method of accounting, subpoena or request for information with or from a Taxing authority in connection with any Tax matter,

(xiii) except as disclosed in Section 3.13(a)(xiii) of the Company Disclosure Letter, neither the Company nor any of its Subsidiaries has or has ever had a fixed place of business or permanent establishment in any foreign country, and

(xiv) neither the Company nor any of its Subsidiaries (including current or former subsidiaries) has been a party to any transaction which the IRS has determined to be a "listed transaction" for purposes of Treasury Regulations Section 1.6011-4(b)(2).

(b) As used in this Agreement, (i) "Tax" or "Taxes" means any and all federal, state, local or foreign taxes, imposts, levies or other like assessments, including all net income,

gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, customs duties, environmental windfall profits, unclaimed funds and other taxes of any kind whatsoever, including any and all interest, penalties, additions to tax or additional amounts imposed by any Governmental Entity in connection with or with respect thereto and any interest in respect of such additions and penalties, and (ii) "Tax Return" means any return, report or similar filing (including any attached schedules, supplements and additional or supporting material) filed or required to be filed with respect to Taxes, including any information return, claim for refund, amended return, consolidated federal income tax return or declaration of estimated Taxes (and including any amendments with respect thereto).

Section 3.14 Labor Matters. Neither the Company nor any of its Subsidiaries is a party to, or bound by, any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization applicable to their respective employees, excluding, for this purpose, any non-U.S. industry-wide multiemployer bargaining agreement. Neither the Company nor any of its Subsidiaries is subject to a dispute, strike or work stoppage, except as would not, individually or in the aggregate, result in any material liability to the Company or any of its Subsidiaries. To the Knowledge of the Company, there are no organizational efforts with respect to the formation of a collective bargaining unit presently being made or threatened involving employees of the Company or any of its Subsidiaries, except as would not, individually or in the aggregate, result in any material liability to the Company or any of its Subsidiaries.

Section 3.15 Intellectual Property.

(a) Section 3.15(a) of the Company Disclosure Letter sets forth a true and complete list of all (i) registered Intellectual Property owned by the Company and its Subsidiaries, indicating for each registered item the registration or application number, the record owner and the applicable filing jurisdiction, and (ii) material unregistered trademarks owned by the Company and its Subsidiaries.

(b) Either the Company or a Subsidiary of the Company owns, or is licensed or otherwise possesses adequate rights to use, all Intellectual Property material to their respective businesses as currently conducted ("Company IP") free and clear of any Liens (other than, for the avoidance of doubt, obligations to pay royalties in the case of licensed in Intellectual Property), and all such rights shall survive unchanged the consummation of the transactions contemplated in this Agreement. There are no pending or, to the Knowledge of the Company, threatened claims by any person alleging infringement, misappropriation or other violation by the Company or any of its Subsidiaries of any other person's Intellectual Property. To the Knowledge of the Company, the conduct of the business of the Company and its Subsidiaries and the Company IP does not misappropriate, infringe or otherwise violate any Intellectual Property of any other person. Neither the Company nor any of its Subsidiaries has made any claim for misappropriation, infringement or other violation by others of its rights in, to or in connection with the Intellectual Property of the Company or any of its Subsidiaries. To the Knowledge of the Company, no person is misappropriating, infringing or otherwise violating any Intellectual Property of the Company or any of its Subsidiaries.

(c) Each IP Contract is valid and binding on the Company and any of its Subsidiaries to the extent such Subsidiary is a party thereto, as applicable, and in full force and effect. Neither the Company nor any of its Subsidiaries nor, to the Knowledge of the Company, any other party, is in breach or default under any such IP Contract and the Company and its Subsidiaries know of no valid basis for the same. No party to any IP Contract has given the Company or its Subsidiaries notice of its intention to cancel, terminate, change the scope of rights under, or fail to renew any IP Contract. The transactions contemplated by this Agreement will not place the Company or its Subsidiaries in breach or default of any IP Contract, or trigger any modification, termination or acceleration or cause any additional fees to be due thereunder, or create any license under or Lien on Intellectual Property owned by the Parent or its Subsidiaries.

(d) The Company and its Subsidiaries (i) take reasonable actions to protect, maintain and preserve the (A) operation and security of their IT Assets, (B) confidentiality of data, information, and Trade Secrets owned, held or used by the Company or its Subsidiaries, and (C) Intellectual Property material to their respective businesses (including by having and enforcing a policy that appropriate prior and current employees, consultants and agents, execute non-disclosure and invention assignment agreements for the benefit of the Company and/or its Subsidiaries), (iii) abide by all Laws and internal policies regarding the collection, use and disclosure of personally identifiable and other confidential information, including customer and client information, and (iv) are not subject to any pending or, to the Knowledge of the Company, threatened claim that alleges a breach of any of the foregoing. To the Knowledge of the Company, none of the Company's or its Subsidiaries' current employees has any patents issued or applications pending for any device, process, design or invention of any kind now used or needed by the Company in furtherance of its business, which patents or applications have not been assigned to the Company.

(e) Operations at the Company's and its Subsidiaries' data centers have not been interrupted or failed within the past three (3) years in a manner that materially impaired the Company's or its Subsidiaries' ability to deliver the Company's core products and services to their respective customers. The Company IP (i) is not subject to any pending or outstanding Action or Order, and to the Knowledge of the Company, there are no Actions or Orders threatened, that question or seek to cancel, limit, challenge or modify the ownership, validity, enforceability, registerability, use or right to use the Company IP, or that would restrict, impair or otherwise materially adversely affect the Company's or its Subsidiaries' use thereof or their rights thereto, and (ii) that is owned or exclusively licensed by the Company or its Subsidiaries, to the Knowledge of the Company, is valid and enforceable.

Section 3.16 Property. The Company and each of its Subsidiaries has good and valid title to all its owned real property and valid leasehold interests in all its leased properties and good title to all its other owned properties and assets in each case as reflected in the most recent balance sheet included in the Company SEC Documents, except for properties and assets that have been disposed of in the ordinary course of business since the date of such balance sheet, free and clear of all Liens of any nature whatsoever, except (a) Liens for current taxes, payments of which are not yet delinquent, (b) Liens permissible under any applicable loan agreements and indentures, and (c) such imperfections in title and easements and encumbrances as are not substantial in character, amount or extent and do not materially detract from the value, or

interfere with the present use of the property subject thereto or affected thereby, or otherwise materially impair the Company's or such Subsidiary's business operations (in the manner presently carried on by the Company or such Subsidiary). All leases under which the Company or any of its Subsidiaries leases any real or personal property are in good standing, valid and effective in accordance with their respective terms, and there is not, under any of such leases, any existing default and no event has occurred which, with notice, lapse of time or both would constitute a breach, violation or default by any of the Company or its Subsidiaries or permit termination, modification, acceleration or repudiation by any third party thereunder, except for, in each case, any ineffectiveness, invalidity, failure to be binding, unenforceability, breach, violation, default, termination, modification, acceleration or repudiation that would not, individually or in the aggregate, have a Company Material Adverse Effect.

Section 3.17 Opinion of Financial Advisor. The Board of Directors of the Company has received the opinion of Goldman, Sachs & Co., dated as of the date hereof, to the effect that, as of the date hereof, the Merger Consideration is fair to the holders of the Company Common Stock from a financial point of view.

Section 3.18 Required Vote of the Company Stockholders. Assuming the accuracy of the representations and warranties in Section 4.8, the affirmative vote of the holders of outstanding shares of Company Common Stock, voting together as a single class, representing at least a majority of all the votes then entitled to vote at a meeting of stockholders, is the only vote of holders of securities of the Company which is required to approve this Agreement, the Merger and the other transactions contemplated hereby (the "Company Stockholder Approval").

Section 3.19 Material Contracts.

(a) Except for this Agreement, the Company Benefit Plans or as filed with the SEC prior to the date hereof, neither the Company nor any of its Subsidiaries is a party to or bound by, as of the date hereof, any Contract (i) which is a "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC) to the Company; (ii) which constitutes a Contract or commitment relating to indebtedness for borrowed money or the deferred purchase price of property (in either case, whether incurred, assumed, guaranteed or secured by any asset) in excess of $3 million; (iii) which contains any provision that would by its terms materially restrict or alter the conduct of business of, or purport materially to restrict or alter the conduct of business of, the Company or any of its Affiliates (including, following the consummation of the Merger, Parent or, to the Company's Knowledge, any Affiliate of Parent); (iv) which contains a standstill or similar agreement pursuant to which the Company or any of its Subsidiaries has agreed not to acquire assets or securities of the other party or any of its Affiliates; or (v) which contains any provision that would limit in any material respect the ability of the Company and its Subsidiaries to solicit prospective employees or customers or would so limit or purport to limit the ability of Parent or its Affiliates to do so after the Effective Time (all contracts of the type described in this Section 3.19(a) being referred to herein as "Company Material Contracts").

(b) A true and complete copy of each Company Material Contract has been made available to Parent prior to the date of this Agreement and (i) each such Company Material Contract is a valid and binding agreement of the Company or one or more of its Subsidiaries, as the case may be, and is in full force and effect, and (ii) neither the Company nor any of its Subsidiaries nor, to the Knowledge of the Company, any other party thereto, is in default or breach in any material respect under the terms of any such Company Material Contract.

Section 3.20 Finders or Brokers. Except for Goldman, Sachs & Co., neither the Company nor any of its Subsidiaries has engaged any investment banker, broker or finder in connection with the transactions contemplated by this Agreement who might be entitled to any fee or any commission in connection with or upon consummation of the Merger or the other transactions contemplated hereby.

Section 3.21 State Takeover Statutes; Rights Plan. The Board of Directors of the Company has approved this Agreement, and the transactions contemplated hereby as required to render inapplicable to this Agreement and the transactions contemplated hereby the restrictions on "business combinations" set forth in Section 203 of the DGCL and, to the Knowledge of the Company, similar "moratorium," "control share," "fair price," "takeover" or "interested stockholder" laws (in each case assuming the accuracy of the representations and warranties in Section 4.8). The Company has taken all action necessary so that the entering into of this Agreement and the consummation of the transactions contemplated hereby do not and will not result in the grant of any rights to any person under the Company Rights Agreement or enable or require the rights issuable thereunder to be exercised, distributed or triggered.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except (i) as disclosed in, and reasonably apparent from, any report, schedule, form or other document filed with, or furnished to, the SEC and publicly available prior to the date of this Agreement (collectively, the "Parent Filed SEC Documents") (excluding, in each case, any disclosures set forth in any risk factor section and in any section relating to forward-looking statements to the extent that they are cautionary, predictive or forward-looking in nature) or (ii) as disclosed in the like-numbered section of the disclosure letter delivered by Parent to the Company contemporaneously with the execution of this Agreement (the "Parent Disclosure Letter," it being agreed that disclosure of any item in any section of the Company Disclosure Letter shall also be deemed disclosure with respect to any other section of this Agreement to which the relevance of such item is reasonably apparent), Parent and Merger Sub jointly and severally represent and warrant to the Company as follows:

Section 4.1 Qualification; Organization.

(a) Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization. Each of Parent and Merger Sub has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted, except when the failure to have such power or authority would not, individually or in the aggregate, have a Parent Material Adverse Effect. True, complete and correct copies of the articles of incorporation of Parent (the "Parent Charter") and the by-laws of Parent (the "Parent By-laws"), as in effect as of the date of this Agreement, were made available to the Company prior to the date of this Agreement and the Parent Charter and Parent By-laws are in effect in such form.

(b) Each of Parent and Merger Sub is qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified or in good standing is not, individually or in the aggregate, reasonably likely to have a Parent Material Adverse Effect. The organizational or governing documents of the Parent and Merger Sub, as provided to the Company prior to the date of this Agreement, are in full force and effect and neither Parent nor Merger Sub is in violation of its organizational or governing documents in any material respect.

Section 4.2 Corporate Authority Relative to This Agreement; No Violation

(a) Each of Parent and Merger Sub has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Board of Directors of Parent and Merger Sub and no other corporate proceedings on the part of Parent or Merger Sub are necessary to authorize the consummation of the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Parent and Merger Sub and, assuming this Agreement constitutes the valid and binding agreement of the Company, this Agreement constitutes the valid and binding agreement of Parent and Merger Sub, enforceable against each of Parent and Merger Sub in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally and general equitable principles (whether considered in a proceeding in equity or at Law).

(b) Other than in connection with or in compliance with (i) the DGCL, (ii) the Exchange Act, (iii) the HSR Act, (iv) any antitrust, competition or similar laws of any foreign jurisdiction, (v) such filings and approvals as are required to be made or obtained under the money transmitter or money services business Laws of various states and (vi) the approvals set forth on Section 4.2(b) of the Parent Disclosure Letter (collectively, the "Parent Approvals"), no authorization, consent or approval of, or filing with, any Governmental Entity is necessary for the consummation by Parent or Merger Sub of the transactions contemplated by this Agreement, except for such authorizations, consents, approvals or filings, that, if not obtained or made, would not, individually or in the aggregate, have a Parent Material Adverse Effect.

(c) The execution, delivery and performance by Parent and Merger Sub of this Agreement does not, and the consummation of the transactions contemplated hereby and compliance with the provisions hereof do not and will not (i) result in any violation of, breach or default (with or without notice or lapse of time, or both) under, require consent under, or give rise to any modification under or right of termination, cancellation, penalty or acceleration of any obligation or remedy, or to the loss of any benefit or any additional payment under any loan, guarantee of indebtedness or credit agreement, note, bond, mortgage, indenture, lease, agreement, contract, instrument, permit, concession, franchise, right, license, arrangement or other obligations to which Parent or any of its Subsidiaries is a party or to which their respective properties and assets are bound, or result in the creation of any Lien upon any of the properties or assets of Parent or any of its Subsidiaries, (ii) contravene, conflict with or result in any violation of any provision of the Parent Charter or Parent By-laws or other equivalent organizational

document, in each case as amended, of Parent's Subsidiaries or (iii) assuming that the consents and approvals referred to in Section 4.2(b) are duly obtained, contravene, conflict with or result in any violation of any applicable Laws, other than, in the case of clauses (i) and (iii), as would not, individually or in the aggregate, have a Parent Material Adverse Effect.

Section 4.3 Parent Information. None of the information supplied or to be supplied by Parent or Merger Sub in writing for inclusion or incorporation by reference in the Proxy Statement will at the time of the mailing of the Proxy Statement to the stockholders of the Company, at the time of the Company Meeting, and at the time of any amendments thereof or supplements thereto, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided* that no representation is made by Parent with respect to information supplied by or related to or the sufficiency of disclosures related to the Company or any Affiliate or representative of the Company.

Section 4.4 Availability of Funds. As of the Closing Date Parent shall have or have immediately available to it sufficient funds to consummate the Merger and the other transactions contemplated hereby and required for the satisfaction of all of Parent's and Merger Sub's obligations under this Agreement, including the payment of the Merger Consideration and the consideration in respect of the Company Stock Options and the Company Restricted Shares under Section 2.3.

Section 4.5 Ownership and Operations of Merger Sub. As of the date of this Agreement, the authorized capital stock of Merger Sub consists of 1,000 shares of common stock, par value $0.01 per share, 100 shares of which are validly issued and outstanding. All of the issued and outstanding capital stock of Merger Sub is, and at the Effective Time will be, owned by Parent or a direct or indirect wholly owned Subsidiary of Parent. Merger Sub has not conducted any business other than (x) incident to its formation for the sole purpose of carrying out the transactions contemplated by this Agreement and (y) in relation to this Agreement, the Merger and the other transactions contemplated hereby and the financing of such transactions.

Section 4.6 Finders or Brokers. Except for Credit Suisse Securities (USA), neither Parent nor any of its Subsidiaries has engaged any investment banker, broker or finder in connection with the transactions contemplated by this Agreement who might be entitled to any fee or any commission in connection with or upon consummation of the Merger or the other transactions contemplated hereby.

Section 4.7 Ownership of Shares. Neither Parent nor Merger Sub owns any Shares, beneficially, of record or otherwise, as of the date hereof or at any time prior to the time that is immediately prior to the Effective Time.

Section 4.8 No Interested Shareholder. Prior to the Board of Directors of the Company approving this Agreement, the Merger and the other transactions contemplated hereby for purposes of the applicable provisions of the DGCL, neither Parent nor Merger Sub, alone or together with any other Person, was at any time, or became, an "interested shareholder" thereunder or has taken any action that would cause any anti-takeover statute under the DGCL to be applicable to this Agreement, the Merger, or any transactions contemplated by this Agreement.

Section 4.9 Investigations; Litigation. There are no Actions pending (or, to the Knowledge of Parent, threatened) against or affecting Parent or any of its Subsidiaries, or any of their respective properties, at Law or in equity (and, to the Knowledge of Parent, no basis for any such Action exists), or (ii) Orders of any Governmental Entity against Parent or any of its Subsidiaries, in each case of clause (i) or (ii), which would, individually or in the aggregate, have a Parent Material Adverse Effect. As of the date hereof, there is no Action pending (or, to the Knowledge of Parent, threatened) against Parent that in any manner challenges or seeks to prevent, enjoin, alter or materially delay the Merger.

ARTICLE V

COVENANTS AND AGREEMENTS

Section 5.1 Conduct of Business.

(a) From and after the date hereof and prior to the Effective Time or the date, if any, on which this Agreement is earlier terminated pursuant to Section 7.1 (the "Termination Date"), and except (i) as may be otherwise required by applicable Law, (ii) with the prior written consent of Parent (not to be unreasonably withheld or delayed), (iii) as expressly contemplated or permitted by this Agreement or (iv) as disclosed in Section 5.1 of the Company Disclosure Letter, the Company shall, and shall cause each of its Subsidiaries to, (i) conduct its business in all material respects in the ordinary course consistent with past practices, (ii) use commercially reasonable efforts to maintain and preserve intact its business organization and advantageous business relationships and to retain the services of its key officers and key employees and (iii) take no action which is intended to or which would reasonably be expected to materially adversely affect or materially delay the ability of any of the parties hereto to obtain any necessary approvals of any regulatory agency or other Governmental Entity required for the transactions contemplated hereby, to perform its covenants and agreements under this Agreement or to consummate the transactions contemplated hereby or otherwise materially delay or prohibit consummation of the Merger or other transactions contemplated hereby; *provided, however,* that no action by the Company or its Subsidiaries with respect to matters specifically addressed by any provision of Section 5.1(b) shall be deemed a breach of this sentence unless such action constitutes a breach of such provision of Section 5.1(b).

(b) The Company agrees with Parent that between the date hereof and the earlier of the Effective Time and the Termination Date, except as set forth in Section 5.1(b) of the Company Disclosure Letter or as otherwise expressly contemplated or expressly permitted by this Agreement, the Company shall not, and shall not permit any of its Subsidiaries to, without the prior written consent of Parent (not to be unreasonably withheld or delayed):

(i) adjust, split, combine or reclassify any capital stock or otherwise amend the terms of its capital stock;

(ii) make, declare or pay any dividend, or make any other distribution on, or directly or indirectly redeem, purchase or otherwise acquire or encumber or pledge any shares of its capital stock or any securities or obligations convertible (whether currently convertible or convertible only after the passage of time or the occurrence of

certain events) into or exchangeable for any shares of its capital stock, except in connection with the exercise of stock options or settlement of other awards or obligations outstanding as of the date hereof (or permitted hereunder to be granted after the date hereof); *provided* that this Section 5.1(b)(ii) shall not apply dividends or distributions paid in cash by Subsidiaries to the Company or to other Subsidiaries;

(iii) grant any person any right to acquire any shares of its capital stock;

(iv) issue, sell, dispose of or otherwise permit to become outstanding, or authorize or propose the creation of, any additional shares of capital stock or any securities or obligations convertible (whether currently convertible or convertible only after the passage of time or the occurrence of certain events) into or exchangeable for any shares of its capital stock, except pursuant to the exercise of Warrants or stock options or settlement of other awards outstanding as of the date hereof (or permitted hereunder to be granted after the date hereof) and in accordance with the terms of such instruments or as required under any Company Benefit Plan;

(v) purchase, sell, transfer, mortgage, encumber or otherwise dispose of (i) any properties or assets having a value in excess of $3 million in the aggregate (other than sales of inventory, or commodity, purchase, sale or hedging agreements, in each case in the ordinary course of business), or (ii) any material Company IP owned by the Company or its Subsidiaries, except as disclosed in Section 5.1(b)(v) of the Company Disclosure Letter;

(vi) make any capital expenditures not contemplated by the capital expenditure budget previously made available to Parent having an aggregate value in excess of $2.0 million for any 12 consecutive month period;

(vii) incur, assume, guarantee, or become obligated with respect to any debt, excluding intercompany debt, other than settlement obligations incurred in the ordinary course of business and other than pursuant to the Company's revolving credit facility or under short-term debt or overdraft facilities, in each case as in effect as of the date hereof and as renewed on substantially similar terms from time to time;

(viii) make any investment in excess of $3 million in the aggregate, whether by purchase of stock or securities, contributions to capital, property transfers, or entering into binding agreements with respect to any such investment or acquisition;

(ix) make any acquisition of another Person or business, whether by purchase of stock or securities, contributions to capital, property transfers, or entering into binding agreements with respect to any such investment or acquisition;

(x) except in the ordinary course of business consistent with past practice, enter into, renew, extend, materially amend or terminate any Company Material Contract or Contract which if entered into prior to the date hereof would be a Company Material Contract other than any Contract relating to indebtedness that would not be prohibited under clause (vii) of this Section 5.1(b) or Contracts relating to compensation or benefits or Company Benefit Plans to the extent not prohibited under clause (xi) of this Section 5.1(b);

(xi) except as required by Law (including Section 409A of the Code) or by Contracts in existence as of the date hereof or by Company Benefit Plans or as disclosed in Section 5.1(b)(xi) of the Company Disclosure Letter, (A) increase in any manner the compensation, bonus, severance or benefits of, pay any bonus to, or make any new equity-based awards to, any of its employees, directors, consultants, independent contractors or service providers except in the ordinary course of business consistent with past practice, (B) pay, grant or provide any pension, severance or retirement benefits not required by any existing plan or agreement to any employees, directors, consultants, independent contractors or service providers, (C) enter into, amend (other than amendments that do not materially increase the cost to the Company or any of its Subsidiaries of maintaining the applicable compensation or benefit program, policy, arrangement or agreement), adopt, implement or otherwise commit itself to, or terminate any compensation or benefit plan, program, policy, arrangement or agreement including any pension, retirement, profit-sharing, bonus or other employee benefit or welfare benefit plan, policy, arrangement or agreement or employment or consulting agreement with or for the benefit of any employee, director, consultant, independent contractor or service provider or amend the terms of any outstanding equity-based award, or (D) accelerate the vesting, or payment, or fund or secure the payment of, or the lapsing of restrictions with respect to, any compensation, stock options other stock-based compensation or other benefits;

(xii) waive, release, assign, settle or compromise any claim, action or proceeding, other than waivers, releases, assignments, settlements or compromises that involve only the payment of monetary damages not in excess of $3 million in the aggregate (excluding amounts to be paid under existing insurance policies or renewals thereof) or otherwise pay, discharge or satisfy any claims, liabilities or obligations in excess of such amount, in each case, other than in the ordinary course consistent with past practice;

(xiii) amend or waive any provision of the Company Charter or the Company By-laws or other equivalent organizational documents of the Company's Subsidiaries or of the Company Rights Agreement or, in the case of the Company, enter into any agreement with any of its stockholders in their capacity as such;

(xiv) take any action that is intended or would reasonably be expected to, individually or in the aggregate with other such actions, result in any of the conditions to the Merger set forth in ARTICLE VI not being satisfied;

(xv) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of such entity;

(xvi) implement or adopt any material change in its financial accounting principles, practices or methods, other than as required by GAAP, the Company's outside auditors, applicable Law or regulatory guidelines;

(xvii) enter into any new line of business or materially change its risk, investment, asset liability management and operating policies, except as required by applicable Law;

(xviii) let lapse, abandon or cancel any registered Company IP owned by the Company or its Subsidiaries except, if consistent with reasonable business judgment, such Company IP is no longer useful in the business of the Company or its Subsidiaries;

(xix) enter into any closing agreement with respect to material Taxes, settle or compromise any material liability for Taxes, make, revoke or change any material Tax election, agree to any adjustment of any material Tax attribute, file or surrender any claim for a material refund of Taxes, execute or consent to any waivers extending the statutory period of limitations with respect to the collection or assessment of material Taxes, file any amended Tax Return or obtain any Tax ruling, change any annual Tax accounting period, change any method of Tax accounting or file for any change in accounting method; or

(xx) agree to take, make any commitment to take, or adopt any resolutions of its Board of Directors in support of, any of the actions prohibited by this Section 5.1(b).

(c) From and after the date hereof and prior to the earlier of the Effective Time or the Termination Date and except (i) as may be otherwise required by applicable Law, (ii) with the prior written consent of the Company (not to be unreasonably withheld or delayed) or (iii) as expressly contemplated or permitted by this Agreement, Parent shall not, and shall not permit any of its Subsidiaries to, (a) take any action which is intended to or which would reasonably be expected to materially adversely affect or materially delay the ability of any of the parties hereto to obtain any necessary approvals of any regulatory agency or other Governmental Entity required for the transactions contemplated hereby, to perform its covenants and agreements under this Agreement or to consummate the transactions contemplated hereby or otherwise materially delay or prohibit consummation of the Merger or other transactions contemplated hereby; or (b) agree to take, make any commitment to take, or adopt any resolutions of its Board of Directors in support of, any of the actions prohibited by this Section 5.1(c).

(d) The Company shall not amend or modify, or waive any provision of, any Employment Agreement, without the prior written consent of Parent.

Section 5.2 Access.

(a) From the date hereof until the Effective Time, upon reasonable notice and subject to the requirements and prohibitions of applicable Laws, the Company shall provide to Parent, its counsel, financial advisors, auditors and other authorized representatives reasonable access during normal business hours to the offices, properties, books, records and personnel of the Company and its Subsidiaries, and furnish to Parent, its counsel, financial advisors, auditors and other authorized representatives such other information concerning its business, properties and personnel as such persons may reasonably request, except that nothing herein shall require a

party or any of its Subsidiaries to disclose any information that would reasonably be expected to cause a violation of any agreement to which such party or any of its Subsidiaries is a party or would cause a risk of a loss of privilege to such party or any of its Subsidiaries. Any investigation pursuant to this Section 5.2(a) shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the Company and its Subsidiaries. No information or knowledge obtained by a party in any investigation pursuant to this Section 5.2(a) shall affect or be deemed to modify any representation or warranty made by the Company in ARTICLE III or by Parent in ARTICLE IV.

(b) The Company shall provide, and shall cause its Subsidiaries and its and their respective Representatives to provide, to Parent and its lenders such historical, financial and other business information regarding the Company and its Subsidiaries or Parent may reasonably request, and to provide reasonable cooperation to Parent in connection with the Financing as may be reasonably requested by Parent, including (i) using reasonable efforts to cause to be prepared and provided to Parent such financial information and data and financial statements of the Company as may be reasonably required in connection with the Financing, (ii) causing senior executives of the Company, in each case to the extent reasonably required, to (A) participate in meetings, presentations, road shows, due diligence sessions with prospective lenders and sessions with rating agencies, (B) assist with the preparation of materials for rating agency presentations, offering documents, business projections and similar marketing documents in connection with the Financing, and (C) assist in negotiating the documentation for the Financing, including reviewing and commenting on documentation and participating in drafting and negotiating sessions with the lenders, (iii) using reasonable efforts to obtain officers' certificates, legal opinions, accountants' comfort letters and consents to the use of audit reports in connection with the Financing, and (iv) executing and delivering, at or immediately prior to the Effective Time, definitive financing documents in connection with the Financing, provided in each case that such requested cooperation does not unreasonably interfere with the ongoing operations of the Company and its Subsidiaries. Notwithstanding anything in this section to the contrary, none of the Company or any Subsidiary thereof shall be required to pay any commitment or other similar fee or incur any unreimbursed liability in connection with the Financing prior to the Effective Time. For purposes of this Section 5.2(b), "Financing" means the financing that is referred to in the Commitment Letter, dated on or about the date hereof, by and between Parent, Credit Suisse Securities (USA) LLC and Credit Suisse or, alternatively, any replacement financing. For the avoidance of doubt, the Company's obligations in this Section 5.2(b) are limited to reasonable cooperation, and obtaining the Financing shall not in any event be deemed to be the responsibility of the Company.

(c) Each party hereby agrees that all information provided to it or its counsel, financial advisors, auditors and other authorized representatives in connection with this Agreement and the consummation of the transactions contemplated hereby shall be deemed to be "Evaluation Materials" as such term is used in and for all purposes of, and shall be treated in accordance with, those certain Confidentiality Agreements, dated May 24, 2007 and July 6, 2007, between the Company and Parent (the "Confidentiality Agreements") as if it had been provided prior to the date of this Agreement.

(d) Promptly following the date hereof, the Company shall use its reasonable best efforts to cause any person to whom the Company has provided documents, data or other

materials relating to the Company or its Subsidiaries in connection with the consideration of any business combination involving the Company to return or destroy any such documents, files, data or other materials in accordance with the confidentiality agreement between the Company and such person.

Section 5.3 No Solicitation.

(a) Subject to Section 5.3(b)-(f), the Company agrees that neither it nor any Subsidiary of the Company shall, and that it shall direct its and their respective officers, directors, employees, agents and representatives, including any investment banker, attorney or accountant retained by it or any of its Subsidiaries ("Representatives") not to, directly or indirectly, (i) initiate, solicit, knowingly encourage (including by providing information) or facilitate any inquiries, proposals or offers with respect to, or the making or completion of, an Alternative Proposal, (ii) engage or participate in any negotiations concerning, or provide or cause to be provided any non-public information or data relating to the Company or any of its Subsidiaries in connection with, or have any discussions with any person relating to, an actual or proposed Alternative Proposal, or otherwise knowingly encourage or facilitate any effort or attempt to make or implement an Alternative Proposal, including exempting any Person (other than Parent and Merger Sub and their Affiliates) from the Company Rights Agreement, (iii) approve, endorse or recommend, or propose publicly to approve, endorse or recommend, any Alternative Proposal, (iv) approve, endorse or recommend, or propose to approve, endorse or recommend, or execute or enter into, any letter of intent, agreement in principle, merger agreement, acquisition agreement, option agreement or other similar agreement relating to any Alternative Proposal, (v) amend, terminate, waive or fail to enforce, or grant any consent under, any confidentiality, standstill or similar agreement, or (vi) resolve to propose or agree to do any of the foregoing; *provided, however,* it is understood and agreed that any determination or action by the Board of Directors of the Company permitted under Section 5.3(c) or (d) shall not be deemed to be a breach or violation of this Section 5.3(a).

(b) The Company shall, shall cause each of its Subsidiaries to, and shall direct each of its Representatives to, immediately cease any solicitations, discussions or negotiations with any Person (other than the parties hereto) that has made or indicated an intention to make an Alternative Proposal, in each case that exist as of the date hereof.

(c) Notwithstanding anything to the contrary in Section 5.3(a) or (b), if the Company receives an unsolicited Alternative Proposal from a person (other than Parent) which did not result from or arise in connection with a breach of Section 5.3(a), and which the Board of Directors of the Company determines, in good faith, after consultation with its outside counsel and financial advisors, is reasonably likely to result in a Superior Proposal, then, prior to the Company Meeting (but not thereafter) the Company may, and may permit its Subsidiaries and Representatives to, (i) furnish non-public information with respect to the Company and its Subsidiaries to the person making such Alternative Proposal and its Representatives pursuant to a customary confidentiality agreement with such person on substantially the same terms as and that is no less restrictive of such person than the Confidentiality Agreements, and (ii) participate in discussions or negotiations with such person and its Representatives regarding such Alternative Proposal; *provided, however,* that the Company shall simultaneously provide or make available to Parent any non-public information concerning the Company or any of its Subsidiaries that is provided to such person or its Representatives which was not previously provided or made available to Parent.

(d) Neither the Board of Directors of the Company nor any committee thereof shall (i) withdraw or modify in a manner adverse to Parent or Merger Sub, or publicly propose to withdraw or modify in a manner adverse to Parent or Merger Sub, the Recommendation, (ii) approve any letter of intent, agreement in principle, acquisition agreement or similar agreement relating to any Alternative Proposal or (iii) approve or recommend, or publicly propose to approve, endorse or recommend, any Alternative Proposal. Notwithstanding the foregoing, if, prior to receipt of the Company Stockholder Approval, the Board of Directors of the Company determines in good faith, after consultation with outside counsel, that failure to so withdraw or modify its Recommendation would be inconsistent with its fiduciary duties under applicable Law, the Board of Directors of the Company or any committee thereof may withdraw or modify its Recommendation; *provided*, *however*, that no such withdrawal or modification may be made until after at least 48 hours following Parent's receipt of written notice from the Company advising that management of the Company currently intends to recommend to its Board of Directors that it take such action and the basis therefor, including all necessary information under Section 5.3(e). In determining whether to withdraw or modify its Recommendation in response to a Superior Proposal or otherwise, the Board of Directors of the Company shall taken into account any changes to the terms of this Agreement proposed by Parent and any other information provided by Parent in response to such notice.

(e) The Company promptly (and in any event within 48 hours) shall advise Parent orally and in writing of (i) any Alternative Proposal or indication or inquiry with respect to or that would reasonably be expected to lead to any Alternative Proposal, (ii) any request for non-public information relating to the Company or its Subsidiaries, other than requests for information not reasonably expected to be related to an Alternative Proposal, and (iii) any inquiry or request for discussion or negotiation regarding an Alternative Proposal, including in each case the identity of the person making any such Alternative Proposal or indication or inquiry and the material terms of any such Alternative Proposal or indication or inquiry (including copies of any document or correspondence evidencing such Alternative Proposal or inquiry). The Company shall keep Parent reasonably informed on a reasonably current basis of the status (including any material change to the terms thereof) of any such Alternative Proposal or indication or inquiry.

(f) Nothing contained in this Agreement shall prohibit the Company or its Board of Directors from (i) disclosing to its stockholders a "stop, look and listen" letter or similar communication of the type contemplated by Rule 14d-9(f) under the Exchange Act or (ii) making any required disclosure to the Company's stockholders if, in the good faith judgment of such Board of Directors, after consultation and the receipt of advice from its outside counsel, failure to disclose such information would reasonably be expected to violate its obligations under applicable Law; *provided, however,* that if any such disclosure constitutes a withdrawal of the Recommendation or a modification of the Recommendation in a manner adverse to Parent or Merger Sub, Parent shall have the rights specified in Section 7.1(d)(ii) and 7.2(a)(ii).

(g) As used in this Agreement, "Alternative Proposal" shall mean any inquiry, proposal or offer from any Person or group of Persons other than Parent or one of its Subsidiaries

for (i) a merger, reorganization, consolidation, share exchange, tender offer, exchange offer, business combination, recapitalization, liquidation, dissolution or similar transaction involving an acquisition of the Company or any Significant Subsidiary of the Company or (ii) the acquisition in any manner, directly or indirectly, of over 20% of the voting power in or business or assets of the Company or any of its Significant Subsidiaries, in each case other than the Merger.

(h) As used in this Agreement, "Superior Proposal" shall mean any bona fide written Alternative Proposal (i) on terms which the Board of Directors of the Company determines in good faith, after consultation with the Company's outside legal counsel and financial advisors, to be more favorable from a financial point of view to the holders of Company Common Stock than the Merger, taking into account all the terms and conditions of such proposal (including the likelihood and timing of consummation thereof and all legal, financial, regulatory and other aspects of such proposal and the identity of the person making the proposal), and this Agreement (including any proposal committed to by Parent in good faith to amend the terms of this Agreement and the Merger in response to such proposal or otherwise; *provided* that for purposes of the definition of "Superior Proposal," the references to "20%" in the definition of Alternative Proposal shall be deemed to be references to "50%."

Section 5.4 Filings; Other Actions.

(a) As promptly as reasonably practicable following the date of this Agreement, the Company shall prepare and file with the SEC the Proxy Statement and Parent shall cooperate with the Company in connection with the preparation of the Proxy Statement. The Company shall use its reasonable best efforts to have the Proxy Statement cleared by the SEC as promptly as practicable after such filing, and shall thereafter mail or deliver the Proxy Statement to the stockholders of the Company. The Company shall as promptly as reasonably practicable notify Parent of the receipt of any oral or written comments from the staff of the SEC relating to the Proxy Statement. The Company shall cooperate and provide Parent with the opportunity to review and comment on (i) the draft of the Proxy Statement (including each amendment or supplement thereto) and (ii) all written responses to requests for additional information by and replies to written comments of the staff of the SEC, prior to filing of the Proxy Statement with or sending such to the SEC, and the Company will provide to Parent copies of all such filings made and correspondence with the SEC or its staff with respect thereto. If at any time prior to the Effective Time, any information should be discovered by any party hereto which should be set forth in an amendment or supplement to the Proxy Statement so that the Proxy Statement would not include any misstatement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties hereto and, to the extent required by applicable Law, an appropriate amendment or supplement describing such information shall be promptly filed by the Company with the SEC and disseminated by the Company to its stockholders.

(b) The Company shall (i) take all action necessary in accordance with the DGCL and the Company Charter and the Company By-laws to duly call, give notice of, convene and hold a meeting of its stockholders as promptly as reasonably practicable after the Proxy

Statement is cleared by the SEC (such meeting or any adjournment or postponement thereof, the "Company Meeting"), and (ii) use reasonable best efforts to solicit from its stockholders proxies in favor of the adoption and approval of this Agreement, the Merger and the other transactions contemplated hereby and include its Recommendation in the Proxy Statement. Notwithstanding the foregoing, the Board of Directors of the Company may withdraw or modify its Recommendation in accordance with Section 5.3(d); *provided* that this Agreement, the Merger and the other transactions contemplated hereby shall be submitted to the stockholders of the Company at the Company Meeting for the purpose of approving this Agreement, the Merger and such other transactions contemplated hereby and nothing contained herein shall be deemed to relieve the Company of such obligation, *provided*, *further*, that if the Board of Directors of the Company shall have withdrawn or modified its Recommendation in accordance with Section 5.3(d), then in submitting this Agreement to the Company's stockholders, the Board of Directors of the Company may submit this Agreement to the Company's stockholders without Recommendation (although the resolutions adopting this Agreement as of the date hereof may not be rescinded or amended), in which event the Board of Directors of the Company may communicate the basis for its lack of Recommendation to the Company's stockholders in the Proxy Statement or an appropriate amendment or supplement thereto to the extent required by applicable law.

Section 5.5 Employee Matters.

(a) For a period following the Effective Time until December 31, 2008, Parent shall provide, or shall cause to be provided, to each current employee of the Company and its Subsidiaries ("Company Employees") annual base salary and base wages, cash incentive compensation opportunities and benefits, in each case, that are no less favorable than such annual base salary and base wages, cash incentive compensation opportunities and benefits provided to the Company Employees immediately prior to the Effective Time. Notwithstanding any other provision of this Agreement to the contrary, (x) Parent shall or shall cause the Surviving Corporation to provide Company Employees whose employment terminates during the one-year period following the Effective Time with severance benefits in an amount that is equal to the severance benefits that such Company Employee would have been entitled to pursuant to and under circumstances consistent with the terms of the Company's severance plan applicable to such Company Employee; *provided*, that such severance benefits shall be determined without taking into account any reduction after the Effective Time in base salary or base wages paid to Company Employees and shall take into account the service crediting provisions set forth in Section 5.5(b) below, and (y) the Company shall be entitled to establish a retention plan (the "Retention Plan") pursuant to which awards in the aggregate not in excess of the amount set forth on Section 5.5(a) of the Company Disclosure Letter may be granted by the Chief Executive Officer of the Company to such officers and employees (other than Key Employees and any other employee who is a party to a retention agreement or severance agreement with the Company) of the Company and its Subsidiaries specified by, and payable on such terms and conditions as determined by the Chief Executive Officer of the Company after consultation with the senior management of Parent. Parent shall or shall cause the Surviving Corporation to honor the Retention Plan in accordance with its terms.

(b) For all purposes (including purposes of vesting, eligibility to participate and level of benefits) under the employee benefit plans of Parent and its Subsidiaries providing

benefits to any Company Employees after the Effective Time (including the Company Benefits Plans) (the "New Plans"), each Company Employee shall be credited with his or her years of service with the Company and its Subsidiaries and their respective predecessors before the Effective Time, to the same extent as such Company Employee was entitled, before the Effective Time, to credit for such service under any similar Company employee benefit plan in which such Company Employee participated or was eligible to participate immediately prior to the Effective Time, *provided* that the foregoing shall not apply with respect to benefit accrual under any final average pay defined benefit pension plan or to the extent that its application would result in a duplication of benefits with respect to the same period of service. In addition, and without limiting the generality of the foregoing, to the extent legally permissible, (i) each Company Employee shall be immediately eligible to participate, without any waiting time, in any and all New Plans to the extent coverage under such New Plan is replacing comparable coverage under a Company Benefit Plan in which such Company Employee participated immediately before the Effective Time (such plans, collectively, the "Old Plans"), and (ii) for purposes of each New Plan providing medical, dental, pharmaceutical and/or vision benefits to any Company Employee, Parent shall cause all pre-existing condition exclusions and actively-at-work requirements of such New Plan to be waived for such employee and his or her covered dependents, unless such conditions would not have been waived under the comparable Old Plans of the Company or its Subsidiaries in which such employee participated immediately prior to the Effective Time and Parent shall cause any eligible expenses incurred by such employee and his or her covered dependents during the portion of the plan year of the Old Plan ending on the date such employee's participation in the corresponding New Plan begins to be taken into account under such New Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan.

(c) From and after the Effective Time, Parent shall cause the Surviving Corporation and its Subsidiaries to honor all obligations under the Company Benefit Plans and compensation and severance arrangements and agreements in accordance with their terms as in effect immediately before the Effective Time, provided that, subject to the requirements of Section 5.5(a), nothing herein shall prohibit the Surviving Corporation from amending or terminating any particular Company Benefit Plan to the extent permitted by its terms or applicable Law.

(d) The provisions of this Section 5.5 are solely for the benefit of the parties to this Agreement, and no current or former employee or any other individual associate therewith shall be regarded for any purpose as a third-party beneficiary of the Agreement and nothing herein shall be construed as an amendment to any Company Benefit Plan for any purpose.

Section 5.6 Efforts.

(a) Subject to the terms and conditions set forth in this Agreement, each of the parties hereto shall use its reasonable best efforts to, and shall assist and cooperate with the other parties, to (i) consummate and make effective the Merger and the other transactions contemplated hereby, (ii) obtain as promptly as practicable all necessary actions or nonactions, waivers, consents, clearances, approvals, and expirations or terminations of waiting periods, including the Company Approvals and the Parent Approvals, from Governmental Entities and

make such registrations and filings as may be necessary to obtain an approval, clearance, or waiver from, or to avoid an action or proceeding by, any Governmental Entity, (iii) obtain as promptly as practicable of all necessary consents, approvals or waivers from third parties, (iv) defend any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the Merger and the other transactions contemplated hereby and (v) execute and deliver any additional instruments reasonably necessary to consummate the transactions contemplated hereby.

(b) Subject to the terms and conditions herein provided and without limiting the foregoing, the Company and Parent shall (i) promptly after the date hereof, file any and all Notification and Report Forms required under the HSR Act with respect to the Merger and the other transactions contemplated hereby, and use reasonable best efforts to cause the expiration or termination of any applicable waiting periods under the HSR Act, (ii) use reasonable best efforts to cooperate with each other in (x) determining whether any filings are required to be made with, or consents, permits, authorizations, waivers, clearances, approvals, and expirations or terminations of waiting periods are required to be obtained from, any third parties or other Governmental Entities in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and (y) as promptly as practicable making all such filings and timely obtaining all such consents, permits, authorizations or approvals, (iii) supply to any Governmental Entity as promptly as practicable any additional information or documents that may be requested pursuant to any Regulatory Law or by such Governmental Entity, and (iv) use reasonable best efforts to take as promptly as practicable, or cause to be taken as promptly as practicable, such other actions as may be necessary, proper or advisable to consummate and make effective the Merger and the other transactions contemplated hereby, to resolve such objections, if any, as the United States Federal Trade Commission, the Antitrust Division of the United States Department of Justice, state antitrust enforcement authorities or competition authorities of any other nation or other jurisdiction or any other person may assert under Regulatory Law with respect to the Merger and the other transactions contemplated hereby, and to avoid or eliminate any impediment under any Law that may be asserted by any Governmental Entity with respect to the Merger so as to enable the Closing to occur as soon as reasonably possible (and in any event no later than the End Date); *provided* that no party shall become subject to, or consent or agree to any requirement, condition, understanding, agreement or order of a Governmental Entity, unless such requirement, condition, understanding, agreement or order is binding on such party only in the event that the Closing occurs; and, *provided, further,* that nothing in this Agreement, or any "reasonable best efforts" standard generally, shall be deemed to require Parent to proffer to, or agree to, or to permit the Company to proffer to or agree to, with respect to assets or businesses of Parent, the Company or any of their respective Subsidiaries, sell, divest, lease, license, transfer, dispose of or otherwise encumber or hold separate or agree to sell, divest, lease, license, transfer, dispose of or otherwise encumber before or after the Effective Time, any assets, licenses, operations, rights, product lines, businesses or interest therein of Parent, the Company or any of their respective Affiliates (or to consent to any sale, divestiture, lease, license, transfer, disposition or other encumbrance by the Company of any of its assets, licenses, operations, rights, product lines, businesses or interest therein or to any agreement by the Company to take any of the foregoing actions) or to agree to any changes (including through a licensing arrangement) or restriction on, or other impairment of Parent's ability to own or operate, any such assets, licenses, product lines, businesses or interests therein or Parent's ability to vote, transfer, receive dividends or otherwise exercise full

ownership rights with respect to the stock of the Surviving Corporation, if and to the extent that any such conduct, action or agreement would be reasonably likely to result in any adverse term, condition, limitation or effect that would be material (measured on a scale relative to the Company and its Subsidiaries taken as a whole) to Parent, the Company or the Surviving Corporation (such adverse term, condition, limitation or effect a "Materially Burdensome Regulatory Condition").

(c) Subject to applicable legal limitations and the instructions of any Governmental Entity, the Company and Parent shall keep each other apprised of the status of matters relating to the completion of the Merger and the other transactions contemplated thereby, including promptly furnishing the other with copies of notices or other communications received by the Company or Parent, as the case may be, or any of their respective Subsidiaries, from any third party and/or any Governmental Entity with respect to such transactions. The Company and Parent shall permit counsel for the other party reasonable opportunity to review in advance, and consider in good faith the views of the other party in connection with, any proposed written communication to any Governmental Entity. Each of the Company and Parent agrees not to participate in any substantive meeting or discussion, either in person or by telephone, with any Governmental Entity in connection with the proposed transactions unless it consults with the other party in advance and, to the extent not prohibited by such Governmental Entity, gives the other party the opportunity to attend and participate.

(d) For purposes of this Agreement, "Regulatory Law" means any and all state, federal and foreign statutes, rules, regulations, Orders, administrative and judicial doctrines and other Laws requiring notice to, filings with, or the consent, clearance or approval of, any Governmental Entity, or that otherwise may cause any restriction, in connection with the Merger and the transactions contemplated thereby, including (i) the Sherman Act of 1890, the Clayton Antitrust Act of 1914, the HSR Act, the Federal Trade Commission Act of 1914 and all other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening competition through merger or acquisition, (ii) any Law governing the direct or indirect ownership, control or operation of any of the operations or assets of the Company and its Subsidiaries, including those relating to money transmitting or (iii) any Law with the purpose of protecting the national security or the national economy of any nation.

Section 5.7 Takeover Statute. If any "fair price," "moratorium," "business combination," "control share acquisition" or other form of anti-takeover statute or regulation shall become applicable to the Merger or the other transactions contemplated by this Agreement after the date of this Agreement, each of the Company and Parent and the members of their respective Boards of Directors shall grant such approvals and take such actions as are reasonably necessary so that the Merger and the other transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated herein and otherwise act to eliminate or minimize the effects of such statute or regulation on the Merger and the other transactions contemplated hereby. Nothing in this Section 5.7 shall be construed to permit Parent or Merger Sub to do any act that would constitute a violation or breach of, or as a waiver of any of the Company's rights under, any other provision of this Agreement.

Section 5.8 Public Announcements. The Company and Parent will consult with and provide each other the reasonable opportunity to review and comment upon any press release, employee communication or other public statement or comment prior to the issuance of such press release, communication or other public statement or comment relating to this Agreement or the transactions contemplated hereby and shall not issue any such press release, communication or other public statement or comment prior to such consultation except as may be required by applicable Law or by obligations pursuant to any listing agreement with any national securities exchange. Parent and the Company agree that the press release announcing the execution and delivery of this Agreement shall be a joint release of Parent and the Company.

Section 5.9 Indemnification and Insurance.

(a) Parent and Merger Sub agree that all rights to exculpation, indemnification and advancement of expenses for acts or omissions occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, existing as of the date of this Agreement in favor of the current or former directors or officers, as the case may be, of the Company or its Subsidiaries as provided in their respective certificates of incorporation or by-laws or other organization documents or in any agreement shall survive the Merger and shall continue in full force and effect and Parent shall honor such obligations.

(b) From and after the Effective Time, Parent shall, to the fullest extent to which the Company would be permitted under applicable Law, indemnify and hold harmless (and advance funds in respect of each of the foregoing) each current and former director and officer of the Company or any of its Subsidiaries (each, together with such person's heirs, executor or administrators, an "Indemnified Party") against any costs or expenses (and shall advance expenses as incurred to the fullest extent permitted under applicable law provided the Indemnified Party to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such Indemnified Party is not entitled to indemnification), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement in connection with any actual or threatened Action, arising out of, relating to or in connection with any action or omission occurring or alleged to have occurred before the Effective Time in their capacities as officers or directors of the Company or any of its Subsidiaries or taken by them at the request or for the benefit of the Company or any of its Subsidiaries (including acts or omissions in connection with such persons serving as an officer, director, employee or other fiduciary in any entity if such service was at the request or for the benefit of the Company).

(c) Prior to the Effective Time, the Company shall purchase, and, following the Effective Time, the Surviving Corporation shall maintain, a fully pre-paid "tail" policy to the current policy of directors' and officers' liability insurance maintained as of the date hereof by the Company (the "Current Policy"), which tail policy shall cover a period from the Effective Time through and including the date six years after the Closing Date with respect to claims arising from facts or events that existed or occurred prior to or at the Effective Time, and which tail policy shall contain no less favorable coverage (including the scope and amount thereof) as, and contain terms and conditions that are equivalent to, the coverage set forth in the Current Policy; *provided* that the cost thereof does not exceed 400% of the aggregate amount per annum that the Company and its Subsidiaries paid for such coverage in its last full fiscal year.

(d) The rights of each Indemnified Party hereunder shall be in addition to, and not in limitation of, any other rights such Indemnified Party may have under the Company Charter or Company By-laws or other organization documents of the Company's Subsidiaries or the Surviving Corporation, any other indemnification agreement or arrangement, the DGCL or otherwise. The provisions of this Section 5.9 shall survive the consummation of the Merger and, notwithstanding any other provision of this Agreement that may be to the contrary, expressly are intended to benefit, and are enforceable by, each of the Indemnified Parties.

(e) In the event Parent, the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any person, then, and in either such case, to the extent not otherwise occurring by operation of law, proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation, as the case may be, shall assume the obligations set forth in this Section 5.9 . The agreements and covenants contained herein shall not be deemed to be exclusive of any other rights to which any Indemnified Party is entitled, whether pursuant to Law, contract or otherwise. Nothing in this Agreement is intended to, shall be construed to or shall release, waive or impair any rights to directors' and officers' insurance claims under any policy that is or has been in existence with respect to the Company or any of its Subsidiaries or their respective officers, directors and employees, it being understood and agreed that the indemnification provided for in this Section 5.9 is not prior to, or in substitution for, any such claims under any such policies.

Section 5.10 Notification of Certain Matters. The Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, of (i) any notice or other communication received by such party from any Governmental Entity in connection with the Merger or the other transactions contemplated hereby or from any person alleging that the consent of such person is or may be required in connection with the Merger or the other transactions contemplated hereby, if the subject matter of such communication or the failure of such party to obtain such consent could be material to the Company, the Surviving Corporation or Parent, (ii) any actions, suits, claims, investigations or proceedings commenced or, to such party's Knowledge, threatened against, relating to or involving or otherwise affecting such party or any of its Subsidiaries which relate to the Merger or the other transactions contemplated hereby, (iii) the discovery of any fact or circumstance that, or the occurrence or non-occurrence of any event the occurrence or non-occurrence of which, would cause or result in any of the Conditions to the Merger set forth in Article VI not being satisfied or satisfaction of those conditions being materially delayed in violation of any provision of this Agreement; *provided, however,* that the delivery of any notice pursuant to this Section 5.10 shall not (x) cure any breach of, or non-compliance with, any other provision of this Agreement or (y) limit the remedies available to the party receiving such notice; and, *provided, further,* that the failure to give prompt notice hereunder pursuant to clause (iii) shall not constitute a failure of a Condition to the Merger set forth in Article VI except to the extent that the underlying fact or circumstance not so notified would standing alone constitute such a failure.

Section 5.11 Rule 16b-3. Prior to the Effective Time, the Company shall be permitted to take such steps as may be reasonably necessary or advisable hereto to cause dispositions of Company equity securities (including derivative securities) pursuant to the transactions contemplated by this Agreement by each individual who is a director or officer of the Company to be exempt under Rule 16b-3 promulgated under the Exchange Act.

Section 5.12 Control of Operations. Without in any way limiting any party's rights or obligations under this Agreement, the parties understand and agree that (i) nothing contained in this Agreement shall give Parent, directly or indirectly, the right to control or direct the Company's operations prior to the Effective Time, and (ii) prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its operations.

Section 5.13 Certain Transfer Taxes. Any liability arising out of any real estate transfer Tax with respect to interests in real property owned directly or indirectly by the Company or any of its Subsidiaries immediately prior to the Merger, if applicable and due with respect to the Merger, shall be borne by the Surviving Corporation or Parent and expressly shall not be a liability of stockholders of the Company.

Section 5.14 Obligations of Merger Sub. Parent shall take all action necessary to cause Merger Sub and the Surviving Corporation to perform their respective obligations under this Agreement.

ARTICLE VI

CONDITIONS TO THE MERGER

Section 6.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligation of each party to effect the Merger shall be subject to the fulfillment (or waiver by all parties) at or prior to the Effective Time of the following conditions:

(a) The Company Stockholder Approval shall have been obtained.

(b) No Order issued by Governmental Entity of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger shall then be in effect. No Law shall have been enacted, entered, promulgated or enforced by any Governmental Entity of competent jurisdiction and then be in effect which prohibits or makes illegal the consummation of the Merger.

(c)(i) Any applicable waiting period under the HSR Act shall have expired or been earlier terminated, (ii) those regulatory approvals set forth on Schedule 6.1(c)(i) required to consummate the transactions contemplated hereby shall have been obtained and shall remain in full force and effect and all statutory waiting periods in respect thereof shall have expired or been terminated , and (iii) any other Company Approvals required to be obtained for the consummation, as of the Effective Time, of the Merger and the other transactions contemplated by this Agreement, other than any Company Approvals the failure to obtain which would not, individually or in the aggregate, have a Company Material Adverse Effect, shall have been obtained (such approvals the "Requisite Regulatory Approvals").

Section 6.2 Conditions to Obligation of the Company to Effect the Merger. The obligation of the Company to effect the Merger is further subject to the fulfillment or waiver at or prior to the Effective Time of the following conditions:

(a) The representations and warranties of Parent and Merger Sub set forth in this Agreement shall be true and correct as of the date of this Agreement and (except to the extent such representations and warranties speak as of an earlier date, in which case they shall be true and correct as of such earlier date) as of the Closing Date as though made on and as of the Closing Date, *provided, however,* that for purposes of determining the satisfaction of this condition, no effect shall be given to any exception in such representations and warranties relating to materiality or a Parent Material Adverse Effect, and *provided, further,* that, for purposes of this condition, such representations and warranties shall be deemed to be true and correct in all respects unless the failure or failures of such representations and warranties to be so true and correct, individually or in the aggregate, is reasonably likely to have a Parent Material Adverse Effect.

(b) Parent shall have in all material respects performed all obligations and complied with all covenants required by this Agreement to be performed or complied with by it at or prior to the Effective Time.

(c) Parent shall have delivered to the Company a certificate, dated the Effective Time and signed by its Chief Executive Officer or another senior executive officer, certifying to the effect that the conditions set forth in Section 6.2(a) and 6.2(b) have been satisfied.

Section 6.3 Conditions to Obligation of Parent and Merger Sub to Effect the Merger. The obligation of Parent and Merger Sub to effect the Merger is further subject to the fulfillment or waiver of the following conditions:

(a) The representations and warranties of the Company set forth in this Agreement shall be true and correct as of the date of this Agreement and (except to the extent such representations and warranties speak as of an earlier date, in which case they shall be true and correct as of such earlier date) as of the Closing Date as though made on and as of the Closing Date, *provided, however,* that for purposes of determining the satisfaction of this condition, no effect shall be given to any exception in such representations and warranties relating to materiality or a material adverse effect, and instead, for purposes of this condition, such representations and warranties (other than the representations and warranties contained in Section 3.2(a), which shall be true and correct except to a de minimis extent relative to Section 3.2(a) taken as a whole) shall be deemed to be true and correct in all respects unless the failure or failures of such representations and warranties to be so true and correct, individually or in the aggregate, would have a Company Material Adverse Effect.

(b) The Company shall have in all material respects performed all obligations and complied with all covenants required by this Agreement to be performed or complied with by it at or prior to the Effective Time.

(c) The Company shall have delivered to Parent a certificate, dated the Effective Time and signed by its Chief Executive Officer, certifying to the effect that the conditions set forth in Section 6.3(a) and Section 6.3(b) have been satisfied.

(d) No Requisite Regulatory Approval shall include any Materially Burdensome Regulatory Condition.

Section 6.4 Frustration of Closing Conditions. Neither the Company nor Parent may rely, either as a basis for not consummating the Merger or terminating this Agreement and abandoning the Merger, on the failure of any condition set forth in Section 6.1, 6.2 or 6.3, as the case may be, to be satisfied if such failure was caused by such party's breach in any material respect of any provision of this Agreement or failure to use reasonable best efforts to consummate the Merger and the other transactions contemplated hereby, to the extent required by and subject to Section 5.6.

ARTICLE VII

TERMINATION

Section 7.1 Termination or Abandonment. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated and abandoned at any time prior to the Effective Time, whether before or after any approval of the matters presented in connection with the Merger by the stockholders of the Company:

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

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

(i) the Effective Time shall not have occurred on or before March 1, 2008 (provided that if, as of such date, either (x) all conditions to the Closing shall have been satisfied or waived (other than those conditions that by their terms are to be satisfied at the Closing) other than the conditions set forth in Section 6.1(c)(i) and (ii), or (y) (A) any Governmental Entity of competent jurisdiction shall have entered an injunction, other legal restraint or Order permanently restraining, enjoining or otherwise prohibiting the consummation of the Merger and such injunction, other legal restraint or Order shall not have become final and non-appealable, or (B) any Governmental Entity which must grant a Requisite Regulatory Approval has denied approval of the Merger and such denial has not become final and non-appealable, such date shall be extended to the earlier of (x) five (5) Business Days following the date the conditions to Closing set forth in Section 6.1(c)(i) and (ii) have been satisfied or waived, and (y) August 1, 2008 (the "End Date"), and the party seeking to terminate this Agreement pursuant to this Section 7.1 (b)(i) shall not have breached its obligations under this Agreement in any manner that shall have proximately caused the failure to consummate the Merger on or before the End Date;

(ii) if (A) any Governmental Entity of competent jurisdiction shall have entered an injunction, other legal restraint or Order permanently restraining, enjoining or otherwise prohibiting the consummation of the Merger and such injunction, other legal restraint or Order shall have become final and non-appealable, or (B) any Governmental Entity which must grant a Requisite Regulatory Approval has denied approval of the Merger and such denial has become final and non-appealable; or

(iii) the Company Meeting (including any adjournments or postponements thereof) shall have concluded and the Company Stockholder Approval contemplated by this Agreement shall not have been obtained.

(c) by the Company, if Parent or Merger Sub shall have breached or failed to perform any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (i) would result in a failure of a condition set forth in Section 6.1 or Section 6.2 and (ii) cannot be cured or, if curable, is not cured within 30 days following written notice thereof to Parent.

(d) by Parent, if:

(i) the Company shall have breached or failed to perform any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (i) would result in a failure of a condition set forth in Section 6.1 or Section 6.3 to be satisfied and (ii) cannot be cured or, if curable, is not cured within 30 days following written notice thereof to the Company; or

(ii) the Board of Directors of the Company withdraws, modifies or qualifies in a manner adverse to Parent or Merger Sub, or publicly proposes to withdraw, modify or qualify, in a manner adverse to Parent or Merger Sub, its Recommendation, fails to recommend to the Company's stockholders that they give the Company Stockholder Approval or approves, endorses or recommends, or publicly proposes to approve, endorse or recommend, any Alternative Proposal (it being understood that the taking by the Company or any of its Representatives of any of the actions permitted by Section 5.3(c) shall not give rise to a right to terminate pursuant to this clause (ii)).

(e) In the event of termination of this Agreement pursuant to this Section 7.1 , this Agreement shall terminate (except for the Confidentiality Agreements and the provisions of Section 7.2 and ARTICLE VIII), and there shall be no other liability or obligation on the part of the Company or Parent and Merger Sub to the other except liability arising out of the provisions of Section 7.2, any willful and material breach of any of the representations, warranties or covenants in this Agreement (subject to any express limitations set forth in this Agreement), or as provided for in the Confidentiality Agreements, in which case the aggrieved party shall be entitled to all rights and remedies available at Law or in equity.

Section 7.2 Termination Fees.

(a) In the event that:

(i)(A) after the date hereof, a bona fide Alternative Proposal shall have been made known to the Company or shall have been made directly to its stockholders generally or any person shall have publicly announced a bona fide intention (not subsequently withdrawn) to make an Alternative Proposal and (B) following the occurrence of an event described in the preceding clause (A), this Agreement is

terminated by the Company or Parent pursuant to (x) Section 7.1(b)(i) and at the time of such termination the Company Stockholder Approval has not been obtained, (y) Section 7.1(b)(iii) (so long as the Alternative Proposal was publicly disclosed prior to, and had not been withdrawn at least ten (10) days prior to the Company Meeting) or (z) Section 7.1(d)(i), and (C) the Company enters into a definitive agreement with respect to, or consummates, a transaction contemplated by any Alternative Proposal within twelve (12) months of the date this Agreement is terminated (*provided* that for purposes of this Section 7.2(a)(i), the references to "20%" in the definition of Alternative Proposal shall be deemed to be references to "50%"); or

(ii) this Agreement is terminated by Parent pursuant to Section 7.1(d)(ii);

then in any such event under clause (i) or (ii) of this Section 7.2(a), the Company shall pay to Parent a termination fee equal to $176 million in cash (the "Termination Fee"), it being understood that in no event shall the Company be required to pay the Termination Fee on more than one occasion.

(b) Any payment required to be made pursuant to clause (i) of Section 7.2(a) shall be made to Parent promptly following the earlier of the execution of a definitive agreement with respect to, or the consummation of, the transaction referred to therein (and in any event not later than two (2) Business Days after delivery to the Company of notice of demand for payment); any payment required to be made pursuant to clause (ii) of Section 7.2(a) shall be made to Parent promptly following termination of this Agreement by Parent pursuant to Section 7.1(d)(ii) (and in any event not later than two (2) Business Days after delivery to the Company of notice of demand for payment), and such payment shall be made by wire transfer of immediately available funds to an account to be designated by Parent.

(c) In the event that the Company shall fail to pay the Termination Fee required pursuant to this Section 7.2 when due, such fee shall accrue interest for the period commencing on the date such fee became past due, at a rate equal to the rate of interest publicly announced by JPMorgan Chase Bank, National Association, in the City of New York from time to time during such period, as such bank's prime lending rate. In addition, if the Company shall fail to pay such fee when due, the Company shall also pay to Parent all of Parent's reasonable costs and expenses (including reasonable attorneys' fees) in connection with efforts to collect such fee. The Company acknowledges that the fees and the other provisions of this Section 7.2 are an integral part of the Merger and that, without these agreements, Parent would not enter into this Agreement.

(d) Each of the parties hereto acknowledges that the agreements contained in this Section 7.2 are an integral part of the transactions contemplated by this Agreement and that the Termination Fee is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate Parent and Merger Sub for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 No Survival of Representations and Warranties. None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the occurrence of the Merger.

Section 8.2 Expenses. Whether or not the Merger is consummated, all costs and expenses incurred in connection with the Merger, this Agreement and the transactions contemplated hereby shall be paid by the party incurring or required to incur such expenses, except (x) expenses incurred in connection with the printing, filing and mailing of the Proxy Statement (including applicable SEC filing fees) and all fees paid in respect of any HSR Act or other regulatory filing shall be borne one-half by the Company and one-half by Parent and (y) as otherwise set forth in Section 7.2.

Section 8.3 Counterparts; Effectiveness. This Agreement may be executed in two or more consecutive counterparts (including by facsimile), each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by telecopy or otherwise) to the other parties.

Section 8.4 Governing Law. This Agreement, and all claims or causes of action (whether at Law, in contract or in tort) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance hereof, shall be governed by and construed in accordance with the Laws of the State of Delaware, without giving effect to any choice or conflict of Law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

Section 8.5 Jurisdiction; Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that prior to the termination of this Agreement in accordance with ARTICLE VII the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in any federal or state court located in the State of Delaware, this being in addition to any other remedy which they are entitled at Law or in equity. In addition, each of the parties hereto irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other party hereto or its successors or assigns, shall be brought and determined exclusively in any federal or state court located in the State of Delaware. Each of the parties hereto hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated hereby in any court other than the aforesaid courts. Each of the parties hereto hereby irrevocably waives, and agrees not to assert,

by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement, (a) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure to serve in accordance with this Section 8.5, (b) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) to the fullest extent permitted by the applicable Law, any claim that (i) the suit, action or proceeding in such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject mater hereof, may not be enforced in or by such courts.

Section 8.6 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 8.7 Notices. Any notice required to be given hereunder shall be sufficient if in writing, and sent by facsimile transmission (*provided* that any notice received by facsimile transmission or otherwise at the addressee's location on any Business Day after 5:00 p.m. (addressee's local time) shall be deemed to have been received at 9:00 a.m. (addressee's local time) on the next Business Day), by reliable overnight delivery service (with proof of service), hand delivery or certified or registered mail (return receipt requested and first-class postage prepaid), addressed as follows:

To Parent or Merger Sub:

Fiserv, Inc.
Braves Acquisition Corp.
255 Fiserv Drive
Brookfield, WI 53045
Telecopy: (262) 879-5532
Attention: Charles W. Sprague

with copies to:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Telecopy: (212) 558-3588
Attention: Mark J. Menting
Matthew G. Hurd

To the Company:

CheckFree Corporation
4411 East Jones Bridge Road
Norcross, GA 30092
Telecopy: (678) 375-1150
Attention: Laura Binion

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Telecopy: (212) 403-2000
Attention: Edward D. Herlihy

or to such other address as any party shall specify by written notice so given, and such notice shall be deemed to have been delivered as of the date so telecommunicated, personally delivered or mailed. Any party to this Agreement may notify any other party of any changes to the address or any of the other details specified in this paragraph; *provided, however,* that such notification shall only be effective on the date specified in such notice or five (5) Business Days after the notice is given, whichever is later. Rejection or other refusal to accept or the inability to deliver because of changed address or facsimile of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

Section 8.8 Assignment; Binding Effect. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties, except that Merger Sub may assign, in its sole discretion, any of or all of its rights, interest and obligations under this Agreement to Parent or to any direct or indirect wholly owned subsidiary of Parent, but no such assignment shall relieve Merger Sub of its obligations hereunder. Any attempt to make any assignment without such consent shall be null and void. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Parent shall cause Merger Sub, and any assignee thereof, to perform its obligations under this Agreement and shall be responsible for any failure of Merger Sub or such assignee to comply with any representation, warranty, covenant or other provision of this Agreement.

Section 8.9 Severability. If any provision of this Agreement or the application thereof to any person (including the officers and directors of Parent, the Company and Merger Sub) or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, will remain in full force and effect and will in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination, the parties will negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

Section 8.10 Entire Agreement; No Third-Party Beneficiaries. This Agreement (including the Company Disclosure Letter and the Parent Disclosure Letter) and the Confidentiality Agreements constitute the entire agreement, and supersede all other prior agreements and understandings, both written and oral, between the parties, or any of them, with respect to the subject matter hereof and thereof and, except as set forth in Section 5.9, is not intended to and shall not confer upon any person other than the parties hereto any rights or remedies hereunder.

Section 8.11 Amendments; Waivers. At any time prior to the Effective Time, any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the Company, Parent and Merger Sub, or in the case of a waiver, by the party against whom the waiver is to be effective; *provided, however,* that after receipt of Company Stockholder Approval, if any such amendment or waiver shall by applicable Law or in accordance with the rules and regulations of the Nasdaq National Market or Nasdaq Global Select Market, as the case may be, require further approval of the stockholders of the Company or Parent, the effectiveness of such amendment or waiver shall be subject to the approval of the stockholders of the Company or Parent. Notwithstanding the foregoing, no failure or delay by the Company or Parent in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right hereunder.

Section 8.12 Headings. Headings of the Articles and Sections of this Agreement are for convenience of the parties only and shall be given no substantive or interpretive effect whatsoever. The table of contents to this Agreement is for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.13 Interpretation. When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." Whenever the words "the transactions contemplated hereby" or similar words or phrases appear, such words or phrases shall be deemed to be followed by the words "(but not including any arrangements, agreements or understandings to which the Company is not a party)." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "or" shall be deemed to mean "and/or." All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant thereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by all the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

Section 8.14 Certain Definitions. For purposes of this Agreement, the following terms will have the following meanings when used herein:

(a) "Affiliates" shall mean, as to any person, any other person which, directly or indirectly, controls, or is controlled by, or is under common control with, such person. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

(b) "Business Day" shall mean any day other than a Saturday, Sunday or a day on which the banks in New York are authorized by Law or executive order to be closed.

(c) "Company Stock Plans" means the Bluegill Technologies, Inc. 1997 Stock Option Plan, the Amended and Restated Bluegill Technologies, Inc. 1998 Incentive and Non-Qualified Stock Option Plan, the Checkfree Corporation 2002 Stock Incentive Plan, the Checkfree Corporation Third Amended and Restated 1995 Stock Option Plan, the Checkfree Holdings Corporation Amended and Restated 1983 Incentive Stock Option Plan, the Checkfree Holdings Corporation Amended and Restated 1983 Nonstatutory Stock Option Plan, and the Checkfree Holdings Corporation Amended and Restated 1993 Stock Option Plan.

(d) "Contracts" means any contracts, agreements, settlements, consents, licenses, notes, bonds, mortgages, indentures, commitments, leases or other instruments, obligations or arrangements, whether written or oral.

(e) "Intellectual Property" means all foreign and domestic intellectual property including without limitation all (i) trademarks, service marks, brand names, Internet domain names, logos, symbols, trade dress, fictitious names, trade names, and other indicia of origin and all goodwill associated therewith and symbolized thereby; (ii) patents and inventions and discoveries, whether patentable or not; (iii) confidential information, proprietary information, trade secrets and know-how, (including without limitation processes, schematics, business methods, formulae, drawings, prototypes, models, designs, customer lists and supplier lists) (collectively, "Trade Secrets"); (iv) copyrights and works of authorship in any media (including without limitation computer software programs, source code, databases and other complications of information); and (v) all disclosures, applications and registrations for any of the foregoing; (vi) all extensions, modifications, renewals, divisions, continuations, continuations-in-part, reissues, restorations and reversions related to any off the foregoing.

(f) "IP Contract" means any material Contract concerning Intellectual Property to which the Company or any of its Subsidiaries is a party, or is bound by, other than licenses for commercial "off-the-shelf" or "shrink-wrap" software that has not been modified or customized for the Company or its Subsidiaries.

(g) "IT Assets" means the computer software, firmware, middleware, servers, systems, networks, workstations, data communications lines, and all other information technology equipment, used by the Company and its Subsidiaries.

(h) "Knowledge" means (i) with respect to Parent, the actual knowledge of the individuals listed on Section 8.14(h)(i) of the Parent Disclosure Letter and (ii) with respect to the Company, the actual knowledge of the individuals listed on Section 8.14(h)(ii) of the Company Disclosure Letter.

(i) "Orders" means any orders, judgments, injunctions, awards, stipulations, decrees or writs handed down, adopted or imposed by, including any consent decree, settlement agreement or similar written agreement with, any Governmental Entity.

(j) "Parent Material Adverse Effect" means any fact, condition, circumstance, event, change, effect or occurrence that, individually or in the aggregate, prevents or materially delays or materially impairs the ability of Parent and Merger Sub to consummate the Merger on a timely basis, or would reasonably be expected to do so.

(k) "person" or "Person" shall mean an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity, group (as such term is used in Section 13 of the Exchange Act) or organization, including a Governmental Entity, and any permitted successors and assigns of such person.

(l) "Subsidiary" and "Significant Subsidiary" have the meanings ascribed to such terms in Rule 1-02 of Regulation S-X promulgated by the SEC.

(m) Each of the following terms is defined in the section set forth opposite such term:

"Action"	3.11(a)
"Affiliates"	8.14(a)
"Agreement"	Preamble
"Alternative Proposal"	5.3(g)
"ASPP"	2.3(d)
"Authorized Preferred Stock"	3.2(a)
"Book-Entry Shares"	2.2(b)(i)
"Business Day"	8.14(b)
"Cancelled Shares"	2.1(c)
"Certificate of Merger"	1.3
"Certificates"	2.2(b)(i)
"Closing"	1.2
"Closing Date"	1.2
"Code"	2.2(b)(iii)
"Company"	Preamble
"Company Approvals"	3.4(b)
"Company Benefit Plan"	3.9(a)
"Company By-laws"	3.1(a)
"Company Charter"	3.1(a)
"Company Common Stock"	2.1(b)
"Company Disclosure Letter"	Article 3
"Company Employees"	5.5(a)
"Company IP"	3.15(b)
"Company Material Adverse Effect"	3.1(c)

“Company Material Contracts”	3.19(a)
“Company Meeting”	5.4(b)
“Company Non-U.S. Benefit Plans”	3.9(e)
“Company Permits”	3.7(b)
“Company Preferred Stock”	3.2(a)
“Company Regulatory Agreement”	3.11(b)
“Company Restricted Share”	2.3(b)
“Company Rights Agreement”	3.2(a)
“Company SEC Documents”	3.5(a)
“Company Stock Option”	2.3(a)
“Company Stock Plans”	8.14(c)
“Company Stockholder Approval”	3.18
“Confidentiality Agreements”	5.2(c)
“Contracts”	8.14(d)
“control”	8.14(a)
“Conversion Number”	2.3(a)
“Current Policy”	5.9(c)
“DGCL”	1.1
“Deferred Equity Units”	2.3(e)
“Dissenting Shares”	2.1(f)
“Dissenting Stockholders”	2.1(f)
“Effective Time”	1.3
“Employment Agreements”	Recitals
“End Date”	7.1(b)(i)
“Environmental Law”	3.8(b)
“ERISA”	3.9(a)
“ERISA Affiliate”	3.9(c)
“Exchange Act”	3.4(b)
“Exchange Agent”	2.2(a)
“Exchange Fund”	2.2(a)
“Filed SEC Documents”	Article 3
“Final Date”	2.3(d)
“GAAP”	3.5(b)
“Governmental Entity”	3.4(b)
“Hazardous Substance”	3.8(c)
“HSR Act”	3.4(b)
“Indemnified Party”	5.9(b)
“Internal Controls”	3.5(d)
“Intellectual Property”	8.14(e)
“IP Contracts”	8.14(f)
“IRS”	3.9(b)
“IT Assets”	8.14(g)
“Key Employees”	Recitals
“Knowledge”	8.14(h)
“Law”	3.7(a)
“Letter of Transmittal”	2.2(b)(i)

“Lien”	3.4(c)
“Materially Burdensome Regulatory Condition”	5.6(b)
“Merger”	Recitals
“Merger Consideration”	2.1(b)
“Merger Sub”	Preamble
“New Plans”	5.5(b)
“Old Plans”	5.5(b)
“Orders”	8.14(i)
“Parent”	Preamble
“Parent Approvals”	4.2(b)
“Parent By-laws”	4.1(a)
“Parent Charter”	4.1(a)
“Parent Common Stock”	2.1(a)
“Parent Disclosure Letter”	Article 4
“Parent Filed SEC Documents”	Article 4
“Parent Material Adverse Effect”	8.14(j)
“person”	8.14(k)
“Person”	8.14(k)
“Proceeding”	3.13(a)(vi)
“Proxy Statement”	3.4(b)
“Recommendation”	3.4(a)
“Regulatory Law”	5.6(d)
“Representatives”	5.3(a)
“Requisite Regulatory Approvals”	6.1(c)(iii)
“Retention Plan”	5.5(a)
“Rights”	3.2(a)
“Sarbanes-Oxley Act”	3.5(a)
“SEC”	3.4(b)
“Securities Act”	3.5(a)
“Series A Preferred Stock”	3.2(a)
“Share”	2.1(b)
“Significant Subsidiary”	8.14(l)
“Subsidiary”	8.14(l)
“Superior Proposal”	5.3(h)
“Surviving Corporation”	1.1
“Tax”	3.13(b)
“Taxes”	3.13(b)
“Tax Return”	3.13(b)
“Termination Date”	5.1(a)
“Termination Fee”	7.2(a)
“Trade Secrets”	8.14(e)
“Warrants”	3.2(a)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

FISERV, INC.

By: /s/ Jeffery W. Yabuki
Name: Jeffery W. Yabuki
Title: President & CEO

BRAVES ACQUISITION CORP.

By: /s/ Jeffery W. Yabuki
Name: Jeffery W. Yabuki
Title: President

CHECKFREE CORPORATION

By: /s/ Peter J. Kight
Name: Peter J. Kight
Title: Chairman

EXHIBIT 31.1

CERTIFICATIONS

I, Jeffery W. Yabuki, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Fiserv, Inc.;

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

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

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

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

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

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

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

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

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

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

Date: August 1, 2007

By: /s/ Jeffery W. Yabuki
Jeffery W. Yabuki
President and Chief Executive Officer

EXHIBIT 31.2

CERTIFICATIONS

I, Thomas J. Hirsch, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Fiserv, Inc.;

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

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

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

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

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

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

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

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

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

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

Date: August 1, 2007

By: /s/ Thomas J. Hirsch
Thomas J. Hirsch
Executive Vice President,
Chief Financial Officer,
Treasurer and Assistant Secretary

EXHIBIT 32

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

In connection with the Quarterly Report on Form 10-Q of Fiserv, Inc. (the "Company") for the quarter ended June 30, 2007 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Jeffery W. Yabuki, as President and Chief Executive Officer of the Company, and Thomas J. Hirsch, as Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary of the Company, each hereby certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to the best of his knowledge:

(1) The Report fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ Jeffery W. Yabuki
Jeffery W. Yabuki
August 1, 2007

By: /s/ Thomas J. Hirsch
Thomas J. Hirsch
August 1, 2007

EXHIBIT 99.1

Explanatory Note: On August 2, 2007, we filed a Current Report on Form 8-K that included as Exhibit 99.1 thereto a copy of the press release below. On August 2, 2007, CheckFree Corporation filed a Schedule 14A that also included a copy of this press release. The filing indicated that the press release contains a scrivener's error under the heading "Checkfree 2007 Preliminary Earnings Per Share." The filing further indicated that the expected amortization of acquisition-related intangible assets that will account in part for the difference between GAAP and underlying earnings per share expectations for fiscal 2007 is approximately $43.5 million. We are providing the press release below and this explanatory note to supplement the information contained in our Current Report on Form 8-K, dated August 2, 2007.

News Release

For more information contact:

Investor Relations:
David Banks 262-879-5055, Fiserv
David.banks@fiserv.com
Tina Moore 678-375-1278, CheckFree

Media Relations:
Melanie Tolley 262-879-5098, Fiserv
Melanie.tolley@fiserv.com
Judy Wicks 678-375-1595, CheckFree

For immediate release:
August 2, 2007

Fiserv to Acquire CheckFree

Combination will accelerate strategic transformation and deliver greater value to customers

Brookfield, Wis., and Norcross, Ga., Aug. 2, 2007—Fiserv, Inc. (NASDAQ: FISV), a leading provider of technology solutions, and CheckFree Corporation, (NASDAQ: CKFR), a leading provider of financial e-commerce services and products, today announced that they have entered into a definitive agreement whereby Fiserv will acquire CheckFree in an all-cash transaction valued at approximately $4.4 billion. Under terms of the agreement, CheckFree shareholders will receive $48.00 in cash for each share of common stock.

CheckFree, a leader in online banking, electronic payments, and infrastructure and services, and Fiserv, a leader in information management services to the financial and insurance industries, have complementary technology, services and business models. Fiserv anticipates the combined organization will deliver a wider range of product and service offerings for customers, as well as provide opportunities for improved growth and enhanced efficiency, including the ability to bring new solutions to market faster.

CheckFree Corporation, Corporate Headquarters and mailing address: 4411 East Jones Bridge Road, Norcross, Georgia 30092
PH: 678-375-3000 Internet: www.checkfreecorp.com

Fiserv, Corporate Headquarters, 255 Fiserv Drive, Brookfield, Wisconsin 53045 PH: 262-879-5000 Mailing Address: P.O. Box 979, Brookfield, Wisconsin 53008-0979
Internet: www.fiserv.com

CheckFree has leading positions in electronic billing and payment, online banking, investment management technology solutions, ACH payments and fraud and risk management, among others. Fiserv currently serves almost 6,000 core processing clients and all top 100 banks in the U.S. CheckFree's Electronic Commerce business serves 21 of the top 25 financial institutions in the U.S. and processes more than 1 billion transactions per year.

"CheckFree's industry-leading payment and Internet banking capabilities will significantly accelerate our strategic transformation, extending our service platform to the largest financial institutions," said Jeffery Yabuki, President and Chief Executive Officer of Fiserv. "This combination allows us to deliver the best available solutions to all of our clients to enhance growth today, and into the future. An important objective of the transaction is to tightly integrate electronic bill payment and settlement capabilities with our core account processing and risk management solutions to create a unique value proposition unrivaled in the marketplace today."

"By joining our complementary technology and capabilities with Fiserv and its unparalleled footprint, this new combined entity will broaden Fiserv's offerings to customers worldwide," said Pete Kight, CheckFree Chairman and Chief Executive Officer. "In particular, it will significantly accelerate the delivery of next-generation services to financial institutions and their customers. CheckFree's broad range of offerings will also enable Fiserv to round out its ability to deliver solutions that address the challenges of an evolving U.S. payments landscape and help facilitate the growth of the managed accounts industry."

In conjunction with the closing of the transaction, Kight will be employed by Fiserv and appointed to its board of directors.

"Pete's demonstrated results in building one of the world's leading payment and transaction processing companies are a testament to his energy, vision and strategic leadership," said Donald F. Dillon, Fiserv Chairman. "We will be thrilled to have him on our board."

Fiserv expects to realize more than $100 million in annualized cost savings and more than $125 million in annualized revenue synergies. For 2008, the transaction is expected to be accretive to Fiserv's underlying cash earnings per share.

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The transaction is expected to be completed by December 31, 2007, subject to regulatory approvals, approval by the CheckFree shareholders and customary closing conditions. After closing, the combined company will have pro-forma revenue of about $6 billion, employ more than 27,000 associates world-wide and be the leading provider of technology processing solutions to banks and financial institutions.

"We are impressed by the people of CheckFree. Their cultural commitment to clients is consistent with how we do business and this combination will create significant growth opportunities for all of our people," said Yabuki.

CheckFree 2007 Preliminary Earnings Per Share

CheckFree announced that, for its fiscal year ended June 30, 2007, it expects to report GAAP revenue in the range of $970.0 million to $973.0 million, and underlying revenue in the range of $993.0 million to $996.0 million. CheckFree expects GAAP earnings per share for fiscal 2007 to be in the range of $1.35 and $1.37, and underlying earnings per share for fiscal 2007 to be in the range of $1.87 to $1.89. The difference between CheckFree's expected GAAP and underlying revenue expectations is due to an $11.0 million charge for earned customer warrants and approximately $12.0 million in expected deferred revenue adjustments related to acquisitions. The difference between GAAP and underlying earnings expectations is due to expected amortization of acquisition-related intangible assets of approximately $63.5 million, acquisition-related integration costs of an estimated $7.0 million, the SFAS 123(R) impact of stock options issued prior to July 1, 2004 of approximately $1.6 million, an $11.0 million charge for earned customer warrants, and approximately $12.0 million in expected deferred revenue adjustments related to acquisitions, all net of related income tax benefits of approximately $28.0 million.

CheckFree plans to release its fiscal year 2007 earnings results on August 3, 2007, rather than August 9, 2007, as previously announced.

Fiserv is being advised by Credit Suisse and Sullivan & Cromwell LLP. CheckFree is being advised by Goldman, Sachs & Co. and Wachtell, Lipton, Rosen & Katz.

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Internet: www.fiserv.com

CONFERENCE CALL

Fiserv will host a call to discuss the transaction with investors at 9 a.m. CDT on Aug. 2. To join the call, dial 888-889-0622, ask for the Fiserv conference call and provide the operator with the passcode, FISV. To register for a webcast of the event, go to www.fiserv.com and click on the link for the event in the "Upcoming Events" Section of the home page. From there, click "Access Event."

The company will provide additional information on the anticipated results for the acquisition and the implications on the company strategy at its annual investor meeting on October 2, 2007 in New York City.

About CheckFree

Founded in 1981, CheckFree Corporation (NASDAQ: CKFR) provides financial electronic commerce services and products to organizations around the world. CheckFree Electronic Commerce solutions enable thousands of financial services providers and billers to offer the convenience of receiving and paying household bills online, via phone or in person through retail outlets. CheckFree Investment Services provides a broad range of investment management solutions and outsourced services to hundreds of financial services organizations, which manage about $1.8 trillion in assets. CheckFree Software develops, markets and supports payment processing solutions that are used by financial institutions to process more than two-thirds of the 14 billion Automated Clearing House transactions in the United States, and supports reconciliation, exception management, risk management, transaction process management, corporate actions processing, and compliance within thousands of organizations worldwide.

About Fiserv

Fiserv, Inc. (NASDAQ: FISV), a Fortune 500 company, provides information management systems and services to the financial and insurance industries. Leading services include transaction processing, outsourcing, business process outsourcing (BPO), software and systems solutions. The company serves

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more than 18,000 clients worldwide and is the leading provider of core processing solutions for U.S. banks, credit unions and thrifts. Fiserv was ranked the largest provider of information technology services to the financial services industry worldwide in the 2004, 2005 and 2006 FinTech 100 surveys. Headquartered in Brookfield, Wis., Fiserv reported more than $4.4 billion in total revenue for 2006. For more information, please visit www.fiserv.com.

Cautionary Statement Regarding Forward-Looking Statements

Certain statements in this release constitute "forward-looking statements." Actual results could differ materially from those projected or forecast in the forward-looking statements. The factors that could cause actual results to differ materially include the following: the possibility that the parties may be unable to achieve expected synergies and operating efficiencies in the merger within the expected time-frames or at all and to successfully integrate CheckFree's operations into those of Fiserv; such integration may be more difficult, time-consuming or costly than expected; revenues following the transaction may be lower than expected; operating costs, customer loss and business disruption (including, without limitation, difficulties in maintaining relationships with employees, customers, clients or suppliers) may be greater than expected following the transaction; the retention of certain key employees at CheckFree; the occurrence of any event, change or other circumstances that could give rise to the termination of the merger agreement; the outcome of any legal proceedings that may be instituted against Fiserv and others related to the merger agreement; shareholder approval or other conditions to the completion of the transaction may not be satisfied, or the regulatory approvals required for the transaction may not be obtained on the terms expected or on the anticipated schedule; the amount of the costs, fees, expenses and charges related to the merger and the execution of certain financings that will be obtained to consummate the merger; and the parties' ability to meet expectations regarding the timing, completion and accounting and tax treatments of the merger. Fiserv and CheckFree are subject to, among other matters, changes in customer demand for their products and services, pricing and other actions by competitors, general changes in local, regional, national and international economic conditions and the impact they may have on Fiserv and CheckFree and their customers and Fiserv's and CheckFree's assessment of that impact; proposed or enacted legislation affecting the financial services industry as a whole, and/or Fiserv and CheckFree and their subsidiaries individually or collectively; regulatory supervision and oversight; rapid technological developments and changes; Fiserv's and CheckFree's ability to continue to introduce competitive new products and services on a timely, cost-effective basis; the mix of products/services; containing costs and expenses; protection and validity of intellectual property rights; the outcome of pending and future litigation and governmental proceedings; acts of war and terrorism; and the other factors discussed in "Risk Factors" in Fiserv's and CheckFree's respective Annual Reports on Form 10-K for the most recently ended fiscal year and Fiserv's and CheckFree's other filings with the SEC, which are available at http://*www.sec.gov*. Neither Fiserv nor

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CheckFree assume any obligation to update the information in this release. Readers are cautioned not to place undue reliance on forward-looking statements which speak only as of the date hereof.

Additional Information and Where to Find It

This communication may be deemed to be solicitation material in respect of the proposed acquisition of CheckFree by Fiserv. In connection with the proposed acquisition, Fiserv and CheckFree intend to file relevant materials with the SEC, including CheckFree's proxy statement on Schedule 14A. **STOCKHOLDERS OF CHECKFREE ARE URGED TO READ ALL RELEVANT DOCUMENTS FILED WITH THE SEC, INCLUDING CHECKFREE'S PROXY STATEMENT, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION.** Investors and security holders will be able to obtain the documents free of charge at the SEC's web site, *http://www.sec.gov,* and CheckFree stockholders will receive information at an appropriate time on how to obtain transaction-related documents for free from CheckFree. Such documents are not currently available.

Participants in Solicitation

Fiserv and its directors and executive officers, and CheckFree and its directors and executive officers, may be deemed to be participants in the solicitation of proxies from the holders of CheckFree common stock in respect of the proposed transaction. Information about the directors and executive officers of Fiserv is set forth in its proxy statement for its 2007 Annual Meeting of Shareholders, which was filed with the SEC on April 11, 2007. Information about the directors and executive officers of CheckFree is set forth in its proxy statement for its 2006 Annual Meeting of Stockholders, which was filed with the SEC on September 26, 2006. Investors may obtain additional information regarding the interest of such participants by reading the proxy statement regarding the acquisition when it becomes available.

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