

LEVEL 3 COMMUNICATIONS INC

FORM 8-K (Current report filing)

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Address	1025 ELDORADO BOULEVARD BLDG 2000 BROOMFIELD, CO 80021
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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): November 17, 2004

Level 3 Communications, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

47-0210602

(IRS Employer
Identification No.)

1025 Eldorado Blvd., Broomfield, Colorado

(Address of principal executive offices)

80021

(Zip Code)

720-888-1000

(Registrant's telephone number, including area code)

Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement

On November 17, 2004, Level 3 Communications, Inc. (“Level 3”) agreed to sell \$320 million aggregate principal amount of its 5 ¹ / 4 % Convertible Senior Notes due 2011 (the “Notes”), pursuant to the terms of a Purchase Agreement, dated as of November 17, 2004, among Level 3 and initial purchasers named therein (the “Initial Purchasers”), a copy of which is attached hereto as Exhibit 1.1 (the “Purchase Agreement”). Pursuant to the Purchase Agreement, the Initial Purchasers will have the right to purchase up to an additional of \$25 million principal amount of such Notes. The Notes are being offered only to qualified institutional buyers in accordance with Rule 144A under the Securities Act of 1933, as amended. The Notes will be governed by the terms of an Indenture, to be entered into between Level 3 and The Bank of New York, as Trustee (the “Indenture”).

In connection with the agreed issuance of Notes, Level 3 has also entered into a Registration Rights Agreement, dated November 17, 2004, with the Initial Purchasers, a copy of which is attached hereto as Exhibit 4.1. Level 3 has agreed to file a shelf registration statement with the Securities and Exchange Commission covering resales of the Notes and Level 3’s common stock issuable upon conversion of the Notes.

The Notes will be convertible, at the option of the holder at any time on or prior to maturity, into shares of Level 3’s common stock. For each \$1,000 principal amount of notes surrendered for conversion, the holder will receive 251.004 shares of common stock, subject to adjustment.

Interest on the Notes will be payable semi-annually on June 15 and December 15 of each year, beginning on June 15, 2005. The Notes will accrue interest at 5 ¹ / 4 % per year on the principal amount.

The Notes will mature on December 15, 2011. After December 15, 2008 Level 3 may redeem the notes, in whole or in part, at its option at any time or from time to time at the redemption prices to be specified in the Indenture, plus accrued and unpaid interest thereon, if any, to the redemption date. Upon the occurrence of certain designated events to be specified in the Indenture, the holders of the Notes will have the right, subject to certain exceptions and conditions, to require Level 3 to repurchase all or any part of their notes at a repurchase price equal to 100% of the principal amount of the notes, plus accrued and unpaid interest thereon, if any, to the redemption date, plus, upon the occurrence of certain changes in control, a “make-whole” premium.

The Notes will be Level 3’s unsecured and unsubordinated obligations and will rank on parity in right of payment with all of its existing unsecured and unsubordinated indebtedness. In addition, the Notes will effectively rank junior to any existing and future secured indebtedness as to the assets securing such debt and will be structurally subordinated to all existing and future indebtedness and other liabilities of Level 3’s subsidiaries.

The summary of the foregoing transaction is qualified in its entirety by reference to the text of the related agreements, which are included as exhibits hereto and are incorporated herein by reference.

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

See Item 1.01, which is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities

See Item 1.01, which is incorporated herein by reference.

Item 8.01 Other Events

On November 17, 2004, Level 3 issued a press release relating to its pending cash tender offers. This press release is filed as Exhibit 99.1 to this Current Report and incorporated by reference as if set forth in full.

On November 17, 2004, Level 3 issued a press release relating to the pricing of a private offering pursuant to Rule 144A. This press release is filed as Exhibit 99.2 to this Current Report and incorporated by reference as if set forth in full.

Item 9.01. Financial Statements and Exhibits**(a) Financial Statements**

Not applicable.

(b) Pro Forma Financial Information

Not applicable.

(c) Exhibits:

- 1.1 Purchase Agreement, dated as of November 17, 2004, among Level 3 Communications, Inc. and the Initial Purchasers.
- 4.1 Registration Rights Agreement, dated as of November 17, 2004, among Level 3 Communications, Inc. and the Initial Purchasers.
- 99.1 Press Release, dated November 17, 2004, of Level 3 Communications, Inc. relating to pending cash tender offers.
- 99.2 Press Release, dated November 17, 2004, of Level 3 Communications, Inc. relating to pricing of private offering.

SIGNATURES

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

LEVEL 3 COMMUNICATIONS, INC.

By /s/ Neil J. Eckstein

Neil J. Eckstein
Senior Vice President

Date: November 23, 2004

EXHIBIT INDEX

Exhibit:

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LEVEL 3 COMMUNICATIONS, INC.

\$320,000,000

5.25% Convertible Senior Notes due 2011

PURCHASE AGREEMENT

New York, New York
November 17, 2004

To: MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED
Morgan Stanley & Co. Incorporated
Citigroup Global Markets Inc.
Credit Suisse First Boston LLC
Needham & Company, Inc.
UBS Securities LLC

In care of:

Merrill Lynch, Pierce, Fenner & Smith Incorporated
4 World Financial Center
North Tower
250 Vesey Street
New York, New York 10080

Ladies and Gentlemen:

Level 3 Communications, Inc., a Delaware corporation (the “Company”), proposes to issue and sell to the several purchasers named in Schedule II hereto (the “Initial Purchasers”), for whom Merrill Lynch, Pierce, Fenner & Smith Incorporated are acting as representatives (the “Representatives”), \$320,000,000 aggregate principal amount of its 5.25% Convertible Senior Notes due 2011 (the “Initial Securities”). The Company also proposes to grant to the Initial Purchasers an option to purchase up to \$25,000,000 additional principal amount of such Convertible Senior Notes (the “Option Securities”; and together with the Initial Securities, the “Securities”). The Securities are convertible into shares of Common Stock, par value \$0.01 per share (the “Common Stock”), of the Company at the conversion rate set forth in the Final Memorandum (as defined below). The Securities are to be issued under an indenture (the “Indenture”) to be dated as of December 2, 2004 between the Company and The Bank of New York, as trustee (the “Trustee”).

The sale of the Securities to you will be made without registration of the Securities under the Securities Act of 1933, as amended (the "Securities Act"), in reliance upon the exemption from the registration requirements of the Securities Act provided by Section 4(2) thereof. You have advised the Company that you will make an offering of the Securities purchased by you hereunder in accordance with Section 4 hereof as soon as you deem advisable after the execution and delivery of this Agreement.

In connection with the sale of the Securities, the Company has prepared a preliminary offering memorandum, dated November 12, 2004 (the "Preliminary Memorandum"), and a final offering memorandum, dated November 17, 2004 (the "Final Memorandum"). Each of the Preliminary Memorandum and the Final Memorandum sets forth certain information concerning the Company and the Securities. The Company hereby confirms that it has authorized the use of the Preliminary Memorandum and the Final Memorandum, and any amendment or supplement thereto, in connection with the offer and sale of the Securities by the Initial Purchasers in accordance with Section 4 hereof. Any reference herein to the Preliminary Memorandum or the Final Memorandum shall be deemed to refer to and include the documents incorporated by reference therein which were filed pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act") on or before the date of the Preliminary Memorandum or the Final Memorandum, respectively. Unless stated to the contrary, all references herein to the Final Memorandum are to the Final Memorandum at the Execution Time (as defined below) and are not meant to include any amendment or supplement thereto subsequent to the Execution Time and any references herein to the terms "amend", "amendment" or "supplement" with respect to the Final Memorandum shall be deemed to refer to and include any information filed under the Exchange Act, subsequent to the Execution Time which is incorporated by reference therein.

The holders of the Securities will be entitled to the benefits of the Registration Rights Agreement dated the date hereof, between the Company and the Initial Purchasers (the "Registration Agreement").

Capitalized terms used herein without definition have the respective meanings assigned to them in the Final Memorandum.

1. Representations and Warranties. The Company represents and warrants to, and agrees with, the Initial Purchasers as set forth below in this Section 1.

(a) (i) Each document, if any, filed or to be filed pursuant to the Exchange Act and incorporated by reference in the Final Memorandum complied or will comply when so filed in all material respects with the Exchange Act and the applicable rules and regulations of the Securities and Exchange Commission (the "Commission") thereunder and (ii) the Final Memorandum, at the date hereof, does not, and at the Closing Date (as defined below) will not (and any amendment or supplement thereto, at the date thereof and at the Closing Date will not), contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Company

makes no representations or warranties as to the information contained in or omitted from the Final Memorandum (or any amendment or supplement thereto) in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of the Initial Purchasers specifically for use in connection with the preparation of the Final Memorandum (or any amendment or supplement thereto).

(b) Subsequent to the respective dates as of which information is given in the Final Memorandum, except as set forth or contemplated in the Final Memorandum, neither the Company nor any of its subsidiaries (as defined below) has incurred any liabilities or obligations, direct or contingent, which are material to the Company and its subsidiaries taken as a whole, nor entered into any transaction not in the ordinary course of business that is material to the Company and its subsidiaries taken as a whole, and there has not been, singularly or in the aggregate, any material adverse change, in the properties, business, results of operations, financial condition, affairs or business prospects of the Company and its subsidiaries taken as a whole (a “Material Adverse Effect”). Without limiting the foregoing, neither the Company nor any of its subsidiaries has sustained since the respective dates as of which information is given in the Final Memorandum any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental or regulatory action, order or decree, constituting a Material Adverse Effect, otherwise than as set forth or contemplated in the Final Memorandum.

(c) Each of the Company and the Subsidiaries (x) has been duly organized and is validly existing as a corporation or limited liability company under the laws of its jurisdiction of organization and is in good standing under the laws of such jurisdiction, (y) has the requisite power and authority to carry on its business as it is currently being conducted and as described in the Final Memorandum, and to own, lease and operate its properties and (z) is duly qualified and is authorized to do business and is in good standing in each jurisdiction where the operation, ownership or leasing of property or the conduct of its business requires such qualification, except where any failure to be so qualified would not, singularly or when aggregated with failures to be qualified elsewhere, have a Material Adverse Effect. The Company has the requisite corporate power and authority to execute, deliver and perform this Agreement and the Registration Agreement and to issue, sell and deliver the Securities. The term “Subsidiaries” means each entity listed on Schedule I hereto, and the Company has no “significant subsidiaries” (as defined in Regulation S-X) other than the Subsidiaries.

(d) The Company’s authorized equity capitalization is as set forth in the Final Memorandum; the capital stock of the Company conforms in all material respects to the description thereof contained in the Final Memorandum; the outstanding shares of Common Stock have been duly and validly authorized and issued and are fully paid and nonassessable; the shares of Common Stock initially issuable upon conversion of the Securities have been duly and validly authorized

and, when issued upon conversion of the Securities and in accordance with the terms of the Indenture, will be validly issued, fully paid and nonassessable; the Board of Directors of the Company or a duly constituted committee thereof, has duly and validly adopted resolutions reserving such shares of Common Stock for issuance upon conversion of the Securities; the holders of outstanding shares of capital stock of the Company are not entitled to preemptive or other rights to subscribe for the Securities or the shares of Common Stock issuable upon conversion thereof; and, except as set forth in the Final Memorandum and, except for outstanding warrants and options to purchase shares of Common Stock that in the aggregate represent less than 5% of the Common Stock outstanding on the date hereof, no options, warrants or other rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities for, shares of capital stock of or ownership interests in the Company are outstanding. All the outstanding shares of capital stock of each Subsidiary and of Level 3 Communications Limited have been duly and validly authorized and issued and are fully paid and nonassessable, and, except as otherwise set forth in the Final Memorandum, all outstanding shares of capital stock of the Subsidiaries are owned by the Company either directly or through wholly owned subsidiaries free and clear of any perfected security interest or any other security interests, claims, liens or encumbrances (other than the pledge of such shares or equity interests pursuant to the agreements the Company and certain of its subsidiaries have entered into in connection with the senior secured credit facility described in the Final Memorandum).

(e) The Company has all requisite corporate power and authority to execute, issue and deliver the Securities and to execute and deliver the Indenture and to incur and perform its obligations provided for therein.

(f) This Agreement and the Registration Agreement have been duly authorized and validly executed and delivered by the Company.

(g) The Indenture has been duly authorized and, when executed and delivered by the Company and the Trustee, will constitute a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general principles of equity.

(h) The Securities have been duly authorized, and, when executed by the Company and authenticated by the Trustee in accordance with the terms of the Indenture, and delivered to and duly paid for by the Initial Purchasers in accordance with the terms of this Agreement, will be entitled to the benefits of the Indenture, will be convertible into Common Stock and will conform in all material respects to the description thereof in the Final Memorandum and will constitute valid and binding obligations of the Company enforceable against the Company in accordance with the terms thereof, subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general principles of equity.

(i) The execution and delivery of this Agreement, the Registration Agreement and the Indenture, the issuance and sale of the Securities hereunder, the issuance of Common Stock upon conversion of the Securities, the performance by the Company of this Agreement, the Registration Agreement and the Indenture, and the consummation of the other transactions herein and therein contemplated will not (x) conflict with or result in a breach or violation of any of the respective charters, by-laws or other organizational documents of the Company, any of the Subsidiaries or Level 3 Communications Limited, (y) violate or conflict with any statute, rule or regulation applicable to the Company or any Subsidiary, or any order or decree of any governmental or regulatory agency or body or any court having jurisdiction over the Company or any Subsidiary or any of their respective properties or (z) after giving effect to the waivers and consents obtained on or prior to the date hereof, if any, conflict with or result in a breach or violation of any term or provision of, constitute a default or cause an acceleration of any obligation under, or result in the imposition or creation of (or the obligation to create or impose) a lien or other claim or encumbrance with respect to, any bond, note, debenture or other evidence of indebtedness or any indenture, mortgage or deed of trust or any other agreement or instrument to which the Company or any of the Subsidiaries or Level 3 Communications Limited is a party or by which it or any of them is bound, or to which any properties of the Company or any of the Subsidiaries is or may be subject, except, in the case of clauses (y) and (z) for violations, conflicts, breaches, defaults, accelerations of obligations or liens that would not, individually or in the aggregate, have a Material Adverse Effect. No authorization, approval or consent or order of, or filing, registration or qualification with, any court or governmental or regulatory body or agency is required in connection with the transactions contemplated by this Agreement, except as may be required by and made with or obtained from state securities laws or regulations and except such as may be required under the Securities Act with respect to the Registration Agreement and the transactions contemplated thereunder.

(j) Except as described in the Final Memorandum, there is no action, suit or proceeding before or by any court, arbitrator or governmental or regulatory official, agency or body, domestic or foreign, pending against or affecting the Company or any of the subsidiaries, or any of their respective properties, that, if determined adversely, is reasonably expected to affect adversely the issuance of the Securities or in any manner draw into question the validity of this Agreement, the Registration Agreement, the Indenture or the Securities or to result, singularly or when aggregated with other pending actions and actions known to be threatened that are not described in the Final Memorandum, in a Material Adverse Effect, or that is reasonably expected to materially and adversely affect the consummation of this Agreement, the Registration Agreement or the transactions contemplated hereby or thereby, and to the best of the Company's knowledge, no such proceedings are contemplated or threatened.

(k) None of the Company nor any of the Subsidiaries or Level 3 Communications Limited is or after giving effect to the issuance of the Securities will be (i) in violation of its respective charter, bylaws or other organizational documents or (ii) in default in the performance of any bond, debenture, note or any other evidence of indebtedness or any indenture, mortgage, deed of trust or other contract, lease or other instrument to which the Company or any of the Subsidiaries or Level 3 Communications Limited is a party or by which any of them is bound, or to which any of the property or assets of the Company or any of the Subsidiaries or Level 3 Communications Limited is subject, or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except in the case of clauses (ii) and (iii) above, for any such default or violation that could not singularly or in the aggregate, have a Material Adverse Effect.

(l) KPMG LLP, who have certified certain of the consolidated financial statements and supporting schedules of the Company included or incorporated by reference in the Final Memorandum are independent registered public accountants with respect to the Company and its subsidiaries, as required by the Securities Act. To the Company's knowledge, Arthur Andersen LLP, who have previously certified certain consolidated financial statements and supporting schedules of the Company and previously delivered their report with respect to certain audited consolidated financial statements and supporting schedules included or incorporated by reference in the Final Memorandum, were at all time during their engagement by the Company independent public accountants with respect to the Company and its subsidiaries, as required by the Securities Act. The consolidated historical statements and any pro forma information, together with related schedules and notes, if any, included or incorporated by reference in the Final Memorandum comply as to form in all material respects with the requirements of the Securities Act. Such historical financial statements fairly present in all material respects the consolidated financial position of the Company and its subsidiaries at the respective dates indicated and the results of their operations and their cash flows for the respective periods indicated, in accordance with generally accepted accounting principles, except as otherwise expressly stated therein, as consistently applied throughout such periods. Such pro forma information has been prepared on a basis consistent with such historical financial statements, except for the pro forma adjustments specified therein, and gives effect to assumptions made on a reasonable basis and fairly presents in all material respects and gives effect to the transactions described therein pertaining to such pro forma information. The other financial and statistical information and data included in the Final Memorandum, historical and pro forma, are, in all material respects, accurately presented and prepared on a basis consistent with such financial statements and the books and records of the Company.

(m) The consolidated historical statements of Genuity Inc., together with related schedules and notes, if any, included or incorporated by reference in the Final Memorandum comply as to form in all material respects with the requirements of the Securities Act. Such historical financial statements fairly present in all material respects the consolidated financial position of Genuity Inc. at the respective dates indicated and the results of its operations and its cash flows for the respective periods indicated, in accordance with generally accepted accounting principles, except as otherwise expressly stated therein, as consistently applied throughout such periods.

(n) Each of the Company and each of the Subsidiaries has all certificates, consents, exemptions, orders, permits, licenses, authorizations, or other approvals (each, an "Authorization") of and from, and has made all declarations and filings with, all Federal, state, local and other governmental or regulatory bodies or agencies, and all courts and other tribunals, necessary or required to own, lease, license and use its properties and assets and to conduct its business as currently operated in the manner described in the Final Memorandum, except to the extent that the failure to obtain or file any such Authorizations would not, singularly or in the aggregate, reasonably be expected to have a Material Adverse Effect. All such Authorizations are in full force and effect with respect to the Company and the Subsidiaries, and the Company and the Subsidiaries are in compliance in all material respects with the terms and conditions of all such Authorizations and with the rules and regulations of the regulatory authorities and governing bodies having jurisdiction with respect thereto.

(o) Except as disclosed in the Final Memorandum, no holder of any security of the Company has or will have any right to require the registration of such security by virtue of any transactions contemplated by this Agreement or the Registration Agreement other than (i) any such right that has been expressly waived in writing, (ii) any such right in respect of outstanding warrants to purchase shares of Common Stock that in the aggregate represent less than 1% of the Common Stock outstanding on the date hereof, and (iii) in the case of holders of Securities, pursuant to the Registration Agreement. No holder of any of the outstanding shares of capital stock of the Company or any other person is entitled to preemptive or other rights to subscribe for the Securities.

(p) The Company has not, except as contemplated by this Agreement, paid or agreed to pay to any person any compensation for soliciting another to purchase any securities of the Company.

(q) The Company has not taken nor will it take, directly or indirectly, any action designed to cause or result in, or which has constituted or which might reasonably be expected to cause or result in, under the Exchange Act or otherwise, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(r) None of the Company, any of its Affiliates (as defined in Rule 501(b) of Regulation D under the Securities Act (“Regulation D”)) or any person (other than the Initial Purchasers as to whom the Company makes no representation or warranty) acting on its or their behalf has (i) sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) which is or will be integrated with the Securities in a manner that would require the registration of the Securities under the Securities Act or (ii) engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with any offer or sale of the Securities in the United States.

(s) The Securities satisfy the eligibility requirements of Rule 144A(d)(3) under the Securities Act.

(t) The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Final Memorandum, will not be an “investment company” within the meaning of the Investment Company Act of 1940, as amended (the “Investment Company Act”), without taking account of any exemption arising out of the number of holders of the Company’s securities.

(u) The Company is subject to and in full compliance with the reporting requirements of Section 13 or 15(d) of the Exchange Act.

(v) The information provided by the Company pursuant to Section 5(i) hereof will not, at the date thereof, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(w) Assuming that the representations and warranties of the Initial Purchasers in Section 4 hereof are true and correct and that the Initial Purchasers comply with their respective covenants in such Section, it is not necessary in connection with the offer, sale and delivery of the Securities in the manner contemplated by this Agreement and the Final Memorandum to register the Securities under the Securities Act or to qualify the Indenture under the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”).

(x) The Company and each of its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to material assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for material assets is compared on a periodic basis, which the Company believes are reasonable intervals, with the existing assets and appropriate action is taken with respect to any material differences. The Company and its applicable executive officers have complied with Rule 13a-14 under the Exchange Act.

(y) Prior to the date hereof, the Company has furnished to the Representatives a letter, substantially in the form of Exhibit E hereto, duly executed by each of James Q. Crowe, Kevin J. O'Hara, Charles C. Miller III and Sunit S. Patel and addressed to the Representatives.

Any certificate signed by any officer of the Company and delivered to the Representatives or counsel for the Initial Purchasers in connection with the offering of the Securities shall be deemed a representation and warranty by the Company, as to matters covered thereby, to each Initial Purchaser.

2. Purchase and Sale. (a) Subject to the terms and conditions and in reliance upon the representations and warranties set forth herein, the Company agrees to sell to each Initial Purchaser, and each Initial Purchaser agrees, severally and not jointly, to purchase from the Company, at a purchase price of 97% of the principal amount thereof, plus accrued interest, if any, from December 2, 2004 to the Closing Date, the principal amount of Securities set forth opposite such Initial Purchaser's name on Schedule II hereto.

(b) Subject to the terms and conditions and in reliance upon the representations and warranties set forth herein, the Company hereby grants an option to the several Initial Purchasers to purchase, severally and not jointly, the Option Securities at the same purchase price as the Initial Purchasers shall pay for the Initial Securities, plus accrued interest, if any, from December 2, 2004 to the date on which such Option Securities are purchased (a "settlement date"). Said option may be exercised in whole or in part at any time on or before the 30th day after the date of the Final Memorandum upon written or telegraphic notice by the Representatives to the Company setting forth the principal amount of the Option Securities as to which the several Initial Purchasers are exercising the option and the settlement date. Delivery of the Option Securities, and payment therefore, shall be made as provided in Section 3 hereof. The principal amount of Option Securities to be purchased by each Initial Purchaser shall be the same percentage of the total principal amount of Option Securities to be purchased by the several Initial Purchasers as such Initial Purchaser is purchasing of the Initial Securities, subject to such adjustments as you in your absolute discretion shall make to eliminate any fractional Securities.

3. Delivery and Payment. Delivery of and payment for the Initial Securities and the Option Securities (if the option provided for in Section 2(b) hereof shall have been exercised on or before the third Business Day prior to the Closing Date) shall be made at 10:00 AM, New York City time, on December 2, 2004, which date and time may be postponed by agreement among the Representatives and the Company or as provided in Section 9 hereof (such date and time of delivery and payment for the Securities being herein called the "Closing Date"). Delivery of the Securities shall be made to the Representatives for the respective accounts of the several Initial Purchasers against payment by the several Initial Purchasers through the Representatives of the

purchase price thereof of the Securities being sold by the Company to or upon the order of the Company by wire transfer payable in same-day funds to an account specified by the Company. Delivery of the Initial Securities and the Option Securities shall be made through the facilities of The Depository Trust Company ("DTC") unless the Representatives shall otherwise instruct.

If the option provided for in Section 2(b) hereof is exercised after the third Business Day prior to the Closing Date, the Company will deliver the Option Securities (at the expense of the Company), through the facilities of DTC unless the Representatives shall instruct otherwise, at 4 World Financial Center, 250 Vesey Street, New York, New York, on the date specified by the Representatives (which shall be not more than ten nor fewer than three Business Days after exercise of said option) for the respective accounts of the several Initial Purchasers, against payment by the several Initial Purchasers through the Representatives of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to an account specified by the Company. If settlement for the Option Securities occurs after the Closing Date, the Company will deliver to the Representatives on the settlement date for the Option Securities, and the obligation of the Initial Purchasers to purchase the Option Securities shall be conditioned upon receipt of, supplemental opinions, certificates and letters confirming as of such date, the opinions, certificates and letters delivered on the Closing Date pursuant to Section 6 hereof.

The Company agrees to have the Securities available for inspection and checking by the Initial Purchasers in New York, New York, not later than 1:00 PM on the business day prior to the Closing Date.

4. Offering of Securities. Each Initial Purchaser severally, and not jointly, (i) acknowledges that the Securities have not been registered under the Securities Act and may not be offered or sold except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act or pursuant to an effective registration statement under the Securities Act and (ii) represents and warrants to and agrees with the Company that:

(a) It has not offered or sold, and will not offer or sell, any Securities except to those it reasonably believes to be qualified institutional buyers (as defined in Rule 144A under the Securities Act) and that, in connection with each such sale, it has taken or will take reasonable steps to ensure that the purchaser of such Securities is aware that such sale is being made in reliance on Rule 144A.

(b) Neither it nor any person acting on its behalf has made or will make offers or sales of the Securities in the United States by means of any form of general solicitation or general advertising (within the meaning of Regulation D) in the United States, except pursuant to a registered public offering, as provided in the Registration Rights Agreement.

5. Agreements. The Company agrees with the Initial Purchasers that:

(a) The Company will furnish to the Initial Purchasers, without charge, as many copies of the Final Memorandum and any supplements or amendments thereof or thereto as the Initial Purchasers may reasonably request. The Company will pay the expenses of printing or other production of all documents relating to the offering.

(b) The Company will not amend or supplement the Final Memorandum, including by filing documents under the Exchange Act that are incorporated by reference therein, unless the Company shall have furnished the Initial Purchasers with a copy of the proposed amendment, supplement or document for a reasonable time before so amending or supplementing the Final Memorandum or filing such document and the Initial Purchasers shall not have reasonably objected to such proposed amendment, supplement or document in writing to the Company within a reasonable time after their receipt thereof; provided, however, that the requirements of this paragraph (b) shall not apply with respect to the filing of documents under the Exchange Act after the completion of the sale of the Securities by the Initial Purchasers.

(c) Subject to paragraph (b) of this Section 5, the Company promptly will advise the Initial Purchasers when, prior to the completion of the sale of the Securities by the Initial Purchasers, any document filed under the Exchange Act that is incorporated by reference in the Final Memorandum shall have been filed with the Commission.

(d) If at any time prior to the completion of the sale of the Securities by the Initial Purchasers, any event occurs as a result of which the Final Memorandum, as then amended or supplemented, would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it shall be necessary to amend or supplement the Final Memorandum (including any document incorporated by reference therein that was filed under the Exchange Act) to comply with the Exchange Act or the rules thereunder or other applicable law, the Company promptly will notify the Initial Purchasers of the same and, subject to paragraph (b) of this Section 5, will prepare and provide to the Initial Purchasers pursuant to paragraph (a) of this Section 5 an amendment or supplement which will correct such statement or omission or effect such compliance, and, in the case of such an amendment or supplement that is to be filed under the Exchange Act and that is incorporated by reference in the Final Memorandum, will file such amendment or supplement with the Commission.

(e) The Company will cooperate with the Initial Purchasers in arranging, at the Company's cost, for the qualification of the Securities for sale under the laws of such jurisdictions as the Initial Purchasers may designate and will maintain such qualifications in effect so long as required for the sale of the Securities; provided however, that in connection therewith the Company shall not

be required to qualify as a foreign corporation or to execute a general consent to service of process in any jurisdiction or subject itself to taxation in excess of a nominal dollar amount in any such jurisdiction where it is not then subject. The Company promptly will advise the Initial Purchasers of the receipt by it of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(f) The Company will not, and will not permit any of its Affiliates to, resell any Securities that have been acquired by any of them until such time as resale of the Securities shall be permitted by the holders thereof (who are not Affiliates of the Company) under Rule 144 (k) of the Securities Act.

(g) None of the Company, any of its Affiliates or any person acting on its or their behalf will, directly or indirectly, make offers or sales of any security, or solicit offers to buy any security, under circumstances that would require the registration of the Securities under the Securities Act, except pursuant to a registered public offering, whether an exchange offer or shelf registration, as provided in the Registration Agreement; provided, however, actions of the Initial Purchasers other than at the direction of the Company shall not constitute a breach of this covenant.

(h) None of the Company, any of its Affiliates or any person acting on its or their behalf will engage in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with any offer or sale of the Securities in the United States, except pursuant to a registered public offering, whether an exchange offer or shelf registration, as provided in the Registration Agreement; provided, however, actions of the Initial Purchasers other than at the direction of the Company shall not constitute a breach of this covenant.

(i) So long as any of the Securities or any of the shares of Common Stock issued upon conversion of the Securities are “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, the Company will, during any period in which it is not subject to or in compliance with Section 13 or 15(d) of the Exchange Act, provide to each holder of such restricted securities and to each prospective purchaser (as designated by such holder) of such restricted securities, upon the request of such holder or prospective purchaser, any information required to be provided by Rule 144A(d)(4) under the Securities Act. This covenant is intended to be for the benefit of the holders, and the prospective purchasers designated by such holders, from time to time of such restricted securities.

(j) The Company will cooperate with the Initial Purchasers and use its best efforts to permit the Securities to be eligible for clearance and settlement through DTC.

(k) The Company hereby agrees to permit the Securities to be designated Portal eligible securities, will pay the requisite fees related thereto and has been advised by The Portal Market that the Securities have or will be designated Portal eligible securities in accordance with the rules and regulations of the National Association of Securities Dealers, Inc.

(l) The Company will not for a period of 30 days following the Execution Time, without the prior written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated, offer, sell, contract to sell, pledge or otherwise dispose of (or enter into any transaction which is designed to result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the Company or any affiliate of the Company or any person in privity with the Company or any affiliate of the Company), directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, any shares of capital stock or securities convertible into, or exchangeable for, shares of capital stock (other than the Securities) or publicly announce an intention to effect any such transaction, except for: (A) Common Stock issued pursuant to any employee benefit plan, stock ownership or stock option plan or dividend reinvestment plan in effect at the Execution Time or options granted pursuant to any such plan in effect at the Execution Time (provided that such options cannot be exercised for any remaining portion of such 30-day period), (B) Common Stock issued in connection with the exercise of any warrants or convertible securities outstanding at the date hereof, and (C) the Securities and the Common Stock issuable upon conversion of the Securities.

(m) The Company will apply the net proceeds from the sale of the Securities sold by it substantially in accordance with its statements under the caption "Use of Proceeds" in the Final Memorandum.

(n) So long as the Securities or any shares of Common Stock issued upon conversion of the securities are outstanding and are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, the Company will not be or become, or be or become owned by, an open-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under Section 8 of the Investment Company Act.

(o) The Company will comply with all applicable securities and other applicable laws, rules and regulations, including, without limitation, the Sarbanes Oxley Act.

(p) The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result, under the Exchange Act or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(q) The Company will reserve and keep available at all times, free of preemptive rights, the full number of shares of Common Stock issuable upon conversion of the Securities.

(r) Between the Execution Time and the Closing Date, the Company will not do or authorize any act or thing that would result in an adjustment of the conversion price with respect to the Securities.

6. Conditions to the Obligations of the Initial Purchasers. The obligations of the Initial Purchasers to purchase the Initial Securities and the Option Securities, as the case may be, shall be subject to the accuracy of the representations and warranties on the part of the Company contained herein at the date and time that this Agreement is executed and delivered by the parties hereto (the "Execution Time"), the Closing Date and any settlement date pursuant to Section 3 hereof, to the accuracy of the statements of the Company made in any certificates pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder to be performed on or prior to the Closing Date and to the following additional conditions:

(a) The Company shall have furnished to the Initial Purchasers the opinion of Willkie Farr & Gallagher LLP, counsel for the Company, dated the Closing Date, to the effect of Exhibit A.

(b) The Company shall have furnished to the Initial Purchasers the opinion of Swidler Berlin Shereff Friedman LLP, regulatory counsel for the Company, dated the Closing Date, to the effect of Exhibit B.

(c) The Company shall have furnished to the Initial Purchasers the opinion of internal counsel for the Company, dated the Closing Date, to the effect of Exhibit C.

(d) The Company shall have furnished to the Initial Purchasers the opinion of Thomas C. Storz, Senior Vice President, General Counsel and Secretary of the Company, dated the Closing Date, to the effect of Exhibit D.

(e) The Initial Purchasers shall have received from Counsel for the Initial Purchasers such opinion or opinions, dated the Closing Date, with respect to the issuance and sale of the Securities, the Final Memorandum (as amended or supplemented at the Closing Date) and other related matters as the Initial Purchasers may reasonably require, and the Company shall have furnished to such counsel such documents as they reasonably request for the purpose of enabling them to pass upon such matters.

(f) The Company shall have furnished to the Initial Purchasers a certificate of the Company, signed by the President and Chief Executive Officer and the Executive Group Vice President and Chief Financial Officer of the Company, dated the Closing Date, to the effect that the signers of such certificate have carefully examined the Final Memorandum, any amendment or supplement

to the Final Memorandum, this Agreement and the Registration Agreement and that:

(i) the representations and warranties of the Company in this Agreement and the Registration Agreement that are qualified as to materiality are true and correct, and all other representations and warranties of the Company in this Agreement and the Registration Agreement are true and correct in all material respects, on and as of the Closing Date with the same effect as if made on the Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied hereunder or thereunder at or prior to the Closing Date; and

(ii) since the date of the most recent financial statements included or incorporated by reference in the Final Memorandum (exclusive of any amendment or supplement thereto), there has been no Material Adverse Effect, whether or not arising from transactions in the ordinary course of business, except as disclosed in the Final Memorandum (exclusive of any amendment or supplement thereto).

(g) The Company shall have requested and caused KPMG LLP to have furnished to the Initial Purchasers, at the Execution Time and at the Closing Date, letters, dated respectively as of the Execution Time and as of the Closing Date, in form and substance reasonably satisfactory to the Initial Purchasers, confirming that they are independent registered accountants within the meaning of the Securities Act and the Exchange Act and the respective applicable rules and regulations adopted by the Commission thereunder and Rule 101 of the Code of Professional Conduct of the American Institute of Certified Public Accountants and that they have performed a review of the unaudited interim financial information of the Company for the nine-month period ended September 30, 2004, and as at September 30, 2004, in accordance with Statement on Auditing Standards No. 100, and stating in effect that:

(i) in their opinion the audited financial statements and financial statement schedules and pro forma financial statements included or incorporated by reference in the Final Memorandum and reported on by them comply as to form in all material respects with the applicable accounting requirements of the Securities Act and the Exchange Act and the related rules and regulations adopted by the Commission;

(ii) on the basis of a reading of the latest unaudited financial statements made available by the Company and its subsidiaries; their limited review, in accordance with the standards established under Statement on Auditing Standards No. 100, of the unaudited interim financial information for the nine-month period ended September 30, 2004, and as at September 30, 2004; carrying out certain specified procedures (but not an examination in accordance with generally accepted

auditing standards) which would not necessarily reveal matters of significance with respect to the comments set forth in such letter; a reading of the minutes of the meetings of the stockholders, directors and audit and compensation committees of the Company and the Subsidiaries; and inquiries of certain officials of the Company who have responsibility for financial and accounting matters of the Company and its subsidiaries as to transactions and events subsequent to December 31, 2003, nothing came to their attention which caused them to believe that:

- (A) any unaudited financial statements included or incorporated by reference in the Final Memorandum do not comply as to form in all material respects with applicable accounting requirements of the Securities Act and with the related rules and regulations adopted by the Commission with respect to financial statements included or incorporated by reference in quarterly reports on Form 10-Q under the Exchange Act; and said unaudited financial statements are not in conformity with generally accepted accounting principles applied on a basis substantially consistent with that of the audited financial statements included or incorporated by reference in the Final Memorandum; or
- (B) with respect to the period subsequent to September 30, 2004, there were any changes, at a specified date not more than five days prior to the date of the letter, in the long term debt of the Company and its subsidiaries or capital stock of the Company or decreases in the stockholders' equity of the Company as compared with the amounts shown on the September 30, 2004 consolidated balance sheet included or incorporated by reference in the Final Memorandum, or for the period from October 1, 2004 to such specified date there were any increases, as compared with the corresponding period in the preceding quarter, in net loss or loss from continuing operations before income taxes or in total or per share amounts of net income/loss of the Company and its subsidiaries, except in all instances for changes or increases set forth in such letter, in which case the letter shall be accompanied by an explanation by the Company as to the significance thereof unless said explanation is not deemed necessary by the Representatives; or

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- (C) the information included or incorporated by reference in the Final Memorandum in response to Regulation S-K, Item 301 (Selected Financial Data), Item 302 (Supplementary Financial Information), Item 402 (Executive Compensation) and Item 503(d) (Ratio of Earnings to Fixed Charges) is not in conformity with the applicable disclosure requirements of Regulation S-K; and

(iii) they have performed certain other specified procedures as a result of which they determined that certain information of an accounting, financial or statistical nature (which is limited to accounting, financial or statistical information derived from the general accounting records of the Company and its subsidiaries) set forth in the Final Memorandum, including the information set forth under the captions “Summary”, “Risk Factors”, “Use of Proceeds”, “Capitalization” and “Description of Notes” in the Final Memorandum, the information included or incorporated by reference in Items 1, 2, 6, 7 and 11 of the 2003 10-K incorporated by reference in the Final Memorandum and the information included in the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included or incorporated by reference in the Company’s Quarterly Reports on Form 10-Q for the quarter ended September 30, 2004 incorporated by reference in the Final Memorandum agrees with the accounting records of the Company and its subsidiaries, excluding any questions of legal interpretation; and

(iv) they have read the unaudited pro forma financial statements included or incorporated by reference in the Final Memorandum (the “pro forma financial statements”); carried out certain specified procedures; inquiries of certain officials of the Company who have responsibility for financial and accounting matters; and proved the arithmetic accuracy of the application of the pro forma adjustments to the historical amounts in the pro forma financial statements, and the officials of the Company referred to above have stated, in response to such auditor’s inquiries, that all significant assumptions regarding the business combinations have been reflected in the pro forma adjustments and that the unaudited condensed consolidated financial statements referred to herein comply as to form in all material respects with the applicable accounting requirements of Rule 11-02 of Regulation S-X.

All references in this Section 6(g) to the Final Memorandum shall be deemed to include any amendment or supplement thereto at the date of the applicable letter.

(h) Subsequent to the Execution Time or, if earlier, the dates as of which information is given in the Final Memorandum (exclusive of any supplement thereto), there shall not have been (i) any increase, change or decrease specified in

the letter or letters referred to in paragraph (g) of this Section 6 or (ii) any change, or any development involving a prospective change, in or affecting the properties, business, results of operations, financial condition, affairs or business prospects of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Final Memorandum (exclusive of any supplement thereto) the effect of which, in any case referred to in clause (i) or (ii) above, is, in the sole judgment of the Representatives, so material and adverse as to make it impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Final Memorandum (exclusive of any supplement thereto).

(i) Subsequent to the Execution Time, there shall not have been (i) any decrease in the rating of the Securities or any of the Company's other debt securities by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Securities Act) or (ii) any notice given of any intended or potential decrease in any such rating or that such organization has under surveillance or review (other than any such notice with positive implications of a possible upgrading) its rating of the Securities or any of the Company's other debt securities.

(j) The shares of Common Stock initially issuable upon conversion of the Securities shall have been listed and admitted and authorized for trading, subject to official notice of issuance, on the Nasdaq National Market, and reasonably satisfactory evidence of such actions shall have been provided to the Representatives.

(k) Prior to the Closing Date, the Company shall have furnished to the Initial Purchasers such further information, certificates and documents as the Initial Purchasers may reasonably request.

If any of the conditions specified in this Section 6 shall not have been fulfilled in all material respects when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be in all material respects reasonably satisfactory in form and substance to the Initial Purchasers and Counsel for the Initial Purchasers, this Agreement and all obligations of the Initial Purchasers hereunder may be canceled at, or at any time prior to, the Closing Date by the Initial Purchasers. Notice of such cancellation shall be given to the Company in writing or by telephone confirmed in writing.

The documents required to be delivered by this Section 6 will be delivered at the office of Counsel for the Initial Purchasers, 825 Eighth Avenue, New York, New York 10019, on the Closing Date.

7. Reimbursement of Expenses. If the sale of the Securities provided for herein is not consummated because any condition to the obligations of the Initial Purchasers set forth in Section 6 hereof is not satisfied, because of any termination pursuant to Section 10 hereof or because of any refusal, inability or failure on the part of

the Company to perform any agreement herein or comply with any provision hereof, in each case other than by reason of a default by the Initial Purchasers, the Company will reimburse the Initial Purchasers upon demand for all reasonable out-of-pocket expenses (including reasonable fees and disbursements of counsel) that shall have been incurred by them in connection with the proposed purchase and sale of the Securities. Except as provided in the preceding sentence or elsewhere in this Agreement, the Initial Purchasers shall be responsible for (i) all costs and expenses incurred by them in connection with their purchase of the Securities hereunder and the resale of any of the Securities, including, without limitation, their own out-of-pocket lodging, meal and other “roadshow” expenses and fees and disbursements of Counsel for the Initial Purchasers, and (ii) such other “roadshow” expenses as shall be agreed upon by the Company and the Representatives.

8. Indemnification and Contribution. (a) The Company agrees to indemnify and hold harmless each Initial Purchaser, each director, officer, employee and agent of any Initial Purchaser and each other person, if any, who controls any Initial Purchaser within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Securities Act, the Exchange Act or other Federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Memorandum, the Final Memorandum or any information provided by the Company to any holder or prospective purchaser of Securities pursuant to Section 5(i), or in any amendments thereof or supplements thereto, or arise out of or are based upon the omission or alleged omission to state therein a 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, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made in the Preliminary Memorandum or the Final Memorandum, or in any amendment thereof or supplement thereto, in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Initial Purchasers specifically for use in connection with the preparation thereof, it being understood that the only such information is that described in Section 8(b); provided further, however, that the indemnity agreement contained in this Section 8(a) shall not inure to the benefit of any indemnified party to the extent that it is determined by a final, non-appealable judgment that (i) the Preliminary Memorandum contained an untrue statement of a material fact or omitted to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, (ii) the sale to the person asserting any such losses, claims, damages or liabilities was an initial resale of the Securities by any Initial Purchaser, (iii) any such loss, claim, damage or liability of such indemnified party results from the fact that there was not sent or given to such person, at or prior to the written confirmation

of the sale of such Securities to such person, a copy of any revised Preliminary Memorandum, the Final Memorandum or the Final Memorandum as amended or supplemented in any case where such delivery is required by the Securities Act, and the Company had previously furnished copies thereof to such Initial Purchaser and (iv) the revised Preliminary Memorandum, the Final Memorandum or the Final Memorandum as amended or supplemented corrected such untrue statement or omission. This indemnity agreement will be in addition to any liability that the Company may otherwise have.

(b) Each Initial Purchaser severally and not jointly agrees to indemnify and hold harmless the Company, its directors and officers, and each other person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, to the same extent as the foregoing indemnity from the Company to the Initial Purchasers, but only with reference to written information relating to the Initial Purchasers furnished to the Company by or on behalf of the Initial Purchasers specifically for use in connection with the preparation of the Preliminary Memorandum or the Final Memorandum (or in any amendment thereof or supplement thereto). This indemnity agreement will be in addition to any liability which the Initial Purchasers may otherwise have. The Company acknowledges that the statements set forth in the last paragraph of the cover page and the eleventh paragraph under the heading "Plan of Distribution" in the Preliminary Memorandum and the Final Memorandum (or in any amendment thereof or supplement thereto) constitute the only information furnished in writing by or on behalf of the Initial Purchasers for use in connection with the preparation of the Preliminary Memorandum or the Final Memorandum (or in any amendment thereof or supplement thereto).

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the indemnified party or parties except as set forth below); provided, however, that such counsel shall be reasonably satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel, if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the

indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, (iii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party. It is understood, however, that the Company shall, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of only one separate firm of attorneys (in addition to any local counsel) at any time for all such Initial Purchasers and controlling persons, which firm shall be designated in writing by Merrill Lynch, Pierce, Fenner & Smith Incorporated. An indemnifying party shall not be liable under this Section 8 to any indemnified party regarding any settlement or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent is consented to by such indemnifying party, which consent shall not be unreasonably withheld.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section 8 is unavailable to or insufficient to hold harmless an indemnified party for any reason, the Company and the Initial Purchasers agree to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending same) (collectively “Losses”) to which the Company and the Initial Purchasers may be subject in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and by the Initial Purchasers on the other from the offering of the Securities; provided, however, that in no case shall the Initial Purchasers be responsible for any amount in excess of the purchase discount or commission applicable to the Securities purchased by the Initial Purchasers hereunder. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the Company and the Initial Purchasers shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and of the Initial Purchasers on the other in connection with the statements or omissions which resulted in such Losses as well as any other relevant equitable considerations. Benefits received by the Company shall be deemed to be equal to the total net proceeds from the offering of the Securities (before deducting expenses), and benefits received by the Initial Purchasers shall be

deemed to be equal to the total purchase discounts and commissions, in each case as set forth on the cover page of the Final Memorandum. Relative fault shall be determined by reference to whether any alleged untrue statement or omission relates to information provided by the Company or the Initial Purchasers. The Company and the Initial Purchasers agree that it would not be just and equitable if contribution were determined by pro rata allocation or any other method of allocation which does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11 (f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 8, each person who controls an Initial Purchaser within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act and each director, officer, employee and agent of an Initial Purchaser shall have the same rights to contribution as such Initial Purchaser, and each person who controls the Company within the meaning of either the Securities Act or the Exchange Act and each officer and director of the Company shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this paragraph (d).

9. Default by an Initial Purchaser . If any one or more Initial Purchasers shall fail to purchase and pay for any of the Initial Securities agreed to be purchased by such Initial Purchaser hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Initial Purchasers shall be obligated severally to take up and pay for (in the respective proportions which the principal amount or principal amount at maturity, as applicable, of Securities set forth opposite their names in Schedule II hereto bears to the aggregate principal amount or aggregate principal amount at maturity, as applicable, of Securities set forth opposite the names of all the remaining Initial Purchaser(s)) the Securities that the defaulting Initial Purchaser or Initial Purchasers agreed but failed to purchase; provided, however, that in the event that the aggregate principal amount or aggregate principal amount at maturity, as applicable, of Securities that the defaulting Initial Purchaser or Initial Purchasers agreed but failed to purchase shall exceed 10% of the aggregate principal amount or aggregate principal amount at maturity, as applicable, of Securities set forth in Schedule I hereto, the remaining Initial Purchasers shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Securities, and if such non-defaulting Initial Purchasers do not purchase all the Securities, this Agreement will terminate without liability to any non-defaulting Initial Purchaser or the Company except as provided in Section 11 hereof. In the event of a default by any Initial Purchaser as set forth in this Section 9, the Closing Date shall be postponed for such period, not exceeding seven days, as the Initial Purchasers shall determine in order that the required changes in the Final Memorandum or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Initial Purchaser of its liability, if any, to the Company or any non-defaulting Initial Purchaser for damages occasioned by its default hereunder.

10. Termination . This Agreement shall be subject to termination in the absolute discretion of the Initial Purchasers, by notice given to the Company prior to delivery of and payment for the Securities, if prior to such time (i) trading in any of the

Company's securities shall have been suspended by the Commission or the Nasdaq National Market or trading in securities generally on the New York Stock Exchange or the Nasdaq National Market shall have been suspended or limited or minimum prices shall have been established on either of such Exchange or National Market, (ii) a banking moratorium shall have been declared either by Federal or New York State authorities or (iii) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war or other calamity or crisis the effect of which on financial markets is such as to make it, in the judgment of the Initial Purchasers, impracticable or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Final Memorandum.

11. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers and of the Initial Purchasers set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Initial Purchasers, the Company or any of the officers, directors, employees, agents or controlling persons referred to in Section 8 hereof, and will survive delivery of and payment for the Securities. The provisions of Sections 7 and 8 hereof shall survive the termination or cancelation of this Agreement.

12. Notices. All communications hereunder will be in writing and effective only on receipt, and, if sent to the Initial Purchasers, will be mailed, delivered or sent by fax and confirmed to them, care of Merrill Lynch, Pierce, Fenner & Smith Incorporated, at Merrill Lynch World Headquarters, North Tower, World Financial Center, New York, New York 10281-1201; or, if sent to the Company, will be mailed, delivered or telegraphed and confirmed to it at 1025 Eldorado Boulevard, Broomfield, Colorado 80021, attention: General Counsel.

13. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers, directors, employees, agents and controlling persons referred to in Section 8 hereof, and, except as expressly set forth in Section 5(i) hereof, no other person will have any right or obligation hereunder.

14. APPLICABLE LAW. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICT OF LAW PROVISIONS THEREOF).

15. Business Day. For purposes of this Agreement, "business day" means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in The City of New York, New York are authorized or obligated by law, executive order or regulation to close.

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all such counterparts will together constitute one and the same instrument.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this Agreement and your acceptance shall represent a binding agreement between the Company and the Initial Purchasers.

Very truly yours,

LEVEL 3 COMMUNICATIONS, INC.

by /s/ Thomas C. Stortz

Name: Thomas C. Stortz

Title: Executive Vice President and
Chief Legal Officer

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED
CITIGROUP GLOBAL MARKETS INC.
CREDIT SUISSE FIRST BOSTON LLC
MORGAN STANLEY & CO. INCORPORATED
NEEDHAM & COMPANY, INC.
UBS SECURITIES LLC

by MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

by /s/ Yonathan Epelbaum

Name: Yonathan Epelbaum

Title: Managing Director

LEVEL 3 COMMUNICATIONS, INC.

\$320,000,000

5.25% Convertible Senior Notes due 2011

REGISTRATION RIGHTS AGREEMENT

New York, New York
November 17, 2004

To: MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

Morgan Stanley & Co. Incorporated
Citigroup Global Markets Inc.
Credit Suisse First Boston LLC
Needham & Company, Inc.
UBS Securities LLC

In care of:

Merrill Lynch, Pierce, Fenner & Smith Incorporated
4 World Financial Center
North Tower
250 Vesey Street
New York, New York 10080

Ladies and Gentlemen:

Level 3 Communications, Inc., a Delaware corporation (the “Company”), proposes to issue and sell to certain purchasers (the “Initial Purchasers”), upon the terms set forth in a purchase agreement dated the date hereof (the “Purchase Agreement”), \$320,000,000 aggregate principal amount of its 5.25% Convertible Senior Notes due 2011 (plus up to an additional \$25,000,000 aggregate principal amount of the 5.25% Convertible Senior Notes due 2011 if the Initial Purchasers exercise in full their option to purchase such additional notes) (the “Securities”) (the “Initial Placement”). As an inducement to the Initial Purchasers to enter into the Purchase Agreement and in satisfaction of a condition to your obligations thereunder, the Company agrees with you, (i) for your benefit and the benefit of the other Initial Purchasers and (ii) for the benefit of the holders from time to time of the Securities (including you and the other Initial Purchasers) (each of the foregoing a “Holder” and together the “Holders”), as follows:

1. Definitions. Capitalized terms used herein without definition shall have their respective meanings set forth in the Purchase Agreement. As used in this Agreement, the following capitalized defined terms shall have the following meanings:

“ Additional Interest ” has the meaning set forth in Section 2(e) hereof.

“ Additional Interest Accrual Period ” has the meaning set forth in Section 2(e) hereof.

“ Additional Interest Payment Date ” means each June 15 and December 15.

“ Affiliate ” of any specified person means any other person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such specified person. For purposes of this definition, control of a person means the power, direct or indirect, to direct or cause the direction of the management and policies of such person whether by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“ Amendment Effectiveness Deadline Date ” has the meaning set forth in Section 2(d) hereof.

“ Applicable Conversion Price ” as of any date of determination means the Conversion Price in effect as of such date of determination or, if no Securities are then outstanding, the Conversion Price that would be in effect were Securities then outstanding.

“ Business Day ” means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in The City of New York are authorized or obligated by law or executive order to close.

“ Closing Date ” means December 2, 2004

“ Commission ” means the U.S. Securities and Exchange Commission or any successor agency.

“ Common Stock ” means the shares of common stock, par value \$.01 per share, of the Company and any other shares of common stock as may constitute “Common Stock” for purposes of the Indenture, including the Underlying Common Stock.

“ Conversion Price ” has the meaning assigned such term in the Indenture.

“ Deferral Notice ” has the meaning set forth in Section 3(c)(2) hereof.

“ Deferral Period ” has the meaning set forth in Section 3(c)(2) hereof.

“Effectiveness Deadline Date” has the meaning set forth in Section 2(a) hereof.

“Effectiveness Period” means the period commencing on the date hereof and ending on the date that all Registrable Securities have ceased to be Registrable Securities.

“Event” has the meaning set forth in Section 2(e) hereof.

“Event Date” has the meaning set forth in Section 2(e) hereof.

“Event Termination Date” has the meaning set forth in Section 2(e) hereof.

“Filing Deadline Date” has the meaning set forth in Section 2(a) hereof.

“Holder” has the meaning set forth in the preamble hereto.

“Holders’ Counsel” has the meaning set forth in Section 4.

“Indenture” means the Indenture relating to the Securities, to be dated as of December 2, 2004, between the Company and The Bank of New York, as trustee, as the same may be amended from time to time in accordance with the terms thereof.

“Initial Placement” has the meaning set forth in the preamble hereto.

“Initial Shelf Registration Statement” has the meaning set forth in Section 2(a) hereof.

“Majority Holders” means the Holders of a majority of the shares of Underlying Common Stock registered under a Registration Statement (with Holders of Securities registered on such Registration Statement deemed to be the Holders of the number of outstanding shares of Underlying Common Stock into which such Securities are or would be convertible as of such date).

“Managing Underwriters” means the investment banker or investment bankers and manager or managers that shall administer an offering of securities under a Shelf Registration Statement.

“Material Event” has the meaning set forth in Section 3(c)(2) hereof.

“Notice and Questionnaire” means a written notice delivered to the Company containing substantially the information called for by the Selling Securityholder Notice and Questionnaire attached as Annex A to the Offering Memorandum of the Company dated November 17, 2004 relating to the Securities.

“Notice Holder” means, on any date, any Holder that has delivered a Notice and Questionnaire to the Company on or prior to such date.

“Prospectus” means the prospectus included in any Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Securities or the Underlying Common Stock, covered by such Registration Statement, and all amendments and supplements to the Prospectus, including post-effective amendments.

“Record Holder” means (i) with respect to any Additional Interest Payment Date relating to any Securities as to which any Additional Interest has accrued, the holder of record of such Security on the record date with respect to the interest payment date under the Indenture on which such Additional Interest Payment Date shall occur and (ii) with respect to any Additional Interest Payment Date relating to the Underlying Common Stock as to which any such Additional Interest has accrued, the registered holder of such Underlying Common Stock fifteen (15) days prior to such Additional Interest Payment Date.

“Registrable Securities” means the Securities until such Securities have been converted into or exchanged for the Underlying Common Stock and, at all times subsequent to any such conversion or exchange the Underlying Common Stock and any securities into or for which such Underlying Common Stock has been converted or exchanged, and any security issued with respect thereto upon any stock dividend, split or similar event until, in the case of any such security, (A) the earliest of (i) its effective registration under the Securities Act and resale in accordance with the Registration Statement covering it, (ii) expiration of the holding period that would be applicable thereto under Rule 144(k) with respect to persons who are not Affiliates of the Company or (iii) its sale to the public pursuant to Rule 144 (or any similar provision then in force, but not Rule 144A) under the Securities Act, and (B) as a result of the event or circumstance described in any of the foregoing clauses (i) through (iii), the legend with respect to transfer restrictions required under the Indenture are removed or removable in accordance with the terms of the Indenture or such legend, as the case may be.

“Registration Statement” means any registration statement that covers any of the Registrable Securities pursuant to the provisions of this Agreement, all amendments and supplements to such registration statement, including, without limitation, post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

“Rule 144” means Rule 144 under the Securities Act, as such Rule may be amended from time to time or any successor rule or regulation hereafter adopted by the Commission.

“Rule 144A” means Rule 144A under the Securities Act, as such Rule may be amended from time to time or any successor rule or regulation hereafter adopted by the Commission.

“Securities” has the meaning set forth in the preamble hereto.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated by the Commission thereunder.

“Shelf Registration Statement” has the meaning set forth in Section 2(a) hereof.

“Subsequent Shelf Registration Statement” has the meaning set forth in Section 2(b) hereof.

“Trustee” means the trustee with respect to the Securities under the Indenture.

“Underlying Common Stock” means the Common Stock into which the Securities are convertible or which is issued upon any such conversion.

“underwriter” means any underwriter of securities in connection with an offering thereof under a Shelf Registration Statement.

2. Shelf Registration. (a) The Company shall prepare and file or cause to be prepared and filed with the Commission, not later than the first Business Day on or following the date that is one hundred eighty (180) days after the Closing Date (the “Filing Deadline Date”), a Registration Statement for an offering to be made on a delayed or continuous basis pursuant to Rule 415 under the Securities Act (a “Shelf Registration Statement”, which term shall include the Initial Shelf Registration Statement and each Subsequent Shelf Registration Statement) registering the resale from time to time by Holders thereof of all of the Registrable Securities (the “Initial Shelf Registration Statement”); provided, that before filing any Registration Statement with the SEC, the Company shall furnish to the Initial Purchasers, counsel for the Initial Purchasers and Holders’ Counsel (to the extent the Company has received written notice of the designation of Holders’ Counsel) copies of all such documents proposed to be filed and use its reasonable efforts to reflect in each such document when so filed with the SEC such comments as the Initial Purchasers, counsel for the Initial Purchasers or such designated Holders’ Counsel reasonably shall propose within five (5) Business Days of the delivery of such copies to the Initial Purchasers, counsel for the Initial Purchasers and such designated Holders’ Counsel. The Initial Shelf Registration Statement shall be on Form S-3 or another appropriate form permitting registration of such Registrable Securities for resale by such Holders in accordance with the methods of distribution elected by the Holders and set forth in the Initial Shelf Registration Statement, provided that in no event will such method(s) of distribution take the form of an underwritten offering of the Registrable Securities without the prior written agreement of the Company, which may be withheld in the Company’s discretion. The Company shall use its best efforts to cause the Initial Shelf Registration Statement to be declared effective under the Securities Act by the date that is not later than the first Business Day on or following the date that is two hundred seventy (270) days after the Closing Date (the “Effectiveness Deadline Date”) and, subject to Section 3(c)(2), to keep the Initial Shelf Registration Statement (or any Subsequent Shelf Registration Statement, as defined below) continuously effective under the Securities Act until the expiration of the

Effectiveness Period. At the time the Initial Shelf Registration Statement is declared effective, each Holder that became a Notice Holder on or prior to the date ten (10) Business Days prior to such time of effectiveness shall be named as a selling securityholder in the Initial Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of Registrable Securities in accordance with applicable law.

(b) If the Initial Shelf Registration Statement or any Subsequent Shelf Registration Statement ceases to be effective for any reason at any time during the Effectiveness Period (other than because all Registrable Securities registered thereunder shall have been resold pursuant thereto or shall have otherwise ceased to be Registrable Securities), the Company shall use its best efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof, and in any event shall within thirty (30) days of such cessation of effectiveness amend the Shelf Registration Statement in a manner reasonably expected to obtain the withdrawal of the order suspending the effectiveness thereof, or file an additional Shelf Registration Statement covering all of the securities that as of the date of such filing are Registrable Securities (a “Subsequent Shelf Registration Statement”). If a Subsequent Shelf Registration Statement is filed, the Company shall use its best efforts to cause the Subsequent Shelf Registration Statement to become effective as promptly as is practicable after such filing (or, if filed during a Deferral Period, after the expiration of such Deferral Period) and to keep such Subsequent Shelf Registration Statement continuously effective until the end of the Effectiveness Period.

(c) The Company shall supplement and amend the Shelf Registration Statement if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement, if required by the Securities Act or as reasonably requested by the Initial Purchasers or by the Trustee on behalf of the Holders of the Registrable Securities covered by such Shelf Registration Statement; provided, that before filing any such amendments or supplements with the SEC, the Company shall furnish to the Initial Purchasers, counsel for the Initial Purchasers and Holders’ Counsel (to the extent the Company has received written notice of the designation of Holder’s Counsel) copies of all such documents proposed to be filed and use its reasonable efforts to reflect in each such document when so filed with the SEC such comments as the Initial Purchasers, counsel for the Initial Purchasers or such designated Holders’ Counsel reasonably shall propose within five (5) Business Days of the delivery of such copies to the Initial Purchasers, counsel for the Initial Purchasers and such designated Holders’ Counsel (provided, however, that the Company shall not be required by this Section 2(c) to furnish copies of such documents to the Initial Purchasers, counsel for the Initial Purchasers or Holders’ Counsel with respect to the filing of a Prospectus supplement solely for the purpose of naming one or more Notice Holders as selling security holders).

(d) Each Holder of Registrable Securities agrees that if such Holder wishes to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus, it will do so only in accordance with this Section 2(d) and Section 3(c)(2). Each Holder of Registrable Securities that is not a Notice Holder and

that wishes to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus agrees to deliver a Notice and Questionnaire to the Company at least five (5) Business Days prior to any intended distribution of Registrable Securities under the Shelf Registration Statement. From and after the date the Initial Shelf Registration Statement is declared effective, the Company shall as promptly as is reasonably practicable after the date a Notice and Questionnaire is delivered, and in any event (x) at the end of each calendar quarter or (y) five (5) Business Days after the expiration of any Deferral Period in effect at the end of such calendar quarter, (i) if required by applicable law, file with the Commission a post-effective amendment to the Shelf Registration Statement or prepare and, if required by applicable law, file a supplement to the related Prospectus or a supplement or amendment to any document incorporated therein by reference or file any other required document (including a Subsequent Shelf Registration Statement) so that the Holder delivering a Notice and Questionnaire during such calendar quarter is named as a selling securityholder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of the Registrable Securities in accordance with applicable law (other than laws not generally applicable to Holders of Registrable Securities) and, if the Company shall file a post-effective amendment to the Shelf Registration Statement or shall file a Subsequent Shelf Registration Statement, use its best efforts to cause such post-effective amendment or Subsequent Shelf Registration Statement to be declared effective under the Securities Act as promptly as is reasonably practicable, but in any event by the date (the “Amendment Effectiveness Deadline Date”) that is sixty (60) days after the date such post-effective amendment is required by this clause to be filed; (ii) provide such Holder copies of any documents filed pursuant to Section 2(d)(i); and (iii) notify such Holder as promptly as practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 2(d)(i); provided, that if such Notice and Questionnaire is delivered during a Deferral Period, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in clauses (i), (ii) and (iii) above upon expiration of the Deferral Period in accordance with Section 3(c)(2). Notwithstanding anything contained in this Agreement to the contrary, the Company shall be under no obligation to (i) name any Holder that is not a Notice Holder as a selling securityholder in any Registration Statement or related Prospectus; or (ii) perform its filing obligations in accordance with Section 2(d)(1) with respect to any Holder at the end of any calendar quarter if such Holder delivered its Notice and Questionnaire to the Company fewer than five (5) Business Days prior to the end of such calendar quarter.

(e) The parties hereto agree that the Holders of Registrable Securities will suffer damages, and that it would not be feasible to ascertain the extent of such damages with precision, if (i) the Initial Shelf Registration Statement has not been filed on or prior to the Filing Deadline Date, (ii) the Initial Shelf Registration Statement has not been declared effective under the Securities Act on or prior to the Effectiveness Deadline Date, (iii) the Company has failed to perform its obligations set forth in Section 2(d)(i) within the time period required therein, (iv) any post-effective amendment to a Shelf Registration Statement or any Subsequent Shelf Registration Statement filed pursuant to Section 2(d)(i) has not become effective under the Securities Act on or prior to the Amendment Effectiveness Deadline Date or (v) the aggregate duration of Deferral

Periods in any period exceeds the number of days permitted in respect of such period pursuant to Section 3(c)(2) hereof (each of the events of a type described in any of the foregoing clauses (i) through (v) are individually referred to herein as an “Event,” and the Filing Deadline Date in the case of clause (i), the Effectiveness Deadline Date in the case of clause (ii), the date by which the Company is required to perform its obligations set forth in Section 2(d) in the case of clause (iii), the Amendment Effectiveness Deadline Date in the case of clause (iv), and the date on which the aggregate duration of Deferral Periods in any period exceeds the number of days permitted by Section 3(c)(2) hereof in the case of clause (v), being referred to herein as an “Event Date”). Events shall be deemed to continue until the “Event Termination Date,” which shall be the following dates with respect to the respective types of Events: the date the Initial Shelf Registration Statement is filed in the case of an Event of the type described in clause (i), the date the Initial Shelf Registration Statement is declared effective under the Securities Act in the case of an Event of the type described in clause (ii), the date the Company performs its obligations set forth in Section 2(d) in the case of an Event of the type described in clause (iii), the date the applicable post-effective amendment to a Shelf Registration Statement or Subsequent Shelf Registration Statement becomes effective under the Securities Act in the case of an Event of the type described in clause (iv), and termination of the Deferral Period that caused the limit on the aggregate duration of Deferral Periods in a period set forth in Section 3(c)(2) to be exceeded in the case of the commencement of an Event of the type described in clause (v).

Accordingly, commencing on (and including) the day immediately following any Event Date and ending on (but excluding) the next date on which there are no Events that have occurred and are continuing (an “Additional Interest Accrual Period”), the Company agrees to pay, as additional interest and not as a penalty, an amount (the “Additional Interest”), payable on the Additional Interest Payment Dates to Record Holders of Securities that are Registrable Securities and of shares of Underlying Common Stock issued upon conversion of Securities that are Registrable Securities, as the case may be, accruing, for each portion of such Additional Interest Accrual Period beginning on and including an Additional Interest Payment Date (or, in respect of the first time that the Additional Interest is to be paid to Holders on an Additional Interest Payment Date as a result of the occurrence of any particular Event, from the Event Date) and ending on but excluding the first to occur of (A) the date of the end of the Additional Interest Accrual Period or (B) the next Additional Interest Payment Date, at a rate per annum equal to one-quarter of one percent (0.25%) of the outstanding principal amount of such Securities for the first 90 days after the occurrence of the event and thereafter at a rate per annum equal to one-half of one percent (0.5%) of the outstanding principal amount of such Securities or, in the case of Securities that have been converted into or exchanged for Underlying Common Stock, the Applicable Conversion Price of such shares of Underlying Common Stock, as the case may be, in each case determined as of the Business Day immediately preceding the next Additional Interest Payment Date; provided, that in the case of an Additional Interest Accrual Period that is in effect solely as a result of an Event of the type described in clause (iii) of the immediately preceding paragraph, such Additional Interest shall be paid only to the Holders that have delivered Notice and Questionnaires that caused the Company to incur the obligations set forth in Section 2(d) the non-performance of which is the basis of such Event, provided further,

that any Additional Interest accrued with respect to any Security or portion thereof called for redemption on a redemption date or converted into Underlying Common Stock on a conversion date prior to the Additional Interest Payment Date, shall, in any such event, be paid instead to the Holder who submitted such Security or portion thereof for redemption or conversion on the applicable redemption date or conversion date, as the case may be, on such date (or promptly following the conversion date, in the case of conversion). In calculating the Additional Interest on any date on which no Securities are outstanding, the Conversion Price and the Additional Interest payable with respect to shares of Common Stock which are Registrable Securities, shall be calculated as if the Securities were still outstanding. Notwithstanding the foregoing, no Additional Interest shall accrue as to any Registrable Security from and after the earlier of (x) the date such security is no longer a Registrable Security and (y) expiration of the Effectiveness Period. The rate of accrual of the Additional Interest with respect to any period shall not exceed the rate provided for in this paragraph notwithstanding the occurrence of multiple concurrent Events. Following the cure of all Events requiring the payment by the Company of Additional Interest to the Holders of Registrable Securities pursuant to this Section, the accrual of Additional Interest will cease (without in any way limiting the effect of any subsequent Event requiring the payment of Additional Interest by the Company).

The Trustee shall be entitled, on behalf of Holders of Securities or Underlying Common Stock, to seek any available remedy for the enforcement of this Agreement, including for the payment of any Additional Interest. Notwithstanding the foregoing, the parties agree that the sole damages payable for a violation of the terms of this Agreement with respect to which Additional Interest is expressly provided shall be such Additional Interest. Nothing shall preclude a Notice Holder or Holder of Registrable Securities from pursuing or obtaining specific performance or other equitable relief with respect to this Agreement.

All of the Company's obligations set forth in this Section 2(e) that are outstanding with respect to any Registrable Security at the time such security ceases to be a Registrable Security shall survive until such time as all such obligations with respect to such security have been satisfied in full.

The parties hereto agree that the Additional Interest provided for in this Section 2(e) constitute a reasonable estimate of the damages that may be incurred by Holders of Registrable Securities by reason of the failure of the Shelf Registration Statement to be filed or declared effective or available for effecting resales of Registrable Securities in accordance with the provisions hereof.

3. Registration Procedures. In connection with the registration obligations of the Company under Section 2 hereof:

(a) The Company shall use its reasonable efforts to comply with the provisions of the Securities Act applicable to it with respect to the disposition of all Registrable Securities covered by such Registration Statement during the Effectiveness Period in accordance with the intended methods of disposition by the Holders thereof set forth in such Registration Statement as so amended or such Prospectus as so supplemented.

(b) The Company shall ensure that (i) any Registration Statement and any amendment thereto and any Prospectus forming part thereof and any amendment or supplement thereto complies in all material respects with the Securities Act and the rules and regulations thereunder, (ii) any Registration Statement and any amendment thereto does not, when it becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and (iii) any Prospectus forming part of any Registration Statement, and any amendment or supplement to such Prospectus, does not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(c) (1) The Company shall advise each Notice Holder, the Initial Purchasers, counsel for the Initial Purchasers and Holders' Counsel:

(i) when a Registration Statement and any amendment thereto has been filed with the Commission and when the Registration Statement or any post-effective amendment thereto has become effective (provided, however, that the Company shall not be required by this clause (i) to notify the Initial Purchasers or any Notice Holder of the filing of a Prospectus supplement solely for the purpose of naming one or more Notice Holders as selling security holders);

(ii) of any request by the Commission for amendments or supplements to the Registration Statement or the Prospectus included therein or for additional information;

(iii) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the securities included therein for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

(v) of the happening of (but not the nature of or details concerning) any Material Event (provided, however, that no notice by the Company shall be required pursuant to this clause (v) in the event that the Company either promptly files a Prospectus supplement to update the Prospectus or a Form 8-K or other appropriate Exchange Act report that is incorporated by reference into the Registration Statement and Prospectus, which, in either case, contains the requisite information with respect to such

Material Event that results in such Registration Statement and Prospectus no longer containing any untrue statement of material fact or omitting to state a material fact necessary to make the statements contained therein not misleading).

(2) Upon (A) the issuance by the Commission of a stop order suspending the effectiveness of the Shelf Registration Statement or the initiation of proceedings with respect to the Shelf Registration Statement under Section 8(d) or 8(e) of the Securities Act, (B) the occurrence of any event or the existence of any fact (a “ Material Event ”) as a result of which any Registration Statement shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or any Prospectus shall contain any untrue statement 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, or (C) the occurrence or existence of any pending corporate development that, in the reasonable discretion of the Company, makes it appropriate to suspend the availability of the Shelf Registration Statement and the related Prospectus, the Company shall (i) in the case of clause (B) above, subject to the next sentence, as promptly as practicable prepare and file, if necessary pursuant to applicable law, a post-effective amendment to such Registration Statement or a supplement to the related Prospectus or any document incorporated therein by reference or file any other required document that would be incorporated by reference into such Registration Statement and Prospectus so that such Registration Statement does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading (except for any such untrue statement or omission made in reliance on and in conformity with information relating to any Notice Holder furnished to the Company in writing by such Notice Holder expressly for use therein), and such Prospectus does not contain any untrue statement 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 (except for any such untrue statement or omission made in reliance on and in conformity with information relating to any Notice Holder furnished to the Company in writing by such Notice Holder expressly for use therein), as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, and, in the case of a post-effective amendment to a Registration Statement, subject to the next sentence, use its reasonable efforts to cause it to be declared effective as promptly as is reasonably practicable, and (ii) give notice to the Notice Holders, and their counsel, if any, that the availability of the Shelf Registration Statement is suspended (a “ Deferral Notice ”) and, upon receipt of any Deferral Notice, each Notice Holder agrees not to sell any Registrable Securities pursuant to the Registration Statement until such Notice Holder’s receipt of copies of the supplemented or amended Prospectus provided for in clause (i) above, or until it is advised in writing by the Company that the Prospectus may be used, and has received copies of any additional or supplemental filings that are incorporated or

deemed incorporated by reference in such Prospectus. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed (x) in the case of clause (A) above, as promptly as is reasonably practicable, (y) in the case of clause (B) above, as soon as, in the sole judgment of the Company, public disclosure of such Material Event would not be prejudicial to or contrary to the interests of the Company or, if necessary to avoid unreasonable burden or expense, as soon as reasonably practicable thereafter and (z) in the case of clause (C) above, as soon as, in the discretion of the Company, such suspension is no longer appropriate. The period during which the availability of the Shelf Registration Statement and any Prospectus may be suspended (the “Deferral Period”) without the Company incurring any obligation to pay Additional Interest shall not exceed 45 days in any ninety-day period and 120 days in any twelve-month period.

(d) The Company shall use its best efforts to obtain the withdrawal of any order suspending the effectiveness of any Registration Statement at the earliest possible time or, if such order is made effective during any Deferral Period, at the earliest time after the expiration of such Deferral Period.

(e) The Company shall furnish to each Notice Holder, without charge, at least one copy of the Shelf Registration Statement and any post-effective amendment thereto, including financial statements and schedules, and, if the Holder so requests in writing, any documents incorporated by reference therein and all exhibits thereto (including those incorporated by reference therein).

(f) The Company shall, during the Effectiveness Period, deliver to each Notice Holder, without charge, as many copies of the Prospectus (including each preliminary Prospectus) included in such Shelf Registration Statement and any amendment or supplement thereto as such Notice Holder may reasonably request; and the Company consents (except during such periods that a Deferral Notice is outstanding and has not been revoked) to the use of the Prospectus or any amendment or supplement thereto by each Notice Holder of securities in connection with the offering and sale of the securities covered by the Prospectus or any amendment or supplement thereto.

(g) Prior to any offering of securities pursuant to any Registration Statement, the Company shall use reasonable efforts to register or qualify or cooperate with the Notice Holders and their respective counsel in connection with the registration or qualification of such securities for offer and sale under the securities or blue sky laws of such jurisdictions within the United States as any such Notice Holder reasonably requests in writing and do any and all other acts or things necessary or advisable to enable the offer and sale in such jurisdictions of the securities covered by such Registration Statement; provided, however, that the Company will not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action which would subject it to general service of process or to taxation in any such jurisdiction where it is not then so subject.

(h) The Company shall cooperate with the Notice Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold pursuant to any Registration Statement free of any restrictive legends and in such denominations and registered in such names as Notice Holders may request prior to sales of Registrable Securities pursuant to such Registration Statement.

(i) Not later than the effective date of any such Registration Statement hereunder, the Company shall provide a CUSIP number for the Securities, registered under such Registration Statement, and provide the Trustee and the transfer agent for the Underlying Common Stock with printed certificates for such Registrable Securities, in a form, if requested by the applicable Holder or Holder's Counsel, eligible for deposit with DTC or any successor thereto under the Indenture.

(j) The Company shall use its best efforts to comply with all applicable rules and regulations of the Commission to the extent and so long as they are applicable to the Shelf Registration Statement and will make generally available to its security holders a consolidated earnings statement (which need not be audited) covering a twelve-month period commencing after the effective date of the Shelf Registration Statement and ending not later than 15 months thereafter, as soon as practicable after the end of such period, which consolidated earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act.

(k) The Company shall cause the Indenture to be qualified under the Trust Indenture Act of 1939, as amended, on or prior to the effective date of any Shelf Registration Statement.

(l) The Company may require each Holder of securities to be sold pursuant to any Shelf Registration Statement to furnish to the Company in writing such information regarding the Holder and the distribution of such securities as the Company may from time to time reasonably require for inclusion in such Registration Statement. The Company may exclude from any such Registration Statement the securities of any such Holder who fails to furnish such information within a reasonable time after receiving such request. Each Holder as to which any Shelf Registration is being effected agrees to furnish promptly to the Company all information required to be disclosed in order to make the information previously furnished to the Company by such Holder not materially misleading.

(m) If reasonably requested by an Initial Purchaser or any Notice Holder, as promptly as reasonably practicable incorporate in a Prospectus supplement or post-effective amendment to a Registration Statement such information as the Initial Purchaser or such Notice Holder shall, on the basis of a written opinion of nationally-recognized counsel experienced in such matters, determine to be required to be included therein by applicable Federal securities law and make any required filings of such Prospectus supplement or such post-effective amendment;

provided, that the Company shall not be required to take any actions under this Section 3(m), (i) that are not in the reasonable opinion of counsel for the Company, in compliance with the applicable Federal securities law or (ii) during a period in which it has suspended availability of the shelf Registration Statement pursuant to Section 3(c)(2).

(n) (i) The Company shall enter into such customary agreements (including underwriting agreements) and take all other appropriate actions in order to expedite or facilitate the registration or the disposition of the Registrable Securities, and in connection therewith, if an underwriting agreement is entered into, cause the same to contain indemnification provisions and procedures no less favorable than those set forth in Section 5 hereof (or such other provisions and procedures acceptable to the Majority Holders and the Managing Underwriters, if any), with respect to all parties to be indemnified pursuant to Section 5 hereof from Holders of Securities to the Company.

(ii) Without limiting in any way paragraph (n)(i), no Holder may participate in any underwritten registration hereunder unless such Holder (x) agrees to sell such Holder's securities to be covered by such registration on the basis provided in any underwriting arrangements approved by the Majority Holders and the Managing Underwriters and (y) completes and executes in a timely manner all customary questionnaires, powers of attorney, underwriting agreements and other documents reasonably required by the Company or the Managing Underwriters in connection with such underwriting arrangements.

(o) The Company shall (i) make reasonably available for inspection by the Notice Holders, any underwriter participating in any disposition pursuant to a Registration Statement, and any attorney, accountant or other agent retained by the Notice Holders or any such underwriter all relevant financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries reasonably requested by such person; (ii) cause the Company's officers, directors and employees to supply all relevant information reasonably requested by the Notice Holders or any such underwriter, attorney, accountant or agent in connection with any such Registration Statement as is customary for due diligence examinations in connection with primary underwritten offerings; provided, however, that any information that is nonpublic at the time of delivery of such information shall be kept confidential by the Notice Holders or any such underwriter, attorney, accountant or agent, unless such disclosure is made in connection with a court proceeding or required by law, or such information becomes available to the public generally or through a third party without an accompanying obligation of confidentiality; (iii) make such representations and warranties to the Notice Holders and the underwriters, if any, in form, substance and scope as are customarily made by issuers to underwriters in primary underwritten offerings; (iv) obtain opinions of counsel to the Company (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the Managing Underwriters, if any) addressed to each selling Notice Holder and the underwriters, if any, covering such matters as are

customarily covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by such Notice Holders and underwriters; (v) obtain “cold comfort” letters (or, in the case of any person that does not satisfy the conditions for receipt of a “cold comfort” letter specified in Statement on Auditing Standards No. 72, an “agreed-upon procedures” letter under Statement on Auditing Standards No. 35) and updates thereof from the independent certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data are, or are required to be, included or incorporated by reference in the Registration Statement), addressed to each selling Notice Holder and the underwriters, if any, in customary form and covering matters of the type customarily covered in “cold comfort” letters in connection with primary underwritten offerings; and (vi) deliver such documents and certificates as may be reasonably requested by the Majority Holders and the Managing Underwriters, if any, including those to evidence compliance with Section 3(c)(2) and with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company. The foregoing actions set forth in clauses (iii), (iv), (v) and (vi) of this Section 3(o) shall be performed (A) on the effective date of such Registration Statement and each post-effective amendment thereto and (B) at each closing under any underwriting or similar agreement as and to the extent required thereunder.

(p) Upon (i) the filing of the Initial Shelf Registration Statement and (ii) the effectiveness of the Initial Shelf Registration Statement and any Subsequent Shelf Registration Statement, announce the same, in each case by release to Reuters Economic Services and Bloomberg Business News, or other equivalent means of dissemination reasonably expected to make such information known publicly.

4. Registration Expenses. The Company shall bear all expenses incurred in connection with the performance of its obligations under Sections 2 and 3 hereof and will reimburse the Holders for the reasonable fees and disbursements of one firm or counsel (in addition to one local counsel in each relevant jurisdiction) (in an amount not to exceed \$10,000 in the aggregate) designated by the Majority Holders to act as counsel for the Holders in connection therewith (“Holders’ Counsel”). Notwithstanding the foregoing, the Holders of the securities being registered shall pay all agency or brokerage fees and commissions and underwriting discounts and commissions attributable to the sale of such securities and the fees and disbursements of any counsel or other advisors or experts retained by such holders (severally or jointly), other than the counsel and experts specifically referred to above in this Section 4, transfer taxes on resale of any of the securities by such Holders and any advertising expenses incurred by or on behalf of such Holders in connection with any offers they may make.

5. Indemnification and Contribution. (a) In connection with any Registration Statement, the Company (i) agrees to indemnify and hold harmless each Notice Holder (including each Initial Purchaser), the directors, officers, employees and

agents of each Notice Holder and each other person, if any, who controls any Notice Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Securities Act, the Exchange Act or other Federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement as originally filed or in any amendment thereof, or in any preliminary prospectus or the Prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and (ii) agrees to reimburse each such indemnified party, as incurred, without duplication, for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable in any case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Notice Holder specifically for inclusion therein; provided further, however, that the indemnity agreement contained in this Section 5(a) shall not inure to the benefit of any indemnified party to the extent that it is determined by a final, non-appealable judgment that (A) a preliminary prospectus contained an untrue statement of a material fact or omitted to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (B) the sale to the person asserting any such losses, claims, damages or liabilities was an initial resale of securities by any Notice Holder, (C) any such loss, claim, damage or liability of such indemnified party results from the fact that there was not sent or given to such person, at or prior to the written confirmation of the sale of such securities to such person, a copy of any revised preliminary Prospectus, the related Prospectus or the related Prospectus as amended or supplemented in any case where such delivery is required by the Securities Act, and the Company had previously furnished copies thereof to such Notice Holder and (D) the revised preliminary Prospectus, the related Prospectus or the related Prospectus as amended or supplemented corrected such untrue statement or omission. This indemnity agreement will be in addition to any liability which the Company may otherwise have.

The Company also agrees to indemnify or contribute to Losses (as defined below) of, as provided in Section 5(d), any underwriters of Registrable Securities registered under a Shelf Registration Statement, their officers, directors, employees and agents and each person who controls such underwriters on substantially the same basis as that of the indemnification of the Initial Purchasers and the Notice Holders provided in this Section 5(a) and shall, if requested by any Notice Holder, enter into an underwriting agreement reflecting such agreement, as provided in Section 3(n) hereof.

(b) Each Holder of securities covered by a Registration Statement (including each Initial Purchaser) severally and not jointly agrees to indemnify and hold harmless the Company, each of its directors and officers and each other person, if any,

who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Company to each such Holder, but only with reference to written information relating to such Holder furnished to the Company by or on behalf of such Holder specifically for inclusion in the documents referred to in the foregoing indemnity. This indemnity agreement will be in addition to any liability which any such Holder may otherwise have.

(c) Promptly after receipt by an indemnified party under this Section 5 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 5, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the indemnified party or parties except as set forth below); provided, however, that such counsel shall be reasonably satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel (and local counsel) if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, (iii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party. It is understood, however, that the Company shall, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and

expenses of only one separate firm of attorneys (in addition to any local counsel) at any time for all such Holders and controlling persons. An indemnifying party shall not be liable under this Section 5 to any indemnified party regarding any settlement or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent is consented to by such indemnifying party, which consent shall not be unreasonably withheld.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section 5 is unavailable to or insufficient to hold harmless an indemnified party for any reason, then each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall have a joint and several obligation to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending same) (collectively “Losses”) to which such indemnified party may be subject in such proportion as is appropriate to reflect the relative benefits received by such indemnifying party, on the one hand, and such indemnified party, on the other hand, from the Initial Placement and the Registration Statement which resulted in such Losses; provided, however, that in no case shall (1) any Initial Purchaser of any Security be responsible, in the aggregate, for any amount in excess of the purchase discount or commission applicable to such Security, as set forth on the cover page of the Final Memorandum, nor shall any underwriter be responsible for any amount in excess of the underwriting discount or commission applicable to the securities purchased by such underwriter under the Registration Statement which resulted in such Losses or (2) any subsequent Holder of any Security be responsible, in the aggregate, for any amount in excess of the total price at which the Registrable Securities sold by such Holder under the Registration Statement were distributed to the public. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the indemnifying party and the indemnified party shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of such indemnifying party, on the one hand, and such indemnified party, on the other hand, in connection with the statements or omissions which resulted in such Losses as well as any other relevant equitable considerations. Benefits received by the Company shall be deemed to be equal to the sum of (x) the total net proceeds from the Initial Placement (before deducting expenses) as set forth on the cover page of the Final Memorandum and (y) the total amount of additional interest which the Company was not required to pay as a result of registering the securities covered by the Registration Statement which resulted in such Losses. Benefits received by the Initial Purchasers shall be deemed to be equal to the total purchase discounts and commissions as set forth on the cover page of the Final Memorandum, and benefits received by any other Holders shall be deemed to be equal to the value of receiving Securities registered under the Securities Act. Benefits received by any underwriter shall be deemed to be equal to the total underwriting discounts and commissions, as set forth on the cover page of the Prospectus forming a part of the Registration Statement which resulted in such Losses. Relative fault shall be determined by reference to whether any alleged untrue statement or omission relates to information provided by the indemnifying party, on the one hand, or

by the indemnified party, on the other hand. The parties agree that it would not be just and equitable if contribution were determined by pro rata allocation or any other method of allocation which does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 5, each person who controls a Holder within the meaning of either the Securities Act or the Exchange Act and each director, officer, employee and agent of such Holder shall have the same rights to contribution as such Holder, and each person who controls the Company within the meaning of either the Securities Act or the Exchange Act, each officer of the Company who shall have signed the Registration Statement and each director of the Company shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this paragraph (d).

(e) The provisions of this Section 5 will remain in full force and effect, regardless of any investigation made by or on behalf of any Initial Purchaser, any other Holder, the Company or any underwriter or any of the officers, directors or controlling persons referred to in this Section 5, and will survive the sale by a Holder of securities covered by a Registration Statement.

6. Miscellaneous .

(a) No Inconsistent Agreements. The Company has not, as of the date hereof, entered into, nor shall it, on or after the date hereof, enter into, any agreement with respect to its securities that limits the rights granted to the Holders herein or otherwise conflicts with the provisions hereof.

(b) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, qualified, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of the Holders of at least a majority of the then outstanding Underlying Common Stock constituting Registrable Securities (with Holders of Securities deemed to be the Holders, for purposes of this Section, of the number of outstanding shares of Underlying Common Stock into which such Securities are or would be convertible or exchangeable as of the date on which such consent is requested); provided that, with respect to any matter that directly or indirectly affects the rights of any Purchaser hereunder, the Company shall obtain the written consent of each such Purchaser against which such amendment, qualification, supplement, waiver or consent is to be effective. Notwithstanding the foregoing (except the foregoing proviso), a waiver or consent to departure from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect the rights of other Holders may be given by the Majority Holders, determined on the basis of securities being sold rather than registered under such Registration Statement.

(c) Notices. All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, first-class mail, facsimile, or air courier guaranteeing overnight delivery:

(1) if to a Holder, at the most current address given by such Holder to the Company in accordance with the provisions of this Section 6(c), which address initially is, with respect to each Holder, the address of such Holder maintained by the registrar under the Indenture, with a copy in like manner to Merrill Lynch, Pierce, Fenner & Smith Incorporated by facsimile (212-449-3207) and confirmed by mail to it at 4 World Financial Center, 250 Vesey Street, New York, New York 10080, Attention: General Counsel;

(2) if to the Initial Purchasers, initially at the address set forth in the Purchase Agreement; and

(3) if to the Company, initially at its address set forth in the Purchase Agreement.

All such notices and communications shall be deemed to have been duly given when received.

The Initial Purchasers or the Company by notice to the other may designate additional or different addresses for subsequent notices or communications.

(d) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties, including, without the need for an express assignment or any consent by the Company or subsequent Holders of Registrable Securities. The Company hereby agrees to extend the benefits of this Agreement to any Holder of Registrable Securities and any such Holder may specifically enforce the provisions of this Agreement as if an original party hereto.

(e) Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(f) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(g) Governing Law. **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICT OF LAW PROVISIONS THEREOF).**

(h) Severability. In the event that any one of more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected thereby, it being intended that all the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

(i) Securities Held by the Company, etc. Whenever the consent or approval of Holders of a specified number of shares of Underlying Common Stock is required hereunder, Securities and shares of Underlying Common Stock held by the Company or its Affiliates (other than subsequent Holders of Securities or Underlying Common Stock if such subsequent Holders are deemed to be Affiliates solely by reason of their holdings of such Securities or Underlying Common Stock) shall not be counted in determining whether such consent or approval was given by the Holders of such required number.

(j) Termination. This Agreement shall automatically terminate, without any further action on the part of the Company or the Initial Purchasers, upon the termination or cancelation of the Purchase Agreement prior to the Closing Date.

(k) Information Requirements. The Company covenants that, if at any time before the end of the Effectiveness Period the Company is not subject to the reporting requirements of the Exchange Act, it will cooperate with any Holder of Registrable Securities and take such further reasonable action as any Holder of Registrable Securities may reasonably request in writing (including, without limitation, making such reasonable representations as any such Holder may reasonably request), all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 and Rule 144A under the Securities Act and customarily taken in connection with sales pursuant to such exemptions. Upon the written request of any Holder of Registrable Securities, the Company shall deliver to such Holder a written statement as to whether it has complied with such filing requirements, unless such a statement has been included in the Company's most recent report filed pursuant to Section 13 or Section 15(d) of Exchange Act. Notwithstanding the foregoing, nothing in this Section 6(k) shall be deemed to require the Company to register any of its securities (other than the Common Stock) under any section of the Exchange Act. The Company shall file the reports required to be filed by it under the Exchange Act and shall comply with all other requirements set forth in the instructions to Form S-3 in order to allow the Company to be eligible to file registration statements on Form S-3.

Please confirm that the foregoing correctly sets forth the agreement between the Company and you.

LEVEL 3 COMMUNICATIONS, INC.,

by /s/ Thomas C. Stortz

Name: Thomas C. Stortz

Title: Executive Vice President and
Chief Legal Officer

The foregoing Agreement is hereby
confirmed and accepted as of the
date first above written.

MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED
CITIGROUP GLOBAL MARKETS INC.
CREDIT SUISSE FIRST BOSTON LLC
MORGAN STANLEY & CO. INCORPORATED
NEEDHAM & COMPANY, INC.
UBS SECURITIES LLC

by MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED

by /s/ Yonathan Epelbaum

Name: Yonathan Epelbaum

Title: Managing Director



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NEWS RELEASE

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Investors: Robin Grey
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Level 3 Increases Aggregate Amount of Debt Tender Offers to a Maximum of \$1.105 Billion

Level 3 Financing Increases the Size of its Proposed Senior Secured Term Loan to \$730 Million

BROOMFIELD, Colo., November 17, 2004 — Level 3 Communications, Inc. (Nasdaq:LVT) announced today that, it has increased to \$1.105 billion (the “Tender Cap”) the maximum aggregate principal amount of its outstanding debt securities due 2008 specified in the table below (the “Notes”) that it could be obligated to accept for payment in its pending cash tender offers (the “Offers”). The “Maximum Offer Amount” Level 3 is offering to purchase for each series of Notes, and the “Acceptance Priority Levels” for each series, remain unchanged and are listed in the table below. The terms and conditions of the Offers are set forth in Level 3’s Offer to Purchase dated October 29, 2004 and a Supplement to the Offer to Purchase dated November 17, 2004 (together, the “Offer to Purchase”) and the related Letter of Transmittal.

In connection with this increase in the Tender Cap, Level 3 has extended the expiration of each Offer to 12:00 midnight, New York City time, on December 1, 2004, unless extended (the “Expiration Date”). Holders of Notes of any series that were validly tendered prior to 5:00 p.m., New York City time on November 12, 2004 (the “Early Tender Date”) will receive the “Total Consideration” for that series shown in the table below, consisting of the applicable “Tender Offer Consideration” for that series and the “Early Tender Payment” for that series, each as shown in the table below, if such Notes are accepted for purchase. Holders of Notes of any series who validly tender after the Early Tender Date and whose Notes are accepted for purchase will receive the applicable Tender Offer Consideration for that series but will not receive the Early Tender Payment. Accrued interest up to, but not including, the applicable settlement date will be paid in cash on all validly tendered and accepted Notes.

Title of Security	Acceptance Priority Level	Principal Amount Outstanding	Maximum Offer Amount	Principal Amount Tendered as of Early Tender Date	Principal Amount Tendered as of November 15, 2004	Tender Offer Consideration*	Early Tender Payment*	Total Consideration*
9 ¹ / 8 % Senior Notes due 2008	1	\$1,203,652,000	\$450,000,000	\$243,955,000	\$244,862,000	\$ 837.50	\$ 20.00	\$ 857.50
11% Senior Notes due 2008	2	\$ 362,036,000	\$362,036,000	\$229,226,000	\$229,226,000	\$ 867.50	\$ 20.00	\$ 887.50
10 ¹ / 2 % Senior Discount Notes due 2008 **	3	\$ 409,462,000	\$409,462,000	\$262,515,000	\$264,215,000	\$ 837.50	\$ 20.00	\$ 857.50
10 ³ / 4 % Senior Euro Notes due 2008	4	€ 320,826,000	€320,826,000	€284,461,000	€284,461,000	€ 830.00	€ 20.00	€ 850.00

* Per \$1,000 or €1,000 principal amount of notes accepted for purchase, as applicable.

** Principal amount outstanding represents principal amount at maturity.

Notes tendered pursuant to the Offers prior to 5:00 p.m., New York City time, on the Early Tender Date may no longer be withdrawn. Notes tendered pursuant to the Offers after 5:00 p.m., New York City time, on the Early Tender Date may be withdrawn until 12:00 midnight on the Expiration Date.

Consistent with amending the Tender Cap, we have amended the financing condition of the Offers to provide that our obligation to accept for purchase Notes pursuant to the Offers is subject to (1) the receipt by our subsidiary, Level 3 Financing, Inc., of borrowings of at least \$730 million under a proposed new senior secured term loan, into which it is seeking to enter, and (2) our receipt of gross proceeds of at least \$320 million from our issuance of new convertible senior notes in a private placement. The Offers are subject to the satisfaction or waiver of certain other conditions. In connection with amending the Tender Cap, Level 3 Financing has increased the size of its proposed new senior secured term loan to \$730 million.

As described in the Offer to Purchase, Level 3 will have no obligation to accept for purchase or to pay for Notes tendered pursuant to the Offers in an aggregate principal amount in excess of the Tender Cap of \$1.105 billion. To the extent that one or more of the Offers are oversubscribed, validly tendered Notes in each series will be accepted for payment in accordance with each series' Maximum Offer Amount and Acceptance Priority Level. For instance, Notes in the Offer with the first Acceptance Priority Level will be accepted up to the Maximum Offer Amount for that series before Notes in the Offer with the second Acceptance Priority Level (subject to the amount of Tender Cap remaining available). If the aggregate principal amount or principal amount at maturity of Notes tendered in any Offer exceeds either the Maximum Offer Amount applicable to such series or, if lesser, the amount of the Tender Cap remaining available for application to the Acceptance Priority Level applicable to such Offer, then, if we accept Notes of such series for purchase, we will accept such Notes on a pro rata basis.

This announcement is not an offer to purchase, a solicitation of an offer to purchase, or a solicitation of an offer to sell securities with respect to any series of Notes. The Offers may only be made pursuant to the terms of the Offer to Purchase and the related Letter of Transmittal.

Copies of the Offer to Purchase and the related Letter of Transmittal may be obtained from the Information Agent for the Offers, Global Bondholder Services Corporation, at (212) 430-3774 and (866) 873-6300 (collect).

Merrill Lynch & Co. is the Dealer Manager for the Offers. Questions regarding the Offers may be directed to Merrill Lynch & Co. at (800) ML4-TNDR (toll-free) and (212) 449-4914.

About Level 3 Communications

Level 3 (Nasdaq:LVL3) is an international communications and information services company. The company operates one of the largest Internet backbones in the world, is one of the largest providers of wholesale dial-up service to ISPs in North America and is the primary provider of Internet connectivity for millions of broadband subscribers, through its cable and DSL partners. The company offers a wide range of communications services over its 23,000-mile broadband fiber optic network including Internet Protocol (IP) services, broadband transport and infrastructure services, colocation services, and patented softswitch managed modem and voice services. Its Web address is www.Level3.com.

The company offers information services through its subsidiaries, Software Spectrum and (i)Structure. For additional information, visit their respective Web sites at www.softwarespectrum.com and www.i-structure.com.

The Level 3 logo is a registered service mark of Level 3 Communications, Inc. in the United States and/or other countries

Forward Looking Statement

Some of the statements made by Level 3 in this press release are forward-looking in nature. Actual results may differ materially from those projected in forward-looking statements. Level 3 believes that its primary risk factors include, but are not limited to: changes in the overall economy relating to, among other things, the September 11 attacks and subsequent events, substantial capital requirements; development of effective internal processes and systems; the ability to attract and retain high quality employees; technology; the number and size of competitors in its markets; law and regulatory policy; and the mix of products and services offered in the company's target markets. Additional information concerning these and other important factors can be found within Level 3's filings with the Securities and Exchange Commission. Statements in this release should be evaluated in light of these important factors.



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NEWS RELEASE**Level 3 contacts:**

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**Level 3 Communications, Inc. Announces Pricing of Private
Offering of \$320 Million of Convertible Senior Notes**

BROOMFIELD, Colo., November 17, 2004 – Level 3 Communications, Inc. (Nasdaq: LVLT) today announced that it has agreed to sell \$320 million aggregate principal amount of a new series of its 5.25% Convertible Senior Notes due 2011 (the “Notes”) in a private offering to “qualified institutional buyers” as defined in Rule 144A under the Securities Act of 1933. The Notes will be convertible into the company’s common stock at a conversion price of \$3.984 per share. Level 3 has granted the initial purchasers a 30-day option to purchase up to \$25 million aggregate principal amount of additional Notes. The offering is expected to be completed (subject to customary closing conditions) on December 2, 2004, the currently scheduled settlement date for Level 3’s pending debt tender offers.

Level 3 intends to use a portion of the net proceeds from the offering of the Notes, together with borrowings under a \$730 million senior secured term loan that is expected to be entered into by its subsidiary, Level 3 Financing, Inc., to fund the purchase of certain debt securities due 2008 pursuant to Level 3’s currently pending debt tender offers. Level 3 has increased to \$1.105 billion the maximum aggregate principal amount of the debt securities that it could be obligated to accept for payment in the debt tender offers.

In addition, Level 3 intends to use a portion of the net proceeds from the offering of the Notes to enter into bond hedge and warrant transactions with respect to its common stock. The transactions are designed to enable the company to limit dilution from the conversion of the Notes. The transactions would effectively increase the anticipated conversion premium to approximately 80.7%. The cost of the bond hedge and warrant transactions is estimated to be approximately 17.8% of the gross proceeds from the offering of the Notes.

The Notes will not be registered under the Securities Act of 1933, as amended or any state securities laws and, unless so registered, may not be offered or sold except pursuant to an applicable exemption from the registration requirements of the Securities Act of 1933 and applicable state securities laws.

About Level 3 Communications

Level 3 (Nasdaq:LVT) is an international communications and information services company. The company operates one of the largest Internet backbones in the world, is one of the largest providers of wholesale dial-up service to ISPs in North America and is the primary provider of Internet connectivity for millions of broadband subscribers, through its cable and DSL partners. The company offers a wide range of communications services over its 23,000-mile broadband fiber optic network including Internet Protocol (IP) services, broadband transport and infrastructure services, colocation services, and patented softswitch managed modem and voice services. Its Web address is www.Level3.com.

The company offers information services through its subsidiaries, Software Spectrum and (i)Structure. For additional information, visit their respective Web sites at www.softwarespectrum.com and www.i-structure.com.

The Level 3 logo is a registered service mark of Level 3 Communications, Inc. in the United States and/or other countries.

Forward Looking Statement

Some of the statements made by Level 3 in this press release are forward-looking in nature. Actual results may differ materially from those projected in forward-looking statements. Level 3 believes that its primary risk factors include, but are not limited to: changes in the overall economy relating to, among other things, the September 11 attacks and subsequent events, substantial capital requirements; development of effective internal processes and systems; the ability to attract and retain high quality employees; technology; the number and size of competitors in its markets; law and regulatory policy; and the mix of products and services offered in the company's target markets. Additional information concerning these and other important factors can be found within Level 3's filings with the Securities and Exchange Commission. Statements in this release should be evaluated in light of these important factors.