

LEVEL 3 COMMUNICATIONS INC

FORM 8-K (Current report filing)

Filed 12/07/04 for the Period Ending 12/01/04

Address	1025 ELDORADO BOULEVARD BLDG 2000 BROOMFIELD, CO 80021
Telephone	7208881000
CIK	0000794323
Symbol	LVLT
SIC Code	4813 - Telephone Communications, Except Radiotelephone
Industry	Communications Services
Sector	Services
Fiscal Year	12/31

LEVEL 3 COMMUNICATIONS INC

FORM 8-K

(Unscheduled Material Events)

Filed 12/7/2004 For Period Ending 12/1/2004

Address	1025 ELDORADO BOULEVARD BLDG 2000 BROOMFIELD, Colorado 80021
Telephone	720-888-1000
CIK	0000794323
Industry	Communications Services
Sector	Services
Fiscal Year	12/31

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): December 1, 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))

Item 1.01. Entry into a Material Definitive Agreement

On December 1, 2004, Level 3 Communications, Inc. (the “Company”), as guarantor, Level 3 Financing, Inc. (“Level 3 Financing”), a wholly owned subsidiary of the Company, as borrower, Merrill Lynch Capital Corporation, as administrative agent and collateral agent, and certain lenders entered into a credit agreement (the “Credit Agreement”) pursuant to which the lenders extended a \$730 million senior secured term loan to Level 3 Financing. The term loan matures in 2011 and has a current interest rate of LIBOR plus an applicable margin of 700 basis points.

A portion of the proceeds of the term loan were (a)(i) advanced by Level 3 Financing to Level 3 Communications, LLC (“Level 3 LLC”), a subsidiary of the Company, against delivery of a loan proceeds note, (ii) used by Level 3 LLC to repay a portion of indebtedness owed by it to the Company under a parent intercompany note, and (iii) used by the Company to repurchase a portion of existing notes maturing in 2008 pursuant to debt tender offers, which expired at 12:00 midnight, New York City time, on December 1, 2004, and (b)(i) used to pay fees and expenses in connection with the term loan and the debt tender offers and (ii) used for general corporate purposes.

Level 3 Financing’s obligations under this term loan are, subject to certain exceptions, secured by certain of the assets of (i) the Company; and (ii) certain of the Company’s material domestic subsidiaries which are engaged in the telecommunications business and which were able to grant a lien on their assets without regulatory approval. The Company and these subsidiaries have also guaranteed the obligations of Level 3 Financing under the term loan. Upon obtaining regulatory approvals (i) Level 3 LLC and its material domestic subsidiaries will guarantee and, subject to certain exceptions, pledge certain of their assets to secure the obligations under the term loan; and (ii) certain of the initial subsidiary guarantors will be released from their pledge and guarantee obligations under the term loan.

The Credit Agreement includes certain negative covenants on the ability of the Company, Level 3 Financing and any restricted subsidiary to engage in certain activities. The Credit Agreement also contains certain events of default. It does not require the Company or Level 3 Financing to maintain specific financial ratios.

The Credit Agreement is filed as Exhibit 10.1 to this Current Report on Form 8-K (this “Form 8-K”). The descriptions of the material terms of the Credit Agreement are qualified in their entirety by reference to such exhibit.

In addition, in connection with the term loan, the Company and its subsidiaries entered into the following agreements on December 1, 2004:

- Guarantee Agreement, among the Company, the Subsidiaries party thereto and Merrill Lynch Capital Corporation, filed as Exhibit 10.2 to this Form 8-K;
- Collateral Agreement, among Level 3 Financing, the Company, Level 3 LLC and Merrill Lynch Capital Corporation, filed as Exhibit 10.3 to this Form 8-K;
- Indemnity, Subrogation and Contribution Agreement among the Company, Level 3 Financing, the Subsidiaries party thereto and Merrill Lynch Capital Corporation, filed as Exhibit 10.4 to this Form 8-K;

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- Supplemental Indenture among Level 3 Financing, the Company, Level 3 LLC and The Bank of New York, as trustee, relating to the Level 3 Financing 10.75% Senior Notes due 2011, filed as Exhibit 4.2 to this Form 8-K;
 - Offering Proceeds Note Subordination Agreement among the Company, Level 3 LLC and Level 3 Financing, filed as Exhibit 10.5 to this Form 8-K;
 - Loan Proceeds Note issued by Level 3 LLC and Level 3 Financing, filed as Exhibit 10.6 to this Form 8-K; and
 - Loan Proceeds Note Collateral Agreement among Level 3 Financing, the Company and Merrill Lynch Capital Corporation, filed as Exhibit 10.7 to this Form 8-K.

On December 2, 2004, the Company entered into an indenture (the "Indenture") with The Bank of New York, as trustee, in connection with the Company's issuance of up to \$345 million in aggregate principal amount of the Company's 5¼% Convertible Senior Notes due 2011 (the "Notes"). The Notes were offered in a private placement only to qualified institutional buyers in accordance with Rule 144A under the Securities Act of 1933, as amended. They were issued pursuant to the terms of a purchase agreement, dated November 17, 2004.

The Notes bear interest at the rate of 5¼% per annum semiannually on June 15 and December 15 of each year, commencing on June 15, 2005. The Notes will mature on December 15, 2011. The Notes are convertible into shares of the Company's common stock at any time at an initial conversion price of \$3.984 per share, equivalent to a conversion rate of approximately 251.004 shares of common stock, for each \$,1000 principal amount of notes surrendered for conversion, subject to adjustment upon certain events, at any time before the close of business on December 15, 2011. In lieu of delivering shares of common stock, the Company may elect to pay holders cash or a combination of cash and shares of common stock. After December 15, 2008, the Company may redeem the notes, in whole or in part, at its option at any time or from time to time at the redemption prices specified in the Indenture, plus accrued and unpaid interest thereon, if any, to the redemption date.

Holders of the Notes may require the Company to repurchase all or any part of their Notes upon the occurrence of a designated event at a price equal to 100% of the principal amount of the Notes, plus accrued and unpaid interest, to but excluding the repurchase date, if any, plus, in certain circumstances, a make-whole premium. After December 15, 2008, the Company may redeem all or a portion of the Notes at the following redemption prices, plus accrued and unpaid interest to, but excluding, the redemption date: (i) for the 12-month period commencing on December 15, 2008, 102.25% principal amount; (ii) for the 12-month period commencing on December 15, 2009, 101.50% principal amount; and (iii) for the 12-month period commencing on December 15, 2010 and thereafter, 100.75% principal amount.

The Indenture is filed as Exhibit 4.1 to this Form 8-K. The descriptions of the material terms of the Indenture are qualified in their entirety by reference to such exhibit.

On December 2, 2004, the Company entered into a confirmation of OTC convertible note hedge, dated December 2, 2004, among Merrill Lynch International, the Company and Merrill Lynch, Pierce, Fenner & Smith Incorporated, attached as Exhibit 10.8 to this Form 8-K.

On December 2, 2004, the Company entered into a confirmation of OTC warrant, dated December 2, 2004, among Merrill Lynch International, the Company and Merrill Lynch, Pierce, Fenner & Smith Incorporated, attached as Exhibit 10.9 to this Form 8-K.

The convertible note hedge and warrant transactions are designed to enable the Company to limit dilution from the conversion of the Notes. The Company used approximately \$57 million of the proceeds from the offering of the Notes for the net cost of the convertible note hedge and warrant transactions.

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 December 2, 2004, Level 3 issued a press release relating to its accepting for purchase notes in debt tender offers. This press release is filed as Exhibit 99.1 to this Form 8-K and incorporated by reference as if set forth in full.

On December 2, 2004, Level 3 issued a press release relating to the completion of the private offering of the Notes 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

(c) Exhibits:

- 4.1 Indenture, dated December 2, 2004, among Level 3 Communications, Inc. and The Bank of New York.
- 4.2 Supplemental Indenture, dated December 1, 2004, among Level 3 Financing, Inc., Level 3 Communications, Inc., Level 3 Communications, LLC and The Bank of New York, as trustee, relating to the Level 3 Financing 10.75% Senior Notes due 2011.
- 10.1 Credit Agreement, dated December 1, 2004, among Level 3 Communications, Inc., Level 3 Financing, Inc., the Lenders party thereto and Merrill Lynch Capital Corporation.
- 10.2 Guarantee Agreement, dated December 1, 2004, among Level 3 Communications, Inc., the Subsidiaries party thereto and Merrill Lynch Capital Corporation.
- 10.3 Collateral Agreement, dated December 1, 2004, among Level 3 Financing, Inc., Level 3 Communications, Inc., Level 3 Communications, LLC and Merrill Lynch Capital Corporation.
- 10.4 Indemnity, Subrogation and Contribution Agreement, dated December 1, 2004, among Level 3 Communications, Inc., Level 3 Financing, Inc., the Subsidiaries party thereto and Merrill Lynch Capital Corporation.

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- 10.5 Offering Proceeds Note Subordination Agreement, dated December 1, 2004, among Level 3 Communications, Inc., Level 3 Communications, LLC and Level 3 Financing, Inc.
 - 10.6 Loan Proceeds Note, dated December 1, 2004, issued by Level 3 Communications, LLC to Level 3 Financing.
 - 10.7 Loan Proceeds Note Collateral Agreement, dated December 1, 2004, among Level 3 Financing, Inc., Level 3 Communications, Inc. and Merrill Lynch Capital Corporation.
 - 10.8 Confirmation of OTC Convertible Note Hedge, dated December 2, 2004, from Merrill Lynch International to Level 3 Communications, Inc.
 - 10.9 Confirmation of OTC Warrant, dated December 2, 2004, from Merrill Lynch International to Level 3 Communications, Inc.
 - 99.1 Press Release, dated December 2, 2004, of Level 3 Communications, Inc. relating to accepting for purchase notes in debt tender offers.
 - 99.2 Press Release, dated December 2, 2004, of Level 3 Communications, Inc. relating to completion 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: December 7, 2004

EXHIBIT INDEX

Exhibit:

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- 99.1 Press Release, dated December 2, 2004, of Level 3 Communications, Inc. relating to accepting for purchase notes in debt tender offers.
- 99.2 Press Release, dated December 2, 2004, of Level 3 Communications, Inc. relating to completion of private offering.

Exhibit 4.1

EXECUTION COPY

INDENTURE

between

LEVEL 3 COMMUNICATIONS, INC.

and

THE BANK OF NEW YORK

as Trustee

Up to \$345,000,000

5¼% CONVERTIBLE SENIOR NOTES DUE 2011

DATED AS OF DECEMBER 2, 2004

CROSS REFERENCE TABLE

TIA Section	Indenture Section
310(a)(1)	7.11
(a)(2)	N.A.
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	N.A.
(b)	7.11
(c)	N.A.
311(a)	7.12
(b)	7.12
(c)	N.A.
312(a)	N.A.
(b)	11.03
(c)	11.03
313(a)	7.06
(b)	7.06
(c)	N.A.
(d)	N.A.
314(a)	4.02
(b)	N.A.
(c)(1)	N.A.
(c)(2)	N.A.
(c)(3)	N.A.
(d)	N.A.
(e)	N.A.
(f)	N.A.
315(a)	7.01
(b)	7.05
(c)	N.A.
(d)(1)	7.01
(d)(2)	7.01
(d)(3)	7.01
(e)	6.11
316(a) (last sentence)	N.A.
(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	N.A.
317(a)(1)	N.A.
(a)(2)	N.A.
(b)	N.A.
318(a)	N.A.

* Note: This Cross Reference Table shall not, for any purpose, be deemed to be part of the Indenture.

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Exhibit D	Form of Transfer Certificate for Transfer of Restricted Common Stock

INDENTURE dated as of December 2, 2004 between LEVEL 3 COMMUNICATIONS, INC., a Delaware corporation (the “Company”), and BANK OF NEW YORK, as trustee hereunder (the “Trustee”).

RECITALS OF THE COMPANY

The Company has duly authorized the creation of an issue of its 5¼% Convertible Senior Notes due 2011 (the “Securities”) of substantially the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture.

All things necessary to make the Securities, when the Securities are executed by the Company and authenticated and delivered hereunder, the valid obligations of the Company, and to make this Indenture a valid and binding agreement of the Company, in accordance with their and its terms, have been done. Further, all things necessary to duly authorize the issuance of the Common Stock of the Company issuable upon the conversion of the Securities, and to duly reserve for issuance the number of shares of Common Stock issuable upon such conversion, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 1.01. Definitions. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (i) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- (ii) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and, except as otherwise herein expressly provided, the term “generally accepted accounting principles” with respect to any computation required or permitted hereunder shall mean United States generally accepted accounting principles as in effect on the date of this Indenture;
- (iii) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section, paragraph or other subdivision; and
- (iv) unless otherwise indicated, references to Articles, Sections, paragraphs or other subdivisions are references to such Articles, Sections, paragraphs or other subdivisions of this Indenture

“144A Global Security” means a permanent Global Security in the form of the Security attached hereto as Exhibit A-1, and that is deposited with and registered in the name of the Depositary, representing Securities sold in reliance on Rule 144A under the Securities Act.

“Acquired Debt” means, with respect to any specified Person, (i) debt of any other Person existing at the time such Person merges with or into or consolidates with such specified Person and (ii) debt secured by a Lien encumbering any property acquired by such specified Person, which debt in each case was not incurred in anticipation of, and was outstanding prior to, such merger, consolidation or acquisition.

“Additional Interest” means the additional interest payable by the Company upon the occurrence of an Event (as defined in the Registration Rights Agreement), in the manner and in the amounts provided by the Registration Rights Agreement.

“Affiliate” of any specified Person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Applicable Procedures” means, with respect to any transfer or transaction involving a Global Security or beneficial interest therein, the rules and procedures of the Depositary for such Security, in each case to the extent applicable to such transaction and as in effect from time to time.

“Board of Directors” means either the board of directors of the Company or any duly authorized committee of such board.

“Board Resolution” means a resolution duly adopted by the Board of Directors, a copy of which, certified by the Secretary or an Assistant Secretary of the Company to be in full force and effect on the date of such certification, shall have been delivered to the Trustee.

“Business Day” means each day of the year other than a Saturday or a Sunday on which banking institutions are not required or authorized by law, regulation or executive order to close in The City of New York.

“Capital Stock” of any Person means any and all shares, interests, participations or other equivalents (however designated) of corporate stock or other equity participations, including partnership interests, whether general or limited, of such Person and any rights (other than debt securities convertible and exchangeable into an equity interest), warrants or options to acquire an equity interest in such Person.

“Certificated Securities” means Securities that are in the form of the Securities attached hereto as Exhibit A-1.

A “Change in Control” of the Company will be deemed to have occurred at such time after the original issuance of Securities as any of the following events shall occur:

(i) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act or any successor provisions to either of the foregoing), including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act, other than any one or more of the Permitted Holders, becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act, except that a person will be deemed to have “beneficial ownership” of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 35% or more of the total voting power of the Voting Stock of the Company (other than as a result of any merger, share exchange, transfer of assets or similar transaction solely for the purpose of changing the Company’s jurisdiction of incorporation and resulting in a reclassification, conversion or exchange of outstanding shares of common stock solely into shares of common stock of the surviving entity); provided, however, that the Permitted Holders are the “beneficial owners” (as defined in Rule 13d-3 under the Exchange Act, except that a person will be deemed to have “beneficial ownership” of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, in the aggregate of a lesser percentage of the total voting power of the Voting Stock of the Company than such other person or group (for purposes of this clause (i), such person or group shall be deemed to beneficially own any Voting Stock of a corporation (the “specified corporation”) held by any other corporation (the “parent corporation”) so long as such person or group beneficially owns, directly or indirectly, in the aggregate a majority of the total voting power of the Voting Stock of such parent corporation); or

(ii) (1) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act or any successor provisions to either of the foregoing), including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act becomes the “beneficial owner” (as defined in Rule 13d-3

under the Exchange Act, except that a person will be deemed to have “beneficial ownership” of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of a majority of the total voting power of the Voting Stock of the Company (other than as a result of any merger, share exchange, transfer of assets or similar transaction solely for the purpose of changing the Company’s jurisdiction of incorporation and resulting in a reclassification, conversion or exchange of outstanding shares of common stock solely into shares of common stock of the surviving entity) and (2) a Termination of Trading shall have occurred; or

(iii) the Company’s consolidation or merger with or into any other person, any merger of another person into the Company’s, or any sale, transfer, assignment, lease, conveyance or other disposition, directly or indirectly, of all or substantially all the assets of the Company and its subsidiaries, considered as a whole (other than a disposition of such assets as an entirety or virtually as an entirety to a wholly owned subsidiary or one or more Permitted Holders) shall have occurred, other than

(A) any transaction (a) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of the Company’s Capital Stock and (b) pursuant to which holders of the Company’s Capital Stock immediately prior to the transaction are entitled to exercise, directly or indirectly, 50% or more of the total voting power of all shares of Capital Stock entitled to vote generally in the election of directors of the continuing or surviving person immediately after the transaction; or

(B) any merger, share exchange, transfer of assets or similar transaction solely for the purpose of changing the Company’s jurisdiction of incorporation and resulting in a reclassification, conversion or exchange of outstanding shares of common stock solely into shares of common stock of the surviving entity; or

(iv) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of the Company (together with any new directors whose election or appointment by such board or whose nomination for election by the shareholders of the Company was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of the Company then in office; or

(v) the shareholders of the Company shall have approved any plan of liquidation or dissolution of the Company.

“Closing Sale Price” of the shares of Common Stock on any date means the closing sale price per share (or, if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such date as reported in composite transactions on the Nasdaq National Market or such principal United States securities exchange on which shares of Common Stock may be traded or, if the shares of Common Stock are not listed on a United States national or regional securities exchange, as reported by the Nasdaq system or by the National Quotation Bureau Incorporated. In the absence of such quotations, the Company shall be entitled to determine the Closing Sale Price on the basis of such quotations as it considers appropriate. Closing Sale Price shall be determined without reference to extended or after hours trading.

“Common Stock” means the Common Stock, \$0.01 par value per share, of the Company as it exists on the date of this Indenture. Subject to the provisions of Section 10.06, shares issuable on conversion of Securities shall include only shares of Common Stock or shares of any class or classes of common stock resulting from any reclassification or reclassifications thereof; provided, however, that if at any time there shall be more than one such resulting class, the shares so issuable on conversion of Securities shall include shares of all such classes, and the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

“common stock” means any stock of any class of Capital Stock which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the issuer.

“Company” means the party named as the “Company” in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture, and, thereafter, “Company” shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

“Company Request” or “Company Order” means a written request or order signed in the name of the Company by any two Officers.

“Conversion Price” means \$1,000 divided by the applicable Conversion Rate.

“Corporate Trust Office” means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at Bank of New York, 101 Barclay Street, Floor 8 West, New York, New York 10286, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal Corporate Trust Office of any successor Trustee (or such other address as a successor Trustee may designate from time to time by notice to the Holders and the Company).

“Default” means any event, act or condition the occurrence of which is, or after notice or the passage of time or both would be, an Event of Default.

“Designated Event” means the occurrence of a Change in Control or a Termination of Trading.

“Exchange Act” means the United States Securities Act of 1934 (or any successor statute), as amended from time to time.

“Global Securities” means Securities that are in the form of the Securities attached hereto as Exhibit A and, to the extent that such Securities are required to bear the Legend required by Section 2.07, such Securities will be in the form of a 144A Global Security.

“Holder” or “Securityholder” means a person in whose name a Security is registered on the Registrar’s books.

“Indenture” means this Indenture, as amended or supplemented from time to time in accordance with the terms hereof, including the provisions of the TIA that are deemed to be a part hereof.

“Initial Purchasers” mean Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. Incorporated, Citigroup Global Markets Inc., Credit Suisse First Boston LLC, Needham & Company, Inc. and UBS Securities LLC.

“Interest Payment Date” means the date specified in the Securities as the fixed date on which an installment of interest on the Securities is due and payable.

“Interest Rate” means 5-1/4% per annum.

“Issue Date” of any Security means the date on which the Security was originally issued or deemed issued as set forth on the face of the Security.

“Lien” means any mortgage or deed of trust, pledge, hypothecation, security interest, lien, charge, encumbrance or other security agreement of any kind or nature whatsoever; provided, however, that Liens shall not include defeasance trusts or funds. For purposes of this definition, the sale, lease, conveyance or other transfer by the Company of, including the grant of indefeasible rights of use or equivalent arrangements with respect to, dark or lit communications fiber capacity or communications conduit shall not constitute a Lien.

“Material Subsidiary” means any Subsidiary with stockholders’ equity which constituted at least 15% of the Company’s consolidated stockholders’ equity, all as determined as of the date of the Company’s most recently prepared financial statements in accordance with GAAP.

“Officer” means the Chairman of the Board, the Vice Chairman, the Chief Executive Officer, the President, any Executive Vice President, any Senior Vice President, any Vice President, the Treasurer or the Secretary or any Assistant Treasurer or Assistant Secretary of the Company.

“Officers’ Certificate” means a written certificate containing the information specified in Section 11.05, signed in the name of the Company by any two Officers, and delivered to the Trustee. An Officers’ Certificate given pursuant to Section 4.03 shall be signed by one authorized financial or accounting Officer of the Company but need not contain the information specified in Section 11.05.

“Opinion of Counsel” means a written opinion containing the information specified in Sections 11.04 and 11.05, from legal counsel who is reasonably acceptable to the Trustee. The counsel may be an employee of, or counsel to, the Company.

“Permitted Holders” means the members of the Board of Directors of the Company on April 28, 1998, and their respective estates, spouses, ancestors, and lineal descendants, the legal representatives of any of the foregoing and the trustees of any bona fide trusts of which the foregoing are the sole beneficiaries or the grantors, or any person of which the foregoing “beneficially owns” (as defined in Rule 13d-3 under the Exchange Act) at least $66 \frac{2}{3} \%$ of the total voting power of the Voting Stock of such Person.

“Person” means any individual, corporation, company, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, government or agency or political subdivision thereof or any other entity.

“principal” of a Security means the principal amount due on the Stated Maturity as set forth on the face of the Security.

“Purchase Agreement” means the Purchase Agreement, dated as of November 17, 2004, between the Company and the Initial Purchasers.

“Redemption Date”, when used with respect to any Security to be redeemed, means the price fixed for such redemption pursuant to Article 3 and the Securities.

“Redemption Price”, when used with respect to any of the Securities to be redeemed, means the price fixed for such redemption pursuant to Article 3 and the Securities.

“Registration Rights Agreement” means the Registration Rights Agreement dated as of November 17, 2004 entered into by the Company and the Initial Purchasers.

“Regular Record Date” means, with respect to the interest payable on any Interest Payment Date, the close of business on the June 1 or December 1 (whether or not a Business Day), as the case may be, immediately preceding such Interest Payment Date.

“Responsible Officer” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject.

“Restricted Security” means a Security required to bear the restrictive Legend set forth in the form of Security set forth in Exhibits A-1 and A-2 of this Indenture.

“Rule 144” means Rule 144 under the Securities Act (or any successor provision), as it may be amended from time to time.

“Rule 144A” means Rule 144A under the Securities Act (or any successor provision), as it may be amended from time to time.

“SEC” means the Securities and Exchange Commission.

“Securities” has the meaning ascribed to it in the first paragraph under the caption “Recitals of the Company.”

“Securities Act” means the United States Securities Act of 1933 (or any successor statute), as amended from time to time.

“Specified Indebtedness” means (A) the Company’s 9 1/8% Senior Notes due 2008, 11% Senior Notes due 2008, 10 1/2% Senior Discount Notes due 2008, 10 3/4% Senior Euro Notes due 2008, 12 7/8% Senior Discount Notes due 2010, 11 1/4% Senior Euro Notes due 2010, 11 1/4% Senior Notes due 2010, 2 7/8% Convertible Senior Notes due 2010, 6.0% Convertible Subordinated Notes due 2009 and 6.0% Convertible Subordinated Notes due 2010, and (B) any indebtedness of the Company for borrowed money that (i) is in the form of, or represented by, bonds, notes, debentures or other securities or any guarantee thereof (other than promissory notes or similar evidence of indebtedness under bank loans, reimbursement agreements, receivables facilities or other bank, insurance or other institutional financing agreements under section 4(2) of the Securities Act or any guarantee thereof) and (ii) is, or may be, quoted, listed or purchased and sold on any stock exchange, automated securities trading system or over-the-counter or other securities market (including, without prejudice to the generality of the foregoing, the market for securities eligible for resale pursuant to Rule 144A under the Securities Act). For the avoidance of doubt, “Specified Indebtedness” shall not include indebtedness among the Company or its Subsidiaries or among Subsidiaries.

“Stated Maturity”, when used with respect to any Security, means the date specified in such Security as the fixed date on which the principal of such Security is due and payable.

“Subsidiary” of any Person means (a) a corporation more than 50% of the combined voting power of the outstanding Voting Stock of which is owned, directly or indirectly, by such Person or by one or more other Subsidiaries of such Person or by such Person and one or more Subsidiaries thereof or (b) any other Person (other than a corporation) in which such Person, or one or more other Subsidiaries of such Person and one or more other Subsidiaries thereof, directly or indirectly, has at least a majority ownership and power to direct the policies, management and affairs thereof.

“Termination of Trading” will be deemed to have occurred if the Common Stock (or other common stock into which the Securities are then convertible) is neither listed for trading on a U.S. national securities exchange nor approved for trading on the Nasdaq National Market.

“TIA” means the Trust Indenture Act of 1939 as in effect on the date of this Indenture, provided, however, that in the event the TIA is amended after such date, TIA means, to the extent required by any such amendment, the TIA as so amended.

“Trading Day” means (a) if the applicable security is quoted on the Nasdaq National Market, a day on which trades may be made thereon, (b) if the applicable security is listed or admitted for trading on the New York Stock Exchange or another national securities exchange, a day on which the New York Stock Exchange or such other national securities exchange is open for business or (c) if the applicable security is not so listed, admitted for trading or quoted, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

“Trustee” means the party named as the “Trustee” in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

“Voting Stock” of any Person means Capital Stock of such Person which ordinarily has voting power for the election of directors (or Persons performing similar functions) of such Person, whether at all times or only for so long as no senior class of securities has such voting power by reason of any contingency.

SECTION 1.02. Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
“Act”	1.05(a)
“Additional Interest Notice”	4.07
“Agent Members”	2.13(f)(5)

Term	Defined in Section
“Applicable Stock Price”	10.02(c)
“Conversion Date”	10.02(d)
“Conversion Rate”	10.04
“Current Market Price”	10.03, 10.05(f)(1)
“Depository”	2.02(a)
“Designated Event Date”	3.09(a)
“Designated Event Offer”	3.09(a)
“Designated Event Offer Termination Date”	3.09(b)
“Designated Event Payment”	3.09(a)
“Designated Event Purchase Date”	3.09(b)
“Designated Event Purchase Notice”	3.10(b)
“Determination Date”	10.05(j)
“DTC”	2.02(a)
“Effective Date”	3.09(b)
“Event of Default”	6.01
“Expiration Time”	10.05(e)
“Fair Market Value”	10.05(f)
“Legal Holiday”	11.08
“Legend”	2.07(f)
“Make Whole Premium”	3.09(b)
“Non-Electing Share”	10.06
“Notice of Default”	6.01(e)
“Paying Agent”	2.04
“Purchased Shares”	10.05(e)(i)
“QIBs”	2.02(a)
“Record Date”	10.05(f)(3)
“Registrar”	2.04
“Restricted Common Stock Legend”	10.11
“Rule 144A Information”	4.06
“Spinoff Valuation Period”	10.05(d)(i)
“Stock Price”	3.09(b)
“Transfer”	2.13(e)
“Trigger Event”	10.05(d)

SECTION 1.03. Incorporation by Reference of Trust Indenture Act. Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

“Commission” means the SEC.

“indenture Securities” means the Securities.

“indenture Security holder” means a Holder.

“indenture trustee” or “institutional trustee” means the Trustee.

“obligor” on the indenture Securities means the Company.

All other TIA terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule have the meanings assigned to them by such definitions.

SECTION 1.04. Rules of Construction. Unless the context otherwise requires:

(i) a term has the meaning assigned to it;

(ii) “or” is not exclusive;

(iii) “including” means including, without limitation; and

(iv) words in the singular include the plural, and words in the plural include the singular.

SECTION 1.05. Acts of Holders. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by their agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.05.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to such officer the execution thereof. Where such execution is by a signer acting in a capacity other than such signer’s individual capacity, such certificate or affidavit shall also constitute sufficient proof of such signer’s authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.

(c) The ownership of Securities shall be proved by the register for the Securities or by a certificate of the Registrar.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(e) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a resolution of the Board of Directors, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for purposes of determining whether Holders of the requisite proportion of outstanding Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the outstanding Securities shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

ARTICLE II

THE SECURITIES

SECTION 2.01. Designation Amount And Issue Of Securities. The Securities shall be designated as “5-1/4% Convertible Senior Notes due 2011”. Securities not to exceed the aggregate principal amount of \$345,000,000 (except pursuant to Sections 2.08 hereof) upon the execution of this Indenture, or from time to time thereafter, may be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver said Securities to or upon a Company Order. The Securities shall be issued only in registered form without coupons and only in denominations of \$1,000 in principal amount and any integral multiple thereof.

SECTION 2.02. Form and Dating. The Securities and the Trustee’s certificate of authentication shall be substantially in the form of Exhibits A-1 and A-2, which are incorporated into and made a part of this

Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage (provided that any such notation, legend or endorsement required by usage is in a form acceptable to the Company). The Company shall provide any such notations, legends or endorsements to the Trustee in writing. Each Security shall be dated the date of its authentication.

(a) 144A Global Securities. Securities offered and sold within the United States to “qualified institutional buyers” as defined in Rule 144A (“QIBs”) in reliance on Rule 144A shall be issued initially in the form of a 144A Global Security, which shall be deposited with the Trustee at its Corporate Trust Office, as custodian for, and registered in the name of, The Depository Trust Company (“DTC”) or its nominee (such depository, or any successor thereto, and any such nominee being hereinafter referred to as the “Depository”) duly executed by the Company and authenticated by the Trustee as herein provided. The aggregate principal amount of the 144A Global Security may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository as hereinafter provided.

(b) Global Securities in General. Except as provided in Section 2.07 or 2.13, owners of beneficial interests in Global Securities will not be entitled to receive physical delivery of Certificated Securities. Each Global Security shall represent such of the outstanding Securities as shall be specified therein and each shall provide that it shall represent the aggregate principal amount of outstanding Securities from time to time endorsed thereon and that the aggregate principal amount of outstanding Securities represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and conversions.

Any adjustment of the aggregate principal amount of a Global Security to reflect the amount of any increase or decrease in the principal amount of outstanding Securities represented thereby shall be made by the Trustee in accordance with instructions given by the Holder thereof as required by Section 2.13 hereof and shall be made on the records of the Trustee and the Depository.

(c) Book-Entry Provisions. This Section 2.02(c) shall apply only to Global Security deposited with or on behalf of the Depository.

The Company shall execute and the Trustee shall, in accordance with this Section 2.02(c), authenticate and deliver initially one or more Global Securities that (a) shall be registered in the name of the Depository, (b) shall be delivered by the Trustee to the Depository or pursuant to the Depository’s instructions or held by the Trustee as custodian for such Depository and (c) shall bear legends substantially to the following effect:

“UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.”

“TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS TO NOMINEES OF THE DEPOSITORY TRUST COMPANY, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE TWO OF THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.”

(d) Certificated Securities. Securities not issued as interests in the Global Securities will be issued in certificated form substantially in the form of Exhibit A-2 attached hereto.

SECTION 2.03. Execution and Authentication. One Officer shall sign the Security for the Company by manual or facsimile signature.

Securities bearing the manual or facsimile signatures of individuals who were at the time of the execution of the Securities the proper Officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of authentication of such Securities.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein duly executed by the Trustee by manual signature of an authorized signatory of the Trustee, and such duly executed certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

SECTION 2.04. Registrar, Paying Agent and Conversion Agent. The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange (“Registrar”), an office or agency where Securities may be presented for purchase or payment (“Paying Agent”) and an office or agency where Securities may be presented for conversion (“Conversion Agent”). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may have one or more co-registrars, one or more additional paying agents and one or more additional conversion agents. The term Paying Agent includes any additional paying agent, including any named pursuant to Section 4.05. The term Conversion Agent includes any additional conversion agent, including any named pursuant to Section 4.05.

The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent, Conversion Agent or co-registrar (other than the Trustee). The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee of the name and address of any such agent. If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.08. The Company or any Subsidiary or an Affiliate of either of them may act as Paying Agent, Registrar, Conversion Agent or co-registrar.

The Company initially appoints the Trustee as Registrar, Conversion Agent and Paying Agent in connection with the Securities.

SECTION 2.05. Paying Agent to Hold Money and Securities in Trust. Except as otherwise provided herein, prior to 11:00a.m., New York time on each due date of payments in respect of any Security, the Company shall deposit with the Paying Agent a sum of money (in immediately available funds if deposited on the due date) sufficient to make such payments when so becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the making of payments in respect of the Securities and shall notify the Trustee of any default by the Company in making any such payment. At any time during the continuance of any such default, the Paying Agent shall, upon the written request of the Trustee, forthwith pay to the Trustee all money so held in trust. If the Company, a Subsidiary or an Affiliate of either of them acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by it. Upon doing so, the Paying Agent shall have no further liability for the money.

SECTION 2.06. Holder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Company shall cause to be furnished to the Trustee at least semiannually on each June 1 and December 1 during the term of the Securities a listing of Holders dated within 13 days of the date on which the list is furnished and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders.

SECTION 2.07. Transfer and Exchange. Subject to Sections 2.02(b), 2.07(b) and 2.13 hereof,

(a) (i) upon surrender for registration of transfer of any Security, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Holder or such Holder’s attorney duly authorized in writing, at the office or agency of the company designated as Registrar or co-registrar pursuant to Section 2.04, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denomination or denominations, of a like aggregate principal amount. The Company shall not charge a service charge for any registration of transfer or

exchange, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of the Securities from the Holder requesting such transfer or exchange.

(ii) At the option of the Holder, Securities may be exchanged for other Securities of any authorized denomination or denominations, of a like aggregate principal amount, upon surrender of the Securities to be exchanged, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Holder or such Holder's attorney duly authorized in writing, at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive.

(b) Notwithstanding any provision to the contrary herein, so long as a Global Security remains outstanding and is held by or on behalf of the Depositary, transfers of a Global Security, in whole or in part, shall be made only in accordance with Section 2.13 and this Section 2.07(b). Transfers of a Global Security shall be limited to transfers of such Global Security in whole, or in part, to nominees of the Depositary or to a successor of the Depositary or such successor's nominee.

(c) Successive registrations and registrations of transfers and exchanges as aforesaid may be made from time to time as desired, and each such registration shall be noted on the register for the Securities.

(d) Any Registrar appointed pursuant to Section 2.04 hereof shall provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Securities upon transfer or exchange of Securities.

(e) No Registrar shall be required to make registrations of transfer or exchange of Securities during any periods designated in the text of the Securities or in this Indenture as periods during which such registration of transfers and exchanges need not be made.

(f) If Securities are issued upon the transfer, exchange or replacement of Securities subject to restrictions on transfer and bearing the legends set forth on the form of Security attached hereto as Exhibits A-1 and A-2 setting forth such restrictions (collectively, the "Legend"), or if a request is made to remove the Legend on a Security, the Securities so issued shall bear the Legend, or the Legend shall not be removed, as the case may be, unless there is delivered to the Company and the Registrar such satisfactory evidence, which shall include an Opinion of Counsel, as may be reasonably required by the Company and the Registrar, that neither the Legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A or Rule 144 under the Securities Act or that such Securities are not "restricted" within the meaning of Rule 144 under the Securities Act. Upon (i) provision of such satisfactory evidence, or (ii) notification by the Company to the Trustee and Registrar of the sale of such Security pursuant to a registration statement that is effective at the time of such sale, the Trustee, at the written direction of the Company, shall authenticate and deliver a Security that does not bear the Legend.

(g) Any Security or Common Stock issued upon the conversion or exchange of a Security that is purchased or owned by the Company or any Affiliate thereof may not be resold by the Company or such Affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction which results in such Securities or Common Stock, as the case may be, no longer being "restricted securities" (as defined under Rule 144).

SECTION 2.08. Replacement Securities. If (a) any mutilated Security is surrendered to the Trustee, or (b) the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and there is delivered to the Company and the Trustee such Security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a protected purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, or is about to be purchased by the Company pursuant to Article 3 hereof, the Company in its discretion may, instead of issuing a new Security, pay or purchase such Security, as the case may be.

Upon the issuance of any new Securities under this Section 2.08, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security issued pursuant to this Section 2.08 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section 2.08 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

SECTION 2.09. Outstanding Securities; Determinations of Holders' Action. Securities outstanding at any time are all the Securities authenticated by the Trustee except for those cancelled by it or delivered to it for cancellation, those paid pursuant to Section 2.08 and those described in this Section 2.09 as not outstanding. A Security does not cease to be outstanding because the Company or an Affiliate thereof holds the Security; provided, however, that in determining whether the Holders of the requisite principal amount of the outstanding Securities have given or concurred in any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee knows to be so owned shall be so disregarded. Subject to the foregoing, only Securities outstanding at the time of such determination shall be considered in any such determination (including, without limitation, determinations pursuant to Articles 6 and 9).

If a Security is replaced pursuant to Section 2.08, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Security is held by a protected purchaser.

Unless the Company defaults in making the applicable payment, if the Paying Agent holds, in accordance with this Indenture, on or prior to the Business Day following the Designated Event Purchase Date, on or prior to any Redemption Date or on the Stated Maturity, money or securities, if permitted hereunder, sufficient to pay Securities payable on that date, then immediately after such Designated Event Purchase Date, Redemption Date or Stated Maturity, as the case may be, such Securities shall cease to be outstanding and interest on such Securities shall cease to accrue.

If a Security is converted in accordance with Article 10, then from and after the time of conversion on the Conversion Date, such Security shall cease to be outstanding and interest shall cease to accrue on such Security.

SECTION 2.10. Temporary Securities. Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Officer executing such Securities may determine, as conclusively evidenced by such Officer's execution of such Securities.

If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for such purpose pursuant to Section 2.04, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities the Company shall execute and the Trustee shall authenticate and deliver in exchange thereof a like principal amount of definitive Securities of authorized denominations. Until so exchanged the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

SECTION 2.11. Cancellation. All Securities surrendered for payment, purchase or redemption by the Company pursuant to Article 3, conversion or registration of transfer or exchange shall, if surrendered to any person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by the Trustee. The Company may not reissue, reoffer or resell new Securities to replace Securities it has paid or delivered to the Trustee for cancellation or that any Holder has converted pursuant to Article 10. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section 2.11, except as expressly permitted by this Indenture. All cancelled Securities shall be disposed of by the Trustee in accordance with its customary procedures.

SECTION 2.12. Persons Deemed Owners. Prior to due presentment of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal or redemption price of the Security or the payment of any Designated Event Payment (including any Make Whole Premium) in respect thereof, and interest thereon, for the purpose of conversion and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

SECTION 2.13. Global Securities. (a) Notwithstanding any other provisions of this Indenture or the Securities, (A) transfers of a Global Security, in whole or in part, shall be made only in accordance with Sections 2.07 and 2.13(a)(i), (B) transfers of a beneficial interest in a Global Security for a Certificated Security shall comply with Sections 2.07 and 2.13(a)(ii) below, and (C) transfers of a Certificated Security shall comply with Section 2.07 and Sections 2.13(a)(iii) and (iv) below.

(i) Transfer of Global Security. A Global Security may not be transferred, in whole or in part, to any Person other than the Depositary or a nominee or any successor thereof, and no such transfer to any such other Person may be registered; provided that this clause (i) shall not prohibit any transfer of a Security that is issued in exchange for a Global Security but is not itself a Global Security. No transfer of a Security to any Person shall be effective under this Indenture or the Securities unless and until such Security has been registered in the name of such Person. Nothing in this Section 2.13(a)(i) shall prohibit or render ineffective (A) any transfer of a beneficial interest in a Global Security effected in accordance with the other provisions of this Section 2.13(a); and (B) the transfer and exchange of beneficial interests in a Global Security effected through the Depositary in accordance with this Indenture and the procedures of the Depositary.

(ii) Restrictions on Transfer of a Beneficial Interest in a Global Security for a Certificated Security. A beneficial interest in a Global Security may not be exchanged for a Certificated Security except upon satisfaction of the requirements set forth below. Upon receipt by the Trustee of a transfer of a beneficial interest in a Global Security in accordance with Applicable Procedures for a Certificated Security in the form satisfactory to the Trustee, together with:

(A) so long as the Securities are Restricted Securities, a certification in the form set forth in Exhibit B;

(B) written instructions from the Company to the Trustee to make, or direct the Registrar to make, an adjustment on its books and records with respect to such Global Security to reflect a decrease in the aggregate principal amount of the Securities represented by the Global Security, such instructions to contain information regarding the Depositary account to be credited with such decrease; and

(C) if the Company or Registrar so requests, to the extent contemplated by the Legend, an Opinion of Counsel or other evidence reasonably satisfactory to them as to the compliance with the restrictions set forth in the Legend, then the Trustee shall cause, or direct the Registrar to cause, in accordance with the standing instructions and procedures existing between the Depositary and the Registrar, the aggregate principal amount of Securities represented by the Global Security to be decreased by the aggregate principal amount of the Certificated Security to be issued, shall issue such Certificated Security and

shall debit or cause to be debited to the account of the Person specified in such instructions a beneficial interest in the Global Security equal to the principal amount of the Certificated Security so issued.

(iii) Transfer and Exchange of Certificated Securities. When Certificated Securities are presented to the Registrar with a request:

(x) to register the transfer of such Certificated Securities; or

(y) to exchange such Certificated Securities for an equal principal amount of Certificated Securities of other authorized denominations,

the Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided, however, that the Certificated Securities surrendered for transfer or exchange:

(1) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing; and

(2) so long as such Securities are Restricted Securities, such Securities are being transferred or exchanged pursuant to an effective registration statement under the Securities Act or pursuant to clause (A), (B) or (C) below, and are accompanied by the following additional information and documents, as applicable:

(A) if such Certificated Securities are being delivered to the Registrar by a Holder for registration in the name of such Holder, without transfer, a certification from such Holder to that effect; or

(B) if such Certificated Securities are being transferred to the Company, a certification to that effect; or

(C) if such Certificated Securities are being transferred pursuant to an exemption from registration, (i) a certification to that effect (in the form set forth in Exhibit B, if applicable) and (ii) if the Company or Registrar so requests, an Opinion of Counsel or other evidence reasonably satisfactory to them as to the compliance with the restrictions set forth in the Legend.

(iv) Restrictions on Transfer of a Certificated Security for a Beneficial Interest in a Global Security. A Certificated Security may not be exchanged for a beneficial interest in a Global Security except upon satisfaction of the requirements set forth below. Upon receipt by the Trustee of a Certificated Security, duly endorsed or accompanied by appropriate instruments of transfer, in form reasonably satisfactory to the Trustee, together with:

(1) so long as the Securities are Restricted Securities, certification, in the form set forth in Exhibit B, that such Certificated Security is being transferred to a QIB in accordance

(2) with Rule 144A; and

(3) written instructions directing the Trustee to make, or to direct the Registrar to make, an adjustment on its books and records with respect to such Global Security to reflect an increase in the aggregate principal amount of the Securities represented by the Global Security, such instructions to contain information regarding the Depositary account to be credited with such increase, then the Trustee shall cancel such Certificated Security and cause, or direct the Registrar to cause, in accordance with the standing instructions and procedures existing between the Depositary and the Registrar, the aggregate principal amount of Securities represented by the Global Security to be increased by the aggregate principal amount of the Certificated Security to be exchanged, and shall credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Global Security equal

to the principal amount of the Certificated Security so cancelled. If no Global Securities are then outstanding, the Company shall issue and the Trustee shall authenticate, upon written order of the Company in the form of an Officers' Certificate, a new Global Security in the appropriate principal amount.

(b) Subject to the succeeding paragraph, every Security shall be subject to the restrictions on transfer provided in the Legend, including the delivery of an Opinion of Counsel, if so provided. Whenever any Restricted Security is presented or surrendered for registration of transfer or for exchange for a Security registered in a name other than that of the Holder, such Security must be accompanied by a certificate in substantially the form set forth in Exhibit B, dated the date of such surrender and signed by the Holder of such Security, as to compliance with such restrictions on transfer. The Registrar shall not be required to accept for such registration of transfer or exchange any Security not so accompanied by a properly completed certificate and other evidence the Registrar may request as to the compliance with the restrictions set forth in the Legend.

(c) The restrictions imposed by the Legend upon the transferability of any Security shall cease and terminate when such Security has been sold pursuant to an effective registration statement under the Securities Act or transferred in compliance with Rule 144 or, if earlier, upon the expiration of the holding period applicable to sales thereof under Rule 144(k). Any Security as to which such restrictions on transfer shall have expired in accordance with their terms or shall have terminated may, upon a surrender of such Security for exchange to the Registrar in accordance with the provisions of this Section 2.13 (accompanied, in the event that such restrictions on transfer have terminated by reason of a transfer in compliance with Rule 144, by an Opinion of Counsel reasonably acceptable to the Company, addressed to the Company and in form acceptable to the Company, to the effect that the transfer of such Security has been made in compliance with Rule 144 or such successor provision), be exchanged for a new Security, of like tenor and aggregate principal amount, which shall not bear the Legend. The Company shall inform the Trustee of the effective date of any registration statement registering the Securities under the Securities Act. The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among DTC participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof. The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the aforementioned Opinion of Counsel or registration statement.

(d) In the event that Rule 144(k) as promulgated under the Securities Act is amended to shorten the two-year restriction period, then restrictions on transfer on the Securities and the Common Stock will be deemed to refer to the shortened restriction period. The Company undertakes to inform the Trustee if such change to Rule 144(k) occurs and the effect (if any) to the restrictions on transfer applicable to the Securities and Common Stock and shall provide additional information (including an Opinion of Counsel and/or an Officers' Certificate) if so requested by the Trustee.

(e) As used in this Section 2.13, the term “transfer” encompasses any sale, pledge, transfer, hypothecation or other disposition of any Security.

(f) The provisions of clauses (1), (2), (3), (4) and (5) below shall apply only to Global Securities:

(1) Notwithstanding any other provisions of this Indenture or the Securities, except as provided in Section 2.13(a)(i), a Global Security shall not be exchanged in whole or in part for a Security registered in the name of any Person other than the Depositary or one or more nominees thereof; provided that a Global Security may be exchanged for Securities registered in the names of any person designated by the Depositary in the event that (i) the Depositary has notified the Company that it is unwilling or unable to continue as Depositary for such Global Security or such Depositary has ceased to be a “clearing agency” registered under the Exchange Act, and a successor Depositary is not appointed by the Company within 90 days or (ii) an Event of Default has occurred and is continuing with respect to the Securities. Any Global Security exchanged pursuant to clause (i) above shall be so exchanged in whole and not in part, and any Global Security exchanged pursuant to clause (ii) above may be exchanged in whole or from time to time in part as directed by the Depositary. Any Security issued in exchange for a Global Security or any portion thereof shall be a Global Security; provided that

any such Security so issued that is registered in the name of a Person other than the Depositary or a nominee thereof shall not be a Global Security.

(2) Securities issued in exchange for a Global Security or any portion thereof shall be issued in definitive, fully registered form, without interest coupons, shall have an aggregate principal amount equal to that of such Global Security or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depositary shall designate and shall bear the applicable legends provided for herein. Any Global Security to be exchanged in whole shall be surrendered by the Depositary to the Trustee, as Registrar. With regard to any Global Security to be exchanged in part, either such Global Security shall be so surrendered for exchange or, if the Trustee is acting as custodian for the Depositary or its nominee with respect to such Global Security, the principal amount thereof shall be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee shall authenticate and deliver the Security issuable on such exchange to or upon the order of the Depositary or an authorized representative thereof.

(3) Subject to the provisions of clause (5) below, the registered Holder may grant proxies and otherwise authorize any Person, including Agent Members (as defined below) and persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(4) In the event of the occurrence of any of the events specified in clause (1) above, the Company will promptly make available to the Trustee a reasonable supply of Certificated Securities in definitive, fully registered form, without interest coupons.

(5) Neither any members of, or participants in, the Depositary (collectively, the “Agent Members”) nor any other Persons on whose behalf Agent Members may act shall have any rights under this Indenture with respect to any Global Security registered in the name of the Depositary or any nominee thereof, or under any such Global Security, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and Holder of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a Holder of any Security.

SECTION 2.14. CUSIP Numbers. The Company in issuing the Securities may use “CUSIP” numbers, and if so, the Trustee shall use the CUSIP numbers in notices to Securityholders as a convenience to Securityholders; provided that any such notice may state that no representation is made as to the correctness of such numbers as printed on the Securities and that reliance may be placed only on the other identification numbers printed on the Securities. The Company will promptly notify the Trustee of any change in the CUSIP numbers.

SECTION 2.15. Defaulted Interest. If the Company defaults in a payment of interest on the Securities, it shall pay, or shall deposit with the Paying Agent money in immediately available funds sufficient to pay, the defaulted interest, plus (to the extent lawful) any interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date. A special record date, as used in this Section 2.15 with respect to the payment of any defaulted interest, shall mean the 15th day immediately preceding the date fixed by the Company for the payment of defaulted interest, whether or not such day is a Business Day. At least 15 days before the subsequent special record date, the Company shall mail to each Holder and to the Trustee (or cause the Trustee to mail to each Holder) a notice that states the subsequent special record date, the payment date and the amount of defaulted interest to be paid.

SECTION 2.16. Registration Default. The Additional Interest shall be payable upon the Securities in the case of an Event (as defined in the Registration Rights Agreement) for the period, if any, specified in the Registration Rights Agreement. If an Event occurs, the Company shall deliver to the Trustee an Officers’ Certificate stating (1) the Additional Interest payable, (2) when such Additional Interest began accruing and (3)

when such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives such an Officers' Certificate, the Trustee shall assume that no Additional Interest is payable. If an Event Termination Date occurs, the Company shall deliver to the Trustee an Officer's Certificate stating when such Additional Interest ceased accruing.

ARTICLE III

PURCHASES OF SECURITIES

SECTION 3.01. Company's Right to Redeem. The Securities will be subject to redemption at the option of the Company, in whole or in part, on the terms and at the redemption prices (expressed as percentages of principal amount) set forth in paragraph 5 on the reverse of the form of Security, plus accrued and unpaid interest thereon (if any) to the Redemption Date. However, if a Redemption Date occurs after a Regular Record Date or a special record date, the Company will instead pay the applicable interest payment to the record Holder on the Regular Record Date or special record date corresponding to such Interest Payment Date or defaulted interest payment date.

SECTION 3.02. Notices to Trustee. If the Company elects to redeem Securities pursuant to the optional redemption provisions of the Securities, it shall furnish to the Trustee, at least 40 days but not more than 60 days before a Redemption Date (unless a shorter period shall be satisfactory to the Trustee), an Officers' Certificate setting forth (i) that such redemption is being made pursuant to paragraph 5 of the Securities and Section 3.01 of this Indenture, (ii) the Redemption Date, (iii) the principal amount of Securities (if less than all) to be redeemed, (iv) the Redemption Price and the amount of any accrued and unpaid interest, if any, payable on the Redemption Date and (v) the CUSIP number of the Securities being redeemed.

SECTION 3.03. Selection of Securities To Be Redeemed. If less than all the Securities are to be redeemed, the Trustee shall select the Securities to be redeemed by a method that complies with the requirements of the principal national securities exchange, if any, on which the Securities are listed or quoted or, if the Securities are not so listed, on a pro rata basis, by lot or by any other method that the Trustee considers fair and appropriate. The Trustee shall make the selection not more than 60 days and not less than 30 days before the Redemption Date from Securities outstanding and not previously called for redemption. The Trustee may select for redemption a portion of the principal of any Securities that has a denomination larger than \$1,000. Securities and portions thereof will be redeemed in the amount of \$1,000 or integral multiples of \$1,000.

Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall notify the Company promptly of the Securities or portions of Securities to be called for redemption.

If any Security selected for partial redemption is converted in part after such selection, the converted portion of such Security shall be deemed (so far as possible) to be the portion to be selected for redemption. The Securities (or portion thereof) so selected shall be deemed duly selected for redemption for all purposes hereof, notwithstanding that any such Security is converted in whole or in part before the mailing of the notice of redemption. Upon any redemption of less than all the Securities, the Company and the Trustee may treat as outstanding any Securities surrendered for conversion during the period of 15 days immediately preceding the mailing of a notice of redemption and need not treat as outstanding any Security authenticated and delivered during such period in exchange for the unconverted portion of any Security converted in part during such period.

In the event of any redemption of less than all the Securities, the Company will not be required to (i) issue or register the transfer or exchange of any Security during a period of 15 days immediately preceding the mailing of a notice of redemption for such Securities for redemption, or (ii) register the transfer or exchange of any Security so selected for redemption, in whole or in part, except the unredeemed portion of any Security being redeemed in part, in which case the Company will execute and the Trustee will authenticate and deliver to the Holder a new Security equal in principal amount to the unredeemed portion of the Security surrendered.

SECTION 3.04. Notice of Redemption. At least 30 days but not more than 60 days before a Redemption Date, the Company shall mail by first class mail a notice of redemption to each Holder whose Securities are to be redeemed, at such Holder's registered address.

The notice shall identify the Securities to be redeemed and shall state:

- (1) the Redemption Date;
- (2) the Redemption Price and any accrued and unpaid interest, payable on the Redemption Date;
- (3) if any Security is being redeemed in part, the portion of the principal amount of such Security to be redeemed and that, after the Redemption Date, upon surrender of such Security, a new Security or Securities in principal amount equal to the unredeemed portion will be issued in the name of the Holder thereof;
- (4) that Securities called for redemption must be surrendered to the Paying Agent to collect the Redemption Price and any accrued and unpaid interest;
- (5) that interest on Securities called for redemption and for which funds have been set apart for payment, ceases to accrue on and after the Redemption Date (unless the Company defaults in the payment of the Redemption Price or any accrued and unpaid interest);
- (6) the aggregate principal amount of Securities (if less than all) that are being redeemed;
- (7) the CUSIP number of the Securities (provided that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP numbers printed in the notice or on the Securities and that reliance may be placed only on the other identification numbers printed on the Securities);
- (8) the name and address of the Paying Agent;
- (9) that Securities called for redemption may be converted at any time prior to the close of business on the last Trading Day immediately preceding the Redemption Date and if not converted prior to the close of business on such date, the right of conversion will be lost; and
- (10) that in the case of Securities or portions thereof called for redemption on a date that is also an Interest Payment Date or a defaulted interest payment date, the interest due on such date shall be paid to the Holder of such Security at the close of business on the relevant Regular Record Date or special record date.

The notice, if mailed in the manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to any Holder designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any Security.

At the Company's request, the Trustee shall give notice of redemption in the Company's name and at the Company's expense.

SECTION 3.05. Effect of Notice of Redemption. Once notice of redemption is mailed, Securities called for redemption become due and payable on the Redemption Date at the Redemption Price set forth in the Security.

SECTION 3.06. Deposit of Redemption Price. On or before 11:00 a.m. New York City time on the Redemption Date, the Company shall deposit with the Trustee or with the Paying Agent money in immediately available funds sufficient to pay the Redemption Price of and accrued interest, if any, on all Securities to be redeemed on that date. The Trustee or the Paying Agent shall return to the Company any money not required for that purpose.

On and after the Redemption Date, unless the Company shall default in the payment of the Redemption Price or any accrued and unpaid interest, interest will cease to accrue on the principal amount of the Securities or portions thereof called for redemption and for which funds have been set apart for payment, and such Securities, or portions thereof, shall cease after the close of business on the Business Day immediately preceding the Redemption Date to be convertible into Common Stock and, except as provided in this Section 3.06 and Article 8

of this Indenture, to be entitled to any benefit or security under this Indenture, and the Holders thereof shall have no right in respect of such Securities, or portions thereof, except the right to receive the Redemption Price thereof and unpaid interest to (but excluding) the Redemption Date. In the case of Securities or portions thereof redeemed on a Redemption Date which is after a Regular Record Date or a special record date and on or prior to the corresponding Interest Payment Date or defaulted interest payment date, the interest due on such date shall be paid to the person in whose name the Security is registered at the close of business on the relevant Regular Record Date or special record date.

SECTION 3.07. Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part only, the Company shall issue and the Trustee shall authenticate and deliver to the Holder of such Security a new Security equal in principal amount to the unredeemed portion of the Security surrendered, at the expense of the Company, except as specified in Section 2.07 of this Indenture.

SECTION 3.08. Conversion Arrangement on Call for Redemption. In connection with any redemption of Securities, the Company may arrange for the purchase and conversion of any Securities by an arrangement with one or more investment bankers or other purchasers to purchase such Securities by paying to the Trustee in trust for the Holders, on or before the date fixed for redemption, an amount not less than the applicable Redemption Price, together with interest accrued to the date fixed for redemption of such Securities. Notwithstanding anything to the contrary contained in this Article 3, the obligation of the Company to pay the Redemption Price of such Securities, together with interest accrued to the date fixed for redemption shall be deemed to be satisfied and discharged to the extent such amount is so paid by the purchasers. If such an agreement is entered into, a copy shall be filed with the Trustee prior to the date fixed for redemption. Any Securities not duly surrendered for conversion by the Holders thereof may, at the option of the Company, be deemed, to the fullest extent permitted by law, acquired by such purchasers from such Holders and (notwithstanding anything to the contrary contained in this Article 3) surrendered by such purchasers for conversion, all as of immediately prior to the close of business on the date fixed for redemption (and the right to convert any such Securities shall be deemed to have been extended through such time), subject to payment of the above amount as aforesaid. At the direction of the Company, the Trustee shall hold and dispose of any such amount paid to it in the same manner as it would moneys deposited with it by the Company for the redemption of Securities. Without the Trustee's prior written consent, no arrangement between the Company and such purchasers for the purchase and conversion of any Securities shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee as set forth in this Indenture, and the Company agrees to indemnify the Trustee from, and defend and hold it harmless against, any loss, liability or expense arising out of or in connection with any such arrangement for the purchase and conversion of any Securities between the Company and such purchasers to which the Trustee has not consented in writing, including the costs and expenses incurred by the Trustee in the defense of any claim or liability arising out of or in connection with the exercise or performance of any of its powers, duties, responsibilities or obligations under this Indenture.

SECTION 3.09. Purchase of Securities at Option of the Holder upon a Designated Event; Make Whole Premium. (a) Following a Designated Event (the date of each such occurrence being the "Designated Event Date"), the Company shall notify the Holders of Securities in writing of such occurrence and shall make an offer (the "Designated Event Offer") to repurchase all Securities then outstanding at a repurchase price in cash (the "Designated Event Payment") equal to 100% of the principal amount thereof, plus (subject to the following Sentence) accrued and unpaid interest to, but excluding, the Designated Event Purchase Date (as defined below), plus, under the circumstances described in paragraph (c) of this Section 3.09, a Make Whole Premium. If such Designated Event Purchase Date is after a Regular Record Date or a special record date but on or prior to an Interest Payment Date or a defaulted interest payment date, however, then the Company shall pay the interest payable on such date to the person in whose name the Security is registered at the close of business on the relevant Regular Record Date or special record date.

(b) Notice of a Designated Event shall be mailed by or at the direction of the Company to the Holders of Securities as specified in Section 3.10. The Designated Event Offer shall remain open until a specified date (the "Designated Event Offer Termination Date") which is at least 20 Business Days from the date such notice is mailed. During the period specified in such notice, Holders of Securities may elect to tender their Securities in whole or in part in integral multiples of \$1,000 in exchange for the Designated Event Payment. Payment shall be made by the Company in respect of Securities properly tendered pursuant to this Section 3.09 on a Business Day specified by the Company (the "Designated Event Purchase Date") which shall be no later than 30 Business Days after the date of the notice given pursuant to Section 3.10.

(c) If a Change in Control described in clause (ii) or (iii) of the definition thereof occurs, the Company shall pay a Make Whole Premium (to the extent such Make Whole Premium is greater than 0.0%) to the Holders of the Securities in respect of Securities properly tendered in the Designated Event Offer in addition to the Designated Event Payment on the Designated Event Purchase Date; provided, however, that the Company shall not be required to pay a Make Whole Premium if a Change in Control described in clause (iii) of the definition of Change in Control occurs and at least 90% of the consideration (excluding cash payments for fractional shares) in the transaction or transactions constituting the Change in Control consists of shares of common stock that are, or upon issuance will be, traded on the New York Stock Exchange or the American Stock Exchange or quoted on the Nasdaq National Market and as a result of such transaction or transactions the Securities become convertible solely into such common stock and other consideration payable in such transaction or transactions. The Make Whole Premium will also be paid on the Designated Event Purchase Date to Holders who convert their Securities pursuant to Article 10 on or after the date on which the Company has given to all Holders of Securities the notice required by Section 3.10(a) and on or before the Designated Event Purchase Date.

The “Make Whole Premium” will be determined by reference to the table below and is based on the date on which the Change in Control becomes effective (the “Effective Date”) and the price (the “Stock Price”) paid per share of Common Stock in the transaction constituting the Change in Control. If holders of the Common Stock receive only cash in the transaction, the Stock Price shall be the cash amount paid per share of the Common Stock. Otherwise, the Stock Price shall be equal to the average of the Closing Sale Price over the five Trading Day period ending on the Trading Day immediately preceding the Effective Date.

The following table sets forth the Make Whole Premiums for each hypothetical Stock Price and Effective Date set forth below, expressed as a percentage of the principal amount of the securities.

Make Whole Premium Upon a Change in Control (% of Face Value)

Stock Price on Effective Date	Effective Date							
	12/2/2004	12/15/2005	12/15/2006	12/15/2007	12/15/2008	12/15/2009	12/15/2010	12/15/2011
\$ 3.32	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
\$ 3.50	4.3	2.2	0.0	0.0	0.0	0.0	0.0	0.0
\$ 3.75	10.3	8.0	5.4	2.5	0.0	0.0	0.0	0.0
\$ 4.00	15.8	13.5	10.7	7.4	0.0	0.0	0.0	0.0
\$ 5.00	15.3	12.6	9.4	5.4	0.0	0.0	0.0	0.0
\$ 6.00	15.0	12.3	8.9	4.8	0.0	0.0	0.0	0.0
\$ 7.00	14.9	12.2	8.8	4.7	0.0	0.0	0.0	0.0
\$ 8.00	14.9	12.0	8.7	4.7	0.0	0.0	0.0	0.0
\$ 9.00	14.9	12.0	8.7	4.7	0.0	0.0	0.0	0.0
\$10.00	14.9	12.0	8.7	4.7	0.0	0.0	0.0	0.0
\$50.00	14.9	12.0	8.7	4.7	0.0	0.0	0.0	0.0

The actual Stock Price and Effective Date may not be set forth on the table, in which case:

(i) if the actual Stock Price on the Effective Date is between two Stock Prices on the table or the actual Effective Date is between two Effective Dates on the table, the Make Whole Premium will be determined by a straight-line interpolation between the Make Whole Premiums set forth for the two Stock Prices and the two Effective Dates on the table based on a 360-day year, as applicable;

(ii) if the Stock Price on the Effective Date exceeds \$50.00 per share (subject to adjustment as described below), no Make Whole Premium will be paid;

(iii) if the Stock Price on the Effective Date is less than or equal to \$3.32 per share (subject to adjustment as described below), no Make Whole Premium will be paid.

The Stock Prices set forth in the first column of the table above will be adjusted as of any date on which the Conversion Rate is adjusted. The adjusted Stock Prices will equal the Stock Prices applicable immediately prior to such adjustment multiplied by a fraction, the numerator of which is the Conversion Rate immediately

prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted.

The Company shall pay, at its option, the Make Whole Premium in cash, shares of Common Stock or the same form of consideration used to pay for the shares of the Common Stock in connection with the transaction constituting the Change in Control.

If the Company pays the Make Whole Premium in shares of Common Stock, the value of the Common Stock to be delivered in respect of the Make Whole Premium shall be deemed to be equal to the average Closing Sale Price over the ten Trading-Day period ending on the Trading Day immediately preceding the Designated Event Purchase Date. The Company may pay the Make Whole Premium in shares of the Common Stock only if the information necessary to calculate the Closing Sale Price per share of the Common Stock is published in a daily newspaper of national circulation or by other appropriate means.

In addition, the Company's right to pay the Make Whole Premium in shares of Common Stock is subject to the satisfaction of the following conditions:

- (i) listing such Common Stock on the Nasdaq National Market or, if not so listed, on the principal United States securities exchange on which the Common Stock or other securities are then listed;
- (ii) the registration of the Common Stock under the Securities Act and the Exchange Act, if required; and
- (iii) any necessary qualification or registration under applicable state securities law or the availability of an exemption from such qualification and registration.

If such conditions are not satisfied with respect to a Holder prior to the close of business on the Designated Event Purchase Date, the Company shall pay the Make Whole Premium in cash. The Company shall not change the form of consideration to be paid with respect to the Make Whole Premium to such Holders once the Company has given the notice that the Company is required to give to Holders, except as described in the immediately preceding sentence.

If the Company pays the Make Whole Premium in the same form of consideration used to pay for the shares of Common Stock in connection with the transaction constituting the Change in Control, the value of the consideration to be delivered in respect of the Make Whole Premium will be calculated as follows:

- (i) securities that are traded on a United States national securities exchange or approved for quotation on the Nasdaq National Market or any similar system of automated dissemination of quotations of securities prices will be valued based on the Closing Sale Price over the ten Trading-Day period ending on the Trading Day immediately preceding the Designated Event Purchase Date;
- (ii) other securities, assets or property (other than cash) will be valued based on 98% of the average of the Fair Market Value of such securities, assets or property (other than cash) as determined by an independent nationally recognized investment bank selected by the Company; and
- (iii) 100% of any cash.

(d) In the case of any reclassification, change, consolidation, merger, share exchange, combination or sale or conveyance to which Section 10.06 applies in which the Common Stock of the Company is changed or exchanged as a result into the right to receive stock, securities or other property or assets (including cash) which includes shares of common stock of the Company or another person that are, or upon issuance will be, traded on a United States national securities exchange or approved for trading on an established automated over-the-counter trading market in the United States and such shares constitute at the time such change or exchange becomes effective in excess of 50% of the aggregate Fair Market Value of such stock, securities, other property and assets (including cash) (as determined by the Company, which determination shall be conclusive and binding), then the person formed by such consolidation or resulting from such merger or share exchange or which acquires such assets, as the case may be, shall execute and deliver to the Trustee a supplemental indenture (which shall comply with the TIA as in force at the date of execution of such supplemental indenture) modifying the provisions of this Indenture relating to the right of Holders of Securities to cause the Company to repurchase

Securities following a Designated Event, including the applicable provisions of this Section 3.09 and the definitions of Designated Event, Change of Control and Termination of Trading, as appropriate, as determined in good faith by the Company (which determination shall be conclusive and binding), to make such provision apply to such common stock and the issuer thereof if different from the Company and Common Stock of the Company (in lieu of the Company and the Common Stock of the Company).

SECTION 3.10. Notice of Designated Event; Designated Event Purchase Notice.

(a) Prior to or on the 20th day after the occurrence of a Designated Event, the Company, or, at the written request and expense of the Company prior to or on the 20th day after such occurrence, the Trustee, shall give to all Holders, in the manner provided in Section 11.02 hereof, notice of the occurrence of the Designated Event and of the purchase right set forth herein arising as a result thereof. The Company shall also deliver a copy of such notice of a purchase right to the Trustee. The notice shall include a form of Designated Event Purchase Notice to be completed by the Holder and shall state:

- (1) briefly, the events causing a Designated Event and the date of such Designated Event;
- (2) the date by which the Designated Event Purchase Notice pursuant to this Section 3.10 must be given;
- (3) the Designated Event Purchase Date;
- (4) the Designated Event Payment;
- (5) the name and address of the Paying Agent and the Conversion Agent;
- (6) that Securities as to which a Designated Event Purchase Notice has been given may be converted pursuant to Article 10 hereof only if the Designated Event Purchase Notice has been withdrawn in accordance with the terms of this Indenture;
- (7) that Securities must be surrendered to the Paying Agent to collect payment;
- (8) that the Designated Event Payment for any Security as to which a Designated Event Purchase Notice has been duly given and not withdrawn will be paid promptly following the later of the Designated Event Purchase Date and the time of surrender of such Security as described in (7) above;
- (9) briefly, the procedures the Holder must follow to exercise rights under Section 3.09;
- (10) briefly, the conversion rights of the Securities, including the Conversion Rate and any adjustments thereto;
- (11) the procedures for withdrawing a Designated Event Purchase Notice;
- (12) the CUSIP number of the Securities;
- (13) whether a Make Whole Premium shall be paid by the Company and the form of consideration to be paid in respect of the Make Whole Premium;
- (14) if a Make Whole Premium is paid by the Company, that a Make Whole Premium shall be paid by the Company on the Designated Event Purchase Date to Holders of Securities who have converted their Securities into the Company's Common Stock on or after the date the Company has given notice to all Holders in accordance with this Section 3.10(a) and on or before the Designated Event Purchase Date;
- (15) that, unless the Company defaults in making the Designated Event Payment (and any Make Whole Premium), any Security accepted for purchase pursuant to the Designated Event Offer

shall cease to accrue interest on the Designated Event Purchase Date and no further interest shall accrue on or after such date; and

(16) that in the case of a Designated Event Purchase Date that occurs after a Regular Record Date or special record date and on or prior to the corresponding Interest Payment Date or defaulted interest Payment Date, the interest due on such date shall be paid to the Holder of such Security at the close of business on the relevant Regular Record Date or special record date.

(b) A Holder may exercise its rights specified in Section 3.09 hereof upon delivery of a written notice of purchase (a “Designated Event Purchase Notice”) to the Paying Agent prior to the Designated Event Purchase Date, stating:

(1) the certificate number of the Security, if any, which the Holder will deliver to be purchased or the appropriate Depository procedures if the Securities are not in certificated form;

(2) the portion of the principal amount of the Security which the Holder will deliver to be purchased, which portion must be \$1,000 or any whole multiple thereof; and

(3) that such Security shall be purchased pursuant to the terms and conditions specified on the reverse side of the Securities and in this Indenture.

The delivery of such Security to the Paying Agent prior to the Designated Event Purchase Date (together with all necessary endorsements) at the offices of the Paying Agent shall be a condition to the receipt by the Holder of the Designated Event Payment and the Make Whole Premium (if any) therefor; provided, however, that such Designated Event Payment and the Make Whole Premium (if any) shall be so paid only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof set forth in the related Designated Event Purchase Notice.

The Company shall purchase from the Holder thereof, pursuant to this Section 3.10, a portion of a Security so delivered for purchase if the principal amount of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the purchase of all of a Security also apply to the purchase of such portion of such Security.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.10 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Designated Event Purchase Date and the time of delivery of the Security to the Paying Agent in accordance with this Section 3.10.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Designated Event Purchase Notice contemplated by this Section 3.10(b) shall have the right to withdraw such Designated Event Purchase Notice at any time prior to the close of business on the Business Day immediately preceding the Designated Event Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.11.

The Paying Agent shall promptly notify the Company of the receipt by it of any Designated Event Purchase Notice or written withdrawal thereof.

SECTION 3.11. Effect of Designated Event Purchase Notice. Upon receipt by the Paying Agent of the Designated Event Purchase Notice specified in Section 3.10(b), the Holder of the Security in respect of which such Designated Event Purchase Notice was given shall (unless such Designated Event Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Designated Event Purchase Price (along with the Make Whole Premium, if any) with respect to such Security. Such Purchase Price (along with the Make Whole Premium, if any) shall be paid to such Holder, subject to receipt of consideration for the Securities by the Paying Agent, promptly following the later of (x) the Designated Event Purchase Date with respect to such Security (provided the conditions in Section 3.10(b), as the case may be, have been satisfied) and (y) the time of delivery of such Security to the Paying Agent by the Holder thereof in the manner required by Section 3.10(b), as the case may be. Securities in respect of which a Designated Event Purchase Notice has been given by the Holder thereof may not be converted pursuant to Article 10 hereof on or

after the date of the delivery of such Designated Event Purchase Notice unless such Designated Event Purchase Notice has first been validly withdrawn as specified in the following two paragraphs.

A Designated Event Purchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the Designated Event Purchase Notice at any time prior to the close of business on the Business Day immediately preceding the Designated Event Purchase Date specifying:

- (a) the certificate number of the Security in respect of which such notice of withdrawal is being submitted or, if not in certificated form, the applicable Depositary procedures,
- (b) the principal amount of the Security with respect to which such notice of withdrawal is being submitted, and
- (c) the principal amount, if any, of such Security which remains subject to the original Designated Event Purchase Notice and which has been or will be delivered for purchase by the Company.

There shall be no purchase of any Securities pursuant to Section 3.09 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Securities, of the required Designated Event Purchase Notice) and is continuing an Event of Default (other than a default in the payment of the Designated Event Payment with respect to such Securities). The Paying Agent will promptly return to the respective Holders thereof any Securities (x) with respect to which a Designated Event Purchase Notice has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Designated Event Payment with respect to such Securities) in which case, upon such return, the Designated Event Purchase Notice with respect thereto shall be deemed to have been withdrawn.

SECTION 3.12. Deposit of Designated Event Payment. Prior to 11:00 a.m. (New York City time) on the Designated Event Purchase Date, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.05) an amount of cash (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Designated Event Payment of all the Securities or portions thereof which are to be purchased as of the Designated Event Purchase Date and an amount in cash or shares of Common Stock or other consideration sufficient to pay any Make Whole Premium in respect of all such Securities.

If the Trustee or other Paying Agent appointed by the Company, or the Company or an Affiliate of the Company, if it or such Affiliate is acting as the Paying Agent, holds cash sufficient to pay the aggregate Designated Event Payment of all the Securities or portions thereof that are to be purchased as of the Designated Event Purchase Date, on or after the Designated Event Purchase Date, and an amount in cash, shares of Common Stock or other consideration sufficient to pay any Make Whole Premium in respect of all such Securities (i) such Securities will cease to be outstanding, (ii) interest on such Securities will cease to accrue and (iii) all other rights of the Holders of such Securities will terminate, whether or not book-entry transfer of the Securities has been made or the Securities have been delivered to the Trustee or Paying Agent, other than the right to receive the Designated Event Purchase Price and the Make Whole Premium, if any, upon delivery of the Securities.

SECTION 3.13. Securities Purchased in Part. Any Security which is to be purchased only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Security so surrendered which is not purchased.

SECTION 3.14. Covenant to Comply with Securities Laws upon Purchase of Securities. In connection with any offer to purchase or purchase of Securities under Section 3.09 hereof (provided that such offer or purchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or purchase), the

Company shall (i) comply with Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act which may then be applicable, (ii) file the related Schedule TO (or any successor schedule, form or report) or any other schedule required under the Exchange Act, and (iii) otherwise comply with all applicable federal and state securities laws so as to permit the rights and obligations under Section 3.09 to be exercised in the time and in the manner specified in Section 3.09 and 3.10.

SECTION 3.15. Repayment to the Company. The Trustee and the Paying Agent shall return to the Company any cash, shares of Common Stock or other consideration that remains unclaimed as provided in the Securities, together with interest or dividends, if any, thereon, held by them for the payment of the Designated Event Payment and Make Whole Premium, if any; provided, however, that to the extent that the aggregate amount of cash deposited by the Company pursuant to Section 3.12 exceeds the aggregate Designated Event Payment of the Securities and Make Whole Premium, if any, or portions thereof which the Company is obligated to purchase as of the Designated Event Purchase Date then promptly after the Business Day following the Designated Event Purchase Date the Trustee shall return any such excess to the Company together with interest or dividends, if any, thereon.

ARTICLE IV

COVENANTS

SECTION 4.01. Payment of Principal, Premium, Interest on the Securities. The Company will duly and punctually pay the principal of and interest at the Interest Rate in respect of the Securities in accordance with the terms of the Securities and this Indenture. The Company will deposit or cause to be deposited with the Trustee as directed by the Trustee, no later than 11:00 a.m., New York time on the day of the Stated Maturity of any Security or on any Interest Payment Date, all payments so due on such date. Principal amount at Stated Maturity, and cash interest shall be considered paid on the applicable date due if at 11:00 a.m., New York time on such date the Trustee or the Paying Agent holds, in accordance with this Indenture, money or securities, if permitted hereunder, sufficient to pay all such amounts then due. Except as otherwise noted, all references to the payment of interest in the Securities and this Indenture include the payment of Additional Interest.

The Company shall, to the extent permitted by law, pay cash interest on overdue amounts at the rate per annum set forth in paragraph 1 on the reverse side of the Securities, compounded semiannually, which interest shall accrue from the date such overdue amount was originally due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such overdue interest shall be payable on demand.

SECTION 4.02. SEC and Other Reports. The Company shall file with the Trustee, within 15 days after it files such annual and quarterly reports, information, documents and other reports with the SEC, copies of its annual report and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. If at any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company shall furnish to the Trustee and the Holders all quarterly and annual financial information (without exhibits) required to be contained in a filing on Forms 10-Q and 10-K, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, with respect to the annual consolidated financial statements only, a report by the Company's independent auditors. The Company shall not be required to file any report or other information with the SEC if it does not permit such filing. The Company also shall comply with the other provisions of TIA Section 314(a).

SECTION 4.03. Compliance Certificate. The Company shall deliver to the Trustee within 90 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2004) an Officers' Certificate, stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

SECTION 4.04. Further Instruments and Acts. Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

SECTION 4.05. Maintenance of Office or Agency. The Company will maintain in The Borough of Manhattan, the City of New York, an office or agency of the Trustee, Registrar, Paying Agent and Conversion Agent where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer, exchange, purchase or conversion and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The New York branch office of the Corporate Trust Office of the Trustee, shall initially be such office or agency for all of the aforesaid purposes. The Corporate Trust Office of the Trustee shall provide appropriate contact information therefor upon request. The Company shall give prompt written notice to the Trustee of the location, and of any change in the location, of any such office or agency (other than a change in the location of the office of the Trustee). If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 11.02.

The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, the City of New York, for such purposes.

SECTION 4.06. Delivery of Certain Information. At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a Holder or any beneficial holder of Securities or shares of Common Stock issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such Holder or any beneficial holder of Securities or holder of shares of Common Stock issued upon conversion of Securities, or to a prospective purchaser of any such security designated by any such Holder, as the case may be, to the extent required to permit compliance by such Holder or Holder with Rule 144A in connection with the resale of any such security. “Rule 144A Information” shall be such information as is specified pursuant to Rule 144A(d) (4) under the Securities Act.

SECTION 4.07. Additional Interest Notice. In the event that the Company is required to pay Additional Interest to Holders pursuant to the Registration Rights Agreement, the Company will provide written notice (an “Additional Interest Notice”) to the Trustee of its obligation to pay Additional Interest no later than fifteen (15) days prior to the proposed payment date for the Additional Interest, and the Additional Interest Notice shall set forth the amount of Additional Interest to be paid by the Company on such payment date. The Trustee shall not at any time be under any duty or responsibility to any Holder to determine the Additional Interest, or with respect to the nature, extent or calculation of the amount of Additional Interest when made, or with respect to the method employed in such calculation of the Additional Interest.

SECTION 4.08. Limitation on Liens. (a) The Company will not, directly or indirectly, incur or suffer to exist any Lien (other than Liens existing on the date of the initial issuance of the Securities) securing Specified Indebtedness of any nature whatsoever on any of its properties or assets, whether owned at the issue date of the Securities or thereafter acquired, without making effective provision for securing the Securities equally and ratably with (or, if the obligation to be secured by the Lien is subordinated in right of payment to the Securities, prior to) the obligations so secured for so long as such obligations are so secured. The Lien, if granted, to secure the Securities may also secure obligations in addition to Specified Indebtedness. Any Lien created to secure the Securities pursuant to this Section 4.08 may provide by its terms that such Lien will be automatically and unconditionally released and discharged upon the full and unconditional release and discharge of the Lien securing the Specified Indebtedness and that the Holders of some or all of such Specified Indebtedness may exclusively control the disposition of property subject to such Lien.

(b) The foregoing restrictions in this Section 4.08 shall not apply to (a) Liens to secure Acquired Debt; provided, however, that (i) such Lien attaches to the acquired property prior to the time of the acquisition of such property and (ii) such Lien does not extend to or cover any other property; and (b) Liens to secure indebtedness incurred to refinance, in whole or in part, debt secured by any Lien referred to in the foregoing clause (a) or this clause (b) so long as such Lien does not extend to any other property (other than improvements and accessions to the original property) and the principal amount of indebtedness so secured is not increased.

ARTICLE V

CONSOLIDATION, MERGER, SALE, LEASE OR CONVEYANCE

SECTION 5.01. When the Company May Merge or Transfer Assets. The Company may not, in a single transaction or series of related transactions, consolidate or merge with or into or effect a share exchange with (whether or not the Company is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets as an entirety or substantially as an entirety to, any Person unless:

(a) either

(i) the Company shall be the surviving or continuing corporation, or

(ii) the Person formed by or surviving any such consolidation, merger or share exchange (if other than the Company) or the Person which acquires by sale, assignment, transfer, lease, conveyance or other disposition the properties and assets of the Company substantially as an entirety:

(1) shall be a corporation organized and validly existing under the laws of the United States or any State thereof or the District of Columbia and

(2) shall expressly assume, by supplemental indenture in form reasonably satisfactory to the Trustee, executed and delivered to the Trustee, the due and punctual payment of the principal of, premium, if any, and interest on all of the Securities and the performance of every covenant of the Securities and this Indenture on the part of the Company to be performed or observed, including, without limitation, modifications to rights of Holders to cause the repurchase of Securities upon a Designated Event in accordance with Section 3.09 and conversion rights in accordance with Section 10.06 to the extent required by such Sections;

(b) immediately after giving effect to such transaction no Default and no Event of Default shall have occurred and be continuing; and

(c) the Company or such successor Person shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that such consolidation, merger, share exchange, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this provision of this Indenture and that all conditions precedent in this Indenture relating to such transaction have been satisfied.

For purposes of this Section 5.01, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Subsidiaries of the Company, the Capital Stock of which individually or in the aggregate constitutes all or substantially all of the properties and assets of the Company, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

SECTION 5.02. Successor Corporation Substituted. Upon any such consolidation, merger, share exchange, sale, assignment, conveyance, lease, transfer or other disposition in accordance with Section 5.01, the successor Person formed by such consolidation or share exchange or into which the Company is merged or to which such sale, assignment, conveyance, lease, transfer or other disposition is made will succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor had been named as the Company herein, and thereafter (except in the case of a lease) the predecessor corporation will be relieved of all further obligations and covenants under this Indenture and the Securities.

SECTION 5.03. Purchase Option on a Designated Event. This Article 5 does not affect the obligations of the Company (including without limitation any successor to the Company) under Section 3.09.

ARTICLE VI
EVENTS OF DEFAULT

SECTION 6.01. Events of Default. An “Event of Default” with respect to any Securities occurs if:

- (a) the Company defaults in the payment of principal of, or premium, if any, on, the Securities when due at maturity, upon repurchase, upon acceleration or otherwise, including, without limitation, failure of the Company to make any optional redemption payment when required pursuant to Article 3; or
- (b) the Company defaults in the payment of any installment of interest on the Securities when due (including any interest payable in connection with a repurchase pursuant to Section 3.09 or in connection with any optional redemption payment pursuant to Article 3) and continuance of such default for 30 days or more; or
- (c) the Company defaults in the payment of the Designated Event Payment (including the Make Whole Premium, if any) in respect of the Securities on the date therefor; or
- (d) the Company fails to provide timely notice of any Designated Event in accordance with Section 3.10; or
- (e) the Company defaults (other than a default set forth in clause (a), (b), (c) or (d) above) in the performance of, or breaches, any other covenant or warranty of the Company set forth in this Indenture or the Securities and fails to remedy such default or breach within a period of 60 days after the receipt of written notice (specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder) from the Trustee or the Holders of at least 25% in aggregate principal amount of the then outstanding Securities; or
- (f) a default under any credit agreement, mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by the Company or any Material Subsidiary (or the payment of which is guaranteed or secured by the Company or any of its Material Subsidiaries), whether such indebtedness or guarantee exists on the date of this Indenture or is created thereafter, which default (i) is caused by a failure to pay when due any principal of such indebtedness within the grace period provided for in such indebtedness, which failure continues beyond any applicable grace period (a “Payment Default”), or (ii) results in the acceleration of such indebtedness prior to its express maturity (without such acceleration being rescinded or annulled) and, in each case, the principal amount of such indebtedness, together with the principal amount of any other such indebtedness under which there is a Payment Default or the maturity of which has been so accelerated, aggregates \$25,000,000 or its foreign currency equivalent or more and such Payment Default is not cured or such acceleration is not annulled within 10 days after receipt of written notice (specifying such default and requiring the Company to cause such Payment Default to be cured or cause such acceleration to be rescinded or annulled and stating that such notice is a “Notice of Default” hereunder) by the Company from the Trustee or by the Company and the Trustee from any Holder of Securities; or
- (g) failure to pay a final, nonappealable judgment or final, nonappealable judgments (other than any judgment as to which a reputable insurance company has accepted full liability) for the payment of money entered by a court or courts of competent jurisdiction against the Company or any Material Subsidiaries of the Company, which judgments remain unstayed, unbonded or undischarged for a period of 60 days, provided that the aggregate amount of all such judgments exceeds \$25,000,000 or its foreign currency equivalent; or
- (h) the Company or any Material Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:
 - (i) commences a voluntary case,
 - (ii) consents to the entry of an order for relief against it in an involuntary case,
 - (iii) consents to the appointment of a Custodian of it or for all or substantially all of its property,
 - (iv) makes a general assignment for the benefit of its creditors, or

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- (v) makes the admission in writing that it generally is unable to pay its debts as the same become due; or
- (i) a court of competent jurisdiction enters a judgment, order or decree under any Bankruptcy Law that:
- (i) is for relief against the Company or any Material Subsidiary in an involuntary case, and the order or decree remains unstayed and in effect for 90 days,
 - (ii) appoints a Custodian of the Company or any Material Subsidiary, and the order or decree remains unstayed and in effect for 90 days, or
 - (iii) orders the liquidation of the Company or any Material Subsidiary, and the order or decree remains unstayed and in effect for 90 days.

The term “Bankruptcy Law” means Title 11, U.S. Code or any similar Federal or state law for the relief of debtors. The term “Custodian” means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

SECTION 6.02. Acceleration. If an Event of Default (other than an Event of Default with respect to the Company specified in clauses (h) and (i) of Section 6.01) occurs and is continuing, then and in every such case the Trustee, by written notice to the Company, or the Holders of at least 25% in aggregate principal amount of the then outstanding Securities, by written notice to the Company and the Trustee, may declare the unpaid principal of, premium, if any, and accrued and unpaid interest on all the Securities to be due and payable. Upon such declaration, such principal amount, premium, if any, and accrued and unpaid interest shall become immediately due and payable, notwithstanding anything contained in this Indenture or the Securities to the contrary. If any Event of Default with respect to the Company specified in clause (h) or (i) of Section 6.01 occurs, all unpaid principal of, and premium, if any, and accrued and unpaid interest on the Securities then outstanding shall become automatically due and payable, without any declaration or other act on the part of the Trustee or any Holder of Securities.

The Holders of a majority in aggregate principal amount of the then outstanding Securities by notice to the Trustee may rescind an acceleration of the Securities and its consequences if all existing Events of Default (other than nonpayment of principal of, premium, if any, and interest on the Securities which has become due solely by virtue of such acceleration) have been cured or waived and if the rescission would not conflict with any judgment or decree of any court of competent jurisdiction. No such rescission shall affect any subsequent Default or Event of Default or impair any right consequent thereto.

In the case of any Event of Default, pursuant to the provisions of this Section 6.02, occurring by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Company with the intention of avoiding payment of the premium which the Company would have had to pay if the Company then had elected to redeem the Securities pursuant to the Securities, an equivalent premium shall also become and be immediately due and payable to the extent permitted by law, upon the acceleration of the Securities notwithstanding anything contained in this Indenture or in the Securities to the contrary. If an Event of Default occurs on any date on which the Company is prohibited from redeeming the Securities, pursuant to the Securities, by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Company with the intention of avoiding the prohibition on redemption of the Securities on such date, then an amount equal to the maximum premium specified in paragraph 5 of the Securities shall also become immediately due and payable to the extent permitted by law upon the acceleration of the Securities. A premium is due under this Indenture and under the Securities only pursuant to this paragraph, Article 3 of this Indenture and the Securities.

SECTION 6.03. Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of or interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture. The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Security in exercising any right or remedy occurring upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

SECTION 6.04. Waiver of Past Defaults. The Holders of a majority in aggregate principal amount of the Securities then outstanding may, on behalf of the Holders of all the Securities, waive an existing Default or Event of Default and its consequences, except a Default or Event of Default in the payment of the principal of, and premium, if any, or interest on the Securities (other than the non-payment of principal of, and Premium, if any, and interest on the Securities which has become due solely by virtue of an acceleration which has been duly rescinded as provided above), or in respect of a covenant or provision of this Indenture which cannot be modified or amended without the consent of all Holders of Securities. When a Default or Event of Default is waived, it is cured and stops continuing. No waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

SECTION 6.05. Control by Majority. The Holders of a majority in aggregate principal amount of the then outstanding Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture that the Trustee determines may be unduly prejudicial to the rights of other Holders of Securities or that may involve the Trustee in personal liability; provided, however, that the Trustee shall have no duty or obligation (subject to Section 7.05) to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders; provided further, however that the Trustee may take any other action the Trustee deems proper that is not inconsistent with such directions.

SECTION 6.06. Limitation on Suits. A Holder of a Security may not pursue any remedy with respect to this Indenture or the Securities unless:

- (a) the Holder gives to the Trustee notice of a continuing Event of Default;
- (b) the Holders of at least 25% in aggregate principal amount of the then outstanding Securities make a written request to the Trustee to pursue the remedy;
- (c) such Holder or Holders offer and, if requested, provide to the Trustee indemnity satisfactory to the Trustee against any loss, liability or expense;
- (d) the Trustee does not comply with the request within 30 days after receipt of the request and the offer and, if requested, the provision of indemnity; and
- (e) during such 30-day period the Holders of a majority in aggregate principal amount of the then outstanding Securities do not give the Trustee a direction inconsistent with the request.

A Holder of a Security may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

SECTION 6.07. Rights of Holders To Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder of a Security to receive payment of principal, premium, if any, and interest on the Security, on or after the respective due dates expressed in the Security, or to bring suit for the enforcement of any such payment on or after such respective dates, or to bring suit for the enforcement of the right to convert the Security shall not be impaired or affected without the consent of the Holder of a Security.

SECTION 6.08. Collection Suit by Trustee. If an Event of Default specified in Section 6.01(a), (b) or (c) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal, premium, if any, and interest remaining unpaid on the Securities and interest on overdue principal, premium, if any, and interest and such further amount as shall be sufficient to cover the costs and, to the extent lawful, expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

SECTION 6.09. Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders of Securities allowed in any judicial proceedings relative to the Company, its creditors or its property. Nothing contained herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Security any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 6.10. Priorities. Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and any predecessor Trustee under Section 7.08;

SECOND: To the payment of the amounts then due and unpaid upon the Securities for principal (and premium, if any) and interest, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the aggregate amounts due and payable on such Securities for principal (and premium, if any) and interest, respectively; and

THIRD: To the payment of the remainder, if any, to the Company.

SECTION 6.11. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit, other than the Trustee, of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in principal amount of the then outstanding Securities.

SECTION 6.12. Waiver of Stay, Extension or Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury or other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive the Company from paying all or any portion of the principal amount, Designated Event Payment or any accrued and unpaid cash interest in respect of Securities, or any interest on such amounts, as contemplated herein, or which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

SECTION 6.13. Notice of Default or Event of Default. The Company shall deliver to the Trustee, as soon as reasonably practicable and in any event within 30 days after an executive Officer of the Company becomes aware of the occurrence of any Event of Default or any event which, with notice or the lapse of time or both, would constitute an Event of Default, an Officers' Certificate setting forth the details of such Event of Default or Default and the action which the Company proposes to take with respect thereto.

ARTICLE VII

TRUSTEE

SECTION 7.01. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) the Trustee need perform only those duties that are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or

opinions furnished to the Trustee and conforming to the requirements of this Indenture, but in case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture, but need not confirm or investigate the accuracy of mathematical calculations or other facts stated.

This Section 7.01(b) shall be in lieu of Section 315(a) of the TIA and such Section 315(a) is hereby expressly excluded from this Indenture, as permitted by the TIA.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this paragraph (c) does not limit the effect of paragraph (b) of this Section 7.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

(iv) Section 7.01(c)(i), (ii) and (iii) shall be in lieu of Sections 315(d)(1), 315(d)(2) and 315(d)(3) of the TIA and such Sections 315(d)(1), 315(d)(2) and 315(d)(3) are hereby expressly excluded from this Indenture, as permitted by the TIA.

(d) The Trustee may refuse to perform any duty or exercise any right or power or expend or risk its own funds or otherwise incur any financial liability unless it receives indemnity satisfactory to it against any loss, liability or expense.

SECTION 7.02. Rights of Trustee. Subject to its duties and responsibilities under the TIA,

(a) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may obtain and, in the absence of bad faith or negligence on its part, conclusively rely upon an Officers' Certificate;

(c) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, attorney, custodian or nominee appointed with due care by it hereunder;

(d) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith which it reasonably believes to be authorized or within its rights or powers conferred under this Indenture;

(e) the Trustee may consult with counsel selected by it and any advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion of such counsel;

(f) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders, pursuant to the provisions of this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby;

(g) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Order and any resolution of the Board of Directors shall be sufficiently evidenced by a Board Resolution;

(h) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled, during normal business hours, to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(i) the Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture;

(j) the rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder;

(k) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of Officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded; and

(l) In no event shall the Trustee be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

SECTION 7.03. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, Conversion Agent or co-registrar may do the same with like rights. However, the Trustee must comply with Sections 7.11 and 7.12.

SECTION 7.04. Trustee's Disclaimer. The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, shall not be accountable for the Company's use or application of the proceeds from the Securities, and shall not be responsible for any statement in any registration statement for the Securities under the Securities Act or in any offering document for the Securities, the Indenture or the Securities (other than its certificate of authentication), or the determination as to which beneficial owners are entitled to receive any notices hereunder.

SECTION 7.05. Notice of Defaults. If a Default occurs and if it is known to the Trustee, the Trustee shall give to each Securityholder notice of all current Defaults known to it within 90 days after any such Default occurs or, if later, within 15 days after it is known to the Trustee, unless such Default shall have been cured or waived before the giving of such notice. Notwithstanding the preceding sentence, except in the case of a Default described in Sections 6.01(a) and 6.01(b), the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of Holders. The second sentence of this Section 7.05 shall be in lieu of the proviso to Section 315(b) of the TIA and such proviso is hereby expressly excluded from this Indenture, as permitted by the TIA.

SECTION 7.06. Reports by Trustee to Holders. Reports by Trustee to Holders. Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, the Trustee shall mail to each Securityholder a brief report dated as of such May 15 that complies with TIA Section 313(a), if required by such Section 313(a). The Trustee also shall comply with TIA Section 313(b).

A copy of each report at the time of its mailing to Holders shall be filed with the SEC and each securities exchange, if any, on which the Securities are listed. The Company agrees to notify the Trustee promptly whenever the Securities become listed on any securities exchange and of any delisting thereof.

SECTION 7.07. Reports by Company. The Company will file with the Trustee and the SEC, and transmit to Holders, such information, documents, and other reports, and such summaries thereof, as may be required pursuant to the TIA (or, if the Company is not subject to the TIA, such information, documents, and other reports, and summaries thereof as would be required if the Company were subject to the TIA) at the times and in the manner provided pursuant to the TIA; provided that any such information, documents, or reports required to be filed with the SEC pursuant to Section 13 or 15(d) of the Exchange Act will be filed with the Trustee within 15 calendar days after the same is so required to be filed with the SEC.

Delivery of such information, documents and reports to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

SECTION 7.08. Compensation and Indemnity. The Company agrees:

(a) to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation as the Company and the Trustee shall from time to time agree in writing for all services rendered by it hereunder (which compensation shall not be limited (to the extent permitted by law) by any provision of law in regard to the compensation of a trustee of an express trust);

(b) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture or any documents executed in connection herewith (including the compensation and the expenses, advances and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence, bad faith or willful misconduct; and

(c) to indemnify each of the Trustee and any predecessor Trustee and their agents, officers, directors and employees for, and to hold them harmless against, any and all loss, damage, claim, liability, cost or expense (including attorneys' fees and expenses and taxes (other than taxes based upon, measured by or determined by the income of the Trustee)) incurred without negligence, misconduct or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim (whether asserted by the Company or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder.

To secure the Company's payment obligations in this Section 7.08, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except that held in trust to pay the principal amount, Designated Event Payment (including any Make Whole Premium) the Redemption Price or interest, if any, due on overdue amounts, as the case may be, in respect of any particular Securities.

The Company's payment obligations pursuant to this Section 7.08 shall survive the discharge of this Indenture or the earlier termination or resignation of the Trustee. When the Trustee incurs expenses after the occurrence of a Default specified in Section 6.01(h) or Section 6.01(i), the expenses, including the reasonable charges and expenses of its counsel, are intended to constitute expenses of administration under any Bankruptcy Law.

SECTION 7.09. Replacement of Trustee. The Trustee may resign by so notifying the Company; provided, however, that no such resignation shall be effective until a successor Trustee has accepted its appointment pursuant to this Section 7.09. The Holders of a majority in aggregate principal amount of the Securities at the time outstanding may remove the Trustee by so notifying the Trustee and the Company. The Company shall remove the Trustee if:

(a) the Trustee fails to comply with Section 7.11;

(b) the Trustee is adjudged bankrupt or insolvent;

(c) a receiver or public officer takes charge of the Trustee or its property; or

(d) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint, by resolution of its Board of Directors, a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company satisfactory in form and substance to the retiring Trustee and the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.08.

If a successor Trustee does not take office within 30 days after the retiring Trustee gives its notice of resignation or is removed, the retiring Trustee, the Company or the Holders of a majority in aggregate principal amount at maturity of the Securities at the time outstanding may petition any court of competent jurisdiction at the expense of the Company for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.11, any Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

SECTION 7.10. Successor Trustee by Merger. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets (including the administration of the trust created by this Indenture) to, another corporation, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

SECTION 7.11. Eligibility; Disqualification. The Trustee shall at all times satisfy the requirements of TIA Section 310(a)(1). The Trustee (or its parent holding company) shall have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition. Nothing herein contained shall prevent the Trustee from filing with the SEC the application referred to in the penultimate paragraph of TIA Section 310(b). The Trustee shall comply with TIA Section 310(b); provided, however, that there shall be excluded from the operation of TIA Section 310(b)(1) any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Company are outstanding if the requirements for such exclusion set forth in TIA Section 310(b)(1) are met.

SECTION 7.12. Preferential Collection of Claims Against Company. The Trustee shall comply with TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

SECTION 7.13. Money Held in Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee (acting in any capacity hereunder) shall be under no liability for interest on any money received by it hereunder unless otherwise agreed in writing with the Company.

ARTICLE VIII

DISCHARGE OF INDENTURE

SECTION 8.01. Discharge of Liability on Securities. When all outstanding Securities will become due and payable within one year of their Stated Maturity and the Company has deposited with the Trustee cash sufficient to pay and discharge all outstanding Securities on the date of their Stated Maturity, then the Company may discharge its obligations under this Indenture while Securities remain outstanding; provided that provisions of Section 2.04, Section 2.05, Section 2.07, Section 2.08, Section 2.09, Section 2.13, Section 4.01, Section 4.05, Section 7.08, Article 10 and this Article 8 shall survive until the Securities have been paid in full. The Trustee shall join in the execution of a document prepared by the Company acknowledging satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officers' Certificate and Opinion of Counsel and at the cost and expense of the Company. For the avoidance of doubt, Sections 3.09 through 3.12 shall cease to apply and shall be of no further force and effect from and after such deposit.

SECTION 8.02. Repayment of the Company. The Trustee and the Paying Agent shall promptly return to the Company upon written request (i) any excess money held by them at any time and (ii) any money or securities held by them for the payment of any amount with respect to the Securities that remains unclaimed for two years, subject to applicable unclaimed property law. After return to the Company, Holders entitled to the money or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person and the Trustee and the Paying Agent shall have no further liability to the Holders with respect to such money or securities for that period commencing after the return thereof.

SECTION 8.03. Deposited Monies to Be Held in Trust by Trustee. Subject to Section 8.02, all monies deposited with the Trustee pursuant to Section 8.01 shall be held in trust for the sole benefit of the Holders and such monies shall be applied by the Trustee to the payment, either directly or through any Paying Agent (including the Company if acting as its own Paying Agent), to the Holders for the payment of which such monies have been deposited with the Trustee, of all sums due and to become due thereon for principal and interest.

SECTION 8.04. Reinstatement. If the Trustee or the Paying Agent is unable to apply any money in accordance with Sections 8.01 and 8.03 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.01 until such time as the Trustee or the Paying Agent is permitted to apply all such money in accordance with Sections 8.01 and 8.03; provided, however, that if the Company makes any payment of interest on or principal of any Security following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE IX

AMENDMENTS

SECTION 9.01. Without Consent of Holders. The Company, when authorized by or pursuant to a Board Resolution, and the Trustee may amend this Indenture or the Securities without the consent of any Holder for the purposes of, among other things:

- (1) adding to the Company's covenants for the benefit of the Holders;
- (2) surrendering any right or power conferred upon the Company;
- (3) providing for conversion rights of Holders if any reclassification or change of Common Stock occurs or any consolidation, merger or sale of all or substantially all of the Company's assets occurs;
- (4) increasing the Conversion Rate in accordance with Section 10.05(g); provided that the increase will not adversely affect the interests of Holders in any material respect;
- (5) complying with the requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;
- (6) making any changes or modifications to this Indenture necessary in connection with the registration of the Securities under the Securities Act as contemplated by the Registration Rights Agreement; provided that this action does not adversely affect the interests of the Holders in any material respect;
- (7) curing any ambiguity, omission, inconsistency or correcting or supplementing any defective provision contained in this Indenture; provided that such modification or amendment does not adversely affect the interests of the Holders in any material respect;
- (8) complying with Article 5;
- (9) evidencing and providing for the acceptance of the appointment of a successor Trustee;

(10) securing the Securities; or

(11) providing for uncertificated Securities in addition to the Certificated Securities so long as such uncertificated Securities are in registered form for purposes of the Internal Revenue Code of 1986, as amended.

SECTION 9.02. With Consent of Holders. With the written consent of the Holders of not less than a majority in aggregate principal amount of the Securities at the time outstanding or by the adoption of a resolution at a meeting of Holders at which a quorum is present by at least a majority in aggregate principal amount of the Securities represented at the meeting, the Company may modify and amend this Indenture or the Securities and waive noncompliance by the Company. However, without the consent of each Holder affected, a modification, amendment or waiver to this Indenture or the Securities may not:

- (1) change the maturity of the principal of or any installment of interest on any Security (excluding any payment of Additional Interest);
- (2) reduce the principal amount of, or interest (excluding Additional Interest on) on any Security;
- (3) change the currency of payment of principal of, or interest on any Security;
- (4) impair the right to institute suit for the enforcement of any payment on or with respect to, or conversion of, any Security;
- (5) except as otherwise permitted or contemplated by provisions of this Indenture concerning corporate reorganizations, materially adversely affect the purchase option of Holders upon a Designated Event or the conversion rights of Holders; or
- (6) reduce the percentage in aggregate principal amount of Securities outstanding necessary to modify or amend this Indenture or to waive any past default.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.

After an amendment under this Section 9.02 becomes effective, the Company shall mail to each Holder a notice briefly describing the amendment.

SECTION 9.03. Compliance with Trust Indenture Act. Every supplemental indenture executed pursuant to this Article shall comply with the TIA.

SECTION 9.04. Revocation and Effect of Consents, Waivers and Actions. Until an amendment, waiver or other action by Holders becomes effective, a consent thereto by a Holder of a Security hereunder is a continuing consent by the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same obligation as the consenting Holder's Security, even if notation of the consent, waiver or action is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent, waiver or action as to such Holder's Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment, waiver or action becomes effective. After an amendment, waiver or action becomes effective, it shall bind every Holder.

SECTION 9.05. Notation on or Exchange of Securities. Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 9 may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Board of Directors, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for outstanding Securities.

SECTION 9.06. Trustee to Sign Supplemental Indentures. The Trustee shall sign any supplemental indenture authorized pursuant to this Article 9 if the amendment contained therein does not adversely affect the

rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign such supplemental indenture. In signing such supplemental indenture the Trustee shall be entitled to receive, and (subject to the provisions of Section 7.01) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

SECTION 9.07. Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article 9, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

ARTICLE X

CONVERSION

SECTION 10.01. Right To Convert. Subject to and upon compliance with the provisions of this Indenture, each Holder of Securities shall have the right, at his or her option, at any time on or before the close of business on the last Trading Day prior to the Stated Maturity (except that, (a) with respect to any Security or portion thereof which is called for redemption prior to such date, such right shall terminate, except as provided in Section 10.02(d), at the close of business on the last Trading Day preceding the date fixed for redemption (unless the Company defaults in payment of the Redemption Price in which case the conversion right will terminate at the close of business on the date such default is cured) and (b) with respect to any Security or portion thereof subject to a duly completed election for repurchase, such right shall terminate at the close of business on the Designated Event Offer Termination Date (unless the Company defaults in the payment due upon repurchase or such Holder elects to withdraw the submission of such election to repurchase in accordance with Section 3.11)) to convert the principal amount of any Security held by such Holder, or any portion of such principal amount which is \$1,000 or an integral multiple thereof, into that number of fully paid and non-assessable shares of Common Stock (as such shares shall then be constituted) specified in Section 10.04, by surrender of the Security so to be converted in whole or in part in the manner provided in Section 10.01. A Holder of Securities is not entitled to any rights of a holder of Common Stock until such Holder of Securities has converted his or her Securities to Common Stock, and then only to the extent such Securities are deemed to have been converted to Common Stock under this Article 10.

SECTION 10.02. Exercise of Conversion Privilege; Issuance of Common Stock on Conversion; No Adjustment for Interest or Dividends. (a) To exercise, in whole or in part, the conversion privilege with respect to any Security, the Holder of such Security shall surrender such Security, duly endorsed, at an office or agency maintained by the Company pursuant to Section 4.05, accompanied by the funds, if any, required by Section 10.02(e), and shall give written notice of conversion in the form provided on the Securities (or such other notice which is acceptable to the Company) to the office or agency that the Holder of Securities elects to convert such Security or such portion thereof specified in said notice. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock which are issuable on such conversion shall be issued, and shall be accompanied by transfer taxes, if required pursuant to Section 10.07. Each such Security surrendered for conversion shall, unless the shares issuable on conversion are to be issued in the same name as the registration of such Security, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder of Securities or his or her duly authorized attorney. The Holder of such Securities will not be required to pay any tax or duty which may be payable in respect of the issue or delivery of Common Stock on conversion, but will be required to pay any tax or duty which may be payable in respect of any transfer involved in the issue or delivery of Common Stock in a name other than the same name as the registration of such Security.

(b) Subject to Section 10.02(c), as promptly as practicable after satisfaction of the requirements for conversion set forth above, the Company shall issue and shall deliver to such Holder at the office or agency maintained by the Company for such purpose pursuant to Section 4.05, a certificate or certificates for the number of full shares of Common Stock (including any full shares as a result of rounding fractional shares up to a full number of shares pursuant to Section 10.03) issuable upon the conversion of such Security or portion thereof in accordance with the provisions of this Article 10 and a check or cash (which payment, if any, shall be paid no later than five Business Days after satisfaction of the requirements for conversion set forth above) in respect of any fractional interest in respect of a share of Common Stock, pursuant to Section 10.03. Certificates representing shares of Common Stock will not be issued or delivered unless all taxes and duties, if any, payable by the Holder have been paid. In case any Security of a denomination of an integral multiple greater than \$1,000

is surrendered for partial conversion, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of the Security so surrendered, without charge to him or her, a new Security or Securities in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Security.

(c) In lieu of delivery shares of the Common Stock upon conversion of any Securities, for all or any portion of the Securities surrendered for conversion, the Company, subject to compliance with this Section 10.02, may elect to pay Holders surrendering Securities for conversion an amount in cash per Security (or a portion of a Security) equal to the average of the Applicable Stock Price over the fifteen Trading Day period starting on and including the third Trading Day following the Conversion Date multiplied by the Conversion Rate in effect on the Conversion Date (or portion of the Conversion Rate applicable to a portion of a Security if a combination of Common Stock and cash is to be delivered). If the Company elects to deliver other than solely shares of Common Stock (other than cash in lieu of fractional shares) upon conversion, the Company shall inform each converting Holder through the Trustee no later than two Business Days following the Conversion Date of the Company's election to deliver shares of the Common Stock, to pay cash in lieu of delivery of the shares of Common Stock or to deliver a combination of Common Stock and cash. Such notice shall specify the percentage of the conversion value per \$1,000 principal amount of the Securities to be converted to be paid in cash and Common Stock, if any. If the Company elects to deliver solely shares of the Common Stock, these will be delivered through the Conversion Agent no later than the third Business Day following the Conversion Date. If the Company elects to deliver a combination of shares of Common Stock and cash or to pay all of such payment in cash, such delivery and payment will be made to Holders surrendering Securities for conversion no later than the twenty-first Business Day following the Conversion Date. The Company may not change its election with respect to the consideration (or components or percentages of components thereof) to be payable any Holder upon conversion once the Company has given the notice to such Holder pursuant to this Section 10.02(c).

The "Applicable Stock Price" with respect to a Trading Day is equal to the volume-weighted average price per share of the Common Stock on such Trading Day. The "volume-weighted average price," with respect to a Trading Day, means such price as displayed on Bloomberg (or any successor service) page LVLT <equity> VAP in respect of the period from 9:30 a.m. to 4:00 p.m., New York City time, on such Trading Day; or, if such price is not available, the "Applicable Stock Price" means the market value per share of the Common Stock on such day as determined by a nationally recognized independent investment banking firm retained by the Company for this purpose.

(d) Each conversion shall be deemed to have been effected as to any such Security (or portion thereof) on the date ("Conversion Date") on which the requirements set forth above in this Section 10.02 have been satisfied as to such Security (or portion thereof), and the Person in whose name any certificate or certificates for shares of Common Stock are issuable upon such conversion shall be deemed to have become on said date the holder of record of the shares represented thereby; provided, however, that any such surrender on any date when the Company's stock transfer books are closed shall constitute the Person in whose name the certificates are to be issued as the record holder thereof for all purposes on the next succeeding day on which such stock transfer books are open, but such conversion shall be at the Conversion Rate in effect on the date upon which such Security is surrendered.

(e) Any Security or portion thereof surrendered for conversion during the period from the close of business on the Regular Record Date for any interest payment through the close of business on the last Trading Day immediately preceding such Interest Payment Date shall (unless (i) such Security or portion thereof being converted has been called for redemption on a date during the period from the close of business on such Regular Record Date to the close of business on the last Trading Day immediately preceding the corresponding Interest Payment Date pursuant to a notice of redemption mailed by the Company to the Holders in accordance with the provisions of Section 3.04 or (ii) the Company has specified a Designated Event Repurchase Date during such period) be accompanied by payment, in funds acceptable to the Company, of an amount equal to the interest otherwise payable on such Interest Payment Date on the principal amount being converted; provided, however, that such payment may be reduced by the amount of any existing payment default in respect of such Securities. An amount equal to such payment shall be paid by the Company on such Interest Payment Date to the Holder of such Security at the close of business on such Regular Record Date. Except as provided above in this Section 10.02, no adjustment shall be made for interest accrued on any Security converted or for dividends on any shares issued upon the conversion of such Security as provided in this Article 10. If any Security or portion thereof that has been called for redemption on a date during the period from the close of business on a Regular Record Date to the close of business on the last Trading Day immediately preceding the corresponding Interest Payment Date

is converted after such Regular Record Date for the payment of interest and prior to such corresponding Interest Payment Date, interest payable on such Interest Payment Date shall be payable notwithstanding such conversion, and such interest shall be paid to the Holder of such Security on the applicable Regular Record Date.

SECTION 10.03. Cash Payments in Lieu of Fractional Shares. If more than one Security shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issuable upon conversion shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof to the extent permitted hereby) so surrendered for conversion. In respect of any fractional share of stock that otherwise would be issuable upon the conversion of any Security or Securities, the Company shall make an adjustment therefor in cash based upon the Current Market Price thereof or the Company shall, at its option, round such fraction up to the nearest full number of shares for issuance upon conversion. For purposes of this Section 10.03, the “Current Market Price” of a share of Common Stock shall be the Closing Sale Price on the last Business Day immediately preceding the day on which the Securities (or specified portions thereof) are deemed to have been converted.

SECTION 10.04. Conversion Rate. Each \$1,000 principal amount of the Securities shall be convertible into 251.004 shares of Common Stock (the “Conversion Rate”), subject to adjustment as provided in this Article 10.

SECTION 10.05. Adjustment of the Conversion Rate. The Conversion Rate shall be adjusted from time to time by the Company as follows:

(a) In case the Company shall hereafter pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution by a fraction,

(i) the numerator of which shall be the sum of the number of shares of Common Stock outstanding at the close of business on the date fixed for the determination of stockholders entitled to receive such dividend or other distribution plus the total number of shares of Common Stock constituting such dividend or other distribution; and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination,

such increase to become effective immediately after the opening of business on the day following the date fixed for such determination. For the purpose of this paragraph (a), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company. If any dividend or distribution of the type described in this Section 10.05 is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) In case the Company shall issue rights or warrants to all holders of its outstanding shares of Common Stock entitling them to subscribe for or purchase shares of Common Stock at a price per share less than the Current Market Price on the date fixed for determination of stockholders entitled to receive such rights or warrants, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the date fixed for determination of stockholders entitled to receive such rights or warrants by a fraction,

(i) the numerator of which shall be the number of shares of Common Stock outstanding on the date fixed for determination of stockholders entitled to receive such rights or warrants plus the total number of additional shares of Common Stock offered for subscription or purchase, and

(ii) the denominator of which shall be the sum of the number of shares of Common Stock outstanding at the close of business on the date fixed for determination of stockholders entitled to receive such rights or warrants plus the number of shares that the aggregate offering price of the total number of shares so offered would purchase at such Current Market Price.

Such adjustment shall be successively made whenever any such rights or warrants are issued, and shall become effective immediately after the opening of business on the day following the date fixed for determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock are not delivered after the expiration of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately increased, and conversely, in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately reduced, such increase or reduction, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(d) In case the Company shall pay a cash dividend to all holders of its Common Stock or, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of Capital Stock of the Company or evidences of its indebtedness or assets, including cash and securities (any such distribution, a “Distribution”; provided, however, that the term “Distribution” shall not include, and this Section 10.05 (d) shall not apply to, (x) any rights or warrants referred to in Section 10.05(b) and (y) any dividend or distribution referred to in Section 10.05 (a)), then, in each such case (unless the Company elects to reserve such Distribution for distribution to the Holders upon the conversion of the Securities so that any such Holder converting Securities will receive upon such conversion, in addition to the shares of Common Stock to which such Holder is entitled, the amount and kind of such Distribution which such Holder would have received if such Holder had converted its Securities into Common Stock immediately prior to the Record Date), the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect on the Record Date with respect to such Distribution by a fraction,

(i) the numerator of which shall be the Current Market Price on such Record Date; and

(ii) the denominator of which shall be the Current Market Price on such Record Date less (A) in the case of Distributions other than cash, the Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) on the Record Date of the portion of such Distributions applicable to one share of Common Stock and (B) in the case of Distributions of cash, the amount of such Distributions applicable to one share of Common Stock,

such adjustment to become effective immediately prior to the opening of business on the day following such Record Date; provided, however, that if the then Fair Market Value (as so determined) of the portion of the Distribution so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion the amount of Distribution such Holder would have received had such Holder converted each Security on the Record Date. If such Distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such Distribution had not been declared. If the Board of Directors determines the Fair Market Value of any distribution for purposes of this Section 10.05 by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price on the applicable Record Date. Notwithstanding the foregoing, if the Distribution distributed by the Company to all holders of its Common Stock consists of Capital Stock of, or similar equity interests in, a Subsidiary or other business unit, the Conversion Rate shall be increased so that the same shall be

equal to the rate determined by multiplying the Conversion Rate in effect on the Record Date with respect to such distribution by a fraction:

(i) the numerator of which shall be the sum of (x) the average Closing Sale Price of one share of Common Stock over the ten consecutive Trading Day period (the “Spinoff Valuation Period”) commencing on and including the fifth Trading Day after the date on which “ex-dividend trading” commences on the Common Stock on the Nasdaq National Market or such other national or regional exchange or market on which the Common Stock is then listed or quoted and (y) the average Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) over the Spinoff Valuation Period of the portion of the Distribution so distributed applicable to one share of Common Stock; and

(ii) the denominator of which shall be the average Closing Sale Price of one share of Common Stock over the Spinoff Valuation Period,

such adjustment to become effective immediately prior to the opening of business on the day following such Record Date; provided, however, that the Company may in lieu of the foregoing adjustment make adequate provision so that each Holder shall have the right to receive upon conversion the amount of Distribution such Holder would have received had such Holder converted each Security on the Record Date with respect to such Distribution.

Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company’s Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events (“Trigger Event”): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 10.05 (and no adjustment to the Conversion Rate under this Section 10.05 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 10.05. If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 10.05 was made, (1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights and warrants had not been issued.

No adjustment of the Conversion Rate shall be made pursuant to this Section 10.05 in respect of rights or warrants distributed or deemed distributed on any Trigger Event to the extent that such rights or warrants are actually distributed, or reserved by the Company for distribution to Holders of Securities upon conversion by such Holders of Securities to Common Stock.

For purposes of this Section 10.05(d) and 10.05(a) and (b), any dividend or distribution to which this Section 10.05(d) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of Capital Stock other than such shares of Common Stock or rights or warrants (and any Conversion Rate adjustment required by this Section 10.05 with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of

Common Stock or such rights or warrants (and any further Conversion Rate adjustment required by Sections 10.05(a) and (b) with respect to such dividend or distribution shall then be made), except

(A) the Record Date of such dividend or distribution shall be substituted as “the date fixed for the determination of stockholders entitled to receive such dividend or other distribution”, “the date fixed for the determination of stockholders entitled to receive such rights or warrants” and “the date fixed for such determination” within the meaning of Section 10.05(a) and (b) and

(B) any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding at the close of business on the date fixed for such determination” within the meaning of Section 10.05(a).

(e) In case a tender or exchange offer made by the Company or any Subsidiary for all or any portion of the Common Stock shall expire and such tender or exchange offer (as amended upon the expiration thereof) shall require the payment to tendering or exchanging stockholders of consideration per share of Common Stock having a Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) that as of the last time (the “Expiration Time”) tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) exceeds the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the Expiration Time by a fraction,

(i) the numerator of which shall be the sum of (x) the Fair Market Value (determined as aforesaid) of the aggregate consideration payable to tendering or exchanging stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted up to any such maximum, being referred to as the “Purchased Shares”) and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time, and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time multiplied by the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time

such adjustment to become effective immediately prior to the opening of business on the day following the Expiration Time. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made.

(f) For purposes of this Section 10.05, and, in the case of the term “Fair Market Value”, Section 3.09, the following terms shall have the meaning indicated:

(1) “Current Market Price” shall mean, with respect to any date, the average of the daily Closing Sale Prices per share of Common Stock for the ten consecutive Trading Days immediately preceding the earlier of such date of determination and the day before the “ex” date with respect to the issuance, distribution, subdivision or combination requiring such computation immediately prior to the date in question. For purpose of this paragraph, the term “ex” date, (1) when used with respect to any issuance or distribution, means the first date on which the Common Stock trades, regular way, on the relevant exchange or in the relevant market from which the Closing Sale Price was obtained without the right to receive such issuance or distribution, and (2) when used with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades, regular way, on such exchange or in such market after the time at which such subdivision or combination becomes effective.

If another issuance, distribution, subdivision or combination to which this Section 10.05 applies occurs during the period applicable for calculating “Current Market Price” pursuant to the definition in the preceding paragraph, “Current Market Price” shall be calculated for such period in a manner determined by the Board of Directors to reflect the impact of such issuance, distribution, subdivision or combination on the Closing Sale Price of the Common Stock during such period.

(2) “Fair Market Value” shall mean the amount which a willing buyer would pay a willing seller in an arm’s-length transaction.

(3) “Record Date” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(g) The Company may make such increases in the Conversion Rate, in addition to those required by Section 10.05(a), (b), (c), (d) or (e) as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

To the extent permitted by applicable law, the Company from time to time may increase the Conversion Rate by any amount for any period of time if the period is at least twenty (20) days, the increase is irrevocable during the period and the Board of Directors shall have made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to Holders of record of the Securities a notice of the increase at least fifteen (15) days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(h) No adjustment in the Conversion Rate shall be required unless such adjustment would require an increase or decrease of at least one percent (1%) in such rate; provided, however, that any adjustments that by reason of this Article 10 are not required to be made shall be carried forward and made (i) as part of any subsequent adjustment, (ii) at the time the Company mails a notice of redemption pursuant to Section 3.04 or (iii) at the time the Company mails a notice of a Designated Event pursuant to Section 3.11. All calculations under this Article 10 shall be made by the Company and shall be made to the nearest cent or to the nearest one-ten thousandth (1/10,000) of a share, as the case may be. No adjustment need be made for rights to purchase Common Stock pursuant to a Company plan for reinvestment of dividends or interest. To the extent the Securities become convertible into cash, assets, property or securities (other than Capital Stock of the Company), no adjustment need be made thereafter as to the cash, assets, property or such securities. Interest will not accrue on any cash into which the Securities are convertible. The Conversion Rate shall be adjusted only once for a single event or occurrence that would require an adjustment under more than one of Section 10.05(a), (b), (c), (d) or (e).

(i) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any Conversion Agent other than the Trustee an Officers’ Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officers’ Certificate, the Trustee shall not be deemed to have actual knowledge of any adjustment of the Conversion Rate and may assume that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the Holder of each Security, within twenty (20) days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(j) In any case in which this Section 10.05 provides that an adjustment shall become effective immediately after (1) a record date or Record Date for an event, (2) the date fixed for the determination of stockholders entitled to receive a dividend or distribution pursuant to Section 10.05(a), (3) a date fixed for the

determination of stockholders entitled to receive rights or warrants pursuant to Section 10.05(b), or (4) the Expiration Time for any tender or exchange offer pursuant to Section 10.05(e), (each a “ Determination Date ”), the Company may elect to defer until the occurrence of the applicable Adjustment Event (as hereinafter defined) (x) issuing to the Holder of any Security converted after such Determination Date and before the occurrence of such Adjustment Event, the additional shares of Common Stock or other consideration issuable upon such conversion by reason of the adjustment required by such Adjustment Event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (y) paying to such Holder any amount in cash in lieu of any fraction pursuant to Section 10.03. For purposes of this Section 10.05(j), the term “ Adjustment Event ” shall mean:

- (i) in any case referred to in clause (1) hereof, the occurrence of such event,
- (ii) in any case referred to in clause (2) hereof, the date any such dividend or distribution is paid or made,
- (iii) in any case referred to in clause (3) hereof, the date of expiration of such rights or warrants, and
- (iv) in any case referred to in clause (4) hereof, the date a sale or exchange of Common Stock pursuant to such tender or exchange offer is consummated and becomes irrevocable.

(k) For purposes of this Section 10.05, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

SECTION 10.06. Effect of Reclassification, Consolidation, Merger or Sale. If any of the following events occur: (i) any reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any consolidation, merger, share exchange or combination of the Company with another Person or (iii) any sale or conveyance of all or substantially all of the properties and assets of the Company as an entirety or substantially as an entirety, in each case as a result of which holders of Common Stock shall receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, then the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the TIA as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) providing that the Securities shall be convertible into the kind and amount of shares of stock and other securities or property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, share exchange, combination, sale or conveyance by a holder of a number of shares of Common Stock issuable upon conversion of the Securities (assuming, for such purposes, a sufficient number of authorized shares of Common Stock available to convert all such Securities) immediately prior to such reclassification, change, consolidation, merger, share exchange, combination, sale or conveyance assuming such holder of Common Stock did not exercise his or her rights of election, if any, as to the kind or amount of securities, cash or other property receivable upon such consolidation, merger, share exchange, sale or conveyance (provided that, if the kind or amount of securities, cash or other property receivable upon such consolidation, merger, share exchange, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election have not been exercised (“ Non-electing Share ”), then, for the purposes of this Section 10.06, the kind and amount of securities, cash or other property receivable upon such consolidation, merger, share exchange, sale or conveyance for each Non-electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non-electing Shares). Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 10. If, in the case of any such reclassification, change, consolidation, merger, share exchange, combination, sale or conveyance, the stock or other securities and assets receivable thereupon by a holder of shares of Common Stock includes shares of stock or other securities and assets of a person other than the successor or purchasing person, as the case may be, in such reclassification, change, consolidation, merger, share exchange, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other person and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors shall reasonably consider necessary by reason of the foregoing.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder of Securities within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

The above provisions of this Section 10.06 shall similarly apply to successive reclassifications, changes, consolidations, mergers, share exchanges, combinations, sales and conveyances.

If this Section 10.06 applies to any event or occurrence, Section 10.05 shall not apply.

SECTION 10.07. Taxes on Shares Issued. The issue of stock certificates on conversions of Securities shall be made without charge to the converting Holder for any tax in respect of the issue thereof. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of stock in any name other than that of the Holder of any Security converted, and the Company shall not be required to issue or deliver any such stock certificate unless and until the person or persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

SECTION 10.08. Reservation of Shares; Shares to Be Fully Paid; Listing of Common Stock. The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for the conversion of the Securities from time to time as such Securities are presented for conversion. Before taking any action which would cause an adjustment increasing the Conversion Rate to an amount that would cause the Conversion Price to be reduced below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Securities, the Company shall take all corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue shares of such Common Stock at such adjusted Conversion Rate.

The Company covenants that all shares of Common Stock issued upon conversion of Securities will be fully paid and nonassessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

The Company further covenants that as long as the Common Stock is quoted on the Nasdaq National Market, or its successor, the Company shall cause all Common Stock issuable upon conversion of the Securities to be eligible for such quotation in accordance with, and at the times required under, the requirements of such market, and if at any time the Common Stock becomes listed on the New York Stock Exchange or any other national securities exchange, the Company shall cause all Common Stock issuable upon conversion of the Securities to be so listed and remain listed.

SECTION 10.09. Responsibility of Trustee. The Trustee and any Conversion Agent shall have no duty, responsibility or liability to any Holder to determine whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. Neither the Trustee nor any Conversion Agent shall be accountable with respect to the registration under securities laws, listing, validity or value (or the kind or amount) of any shares of Common Stock, or of any other securities or property, which may at any time be issued or delivered upon the conversion of any Security, and neither the Trustee nor any Conversion Agent makes any representation with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any shares of stock or stock certificates or other securities or property upon the surrender of any Security for the purpose of conversion; and the Trustee and any Conversion Agent shall not be responsible for any failure of the Company to comply with any of the covenants of the Company contained in this Article 10.

SECTION 10.10. Notice to Holders Prior to Certain Actions. If:

- (a) the Company declares a dividend (or any other distribution) on its Common Stock (other than in cash out of retained earnings);
- (b) the Company authorizes the granting to the holders of its Common Stock of rights or warrants to subscribe for or purchase any share of any class of Common Stock or any other rights or warrants (other than rights or warrants referred to in the second paragraph of Section 10.05(d));

(c) there is any reclassification of the Common Stock (other than a subdivision or combination of outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation, merger or share exchange to which the Company is a party, or of the sale or transfer of all or substantially all of the assets of the Company; or

(d) there is any voluntary or involuntary dissolution, liquidation or winding-up of the Company;

then the Company shall cause to be filed with the Trustee and at the office or agency maintained for the purpose of conversion of the Securities pursuant to Section 4.05, and shall caused to be mailed to each Holder of Securities, at their last addresses as they shall appear on the Security Register of the Company as promptly as possible but in any event at least 10 days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend or distribution of rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend or distribution are to be determined or (y) the date on which such reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up. The Company shall also disseminate a press release through Dow Jones & Company Inc., Bloomberg Business News or PR Newswire containing this information.

SECTION 10.11. Restriction on Common Stock Issuable upon Conversion. (a) Shares of Common Stock to be issued upon conversion of the Securities prior to the effectiveness of a Shelf Registration Statement (as defined in the Registration Rights Agreement) shall be physically delivered in certificated form or in the form of beneficial interests in book-entry Common Stock registered in the name of the Depositary or a nominee thereof to the Holders converting such Securities, and the certificate or certificates representing such shares of Common Stock shall bear the Restricted Common Stock Legend attached hereto as Exhibit C (the “Restricted Common Stock Legend”) unless removed in accordance with Section 10.11(c).

(b) If (i) shares of Common Stock to be issued upon conversion of a Security prior to the effectiveness of a Shelf Registration Statement are to be registered in a name other than that of the Holder of such Security or (ii) shares of Common Stock represented by a certificate bearing the Restricted Common Stock Legend are transferred subsequently by such Holder, then, unless the Shelf Registration Statement has become effective and such shares are being transferred pursuant to the Shelf Registration Statement, the Holder must deliver to the transfer agent for the Common Stock a certificate in substantially the form of Exhibit D as to compliance with the restrictions on transfer applicable to such shares of Common Stock, and neither the transfer agent nor the registrar for the Common Stock shall be required to register any transfer of such Common Stock not so accompanied by a properly completed certificate.

(c) Except for transfers in connection with a Shelf Registration Statement, if certificates representing shares of Common Stock are issued upon the registration of transfer, exchange or replacement of any other certificate representing shares of Common Stock bearing the Restricted Common Stock Legend, or if a request is made to remove such Restricted Common Stock Legend from certificates representing shares of Common Stock, the certificates so issued shall bear the Restricted Common Stock Legend, or the Restricted Common Stock Legend shall not be removed, as the case may be, unless there is delivered to the Company such satisfactory evidence, which, in the case of a transfer made pursuant to Rule 144 under the Securities Act, may include an Opinion of Counsel as may be reasonably required by the Company, that neither the legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A or Rule 144 under the Securities Act or that such shares of Common Stock are securities that are not “restricted” within the meaning of Rule 144 under the Securities Act. Upon provision to the Company of such reasonably satisfactory evidence, the Company shall cause the transfer agent for the Common Stock to countersign and deliver certificates representing shares of Common Stock that do not bear the Restricted Common Stock Legend.

SECTION 10.12. Rights Issued in Respect of Common Stock Issued Upon Conversion. If the Company has a stockholder rights plan in effect on any Conversion Date, the Company shall issue, in addition to the Common Stock, the rights under the rights plan unless the rights have separated from the

Common Stock at the time of conversion, in which case the Conversion Rate will be adjusted as if the Company had distributed to all holders of the Common Stock, shares of the Capital Stock, evidences of indebtedness or assets set forth in Section 10.05, subject to readjustment in the event of the expiration, termination or redemption of such rights.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. Trust Indenture Act Controls. If any provision of this Indenture limits, qualifies, or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision shall control. If any provision of this Indenture expressly modifies or excludes any provision of the TIA that may be so modified or excluded, the Indenture provision so modifying or excluding such provision of the TIA shall be deemed to apply.

SECTION 11.02. Notices. Any request, demand, authorization, notice, waiver, consent or communication shall be in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows, or, other than notices to the Company, transmitted by facsimile transmission (confirmed by guaranteed overnight courier) to the following facsimile numbers:

if to the Company:

Level 3 Communications, Inc.
1025 Eldorado Blvd.
Broomfield, Colorado 80021
Attention: General Counsel
Facsimile: (720) 888-5127

if to the Trustee:

The Bank of New York
101 Barclay Street
Floor 8 West
New York, New York 10286
Attention: Corporate Trust Administration
Facsimile: (212) 815-5707

The Company or the Trustee by notice given to the other in the manner provided above may designate additional or different addresses for subsequent notices or communications.

Any notice or communication given to a Holder shall be mailed to the Holder, by first-class mail, postage prepaid, at the Holder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not received by the addressee.

If the Company mails a notice or communication to the Holders, it shall mail a copy to the Trustee and each Registrar, Paying Agent, Conversion Agent or co-registrar.

SECTION 11.03. Communication by Holders with Other Holders. Holders may communicate pursuant to TIA Section 312(b) with other Holders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar, the Paying Agent, the Conversion Agent and anyone else shall have the protection of TIA Section 312(c).

SECTION 11.04. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture

relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that in the case of any such request or application as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular request or application, no additional certificate or opinion need be furnished.

SECTION 11.05. Statements Required in an Officers' Certificate or Opinion. Each Officers' Certificate or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture shall include:

- (1) a statement that each person making such Officers' Certificate or Opinion of Counsel has read such covenant or condition;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such Officers' Certificate or Opinion of Counsel are based;
- (3) a statement that, in the opinion of each such person, he has made such examination or investigation as is necessary to enable such person to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement that, in the opinion of such person, such covenant or condition has been complied with.

SECTION 11.06. Separability Clause. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 11.07. Rules by Trustee, Paying Agent, Conversion Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of Holders. The Registrar, Conversion Agent and the Paying Agent may make reasonable rules for their functions.

SECTION 11.08. Legal Holidays. A "Legal Holiday" is any day other than a Business Day. If any specified date (including a date for giving notice) is a Legal Holiday, the action shall be taken on the next succeeding day that is not a Legal Holiday, and, if the action to be taken on such date is a payment in respect of the Securities, no interest, if any, shall accrue for the intervening period.

SECTION 11.09. GOVERNING LAW. THIS INDENTURE AND THE SECURITIES WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 11.10. No Recourse Against Others. A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Holder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Securities.

SECTION 11.11. Successors. All agreements of the Company in this Indenture and the Securities shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

SECTION 11.12. Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

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

LEVEL 3 COMMUNICATIONS, INC.

By: /s/ Thomas C. Stortz

Name: Thomas C. Stortz

Title: Executive Vice President and Chief Legal Officer

THE BANK OF NEW YORK, as Trustee

By: /s/ Van K. Brown

Name: Van K. Brown

Title: Vice President

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Exhibit 4.2

EXECUTION COPY

SUPPLEMENTAL INDENTURE (this “Supplemental Indenture”) dated as of December 1, 2004, among LEVEL 3 FINANCING, INC., a Delaware corporation (the “Issuer”), LEVEL 3 COMMUNICATIONS, INC., a Delaware corporation (“Parent”), LEVEL 3 COMMUNICATIONS, LLC, a limited liability company (“Level 3 LLC”), and THE BANK OF NEW YORK, a New York banking corporation, as trustee under the Indenture referred to below (the “Trustee”).

WITNESSETH:

WHEREAS the Issuer, Parent and the Trustee have heretofore executed and delivered (a) an Indenture dated as of October 1, 2003 (the “Indenture”; capitalized terms used but not defined herein having the meanings assigned thereto in the Indenture), providing for the issuance by the Issuer of its 10.75% Senior Notes Due 2011 (the “Securities”), and (b) a Supplemental Indenture dated October 20, 2004, pursuant to which Level 3 LLC has guaranteed the Issuer’s obligations under the Indenture (the “Subordinated Guarantee”);

WHEREAS the Issuer, Parent, certain lenders (together with their successors and assigns and any future Lenders under and as defined in the Credit Agreement (as hereafter defined) (the “Lenders”) and Merrill Lynch Capital Corporation, as administrative agent and collateral agent (the “Administrative Agent”), have entered into a Credit Agreement dated as of December 1, 2004 (the “Credit Agreement”), under which the Issuer will borrow term loans in an aggregate principal amount of \$730,000,000 from the Lenders (the “Term Loans”);

WHEREAS the obligations of the Issuer under the Credit Agreement and the other Loan Documents (as defined therein) will, upon the receipt of certain regulatory approvals, be guaranteed by Level 3 LLC;

WHEREAS the proceeds of the Term Loans will be advanced to Level 3 LLC under an intercompany demand note dated the date hereof in an initial principal amount of \$730,000,000 issued by Level 3 LLC to the Issuer (together with any additional loan proceeds note issued pursuant to Section 9.02 of the Credit Agreement, and as such note or any such additional note may be amended from time to time, the “Loan Proceeds Note”);

WHEREAS the Loan Proceeds Note will be pledged by the Issuer to the Collateral Agent (as defined in the Credit Agreement) in order to assure the Lenders against loss in respect of the obligations of the Issuer under the Credit Agreement;

WHEREAS pursuant to Section 1308 of the Indenture, the Trustee is authorized to enter into a supplemental indenture which subordinates in any bankruptcy, liquidation or winding up proceeding a guarantee of an Issuer Restricted Subsidiary as

guarantor or borrower pursuant to the Indenture to the obligations of such Subsidiary under a Qualified Credit Facility;

WHEREAS upon the guarantee of the Securities by an Issuer Restricted Subsidiary (other than Level 3 LLC), the Issuer, Parent, the Trustee and such Issuer Restricted Subsidiary shall enter into a supplemental indenture in substantially the form of this Supplemental Indenture pursuant to which such guarantee will be subordinated in any bankruptcy, liquidation or winding up proceeding to the obligations of such Issuer Restricted Subsidiary under the Loan Documents (as defined in the Credit Agreement).

WHEREAS the Credit Agreement constitutes a Qualified Credit Facility and the guarantee of the obligations under the Credit Agreement by Level 3 LLC and the issuance and pledge of the Loan Proceeds Note constitute Guarantees of a Qualified Credit Facility;

WHEREAS the obligations of the Lenders to make the Term Loans are conditioned on, among other things, the execution and delivery by the Issuer, Parent, Level 3 LLC and the Trustee of a supplemental indenture in the form hereof;

WHEREAS pursuant to Section 901 and Section 1307 of the Indenture, the Trustee, Parent, the Issuer and Level 3 LLC are authorized to execute and deliver this Supplemental Indenture;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, Parent, the Issuer, Level 3 LLC and the Trustee mutually covenant and agree for the equal and ratable benefit of the holders of the Securities as follows:

ARTICLE I

Subordination

SECTION 1.1. Subordination. The Trustee hereby agrees that all obligations in respect of any amounts payable by Level 3 LLC pursuant to the Subordinated Guarantee, including the guarantee of the payment of principal, premium (if any), interest or all other amounts payable in respect of the Securities (the “Subordinated Obligations”), shall be subordinate and junior in right of payment, to the extent and in the manner provided in the Indenture (as supplemented by this Supplemental Indenture), to the prior payment in full in cash of all obligations (including without limitation the Obligations (as defined in the Credit Agreement)) of Level 3 LLC under or in respect of the Loan Documents (as defined in the Credit Agreement) and the Loan Proceeds Note, including the payment of principal, premium (if any), interest (including interest arising after the commencement of a bankruptcy or other proceeding, whether or not such a claim is permitted in such proceeding), the guarantees thereof or all other amounts payable thereunder (the “Senior Obligations”).

SECTION 1.2. Subordination in the Event of Dissolution or Insolvency of Level 3 LLC. Upon any distribution of assets of Level 3 LLC in connection with its dissolution or insolvency or upon any dissolution, winding up, liquidation or reorganization of Level 3 LLC, whether in bankruptcy, insolvency, reorganization, arrangement or receivership

or similar proceedings, or upon any assignment for the benefit of creditors or any other marshaling of the assets and liabilities of Level 3 LLC:

(a) the holders of the Senior Obligations (the “Senior Creditors”) shall first be entitled to receive payment in full in cash of the Senior Obligations in accordance with the terms of such Senior Obligations before the Securityholders shall be entitled to receive any payment on account of the Subordinated Obligations owed by Level 3 LLC in respect of the Securities, whether of principal, premium (if any), interest, pursuant to the Subordinated Guarantee or otherwise; and

(b) any payment by, or distribution of the assets of, Level 3 LLC of any kind or character, whether in cash, property or securities, to which the Securityholders would be entitled except for the provisions of Section 1308 of the Indenture and this Supplemental Indenture shall be paid or delivered by the Person making such payment or distribution (whether a trustee in bankruptcy, a receiver, custodian or liquidating trustee or otherwise) directly to the Administrative Agent or the Senior Creditors to the extent necessary to make payment in full in cash of all Senior Obligations remaining unpaid, after giving effect to any concurrent payment or distribution to the Administrative Agent or the Senior Creditors in respect of the Senior Obligations.

SECTION 1.3. Certain Payments Held in Trust. In the event that any payment by, or distribution of the assets of, Level 3 LLC of any kind or character, whether in cash, property or securities, and whether directly or otherwise, shall be received by or on behalf of the Trustee or the Securityholders at a time when such payment is prohibited by or contrary to the agreements set forth in this Supplemental Indenture, such payment or distribution shall be held in trust for the benefit of, and shall be paid over to, the Administrative Agent or the Senior Creditors to the extent necessary to make payment in full in cash of all Senior Obligations remaining unpaid, after giving effect to any concurrent payment or distribution to the Administrative Agent or the Senior Creditors in respect of such Senior Obligations.

SECTION 1.4 Trustee Not Fiduciary. The Trustee shall not be deemed to owe any fiduciary duty to the Senior Creditors and shall not be liable to any such Senior Creditor if the Trustee shall in good faith mistakenly pay over or distribute to the Securityholders or to the Issuer or to any other person cash, property or securities to which any holders of Senior Obligations shall be entitled by virtue of this Article or otherwise. With respect to the holders of Senior Obligations, the Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in this Article and no implied covenants or obligations with respect to holders of Senior Obligations shall be read into this Supplemental Indenture against the Trustee.

SECTION 1.5. Legend. Any and all instruments or records now or hereafter creating or evidencing the Subordinated Obligations, whether upon refunding, extension, renewal, refinancing, replacement or otherwise, shall contain the following legend:

“Notwithstanding anything contained herein to the contrary, neither the principal of nor the interest on, nor any other amounts payable in respect of, the indebtedness created or evidenced by this instrument or record shall be paid or payable with or by the funds provided by Level 3 Communications, LLC, except to the extent permitted under the Supplemental Indenture dated December 1, 2004, among Level 3 Communications, Inc., Level 3 Communications, LLC, Level 3 Financing, Inc. and the Trustee, which Supplemental Indenture is incorporated herein with the same effect as if fully set forth herein.”

SECTION 1.6. Obligations Hereunder Not Affected. So long as the Credit Agreement shall constitute a Qualified Credit Facility, this Supplemental Indenture shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Senior Obligations or any part thereof shall be rescinded or must otherwise be returned by the Administrative Agent and the Senior Creditors upon the insolvency, bankruptcy or reorganization of Level 3 LLC or otherwise, all as though such payment had not been made.

ARTICLE II

Miscellaneous

SECTION 2.1. Governing Law. **THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.**

SECTION 2.2. Modification. No modification, amendment or waiver of any provision of this Supplemental Indenture shall in any event be effective unless the same shall be in writing and signed by the Trustee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

SECTION 2.3. Opinion of Counsel. Concurrently with the execution and delivery of this Supplemental Indenture, the Issuer shall deliver to the Trustee an Opinion of Counsel to the effect that this Supplemental Indenture has been duly authorized, executed and delivered by each of Parent, the Issuer and Level 3 LLC and that, subject to the application of bankruptcy, insolvency, moratorium, fraudulent conveyance or transfer and other similar laws relating to creditors' rights generally and to the principles of equity, whether considered in a proceeding at law or in equity, this Supplemental Indenture is a legal, valid and binding obligation of Parent, the Issuer and Level 3 LLC, enforceable against each of them in accordance with its terms.

SECTION 2.4. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all

purposes, and every holder of Securities heretofore or hereafter authenticated and delivered shall be bound hereby.

SECTION 2.5. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

SECTION 2.8. Headings. Article and Section headings used herein are for convenience of reference only, are not part of this Supplemental Indenture and are not to affect the construction of, or to be taken into consideration in interpreting, this Supplemental Indenture.

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

LEVEL 3 COMMUNICATIONS, INC.,

By: /s/ Thomas C. Stortz
Name: Thomas C. Stortz
Title: Executive Vice President and Chief Legal Officer

LEVEL 3 FINANCING, INC.,

By: /s/ Neil J. Eckstein
Name: Neil J. Eckstein
Title: Senior Vice President and Assistant General Counsel

LEVEL 3 COMMUNICATIONS, LLC,

By: /s/ Neil J. Eckstein
Name: Neil J. Eckstein
Title: Senior Vice President and Assistant General Counsel

THE BANK OF NEW YORK, as Trustee,

By: /s/ Luis Perez
Name: Luis Perez
Title: Assistant Vice President

Exhibit 10.1

EXECUTION COPY

CREDIT AGREEMENT

dated as of

December 1, 2004

among

LEVEL 3 COMMUNICATIONS, INC.

LEVEL 3 FINANCING, INC.

The Lenders Party hereto

and

MERRILL LYNCH CAPITAL CORPORATION,
as Agent

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
as Joint Lead Arranger, Bookrunner and Administrative Agent

CITIGROUP GLOBAL MARKETS INC.,
as Joint Lead Arranger and Syndication Agent

MORGAN STANLEY & CO. INCORPORATED

and

CREDIT SUISSE FIRST BOSTON

as Co-Documentation Agents

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CREDIT AGREEMENT dated as of December 1, 2004 among LEVEL 3 COMMUNICATIONS, INC., LEVEL 3 COMMUNICATIONS FINANCING INC., the LENDERS party hereto, and MERRILL LYNCH CAPITAL CORPORATION, as Administrative Agent and Collateral Agent.

WHEREAS the Borrower has requested that the Lenders make Loans (such term and each other capitalized term used but not otherwise defined herein having the meaning given it in Article I) to the Borrower in an aggregate principal amount of \$730,000,000, the proceeds of which will (a) (i) be advanced by the Borrower to Level 3 LLC against delivery of the Loan Proceeds Note, (ii) be used by Level 3 LLC to repay a portion of the Indebtedness owed by it to Level 3 under the Parent Intercompany Note and (iii) be used by Level 3 to repurchase a portion of the Existing Notes maturing in 2008 pursuant to the Debt Tender Offer, (b) be used to pay fees and expenses in connection with the Loans and the Debt Tender Offer and (iii) be used for general corporate purposes; and

WHEREAS the Lenders have agreed to make such Loans to the Borrower on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

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

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

“Accreted Value” of any Indebtedness issued at a price less than the principal amount at stated maturity, means, as of any date of determination, an amount equal to the sum of (a) the issue price of such Indebtedness as determined in accordance with Section 1273 of the Code or any successor provisions plus (b) the aggregate of the portions of the original issue discount (the excess of the amounts considered as part of the “stated redemption price at maturity” of such Indebtedness within the meaning of Section 1273(a)(2) of the Code or any successor provisions, whether denominated as principal or interest, over the issue price of such Indebtedness) that shall theretofore have accrued pursuant to Section 1272 of the Code (without regard to Section 1272(a)(7) of the Code) from the date of issue of such Indebtedness to the date of determination, minus all amounts theretofore paid in respect of such Indebtedness, which amounts are considered as part of the “stated redemption price at maturity” of such Indebtedness

within the meaning of Section 1273(a)(2) of the Code or any successor provisions (whether such amounts paid were denominated principal or interest).

“ Acquired Debt ” means, with respect to any specified Person, (i) Indebtedness of any other Person existing at the time such Person merges with or into or consolidates with or becomes a Subsidiary of such specified Person and (ii) Indebtedness secured by a Lien encumbering any Property acquired by such specified Person, which Indebtedness was not incurred in anticipation of, and was outstanding prior to, such merger, consolidation or acquisition.

“ Additional Tranche ” means any tranche of commitments established or loans made under this Agreement pursuant to Section 9.02(d).

“ Administrative Agent ” means Merrill Lynch Capital Corporation, in its capacity as administrative agent for the Lenders hereunder.

“ Administrative Questionnaire ” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“ Affiliate ” of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing. For purposes of Sections 6.07 and 6.09 and the definition of “Telecommunications/IS Assets” only, “Affiliate” shall also mean any beneficial owner of shares representing 10% or more of the total voting power of the Voting Stock (on a fully diluted basis) of Level 3 or of rights or warrants to purchase such Voting Stock (whether or not currently exercisable) and any Person who would be an Affiliate of any such beneficial owner pursuant to the first sentence hereof.

“ Affiliate Transaction ” has the meaning assigned to such term in Section 6.09.

“ Agent ” means Merrill Lynch Capital Corporation, in its capacities as Administrative Agent and Collateral Agent.

“ Alternate Base Rate ” means, for any day, a rate per annum equal to the greater of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1%. Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective from and including the effective date of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

“ Annual Perfection Certificate ” has the meaning assigned to such term in the Collateral Agreement.

“Applicable Margin” means 7.00% per annum; provided that if the Enhanced Collateral Date shall not have occurred by the first anniversary of the Effective Date, then the Applicable Margin from and after such first anniversary shall be 10.00% per annum until the Enhanced Collateral Date shall have occurred.

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

“Asset Disposition” means any transfer, conveyance, sale, lease, issuance or other disposition by Level 3 or any Restricted Subsidiary in one or more related transactions (including a consolidation or merger or other sale of any such Restricted Subsidiary with, into or to another Person in a transaction in which such Restricted Subsidiary ceases to be a Restricted Subsidiary, but excluding a disposition by a Restricted Subsidiary to Level 3 or a Restricted Subsidiary or by Level 3 to a Restricted Subsidiary) of (i) shares of Capital Stock or other ownership interests of a Restricted Subsidiary (other than as permitted by clause (v), (vi), (vii) or (ix) of Section 6.08), (ii) substantially all of the assets of Level 3 or any Restricted Subsidiary representing a division or line of business or (iii) other Property of Level 3 or any Restricted Subsidiary outside of the ordinary course of business (excluding any transfer, conveyance, sale, lease or other disposition of equipment that is obsolete or no longer used by or useful to Level 3; provided, however, that Level 3 has delivered to the Administrative Agent an Officers’ Certificate stating that such criteria are satisfied); provided in each case that the aggregate consideration for such transfer, conveyance, sale, lease or other disposition is equal to \$5,000,000 or more in any 12-month period. The following shall not be Asset Dispositions: (i) Permitted Telecommunications Capital Asset Dispositions that comply with clause (i) of the first paragraph of Section 6.07, (ii) when used with respect to Level 3, any Asset Disposition permitted pursuant to Section 6.13 which constitutes a disposition of all or substantially all of the assets of Level 3 and the Restricted Subsidiaries taken as a whole, (iii) Receivables sales constituting Indebtedness under Qualified Receivables Facilities permitted to be Incurred pursuant to Section 6.01 or Section 6.02 and (iv) any disposition that constitutes a Permitted Investment or a Restricted Payment permitted by Section 6.03.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee in the form of Exhibit A or any other form approved by the Administrative Agent.

“Attributable Value” means, as to any particular lease under which any Person is at the time liable other than a Capital Lease Obligation, and at any date as of which the amount thereof is to be determined, the total net amount of rent required to be paid by such Person under such lease during the remaining term thereof (including any period for which such lease has been extended) as determined in accordance with GAAP, discounted from the last date of such remaining term to the date of determination at a rate per annum equal to the discount rate which would be applicable to a Capital Lease

Obligation with like term in accordance with GAAP. The net amount of rent required to be paid under any such lease for any such period shall be the aggregate amount of rent payable by the lessee with respect to such period after excluding amounts required to be paid on account of insurance, taxes, assessments, utility, operating and labor costs and similar charges. In the case of any lease which is terminable by the lessee upon the payment of penalty, such net amount shall also include the lesser of the amount of such penalty (in which case no rent shall be considered as required to be paid under such lease subsequent to the first date upon which it may be so terminated) or the rent which would otherwise be required to be paid if such lease is not so terminated. "Attributable Value" means, as to a Capital Lease Obligation, the principal amount thereof.

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

"Board of Directors" of any Person means the board of directors of such Person or the executive committee or similar body of such Person.

"Board Resolution" of any Person means a copy of a resolution certified by the Secretary or an Assistant Secretary of such Person to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Administrative Agent.

"Borrower" means Level 3 Financing, Inc., a Delaware corporation.

"Borrower Debt Ratio" means the ratio of (a) the aggregate consolidated principal amount (or, in the case of Indebtedness issued at a discount, the then-Accreted Value) of Indebtedness of the Borrower and the Borrower Restricted Subsidiaries (other than Indebtedness owed to Level 3 or a Sister Restricted Subsidiary that is subordinated to the Loan Proceeds Note (if Level 3 LLC is the obligor of such Indebtedness) or the Loan Proceeds Note Guarantee or the Guarantee of the Obligations by the obligor on such Indebtedness), on a consolidated basis, outstanding as of the most recent available quarterly or annual balance sheet, after giving pro forma effect to the proposed Incurrence of Indebtedness giving rise to such calculation and any other Indebtedness Incurred or repaid since such balance sheet date and the receipt and application of the net proceeds thereof, to (b) the sum of, without duplication, (x) Consolidated Cash Flow Available for Fixed Charges of the Borrower and the Borrower Restricted Subsidiaries for the four full fiscal quarters next preceding such proposed Incurrence of Indebtedness for which consolidated financial statements are available and (y) Consolidated Cash Flow Available for Fixed Charges of Level 3 and the Sister Restricted Subsidiaries to the extent attributable to Sister Restricted Subsidiaries that are Guarantors for such four full fiscal quarters.

"Borrower Restricted Subsidiary Supplemental Indenture" means any supplemental indenture to the 10.75% Notes in substantially the form of the Level 3 LLC 10.75% Notes Supplement Indenture among the Borrower, Level 3, any Borrower Restricted Subsidiary (other than Level 3 LLC) and the Trustee under the Indenture governing the 10.75% Notes.

“Borrower Restricted Subsidiaries” means the Subsidiaries of the Borrower that are Restricted Subsidiaries.

“Borrowing” means Loans made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

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

“Capital Lease Obligations” of any Person means the obligation of such Person to pay rent or other payment amount under any lease of (or other Indebtedness arrangement conveying the right to use) Property of such Person which obligation is required to be classified and accounted for as a capital lease or a liability on a balance sheet of such Person under GAAP (a “Capital Lease”). The stated maturity of such obligation shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty. The principal amount of such obligation shall be the capitalized amount thereof that would appear on the face of a balance sheet of such Person in accordance with GAAP.

“Capital Stock” of any Person means any and all shares, interests, participations or other equivalents (however designated) of corporate stock or other equity participations, including partnership interests, whether general or limited, of such Person and any rights (other than debt securities convertible or exchangeable into an equity interest), warrants or options to acquire an equity interest in such Person.

“Cash Equivalents” means (i) Government Securities maturing, or subject to tender at the option of the holder thereof, within two years after the date of acquisition thereof, (ii) time deposits and certificates of deposit of any commercial bank organized in the United States having capital and surplus in excess of \$500,000,000 or a commercial bank organized under the law of any other country that is a member of the OECD having total assets in excess of \$500,000,000 (or its foreign currency equivalent at the time) with a maturity date not more than one year from the date of acquisition, (iii) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (i) above entered into with (x) any bank meeting the qualifications specified in clause (ii) above or (y) any primary government securities dealer reporting to the Market Reports Division of the Federal Reserve Bank of New York, (iv) direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing, or subject to tender at the option of the holder thereof, within 90 days after the date of acquisition thereof; provided, however, that at the time of acquisition, the long-term debt of such state, political subdivision or public instrumentality has a rating of A (or higher) from S&P or A-2 (or higher) from Moody’s (or, if at any time neither S&P nor Moody’s shall

be rating such obligations, then an equivalent rating from such other nationally recognized rating service acceptable to the Administrative Agent), (v) commercial paper issued by the parent corporation of any commercial bank organized in the United States having capital and surplus in excess of \$500,000,000 or a commercial bank organized under the laws of any other country that is a member of the OECD having total assets in excess of \$500,000,000 (or its foreign currency equivalent at the time), and commercial paper issued by others having one of the two highest ratings obtainable from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, then from such other nationally recognized rating service acceptable to the Administrative Agent) and in each case maturing within one year after the date of acquisition, (vi) overnight bank deposits and bankers' acceptances at any commercial bank organized in the United States having capital and surplus in excess of \$500,000,000 or a commercial bank organized under the laws of any other country that is a member of the OECD having total assets in excess of \$500,000,000 (or its foreign currency equivalent at the time), (vii) deposits available for withdrawal on demand with a commercial bank organized in the United States having capital and surplus in excess of \$500,000,000 or a commercial bank organized under the laws of any other country that is a member of the OECD having total assets in excess of \$500,000,000 (or its foreign currency equivalent at the time) and (viii) investments in money market funds substantially all of whose assets comprise securities of the types described in clauses (i) through (vii).

“Change of Control” means the occurrence of any of the following events:

(a) if any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act or any successor provisions to either of the foregoing), including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act, other than any one or more of the Permitted Holders, becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act, except that a person will be deemed to have “beneficial ownership” of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 35% or more of the total voting power of the Voting Stock of Level 3; *provided, however*, that the Permitted Holders are the “beneficial owners” (as defined in Rule 13d-3 under the Exchange Act, except that a person will be deemed to have “beneficial ownership” of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, in the aggregate of a lesser percentage of the total voting power of the Voting Stock of Level 3 than such other person or group (for purposes of this clause (i), such person or group shall be deemed to beneficially own any Voting Stock of a corporation (the “specified corporation”) held by any other corporation (the “parent corporation”) so long as such person or group beneficially owns, directly or indirectly, in the aggregate a majority of the total voting power of the Voting Stock of such parent corporation); or

(b) the sale, transfer, assignment, lease, conveyance or other disposition, directly or indirectly, of all or substantially all the assets of (i) Level 3 and the Restricted Subsidiaries, or (ii) the Borrower and the Borrower Restricted Subsidiaries, in each case considered as a whole (other than a disposition of such assets as an entirety or virtually as an entirety to a Wholly Owned Restricted

Subsidiary or Level 3 or the Borrower, respectively, or one or more Permitted Holders) shall have occurred; or

(c) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of Level 3 (together with any new directors whose election or appointment by such board or whose nomination for election by the shareholders of Level 3 was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of Level 3 then in office; or

(d) the shareholders of Level 3 or the Borrower shall have approved any plan of liquidation or dissolution of Level 3 or the Borrower, respectively.

“Change of Control Triggering Event” means the occurrence of both a Change of Control and a Rating Decline with respect to the Loans within 30 days of each other.

“Change in Law” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender (or, for purposes of Section 2.08(c), by any lending office of such Lender or by such Lender’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

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

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

“Collateral” means any and all “Collateral”, as defined in any applicable Security Document. It is understood that the Collateral shall not include Excluded Collateral (as defined in the Collateral Agreement).

“Collateral Agent” means Merrill Lynch Capital Corporation in its capacity as collateral agent for the Secured Parties hereunder.

“Collateral Agreement” means the Collateral Agreement substantially in the form of Exhibit C-2.

“Collateral Permit Condition” means, with respect to Level 3 LLC or any Material LLC Subsidiary, that Level 3 LLC or such Material LLC Subsidiary, as the case may be, has obtained all material (as determined in good faith by the General Counsel of

Level 3) authorizations and consents of Federal and State Governmental Authorities required in order for it to become a Grantor under the Collateral Agreement and to satisfy the Guarantee and Collateral Requirement insofar as the authorizations and consents so permit.

“Commitment” means, with respect to each Lender, the commitment of such Lender to make Loans on the Effective Date, expressed as an amount representing the maximum principal amount of the Loans to be made by such Lender hereunder. The amount of each Lender’s Commitment is set forth on Schedule 2.01, as it may be modified under Section 9.02. The aggregate amount of the Lenders’ Commitments is \$730,000,000, subject to any increase under Section 9.02.

“Common Stock” of any Person means Capital Stock of such Person that does not rank prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to shares of Capital Stock of any other class of such Person.

“Communications Act” means the Communications Act of 1934 and any similar or successor Federal statute and the rules, regulations and published policies of the FCC thereunder, all as amended and as the same may be in effect from time to time.

“Comparable Treasury Issue” means the United States Treasury security selected by an Independent Investment Banker as having a maturity comparable to the remaining period prior to the second anniversary of the Effective Date that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining period prior to the second anniversary of the Effective Date. “Independent Investment Banker” means one of the Reference Treasury Dealers appointed by the Administrative Agent after consultation with the Borrower.

“Comparable Treasury Price” means, with respect to any repayment date, (a) the average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) on the third business day preceding such repayment date, as set forth in the most recently published statistical release designated “H.15(519)” (or any successor release) published by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States treasury securities adjusted to constant maturity under the caption “Treasury Constant Maturities”, or (b) if such release (or any successor release) is not published or does not contain such prices on such business day, the average of the Reference Treasury Dealer Quotations for such repayment date.

“Consolidated Capital Ratio” means as of the date of determination the ratio of (i) the aggregate amount of Indebtedness of Level 3 and its Restricted Subsidiaries on a consolidated basis as at the date of determination to (ii) the sum of (a) \$2,024,000,000, (b) the aggregate net proceeds to Level 3 from the issuance or sale of any Capital Stock (including Preferred Stock) of Level 3 other than Disqualified Stock subsequent to the Measurement Date, (c) the aggregate net proceeds from the issuance or

sale of Indebtedness of Level 3 or any Restricted Subsidiary subsequent to the Measurement Date convertible or exchangeable into Capital Stock of Level 3 other than Disqualified Stock, in each case upon conversion or exchange thereof into Capital Stock of Level 3 subsequent to the Measurement Date and (d) the after-tax gain on the sale, subsequent to the Measurement Date, of Special Assets to the extent such Special Assets have been sold for cash, Cash Equivalents, Telecommunications/IS Assets or the assumption of Indebtedness of Level 3 or any Restricted Subsidiary (other than Indebtedness that is subordinated to the Loans or any applicable Loan Proceeds Note Guarantee or any Guarantee of the Obligations) and release of Level 3 and all Restricted Subsidiaries from all liability on the Indebtedness assumed; provided, however, that, for purposes of calculation of the Consolidated Capital Ratio, the net proceeds from the issuance or sale of Capital Stock or Indebtedness described in clause (b) or (c) above shall not be included to the extent (x) such proceeds have been utilized to make a Permitted Investment under clause (i) of the definition thereof or a Restricted Payment or (y) such Capital Stock or Indebtedness shall have been issued or sold to Level 3, a Subsidiary of Level 3 or an employee stock ownership plan or trust established by Level 3 or any such Subsidiary for the benefit of their employees.

“Consolidated Cash Flow Available for Fixed Charges” for Level 3 and its Restricted Subsidiaries or for the Borrower and the Borrower Restricted Subsidiaries for any period means the Consolidated Net Income of Level 3 and its Restricted Subsidiaries or the Borrower and the Borrower Restricted Subsidiaries, as applicable, for such period increased by the sum of, to the extent reducing such Consolidated Net Income for such period, (i) Consolidated Interest Expense of Level 3 and its Restricted Subsidiaries or the Borrower and the Borrower Restricted Subsidiaries, as applicable, for such period, plus (ii) Consolidated Income Tax Expense of Level 3 and its Restricted Subsidiaries or the Borrower and the Borrower Restricted Subsidiaries, as applicable, for such period, plus (iii) consolidated depreciation and amortization expense and any other non-cash items (other than any such non-cash item to the extent that it represents an accrual of or reserve for cash expenditures in any future period) for Level 3 and its Restricted Subsidiaries or for the Borrower and the Borrower Restricted Subsidiaries, as applicable; provided, however, that there shall be excluded therefrom the Consolidated Cash Flow Available for Fixed Charges (if positive) of any Restricted Subsidiary or Borrower Restricted Subsidiary, as applicable (calculated separately for such Restricted Subsidiary or Borrower Restricted Subsidiary in the same manner as provided above for Level 3 or the Borrower, as applicable) that is subject to a restriction which prevents the payment of dividends or the making of distributions to Level 3 or another Restricted Subsidiary or to the Borrower or another Borrower Restricted Subsidiary, as applicable, to the extent of such restrictions.

“Consolidated Income Tax Expense” for Level 3 and its Restricted Subsidiaries or for the Borrower and the Borrower Restricted Subsidiaries for any period means the aggregate amounts of the provisions for income taxes of Level 3 and its Restricted Subsidiaries or the Borrower and the Borrower Restricted Subsidiaries, as applicable, for such period calculated on a consolidated basis in accordance with GAAP.

“Consolidated Interest Expense” for Level 3 and its Restricted Subsidiaries or the Borrower and the Borrower Restricted Subsidiaries for any period means the interest expense included in a consolidated income statement (excluding interest income) of Level 3 and its Restricted Subsidiaries or the Borrower and the Borrower Restricted Subsidiaries, as applicable, for such period in accordance with GAAP, including without limitation or duplication (or, to the extent not so included, with the addition of), (i) the amortization of Indebtedness discounts and issuance costs, including commitment fees; (ii) any payments or fees with respect to letters of credit, bankers’ acceptances or similar facilities; (iii) net costs with respect to interest rate swap or similar agreements or foreign currency hedge, exchange or similar agreements (including fees); (iv) Preferred Stock Dividends (other than dividends paid in shares of Preferred Stock that is not Disqualified Stock) declared and paid or payable; (v) accrued Disqualified Stock Dividends, whether or not declared or paid; (vi) interest on Indebtedness guaranteed by Level 3 and its Restricted Subsidiaries or the Borrower and the Borrower Restricted Subsidiaries, as applicable; (vii) the portion of any Capital Lease Obligation or Sale and Leaseback Transaction paid during such period that is allocable to interest expense; (viii) interest Incurred in connection with investments in discontinued operations; and (ix) the cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than Level 3 or a Restricted Subsidiary or the Borrower or a Borrower Restricted Subsidiary, as applicable) in connection with Indebtedness Incurred by such plan or trust.

“Consolidated Net Income” for Level 3 and its Restricted Subsidiaries or the Borrower and the Borrower Restricted Subsidiaries for any period means the net income (or loss) of Level 3 and its Restricted Subsidiaries or the Borrower and the Borrower Restricted Subsidiaries, as applicable, for such period determined on a consolidated basis in accordance with GAAP; provided, however, that there shall be excluded therefrom (a) for purposes of Section 6.03 only, the net income (or loss) of any Person acquired by Level 3 or a Restricted Subsidiary or the Borrower or a Borrower Restricted Subsidiary, as applicable, in a pooling-of-interests transaction for any period prior to the date of such transaction, (b) the net income (or loss) of any Person that is not a Restricted Subsidiary or a Borrower Restricted Subsidiary, as applicable, except to the extent of the amount of dividends or other distributions actually paid to Level 3 or a Restricted Subsidiary or to the Borrower or a Borrower Restricted Subsidiary, as applicable, by such Person during such period (except, for purposes of Section 6.03 only, to the extent such dividends or distributions have been subtracted from the calculation of the amount of Investments to support the actual making of Investments), (c) gains or losses realized upon the sale or other disposition of any Property of Level 3 or its Restricted Subsidiaries or the Borrower or the Borrower Restricted Subsidiaries, as applicable, that is not sold or disposed of in the ordinary course of business (it being understood that Permitted Telecommunications Capital Asset Dispositions shall be considered to be in the ordinary course of business), (d) gains or losses realized upon the sale or other disposition of any Special Assets, (e) all extraordinary gains and extraordinary losses, determined in accordance with GAAP, (f) the cumulative effect of changes in accounting principles, (g) non-cash gains or losses resulting from fluctuations in currency exchange rates, (h) any non-cash expense related to the issuance to

employees or directors of Level 3 or any Restricted Subsidiary or the Borrower or any Borrower Restricted Subsidiary, as applicable, of (1) options to purchase Capital Stock of Level 3 or such Restricted Subsidiary or the Borrower or such Borrower Restricted Subsidiary, as applicable, or (2) other compensatory rights; provided, in either case, that such options or rights, by their terms can be redeemed at the option of the holder of such option or right only for Capital Stock and (i) with respect to a Restricted Subsidiary or a Borrower Restricted Subsidiary, as applicable, that is not a Wholly Owned Subsidiary any aggregate net income (or loss) in excess of Level 3's or any Restricted Subsidiary's or the Borrower's or any Borrower Restricted Subsidiary's, as applicable, pro rata share of the net income (or loss) of such Restricted Subsidiary or Borrower Restricted Subsidiary, as applicable, that is not a Wholly Owned Subsidiary; provided further that there shall further be excluded therefrom the net income (but not net loss) of any Restricted Subsidiary or any Borrower Restricted Subsidiary, as applicable, that is subject to a restriction which prevents the payment of dividends or the making of distributions to Level 3 or another Restricted Subsidiary or to the Borrower or another Borrower Restricted Subsidiary, as applicable, to the extent of such restriction.

“Consolidated Net Worth” of any Person means the stockholders' equity of such Person, determined on a consolidated basis in accordance with GAAP, less amounts attributable to Disqualified Stock of such Person.

“Consolidated Tangible Assets” of any Person means the total amount of assets (less applicable reserves and other properly deductible items) which under GAAP would be included on a consolidated balance sheet of such Person and its Subsidiaries after deducting therefrom all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangibles, which in each case under GAAP would be included on such consolidated balance sheet.

“Credit Facilities” means one or more credit agreements, loan agreements or similar facilities (including any Additional Tranche), secured or unsecured, providing for revolving credit loans, term loans and/or letters of credit, including any Qualified Receivable Facility, entered into from time to time by Level 3 and its Restricted Subsidiaries, or Purchase Money Debt, or Indebtedness Incurred pursuant to Capital Lease Obligations, Sale and Leaseback Transactions, or senior secured note issuances, and including any related notes, Guarantees, collateral documents, instruments and agreements executed in connection therewith, as the same may be amended, supplemented, modified, restated or replaced from time to time.

“Debt Tender Offer” means the tender offer for Existing Notes maturing in 2008 contemplated by the Offer to Purchase of Level 3 dated October 29, 2004, as amended or supplemented prior to the Effective Date.

“Default” means any event, act or condition which constitutes an Event of Default or which upon the notice specified in Article VII, the lapse of time specified in Article VII or both would, unless cured or waived, become an Event of Default.

“Designated Grantor Subsidiary” means (a) BTE Equipment, LLC, (b) Level 3 Enhanced Services, LLC, (c) Level 3 International, Inc., (d) Eldorado Marketing, Inc., (e) Software Spectrum, Inc., (f) (i)Structure LLC, (g) each other Material Subsidiary (other than the Borrower, Level 3 LLC or any Material LLC Subsidiary), (h) each Subsidiary of Level 3 that directly or indirectly owns any Equity Interest in any Designated Grantor Subsidiary, (i) at such time as it shall have satisfied the Collateral Permit Condition, Level 3 LLC, and (j) at such time as it shall have satisfied the Collateral Permit Condition, each Material LLC Subsidiary; provided, that on the Enhanced Collateral Date, the Subsidiaries referred to in clauses (d), (e) and (f) shall cease to be Designated Subsidiaries. No Foreign Subsidiary shall at any time constitute a Designated Grantor Subsidiary.

“Designated Guarantor Subsidiary” means (a) BTE Equipment, LLC, (b) Level 3 Enhanced Services, LLC, (c) Level 3 International, Inc., (d) Eldorado Marketing, Inc., (e) Software Spectrum, Inc., (f) (i)Structure LLC, (g) each other Material Subsidiary (other than the Borrower, Level 3 LLC or any Material LLC Subsidiary), (h) each Subsidiary of Level 3 that directly or indirectly owns any Equity Interest in any Designated Guarantor Subsidiary, (i) at such time as it shall have satisfied the Guarantee Permit Condition, Level 3 LLC, and (j) at such time as it shall have satisfied the Guarantee Permit Condition, each Material LLC Subsidiary; provided, that on the Enhanced Collateral Date, the Subsidiaries referred to in clauses (d), (e) and (f) shall cease to be Designated Guarantor Subsidiaries. No Foreign Subsidiary shall at any time constitute a Designated Guarantor Subsidiary.

“Designation” and “Designation Amount” have the respective meanings specified in Section 6.10.

“Disclosed Matters” means the actions, suits and proceedings and the environmental matters disclosed in Level 3’s reports and filings under the Exchange Act filed since January 1, 2004 and prior to December 1, 2004 and available on the Securities and Exchange Commission’s website on the internet at www.sec.gov prior to December 1, 2004.

“Disqualified Stock” of any Person means any Capital Stock of such Person which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the Maturity Date; provided, however, that any Preferred Stock which would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require Level 3 or the Borrower, respectively, to repurchase or redeem such Preferred Stock upon the occurrence of a change of control occurring prior to the Maturity Date shall not constitute Disqualified Stock if the change of control provisions applicable to such Preferred Stock are no more favorable to the holders of such Preferred Stock than the provisions applicable to the Loan as provided for in the definition of “Change of Control Triggering Event) and such Preferred Stock specifically provides that Level 3 or the Borrower, respectively, will not repurchase or redeem any such stock pursuant to such

provisions prior to the Borrower's repayment of the Loan as required by Section 2.04(f).

"Disqualified Stock Dividends" means all dividends with respect to Disqualified Stock of Level 3 held by Persons other than a Wholly Owned Restricted Subsidiary. The amount of any such dividend shall be equal to the quotient of such dividend divided by the difference between one and the maximum statutory federal income tax rate (expressed as a decimal number between 1 and 0) applicable to Level 3 for the period during which such dividends were paid.

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

"Domestic Subsidiary" shall mean any Subsidiary that is not a Foreign Subsidiary.

"Domestic Restricted Subsidiary" means any Restricted Subsidiary other than (a) a Foreign Restricted Subsidiary or (b) a Subsidiary of a Foreign Restricted Subsidiary.

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

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

"Effective Date Purchase Money Debt" means Purchase Money Debt outstanding on the Effective Date; provided, however, that the amount of such Purchase Money Debt when Incurred did not exceed 100% of the cost of the construction, installation, acquisition, lease, development or improvement of the applicable Telecommunications/IS Assets.

"Effective Date Rating" means B3 in the case of Moody's and CCC in the case of S&P, which are the respective ratings assigned to the Loans by the Rating Agencies on the Effective Date.

"Eligible Transferee" shall mean and include (i) a commercial bank, (ii) an insurance company, a finance company, a financial institution or any fund that invests in loans in the ordinary course of business and has total assets in excess of \$5,000,000 and (iii) any other financial institution reasonably satisfactory to Level 3 and the Administrative Agent.

"Enhanced Collateral Date" means the date on which (a) the Guarantee Permit Condition and the Collateral Permit Condition shall have been satisfied by Level 3 LLC and each Material Subsidiary that is a Subsidiary of Level 3 LLC, (b) the Guarantee and Collateral Requirement shall be satisfied (including with respect to Level 3 LLC and each Material Subsidiary that is a Subsidiary of Level 3 LLC) and (c) the Administrative Agent shall have received a certificate signed by an authorized officer of Level 3 confirming the satisfaction of the conditions set forth in the preceding clauses (a) and (b).

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

“ Environmental Liability ” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of Level 3 or any Subsidiary of Level 3 directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

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

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

“ ERISA Affiliate ” means any trade or business (whether or not incorporated) that together with Level 3 is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ ERISA Event ” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by Level 3 or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by Level 3 or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by Level 3 or any of its ERISA Affiliates of any Withdrawal Liability; or (g) the receipt by Level 3 or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from Level 3 or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“ Eurocurrency Reserve Requirements ” means the aggregate of the maximum reserve percentages (including any marginal, special, emergency or

supplemental reserves) expressed as a decimal established by the Board and any other banking authority to which United States commercial banks are subject and applicable to “Eurocurrency Liabilities”, as such term is defined in Regulation D of the Board, or any similar category of assets or liabilities relating to eurocurrency fundings. Eurocurrency Reserve Requirements shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

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

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

“Exchange Act” means the Securities Exchange Act of 1934, as amended (or any successor act), and the rules and regulations thereunder (or respective successors thereto).

“Excess Proceeds” has the meaning specified in Section 6.07(c).

“Excluded Taxes” means, with respect to the Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction described in clause (a) above and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.12(b)), any withholding tax that (i) is in effect and would apply to amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.10(a) or (ii) is attributable to such Foreign Lender’s failure to comply with Section 2.10(e).

“Executive Officer” means the chief executive officer, the president, the chief financial officer, the secretary or the treasurer of Level 3.

“Existing Notes” means Level 3’s 2 ⁷/₈ % Convertible Senior Notes due 2010 in an aggregate principal amount not to exceed \$373,750,000, 11% Senior Notes due 2008 in an aggregate principal amount not to exceed \$800,000,000, 11¼% Senior Notes due 2010 in an aggregate principal amount not to exceed \$250,000,000, 12 ⁷/₈ % Senior Discount Notes due 2010 in an aggregate principal amount at maturity not to exceed \$675,000,000, 10¾% Senior Notes due 2008 in an aggregate principal amount not to exceed €500,000,000, 11¼% Senior Notes due 2010 in an aggregate principal amount not to exceed €300,000,000, 9 ¹/₈ % Senior Notes due 2008 in an aggregate principal

amount not to exceed \$2,000,000,000, 10½% Senior Discount Notes due 2008 in an aggregate principal amount at maturity not to exceed \$833,815,000, 6% Convertible Subordinated Notes due 2009 in an aggregate principal amount not to exceed \$823,000,000 and 6% Convertible Subordinated Notes due 2010 in an aggregate principal amount not to exceed \$862,500,000 and Level 3 Financing, Inc.'s 10.75% Senior Notes due 2011 in an aggregate principal amount not to exceed \$500,000,000.

“Fair Market Value” means, with respect to any Property, the price that could be negotiated in an arm’s-length free market transaction, for cash, between a willing seller and a willing buyer, neither of whom is under pressure or compulsion to complete the transaction. Unless otherwise specified herein, Fair Market Value shall be determined by the Board of Directors of Level 3 acting in good faith and shall be evidenced by a Board Resolution of Level 3 (except in the case of the last paragraph under Section 6.07 delivered to the Administrative Agent).

“FCC” means the United States Federal Communications Commission.

“Federal Bankruptcy Code” means the Bankruptcy Act of Title 11 of the United States Code, as amended from time to time.

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

“Financial Officer” means the chief financial officer, principal accounting officer, vice president-finance, assistant treasurer, treasurer or controller of Level 3.

“5.25% Notes” means Level 3’s 5.25% Convertible Senior Notes due 2011 to be issued pursuant to the 5.25% Notes Indenture.

“5.25% Parent Indenture” means the indenture to be dated as of December 2, 2004 between Level 3 and Bank of New York, as trustee, as amended or supplemented from time to time in accordance therewith relating to Level 3’s 5.25% Convertible Senior Notes due 2011.

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

“Foreign Restricted Subsidiary” means any Restricted Subsidiary that is not organized under the laws of the United States of America or any State thereof or the District of Columbia.

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

“GAAP” has the meaning ascribed to such term in Section 1.03.

“Government Securities” means direct obligations of, or obligations fully and unconditionally guaranteed or insured by, the United States of America or any agency or instrumentality thereof for the payment of which obligations or guarantee the full faith and credit of the United States is pledged and which are not callable or redeemable at the issuer’s option (unless, for purposes of the definition of “Cash Equivalents” only, the obligations are redeemable or callable at a price not less than the purchase price paid by Level 3 or the applicable Restricted Subsidiary, together with all accrued and unpaid interest (if any) on such Government Securities).

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Grantor” means (1) Level 3 and (2) any other Person that becomes a Grantor pursuant to the terms of the Collateral Agreement.

“Guarantee” by any Person means any obligation, direct or indirect, contingent or otherwise, of such Person guaranteeing, or having the economic effect of guaranteeing, any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, including any such obligations arising by virtue of partnership arrangements or by agreements to keep-well, (ii) to purchase Property or services or to take-or-pay for the purpose of assuring the holder of such Indebtedness of the payment of such Indebtedness, (iii) to maintain working capital, equity capital or other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (iv) entered into for the purpose of assuring in any other manner the obligee against loss in respect thereof, in whole or in part (and “Guaranteed”, “Guaranteeing” and “Guarantor” shall have meanings correlative to the foregoing); provided, however, that the Guarantee by any Person shall not include endorsements by such Person for collection or deposit, in either case, in the ordinary course of business.

“Guarantee Agreement” means the Guarantee Agreement substantially in the form of Exhibit C-1.

“Guarantee and Collateral Permit Condition” means, with respect to Level 3 LLC or any Material LLC Subsidiary, that Level 3 LLC or such Material LLC

Subsidiary, as the case may be, has obtained all material (as determined in good faith by the General Counsel of Level 3) authorizations and consents of Federal and State Governmental Authorities required in order for it to become a Guarantor and a Grantor under the Guarantee Agreement and the Collateral Agreement and to satisfy the Guarantee and Collateral Requirement insofar as the Guarantee and Collateral Requirement applies to it.

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

(a) the Administrative Agent shall have received from Level 3 and each Designated Guarantor Subsidiary either (i) a counterpart of the Guarantee Agreement duly executed and delivered on behalf of such Person or (ii) in the case of any Person that becomes a Designated Guarantor Subsidiary after the Effective Date, a supplement to the Guarantee Agreement in the form specified therein or other form acceptable to the Administrative Agent, duly executed and delivered on behalf of such Designated Guarantor Subsidiary;

(b) the Administrative Agent shall have received from Level 3, the Borrower and each Designated Grantor Subsidiary either (i) a counterpart of the Collateral Agreement duly executed and delivered on behalf of such Person or (ii) in the case of any Person that becomes a Designated Grantor Subsidiary after the Effective Date, a supplement to the Collateral Agreement in the form specified therein or other form acceptable to the Administrative Agent, duly executed and delivered on behalf of such Designated Grantor Subsidiary;

(c) the Administrative Agent shall have received from Level 3, the Borrower, each Designated Guarantor Subsidiary and each Designated Grantor Subsidiary either (i) a counterpart of the Indemnity, Subrogation and Contribution Agreement duly executed and delivered on behalf of such Person or (ii) in the case of any Person that becomes a Designated Grantor Subsidiary or a Designated Guarantor Subsidiary after the Effective Date, a supplement to the Indemnity, Subrogation and Contribution Agreement in the form specified therein or other form acceptable to the Administrative Agent, duly executed and delivered on behalf of such Designated Guarantor Subsidiary or such Designated Grantor Subsidiary, as applicable unless such Person has previously duly executed and delivered such supplement to the Collateral Agent;

(d) all Equity Interests of Material Subsidiaries directly owned by or on behalf of Level 3, the Borrower or any Designated Grantor Subsidiary (other than Equity Interests released from the Lien of the Collateral Agreement as provided in Section 6.07, 6.08, 6.10 or 9.14) shall have been pledged pursuant to the Collateral Agreement and, if such pledged Equity Interests are in certificated form, the Collateral Agent shall have received the certificates representing such pledged Equity Interests, together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank (provided that none of the outstanding Equity Interests of any Foreign Subsidiary will be required to be

pledged other than 65% of the outstanding voting Equity Interests of Level 3 Communications Canada Co.);

(e) the Loan Proceeds Note, the Offering Proceeds Note and the Parent Intercompany Note shall have been pledged by the Borrower and Level 3, as applicable, pursuant to the Collateral Agreement, and the Collateral Agent shall have received such promissory notes together with undated instruments of transfer with respect thereto endorsed in blank; and

(f) all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Collateral Agent to be filed, registered or recorded to create the Liens intended to be created by the Collateral Agreement or to perfect such Liens to the extent and with the priority required by the Collateral Agreement shall have been filed, registered or recorded or delivered to the Collateral Agent for filing, registration or recording or arrangements therefor satisfactory to the Administrative Agent shall have been made; provided, however, that it is understood that no Grantor shall have any obligation to provide a real property description for central fixture filings or local fixture filings.

The foregoing provisions shall not require the creation or perfection of pledges of or security interests in particular assets if and for so long as, in the good faith judgment of the Collateral Agent, the cost of creating or perfecting such pledges or security interests in such assets shall be excessive in view of the benefits to be obtained by the Lenders therefrom. The Collateral Agent may grant extensions of time for the perfection of security interests in particular assets (including extensions beyond the Effective Date for the perfection of security interests in the assets of the Loan Parties on such date) where it determines that perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Security Documents. The Guarantee and Collateral Requirement shall be satisfied with respect to any Designated Guarantor Subsidiary or Designated Grantor Subsidiary that is referred to in clause (g) or (j) of the definition of either such term and that is not a Designated Guarantor Subsidiary or Designated Grantor Subsidiary on the date hereof within 45 days after the date on which it becomes a Designated Guarantor Subsidiary or Designated Grantor Subsidiary (or in the case of a Material Subsidiary, 45 days from the date on which financial statements are available that enable Level 3 to make the determination that such Person has become a Material Subsidiary), but will not be required to be satisfied prior to such time. Notwithstanding any provision of this definition, (i) no Foreign Subsidiary shall be required to become a party to the Guarantee Agreement, the Collateral Agreement or any other Security Document or to Guarantee or create Liens on its assets to secure the Obligations, and (ii) no Designated Guarantor Subsidiary or Designated Grantor Subsidiary that is referred to in clause (g) or (j) of the definition of either such term and that is not a Designated Guarantor Subsidiary or Designated Grantor Subsidiary on the date hereof shall be required to become a party to the Collateral Agreement or any other Security Document or

to Guarantee or create Liens on its assets to secure the Obligations if Level 3 shall deliver to the Administrative Agent a certificate of a legal officer of Level 3 stating that such actions would in the good faith belief of such officer violate any applicable law or regulation; provided, that the Borrower covenants and agrees that if it shall deliver a certificate pursuant to the foregoing clause (ii) with respect to any Designated Guarantor Subsidiary or Designated Grantor Subsidiary, it will promptly notify the Collateral Agent in the event that at any time thereafter the circumstances preventing such Designated Guarantor Subsidiary or Designated Grantor Subsidiary from becoming a party to the Collateral Agreement or any other Security Document or Guaranteeing or creating Liens on its assets to secure the Obligations shall no longer exist, and following the delivery of such notice the provisions of this definition will at all times apply as if no such certificate had been delivered with respect to such Designated Guarantor Subsidiary or Designated Grantor Subsidiary. No Loan Party shall be obligated to provide a lien on real property or interests in real property, other than fixtures.

“Guarantee Permit Condition” means, with respect to Level 3 LLC or any Material LLC Subsidiary, that Level 3 LLC or such Material LLC Subsidiary, as the case may be, has obtained all material (as determined in good faith by the General Counsel of Level 3) authorizations and consents of Federal and State Governmental Authorities required in order for it to become a Guarantor under the Guarantee Agreement and to satisfy the Guarantee and Collateral Requirement insofar as the authorizations and consents so permit.

“Guarantor” means (1) Level 3 and (2) any other Person that becomes a Guarantor pursuant to Section 6.01, Section 6.02, Section 6.13 or any other provisions of this Agreement.

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

“Hedging Agreement” means any interest rate protection agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

“Incur” means, with respect to any Indebtedness or other obligation of any Person, to create, issue, incur (by conversion, exchange or otherwise), assume, Guarantee or otherwise become liable in respect of such Indebtedness or other obligation including the recording, as required pursuant to GAAP or otherwise, of any such Indebtedness or other obligation on the balance sheet of such Person (and “Incurrence”, “Incurred” and “Incurring” shall have meanings correlative to the foregoing); provided, however, that a change in GAAP that results in an obligation of such Person that exists at such time becoming Indebtedness shall not be deemed an Incurrence of such Indebtedness and that neither the accrual of interest nor the accretion of original issue discount shall be deemed

an Incurrence of Indebtedness. Indebtedness otherwise incurred by a Person before it becomes a Subsidiary of Level 3 shall be deemed to have been Incurred at the time at which it becomes a Subsidiary.

“Indebtedness” means (without duplication), with respect to any Person, whether recourse is to all or a portion of the assets of such Person and whether or not contingent, (i) every obligation of such Person for money borrowed, (ii) every obligation of such Person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of Property, (iii) every reimbursement obligation of such Person with respect to letters of credit, bankers’ acceptances or similar facilities issued for the account of such Person, (iv) every obligation of such Person issued or assumed as the deferred purchase price of Property or services (including securities repurchase agreements but excluding trade accounts payable or accrued liabilities arising in the ordinary course of business), (v) every Capital Lease Obligation of such Person and all Attributable Value in respect of Sale and Leaseback Transactions entered into by such Person, (vi) all obligations to redeem or repurchase Disqualified Stock issued by such Person, (vii) the liquidation preference of any Preferred Stock (other than Disqualified Stock, which is covered by the preceding clause (vi)) issued by any Restricted Subsidiary of such Person, (viii) every obligation under Hedging Agreements of such Person, and (ix) every obligation of the type referred to in clauses (i) through (viii) of another Person and all dividends of another Person the payment of which, in either case, such Person has Guaranteed. The “amount” or “principal amount” of Indebtedness at any time of determination as used herein represented by (a) any Indebtedness issued at a price that is less than the principal amount at maturity thereof, shall be, except as otherwise set forth herein, the Accreted Value of such Indebtedness at such time or (b) in the case of any Receivables sale constituting Indebtedness, the amount of the unrecovered purchase price (that is, the amount paid for Receivables that has not been actually recovered from the collection of such Receivables) paid by the purchaser (other than Level 3 or a Wholly Owned Restricted Subsidiary of Level 3) thereof. The amount of Indebtedness represented by an obligation under a Hedging Agreement shall be equal to (x) zero if such obligation has been Incurred pursuant to clause (x) of paragraph (b) of Section 6.01 or clause (viii) of paragraph (b) of Section 6.02 or (y) the notional amount of such obligation if not Incurred pursuant to such clause. A Qualified Receivable Facility in the form of a Receivables purchase facility will be deemed to constitute Indebtedness.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Indemnity, Subrogation and Contribution Agreement” means the Indemnity, Subrogation and Contribution Agreement among Level 3, the Borrower, the Subsidiary Loan Parties and the Collateral Agent, substantially in the form of Exhibit C-3.

“Interest Payment Date” means (a) with respect to any Eurodollar Loan, the last day of each Interest Period applicable to such Eurodollar Loan and (b) in the case of any ABR Loan, March 31, June 30, September 30 and December 31 in each year.

“Interest Period” means, with respect to any Eurodollar Borrowing, (a) initially, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the third calendar month following the month in which the Effective Date occurs, and (b) thereafter, each period commencing on the last day of the immediately preceding Interest Period and ending on the numerically corresponding day in the calendar month that is three months thereafter; provided, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Invested Capital” means the sum of (a) \$500,000,000, (b) the aggregate net proceeds received by Level 3 from the issuance or sale of any Capital Stock, including Preferred Stock, of Level 3 but excluding Disqualified Stock, subsequent to the Measurement Date, and (c) the aggregate net proceeds from the issuance or sale of Indebtedness of Level 3 or any Restricted Subsidiary subsequent to the Measurement Date convertible or exchangeable into Capital Stock of Level 3 other than Disqualified Stock, in each case upon conversion or exchange thereof into Capital Stock of Level 3 subsequent to the Measurement Date; provided, however, that the net proceeds from the issuance or sale of Capital Stock or Indebtedness described in clause (b) or (c) shall be excluded from any computation of Invested Capital to the extent (i) utilized to make a Restricted Payment or (ii) such Capital Stock or Indebtedness shall have been issued or sold to Level 3, a Subsidiary of Level 3 or an employee stock ownership plan or trust established by Level 3 or any such Subsidiary for the benefit of their employees.

“Investment” by any Person means any direct or indirect loan, advance or other extension of credit or capital contribution (by means of transfers of cash or other Property to others or payments for Property or services for the account or use of others, or otherwise) to, purchase, redemption, retirement or acquisition of Capital Stock, bonds, notes, debentures or other securities or evidence of Indebtedness issued by, or Incurrence of, or payment on, a Guarantee of any obligation of, any other Person; provided, however, that Investments shall exclude commercially reasonable extensions of trade credit. The amount, as of any date of determination, of any Investment shall be the original cost of such Investment, plus the cost of all additions, as of such date, thereto and minus the amount, as of such date, of any portion of such Investment repaid to such Person in cash as a repayment of principal or a return of capital, as the case may be (except to the extent such repaid amount has been included in Consolidated Net Income of Level 3 and its Restricted Subsidiaries to support the actual making of Restricted Payments), but without any other adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment. In determining the

amount of any Investment involving a transfer of any Property other than cash, such Property shall be valued at its Fair Market Value at the time of such transfer.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P.

“Joint Venture” means a Person in which Level 3 or a Restricted Subsidiary holds not more than 50% of the shares of Voting Stock.

“knowledge” means, when used in reference to Level 3 or any of its Subsidiaries, the actual knowledge of any Executive Officer or any Financial Officer.

“Lenders” means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption or Section 9.02 (d), other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Level 3” means Level 3 Communications, Inc., a Delaware corporation.

“Level 3 LLC” means Level 3 Communications, LLC, a Delaware limited liability company.

“Level 3 LLC 10.75% Notes Supplement Indenture” means the Supplemental Indenture dated the Effective Date and substantially in the form of Exhibit F-1 hereto among the Borrower, Level 3, Level 3 LLC and the Trustee under the Indenture governing the 10.75% Notes.

“LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, the rate appearing on Bloomberg’s British Banker’s Association rate page (or on any successor or substitute page) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available on such page at such time for any reason, then the “LIBO Rate” with respect to such Eurodollar Borrowing for such Interest Period shall be determined by reference to any analogous page of another quotation service providing quotations comparable to those currently provided on such page for interest rates applicable to dollar deposits in the London interbank market, as determined by the Administrative Agent.

“License” means any license granted by the FCC or any foreign telecommunications regulatory body.

“Lien” means, with respect to any Property, any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, lien, charge, easement (other than any easement not materially impairing usefulness), encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such Property (including any Capital Lease Obligation, conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing and any Sale and Leaseback Transaction).

For purposes of this definition the sale, lease, conveyance or other transfer by Level 3 or any of its Subsidiaries of, including the grant of indefeasible rights of use or equivalent arrangements with respect to, dark or lit communications fiber capacity or communications conduit shall not constitute a Lien. For the sake of clarity, subordination and setoff rights do not constitute Liens.

“Loan Documents” means this Agreement, any promissory notes issued hereunder and the Security Documents.

“Loan Parties” means Level 3, the Borrower and the Subsidiary Loan Parties.

“Loan Proceeds Note” means the demand note dated the Effective Date in an initial principal amount of \$730,000,000 issued by Level 3 LLC to the Borrower to evidence the loan in such amount made by the Borrower to Level 3 LLC with the proceeds of the Loans made on the Effective Date.

“Loan Proceeds Note Collateral Agreement” means the Loan Proceeds Note Collateral Agreement dated as of December 1, 2004 among the Borrower, Level 3 LLC and the Collateral Agent.

“Loan Proceeds Note Guarantee” means an unconditional Guarantee of the due and punctual payment of the principal of and premium, if any, and interest on the Loan Proceeds Note, when and as due, whether on demand, at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, and all other monetary obligations of Level 3 LLC under the Loan Proceeds Note, in substantially the form set forth in Exhibit G hereto.

“Loan Proceeds Note Guarantor” means any Restricted Subsidiary that provides a Loan Proceeds Note Guarantee pursuant to Section 6.01, Section 6.02 or any other provision of this Agreement.

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

“Material Adverse Effect” means (a) a material adverse effect on the business, assets, operations or condition, financial or otherwise, of Level 3 and the Restricted Subsidiaries taken as a whole that materially increases the likelihood of a default in the payment of the Obligations when due or (b) a material adverse effect on the rights of or benefits available to the Lenders under any Loan Document.

“Material Indebtedness” means Indebtedness of any one or more of Level 3, the Borrower or any other Restricted Subsidiary having an outstanding principal amount of no less than \$25,000,000 or its foreign currency equivalency at the time individually or in the aggregate.

“Material LLC Subsidiary” means a Material Subsidiary that is a subsidiary of Level 3 LLC.

“Material Subsidiary” means, at any time, any Restricted Subsidiary engaged in the Telecommunications/IS Business (other than a Subsidiary (including, on the date hereof, Eldorado Marketing, Inc., Software Spectrum, Inc. and (i)Structure, LLC) engaged primarily in the business of (i) constructing, creating, developing or marketing software or (ii) computer outsourcing, data center management, computer systems integration, or reengineering of software for any purpose, as determined in good faith by the Board of Directors of Level 3) accounting, or holding assets that accounted, for more than 5% of Consolidated Cash Flow Available for Fixed Charges for the period of four fiscal quarters most recently ended or more than 5% of Consolidated Tangible Assets at the end of such period; *provided* that if at any time all Restricted Subsidiaries that are not Material Subsidiaries shall account for more than 10% of Consolidated Cash Flow Available for Fixed Charges for the period of four fiscal quarters most recently ended or more than 10% of Consolidated Tangible Assets at the end of such period, Level 3 shall designate sufficient Restricted Subsidiaries as “Material Subsidiaries” to eliminate such excess (or if Level 3 shall have failed to designate such Restricted Subsidiaries within 10 Business Days, Restricted Subsidiaries shall automatically be deemed designated as Material Subsidiaries in descending order based on the amounts of their contributions to Consolidated Tangible Assets until such excess shall have been eliminated), and the Restricted Subsidiaries so designated or deemed designated shall for all purposes of this Agreement constitute Material Subsidiaries. Notwithstanding the foregoing, Level 3 Holdings, Inc. and its Subsidiaries shall not constitute Material Subsidiaries unless they would otherwise satisfy the foregoing test and they are engaged to any material extent in the Telecommunications/IS Business, as determined in good faith by the Board of Directors of Level 3.

“Maturity Date” means December 1, 2011.

“Measurement Date” means April 28, 1998.

“Moody’s” means Moody’s Investors Service, Inc. or, if Moody’s Investors Service, Inc. shall cease rating debt securities having a maturity at original issuance of at least one year and such ratings business shall have been transferred to a successor Person, such successor Person; *provided, however*, that if Moody’s Investors Service Inc. ceases rating debt securities having a maturity at original issuance of at least one year and its ratings business with respect thereto shall not have been transferred to any successor Person, then “Moody’s” shall mean any other nationally recognized rating agency (other than S&P) that rates debt securities having a maturity at original issuance of at least one year and that shall have been designated by the Administrative Agent by a written notice given to the Borrower.

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

“Net Available Proceeds” from any Asset Disposition by any Person means cash or cash equivalents received (including amounts received by way of sale or discounting of any note, installment receivable or other receivable, but excluding any other consideration received in the form of assumption by the acquirer of Indebtedness or

other obligations relating to such Property) therefrom by such Person, net of (i) all legal, title and recording taxes, expenses and commissions and other fees and expenses (including appraisals, brokerage commissions and investment banking fees) Incurred and all federal, state, provincial, foreign and local taxes required to be accrued as a liability as a consequence of such Asset Disposition, (ii) all payments made by such Person or its Subsidiaries on any Indebtedness which is secured by such Property in accordance with the terms of any Lien upon or with respect to such Property or which must by the terms of such Lien, or in order to obtain a necessary consent to such Asset Disposition or by applicable law, be repaid out of the proceeds from such Asset Disposition, (iii) all distributions and other payments required to be made to minority interest holders in Subsidiaries or Joint Ventures of such Person as a result of such Asset Disposition and (iv) appropriate amounts to be provided by such Person or any Subsidiary thereof, as the case may be, as a reserve in accordance with GAAP against any liabilities associated with such Property and retained by such Person or any Subsidiary thereof, as the case may be, after such Asset Disposition, including liabilities under any indemnification obligations and severance and other employee termination costs associated with such Asset Disposition, in each case as determined by the Board of Directors of such Person, in its reasonable good faith judgment evidenced by a Board Resolution delivered to the Administrative Agent; provided, however, that any reduction in such reserve within twelve months following the consummation of such Asset Disposition will be, for all purposes of this Agreement, treated as a new Asset Disposition at the time of such reduction with Net Available Proceeds equal to the amount of such reduction; provided further, however, that, in the event that any consideration for a transaction (which would otherwise constitute Net Available Proceeds) is required to be held in escrow pending determination of whether a purchase price adjustment will be made, at such time as such portion of the consideration is released to such Person or its Restricted Subsidiary from escrow, such portion shall be treated for all purposes of this Agreement as a new Asset Disposition at the time of such release from escrow with Net Available Proceeds equal to the amount of such portion of consideration released from escrow.

“ Non-Telecommunications Subsidiary ” means any Borrower Restricted Subsidiary not engaged in any material respect in the Telecommunications/IS Business.

“ Obligations ” has the meaning assigned to such term in the Guarantee Agreement.

“ OECD ” means the Organization for Economic Cooperation and Development.

“ Offering Proceeds Note ” means the intercompany demand note dated October 1, 2003, in an initial principal amount equal to \$500,000,000, issued by Level 3 LLC to the Borrower.

“ Offering Proceeds Note Guarantee ” means an unconditional Guarantee of the due and punctual payment of the principal of and premium, if any, and interest on the Offering Proceeds Note, when and as due, whether on demand, at maturity, by

acceleration, upon one or more dates set for prepayment or otherwise, and all other monetary obligations of Level 3 LLC under the Offering Proceeds Note.

“Offering Proceeds Note Guarantor” means any Restricted Subsidiary that provides an Offering Proceeds Note Guarantee.

“Offering Proceeds Note Subordination Agreement” means the Offering Proceeds Note Subordination Agreement dated the Effective Date and substantially in the form of Exhibit F-2 hereto among the Borrower, Level 3, Level 3 LLC and the Administrative Agent.

“Officers’ Certificate” of any Person means a certificate signed by the Chairman of the Board of Directors of such Person, a Vice Chairman of the Board of Directors of such Person, the President or a Vice President, and by the Chief Financial Officer, the Chief Accounting Officer, the Treasurer, an Assistant Treasurer, the Controller, the Secretary or an Assistant Secretary of such Person and delivered to the Administrative Agent, which shall comply with this Agreement.

“Opinion of Counsel” means an opinion of counsel reasonably acceptable to the Administrative Agent (who may be counsel to Level 3 or the Borrower, including an employee of Level 3 or the Borrower).

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

“Parent Intercompany Note” means the intercompany demand note dated December 8, 1999, as amended and restated on October 1, 2003, in an initial principal amount equal to \$11,900,000,000, issued by Level 3 LLC to Level 3.

“Parent’s Indentures” means (a) the indenture dated as of April 28, 1998 between Level 3 and IBJ Schroder Bank & Trust Company, as trustee, as amended or supplemented from time to time in accordance therewith relating to the Level 3’s 9 ¹/₈ % Senior Notes due 2008, (b) the indenture dated as of February 29, 2000 between Level 3 and The Bank of New York, as trustee, as amended or supplemented from time to time in accordance therewith relating to the Level 3’s 11% Senior Notes due 2008, (c) the Euro Securities indenture dated as of February 29, 2000 between Level 3 and The Bank of New York, as trustee, as amended or supplemented from time to time in accordance therewith relating to the Level 3’s 10³/₄% Senior Euro Notes due 2008, (d) the indenture dated as of December 2, 1998 between Level 3 and IBJ Schroder Bank & Trust Company, as trustee, as amended or supplemented from time to time in accordance therewith relating to the Level 3’s 10¹/₂% Senior Discount Notes due 2008, (e) the indenture dated as of February 29, 2000 between Level 3 and The Bank of New York, as trustee, as amended or supplemented from time to time in accordance therewith relating to the Level 3’s 12 ⁷/₈ % Senior Discount Notes due 2010, (f) the indenture dated as of February 29, 2000 between Level 3 and The Bank of New York, as trustee, as amended

or supplemented from time to time in accordance therewith relating to the Level 3's 11¼% Senior Notes due 2010, (g) the Euro Securities indenture dated as of February 29, 2000 between Level 3 and The Bank of New York, as trustee, as amended or supplemented from time to time in accordance therewith relating to the Level 3's 11¼% Senior Euro Notes due 2010 and (h) the indenture dated as of October 24, 2003 between Level 3 and The Bank of New York, as trustee, as amended or supplemented from time to time in accordance therewith relating to the Level 3's 9% Senior Notes due 2013.

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

“ Permitted Holders ” means the members of Level 3's board of directors on the Measurement Date and their respective estates, spouses, ancestors, and lineal descendants, the legal representatives of any of the foregoing and the trustees of any bona fide trusts of which the foregoing are the sole beneficiaries or the grantors, or any Person of which the foregoing “beneficially owns” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) at least 66 2/3 % of the total voting power of the Voting Stock of such Person.

“ Permitted Hedging Agreement ” of any Person means any Hedging Agreement entered into with one or more financial institutions in the ordinary course of business that is designed to protect such Person against fluctuations in interest rates or currency exchange rates with respect to Indebtedness Incurred and not for purposes of speculation and which, in the case of an interest rate agreement, shall have a notional amount no greater than the principal amount at maturity due with respect to the Indebtedness being hedged thereby.

“ Permitted Investments ” means (a) Cash Equivalents; (b) investments in prepaid expenses; (c) negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits; (d) loans, advances or extensions of credit to employees and directors made in the ordinary course of business and consistent with past practice; (e) obligations under Permitted Hedging Agreements; (f) bonds, notes, debentures and other securities received as a result of Asset Dispositions pursuant to and in compliance with Section 6.07; (g) Investments in any Person as a result of which such Person becomes a Restricted Subsidiary; (h) Investments made prior to the Measurement Date; (i) Investments made after the Measurement Date in Persons engaged in the Telecommunications/IS Business in an aggregate amount not to exceed Invested Capital; and (j) additional Investments in an aggregate amount not to exceed \$200,000,000.

“ Permitted Liens ” means (a) Liens for taxes, assessments, governmental charges, levies or claims which are not yet delinquent or which are being contested in good faith by appropriate proceedings, if a reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor; (b) other Liens incidental to the conduct of Level 3's and its Restricted Subsidiaries' businesses or the ownership of its Property not securing any Indebtedness of Level 3 or a Subsidiary of Level 3, and which do not in the aggregate materially detract from the value of Level 3's

and its Restricted Subsidiaries' Property when taken as a whole, or materially impair the use thereof in the operation of its business; (c) Liens, pledges and deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of statutory obligations; (d) Liens, pledges or deposits made to secure the performance of tenders, bids, leases, public or statutory obligations, sureties, stays, appeals, indemnities, performance or other similar bonds and other obligations of like nature incurred in the ordinary course of business (exclusive of obligations for the payment of borrowed money, the obtaining of advances or credit or the payment of the deferred purchase price of Property and which do not in the aggregate materially impair the use of Property in the operation of the business of Level 3 and the Restricted Subsidiaries taken as a whole); (e) zoning restrictions, servitudes, easements, rights-of-way, restrictions and other similar charges or encumbrances incurred in the ordinary course of business which, in the aggregate, do not materially detract from the value of the Property subject thereto or materially interfere with the ordinary conduct of the business of Level 3 or its Restricted Subsidiaries; and (f) any interest or title of a lessor in the Property subject to any lease other than a Capital Lease.

"Permitted Telecommunications Capital Asset Disposition" means the transfer, conveyance, sale, lease or other disposition of optical fiber and/or conduit and any related equipment used in a Segment (as defined) of Level 3's communications network that (i) constitute capital assets in accordance with GAAP and (ii) after giving effect to such disposition, would result in Level 3 retaining at least either (A) 24 optical fibers per route mile on such Segment as deployed at the time of such disposition or (B) 12 optical fibers and one empty conduit per route mile on such Segment as deployed at such time. "Segment" means (x) with respect to Level 3's intercity network, the through-portion of such network between two local networks (i.e., Omaha to Denver) and (y) with respect to a local network of Level 3 (i.e., Dallas), the entire through-portion of such network, excluding the spurs which branch off the through-portion.

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

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

"Pledged Equity Interests" has the meaning assigned to such term in the Collateral Agreement.

"Preferred Stock" of any Person means Capital Stock of such Person of any class or classes (however designated) that ranks prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding-up of such Person, to shares of Capital Stock of any other class of such Person.

“Preferred Stock Dividends” means all dividends with respect to Preferred Stock of Restricted Subsidiaries held by Persons other than Level 3 or the Borrower or a Wholly Owned Restricted Subsidiary or the Borrower, respectively. The amount of any such dividend shall be equal to the quotient of such dividend divided by the difference between one and the maximum statutory federal income rate (expressed as a decimal number between 1 and 0) applicable to the borrower of such Preferred Stock for the period during which such dividends were paid.

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

“Property” means, with respect to any Person, any interest of such Person in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including Capital Stock in, and other securities of, any other Person. For purposes of any calculation required pursuant to this Agreement, the value of any Property shall be its Fair Market Value.

“Proportionate Interest” in any issuance of Capital Stock of a Restricted Subsidiary means a ratio (i) the numerator of which is the aggregate amount of all Capital Stock of such Restricted Subsidiary beneficially owned by Level 3 and the Restricted Subsidiaries and (ii) the denominator of which is the aggregate amount of Capital Stock of such Restricted Subsidiary beneficially owned by all Persons (excluding, in the case of this clause (ii), any Investment made in connection with such issuance).

“Purchase Money Debt” means Indebtedness (including Acquired Debt and Capital Lease Obligations, mortgage financings and purchase money obligations) incurred for the purpose of financing all or any part of the cost of construction, installation, acquisition, lease, development or improvement by Level 3 or any Restricted Subsidiary of any Telecommunications/IS Assets of Level 3 or any Restricted Subsidiary and including any related notes, Guarantees, collateral documents, instruments and agreements executed in connection therewith, as the same may be amended, supplemented, modified or restated from time to time (it being understood that Indebtedness meeting the foregoing requirements and Incurred within 90 days after the construction, installation, acquisition, lease, development or improvement of such Telecommunications/IS Assets by Level 3 or such Restricted Subsidiary shall constitute Purchase Money Debt).

“Qualified Credit Facility” means one or more credit agreements, loan agreements, or similar facilities, secured or unsecured, providing for revolving credit loans, term loans and/or letters of credit, including any Qualified Receivable Facility, entered into from time to time by Level 3 and its Restricted Subsidiaries, and including any related notes, Guarantees, collateral documents, instruments and agreements executed in connection therewith, as the same may be amended, supplemented, modified, restated or replaced from time to time.

“Qualified Receivable Facility” means Indebtedness of Level 3 or any Subsidiary of Level 3 Incurred from time to time on customary terms (as determined by Level 3 in good faith) pursuant to either (x) credit facilities secured only by Receivables, collections thereof and accounts established solely for the collection of such Receivables or (y) Receivables purchase facilities, and including any related notes, Guarantees, collateral documents, instruments and agreements executed in connection therewith, as the same may be amended, supplemented, modified or restated from time to time.

“Rating Agencies” mean Moody’s and S&P.

“Rating Date” means the earlier of the date of public notice of the occurrence of a Change of Control or of the intention of Level 3 to effect a Change of Control.

“Rating Decline” shall be deemed to have occurred if, no later than 90 days after the Rating Date (which period shall be extended so long as the rating of the Loans is under publicly announced consideration for possible downgrade by any of the Rating Agencies), either of the Rating Agencies assigns or reaffirms a rating to the Loans that is lower than the applicable Effective Date Rating (or the equivalent thereof). If, prior to the Rating Date, either of the ratings assigned to the Loans by the Rating Agencies is lower than the applicable Effective Date Rating, then a Rating Decline will be deemed to have occurred if such rating is not changed by the 90th day following the Rating Date. A downgrade within rating categories, as well as between rating categories, will be considered a Rating Decline. A “Rating Decline” also shall be deemed to have occurred if a Rating Decline (as defined in any indenture governing any of the Existing Notes) shall have occurred in respect of any of the Existing Notes.

“Receivables” means receivables, chattel paper, instruments, documents or intangibles evidencing or relating to the right to payment of money and proceeds and products thereof in each case generated in the ordinary course of business.

“Reference Treasury Dealer” means Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc., Morgan Stanley & Co. Incorporated and Credit Suisse First Boston LLC and their respective successors; provided, however, that if any of the foregoing shall cease to be a primary U.S. Government securities dealer in New York City (a “Primary Treasury Dealer”), the Borrower shall substitute therefor another Primary Treasury Dealer.

“Reference Treasury Dealer Quotations” means, with respect to each Reference Treasury Dealer and any repayment date, the average, as determined by the Administrative Agent, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Administrative Agent by such Reference Treasury Dealer at 5:00 p.m. on the third business day preceding such repayment date.

“refinancing” has the meaning assigned to such term in Sections 6.01(b)(viii) and 6.02(b)(vi).

“Register” has the meaning assigned to such term in Section 9.04.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the directors, officers, employees, agents, trustees, partners, members and advisors of such Person and such Person’s Affiliates.

“Required Lenders” means, at any time (a) Lenders having Loans representing at least a majority in aggregate principal amount of the total Loans outstanding (or if the Loans have not yet been made, Lenders having commitments representing at least a majority in aggregate principal amount of the total Commitments).

“Restricted Payment” has the meaning specified in Section 6.03.

“Restricted Subsidiary” means (a) a Subsidiary of Level 3 or a Restricted Subsidiary, including the Borrower, that has not been designated or classified as an Unrestricted Subsidiary pursuant to and in compliance with Section 6.10 and (b) an Unrestricted Subsidiary that has been redesignated as a Restricted Subsidiary pursuant to such Section. Notwithstanding any other provision of this Agreement, the Restricted Subsidiaries shall at all times include the Borrower and Level 3 LLC.

“Revocation” has the meaning specified in Section 6.10.

“S&P” means Standard & Poor’s Ratings Service or, if Standard & Poor’s Rating Service shall cease rating debt securities having a maturity at original issuance of at least one year and such ratings business shall have been transferred to a successor Person, such successor Person; *provided, however*, that if Standard & Poor’s Ratings Service ceases rating debt securities having a maturity at original issuance of at least one year and its ratings business with respect thereto shall not have been transferred to any successor Person, then “S&P” shall mean any other nationally recognized rating agency (other than Moody’s) that rates debt securities having a maturity at original issuance of at least one year and that shall have been designated by the Administrative Agent by a written notice given to the Borrower.

“Sale and Leaseback Transaction” of any Person means any direct or indirect arrangement pursuant to which any Property is sold or transferred by such Person or a Restricted Subsidiary of such person and is thereafter leased back from the purchaser or transferee thereof by such Person or one of its Restricted Subsidiaries. The stated maturity of such arrangement shall be the date of the last payment of rent or any other amount due under such arrangement prior to the first date on which such arrangement may be terminated by the lessee without payment of a penalty.

“Security Documents” means the Guarantee Agreement, the Collateral Agreement, the Indemnity, Subrogation and Contribution Agreement, the Loan Proceeds Note Collateral Agreement and each other security agreement or other instrument or document executed and delivered pursuant to Section 5.12 to secure any of the Obligations.

“Security Interest” has the meaning assigned to such term in the Collateral Agreement.

“Sister Restricted Subsidiary” means a Restricted Subsidiary that is not the Borrower or a Borrower Restricted Subsidiary.

“Significant Subsidiary” means any Subsidiary that would be a “Significant Subsidiary” of Level 3 within the meaning of Rule 1-02 under Regulation S-X promulgated by the Securities and Exchange Commission.

“Special Assets” means (a) the Capital Stock or assets of RCN Corporation (and any intermediate holding companies or other entities formed solely for the purpose of owning such Capital Stock or assets) owned, directly or indirectly, by Level 3 or any Restricted Subsidiary on the Measurement Date, and (b) any Property, other than cash, Cash Equivalents and Telecommunications/IS Assets, received as consideration for the disposition after the Measurement Date of Special Assets (as contemplated by the first proviso in Section 6.07).

“Subordinated Debt” means Indebtedness of Level 3 (a) that is not secured by any Lien on or with respect to any Property now owned or acquired after the Measurement Date and (b) as to which the payment of principal of (and premium, if any) and interest and other payment obligations in respect of such Indebtedness shall be subordinate to the prior payment in full in cash of the Guarantee of the Obligations by Level 3 to at least the following extent: (i) no payments of principal of (or premium, if any) or interest on or otherwise due (including by acceleration or for additional amounts) in respect of, or repurchases, redemptions or other retirements of, such Indebtedness (collectively, “payments of such Indebtedness”) may be permitted for so long as any default (after giving effect to any applicable grace periods) in the payment of principal (or premium, if any) or interest on the Loans exists, including as a result of acceleration; (ii) in the event that any other Default exists with respect to the Loans, upon notice by Lenders holding of 25% or more in aggregate outstanding principal amount of the Loans to the Administrative Agent, the Administrative Agent shall have the right to give notice to Level 3 and the holders of such Indebtedness (or trustees or agents therefor) of a payment blockage, and thereafter no payments of such Indebtedness may be made for a period of 179 days from the date of such notice; provided, however, that not more than one such payment blockage notice may be given in any consecutive 360-day period, irrespective of the number of defaults with respect to the Loans during such period; (iii) if payment of such Indebtedness is accelerated when any principal amount of the Loans is outstanding, no payments of such Indebtedness may be made until three Business Days after the Administrative Agent receives notice of such acceleration and, thereafter, such payments may only be made to the extent the terms of such Indebtedness permit payment at that time; and (iv) such Indebtedness may not (x) provide for payments of principal of such Indebtedness at the stated maturity thereof or by way of a sinking fund applicable thereto or by way of any mandatory redemption, defeasance, retirement or repurchase thereof by Level 3 (including any redemption, retirement or repurchase which is contingent upon events or circumstances but excluding any retirement required by virtue of acceleration of such Indebtedness upon an event of default thereunder), in each case

prior to the Maturity Date or (y) permit redemption or other retirement (including pursuant to an offer to purchase made by Level 3) of such Indebtedness at the option of the holder thereof prior to the Maturity Date, other than, in the case of clause (x) or (y), any such payment, redemption or other retirement (including pursuant to an offer to purchase made by Level 3) which is conditioned upon (A) a change of control of Level 3 pursuant to provisions substantially similar to those described in the definition of "Change of Control Triggering Event" (and which shall provide that such Indebtedness will not be repurchased pursuant to such provisions prior to the Borrower's repayment of the Loans required to be repaid by the Borrower pursuant to the provisions described in the definition of "Change of Control Triggering Event") or (B) a sale or other disposition of assets pursuant to provisions substantially similar to those described in Section 6.07 (and which shall provide that such Indebtedness will not be repurchased pursuant to such provisions prior to the Borrower's repayment of the Loans required to be repaid by the Borrower pursuant to Section 6.07).

"Subordinated Indentures" means (a) the indenture dated as of September 20, 1999 between Level 3 and IBJ Whitehall Bank & Trust Company, as trustee, as supplemented by the Supplement dated September 20, 1999 and as amended or supplemented from time to time in accordance therewith relating to Level 3's 6.0% Convertible Subordinated Notes due 2009 and (b) the indenture dated as of September 20, 1999 between Level 3 and IBJ Whitehall Bank & Trust Company, as trustee, as supplemented by the Second Supplement dated February 29, 1999 and as amended or supplemented from time to time in accordance therewith relating to Level 3's 6.0% Convertible Subordinated Notes due 2010.

"Subsidiary" of any Person means (i) a corporation more than 50% of the combined voting power of the outstanding Voting Stock of which is owned, directly or indirectly, by such Person or by one or more other Subsidiaries of such Person or by such Person and one or more Subsidiaries thereof or (ii) any other Person (other than a corporation) in which such Person, or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, has at least a majority ownership and power to direct the policies, management and affairs thereof.

"Subsidiary Loan Party" means, as applicable, any Subsidiary of Level 3 that has guaranteed the Obligations or has assigned and pledged any of its assets to secure the Obligations pursuant to any Security Document.

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

"Telecommunications/IS Assets" means (a) any Property (other than cash, cash equivalents and securities) to be owned by Level 3 or any Restricted Subsidiary and used in the Telecommunications/IS Business; (b) for purposes of Sections 6.01, 6.02 and 6.05 only, Capital Stock of any Person; or (c) for all other purposes of this Agreement, Capital Stock of a Person that becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by Level 3 or another Restricted Subsidiary from any

Person other than an Affiliate of Level 3; *provided, however*, that, in the case of clause (b) or (c), such Person is primarily engaged in the Telecommunications/IS Business.

“Telecommunications/IS Business” means the business of (i) transmitting, or providing (or arranging for the providing of) services relating to the transmission of, voice, video or data through owned or leased transmission facilities, (ii) constructing, creating, developing or marketing communications networks, related network transmission equipment, software and other devices for use in a communications business, (iii) computer outsourcing, data center management, computer systems integration, reengineering of computer software for any purpose (including, without limitation, for the purposes of porting computer software from one operating environment or computer platform to another or to address issues commonly referred to as “Year 2000 issues”) or (iv) evaluating, participating or pursuing any other activity or opportunity that is primarily related to those identified in (i), (ii) or (iii) above; *provided*, that the determination of what constitutes a Telecommunications/IS Business shall be made in good faith by the Board of Directors of Level 3.

“10.75% Note Indenture” means the Indenture dated as of October 1, 2003 among Level 3, the Borrower and The Bank of New York, as trustee, governing the 10.75% Notes.

“10.75% Notes” means the Borrower’s 10.75% Senior Notes due 2011 in an aggregate principal amount outstanding on the date hereof of \$500,000,000.

“10.75% Notes Supplemental Indentures” means the Borrower Restricted Subsidiary Supplemental Indentures and the Level 3 LLC 10.75% Notes Supplemental Indenture.

“Transactions” means the execution, delivery and performance by each Loan Party of the Loan Documents to which it is to be a party, the borrowing of the Loans and the use of the proceeds thereof.

“Treasury Rate” means, with respect to any optional prepayment date, the rate per annum equal to the yield to maturity of the Comparable Treasury Issue, compounded semi-annually, assuming a price for such Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by LIBO Rate or ABR.

“Unrestricted Subsidiary” means (a) 91 Holding Corp., SR 91 Holding LLC, SR91 Corp., SR LP, Express Lanes, Inc., California Private Transportation Company LP, CPTC LLC and 85 Tenth Avenue LLC; (b) any Subsidiary of an Unrestricted Subsidiary; and (c) any Subsidiary designated as such pursuant to and in

compliance with Section 6.10 and not thereafter redesignated as a Restricted Subsidiary as permitted pursuant thereto. For the sake of clarity, actions taken by an Unrestricted Subsidiary will not be deemed to have been taken, directly or indirectly, by Level 3 or any Restricted Subsidiary. No Unrestricted Subsidiary may own any Capital Stock of a Restricted Subsidiary.

“Vice President”, when used with respect to any Person, means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president”.

“Voting Stock” of any Person means Capital Stock of such Person which ordinarily has voting power for the election of directors (or persons performing similar functions) of such Person, whether at all times or only for so long as no senior class of securities has such voting power by reason of any contingency.

“Wholly Owned Subsidiary” of any Person means a Subsidiary of such Person all of the outstanding Voting Stock or other ownership interests (other than directors’ qualifying shares) of which shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person or by such Person and one or more Wholly Owned Subsidiaries such Person.

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

SECTION 1.02. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.03. Accounting Terms; GAAP. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and, except as otherwise herein expressly

provided, the term “GAAP” with respect to any computation required or permitted hereunder shall mean United States generally accepted accounting principles as in effect on September 30, 2004. Notwithstanding the foregoing, all financial statements provided for hereunder shall be prepared in accordance with United States generally accepted accounting principles as in effect from time to time.

ARTICLE II

The Credits

SECTION 2.01. Commitments; Eurodollar Loans. (a) Subject to the terms and conditions set forth herein, each Lender agrees to make a Eurodollar Loan to the Borrower on the Effective Date in a principal amount equal to its Commitment. Amounts paid or prepaid in respect of Loans may not be reborrowed. The Commitments shall expire at 5:00 p.m. New York City time on the Effective Date.

(b) The Loans shall at all times continue to be Eurodollar Loans except as provided in Section 2.07.

SECTION 2.02. Funding of Loans. (a) Each Lender shall make the Loan to be made by it hereunder on the Effective Date by wire transfer of immediately available funds by 12:00 noon, New York City time, to the account most recently designated by the Administrative Agent for such purpose by notice to the Lenders. The Administrative Agent will make the Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to the account of the Borrower designated by it for such purpose and previously communicated to the Administrative Agent.

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

(c) The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender’s failure to make a Loan as required.

SECTION 2.03. Repayment of Loans; Evidence of Debt. (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan on the Maturity Date.

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

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

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein (including any failure to record the making or repayment of any Loan) shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

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

SECTION 2.04. Prepayments and Offers to Prepay. (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part on the terms and subject to the conditions set forth in this Section.

(b) On each occasion on which Loans are prepaid pursuant to paragraph (a) of this Section prior to the second anniversary of the Effective Date, the amount of such prepayment shall be accompanied by a premium equal to the excess of (i) the present value at such time of (A) 103% of the principal amount of the Loans being prepaid plus (B) all interest that would have accrued on such principal amount from the date of such prepayment through the second anniversary of the Effective Date, computed using a discount rate equal to the Treasury Rate (determined as of the Business Day prior to prepayment) plus 50 basis points, over (ii) such principal amount of the Borrowing being prepaid. For purposes of computing the interest that would have accrued on any amount prepaid pursuant to this paragraph through the second anniversary of the Effective Date, it shall be assumed that such amount would have accrued interest at all times from the date of such prepayment through

such second anniversary at a rate equal to the LIBO Rate for a notional Interest Period of three months commencing on the date of such prepayment plus the Applicable Margin at the time in effect.

(c) On each occasion on which Loans are prepaid pursuant to paragraph (a) of this Section on or after the second anniversary of the Effective Date but prior to the fourth anniversary of the Effective Date, the amount of such prepayment shall be accompanied by a premium in an amount equal to:

(i) if such prepayment is made on or after the second anniversary of the Effective Date but before the third anniversary of the Effective Date, 3.00% of the aggregate principal amount prepaid; and

(ii) if such prepayment is made on or after the third anniversary of the Effective Date but before the fourth anniversary of the Effective Date, 1.50% of the aggregate principal amount prepaid.

(d) When the aggregate amount of Excess Proceeds exceeds \$10,000,000, the Borrower shall within 15 days notify the Administrative Agent thereof and prepay the Loans in the amount of such Excess Proceeds without premium (as reduced by any portion thereof which has been rejected by Declining Lenders pursuant to clause (g) below). To the extent there are any remaining Excess Proceeds following the completion of the prepayment required hereunder as a result of Lender elections not to accept such prepayment, the Borrower shall apply such Excess Proceeds to the repayment of other Indebtedness of the Borrower or any Restricted Subsidiary that is a Subsidiary of the Borrower, to the extent permitted or required under the terms thereof. Any other remaining Excess Proceeds may be applied to any use as determined by Level 3 which is not otherwise prohibited by this Agreement, and the amount of Excess Proceeds shall be reset to zero.

(e) Not fewer than 30 days prior to any payment or prepayment of any principal amount of the Loan Proceeds Note, the Borrower shall notify the Administrative Agent thereof and shall, on the date of such payment or prepayment, subject to paragraph (g) below, prepay the Loans at a price equal to (1) prior to the second anniversary of the Effective Date, the amount specified in clause (b) above, (2) on or after the second anniversary of the Effective Date but prior to the fourth anniversary of the Effective Date, the principal amount of the Loans with the premium specified in clause (c) above and (3) on and after the fourth anniversary of the Effective Date, at the principal amount of the Loan without premium; provided, however that (i) at the expiration of such thirty Business Day period, the Administrative Agent shall notify the Borrower of the required amount of such prepayment (as reduced by any portion thereof which has been rejected by Declining Lenders pursuant to clause (g) below) and the Borrower shall immediately prepay the Loans in such amount in accordance with clause (g) below.

(f) Upon the occurrence of a Change of Control Triggering Event, the Borrower shall within 30 days of such occurrence notify the Administrative Agent thereof and prepay the Loans not later than 30 Business Days following such notification; provided, however that (i) at the expiration of such 30 Business Day period, the Administrative Agent shall notify the Borrower of the required amount of such prepayment (as reduced by any portion thereof which has been rejected by Declining Lenders pursuant to clause (g) below) and the Borrower shall immediately prepay the Loans in such amount in accordance with clause (g) below and (ii) the Borrower shall also pay, on the date of such

prepayment, to each Lender receiving such prepayment a fee equal to 1.00% of the principal amount of the Loans prepaid to such Lender.

(g) With respect to any proposed mandatory prepayment of the Loan pursuant to clauses (d), (e) or (f) above, any Lender may, at its option, elect not to accept such prepayment (any Lender making such election being a “Declining Lender”) as follows: each Declining Lender shall give written notice thereof to the Administrative Agent not later than 10:00 a.m. New York City time on the date which is two Business Days prior to the date on which the Administrative Agent is required to notify the Borrower of the amount of the applicable prepayment pursuant to clause (d), (e) or (f) above. On the date of prepayment, an amount equal to that portion of the Loan then to be prepaid (less the amount thereof that would otherwise be payable to Declining Lenders) shall be paid to the Lenders that are not Declining Lenders in accordance with subsection (h) below. In the event that the Administrative Agent has not, with respect to any mandatory prepayment, received a notice from a Lender in accordance with this clause (g), such Lender shall be deemed to have waived its rights under this clause (g) to decline receipt thereof.

(h) The Borrower (or Level 3 on its behalf) shall notify the Administrative Agent by telephone (confirmed by telecopy) of any prepayment hereunder not later than 1:00 p.m., New York City time, two Business Days before the date of prepayment or such lesser period as may be acceptable to the Administrative Agent. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.06. If any prepayment pursuant to this Section is made by the Borrower other than on the last day of the Interest Period applicable to the prepaid Loans, the Borrower shall also pay to each Lender (other than any Declining Lender) on the date of such prepayment any amount owing to such Lender pursuant to Section 2.09.

SECTION 2.05. Fees. (a) Level 3 and the Borrower agree to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon by the Borrower and the Administrative Agent.

SECTION 2.06. Interest. (a) Each Loan shall bear interest at the LIBO Rate for the Interest Period at the time in effect for such Loan plus the Applicable Margin; provided, that at any time when a Loan is an ABR Loan by reason of the operation of Section 2.07, such Loan shall bear interest at the Alternative Base Rate in effect from time to time plus the Applicable Margin minus 1.00% per annum.

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

(c) Accrued interest on the Loans shall be payable in arrears on each Interest Payment Date; provided that (i) interest accrued pursuant to paragraph (b) of this Section shall be payable on demand and (ii) in the event of any repayment or prepayment of the Loans, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(d) All interest hereunder shall be computed on the basis of the actual number of days elapsed in a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable LIBO Rate or Alternate Base Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.07. Alternate Rate of Interest. If, prior to the commencement of any Interest Period, the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the LIBO Rate for such Interest Period, then the Administrative Agent shall give notice thereof to Level 3 and the Lenders by telephone or telecopy as promptly as practicable thereafter, whereupon each Eurodollar Loan shall automatically, on the last day of the current Interest Period for such Eurodollar Loan, convert into an ABR Loan and the obligations of the Lenders to make Eurodollar Loans shall be suspended until the Administrative Agent notifies Level 3 and the Lenders that the circumstances giving rise to such notice no longer exist.

SECTION 2.08. Increased Costs. (a) If any Lender shall notify the Administrative Agent and Level 3 at any time that Eurocurrency Reserve Requirements are, or are scheduled to become, effective and that such Lender is or will be generally subject to such Eurocurrency Reserve Requirements and will, as a result, incur additional costs, then such Lender shall, for each day from the later of the date of such notice and the date on which such Eurocurrency Reserve Requirements become effective, be entitled to additional interest on each Eurodollar Loan made by it at a rate per annum determined for such day (rounded upward to the nearest 100th of 1%) equal to the remainder obtained by subtracting (i) the LIBO Rate for such Eurodollar Loan from (ii) the rate obtained by dividing such LIBO Rate by a percentage equal to 100% minus the Eurocurrency Reserve Requirements then-applicable to such Lender. Such additional interest will be payable in arrears to the Administrative Agent, for the account of such Lender, on each Interest Payment Date relating to such Eurodollar Loan and on any other date when interest is required to be paid hereunder with respect to such Loan. Any Lender giving a notice under this paragraph (a) shall promptly withdraw such notice (by written notice of withdrawal given to the Administrative Agent and Level 3) in the event Eurocurrency Reserve Requirements cease to apply to it or the circumstances giving rise to such notice otherwise cease to exist.

(b) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of or credit extended by any Lender (except any Eurocurrency Reserve Requirement); or

(ii) impose on any Lender or the London interbank market any other condition affecting this Agreement or Eurodollar Loans of such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan or to reduce the amount of any sum received by such Lender, then Level 3 and the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender, for such additional costs incurred or reduction suffered. This Section shall not apply to any additional costs or reductions relating to Taxes, which are governed by Section 2.10.

(c) If any Lender determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time Level 3 and the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(d) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (b) or (c) of this Section shall be delivered to Level 3 and shall be conclusive absent manifest error. Level 3 and the Borrower, as the case may be, shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(e) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that Level 3 and the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies Level 3 of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(f) The provisions of Section 2.08(a) and (c) shall only be available to Lenders regulated by Federal banking authorities.

SECTION 2.09. Break Funding Payments. In the event of (a) any payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the failure to borrow or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto, or (c) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by Level 3 pursuant to Section 2.12, then, in any such event, Level 3 and the Borrower, as applicable, shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed not to include any lost profit (including loss of Applicable Margin) and shall be deemed to

include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred at the LIBO Rate that is or would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to Level 3 and shall be conclusive absent manifest error. Level 3 or the Borrower, as applicable, shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.10. Taxes. (a) Any and all payments by or on account of the obligations of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Level 3 and the Borrower shall indemnify the Administrative Agent and each Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Level 3 or the Borrower by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

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

evidencing such payment; provided however in no case shall the Borrower be required to deliver documentation not normally issued by such Governmental Authority.

(e) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower and Level 3 (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrower and Level 3 as will permit such payments to be made without withholding or at a reduced rate.

SECTION 2.11. Payments Generally; Pro Rata Treatment; Sharing of Set-offs. (a) The Borrower shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.08, 2.09 or 2.10, or otherwise) prior to 1:00 p.m., New York City time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at Merrill Lynch World Headquarters, North Tower, World Financial Center, New York, New York 10281-1201, except that payments pursuant to Sections 2.08, 2.09, 2.10 and 9.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in dollars.

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

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of the other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance

with the aggregate amount of principal of and accrued interest on their respective Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to Level 3 or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation in an obligation owed by it pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it hereunder, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations until all such unsatisfied obligations are fully paid.

SECTION 2.12. Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.08, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.10, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.08 or 2.10, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Level 3 and the Borrower hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.08 (other than paragraph (a) of such Section), or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.10, if any Lender defaults in its obligation to fund Loans hereunder or under the circumstances contemplated by Section 9.02(d), Level 3 may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) Level 3 shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Level 3 or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.08 or payments required to be made pursuant to Section 2.10, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Level 3 to require such assignment and delegation cease to apply.

ARTICLE III

Representations and Warranties

On and as of the Effective Date, each of Level 3 and the Borrower represents and warrants to the Lenders that:

SECTION 3.01. Organization; Powers. Each of Level 3, the Borrower and each Material Subsidiary of Level 3 is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, would not constitute or result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

SECTION 3.02. Authorization; Enforceability. The Transactions to be entered into by each Loan Party are within such Loan Party's powers and have been duly authorized by all necessary corporate or other action and, if required, stockholder or member action. This Agreement has been duly executed and delivered by Level 3 and the Borrower and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of Level 3, the Borrower or such Loan Party (as the case may be), enforceable in accordance with its terms, subject to applicable bankruptcy,

insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as are contemplated to be taken to satisfy the Guarantee Permit Condition and the Collateral Permit Condition, such as have been obtained or made and are in full force and effect and filings necessary to perfect Liens created under the Loan Documents, (b) will not violate the charter, by-laws or other organizational documents of Level 3 or any of the Loan Parties and will not violate, except for any violation which would not constitute or result in a Material Adverse Effect, (i) any applicable law or regulation of a type typically applicable to transactions of the type contemplated by the Transactions, (ii) any material order of any Governmental Authority, (c) will not violate the Parent's Indentures, the Subordinated Indentures, the 10.75% Note Indenture and, after giving effect to the sale and issuance of the 5.25% Notes, the 5.25% Notes Indenture and (d) will not result in the creation or imposition of any Lien on any material assets of Level 3, the Borrower or any Subsidiary of Level 3, except Liens created under the Loan Documents.

SECTION 3.04. Financial Condition; No Material Adverse Change. (a) The Lenders have been given access to Level 3's (i) consolidated balance sheet and statements of income, stockholders equity and cash flows as of and for the fiscal year ended December 31, 2003, reported on by KPMG LLP, independent public accountants, and (ii) its consolidated balance sheet and statements of income and cash flows as of and for the fiscal quarter and the portion of the fiscal year ended September 30, 2004. Such financial statements present fairly in all material respects the financial position and results of operations and cash flows of Level 3 and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) Except for the Disclosed Matters, after giving effect to the Transactions, none of Level 3 or its Subsidiaries will have, as of the Effective Date, any contingent liabilities, unusual long-term commitments or unrealized losses which would constitute or result in a Material Adverse Effect.

(c) Except as may be disclosed in Level 3's reports and filings under the Exchange Act filed since January 1, 2004 and prior to November 30, 2004 and available on the Securities and Exchange Commission's website on the internet at www.sec.gov prior to December 1, 2004, since December 31, 2003, there has been no material adverse change in the business, assets, operations or condition, financial or otherwise, of Level 3 and its Subsidiaries, taken as a whole which would constitute or result in a Material Adverse Effect.

SECTION 3.05. Properties. Each of Level 3, the Borrower and each Subsidiary of Level 3 has good title to, or valid leasehold interests in, all its real and

personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes and such defects as would not constitute or result in a Material Adverse Effect.

SECTION 3.06. Litigation and Environmental Matters. (a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of Level 3 or the Borrower, threatened against or affecting Level 3, the Borrower or any Material Subsidiary of Level 3 (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, would, individually or in the aggregate, constitute or result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve any of the Loan Documents or the Transactions.

(b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, would not constitute or result in a Material Adverse Effect, none of Level 3, the Borrower or any of the Subsidiaries of Level 3 (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

SECTION 3.07. Compliance with Laws and Agreements. Level 3, the Borrower and each of the Subsidiaries of Level 3 is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, would not constitute or result in a Material Adverse Effect. No Default has occurred and is continuing.

SECTION 3.08. Investment and Holding Company Status. Neither Level 3 nor any of the Loan Parties is (a) an “investment company” or is controlled by an entity that is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940 or (b) a “holding company” or is controlled by an entity that is a “holding company” as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

SECTION 3.09. Taxes. Level 3, the Borrower and each of the Material Subsidiaries of Level 3 has timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid all taxes required to have been paid by it, except (a) taxes that are being contested in good faith by appropriate proceedings and for which Level 3, the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so would not constitute or result in a Material Adverse Effect.

SECTION 3.10. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which

liability is reasonably expected to occur that would constitute or result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan by an amount that would constitute or result in a Material Adverse Effect, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans by an amount that would constitute or result in a Material Adverse Effect.

SECTION 3.11. Disclosure. None of the reports, financial statements, certificates or information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or thereunder (as modified or supplemented by other information so furnished), contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

SECTION 3.12. Subsidiaries. Schedule 3.12 sets forth the name of, and the ownership interest of Level 3 in, each domestic Material Subsidiary.

SECTION 3.13. Insurance. Schedule 3.13 sets forth a description of all insurance maintained by or on behalf of Level 3, the Borrower and the Material Subsidiaries of Level 3 as of the Effective Date. To the knowledge of Level 3, such insurance complies with the requirements of Section 5.07.

SECTION 3.14. Labor Matters. As of the Effective Date, there are no material strikes, lockouts or slowdowns against Level 3, the Borrower or any Subsidiary of Level 3 pending or, to the knowledge of Level 3 or the Borrower, threatened which would constitute or result in the Material Adverse Effect. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which Level 3, the Borrower or any Subsidiary of Level 3 is bound other than any right which would not constitute or result in a Material Adverse Effect.

SECTION 3.15. Intellectual Property. Each of Level 3, the Borrower and the Material Subsidiaries of Level 3 owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by Level 3, the Borrower and each Material Subsidiary of Level 3, to the knowledge of Level 3 or the Borrower, does not infringe upon the rights of any other Person except for any such infringements that, individually or in the aggregate, would not constitute or result in a Material Adverse Effect.

SECTION 3.16. Security Interests. (a) When executed and delivered, the Collateral Agreement will be effective to create in favor of the Collateral Agent for the

benefit of the Secured Parties a valid and enforceable security interest in the Collateral (as defined in the Collateral Agreement) and (i) when the portion of the Collateral constituting certificated securities (as defined in the Uniform Commercial Code) is delivered to the Collateral Agent thereunder together with instruments of transfer duly endorsed in blank, the Collateral Agreement shall constitute a fully perfected first priority Lien on, and security interest in, under applicable Federal and State law, all right, title and interest of the pledgors thereunder in such Collateral, prior and superior in right to any other Person and (ii) when financing statements in appropriate form are filed in the offices specified in the Effective Date Perfection Certificate, the Collateral Agreement shall constitute a fully perfected Lien on, and security interest in, under applicable Federal and State law, all right, title and interest of the grantors thereunder in such Collateral, to the extent perfection can be obtained by filing Uniform Commercial Code financing statements, other than the Intellectual Property (as defined in the Security Agreements) in which a security interest may be perfected by filing, recording or registering a security agreement, financing statement or analogous document in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, in each case prior and superior in right to any other Person to the extent perfection can be obtained by filing Uniform Commercial Code financing statements, other than with respect to the rights of Persons pursuant to Liens expressly permitted by Section 6.05.

(b) When the Collateral Agreement is filed in the United States Patent and Trademark Office and the United States Copyright Office, the security interest created thereunder shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Intellectual Property (as defined in the Collateral Agreement) in which a security interest may be perfected by filing, recording or registering a security agreement, financing statement or analogous document in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, in each case prior and superior in right to any other Person, other than with respect to the rights of Persons pursuant to Liens expressly permitted by Section 6.05 (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a lien on registered trademarks, trademark applications and copyrights acquired by the Loan Parties after the date hereof).

SECTION 3.17. FCC Compliance. (a) Level 3, the Borrower and each Subsidiary of Level 3 are in compliance with the Communications Act except where the failure to be in compliance would not constitute or result in a Material Adverse Effect.

(b) To the knowledge of Level 3, there is no investigation, notice of apparent liability, violation, forfeiture or other order or complaint issued by or before the FCC, or any other proceedings of or before the FCC, affecting it, the Borrower or any Subsidiary of Level 3 which would constitute or result in a Material Adverse Effect.

(c) No event has occurred which (i) results in, or after notice or lapse of time or both would result in, revocation, suspension, adverse modifications, non-renewal, impairment, restriction or termination of, or order of forfeiture with respect to, any

License in any respect which would constitute or result in a Material Adverse Effect or (ii) affects or would reasonably be expected in the future to affect any of the rights of Level 3, the Borrower or any Subsidiary of Level 3 under any License held by Level 3, the Borrower or such Subsidiary in any respect which would constitute or result in a Material Adverse Effect.

(d) Level 3, the Borrower and each Subsidiary of Level 3 have duly filed in a timely manner all material filings, reports, applications, documents, instruments and information required to be filed by it under the Communications Act, and all such filings were when made true, correct and complete in all respects except where the failure to do so would not constitute or result in a Material Adverse Effect.

SECTION 3.18. Qualified Credit Facility; Senior Indebtedness. The Loans and the other Obligations constitute a “Qualified Credit Facility” as defined in the 10.75% Note Indenture. The Loans and the other Obligations constitute a “Credit Facility” as defined in the Parent’s Indentures. The Loans and the other Obligations constitute “Senior Indebtedness” of the Parent, the Borrower and each other Loan Party for purposes of any Indebtedness of the Parent, the Borrower or such other Loan Party that by its terms is subordinated to any other Indebtedness of such Person.

SECTION 3.19. Solvency. Immediately following the making of the Loans on the Effective Date and after giving effect to the application of the proceeds of the Loans, (a) the fair value of the assets of Level 3 and its Subsidiaries on a consolidated basis, at a fair valuation, will exceed their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of Level 3 and its Subsidiaries on a consolidated basis, will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) Level 3 and its Subsidiaries on a consolidated basis, will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) Level 3 and its Subsidiaries on a consolidated basis, will not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted following the Effective Date.

ARTICLE IV

Conditions

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

(a) The Administrative Agent (or its counsel) shall have received from Level 3, the Borrower, the Administrative Agent and each Lender either (i) counterparts of this Agreement signed on behalf of each such party or (ii) written evidence satisfactory to the Administrative Agent (which

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

(b) The Administrative Agent shall have received favorable written opinions (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of (i) Willkie Farr & Gallagher LLP, counsel for the Borrower, substantially in the form of Exhibit E-1, (ii) the Chief Legal Officer or an Assistant General Counsel of Level 3, substantially in the form of Exhibit E-2, (iii) Potter Anderson & Corroon LLP, Delaware local counsel, substantially in the form of Exhibit E-3 and (iv) Swidler Berlin Shereff Friedman LLP, regulatory counsel for the Borrower, substantially in the form of Exhibit E-4, and covering such other matters relating to the Loan Parties, the Loan Documents or the Transactions as the Administrative Agent or the Required Lenders shall reasonably request.

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

(d) The representations and warranties set forth in Article III shall be true and correct in all material respects on and as of the Effective Date.

(e) The Borrower and the other Loan Parties shall be in compliance with all the terms and provisions set forth herein and in the other Loan Documents on their part to be observed or performed, and at the time of and immediately after the making of the Loans on the Effective Date, no Default shall have occurred and be continuing.

(f) The Administrative Agent shall have received a certificate signed by a Financial Officer of Level 3 confirming the satisfaction of the conditions set forth in paragraphs (d) and (e) above and in paragraphs (g) and (h) below.

(g) The Guarantee and Collateral Requirement shall be satisfied.

(h) Level 3 shall have accepted for payment securities tendered in the Debt Tender Offer in an amount greater than or equal to the amount of securities that can be purchased pursuant to the terms of the Debt Tender Offer for a purchase price of \$730,000,000 less the amount of fees and expenses incurred in connection with the Debt Tender Offer or this Agreement.

(i) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all out of pocket expenses required to be reimbursed or paid by the Borrower hereunder.

(j) The Administrative Agent shall have received (i) a completed Effective Date Perfection Certificate dated the Effective Date and signed by a Financial Officer, together with all attachments contemplated thereby, and (ii) the results of a search of the Uniform Commercial Code (or equivalent) filings made with respect to the Loan Parties in the jurisdictions referred to in Schedule 4.01(j) hereto and copies of the financing statements (or similar documents) disclosed by such search and evidence reasonably satisfactory to the Administrative Agent that the Liens indicated

by such financing statements (or similar documents) are permitted by Section 6.05 or have been released.

(k) The Administrative Agent shall have received an executed copy of the Level 3 LLC 10.75% Notes Supplemental Indenture substantially in the form of Exhibit F-1.

(l) The Administrative Agent shall have received an executed copy of the Offering Proceeds Note Subordination Agreement substantially in the form of Exhibit F-2.

(m) The Borrower shall have obtained ratings on the Loans from each of the Rating Agencies.

The Administrative Agent shall notify Level 3, the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

ARTICLE V

Affirmative Covenants

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full, each of Level 3 and the Borrower covenants and agrees with the Lenders that:

SECTION 5.01. Financial Statements and Other Information. Level 3 will furnish to the Administrative Agent on behalf of the Lenders:

(a) within 120 days after the end of each fiscal year of Level 3, an audited consolidated balance sheet of Level 3 and its Subsidiaries and related statements of operations and cash flows of Level 3 and its Subsidiaries as of the end of and for such year, setting forth in each case commencing December 31, 2004, in comparative form the figures for the previous fiscal year, all reported on by KPMG LLP or other independent public accountants of recognized national standing (without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of Level 3 and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within 60 days after the end of each fiscal quarter of Level 3, an unaudited consolidated balance sheet of Level 3 and its Subsidiaries and related statements of operations and cash flows of Level 3 and its Subsidiaries as of the end of and for such quarter, setting forth in each case commencing March 31, 2005, in comparative form the figures for the corresponding quarter of the previous fiscal year, all certified by a Financial Officer to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of Level 3 and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied; and

(c) within 120 days after the end of each fiscal year of Level 3, a certificate of a Financial Officer stating that a review of the activities of Level 3 and its Subsidiaries during the preceding fiscal year has been made under the supervision of such Financial Officer with a view to determining whether the Borrower and the other Loan Parties have kept, observed, performed and fulfilled their obligations under this Agreement and the other Loan Documents, and further stating, as to the knowledge of the Officer signing such certificate, Level 3, the Borrower and each other Loan Party has kept, observed, performed and fulfilled each and every covenant contained in this Agreement and is not in default in the performance or observance of any of the terms, provisions and conditions of this Agreement and the other Loan Documents (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Borrower or such Loan Party is taking or proposes to take with respect thereto).

Whether or not required by the rules and regulations of the Securities and Exchange Commission, the Borrower shall file with the Securities and Exchange Commission, if permitted, all the periodic and other reports, proxy statements and other materials it would be required to file with the Securities and Exchange Commission by Section 13(a) or 15(d) under the Securities Exchange Act of 1934, as amended, or any successor provision thereto if it were subject thereto. The financial statements required to be delivered by Level 3 pursuant to paragraphs (a) and (b) of this Section and the reports and statements required to be delivered by the Borrower pursuant to paragraph (c) of this Section shall be deemed to have been delivered (i) when reports containing such financial statements, or such other materials, are posted on Level 3's website on the internet at www.level3.com (or any successor page identified in a notice given to the Administrative Agent and the Lenders) or on the Securities and Exchange Commission's website on the internet at www.sec.gov or (ii) when such financial statements, reports or statements are delivered in accordance with Section 9.01(a).

SECTION 5.02. Notices of Material Events. Level 3 and the Borrower will furnish to the Administrative Agent, within 30 days, written notice of the following:

(a) the occurrence of any Default; and

(b) if the trustee for or the holder of any Material Indebtedness of Level 3 or any Restricted Subsidiary gives any notice or takes any other action with respect to a claimed default;

Each notice delivered under this Section shall be accompanied by a statement of an authorized officer of Level 3 setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03. Information Regarding Collateral. (a) Level 3 and the Borrower will furnish to the Collateral Agent prompt written notice of any change (i) in any Loan Party's corporate name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties, (ii) in any Loan Party's identity or corporate structure or (iii) in any Loan Party's Federal Taxpayer Identification Number. Each of Level 3 and the Borrower agrees not to effect or permit any change referred to in

the preceding sentence unless all filings (or arrangements therefor satisfactory to the Collateral Agent) have been made under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral. Each of Level 3 and the Borrower also agrees promptly to notify the Collateral Agent if any material portion of the Collateral is damaged or destroyed.

(b) Each year, at the time of delivery of the certificate pursuant to paragraph (c) of Section 5.01, Level 3 shall deliver to the Collateral Agent a certificate of an authorized officer of Level 3 (i) setting forth the information required pursuant to the Annual Perfection Certificate or confirming that there has been no change in such information since the date of the Effective Date Perfection Certificate or the date of the most recent certificate delivered pursuant to this Section and (ii) certifying that all Uniform Commercial Code financing statements (excluding fixture filings) or other appropriate filings, recordings or registrations, including all refilings, rerecordings and reregistrations, containing a description of the Collateral required to be set forth therein have been filed of record in each United States governmental, municipal or other appropriate office in each jurisdiction identified pursuant to clause (i) above to the extent necessary to perfect and continue the perfection of the security interests under the applicable Security Documents for a period of not less than 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period).

SECTION 5.04. Existence; Conduct of Business. Each of Level 3 and the Borrower will, and will cause each Material Subsidiary of Level 3 to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and its rights, charter and statutory, except where the failure to do so would not constitute or result in a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.13.

SECTION 5.05. Payment of Taxes. Each of Level 3 and the Borrower will, and will cause each Subsidiary of Level 3 to, pay its material Tax obligations, before the same shall become delinquent or in default, except where the failure to pay such tax would not constitute or result in a Material Adverse Effect.

SECTION 5.06. Maintenance of Properties. Each of Level 3 and the Borrower shall cause all properties owned by Level 3, the Borrower or any Restricted Subsidiary or used or held for use in the conduct of its business or the business of any Restricted Subsidiary to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and shall cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of Level 3 may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that nothing in this Section shall prevent Level 3 from discontinuing the maintenance of any of such properties if such discontinuance is, in the judgment of

Level 3, desirable in the conduct of its business or the business of any Subsidiary of Level 3 and not disadvantageous in any material respect to the Lenders.

SECTION 5.07. Insurance. Each of Level 3 and the Borrower will, and will cause each of the Restricted Subsidiaries to, keep all of their respective properties which are of an insurable nature insured with insurers, believed by the Borrower to be responsible, against loss or damage to the extent that property of a similar character is usually insured by companies similarly situated and owning like properties. Level 3 will furnish to the Lenders, upon the reasonable request of the Administrative Agent, but not more than once during any calendar year unless a default or an Event of Default has occurred and is continuing, information in reasonable detail as to the insurance so maintained.

SECTION 5.08. Casualty and Condemnation. Level 3 (a) will furnish to the Administrative Agent prompt written notice of any casualty or other insured damage to any portion of any Collateral or the commencement of any action or proceeding for the taking of any Collateral or any part thereof or interest therein under power of eminent domain or by condemnation or similar proceeding in each case only where Level 3 estimates in good faith that the expected proceeds from insurance, condemnation awards or otherwise will exceed \$25,000,000 and (b) will ensure that the Net Available Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Security Documents. Level 3 will act in good faith to collect or compromise all such amounts.

SECTION 5.09. Annual Information Meeting. The Borrower shall, at the request of the Required Lenders, hold an annual meeting (telephonic or otherwise) at which the Borrower will address any questions from the Lenders relating to its affairs, finances, condition or otherwise to the extent that the relevant information is public.

SECTION 5.10. Compliance with Laws. Each of Level 3 and the Borrower will, and will cause each of the Restricted Subsidiaries of Level 3 to, comply with all laws (including the Communications Act), rules, regulations and orders of any Governmental Authority applicable to it or its property (including obligations under Licenses), except where the failure to do so, individually or in the aggregate, would not constitute or result in a Material Adverse Effect.

SECTION 5.11. Use of Proceeds. The proceeds of the Loans will be advanced by the Borrower to Level 3 LLC against delivery of the Loan Proceeds Note and will be used by Level 3 LLC to repay a portion of the Indebtedness owed by it to Level 3 under the Parent Intercompany Note. Level 3 will use the amounts received as a result of such repayment (i) to repurchase a portion of the Existing Notes maturing in 2008 pursuant to the Debt Tender Offer, (ii) to pay fees and expenses in connection with the Loans and the Debt Tender Offer and (iii) for general corporate purposes. No part of the proceeds of the Loans will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

SECTION 5.12. Guarantee and Collateral Requirement; Further Assurances. Level 3 and the Borrower will cause the Guarantee and Collateral Requirement to be and remain satisfied at all times. Without limiting the foregoing, Level 3 and the Borrower will, and will cause each Subsidiary of Level 3 to, execute any and all documents, financing statements, agreements and instruments, and take all other actions (including the filing of financing statements and other documents), which shall be required under any applicable United States law, or which the Collateral Agent may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Loan Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. Level 3 and the Borrower also agree to provide to the Collateral Agent, from time to time upon request, evidence reasonably satisfactory to the Collateral Agent as to the perfection of the Liens created or intended to be created by the Loan Documents.

SECTION 5.13. Guarantee Permit Condition and Collateral Permit Condition . (a) Each of Level 3 and the Borrower will endeavor, and cause Level 3 LLC and the Material LLC Subsidiaries to endeavor, in good faith using commercially reasonable efforts to (i) cause the Guarantee Permit Condition and the Collateral Permit Condition to be satisfied with respect to Level 3 LLC and each Material LLC Subsidiary at the earliest practicable date and (ii) to obtain the material (as determined in good faith by the General Counsel of Level 3) authorizations and consents of Federal and State Authorities required to cause any Restricted Subsidiary to become as Guarantor as required by Sections 6.01(d) and 6.02(d). For purposes of this Section, the requirement that Level 3, the Borrower or any Subsidiary of Level 3 use “commercially reasonable efforts” shall not be deemed to require it to make material payments in excess of normal fees and costs to or at the direction of Governmental Authorities or to change the manner in which it conducts its business in any respect that the management of Level 3 shall determine in good faith to be adverse or materially burdensome. Upon the reasonable request of Level 3 or the Borrower, the Administrative Agent and the Lenders will cooperate with Level 3 and the Borrower as necessary to enable them to comply with their obligations under this Section.

(b) If Level 3 shall determine that Level 3 LLC is able, consistent with applicable law, to create Liens on any Collateral owned by it and located in any jurisdiction located in the United States to secure the Loan Proceeds Note prior to the satisfaction by it of the Collateral Permit Condition, it will cause Level 3 LLC promptly to create and perfect such Liens on terms and under documentation reasonably satisfactory to Level 3 and the Collateral Agent.

ARTICLE VI

Negative Covenants

Until the Commitments have expired or terminated and the principal of and interest on the Loan and all fees payable hereunder have been paid in full, each of Level 3, the Borrower, each Guarantor covenants and agrees with the Lenders that:

SECTION 6.01. Limitation on Consolidated Debt. (a) Level 3 shall not, and shall not permit any Restricted Subsidiary (other than to the extent permitted by paragraph (b) of Section 6.02) to, directly or indirectly, Incur any Indebtedness; provided, however, that Level 3 or any Restricted Subsidiary (subject, in the case of the Borrower and any Borrower Restricted Subsidiary, to Section 6.02) may Incur any Indebtedness if, after giving pro forma effect to such Incurrence and the receipt and application of the net proceeds thereof, no Default or Event of Default would occur as a consequence of such Incurrence or be continuing following such Incurrence and either (i) the ratio of (A) the aggregate consolidated principal amount (or, in the case of Indebtedness issued at a discount, the then-Accreted Value) of Indebtedness of Level 3 and its Restricted Subsidiaries outstanding as of the most recent available quarterly or annual balance sheet, after giving pro forma effect to the Incurrence of such Indebtedness and any other Indebtedness Incurred or repaid since such balance sheet date and the receipt and application of the net proceeds thereof, to (B) Consolidated Cash Flow Available for Fixed Charges for Level 3 and its Restricted Subsidiaries for the four full fiscal quarters next preceding the Incurrence of such Indebtedness for which consolidated financial statements are available, would be less than 5.0 to 1.0, or (ii) Level 3's Consolidated Capital Ratio as of the most recent available quarterly or annual balance sheet, after giving pro forma effect to (x) the Incurrence of such Indebtedness and any other Indebtedness Incurred or repaid since such balance sheet date, (y) the issuance of any Capital Stock (other than Disqualified Stock) of Level 3 since such balance sheet date, including the issuance of any Capital Stock to be issued concurrently with the Incurrence of such Indebtedness, and (z) the receipt and application of the net proceeds of such Indebtedness or Capital Stock, as the case may be, is less than 2.25 to 1.0.

(b) Notwithstanding the foregoing limitation, Level 3 or any Restricted Subsidiary (other than the Borrower or any Borrower Restricted Subsidiary, except to the extent permitted by Section 6.02) may Incur any and all of the following (each of which shall be given independent effect):

(i) Indebtedness created under the Loan Documents (other than Indebtedness Incurred pursuant to an Additional Tranche);

(ii) (A) Indebtedness under Qualified Credit Facilities (other than Qualified Receivables Facilities), Purchase Money Debt and Indebtedness in respect of letters of credit, in an aggregate principal amount outstanding or available that, when taken together with the sum of (A) the amount of any Indebtedness outstanding or available under the Loan Documents, plus (B) the amount of any outstanding Indebtedness Incurred pursuant to clause (ii)(A) of

paragraph (b) of Section 6.02, plus (C) the amount of all refinancing Indebtedness outstanding or available pursuant to clause (vi) of paragraph (b) of Section 6.02 in respect of Indebtedness previously Incurred pursuant to clause (ii)(A) of paragraph (b) of Section 6.02, plus (D) the amount of all refinancing Indebtedness outstanding or available pursuant to clause (viii) below in respect of Indebtedness previously Incurred pursuant to this clause (ii)(A)) at any one time not to exceed \$750,000,000, which amount shall be reduced by the amount of Net Available Proceeds used after the Effective Date to repay Indebtedness under any Credit Facilities (including the Loan Documents) or any refinancing Indebtedness in respect of any Credit Facilities (including the Loan Documents) Incurred pursuant to clause (vi) of paragraph (b) of Section 6.02 or clause (viii) below), and not reinvested in Telecommunications/IS Assets or used to repay Indebtedness created under the Loan Documents or repay other Indebtedness, pursuant to and as permitted by Section 6.07; and

(B) Indebtedness under Credit Facilities in an aggregate principal amount outstanding or available that, when taken together with the sum of (A) the amount of any outstanding Indebtedness Incurred pursuant to clause (ii)(B) of paragraph (b) of Section 6.02, plus (B) the amount of all refinancing Indebtedness outstanding or available pursuant to clause (vi) of paragraph (b) of Section 6.02 in respect of Indebtedness previously Incurred pursuant to clause (ii)(B) of paragraph (b) of Section 6.02, plus (C) the amount of all refinancing Indebtedness outstanding or available pursuant to clause (viii) below in respect of Indebtedness previously Incurred pursuant to this clause (ii)(A)) at any one time not to exceed \$100,000,000;

provided, however, that at any one time, the aggregate amount of (x) Indebtedness Incurred or permitted to be Incurred pursuant to clauses (A) and (B) above (including any refinancing Indebtedness Incurred pursuant to clause (viii) below) and (y) the Indebtedness Incurred or permitted to be Incurred pursuant to clause (ii) of paragraph (b) of Section 6.02 (including any refinancing Indebtedness Incurred pursuant to clause (vi) of paragraph (b) of Section 6.02) shall not exceed 1.5 times Consolidated Cash Flow Available for Fixed Charges of Level 3 and its Restricted Subsidiaries for the four full fiscal quarters next preceding the Incurrence of such Indebtedness for which consolidated financial statements are available.

(iii) Purchase Money Debt; provided, however, that the amount of such Purchase Money Debt does not exceed 100% of the cost of construction, installation, acquisition, lease, development or improvement of the applicable Telecommunications/IS Assets;

(iv) Subordinated Debt of Level 3; provided, however, that the aggregate principal amount (or, in the case of Indebtedness issued at a discount, the Accreted Value) of such Indebtedness, together with any other outstanding Indebtedness Incurred pursuant to this clause (iv), shall not exceed \$500,000,000 at any one time (which amount shall be permanently reduced by the amount of

Net Available Proceeds used to repay Subordinated Debt of Level 3, and not reinvested in Telecommunications/IS Assets or used to repay the Loan or repay other Indebtedness, pursuant to and as permitted by Section 6.07), except to the extent such Indebtedness in excess of \$500,000,000 (A) is subordinated to all other Indebtedness of Level 3 other than Indebtedness Incurred pursuant to this clause (iv) in excess of such \$500,000,000 limitation, (B) does not provide for the payment of cash interest on such Indebtedness prior to the Maturity Date and (C) (1) does not provide for payments of principal of such Indebtedness at stated maturity or by way of a sinking fund applicable thereto or by way of any mandatory redemption, defeasance, retirement or repurchase thereof by Level 3 (including any redemption, retirement or repurchase which is contingent upon events or circumstances, but excluding any retirement required by virtue of the acceleration of any payment with respect to such Indebtedness upon any event of default thereunder), in each case on or prior to the Maturity Date, and (2) does not permit redemption or other retirement (including pursuant to an offer to purchase made by Level 3 but excluding through conversion into capital stock of Level 3, other than Disqualified Stock, without any payment by Level 3 or its Restricted Subsidiaries to the holders thereof) of such Indebtedness at the option of the holder thereof on or prior to the Maturity Date or the stated maturity of any Additional Tranche then outstanding;

(v) Indebtedness outstanding on the Measurement Date;

(vi) Indebtedness owed by Level 3 to any Restricted Subsidiary or Indebtedness owed by a Restricted Subsidiary to Level 3 or a Restricted Subsidiary; provided, however, that (A) any Person that Incurs Indebtedness owed to Level 3 or a Sister Restricted Subsidiary pursuant to this clause (vi) is a Guarantor and a Loan Proceeds Note Guarantor, (B) (x) upon the transfer, conveyance or other disposition by such Restricted Subsidiary or Level 3 of any Indebtedness so permitted to a Person other than Level 3 or another Restricted Subsidiary or (y) if for any reason such Restricted Subsidiary ceases to be a Restricted Subsidiary, the provisions of this clause (vi) shall no longer be applicable to such Indebtedness and such Indebtedness shall be deemed to have been Incurred by the issuer thereof at the time of such transfer, conveyance or other disposition or when such Restricted Subsidiary ceases to be a Restricted Subsidiary; and (C) the payment obligation of (i) such Indebtedness (if clause (A) above applies) and (ii) all obligations (if clause (A) above applies) with respect to any Offering Proceeds Note Guarantee of such obligor is expressly subordinated in any bankruptcy, liquidation or winding up proceeding of the obligor to the prior payment in full in cash of all obligations with respect to the Loan Proceeds Note Guarantee of such Loan Proceeds Note Guarantor; and provided further, however, that a Foreign Restricted Subsidiary need not become a Guarantor or a Loan Proceeds Note Guarantor pursuant to clause (A) above until such time and only so long as such Foreign Restricted Subsidiary Guarantees any other Indebtedness of Level 3 or any Domestic Restricted Subsidiary;

(vii) Indebtedness Incurred by a Person prior to the time (A) such Person became a Restricted Subsidiary, (B) such Person merges into or consolidates with a Restricted Subsidiary or (C) another Restricted Subsidiary merges into or consolidates with such Person (in a transaction in which such Person becomes a Restricted Subsidiary), which Indebtedness was not Incurred in anticipation of such transaction and was outstanding prior to such transaction;

(viii) Indebtedness Incurred to renew, extend, refinance, defease, repay, prepay, repurchase, redeem, retire, exchange or refund (each, a "refinancing") Indebtedness Incurred pursuant to clause (i), (ii), (iii), (v), (vii) or (xii) of this paragraph (b) or this clause (viii), in an aggregate principal amount (or if issued at a discount, the then-Accreted Value) not to exceed the aggregate principal amount (or if issued at a discount, the then-Accreted Value) of and accrued interest on the Indebtedness so refinanced plus the amount of any premium required to be paid in connection with such refinancing pursuant to the terms of the Indebtedness so refinanced or the amount of any premium reasonably determined by the Board of Directors of Level 3 as necessary to accomplish such refinancing by means of a tender offer or privately negotiated repurchase, plus the expenses of Level 3 Incurred in connection with such refinancing; provided, however, that (A) if the Person that originally Incurred the Indebtedness to be refinanced became, or would have been required to become if not already, a Guarantor or a Loan Proceeds Note Guarantor as a result of the Incurrence of the Indebtedness being refinanced in accordance with this covenant, (1) the Person that Incurs the refinancing Indebtedness pursuant to this clause (viii) shall be a Guarantor and a Loan Proceeds Note Guarantor and (2) if the Indebtedness to be refinanced is subordinated to the Loan Proceeds Note Guarantee of such Loan Proceeds Note Guarantor or the Guarantee of the Obligations of such Guarantor, the refinancing Indebtedness shall be subordinated to the same extent to the Loan Proceeds Note Guarantee of the Loan Proceeds Note Guarantor or the Guarantee of the Obligations of such Guarantor, as the case may be, Incurring such refinancing Indebtedness, (B) the refinancing Indebtedness shall not be senior in right of payment to the Indebtedness that is being refinanced and (C) in the case of any refinancing of Indebtedness Incurred pursuant to clause (i), (v), (vii) or (xii) or, if such Indebtedness previously refinanced Indebtedness Incurred pursuant to any such clause, this clause (viii), the refinancing Indebtedness by its terms, or by the terms of any agreement or instrument pursuant to which such Indebtedness is issued, (x) does not provide for payments of principal of such Indebtedness at stated maturity or by way of a sinking fund applicable thereto or by way of any mandatory redemption, defeasance, retirement or repurchase thereof by Level 3 or any Restricted Subsidiary (including any redemption, retirement or repurchase which is contingent upon events or circumstances, but excluding any retirement required by virtue of the acceleration of any payment with respect to such Indebtedness upon any event of default thereunder), in each case prior to the time the same are required by the terms of the Indebtedness being refinanced and (y) does not permit redemption or other retirement (including pursuant to an offer to purchase made by Level 3 or any Restricted Subsidiary) of such Indebtedness at the option of the holder

thereof prior to the time the same are required by the terms of the Indebtedness being refinanced, other than, in the case of clause (x) or (y), any such payment, redemption or other retirement (including pursuant to an offer to purchase made by Level 3) which is conditioned upon a change of control pursuant to provisions substantially similar to those described under Section 2.04(f);

(ix) Indebtedness (A) in respect of performance, surety or appeal bonds, Guarantees, letters of credit or reimbursement obligations Incurred or provided in the ordinary course of business securing the performance of contractual, franchise, lease, self-insurance or license obligations and not in connection with the Incurrence of Indebtedness or (B) in respect of customary agreements providing for indemnification, adjustment of purchase price after closing, or similar obligations, or from Guarantees or letters of credit, surety bonds or performance bonds securing any such obligations of Level 3 or any of its Restricted Subsidiaries pursuant to such agreements, Incurred in connection with the disposition of any business, assets or Restricted Subsidiary (other than Guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiary for the purpose of financing such acquisition) and in an aggregate principal amount not to exceed the gross proceeds actually received by Level 3 or any Restricted Subsidiary in connection with such disposition;

(x) Indebtedness consisting of Permitted Hedging Agreements;

(xi) Indebtedness not otherwise permitted to be Incurred pursuant to clauses (i) through (x) above or clause (xii) below, which, together with any other outstanding Indebtedness Incurred pursuant to this clause (xi), has an aggregate principal amount not in excess of \$50,000,000 at any time outstanding; and

(xii) Effective Date Purchase Money Debt and Indebtedness outstanding on the date hereof under the Existing Notes and the related indentures and any Restricted Subsidiary Guarantees or Level 3 Guarantees issued prior to the Effective Date in accordance with such related indentures.

(c) Notwithstanding any other provision of this Section 6.01, the maximum amount of Indebtedness that Level 3 or any Restricted Subsidiary may Incur pursuant to this Section 6.01 shall not be deemed to be exceeded due solely to the result of fluctuations in the exchange rates of currencies.

(d) For purposes of determining any particular amount of Indebtedness under this Section 6.01, Guarantees, Liens or obligations with respect to letters of credit supporting Indebtedness otherwise included in the determination of such particular amount shall not be included and shall not be treated as Indebtedness. For purposes of determining compliance with this Section 6.01, in the event that an item of Indebtedness meets the criteria of more than one of the types of Indebtedness described in the above clauses, Level 3, in its sole discretion, shall classify such item of Indebtedness and only be required to include the amount and type of such Indebtedness in one of such clauses.

Notwithstanding anything to the contrary set forth in this Agreement, after the Effective Date and prior to the Enhanced Collateral Date, Level 3 shall not permit Level 3 LLC or any other Borrower Restricted Subsidiary to Incur any Guarantee of any Indebtedness (other than Indebtedness created under the Loan Documents (including pursuant to an Additional Tranche)) of Level 3, the Borrower or any Sister Restricted Subsidiary. To the extent permitted under applicable laws and regulations, in the event that any Restricted Subsidiary of Level 3 Guarantees the 10.75% Notes, then Level 3 shall cause such Restricted Subsidiary to (i) become a Guarantor and a Loan Proceeds Note Guarantor and (ii) if such Restricted Subsidiary is a Borrower Restricted Subsidiary, subordinate, in any bankruptcy, liquidation or winding up proceeding of such Borrower Restricted Subsidiary, such Borrower Restricted Subsidiary's Guarantee of the 10.75% Notes to the Guarantee of the Obligations and the Loan Proceeds Note Guarantee of such Borrower Restricted Subsidiary.

SECTION 6.02. Limitation on Indebtedness of the Borrower and Borrower Restricted Subsidiaries. (a) The Borrower shall not, and shall not permit any Borrower Restricted Subsidiary to, directly or indirectly, Incur any Indebtedness; provided, however, that (i) the Borrower or (ii) any Borrower Restricted Subsidiary may incur any Indebtedness if, after giving pro forma effect to such Incurrence and the receipt and application of the net proceeds thereof, no Default or Event of Default would occur as a consequence of such Incurrence or be continuing following such Incurrence and the Borrower Debt Ratio would be less than 4.0 to 1.0; provided, however, that any Borrower Restricted Subsidiary that Incurs Indebtedness pursuant to this paragraph (a) is a Guarantor and a Loan Proceeds Note Guarantor.

(b) Notwithstanding the foregoing limitation, the Borrower or any Borrower Restricted Subsidiary may Incur any and all of the following (each of which shall be given independent effect):

(i) Indebtedness created under the Loan Documents (other than Indebtedness Incurred pursuant to an Additional Tranche);

(ii) (A) Qualified Credit Facilities (other than Qualified Receivables Facilities), Purchase Money Debt and Indebtedness in respect of letters of credit, in an aggregate principal amount outstanding or available that, when taken together with the sum of (A) the amount of any Indebtedness outstanding or available under the Loan Documents, plus (B) the amount of any outstanding Indebtedness Incurred pursuant to clause (ii)(A) of paragraph (b) of Section 6.01, plus (C) the amount of all refinancing Indebtedness outstanding or available pursuant to clause (viii) of paragraph (b) of Section 6.01 in respect of Indebtedness previously Incurred pursuant to clause (ii)(A) of paragraph (b) of Section 6.01, plus (D) the amount of all refinancing Indebtedness outstanding or available pursuant to clause (vi) below in respect of Indebtedness previously Incurred pursuant to this clause (ii)(A)) at any one time not to exceed \$750,000,000, which amount shall be reduced by the amount of Net Available Proceeds used after the Effective Date to repay Indebtedness under any Credit Facilities (including the Loan Documents) or any refinancing Indebtedness in respect of any Credit Facilities (including the Loan Documents) Incurred pursuant to clause (viii) of paragraph (b) of Section 6.01 or clause (vi) below),

and not reinvested in Telecommunications/IS Assets or used to repay Indebtedness created under the Loan Documents or repay other Indebtedness, pursuant to and as permitted by Section 6.07; and

(B) Indebtedness under Credit Facilities in an aggregate principal amount outstanding or available that, when taken together with the sum of (A) the amount of any outstanding Indebtedness Incurred pursuant to clause (ii)(B) of paragraph (b) of Section 6.01, plus (B) the amount of all refinancing Indebtedness outstanding or available pursuant to clause (viii) of paragraph (b) of Section 6.01 in respect of Indebtedness previously Incurred pursuant to clause (ii)(B) of paragraph (b) of Section 6.01, plus (C) the amount of all refinancing Indebtedness outstanding or available pursuant to clause (vi) below in respect of Indebtedness previously Incurred pursuant to this clause (ii)(A)) at any one time not to exceed \$100,000,000;

provided, however, that at any one time, the aggregate amount of (x) Indebtedness Incurred or permitted to be Incurred pursuant to clauses (A) and (B) above (including any refinancing Indebtedness Incurred pursuant to clause (vi) below) and (y) the Indebtedness Incurred or permitted to be Incurred pursuant to clause (ii) of paragraph (b) of Section 6.01 (including any refinancing Indebtedness Incurred pursuant to clause (viii) of paragraph (b) of Section 6.01) shall not exceed 1.5 times Consolidated Cash Flow Available for Fixed Charges of Level 3 and its Restricted Subsidiaries for the four full fiscal quarters next preceding the Incurrence of such Indebtedness for which consolidated financial statements are available.

(iii) Indebtedness of the Borrower or any Borrower Restricted Subsidiary outstanding on the Measurement Date;

(iv) Indebtedness owed by the Borrower to a Restricted Subsidiary, Indebtedness owed by a Borrower Restricted Subsidiary to Level 3 or a Restricted Subsidiary (including Indebtedness owed by a Borrower Restricted Subsidiary to another Borrower Restricted Subsidiary), and Indebtedness with an aggregate principal amount not in excess of \$10,000,000 at any time outstanding owed by the Borrower to Level 3 or any Sister Restricted Subsidiary; provided, however, that (A) any Borrower Restricted Subsidiary that Incurs Indebtedness owed to Level 3 or a Sister Restricted Subsidiary pursuant to this clause (iv) is a Guarantor and a Loan Proceeds Note Guarantor, (B)(x) upon the transfer, conveyance or other disposition by such Borrower Restricted Subsidiary or the Borrower of any Indebtedness so permitted to a Person other than the Borrower or another Borrower Restricted Subsidiary or (y) if for any reason such Borrower Restricted Subsidiary ceases to be a Borrower Restricted Subsidiary, the provisions of this clause (iv) shall no longer be applicable to such Indebtedness and such Indebtedness shall be deemed to have been Incurred by the borrower thereof at the time of such transfer, conveyance or other disposition or when such Borrower Restricted Subsidiary ceases to be a Borrower Restricted Subsidiary and (C) the payment obligation of (i) such Indebtedness (if clause (A)

above applies) and (ii) all obligations (if clause (A) above applies) with respect to any Offering Proceeds Note Guarantee of such obligor is expressly subordinated in any bankruptcy, liquidation or winding up proceeding of the obligor to the prior payment in full in cash of all obligations of such Guarantor with respect to the Loan Proceeds Note Guarantee of such Loan Proceeds Note Guarantor; and provided further, however, that a Foreign Restricted Subsidiary need not become a Guarantor or a Loan Proceeds Note Guarantor pursuant to clause (A) above until such time and only so long as such Foreign Restricted Subsidiary Guarantees any other Indebtedness of Level 3 or any Domestic Restricted Subsidiary;

(v) Indebtedness Incurred by a Person (other than Level 3 or any Sister Restricted Subsidiary) prior to the time (A) such Person became a Borrower Restricted Subsidiary, (B) such Person merges into or consolidates with a Borrower Restricted Subsidiary or (C) a Borrower Restricted Subsidiary merges into or consolidates with such Person (in a transaction in which such Person becomes a Borrower Restricted Subsidiary), which Indebtedness was not Incurred in anticipation of such transaction and was outstanding prior to such transaction; provided, however, that after giving effect to the Incurrence of any Indebtedness pursuant to this clause (v), the Borrower could Incur at least \$1.00 of additional Indebtedness pursuant to paragraph (a) above computed using “5.0 to 1.0” rather than “4.0 to 1.0” as it appears therein and such Person or the Borrower Restricted Subsidiary into which such Person merges or consolidates is a Guarantor and a Loan Proceeds Note Guarantor;

(vi) Indebtedness of the Borrower or any Borrower Restricted Subsidiary Incurred to renew, extend, refinance, defease, repay, prepay, repurchase, redeem, retire, exchange or refund (each, a “refinancing”) Indebtedness of the Borrower or any Borrower Restricted Subsidiary Incurred pursuant to clause (i), (ii), (iii), (v) or (x) of this paragraph (b) or this clause (vi), in an aggregate principal amount (or if issued at a discount, the then-Accreted Value) not to exceed the aggregate principal amount (or if issued at a discount, the then-Accreted Value) of and accrued interest on the Indebtedness so refinanced plus the amount of any premium required to be paid in connection with such refinancing pursuant to the terms of the Indebtedness so refinanced or the amount of any premium reasonably determined by the Board of Directors of Level 3 as necessary to accomplish such refinancing by means of a tender offer or privately negotiated repurchase, plus the expenses of the Borrower Incurred in connection with such refinancing; provided, however, that (A) if the Person that originally Incurred the Indebtedness to be refinanced became, or would have been required to become if not already, a Guarantor or a Loan Proceeds Note Guarantor as a result of the Incurrence of the Indebtedness being refinanced in accordance with this covenant, (1) the Person that Incurs the refinancing Indebtedness pursuant to this clause (vi) (if not the Borrower) shall be a Guarantor and a Loan Proceeds Note Guarantor and (2) if the Indebtedness to be refinanced is subordinated to the Loan Proceeds Note Guarantee of such Loan Proceeds Note Guarantor or the Guarantee of the Obligations of such Guarantor, the refinancing Indebtedness

shall be subordinated to the same extent to the Loan Proceeds Note Guarantee of such Loan Proceeds Note Guarantor or the Guarantee of the Obligations of such Guarantor, as the case may be, Incurring such refinancing Indebtedness, (B) the refinancing Indebtedness shall not be senior in right of payment to the Indebtedness that is being refinanced and (C) in the case of any refinancing of Indebtedness Incurred pursuant to clause (i), (v) or (x) or, if such Indebtedness previously refinanced Indebtedness Incurred pursuant to any such clause, this clause (vi), the refinancing Indebtedness by its terms, or by the terms of any agreement or instrument pursuant to which such Indebtedness is issued, (x) does not provide for payments of principal of such Indebtedness at stated maturity or by way of a sinking fund applicable thereto or by way of any mandatory redemption, defeasance, retirement or repurchase thereof by the Borrower or any Borrower Restricted Subsidiary (including any redemption, retirement or repurchase which is contingent upon events or circumstances, but excluding any retirement required by virtue of the acceleration of any payment with respect to such Indebtedness upon any event of default thereunder), in each case prior to the time the same are required by the terms of the Indebtedness being refinanced and (y) does not permit redemption or other retirement (including pursuant to an offer to purchase made by the Borrower or a Borrower Restricted Subsidiary) of such Indebtedness at the option of the holder thereof prior to the time the same are required by the terms of the Indebtedness being refinanced, other than, in the case of clause (x) or (y), any such payment, redemption or other retirement (including pursuant to an offer to purchase made by the Borrower) which is conditioned upon a change of control pursuant to provisions substantially similar to those described under Section 2.04(f);

(vii) Indebtedness of the Borrower or any Borrower Restricted Subsidiary (A) in respect of performance, surety or appeal bonds, Guarantees, letters of credit or reimbursement obligations Incurred or provided in the ordinary course of business securing the performance of contractual, franchise, lease, self-insurance or license obligations and not in connection with the Incurrence of Indebtedness or (B) in respect of customary agreements providing for indemnification, adjustment of purchase price after closing, or similar obligations, or from Guarantees or letters of credit, surety bonds or performance bonds securing any such obligations of the Borrower or any Borrower Restricted Subsidiary pursuant to such agreements, Incurred in connection with the disposition of any business, assets or Borrower Restricted Subsidiary (other than Guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Borrower Restricted Subsidiary for the purpose of financing such acquisition) and in an aggregate principal amount not to exceed the gross proceeds actually received by the Borrower or any Borrower Restricted Subsidiary in connection with such disposition;

(viii) Indebtedness of the Borrower or any Borrower Restricted Subsidiary consisting of Permitted Hedging Agreements;

(ix) Indebtedness of any Foreign Restricted Subsidiary of the Borrower not otherwise permitted to be Incurred pursuant to clause (i) through (viii) above or clause (x) below, which, together with any other outstanding Indebtedness Incurred pursuant to this clause (ix) has an aggregate principal amount not in excess of \$100,000,000 at any time outstanding; and

(x) Effective Date Purchase Money Debt initially Incurred by the Borrower or any Borrower Restricted Subsidiary or another Person that became a Borrower Restricted Subsidiary on or before the Effective Date.

(c) Notwithstanding any other provision of this Section 6.02, the maximum amount of Indebtedness the Borrower or any Borrower Restricted Subsidiary may Incur pursuant to this Section 6.02 shall not be deemed to be exceeded due solely to the result of fluctuations in the exchange rates of currencies.

(d) For purposes of determining any particular amount of Indebtedness under this Section 6.02, Guarantees (other than Guarantees of Indebtedness of Level 3 or any Sister Restricted Subsidiary that are not Guarantees of Indebtedness Incurred by Level 3 or any Sister Restricted Subsidiary pursuant to clause (ii) of paragraph (b) of Section 6.01), Liens or obligations with respect to letters of credit supporting Indebtedness otherwise included in the determination of such particular amount shall not be included shall not be treated as Indebtedness. For purposes of determining compliance with this Section 6.02, in the event that an item of Indebtedness meets the criteria of more than one of the types of Indebtedness described in the above clauses, the Borrower, in its sole discretion, shall classify such item of Indebtedness and only be required to include the amount and type of such Indebtedness in one of such clauses. Notwithstanding anything to the contrary set forth in this Agreement, after the Effective Date and prior to the Enhanced Collateral Date, the Borrower shall not permit Level 3 LLC or any other Borrower Restricted Subsidiary to Incur any Guarantee of any Indebtedness (other than Indebtedness created under the Loan Documents (including pursuant to an Additional Tranche)) of Level 3, the Borrower or any Sister Restricted Subsidiary. To the extent permitted under applicable laws and regulations, in the event that any Borrower Restricted Subsidiary Guarantees the 10.75% Notes, then the Borrower shall cause such Borrower Restricted Subsidiary to (i) become a Guarantor and a Loan Proceeds Note Guarantor and (ii) to subordinate, in any bankruptcy, liquidation or winding up proceeding of such Borrower Restricted Subsidiary, such Borrower Restricted Subsidiary's Guarantee of the 10.75% Notes to the Guarantee of the Obligations and the Loan Proceeds Note Guarantee of such Borrower Restricted Subsidiary.

SECTION 6.03. Limitation on Restricted Payments. (a) Level 3:

(i) shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, declare or pay any dividend, or make any distribution, in respect of its Capital Stock or to the holders thereof, excluding any dividends or distributions which are made solely to Level 3 or a Restricted Subsidiary (and, if such Restricted Subsidiary is not a Wholly Owned Subsidiary, to the other stockholders of such Restricted Subsidiary on a pro rata basis or on a basis that results in the receipt by Level 3 or a Restricted Subsidiary of dividends or distributions of greater value than it would receive on a pro rata basis) or any dividends or distributions payable solely in shares of Capital Stock of Level 3

(other than Disqualified Stock) or in options, warrants or other rights to acquire Capital Stock of Level 3 (other than Disqualified Stock);

(ii) shall not, and shall not permit any Restricted Subsidiary to, purchase, redeem, or otherwise retire or acquire for value (x) any Capital Stock of Level 3 or any Restricted Subsidiary or (y) any options, warrants or rights to purchase or acquire shares of Capital Stock of Level 3 or any Restricted Subsidiary or any securities convertible or exchangeable into shares of Capital Stock of Level 3 or any Restricted Subsidiary, except, in any such case, any such purchase, redemption or retirement or acquisition for value (A) paid to Level 3 or a Restricted Subsidiary (or, in the case of any such purchase, redemption or other retirement or acquisition for value with respect to a Restricted Subsidiary that is not a Wholly Owned Subsidiary, to the other stockholders of such Restricted Subsidiary on a pro rata basis or on a basis that results in the receipt by Level 3 or a Restricted Subsidiary of payments of greater value than it would receive on a pro rata basis) or (B) paid solely in shares of Capital Stock (other than Disqualified Stock) of Level 3;

(iii) shall not make, or permit any Restricted Subsidiary to make, any Investment (other than an Investment in Level 3 or a Restricted Subsidiary or a Permitted Investment) in any Person, including the Designation of any Restricted Subsidiary as an Unrestricted Subsidiary, or the Revocation of any such Designation, according to Section 6.10;

(iv) shall not, and shall not permit any Restricted Subsidiary to, redeem, defease, repurchase, retire or otherwise acquire or retire for value, prior to any scheduled maturity, repayment or sinking fund payment, Indebtedness of Level 3 which is subordinate in right of payment to the Guarantee by Level 3 of the Obligations or Indebtedness of any Restricted Subsidiary which is subordinate in right of payment to the Loans (in the case of the Borrower) or the Guarantee of the Obligations (in the case of Restricted Subsidiaries other than the Borrower) by such Restricted Subsidiary (other than any redemption, defeasance, repurchase, retirement or other acquisition or retirement for value made in anticipation of satisfying a scheduled maturity, repayment or sinking fund obligation due within one year thereof); and

(v) shall not, and shall not permit any Restricted Subsidiary to, issue, transfer, convey, sell or otherwise dispose of Capital Stock of any Restricted Subsidiary to a Person other than Level 3 or another Restricted Subsidiary if the result thereof is that such Restricted Subsidiary shall cease to be a Restricted Subsidiary, in which event the amount of such "Restricted Payment" shall be the Fair Market Value of the remaining interest, if any, in such former Restricted Subsidiary held by Level 3 and the other Restricted Subsidiaries (each of clauses (i) through (v) being a "Restricted Payment")

if:

(1) an Event of Default, or an event that with the passing of time or the giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, or

(2) upon giving effect to such Restricted Payment, Level 3 could not Incur at least \$1.00 of additional Indebtedness pursuant to paragraph (a) of Section 6.01, or

(3) upon giving effect to such Restricted Payment, the aggregate of all Restricted Payments made on or after Measurement Date, including Restricted Payments made pursuant to clause (A) or (B) of the proviso at the end of this sentence, and Permitted Investments made on or after the Measurement Date pursuant to clause (i) or (j) of the definition thereof (the amount of any such Restricted Payment or Permitted Investment, if made other than in cash, to be based upon Fair Market Value) exceeds the sum of:

(a) 50% of cumulative Consolidated Net Income of Level 3 and its Restricted Subsidiaries (or, in the case that Consolidated Net Income of Level 3 and its Restricted Subsidiaries shall be negative, 100% of such negative amount) since the end of the last full fiscal quarter prior to the Measurement Date through the last day of the last full fiscal quarter ending at least 45 days prior to the date of such Restricted Payment and

(b) plus, in the case of any Revocation made after the Measurement Date, an amount equal to the lesser of the portion (proportionate to Level 3's equity interest in the Subsidiary to which such Revocation relates) of the Fair Market Value of the net assets of such Subsidiary at the time of Revocation and the amount of Investments previously made (and treated as a Restricted Payment) by Level 3 or any Restricted Subsidiary in such Subsidiary;

provided, however, that Level 3 or a Restricted Subsidiary may, without regard to the limitations in clause (3) but subject to clauses (1) and (2), make (A) Restricted Payments in an aggregate amount not to exceed the sum of \$50,000,000 and the aggregate net cash proceeds received after the Measurement Date (i) as capital contributions to Level 3, from the issuance (other than to a Subsidiary or an employee stock ownership plan or trust established by Level 3 or any such Subsidiary for the benefit of their employees) of Capital Stock (other than Disqualified Stock) of Level 3, and (ii) from the issuance or sale of Indebtedness of Level 3 or any Restricted Subsidiary (other than to a Subsidiary, Level 3 or an employee stock ownership plan or trust established by Level 3 or any such Subsidiary for the benefit of their employees) that after the Measurement Date has been converted into or exchanged for Capital Stock (other than Disqualified Stock) of Level 3 and (B) Investments in Persons engaged in the Telecommunications/IS Business in an aggregate amount not to exceed the after-tax gain on the sale, after the Measurement Date, of

Special Assets to the extent sold for cash, Cash Equivalents, Telecommunications/IS Assets or the assumption of Indebtedness of Level 3 or any Restricted Subsidiary (other than Indebtedness that is subordinated to the Loans, the Loan Proceeds Note or any applicable Guarantee of the Obligations or Loan Proceeds Note Guarantee) and release of Level 3 and all Restricted Subsidiaries from all liability on the Indebtedness assumed. The aggregate net cash proceeds referred to in the immediately preceding clauses (A)(i) and (A)(ii) shall not be utilized to make Restricted Payments pursuant to such clauses to the extent such proceeds have been utilized to make Permitted Investments under clause (i) of the definition of "Permitted Investments."

(b) Notwithstanding the foregoing limitation,

(i) Level 3 may pay any dividend on Capital Stock of any class of Level 3 within 60 days after the declaration thereof if, on the date when the dividend was declared, Level 3 could have paid such dividend in accordance with the foregoing provisions; provided, however, that at the time of such payment of such dividend, no other Event of Default shall have occurred and be continuing (or result therefrom);

(ii) Level 3 may repurchase any shares of its Common Stock or options to acquire its Common Stock from Persons who were formerly directors, officers or employees of Level 3 or any of its Subsidiaries or other Affiliates in an amount not to exceed \$3,000,000 in any 12-month period;

(iii) Level 3 and any Restricted Subsidiary may refinance any Indebtedness otherwise permitted by clause (viii) of paragraph (b) of Section 6.01 or clause (vi) of paragraph (b) of Section 6.02;

(iv) Level 3 and any Restricted Subsidiary may retire or repurchase any Capital Stock of Level 3 or of any Restricted Subsidiary or any Subordinated Debt of Level 3 in exchange for, or out of the proceeds of substantially concurrent sale (other than to a Subsidiary or an employee stock ownership plan or trust established by Level 3 or any such Subsidiary for the benefit of their employees) of, Capital Stock (other than Disqualified Stock) of Level 3; provided, however, that the proceeds from any such exchange or sale of Capital Stock shall be excluded from any calculation pursuant to clause (A)(i) in the proviso at the end of paragraph (a) above or pursuant to clause (b) of the definition of "Invested Capital"; and

(v) Level 3 may pay cash dividends in any amount not in excess of \$50,000,000 in any 12-month period in respect of Preferred Stock of Level 3 (other than Disqualified Stock).

The Restricted Payments described in the foregoing clauses (i), (ii) and (v) shall be included in the calculation of Restricted Payments; the

Restricted Payments described in clauses (iii) and (iv) shall be excluded in the calculation of Restricted Payments.

(c) The Borrower may not, and may not permit any Borrower Restricted Subsidiary to, pay any dividend or make any distribution in respect of shares of its Capital Stock held by Level 3 or a Sister Restricted Subsidiary (whether in cash, securities or other Property) or any payment (whether in cash, securities or other Property) on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such shares of Capital Stock (all such dividends, distributions and payments being referred to herein as “Level 3 Transfers”), other than (i) Level 3 Transfers at such times and in such amounts as shall be necessary to permit Level 3 to pay administrative expenses attributable to the operations of its Restricted Subsidiaries, (ii) Level 3 Transfers at such times and in such amounts as are sufficient for Level 3 to make the timely payment of interest, premium (if any) and principal (whether at stated maturity, by way of a sinking fund applicable thereto, by way of any mandatory redemption, defeasance, retirement or repurchase thereof, including upon the occurrence of designated events or circumstances or by virtue of acceleration upon an event of default, or by way of redemption or retirement at the option of the holder of the Indebtedness of Level 3, including pursuant to offers to purchase) according to the terms of any Indebtedness of Level 3, (iii) Level 3 Transfers (A) to permit Level 3 to satisfy its obligations in respect of stock option plans or other benefit plans for management or employees of Level 3 and its Subsidiaries, (B) to permit Level 3 to pay dividends on Preferred Stock of Level 3 in an amount not to exceed the aggregate net cash proceeds received by Level 3 (1) after September 30, 1999, from the issuance of Capital Stock, and (2) from the issuance or sale of Indebtedness of Level 3 or any Restricted Subsidiary that after September 30, 1999, has been converted into or exchanged for Capital Stock of Level 3, (C) in an annual amount not to exceed 50% of Level 3’s Consolidated Net Income for the prior fiscal year and (D) Level 3 Transfers in amounts not to exceed the amount required by Level 3 to pay accrued and unpaid interest on any Indebtedness of Level 3 due upon the conversion, exchange or purchase of such Indebtedness into, for or with Capital Stock of Level 3 and (iv) additional Level 3 Transfers in an aggregate amount not to exceed \$50,000,000 in the aggregate.

SECTION 6.04. Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries. (a) Level 3 shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction (other than pursuant to law or regulation) on the ability of any Restricted Subsidiary (i) to pay dividends (in cash or otherwise) or make any other distributions in respect of its Capital Stock owned by Level 3 or any other Restricted Subsidiary or pay any Indebtedness or other obligation owed to Level 3 or any other Restricted Subsidiary, (ii) to make loans or advances to Level 3 or any other Restricted Subsidiary or (iii) to transfer any of its Property to Level 3 or any other Restricted Subsidiary.

(b) Notwithstanding the foregoing limitation, Level 3 may, and may permit any Restricted Subsidiary to, create or otherwise cause or suffer to exist

(i) any encumbrance or restriction pursuant to the Loan Documents in effect on the Measurement Date,

(ii) any encumbrance or restriction under the Loan Documents, and any customary (as conclusively determined in good faith by the Chief Financial Officer of Level 3) encumbrance or restriction applicable to a Restricted Subsidiary that is contained in an agreement or instrument governing or relating to Indebtedness contained in any Qualified Receivable Facility or Purchase Money Debt Incurred pursuant to clause (ii) of paragraph (b) under Section 6.01 or clause (ii) of paragraph (b) under Section 6.02 (or refinancing Indebtedness thereof Incurred pursuant to clause (viii) of paragraph (b) under Section 6.01 or clause (vi) of paragraph (b) under Section 6.02); provided, however, that such encumbrances and restrictions do not limit the ability of such Restricted Subsidiary, directly or indirectly (including through another Subsidiary of the Borrower) (i) to pay dividends (in cash or otherwise) or make any other distributions in respect of its Capital Stock owned by the Borrower or any other Borrower Restricted Subsidiary or pay any Indebtedness or other obligation owed to the Borrower, (ii) to make loans or advances to the Borrower or (iii) to transfer any of its Property (other than in the case of Purchase Money Debt, the Telecommunications/IS Assets installed, constructed, acquired, leased, developed or improved with the proceeds of such Purchase Money Debt and any improvements or accessions thereto) to the Borrower,

(iii) any encumbrance or restriction pursuant to an agreement relating to any Acquired Debt, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired,

(iv) any encumbrance or restriction pursuant to an agreement effecting a refinancing of Indebtedness Incurred pursuant to an agreement referred to in clause (i), (ii) or (iii) of this paragraph (b); provided, however, that the provisions contained in such agreement relating to such encumbrance or restriction are no more restrictive (as so determined) in any material respect than the provisions contained in the agreement the subject thereof,

(v) in the case of clause (iii) of paragraph (a) above, any encumbrance or restriction contained in any security agreement (including a Capital Lease Obligation) securing Indebtedness of Level 3 or a Restricted Subsidiary otherwise permitted under this Agreement, but only to the extent such restrictions restrict the transfer of the Property subject to such security agreement,

(vi) in the case of clause (iii) of paragraph (a) above, customary provisions (A) that restrict the subletting, assignment or transfer of any Property that is a lease, license, conveyance or similar contract, (B) contained in asset sale or other asset disposition agreements limiting the transfer of the Property being sold or disposed of pending the closing of such sale or disposition or (C) arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of

Property of Level 3 or any Restricted Subsidiary in any manner material to Level 3 or any Restricted Subsidiary,

(vii) any encumbrance or restriction with respect to a Restricted Subsidiary imposed pursuant to an agreement which has been entered into for the sale or disposition of all or substantially all of the Capital Stock or Property of such Restricted Subsidiary; provided, however, that the consummation of such transaction would not result in a Default or an Event of Default, that such restriction terminates if such transaction is abandoned and that the consummation or abandonment of such transaction occurs within one year of the date such agreement was entered into, and

(viii) any encumbrance or restriction pursuant to this Agreement.

SECTION 6.05. Limitation on Liens. Level 3 shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, Incur or suffer to exist any Lien on or with respect to any Property now owned or acquired after the date hereof to secure any Indebtedness other than:

(i) Liens existing on the Effective Date and securing Indebtedness outstanding on the Effective Date, which in any event shall not include Liens securing the Parent Intercompany Note or the Existing Notes;

(ii) Liens Incurred on or after the Effective Date:

(1) pursuant to the Loan Documents to secure Indebtedness permitted to be Incurred pursuant to clause (ii)(A) of paragraph (b) under Section 6.01 or clause (ii)(A) of paragraph (b) under Section 6.02 (or refinancing Indebtedness in respect thereof Incurred pursuant to clause (viii) of paragraph (b) under Section 6.01 or clause (vi) of paragraph (b) under Section 6.02);

(2) on Receivables, collections thereof and accounts established solely for the collection of such Receivables to secure Indebtedness under Qualified Receivables Facilities permitted to be Incurred pursuant to clause (ii)(B) of paragraph (b) under Section 6.01 or clause (ii)(B) of paragraph (b) under Section 6.02 (or refinancing Indebtedness thereof Incurred pursuant to clause (viii) of paragraph (b) under Section 6.01 or clause (vi) of paragraph (b) under Section 6.02);

(3) on cash to secure reimbursement obligations in respect of letters of credit permitted to be Incurred pursuant to clause (ii)(A) or (B) of paragraph (b) under Section 6.01 or clause (ii)(A) or (B) of paragraph (b) under Section 6.02 (or refinancing Indebtedness thereof Incurred pursuant to clause (vi) of paragraph (b) under Section 6.02 or clause (viii) of paragraph (b) under Section 6.01), provided that the amount of such cash does not exceed 110% of the face amount of such letters of credit; and

(4) on Property acquired after the Effective Date with the proceeds of Purchase Money Debt Incurred pursuant to clause (ii) (A) or (B) of paragraph (b) under Section 6.01 or clause (ii)(A) or (B) of paragraph (b) under Section 6.02 (or refinancing Indebtedness thereof Incurred pursuant to clause (vi) of paragraph (b) under Section 6.02 or clause (viii) of paragraph (b) under Section 6.01) to secure such Purchase Money Debt, provided that any such Lien may not extend to any Property other than the Telecommunications/IS Assets installed, constructed, acquired, leased, developed or improved with the proceeds of such Purchase Money Debt and any improvements or accessions thereto (it being understood that all Indebtedness to any single lender or group of related lenders or outstanding under any single credit facility, and in any case relating to the same group or collection of Telecommunications/IS Assets financed thereby, shall be considered a single Purchase Money Debt, whether drawn at one time or from time to time);

(iii) Liens in favor of Level 3 or any Restricted Subsidiary; provided, however, that any subsequent issue or transfer of Capital Stock or other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of the Indebtedness secured by any such Lien (except to Level 3 or a Restricted Subsidiary) shall be deemed, in each case, to constitute the Incurrence of such Lien by the borrower thereof;

(iv) Liens outstanding on the Effective Date securing Purchase Money Debt and Liens on Property acquired after the Effective Date with the proceeds of Purchase Money Debt Incurred pursuant to clause (iii) of paragraph (b) under Section 6.01 to secure such Purchase Money Debt, provided that any such Lien may not extend to any Property other than the Telecommunications/IS Assets installed, constructed, acquired, leased, developed or improved with the proceeds of such Purchase Money Debt and any improvements or accessions thereto (it being understood that all Indebtedness to any single lender or group of related lenders or outstanding under any single credit facility, and in any case relating to the same group or collection of Telecommunications/IS Assets financed thereby, shall be considered a single Purchase Money Debt, whether drawn at one time or from time to time);

(v) Liens to secure Acquired Debt, provided that (a) such Lien attaches to the acquired Property prior to the time of the acquisition of such Property and (b) such Lien does not extend to or cover any other Property;

(vi) Liens to secure Indebtedness Incurred to refinance, in whole or in part, Indebtedness secured by any Lien referred to in the foregoing clauses (i), (iv) and (v) or this clause (vi) so long as such Lien does not extend to any other Property (other than improvements and accessions to the original Property) and the principal amount of Indebtedness so secured is not increased except as otherwise permitted under clause (viii) of paragraph (b) of Section 6.01 or clause (vi) of paragraph (b) of Section 6.02;

(vii) Liens on Property (A) not constituting Collateral and (B) not required to become Collateral following the satisfaction of the Guarantee Permit Condition and the Collateral Permit Condition, Incurred on or after the Measurement Date not otherwise permitted by the foregoing clauses (i) through (v) (but including in the computations of Liens permitted under this clause (vii) Liens existing on the Effective Date which remain existing at the time of computation which are otherwise permitted under clause (i)) securing Indebtedness of Level 3 or any Restricted Subsidiary (other than the Borrower or any Borrower Restricted Subsidiary) in an aggregate amount not to exceed 5% of Level 3's Consolidated Tangible Assets.

(viii) Liens on Property of any Non-Telecommunications Subsidiary; provided, however, that the Incurrence of such Lien does not require the Person Incurring such Lien to secure any Indebtedness of any Person other than a Non-Telecommunications Subsidiary;

(ix) Liens to secure Indebtedness Incurred pursuant to clause (viii) of paragraph (b) of Section 6.02; and

(x) Permitted Liens.

SECTION 6.06. Limitation on Sale and Leaseback Transactions. Level 3 shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, enter into, assume, Guarantee or otherwise become liable with respect to any Sale and Leaseback Transaction, unless (i) Level 3 or such Restricted Subsidiary would be entitled to Incur (a) Indebtedness in an amount equal to the Attributable Value of the Sale and Leaseback Transaction pursuant to Section 6.01 or Section 6.02 and (b) a Lien pursuant to Section 6.05, equal in amount to the Attributable Value of the Sale and Leaseback Transaction, and (ii) the Sale and Leaseback Transaction is treated as an Asset Disposition and all of the conditions of Section 6.07 (including the provisions concerning the application of Net Available Proceeds) are satisfied with respect to such Sale and Leaseback Transaction, treating all of the consideration received in such Sale and Leaseback Transaction as Net Available Proceeds for purposes of such Section 6.07.

SECTION 6.07. Limitation on Asset Dispositions. (a) Level 3 shall not, and shall not permit any Restricted Subsidiary to, make any Asset Disposition unless: (i) Level 3 or the Restricted Subsidiary, as the case may be, receives consideration for such disposition at least equal to the Fair Market Value for the Property sold or disposed of as determined by the Board of Directors of Level 3 in good faith and evidenced by a Board Resolution of Level 3; and (ii) at least 75% of the consideration for such disposition consists of cash or Cash Equivalents or the assumption of Indebtedness of the Borrower or any Borrower Restricted Subsidiary (other than Indebtedness of the Borrower that is subordinated to the Obligations or Indebtedness of any Borrower Restricted Subsidiary that is subordinated to the Obligations of such Borrower Restricted Subsidiary) and release of the Borrower and all Borrower Restricted Subsidiaries from all liability on the Indebtedness assumed (or if less than 75%, the remainder of such consideration consists of Telecommunications/IS Assets); provided, however, that, to the

extent such disposition involves Special Assets, all or any portion of the consideration may, at Level 3's election, consist of Property other than cash, Cash Equivalents or the assumption of Indebtedness or Telecommunications/IS Assets.

(b) If the Net Available Proceeds from any Asset Disposition (or any series of related Asset Dispositions) consisting of Property that is Collateral or Property that would be required to become Collateral following the satisfaction of the Guarantee Permit Condition and the Collateral Permit Condition exceed \$10.0 million, the Borrower shall deposit an amount in cash or cash equivalents equal to such Net Available Proceeds (which such amount shall thereafter constitute the Net Available Proceeds of such Asset Disposition or related Asset Dispositions) into a deposit account in which the Collateral Agent has a perfected security interest in favor of the Lenders. Prior to such time a Notice of Default shall have been delivered to the Borrower pursuant to Article VII, the Borrower may withdraw such Net Available Proceeds, and the Collateral Agent, at the Request of the Borrower, shall take all actions necessary, at the expense of the Borrower, to promptly release the security interest in such Net Available Proceeds (i) to permit Level 3 or a Restricted Subsidiary to reinvest such Net Available Proceeds in Telecommunications/IS Assets, (ii) to permit the Borrower to repay the Loan in accordance with Section 2.04(d) or (iii) following consummation of any offer to prepay the Loan pursuant to Section 2.04(d), to Level 3 or any Restricted Subsidiary for any purpose.

(c) The Net Available Proceeds (or any portion thereof) from Asset Dispositions may be applied by Level 3 or a Restricted Subsidiary, to the extent Level 3 or such Restricted Subsidiary elects: (1) to permanently prepay Borrowings in accordance with Section 2.04(b) or (c) or (2) to reinvest in Telecommunications/IS Assets (including by means of an Investment in Telecommunications/IS Assets by a Restricted Subsidiary with Net Available Proceeds received by Level 3 or another Restricted Subsidiary). Level 3 shall not, and shall not permit any Restricted Subsidiary, to acquire any Telecommunications/IS Assets with the Net Available Proceeds of any Asset Disposition consisting of Collateral or Property that would be required to become Collateral following the satisfaction of the Guarantee Permit Condition and the Collateral Permit Condition unless such Telecommunications/IS Assets are Collateral or Property that would be required to become Collateral following the satisfaction of the Guarantee Permit Condition and the Collateral Permit Condition. Any Net Available Proceeds from an Asset Disposition not applied in accordance with paragraph (b) within 330 days (or, in the case of a disposition of Special Assets identified in clause (a) of the definition thereof in which the Net Available Proceeds exceed \$500,000,000, 510 days) from the date of the receipt of such Net Available Proceeds shall constitute "Excess Proceeds." The Borrower shall apply such Excess Proceeds to the extent required by Section 2.04.

(d) (1) The Borrower shall not, and shall not permit any Borrower Restricted Subsidiary to sell, transfer, lease or otherwise dispose of any Property that is Collateral or that would be required to become Collateral following the satisfaction of the Collateral Permit Condition to a Subsidiary of Level 3 (other than a Subsidiary that is a Guarantor and a Grantor or that will become a Guarantor and a Grantor following satisfaction of the Guarantee Permit Condition and the Collateral Permit Condition), and (2) Level 3 shall not designate as an Unrestricted Subsidiary any Borrower Restricted Subsidiary that owns, directly or indirectly, any Property that is Collateral or that would be required to become Collateral following the satisfaction of the Collateral Permit Condition unless either:

(A) (1) in the case of a sale, transfer, lease or other disposition, the Borrower or such Borrower Restricted Subsidiary receives consideration for such sale, transfer, lease or other disposition at least equal to the Fair Market Value of such Property (which, in the case of the Offering Proceeds Note or the Loan Proceeds Note, is the principal amount of the Offering Proceeds Note or the Loan Proceeds Note, as applicable, and any accrued and unpaid interest thereon), and

(2) in the case of a sale, transfer, lease or other disposition, the consideration consists of 100% in cash or Cash Equivalents; or

(B) such transaction (1) occurs after the earlier of (i) the Enhanced Collateral Date and (ii) the date on which the Applicable Margin is increased to 10.00% per annum in accordance with definition thereof,

(2) is desirable in the conduct of the business of Level 3 and its Subsidiaries taken as a whole (as conclusively determined by the Board of Directors of Level 3), and

(3) (i) in the case of a sale, transfer, lease or other disposition in which the consideration does not consist of 100% cash or Cash Equivalents, the Fair Market Value of the Property that is Collateral so sold, transferred, leased or disposed of (net of any cash or Cash Equivalents received by the Borrower or such Borrower Restricted Subsidiary in respect of such Collateral), or (ii) in the case of a designation of a Borrower Restricted Subsidiary as an Unrestricted Subsidiary, the Fair Market Value of all Property that is Collateral owned, directly or indirectly, by such Borrower Restricted Subsidiary at the time it is designated an Unrestricted Subsidiary, when taken together with the Collateral Release Amount (determined prior to such sale, lease, transfer or other disposition or designation as an Unrestricted Subsidiary), does not exceed 5.0% of Consolidated Tangible Assets as determined at the time of such sale, lease, transfer or other disposition or designation as an Unrestricted Subsidiary, on the basis of the most recent consolidated balance sheet available to Level 3 (as conclusively determined in good faith by the Chief Financial Officer of Level 3).

For purposes of this Section 6.07(d), “Collateral Release Amount” means an amount equal to:

(1) the sum of (x) the Fair Market Value of any Property that constituted Collateral previously sold, transferred, leased or otherwise disposed of pursuant to this Section 6.07(d) for consideration not consisting of 100% cash or Cash Equivalents (net of any cash or Cash Equivalents received by the transferor in consideration for such sale, transfer, lease or other disposition) plus (y) the Fair Market Value of all Property that constituted Collateral held directly or indirectly

by each Borrower Restricted Subsidiary previously designated as an Unrestricted Subsidiary pursuant to this Section 6.07(d), minus

(2) the sum of, without duplication, (x) the amount of any cash or Cash Equivalents received by the Borrower or a Borrower Restricted Subsidiary in repayment of principal or as a return of capital from an Investment made pursuant to clause (B) of this Section 6.07(d) plus (y) the amount of any cash or Cash Equivalents received by the Borrower or a Borrower Restricted Subsidiary from a Borrower Restricted Subsidiary designated as an Unrestricted Subsidiary pursuant to this Section 6.07(d) representing a return of capital, in the case of clauses (x) and (y), to the extent such cash or Cash Equivalents were treated as Net Available Proceeds from an Asset Disposition, plus (z) the Fair Market Value (determined at the time that such Property again becomes Collateral in accordance with the Security Documents) of any Property which had ceased to be Collateral pursuant to this Section 6.07(d) and thereafter became Collateral in accordance with the terms of the Security Documents.

In the event of (a) a transfer of Property that constitutes Collateral made in accordance with this Section 6.07(d), such Property shall be released from any Lien to which it is subject pursuant to the Security Documents in accordance with the procedures in Section 9.14 or (b) the designation of a Restricted Subsidiary as an Unrestricted Subsidiary in compliance with this Section 6.07(d), such Restricted Subsidiary shall, by delivery of documentation providing for such release in form satisfactory to the Administrative Agent, be released from any Guarantee (in the case of a Guarantor) and its obligations under the Collateral Agreement (in the case of a Grantor) previously made by such Subsidiary.

(e) The Borrower shall not, and shall not permit any Borrower Restricted Subsidiary to, sell, transfer, lease or otherwise dispose of any Property that does not constitute Collateral to Level 3 or any Sister Restricted Subsidiary unless (i) the Borrower or such Borrower Restricted Subsidiary receives consideration for such sale, transfer, lease or other disposition at least equal to the Fair Market Value of such Property and (ii) the consideration consists of either (A) 100% in cash or Cash Equivalents or (B) Debt of Level 3 or the Restricted Subsidiary to which Property was transferred that is secured by a Lien on such transferred Property. Level 3 or the Restricted Subsidiary to which Property was transferred for consideration consisting of Debt that is secured by a Lien on such Property in accordance with clause (ii)(B) of the prior sentence may substitute the Lien on such Property with a Lien on other Property (including any Property owned by the Borrower or an Borrower Restricted Subsidiary) that, as determined by the Board of Directors of Level 3 in good faith and evidenced by a Board Resolution of Level 3 filed with the Trustee upon request of the Trustee, has a Fair Market Value of no less than the Fair Market Value of the Property for which the substitution is made at the time of the substitution. The provisions of this paragraph do not apply to (a)

dividends and distributions, (b) loans or advances and (c) purchases of services or goods.

SECTION 6.08. Limitation on Issuance and Sales of Capital Stock of Restricted Subsidiaries. Level 3 shall at all times own all the issued and outstanding Capital Stock of the Borrower. The Borrower shall at all times own all the issued and outstanding Capital Stock of Level 3 LLC. Level 3 shall not, and shall not permit any Restricted Subsidiary to, issue, transfer, convey, sell or otherwise dispose of any shares of Capital Stock of a Restricted Subsidiary or securities convertible or exchangeable into, or options, warrants, rights or any other interest with respect to, Capital Stock of a Restricted Subsidiary to any Person other than Level 3 or a Restricted Subsidiary except (i) a sale of all of the Capital Stock of such Restricted Subsidiary owned by Level 3 and any Restricted Subsidiary that complies with the provisions of Section 6.07 to the extent such provisions apply, (ii) in a transaction that results in such Restricted Subsidiary becoming a Joint Venture, provided (x) such transaction complies with the provisions of Section 6.07 to the extent such provisions apply and (y) the remaining interest of Level 3 or any other Restricted Subsidiary in such Joint Venture would have been permitted as a new Restricted Payment or Permitted Investment under the provisions of Section 6.03, (iii) the issuance, transfer, conveyance, sale or other disposition of shares of such Restricted Subsidiary so long as after giving effect to such transaction such Restricted Subsidiary remains a Restricted Subsidiary and such transaction complies with the provisions of Section 6.07 to the extent such provisions apply, (iv) the transfer, conveyance, sale or other disposition of shares required by applicable law or regulation, (v) if required, the issuance, transfer, conveyance, sale or other disposition of directors' qualifying shares, (vi) Disqualified Stock issued in exchange for, or upon conversion of, or the proceeds of the issuance of which are used to refinance, shares of Disqualified Stock of such Restricted Subsidiary, provided that the amounts of the redemption obligations of such Disqualified Stock shall not exceed the amounts of the redemption obligations of, and such Disqualified Stock shall have redemption obligations no earlier than those required by, the Disqualified Stock being exchanged, converted or refinanced, (vii) in a transaction where Level 3 or a Restricted Subsidiary acquires at the same time not less than its Proportionate Interest in such issuance of Capital Stock, (viii) Capital Stock issued and outstanding on the Measurement Date, (ix) Capital Stock of a Restricted Subsidiary issued and outstanding prior to the time that such Person becomes a Restricted Subsidiary so long as such Capital Stock was not issued in contemplation of such Person's becoming a Restricted Subsidiary or otherwise being acquired by Level 3 and (x) an issuance of Preferred Stock of a Restricted Subsidiary (other than Preferred Stock convertible or exchangeable into Common Stock of any Restricted Subsidiary) otherwise permitted by this Agreement. In the event of (a) the consummation of a transaction referred to in any of the foregoing clauses that results in a Restricted Subsidiary that is a Guarantor or a Grantor (or both) no longer being a Restricted Subsidiary and (b) the execution and delivery of documentation providing for such release in form satisfactory to the Administrative Agent, any such Guarantor or Grantor (or Guarantor and Grantor) shall be released from all its obligations under its Guarantee (in the case of a Guarantor) and its obligations under the Collateral Agreement (in the case of a Grantor).

SECTION 6.09. Transactions with Affiliates. Level 3 shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, sell, lease, transfer, or otherwise dispose of any of its Property to, or purchase any Property from, or enter into any contract, agreement, understanding, loan, advance, Guarantee or transaction (including the rendering of services) with or for the benefit of, any Affiliate (each of the foregoing, an "Affiliate Transaction"), unless (a) such Affiliate Transaction or series of Affiliate Transactions is (i) in the best interest of Level 3 or such Restricted Subsidiary and (ii) on terms that are no less favorable to Level 3 or such Restricted Subsidiary than those that would have been obtained in a comparable arm's-length transaction by Level 3 or such Restricted Subsidiary with a Person that is not an Affiliate (or, in the event that there are no comparable transactions involving Persons who are not Affiliates of Level 3 or the relevant Restricted Subsidiary to apply for comparative purposes, is otherwise on terms that, taken as a whole, Level 3 has determined to be fair to Level 3 or the relevant Restricted Subsidiary) and (b) Level 3 delivers to the Administrative Agent (i) with respect to any Affiliate Transaction or series of Affiliate Transactions involving aggregate payments in excess of \$10,000,000 but less than \$15,000,000, a certificate of the chief executive, operating or financial officer of Level 3 evidencing such officer's determination that such Affiliate Transaction or series of Affiliate Transactions complies with clause (a) above and (ii) with respect to any Affiliate Transaction or series of Affiliate Transactions involving aggregate payments equal to or in excess of \$15,000,000, a Board Resolution of Level 3 certifying that such Affiliate Transaction or series of Affiliate Transactions complies with clause (a) above and that such Affiliate Transaction or series of Affiliate Transactions has been approved by the Board of Directors of Level 3, including a majority of the disinterested members of the Board of Directors of Level 3; provided, however, that, in the event that there shall not be at least two disinterested members of the Board of Directors of Level 3 with respect to the Affiliate Transaction, Level 3 shall, at the request of the Administrative Agent, in addition to such Board Resolution, deliver to the Administrative Agent a written opinion from an investment banking firm of national standing in the United States which, in the good faith judgment of the Board of Directors of Level 3, is independent with respect to Level 3 and its Affiliates and qualified to perform such task, which opinion shall be to the effect that the consideration to be paid or received in connection with such Affiliate Transaction is fair, from a financial point of view, to Level 3 or such Restricted Subsidiary.

Notwithstanding the foregoing, the following shall not be deemed Affiliate Transactions: (i) any employment agreement entered into by Level 3 or any of its Restricted Subsidiaries in the ordinary course of business and consistent with industry practice; (ii) any agreement or arrangement with respect to the compensation of a director or officer of Level 3 or any Restricted Subsidiary approved by a majority of the disinterested members of the Board of Directors of Level 3 and consistent with industry practice; (iii) transactions between or among Level 3 and its Restricted Subsidiaries; provided, however, that no more than 5% of the Voting Stock (on a fully diluted basis) of any such Restricted Subsidiary is owned by an Affiliate of Level 3 (other than a Restricted Subsidiary); (iv) Restricted Payments and Permitted Investments permitted by Section 6.03 (other than Investments in Affiliates that are not Level 3 or Restricted Subsidiaries); (v) transactions pursuant to the terms of any agreement or arrangement as

in effect on the Measurement Date; and (vi) transactions with respect to wireline or wireless transmission capacity, the lease or sharing or other use of cable or fiber optic lines, equipment, rights-of-way or other access rights, between Level 3 (or any Restricted Subsidiary) and any other Person; provided, however, that, in the case of this clause (vi), such transaction complies with clause (a) in the immediately preceding paragraph.

SECTION 6.10. Limitation on Designations of Unrestricted Subsidiaries. Level 3 shall not designate (1) the Borrower or Level 3 LLC as an Unrestricted Subsidiary or (2) any other Subsidiary (other than a newly created Subsidiary in which no Investment has previously been made) as an “Unrestricted Subsidiary” under this Agreement (a “Designation”) unless in the case of this clause (2):

- (a) no Default or Event of Default shall have occurred and be continuing at the time of or after giving effect to such Designation;
- (b) immediately after giving effect to such Designation, Level 3 would be able to Incur \$1.00 of Indebtedness under paragraph (a) of Section 6.01; and
- (c) Level 3 would not be prohibited under any provision of this Agreement from making an Investment at the time of Designation (assuming the effectiveness of such Designation) in an amount (the “Designation Amount”) equal to the portion (proportionate to Level 3’s equity interest in such Restricted Subsidiary) of the Fair Market Value of the net assets of such Restricted Subsidiary on such date.

In the event of any such Designation, Level 3 shall be deemed to have made an Investment constituting a Restricted Payment pursuant to Section 6.03 for all purposes of this Agreement in the Designation Amount; provided, however, that, upon a Revocation of any such Designation of a Subsidiary, Level 3 shall be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary of an amount (if positive) equal to (i) Level 3’s “Investment” in such Subsidiary at the time of such Revocation less (ii) the portion (proportionate to Level 3’s equity interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary at the time of such Revocation. At the time of any Designation of any Subsidiary as an Unrestricted Subsidiary, such Subsidiary shall not own any Capital Stock of Level 3 or any Restricted Subsidiary. In addition, neither Level 3 nor any Restricted Subsidiary shall at any time (x) provide credit support for, or a Guarantee of, any Indebtedness of any Unrestricted Subsidiary (including any undertaking, agreement or instrument evidencing such Indebtedness); provided, however, that Level 3 or a Restricted Subsidiary may pledge Capital Stock or Indebtedness of any Unrestricted Subsidiary on a nonrecourse basis such that the pledgee has no claim whatsoever against Level 3 other than to obtain such pledged Capital Stock or Indebtedness, (y) be directly or indirectly liable for any Indebtedness of any Unrestricted Subsidiary or (z) be directly or indirectly liable for any Indebtedness which provides that the holder thereof may (upon notice, lapse of time or both) declare a default thereon or cause the payment thereof to be accelerated or payable prior to its final scheduled maturity upon the occurrence of a default with respect to any Indebtedness, Lien or other obligation of any Unrestricted Subsidiary (including any right to take enforcement action

against such Unrestricted Subsidiary), except in the case of clause (x) or (y) to the extent permitted under Sections 6.03 and 6.09.

Unless Designated as an Unrestricted Subsidiary, any Person that becomes a Subsidiary of Level 3 will be classified as a Restricted Subsidiary; provided, however, that such Subsidiary shall not be designated as a Restricted Subsidiary and shall be automatically classified as an Unrestricted Subsidiary if either of the requirements set forth in clauses (a) and (b) of the immediately following paragraph will not be satisfied immediately following such classification. Except as provided in the first sentence of this Section 6.10, no Restricted Subsidiary may be redesignated as an Unrestricted Subsidiary.

A Designation may be revoked (a “Revocation”) by a Board Resolution of Level 3 delivered to the Administrative Agent, provided that Level 3 will not make any Revocation unless:

- (a) no Default or Event of Default shall have occurred and be continuing at the time of and after giving effect to such Revocation; and
- (b) all Liens and Indebtedness of such Unrestricted Subsidiary outstanding immediately following such Revocation would, if Incurred at such time, have been permitted to be Incurred at such time for all purposes of this Agreement.

All Designations and Revocations must be evidenced by Board Resolutions of Level 3 delivered to the Administrative Agent (i) certifying compliance with the foregoing provisions and (ii) giving the effective date of such Designation or Revocation, such delivery to the Administrative Agent to occur within 45 days after the end of the fiscal quarter of Level 3 in which such Designation or Revocation is made (or, in the case of a Designation or Revocation made during the last fiscal quarter of Level 3’s fiscal year, within 90 days after the end of such fiscal year). Upon Designation of a Restricted Subsidiary as an Unrestricted Subsidiary in compliance with this Section 6.10, such Restricted Subsidiary shall, by delivery of documentation providing for such release in form satisfactory to the Administrative Agent, be released from any Guarantee (in the case of a Guarantor) and its obligations under the Collateral Agreement (in the case of a Grantor) previously made by such Subsidiary.

SECTION 6.11. Limitation on Actions with respect to Existing Intercompany Obligations. Without the consent of the holders of at least two-thirds of the outstanding principal amount of the Loans:

- (a) the Borrower shall not forgive or waive or fail to enforce any of its rights under the Offering Proceeds Note, the Loan Proceeds Note, any 10.75% Notes Supplemental Indenture, the Offering Proceeds Note Subordination Agreement or any other agreement with Level 3 or any Restricted Subsidiary to subordinate a payment obligation on any Indebtedness to the prior payment in full in cash of all obligations with respect to the Loan Proceeds Note, a Loan Proceeds Note Guarantee, the Offering Proceeds Note or an Offering Proceeds Note

Guarantee, and the Borrower and Level 3 LLC may not amend the Loan Proceeds Note, a Loan Proceeds Note Guarantee, the Offering Proceeds Note or an Offering Proceeds Note Guarantee, in a manner adverse to the Lenders; provided, however, that that in the event of an Event of Default of Level 3 LLC as described in clause (i) or (j) or Article 7, the principal then outstanding together with accrued interest thereon on the Loan Proceeds Note, the Offering Proceeds Note, the Loan Proceeds Note Guarantee and the Offering Proceeds Note Guarantee shall automatically become due and payable without presentment, demand, protest or other notice of any kind;

(b) in the event Level 3 LLC (or any successor obligor under the Loan Proceeds Note) repays all or a portion of the Loan Proceeds Note, the Borrower must prepay the Loan in a principal amount equal to the principal amount of the Loan Proceeds Note then repaid in accordance with, and if at such time permitted by, this Agreement; provided, however, that if at any time the principal amount of the Loan Proceeds Note is greater than the principal amount of the Loan that remains outstanding, Level 3 LLC (or any successor obligor under the Loans Proceeds Note) may repay or forgive or waive an amount of the Loan Proceeds Note equal to such excess without complying with this paragraph (b);

(c) Level 3 shall not, and shall not permit any Restricted Subsidiary to, provide any Lien on its Property for the benefit of, or any Guarantee (other than a similarly subordinated Guarantee) or other form of credit enhancement in respect of, (i) the Parent Intercompany Note or (ii) any other intercompany note required by clause (vi) of paragraph (b) of Section 6.01 or clause (iv) of paragraph (b) of Section 6.02 to be subordinated to the prior payment in full in cash of all obligations with respect to the Loan Proceeds Note or a Loan Proceeds Note Guarantee, or take any other action with the purpose or effect of making the Parent Intercompany Note senior to or equal in right of payment with the Offering Proceeds Note or the Loan Proceeds Note;

(d) Level 3 shall not, and shall not permit any Restricted Subsidiary to, provide any Lien on its Property for the benefit of, or any Guarantee (other than a similarly subordinated Guarantee) or other form of credit enhancement in respect of, (i) the Offering Proceeds Note or (ii) any other intercompany note required by clause (vi) of paragraph (b) of Section 6.01 or clause (iv) of paragraph (b) of Section 6.02 to be subordinated to the prior payment in full in cash of all obligations with respect to the Loan Proceeds Note or a Loan Proceeds Note Guarantee, or take any other action with the purpose or effect of making the Offering Proceeds Note senior to or equal in right of payment with the Loan Proceeds Note;

(e) Level 3 and Level 3 LLC shall not amend the terms of the Parent Intercompany Note or the Offering Proceeds Note in a manner adverse to the Lenders, the determination of which shall be made by the Board of Directors of Level 3 acting in good faith and shall be evidenced by a Board Resolution of Level 3;

(f) Level 3, the Borrower and Level 3 LLC shall not amend any of the 10.75% Notes Supplemental Indentures or the Offering Proceeds Note Subordination Agreement in a manner adverse to the Lenders and Level 3 or any Restricted Subsidiary and the Borrower shall not amend any other agreement between Level 3 or any Restricted Subsidiary and the Borrower to subordinate a payment obligation on any Indebtedness of Level 3 or any Restricted Subsidiary to the prior payment in full in cash of all obligations with respect to the Loan Proceeds Note, in each case, the determination of which shall be made by the Board of Directors of Level 3 acting in good faith and shall be evidenced by a Board Resolution of Level 3;

(g) unless an Event of Default has occurred and is continuing, Level 3 shall neither cause nor permit the Borrower to demand repayment of the Offering Proceeds Note prior to the satisfaction of the Guarantee Permit Condition and the Collateral Permit Condition; and

(h) Level 3 and the Borrower shall cause any Indebtedness of Level 3 LLC to Level 3 to be evidenced by either the Parent Intercompany Note or another duly executed promissory note that is pledged and delivered to the Collateral Agent within 3 Business Days of the Incurrence of such Indebtedness.

SECTION 6.12. Covenant Suspension. During any period of time (a “Suspension Period”) that (i) the ratings assigned to the Term Loan by both of the Rating Agencies are Investment Grade Ratings and (ii) no Default or Event of Default has occurred and is continuing, Level 3 and the Restricted Subsidiaries will not be subject to the covenants set forth in Sections 6.01, 6.02, 6.03, 6.04, 6.06(i)(a), 6.07, 6.08 (other than the first two sentences thereof), 6.09, 6.13(a)(3) and (4), 6.13(c)(3) and (4) and clause (b) of the first sentence of Section 6.10 (collectively, the “Suspended Covenants”). In the event that Level 3 and the Restricted Subsidiaries are not subject to the Suspended Covenants for any period of time as a result of the preceding sentence and, on any subsequent date (the “Reversion Date”), one or both of the Rating Agencies withdraws its ratings or downgrades the ratings assigned to the Loan below the required Investment Grade Ratings or a Default or Event of Default occurs and is continuing, then Level 3 and the Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants and calculations of the amount available to be made as Restricted Payments under Section 6.03 will be made as though Section 6.03 had been in effect during the entire period of time from the Measurement Date. On the Reversion Date, all Indebtedness Incurred during the Suspension Period will be classified to have been Incurred pursuant to paragraph (a) of Section 6.01 or one of the clauses set forth in paragraph (b) of Section 6.01 or paragraph (a) of Section 6.02 or one of the clauses set forth in paragraph (b) of Section 6.02 (in each case to the extent such Indebtedness would be permitted to be Incurred thereunder as of the Reversion Date and after giving effect to Indebtedness Incurred prior to the Suspension Period and outstanding on the Reversion Date). To the extent such Indebtedness would not be permitted to be Incurred pursuant to paragraph (a) of Section 6.01 or one of the clauses set forth in paragraph (b) of Section 6.01 or paragraph (a) of Section 6.02 or one of the clauses set forth in paragraph (b) of Section 6.02, such Indebtedness will be deemed to have been

outstanding on the Measurement Date, so that it is classified as permitted under Section 6.01(b)(v) or Section 6.02(b)(iii). If the Incurrence of any Indebtedness by a Restricted Subsidiary during the Suspension Period would have been prohibited or conditioned upon such Restricted Subsidiary entering into a Guarantee of the Obligations and a Loan Proceeds Note Guarantee had Section 6.01 and Section 6.02 been in effect at the time of such Incurrence, such Restricted Subsidiary shall enter into a Guarantee of the Obligations and a Loan Proceeds Note Guarantee that are senior to or pari passu with such Indebtedness within ten days after the Reversion Date. For purposes of determining compliance with Section 6.07 on the Reversion Date, the Net Available Proceeds from all Asset Dispositions not applied in accordance with the covenant will be deemed to be reset to zero. Notwithstanding the foregoing, neither (a) the continued existence, after the date of such withdrawal or downgrade, of facts and circumstances or obligations that were Incurred or otherwise came into existence during a Suspension Period nor (b) the performance of any such obligations, shall constitute a breach of any covenant set forth in the Agreement or cause a Default or Event of Default thereunder; provided, however, that (1) Level 3 and its Restricted Subsidiaries did not Incur or otherwise cause such facts and circumstances or obligations to exist in anticipation of a withdrawal or downgrade below investment grade, (2) Level 3 reasonably believed that such Incurrence or actions would not result in such a withdrawal or downgrade and (3) if so required each Restricted Subsidiary shall have entered into a Guarantee of the Obligations and a Loan Proceeds Note Guarantee within the specified time period. For purposes of clauses (1) and (2) in the preceding sentence, anticipation and reasonable belief may be determined by Level 3 and shall be conclusively evidenced by a board resolution to such effect adopted in good faith by the Board of Directors of Level 3. In reaching their determination, the Board of Directors of Level 3 may, but need not, consult with the Rating Agencies.

SECTION 6.13. Consolidation, Merger, Conveyance, Transfer or Lease.

(a) Level 3 May Consolidate, etc., Only on Certain Terms.

Level 3 shall not, in a single transaction or a series of related transactions, (i) consolidate with or merge into any other Person or Persons or permit any other Person to consolidate with or merge into Level 3 or (ii) directly or indirectly, transfer, sell, lease, convey or otherwise dispose of all or substantially all its assets to any other Person or Persons unless:

(1) in a transaction in which Level 3 is not the surviving Person or in which Level 3 transfers, sells, leases, conveys or otherwise disposes of all or substantially all of its assets to any other Person, the resulting surviving or transferee Person (the “successor entity”) is organized under the laws of the United States of America or any State thereof or the District of Columbia and shall expressly assume all of Level 3’s Obligations under the Loan Documents in a form satisfactory to the Administrative Agent;

(2) immediately before and after giving effect to such transaction and treating any Indebtedness which becomes an obligation of Level 3 (or

the successor entity) or a Restricted Subsidiary as a result of such transaction as having been Incurred by Level 3 or such Restricted Subsidiary at the time of the transaction, no Default or Event of Default shall have occurred and be continuing;

(3) immediately after giving effect to such transaction, the Consolidated Net Worth of Level 3 (or the successor entity) is equal to or greater than that of Level 3 immediately prior to the transaction;

(4) immediately after giving effect to such transaction and treating any Indebtedness which becomes an obligation of Level 3 (or the successor entity) or a Restricted Subsidiary as a result of such transaction as having been Incurred by Level 3 or such Restricted Subsidiary at the time of the transaction, Level 3 (or the successor entity) could Incur at least \$1.00 of additional Indebtedness pursuant to paragraph (a) of Section 6.01;

(5) in the case of a transfer, sale, lease, conveyance or other disposition of all or substantially all of the assets of Level 3, such assets shall have been transferred as an entirety or virtually as an entirety to one Person and such Person shall have complied with all the provisions of this paragraph; and

(6) Level 3 and the Borrower have delivered to the Administrative Agent an Officers' Certificate and Opinion of Counsel, each in form and substance reasonably satisfactory to the Administrative Agent, stating that such consolidation, merger, transfer, sale, lease, conveyance or other disposition and the assumption by such Person of the Obligations under the Loan Documents, complies with this Section and that all conditions precedent herein have been complied with, and, with respect to such Officers' Certificate, setting forth the manner of determination of the Consolidated Net Worth, in accordance with clause (3) of this subsection (a), of Level 3 or, if applicable, of the successor entity as required pursuant to the foregoing.

(b) Successor Level 3 Substituted.

Upon any consolidation of Level 3 with or merger of Level 3 with or into any other Person or any transfer, sale, lease, conveyance or other disposition of all or substantially all the assets of Level 3 to any Person or Persons in accordance with Section 6.13(a), the successor Person formed by such consolidation or into which Level 3 is merged or to which such transfer, sale, lease, conveyance or other disposition is made shall succeed to, and be substituted for, and may exercise every right and power of, Level 3 under this Agreement with the same effect as if such successor Person had been named as Level 3 herein, and the predecessor Level 3 (which term shall for this purpose mean the Person named as "Level 3" in the first paragraph of this Agreement or any successor Person which shall have become such in the manner described in

Section 6.13(a)), except in the case of a lease, shall be released from all its obligations and covenants under this Agreement and the other Loan Documents and may be dissolved and liquidated.

(c) Borrower May Consolidate, etc., Only on Certain Terms.

The Borrower shall not, in a single transaction or a series of related transactions, (i) consolidate or merge into Level 3 or permit Level 3 to consolidate with or merge into the Borrower or (ii) except to the extent permitted under Section 6.03, directly or indirectly, transfer, sell, lease, convey or otherwise dispose of all or substantially all its assets to Level 3. Additionally, the Borrower shall not, in a single transaction or a series of related transactions, (i) consolidate with or merge into any other Person or Persons or permit any other Person to consolidate with or merge into the Borrower or (ii) (other than, to the extent permitted under Section 6.03, to a Restricted Subsidiary that is or becomes a Guarantor and a Loan Proceeds Note Guarantor or to Level 3 so long as Level 3 is a Guarantor) directly or indirectly, transfer, sell, lease, convey or otherwise dispose of all or substantially all its assets to any other Person or Persons, unless:

(1) in a transaction in which the Borrower is not the surviving Person or in which the Borrower transfers, sells, leases, conveys or otherwise disposes of all or substantially all of its assets to any other Person, the successor entity is organized under the laws of the United States of America or any State thereof or the District of Columbia and shall expressly assume all of the Borrower's Obligations under the Loan and the Loan Documents in a form satisfactory to the Administrative Agent;

(2) immediately before and after giving effect to such transaction and treating any Indebtedness which becomes an obligation of the Borrower (or the successor entity) or a Borrower Restricted Subsidiary as a result of such transaction as having been Incurred by the Borrower or such Borrower Restricted Subsidiary at the time of the transaction, no Default or Event of Default shall have occurred and be continuing;

(3) immediately after giving effect to such transaction, the Consolidated Net Worth of the Borrower (or the successor entity) is equal to or greater than that of the Borrower immediately prior to the transaction;

(4) immediately after giving effect to such transaction and treating any Indebtedness which becomes an obligation of the Borrower (or the successor entity) or a Borrower Restricted Subsidiary as a result of such transaction as having been Incurred by the Borrower or such Borrower Restricted Subsidiary at the time of the transaction, the Borrower (or the successor entity) could Incur at least \$1.00 of additional Indebtedness pursuant to paragraph (a) of Section 6.02;

(5) in the case of a transfer, sale, lease, conveyance or other disposition of all or substantially all of the assets of the Borrower, such assets shall have been transferred as an entirety or virtually as an entirety to one Person and such Person shall have complied with all the provisions of this paragraph; and

(6) Level 3 and the Borrower have delivered to the Administrative Agent an Officers' Certificate and an Opinion of Counsel, each in form and substance reasonably satisfactory to the Administrative Agent, stating that such consolidation, merger, transfer, sale, lease, conveyance or other disposition and the assumption by such Person of the Obligations under the Loan Documents complies with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with, and, with respect to such Officers' Certificate, setting forth the manner of determination of the Consolidated Net Worth, in accordance with clause (3) of this subsection (c), of the Borrower or, if applicable, of the successor entity as required pursuant to the foregoing.

(d) Successor Borrower Substituted.

Upon any consolidation of the Borrower with or merger of the Borrower with or into any other Person or any transfer, sale, lease, conveyance or other disposition of all or substantially all the assets of the Borrower to any Person or Persons in accordance with Section 6.13 (c), the successor Person formed by such consolidation or into which the Borrower is merged or to which such transfer, sale, lease, conveyance or other disposition is made shall succeed to, and be substituted for, and may exercise every right and power of, the Borrower under this Agreement and each other Loan Document with the same effect as if such successor Person had been named as the Borrower herein, and the predecessor Borrower (which term shall for this purpose mean the Person named as the "Borrower" in the first paragraph of this Agreement or any successor Person which shall have become such in the manner described in Section 6.13(c), except in the case of a lease, shall be released from all its obligations and covenants under this Agreement and the Term Loan and may be dissolved and liquidated.

(e) Guarantor (other than Level 3) May Consolidate, etc., Only on Certain Terms.

A Guarantor (other than Level 3) shall not, in a single transaction or a series of related transactions, (i) consolidate with or merge into any other Person or Persons (other than, with respect to a Guarantor that is a Borrower Restricted Subsidiary, the Borrower or another Guarantor that is a Borrower Restricted Subsidiary and with respect to a Guarantor that is a Sister Restricted Subsidiary, another Guarantor that is a Sister Restricted Subsidiary or Level 3) or permit any other Person (other than, with respect to a Guarantor that is a Borrower Restricted Subsidiary, another Guarantor that is a Borrower Restricted Subsidiary, and with respect to a Guarantor that is a Sister Restricted Subsidiary, Level 3 or another Guarantor that is a Sister Restricted Subsidiary) to consolidate with or merge into such Guarantor or (ii) except to another Guarantor to the extent permitted under Section 6.03, directly or indirectly, transfer, sell, lease, convey

or otherwise dispose of all or substantially all its assets to any other Person or Persons (other than, with respect to a Guarantor that is a Borrower Restricted Subsidiary, the Borrower or another Guarantor that is a Borrower Restricted Subsidiary, and with respect to a Guarantor that is a Sister Restricted Subsidiary, another Guarantor that is a Sister Restricted Subsidiary or Level 3), unless:

(1) immediately before and after giving effect to such transaction and treating any Indebtedness which becomes an obligation of such Guarantor as a result of such transaction as having been Incurred by such Guarantor at the time of the transaction, no Default or Event of Default shall have occurred and be continuing;

(2) either (A) in a transaction in which such Guarantor is not the surviving Person or in which such Guarantor transfers, sells, leases, conveys or otherwise disposes of all or substantially all of its assets to any other Person, the resulting surviving or transferee Person is organized under the laws of the United States of America or any State thereof or the District of Columbia and shall expressly assume all of such Restricted Subsidiary's Obligations under the Loan Documents in a form satisfactory to the Administrative Agent; or (B) such transaction complies with Section 6.07 (or Level 3 certifies in an Officers' Certificate to the Administrative Agent that it will comply with the requirements of such covenant relating to application of the proceeds of such transaction); and

(3) Level 3 and the Borrower have delivered to the Administrative Agent an Officers' Certificate and an Opinion of Counsel, each in form and substance reasonably satisfactory to the Administrative Agent, stating that such consolidation, merger, transfer, sale, lease, conveyance or other disposition and, if a supplement to any Loan Document is required in connection with such transaction, such supplement complies with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

(f) Successor Guarantor Substituted.

Upon any consolidation of a Guarantor with or merger of a Guarantor with or into any other Person or any transfer, sale, lease, conveyance or other disposition of all or substantially all the assets of a Guarantor to any Person or Persons in accordance with subsection (e), the successor Person formed by such consolidation or into which such Guarantor is merged or to which such transfer, sale, lease, conveyance or other disposition is made (other than any such transaction made in accordance with Section 6.13(e)(2)(B)) shall succeed to, and be substituted for, and may exercise every right and power of, such Guarantor under the Loan Documents with the same effect as if such successor Person had been named as a Guarantor herein, and the predecessor Guarantor (which term shall for this purpose mean the Person named as the "Guarantor" in the first paragraph of the applicable supplement to this Agreement or any successor Person which shall have become such in the manner described in subsection (e)), except

in the case of a lease, shall be released from all its Obligations and covenants under the Loan Documents and may be dissolved and liquidated.

(g) Loan Proceeds Note Guarantor May Consolidate, etc., Only on Certain Terms .

A Loan Proceeds Note Guarantor shall not, in a single transaction or a series of related transactions, (i) consolidate with or merge into any other Person or Persons (other than, with respect to an Loan Proceeds Note Guarantor that is an Borrower Restricted Subsidiary, the Borrower or another Loan Proceeds Note Guarantor that is an Borrower Restricted Subsidiary, and with respect to an Loan Proceeds Note Guarantor that is a Sister Restricted Subsidiary, another Loan Proceeds Note Guarantor that is a Sister Restricted Subsidiary or Level 3) or permit any other Person (other than, with respect to an Loan Proceeds Note Guarantor that is an Borrower Restricted Subsidiary, another Loan Proceeds Note Guarantor that is an Borrower Restricted Subsidiary, and with respect to an Loan Proceeds Note Guarantor that is a Sister Restricted Subsidiary, Level 3 or another Loan Proceeds Note Guarantor that is a Sister Restricted Subsidiary) to consolidate with or merge into such Loan Proceeds Note Guarantor or (ii) except to another Loan Proceeds Note Guarantor to the extent permitted under Section 6.03, directly or indirectly, transfer, sell, lease, convey or otherwise dispose of all or substantially all its assets to any other Person or Persons (other than, with respect to an Loan Proceeds Note Guarantor that is an Borrower Restricted Subsidiary, the Borrower or another Loan Proceeds Note Guarantor that is an Borrower Restricted Subsidiary, and with respect to an Loan Proceeds Note Guarantor that is a Sister Restricted Subsidiary, another Loan Proceeds Note Guarantor that is a Sister Restricted Subsidiary or Level 3), unless:

(1) immediately before and after giving effect to such transaction and treating any Indebtedness which becomes an obligation of such Loan Proceeds Note Guarantor as a result of such transaction as having been Incurred by such Loan Proceeds Note Guarantor at the time of the transaction, no Default or Event of Default shall have occurred and be continuing;

(2) either (a) in a transaction in which such Loan Proceeds Note Guarantor is not the surviving Person or in which such Loan Proceeds Note Guarantor transfers, sells, leases, conveys or otherwise disposes of all or substantially all of its assets to any other Person, the resulting surviving or transferee Person is organized under the laws of the United States of America or any State thereof or the district of Columbia and shall expressly assume all of such Loan Proceed Note Guarantor's obligations under the Loan Proceeds Note Guarantee and any subordination agreement between the Borrower and such Loan Proceed Note Guarantor relating to the Loan Proceeds Note; or (b) such transaction complies with Section 6.07 (or Level 3 certifies in an Officers' Certificate to the Administrative Agent that it will comply with the requirements of such covenant relating to application of the proceeds of such transaction); and

(3) Level 3 and the Borrower have delivered to the Administrative Agent and Officers' Certificate and an Opinion of Counsel, each in form and substance reasonably satisfactory to the Administrative Agent, stating that such consolidation, merger, transfer, sale, lease, conveyance or other disposition and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, complies with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

ARTICLE VII

Events of Default

If any of the following events (" Events of Default ") shall occur:

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

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable by it under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of 30 days;

(c) the Borrower shall fail to pay the Loans when required pursuant to Section 2.04(f);

(d) any representation or warranty made or deemed made by or on behalf of Level 3, the Borrower or any Restricted Subsidiary in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made and shall continue to be material at the time tested;

(e) Level 3, the Borrower or any Restricted Subsidiary shall fail to observe or perform with the covenants contained in Sections 6.07 or 6.13(a), (c), (e) or (g);

(f) Level 3, the Borrower or any Restricted Subsidiary shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than a covenant, condition or agreement a default in the performance of which is elsewhere in this Article specifically dealt with) and such failure shall continue unremedied for 60 days after written notice to the Borrower

by the Administrative Agent or the Required Lenders, which notice shall specify the default and state that such notice is a “Notice of Default” hereunder;

(g) Level 3 or any Restricted Subsidiary shall default under the terms of any instrument evidencing or securing Material Indebtedness of Level 3 or any Restricted Subsidiary which default results in the acceleration of the payment of such indebtedness or constitutes the failure to pay such indebtedness when due (after expiration of any applicable grace period);

(h) a judgment or judgments shall be rendered against Level 3 or any Restricted Subsidiary in an aggregate amount in excess of \$25,000,000 or its foreign currency equivalent at the time and shall not be waived, satisfied or discharged for any period of 45 consecutive days during which a stay of enforcement shall not be in effect;

(i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of Level 3, the Borrower or any Significant Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Level 3, the Borrower or any Significant Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(j) Level 3, the Borrower or any Significant Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Level 3, the Borrower or any Significant Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(k) Level 3, the Borrower or any Significant Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(l) any Lien purported to be created under this Agreement or any Security Document shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any Collateral (other than immaterial portions of the Collateral or except as otherwise contemplated by the Security Documents), with

the priority required by this Agreement or the applicable Security Document, except (i) as provided in Section 9.14 or (ii) as a result of the Collateral Agent's failure to maintain possession of any stock certificates, promissory notes or other instruments delivered to it under this Agreement or the applicable Security Document; or

(m) any material provision of any Loan Document, after the delivery thereof, ceases to be in full force and effect (other than in accordance with the terms of such Loan Document) or Level 3, the Borrower or any Guarantor denies or disaffirms its obligations under any material provision of a Loan Document;

then, and in every such event (other than an event with respect to the Borrower or Level 3 described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and enforce, as Collateral Agent, all the rights and remedies under the Security Documents; and in case of any event with respect to Level 3 or the Borrower described in clause (h) or (i) of this Article, the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, and the Collateral Agent may, to the extent permitted by applicable law, exercise all rights and remedies under the Security Documents.

ARTICLE VIII

The Agent

Each of the Lenders hereby irrevocably appoints the Agent as its agent and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto.

In the event the institution serving as the Agent hereunder shall also be a Lender, it shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent, and such institution and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with Level 3, the Borrower or any Subsidiary or Affiliate thereof as if it were not the Agent hereunder.

The Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and shall not have any duty to take any action or exercise any powers that would result in the incurrence by it of costs or expenses unless arrangements satisfactory to it to ensure the prompt payment of all such costs or expenses shall have been made by the Lenders, and (c) except as expressly set forth in the Loan Documents, the Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Level 3, the Borrower or any of the Subsidiaries of Level 3 that is communicated to or obtained by the institution serving as Agent or any of its Affiliates in any capacity. The Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct. The Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Agent by Level 3, the Borrower or a Lender, and the Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Agent. As to any matters not expressly provided for by this Agreement and the other Loan Documents (including enforcement or collection), the Administrative Agent and the Collateral Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Requisite Lenders, and such instructions shall be binding upon all Lenders, *provided, however*, that the Administrative Agent and the Collateral Agent shall not be required to take any action that (i) the Administrative Agent or the Collateral Agent in good faith believes exposes it to personal liability unless it receives an indemnification satisfactory to it from the Lenders with respect to such action or (ii) is contrary to this Agreement or applicable law.

The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Agent may consult with legal counsel (who may be counsel for Level 3 or the Borrower), independent accountants and other experts selected

by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

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

Subject to the appointment and acceptance of a successor as provided in this paragraph, the Agent may resign at any time by notifying the Lenders and Level 3. Upon any such resignation, the Required Lenders shall have the right, with, so long as no Default or Event of Default shall have occurred and be continuing, the consent of Level 3 (which consent shall not be unreasonably withheld or delayed) to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent which shall be a Lender or a bank with an office in New York, New York, or an Affiliate of such Lender or any such bank. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. The fees payable by Level 3 and the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed with such successor. After the Agent's resignation hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Agent.

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

ARTICLE IX

Miscellaneous

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

(a) if to Level 3 or the Borrower, to it at Level 3 Communications, Inc., 1025 Eldorado Boulevard, Broomfield, Colorado 80021, Attention of Chief Financial Officer and General Counsel;

(b) if to the Administrative Agent, to it at Merrill Lynch Capital Corporation, Merrill Lynch World Headquarters, North Tower, World Financial Center, New York, New York 10281-1201, Attention of Camille Wilson (Telecopy No. 212-449-9435);

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

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

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

(b) Except as provided in paragraph (d) of this Section, none of this Agreement, any other Loan Document or any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Level 3, the Borrower and the Required Lenders or,

in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of or impose additional obligations on any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or reduce the rate of interest thereon without the written consent of each Lender affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan or any interest thereon, or reduce the amount of, waive or excuse any such payment, without the written consent of each Lender affected thereby, (iv) change Section 2.11(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender (except as provided in paragraph (d) of this Section), (v) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (except as provided in paragraph (d) of this Section), (vi) release Level 3 or any other Guarantor from its Guarantee of the Obligations under the Guarantee Agreement (except as expressly provided in Section 6.07, 6.08, 6.10 or 9.14 or in the Guarantee Agreement), or limit its liability in respect of any such Guarantee, without the written consent of each Lender, (vii) release all or any substantial part of the Collateral from the Liens of the Security Documents (except as expressly provided in Section 6.07, 6.08, 6.10 or 9.14 or in Collateral Agreement), or subordinate such Liens, without the written consent of each Lender or (viii) except to the extent necessary to comply with applicable law, amend or modify Section 9.04 in a manner that would by the terms of such amendment or waiver, as applicable, restrict the ability of the Lenders to make assignments, without the written consent of each Lender, provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, without the prior written consent of the Administrative Agent.

(c) If, in connection with any proposed change, waiver, discharge or termination of any of the provisions of this Agreement referred to in any of clauses (i) through (vii) of the first proviso in paragraph (b) of this Section, the consent of the Required Lenders shall be obtained but the consent of one or more other Lenders whose consent is sought shall not be obtained, then the Borrower shall have the right, so long as all non-consenting Lenders whose individual consents are sought are treated as described in either clauses (A) or (B) below, to either (A) replace each such non-consenting Lender or Lenders with one or more replacement Lenders in accordance with the provisions of Section 2.12(b) so long as, at the time of such replacement, each such replacement Lender consents to the proposed change, waiver, discharge or termination or (B) repay the outstanding Loans of each such non-consenting Lender in accordance with Sections 2.04(a) and 2.09; provided that, unless the Loans that are repaid pursuant to preceding clause (B) are immediately replaced in full at such time through the addition of new Lenders or the increase of the outstanding Loans of existing Lenders (who in each case must specifically consent thereto), then in the case of any action pursuant to

preceding clause (B) each Lender (determined after giving effect to the proposed action) shall specifically consent thereto.

(d) Notwithstanding anything in paragraph (b) of this Section to the contrary, this Agreement and the other Loan Documents may be amended at any time and from time to time to establish revolving credit commitments or one or more additional classes of term loans by an agreement in writing entered into by Level 3, the Borrower, the Administrative Agent, the Collateral Agent and each person (including any Lender) that shall agree to provide such a revolving credit commitment or make a term loan of any class so established (but without the consent of any other Lender), and each such person that shall not already be a Lender shall, at the time such agreement becomes effective, become a Lender with the same effect as if it had originally been a Lender under this Agreement with the revolving credit commitment and/or term loans set forth in such agreement; *provided* that the aggregate outstanding principal amount of the revolving credit commitments and term loans of all classes established pursuant to this paragraph shall at no time exceed the maximum principal amount of the Indebtedness permitted to be incurred at such time under Section 6.01(b)(ii) and 6.02(b)(ii)). Any such agreement shall amend the provisions of this Agreement and the other Loan Documents to set forth the terms of the revolving credit commitments or class of term loans established thereby (including the amount and final maturity thereof (which, in the case of any class of term loans, shall not be earlier than the Maturity Date), any provisions relating to amortization or mandatory prepayments or offers to prepay (it being agreed that not more than 1% of the aggregate principal amount of the term loans of any class shall amortize during any calendar year prior to the Maturity Date and that provisions for mandatory prepayments of and offers to prepay the term loans of any class may require such term loans to be prepaid or offered the right to be prepaid ratably with the Loans but shall not include any additional mandatory prepayment rights), the interest to accrue and be payable thereon and any fees to be payable in respect thereof) and to effect such other changes (including changes to the provisions of this Section, Section 2.11 and the definition of "Required Lenders" and changes to provide for a note of Level 3 LLC evidencing the advance of the proceeds of any loans) as Level 3, the Borrower and the Administrative Agent shall deem necessary or advisable in connection with the establishment of any such revolving credit commitments or class of term loans; *provided* that no such agreement shall (i) effect any change described in any of clauses (i), (ii), (iii), (vi) or (vii) of paragraph (b) of this Section without the consent of each person required to consent to such change under such clause (it being agreed, however, that the establishment of any revolving commitment or class of term loans will not, of itself, be deemed to effect any of the changes described in clauses (vi) or (vii) of such paragraph (b)), or (ii) amend Article V, VI or VII to establish any affirmative or negative covenant, Event of Default or remedy that by its terms benefits any such revolving credit commitments or class of term loans but not the Loans without the prior written consent of Lenders holding a majority in interest of the Loans. Without limiting the foregoing, a Qualified Receivable Facility permitted by Sections 6.01 and 6.02 may be established pursuant to and in accordance with the provisions of this paragraph and may have a first priority Lien on Collateral consisting of Receivables, collections thereof and accounts established solely for the collection of such Receivables, and the Agent is authorized and directed to enter into all such amendments to the Loan Documents as it shall deem

necessary or advisable to establish such first priority Lien and to subordinate to such Lien on customary terms (as determined by the Agent and Level 3) the Liens on such Receivables securing the other Obligations. The loans of any class established pursuant to this paragraph shall, to the extent provided in the amendment entered into in connection therewith, be entitled to all the benefits afforded by this Agreement and the other Loan Documents, and shall benefit equally and ratably (except as provided in the next preceding sentence) from the Guarantees created by the Guarantee Agreement and security interests created by the Collateral Agreement and the other Security Documents. Level 3 and the Borrower shall take any actions reasonably required by the Administrative Agent to ensure and/or demonstrate that the Guarantee and Collateral Requirement continues to be satisfied after the establishment of any such revolving credit commitments or class of term loans.

For each borrowing under an Additional Tranche, the Borrower shall use the net proceeds of each such issuance and additional funds as necessary to lend to Level 3 LLC an amount equal to the principal amount of the Additional Tranche so issued, and the principal amount of the Loan Proceeds Note shall be increased by such amount.

(e) Notwithstanding anything in paragraph (b) of this Section to the contrary, this Agreement and the other Loan Documents may be amended by an agreement in writing entered into by Level 3, the Borrower, the Collateral Agent and the Administrative Agent on such terms as may be required to consummate the transactions contemplated by Section 5.13(b).

SECTION 9.03. Expenses; Indemnity; Damage Waiver. (a) Level 3 and the Borrower shall pay, on a joint and several basis, (i) all reasonable out-of-pocket expenses incurred by the Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Agent, in connection with all ministerial activities in the administration of the Loan Documents and any amendments, modifications or waivers of the provisions thereof and (ii) all reasonable out-of-pocket expenses incurred by the Agent and its Affiliates and each Lender in connection with the enforcement of the Loan Documents, including rights under this Section, or in connection with the Loans, but Level 3 and the Borrower shall only be liable for the fees and expenses of counsel for the Agent and one other counsel for all such other Persons (as well as separate local and regulatory counsel). The Borrower also shall pay all Lien search, filing, recording and similar fees incurred by the Collateral Agent in connection with the creation and perfection of the security interests contemplated by the Loan Documents (other than the filing fees in connection with any local fixture filings and the expenses in connection with obtaining real estate descriptions for fixture filings).

(b) Level 3 and the Borrower shall indemnify, on a joint and several basis, the Agent, each Related Party of the Agent (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnatee, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (i) the execution or delivery of any Loan Document or any other agreement or instrument contemplated

hereby or thereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby or thereby, or the Collateral, (ii) any Loan or the use of the proceeds thereof, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by Level 3, the Borrower or any of the Subsidiaries of Level 3, or any Environmental Liability related in any way to Level 3, the Borrower or any of the Subsidiaries of Level 3, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. It is agreed that the expenses for which Level 3 and the Borrower agree to indemnify the Agent under this paragraph shall not include expenses associated with (i) the arrangement and syndication of the Loans, (ii) the preparation, execution and delivery of the Loan Documents, (iii) the enforcement of the Loan Documents or (iv) the filing fees in connection with any local fixture filings and the expenses in connection with obtaining real estate descriptions for fixture filings; provided, that nothing in this sentence shall have the effect of reducing any rights of the Agent or its Affiliates pursuant to paragraph (a) of this Section or of reducing the Borrower's responsibility for expenses related to claims, litigation, investigations or proceedings referred to in clause (iv) of the immediately preceding sentence.

(c) To the extent that Level 3 and the Borrower fail to pay any amount required to be paid by them to the Agent or any Related Party of the Agent under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Agent such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), based on the amount of its Commitment or outstanding Loans or, if no Loans shall be outstanding, on the amount of its Loans on the most recent date on which Loans were outstanding, of such unpaid amount; provided that (i) the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent in its capacity as such and (ii) such indemnity shall not, as to the Agent or any Related Party, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of the Agent or such Related Party, as the case may be.

(d) To the extent permitted by applicable law, neither Level 3 nor the Borrower shall assert, and each hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

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

(b) Any Lender may assign to one or more assignees all or a portion of its rights under this Agreement (including all or a portion of the Loans at the time owing to it) to an Eligible Transferee; provided, that (i) except in the case of an assignment to a Lender, the amount of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall be an integral multiple of \$1,000,000 (or the entire remaining amount of the assigning Lender's Loans, if less than \$1,000,000) unless the Administrative Agent shall otherwise consent, provided that (A) in the event of concurrent assignments to two or more assignees that are Affiliates of one another, or to two or more Approved Funds managed by the same investment advisor or by affiliated investment advisors, all such concurrent assignments shall be aggregated in determining compliance with this subsection and (B) in the event of concurrent assignments by two or more assignors that are Affiliates of one another, or by two or more Approved Funds managed by the same investment advisor or by affiliated investment advisors, all such concurrent assignments shall be aggregated in determining compliance with this subsection; (ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement; (iii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (except that in the event of (A) concurrent assignments to two or more assignees that are Affiliates of one another, or to two or more Approved Funds managed by the same investment advisor or by affiliated investment advisors or (B) concurrent assignments by two or more assignees that are Affiliates of one another, or by two or more Approved Funds managed by the same investment advisor or by affiliated investment advisors, only one such fee shall be payable); and (iv) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(c) Subject to acceptance and recording thereof pursuant to paragraph (d) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the

interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.08, 2.09, 2.10 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (f) of this Section. Each assignment hereunder shall be deemed to be an assignment of the related rights under the Security Documents.

(d) The Administrative Agent shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice. Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder) and the processing and recordation fee referred to in paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(e) By executing and delivering an Assignment and Assumption, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that its Commitment and the outstanding balances of its Loans, in each case without giving effect to assignments thereof that have not become effective, are as set forth in such Assignment and Assumption; (ii) except as set forth in clause (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document or any other instrument or document furnished pursuant hereto or thereto, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of any of the foregoing, or the financial condition of the Loan Parties or the performance or observance by the Loan Parties of any of their obligations under this Agreement or under any other Loan Document or any other instrument or document furnished pursuant hereto or thereto; (iii) each of the assignee and the assignor represents and warrants that it is

legally authorized to enter into such Assignment and Assumption; (iv) such assignee confirms that it has received a copy of this Agreement, together with copies of any amendments or consents entered into prior to the date of such Assignment and Assumption and copies of the most recent financial statements delivered pursuant to Section 5.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Assumption; (v) such assignee will independently and without reliance upon the Agents, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (vi) such assignee appoints and authorizes the Agents to take such action as agents on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to them by the terms hereof and thereof, together with such powers as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations that by the terms of this Agreement are required to be performed by it as a Lender.

(f) (i) Any Lender may, without the consent of the Borrower, or the Administrative Agent, sell participations to one or more other Persons (each a “Participant”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that affects such Participant and that, under Section 9.02(b), would require the consent of each affected Lender. Subject to paragraph (f)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.08, 2.09 and 2.10 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.11(c) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.08, 2.09, or 2.10 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant unless the sale of the participation to such Participant is made with the Borrower’s prior written consent, which consent shall specifically refer to this exception. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.10 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.10(e) as though it were a Lender.

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

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any other amount payable under this Agreement is outstanding and unpaid and so long as the Commitments have not expired or terminated. The provisions of Sections 2.08, 2.09, 2.10 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans or the termination of this Agreement or any provision hereof.

SECTION 9.06. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective as provided in Section 4.01.

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

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing and the Loans shall have become due and payable pursuant to Article VII, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the

account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

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

(b) Each of Level 3 and the Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against Level 3, the Borrower or its properties in the courts of any jurisdiction.

(c) Each of Level 3 and the Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

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

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO

(A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

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

SECTION 9.12. Confidentiality. The Administrative Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (g) with the consent of the Borrower, (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section, (ii) becomes available to the Administrative Agent or any Lender on a nonconfidential basis from a source other than Level 3 or the Borrower, (i) to any direct or indirect contractual counterparty in swap agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section or (j) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender. For the purposes of this Section, "Information" means all information received from Level 3 or the Borrower relating to Level 3 or the Borrower or its business (including information obtained through the exercise of a Lender's rights under Sections 5.01) other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by Level 3 or the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

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

SECTION 9.14. Release of Subsidiary Loan Parties and Collateral. (a) On the Enhanced Collateral Date, each Subsidiary of Level 3 that shall have ceased to be a “Designated Guarantor Subsidiary” and a “Designated Grantor Subsidiary” by reason of the proviso in the definition of such term shall be automatically released from its obligations under, and all Collateral owned by it and the Equity Interests of each such released Subsidiary owned by or on behalf of the Borrower shall be automatically released from the Liens created by, the Security Documents, and the Collateral Agent shall, without the consent of any Lender, execute and deliver all such releases, termination statements or other instruments, and take all such further actions, as shall be reasonably requested by Level 3 to evidence any such release.

(b) Notwithstanding any contrary provision herein or in any other Loan Document, if Level 3 shall request the release under any Security Document of (i) any of its Subsidiaries (other than the Borrower or Level 3 LLC) or any Collateral to be sold or otherwise disposed of (including through the sale or disposition of any Subsidiary (other than the Borrower or Level 3 LLC) owning any such Subsidiary or Collateral) to a Person other than Level 3 or a Subsidiary of Level 3 in a transaction permitted under the terms of this Agreement (including to the extent permitted by Section 6.07, 6.08 or 6.10), (ii) any Receivables, collections thereof and accounts established solely for the collection of such Receivables to secure the Incurrence of Indebtedness pursuant to a Qualified Receivable Facility as permitted by Section 6.01(b)(ii) or 6.02(b)(ii) or (iii) any Property that is to become subject to any Lien permitted to be Incurred under Section 6.05(ii)(3) or (4), and shall deliver to the Collateral Agent a certificate to the effect that such sale or other disposition and the application of the proceeds thereof will comply with the terms of this Agreement and that no Event of Default shall have occurred and be continuing, the Collateral Agent, if satisfied that the applicable certificate is correct, and if satisfied with any arrangements for the receipt and deposit of proceeds of such transaction to the extent required under Section 6.07(b), shall, unless an Event of Default has occurred and is continuing, execute and deliver all such instruments, releases, financing statements or other agreements, and take all such further actions, as shall be necessary to effectuate the release of such Subsidiary or such Collateral substantially simultaneously with or at any time after the completion of such sale or other disposition; provided that (i) if the

Collateral to be sold or otherwise disposed of is sold or otherwise disposed of by a Grantor in the ordinary course of business in a transaction permitted by the Credit Agreement to a Person other than Level 3 or a Subsidiary of Level 3 and (ii) such sale or other disposal would not constitute an Asset Disposition, then such Collateral shall be automatically released from any Lien created by this Agreement or any other Loan Document upon the effectiveness of such sale or disposition. Any such release shall be without recourse to, or representation or warranty by, the Collateral Agent and shall not require the consent of any Lender. The Collateral Agent shall execute and deliver all such releases, termination statements or other instruments, and take all such further actions, as shall be necessary to effectuate or confirm any release of Collateral required by this paragraph.

(c) Without limiting the provisions of Section 9.03, the Company and the Borrower shall reimburse the Collateral Agent for all reasonable out-of-pocket costs and expenses, including the reasonable fees, charges and disbursements of counsel, incurred by it in connection with any action contemplated by this Section.

(d) No such termination or cessation shall release, reduce or otherwise adversely affect the obligations of any other Loan Party under this Agreement or any other Loan Document, all of which obligations continue to remain in full force and effect.

SECTION 9.15. Senior Debt Status . In the event that Level 3 or any Subsidiary of Level 3 shall at any time issue or have outstanding any Indebtedness that by its terms is subordinated to any other Indebtedness of Level 3 or such Subsidiary, Level 3 shall take or cause such Subsidiary to take all such actions as shall be necessary to cause the Obligations to constitute senior indebtedness (however denominated) in respect of such subordinated Indebtedness and to enable the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such subordinated Indebtedness. Without limiting the foregoing, the Obligations are hereby designated as “senior indebtedness” and, if relevant, as “designated senior indebtedness” in respect of all such subordinated Indebtedness and are further given all such other designations as shall be required under the terms of any such subordinated Indebtedness in order that the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such subordinated indebtedness.

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

LEVEL 3 COMMUNICATIONS, INC.,

by /s/ Neil J. Eckstein
Name: Neil J. Eckstein
Title: Senior Vice President and
Assistant General Counsel

LEVEL 3 FINANCING, INC.

by /s/ Neil J. Eckstein
Name: Neil J. Eckstein
Title: Senior Vice President and
Assistant General Counsel

MERRILL LYNCH CAPITAL CORPORATION,
individually and as Administrative Agent,

by /s/ Cecile Baker
Name: Cecile Baker
Title: Vice President

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Exhibit 10.2

EXECUTION COPY

GUARANTEE AGREEMENT

dated as of

December 1, 2004

among

LEVEL 3 COMMUNICATIONS, INC.,

the Subsidiaries of LEVEL 3 COMMUNICATIONS, INC. identified herein,

and

MERRILL LYNCH CAPITAL CORPORATION,
as Agent

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GUARANTEE AGREEMENT dated as of December 1, 2004, among LEVEL 3 COMMUNICATIONS, INC., a Delaware corporation (“Level 3”), the Subsidiaries of Level 3 identified herein and MERRILL LYNCH CAPITAL CORPORATION (“MLCC”), as administrative agent and collateral agent (in such capacity, the “Agent”).

PRELIMINARY STATEMENT

Reference is made to the Credit Agreement dated as of December 1, 2004 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”), among the Borrower, Level 3, the lenders from time to time party thereto (the “Lenders”) and the Agent. The Lenders have agreed to extend credit to the Borrower pursuant to and upon the terms and conditions specified in the Credit Agreement. The obligations of the Lenders to extend such credit to the Borrower are conditioned upon, among other things, the execution and delivery of this Agreement by Level 3, the Borrower and the Subsidiary Guarantors. Level 3 and the Subsidiary Guarantors are affiliates of the Borrower, will derive substantial benefits from the extension of credit to the Borrower pursuant to the Credit Agreement and are willing to execute and deliver this Agreement in order to induce the Lenders to extend such credit.

Accordingly, the parties hereto agree as follows:

ARTICLE I

SECTION 1.01. Credit Agreement. (a) Capitalized terms used in this Agreement and not otherwise defined herein have the meanings set forth in the Credit Agreement.

(b) The rules of construction specified in Section 1.02 of the Credit Agreement also apply to this Agreement.

SECTION 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“Borrower” has the meaning assigned to such term in the preamble of this Agreement.

“Agent” has the meaning assigned to such term in the preamble of this Agreement.

“Credit Agreement” has the meaning assigned to such term in the preliminary statement of this Agreement.

“Guarantors” means Level 3 and the Subsidiary Guarantors.

“MLCC” has the meaning assigned to such term in the preamble of this Agreement.

“Obligations” means (a) the due and punctual payment of (i) the principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans (including Loans pursuant to Additional Tranches), when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations of the Borrower to any of the Secured Parties under the Credit Agreement and each of the other Loan Documents, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), (b) the due and punctual performance of all other obligations of the Borrower under or pursuant to the Credit Agreement and each of the other Loan Documents, and (c) the due and punctual payment and performance of all the obligations of each other Loan Party under or pursuant to this Agreement and each of the other Loan Documents.

“Secured Parties” means (a) the Lenders, (b) the Agent, (c) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (d) the successors and assigns of each of the foregoing.

“Subsidiary Guarantors” means (a) the Subsidiaries identified on Schedule I and (b) each other Subsidiary that becomes a party to this Agreement as a Subsidiary Guarantor after the Closing Date.

ARTICLE II

Guarantee

SECTION 2.01. Guarantee. Each Guarantor unconditionally guarantees, jointly with the other Guarantors and severally, as a primary obligor and not merely as a surety, the due and punctual payment and performance of the Obligations. Each of the Guarantors further agrees that the Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee notwithstanding any extension or renewal of any Obligation. Each of the Guarantors waives presentment to, demand of payment from and protest to the Borrower or any other Loan Party of any of the Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment.

SECTION 2.02. Guarantee of Payment. Each of the Guarantors further agrees that its guarantee hereunder constitutes a guarantee of payment when due and not of collection, and waives any right to require that any resort be had by the Agent or any other Secured Party to any security held for the payment of the Obligations or to any balance of any deposit account or credit on the books of the Agent or any other Secured Party in favor of the Borrower or any other person.

SECTION 2.03. No Limitations, Etc. (a) Except for termination of a Guarantor's obligations hereunder as expressly provided in Section 3.12, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor hereunder shall not be discharged or impaired or otherwise affected by (i) the failure of the Agent or any other Secured Party to assert any claim or demand or to enforce any right or remedy under the provisions of any Loan Document or otherwise; (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Loan Document or any other agreement, including with respect to any other Guarantor under this Agreement; (iii) the release of any security held by the Agent or any other Secured Party for the Obligations or any of them; (iv) any default, failure or delay, willful or otherwise, in the performance of the Obligations; or (v) any other act or omission that may or might in any manner or to any extent vary the risk of any Guarantor or otherwise operate as a discharge of any Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of all the Obligations). Each Guarantor expressly authorizes the Agent to take and hold security for the payment and performance of the Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in its sole discretion or to release or substitute any one or more other guarantors or obligors upon or in respect of the Obligations, all without affecting the obligations of any Guarantor hereunder.

(b) To the fullest extent permitted by applicable law, each Guarantor waives any defense based on or arising out of any defense of the Borrower or any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the Borrower or any other Loan Party, other than the indefeasible payment in full in cash of all the Obligations. The Agent and the other Secured Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with the Borrower or any other Loan Party or exercise any other right or remedy available to them against the Borrower or any other Loan Party, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent the Obligations have been fully and indefeasibly paid in full in cash. To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against the Borrower or any other Loan Party, as the case may be, or any security.

SECTION 2.04. Reinstatement. Each of the Guarantors agrees that its guarantee hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must

otherwise be restored by the Agent or any other Secured Party upon the bankruptcy or reorganization of the Borrower, any other Loan Party or otherwise.

SECTION 2.05. Agreement To Pay; Subrogation. In furtherance of the foregoing and not in limitation of any other right that the Agent or any other Secured Party has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Borrower or any other Loan Party to pay any Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the Agent for distribution to the applicable Secured Parties in cash the amount of such unpaid Obligation. Upon payment by any Guarantor of any sums to the Agent as provided above, all rights of such Guarantor against the Borrower or any other Guarantor arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations. In addition, any indebtedness of the Borrower now or hereafter held by any Guarantor is hereby subordinated in right of payment to the prior payment in full of the Obligations. If any amount shall erroneously be paid to any Guarantor on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of the Borrower, such amount shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of the Loan Documents.

SECTION 2.06. Information. Each Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's and each other Loan Party's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that none of the Agent or the other Secured Parties will have any duty to advise such Guarantor of information known to it or any of them regarding such circumstances or risks.

SECTION 2.07. Representations and Warranties. Each of the Guarantors represents and warrants as to itself that all representations and warranties relating to it contained in the Credit Agreement are true and correct.

ARTICLE III

Miscellaneous

SECTION 3.01. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 9.01 of the Credit Agreement. All communications and notices hereunder to any Subsidiary Guarantor shall be given to it in care of the Borrower as provided in Section 9.01 of the Credit Agreement.

SECTION 3.02. Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in

the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended under the Credit Agreement, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under any Loan Document is outstanding.

SECTION 3.03. Binding Effect; Several Agreement. This Agreement shall become effective as to any Loan Party when a counterpart hereof executed on behalf of such Loan Party shall have been delivered to the Agent and a counterpart hereof shall have been executed on behalf of the Agent, and thereafter shall be binding upon such Loan Party and the Agent and their respective permitted successors and assigns, and shall inure to the benefit of such Loan Party, the Agent and the other Secured Parties and their respective successors and assigns, except that no Loan Party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement or the Credit Agreement. This Agreement shall be construed as a separate agreement with respect to each Loan Party and may be amended, modified, supplemented, waived or released with respect to any Loan Party without the approval of any other Loan Party and without affecting the obligations of any other Loan Party hereunder.

SECTION 3.04. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of any Guarantor or the Agent that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

SECTION 3.05. Applicable Law. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

SECTION 3.06. Waivers; Amendment. (a) No failure or delay by the Agent or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Agent and the other Secured Parties hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of

a Loan shall not be construed as a waiver of any Default, regardless of whether the Agent or any Lender may have had notice or knowledge of such Default at the time. No notice or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Agent and the Loan Party or Loan Parties with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 9.02 of the Credit Agreement.

SECTION 3.07. *WAIVER OF JURY TRIAL*. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 3.07.

SECTION 3.08. *Severability*. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 3.09. *Counterparts*. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 3.03. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 3.10. *Headings*. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this

Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 3.11. Jurisdiction; Consent to Service of Process. (a) Each of the Loan Parties hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America, sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the Loan Parties hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the Loan Parties agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

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

(c) Each of the Loan Parties hereby irrevocably consents to service of process in the manner provided for notices in Section 3.01. Nothing in this Agreement or any other Loan Document will affect the right of the Agent to serve process in any other manner permitted by law.

SECTION 3.12. Termination or Release. Agreement and the Guarantees shall terminate when all the Obligations (other than wholly contingent indemnification obligations) then due and owing have been indefeasibly paid in full and the Lenders have no further commitment to lend under the Credit Agreement. This Agreement and the Guarantee shall terminate as to any particular Guarantor under the circumstances, at the times and in the manner set forth in Section 6.07, 6.08, 6.10 or 9.14 of the Credit Agreement, as applicable.

SECTION 3.13. Additional Guarantors. Upon the execution and delivery by the Agent and any Subsidiary of a supplement in the form of Exhibit A hereto, such Subsidiary shall become a Subsidiary Guarantor hereunder with the same force and effect as if originally named as a Subsidiary Guarantor herein. The execution and delivery of any such instrument shall not require the consent or reduce the obligations of any other Guarantor hereunder. The rights and obligations of each Subsidiary Guarantor hereunder

shall remain in full force and effect notwithstanding the addition of any new Subsidiary as a party to this Agreement.

SECTION 3.14. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Guarantor against any and all of the obligations of such Guarantor now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 3.15. Conflicts. In the event that there is a conflict between this Agreement and the Credit Agreement, the Credit Agreement shall govern.

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

LEVEL 3 COMMUNICATIONS, INC.,
SOFTWARE SPECTRUM, INC.,
ELDORADO MARKETING, INC.,
LEVEL 3 INTERNATIONAL, INC.,
LEVEL 3 ENHANCED SERVICES, LLC,
BTE EQUIPMENT, LLC, and
(i)STRUCTURE LLC,

by /s/ Neil J. Eckstein

Name: Neil J. Eckstein

Title: Senior Vice President

MERRILL LYNCH CAPITAL CORPORATION, as Agent,

by /s/ Cecile Baker

Name: Cecile Baker

Title: Vice President

Exhibit 10.3

EXECUTION COPY

COLLATERAL AGREEMENT

dated as of

December 1, 2004

among

LEVEL 3 COMMUNICATIONS, INC.,

LEVEL 3 FINANCING, INC.,

the Subsidiaries of LEVEL 3 COMMUNICATIONS, INC. identified herein,

and

MERRILL LYNCH CAPITAL CORPORATION,
as Collateral Agent

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COLLATERAL AGREEMENT dated as of December 1, 2004, among LEVEL 3 FINANCING, INC., a Delaware corporation (the “Borrower”), LEVEL 3 COMMUNICATIONS, INC., a Delaware corporation (“Level 3”), the Subsidiaries of Level 3 identified herein and MERRILL LYNCH CAPITAL CORPORATION (“MLCC”), as collateral agent (in such capacity, the “Collateral Agent”).

PRELIMINARY STATEMENT

Reference is made to the Credit Agreement dated as of December 1, 2004 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”), among the Borrower, Level 3, the lenders from time to time party thereto (the “Lenders”) and MLCC, as administrative agent (in such capacity, the “Administrative Agent”) and Collateral Agent. The Lenders have agreed to extend credit to the Borrower pursuant to, and upon the terms and conditions specified in, the Credit Agreement. The obligations of the Lenders to extend such credit to the Borrower are conditioned upon, among other things, the execution and delivery of this Agreement by Level 3, the Borrower and the Subsidiary Grantors. Level 3 and the Subsidiary Grantors are affiliates of the Borrower, will derive substantial benefits from the extension of credit to the Borrower pursuant to the Credit Agreement and are willing to execute and deliver this Agreement in order to induce the Lenders to extend such credit.

Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Credit Agreement. (a) Capitalized terms used in this Agreement and not otherwise defined herein have the meanings set forth in the Credit Agreement. All terms defined in the New York UCC (as such term is defined herein) and not defined in this Agreement have the meanings specified therein. All references to the Uniform Commercial Code shall mean the New York UCC.

(b) The rules of construction specified in Section 1.02 of the Credit Agreement also apply to this Agreement.

SECTION 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“Account Debtor” means any person who is or who may become obligated to any Grantor under, with respect to or on account of an Account.

“Accounts Receivable” means all Accounts and all right, title and interest in any returned goods, together with all rights, titles, securities and guarantees with respect thereto, including any rights to stoppage in transit, replevin, reclamation and resales, and all related security interests, liens and pledges, whether voluntary or involuntary, in each case whether now existing or owned or hereafter arising or acquired.

“Administrative Agent” has the meaning assigned to such term in the preliminary statement of this Agreement.

“Annual Perfection Certificate” means a certificate substantially in the form of Exhibit B, completed and supplemented with the schedules and attachments contemplated thereby, and duly executed by an authorized officer of the Borrower.

“Article 9 Collateral” has the meaning assigned to such term in Section 3.01.

“Borrower” has the meaning assigned to such term in the preamble of this Agreement.

“Collateral” means the Article 9 Collateral and the Pledged Collateral.

“Collateral Proceeds Deposit Account” means any cash collateral account established as provided in Section 3.04(b).

“Collateral Agent” has the meaning assigned to such term in the preamble of this Agreement.

“Copyright License” means any written agreement, now or hereafter in effect, granting any right to any third party under any Copyright now or hereafter owned by any Grantor or that such Grantor otherwise has the right to license, or granting any right to any Grantor under any United States copyright now or hereafter owned by any third party, and all rights of such Grantor under any such agreement.

“Copyrights” means all of the following now owned or hereafter acquired by any Grantor: (a) all copyright rights in any work subject to the copyright laws of the United States, whether as author, assignee, transferee or otherwise, and (b) all registrations and applications for registration of any such copyright in the United States, including registrations, recordings, supplemental registrations and pending applications for registration in the United States Copyright Office (or any successor office), including those listed on Schedule III.

“Credit Agreement” has the meaning assigned to such term in the preliminary statement of this Agreement.

“Effective Date Perfection Certificate” has the meaning assigned to such term in the Credit Agreement.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity interests in any person, or any obligations convertible into or exchangeable for, or giving any person a right, option or warrant to acquire such equity interests or such convertible or exchangeable obligations.

“Federal Securities Laws” has the meaning assigned to such term in Section 5.04.

“General Intangibles” means all choses in action and causes of action and all other intangible personal property of any Grantor of every kind and nature (other than Accounts) now owned or hereafter acquired by any Grantor, including all rights and interests in partnerships, limited partnerships, limited liability companies and other unincorporated entities, corporate or other business records, indemnification claims, contract rights (including rights under leases, whether entered into as lessor or lessee, Hedging Agreements and other agreements), Intellectual Property, goodwill, registrations, franchises, tax refund claims and any letter of credit, guarantee, claim, security interest or other security held by or granted to any Grantor to secure payment by an Account Debtor of any of the Accounts.

“Grantors” means Level 3, the Borrower and the Subsidiary Grantors.

“Intellectual Property” means all intellectual and similar property of any Grantor of every kind and nature now owned or hereafter acquired by any Grantor in the United States, including inventions, designs, Patents, Copyrights, Licenses, Trademarks, trade secrets, confidential or proprietary technical and business information, know-how, show-how or other data or information, software and databases and all embodiments or fixations thereof and related documentation, registrations and franchises, and all additions, improvements and accessions to, and books and records describing or used in connection with, any of the foregoing.

“Lenders” has the meaning assigned to such term in the preliminary statement of this Agreement.

“Level 3” has the meaning assigned to such term in the preamble of this Agreement.

“Level 3 LLC” means Level 3 Communications LLC, a Delaware limited liability company.

“License” means any Patent License, Trademark License, Copyright License or other license or sublicense agreement to which any Grantor is a party, including those listed on Schedule III (other than those license agreements in existence on the date hereof and listed on Schedule III and those license agreements entered into after the date hereof, which by their terms prohibit assignment or a grant of a security interest by such Grantor as licensee thereunder).

“MLCC” has the meaning assigned to such term in the preamble of this Agreement.

“New York UCC” means the Uniform Commercial Code as from time to time in effect in the State of New York.

“Obligations” means (a) the due and punctual payment of (i) the principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans (including Loans pursuant to Additional Tranches), when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations of the Borrower to any of the Secured Parties under the Credit Agreement and each of the other Loan Documents, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), (b) the due and punctual performance of all other obligations of the Borrower under or pursuant to the Credit Agreement and each of the other Loan Documents, and (c) the due and punctual payment and performance of all the obligations of each Loan Party other than the Borrower under or pursuant to this Agreement and each of the other Loan Documents.

“Patent License” means any written agreement, now or hereafter in effect, granting to any third party any right to make, use or sell any invention on which a Patent, now or hereafter owned by any Grantor or that any Grantor otherwise has the right to license, is in existence, or granting to any Grantor any right to make, use or sell any invention on which a United States patent, now or hereafter owned by any third party, is in existence, and all rights of any Grantor under any such agreement.

“Patents” means all of the following now owned or hereafter acquired by any Grantor: (a) all letters patent of the United States, all registrations and recordings thereof, and all applications for letters patent of the United States, including registrations, recordings and pending applications in the United States Patent and Trademark Office (or any successor), including those listed on Schedule III, and (b) all reissues, continuations, divisions, continuations-in-part, renewals or extensions thereof in the United States, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein in the United States.

“Pledged Collateral” has the meaning assigned to such term in Section 2.01.

“Pledged Debt Securities” has the meaning assigned to such term in Section 2.01.

“Pledged Securities” means any promissory notes, stock certificates or other securities now or hereafter included in the Pledged Collateral, including all

certificates, instruments or other documents representing or evidencing any Pledged Collateral.

“ Pledged Equity Interests ” has the meaning assigned to such term in Section 3.01.

“ Secured Parties ” means (a) the Lenders, (b) the Administrative Agent, (c) the Collateral Agent, (d) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (e) the successors and assigns of each of the foregoing.

“ Security Interest ” has the meaning assigned to such term in Section 4.01.

“ Subsidiary Grantors ” means (a) the Subsidiaries of Level 3 identified on Schedule I and (b) each other Subsidiary of Level 3 that becomes a party to this Agreement as a Subsidiary Grantor after the date hereof.

“ Trademark License ” means any written agreement, now or hereafter in effect, granting to any third party any right to use any Trademark now or hereafter owned by any Grantor or that any Grantor otherwise has the right to license, or granting to any Grantor any right to use any United States trademark now or hereafter owned by any third party, and all rights of any Grantor under any such agreement.

“ Trademarks ” means all of the following now owned or hereafter acquired by any Grantor in the United States: (a) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office (or any successor office) or any similar offices in any State of the United States, and all extensions or renewals thereof, including those listed on Schedule III, (b) all goodwill associated therewith or symbolized thereby and (c) all other assets, rights and interests that uniquely reflect or embody such goodwill.

“ Vehicles ” means all cars, trucks, trailers, construction and earth moving equipment and other vehicles covered by a certificate of title law of any state.

ARTICLE II

Pledge of Securities

SECTION 2.01. Pledge. As security for the payment or performance, as the case may be, in full of the Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest in, all of such Grantor’s right, title and interest in, to and under (a) all Equity Interests listed on Schedule II, all other Equity Interests owned by such Grantor

on the date hereof (other than Equity Interests issued by Subsidiaries (1) not engaged to any extent in the Telecommunications/IS Business or (2) that are not Material Subsidiaries) and any other Equity Interests that are obtained in the future by such Grantor (other than Equity Interests issued by Subsidiaries (1) not engaged to any extent in the Telecommunications/IS Business or (2) that are not Material Subsidiaries), and the certificates representing all such Equity Interests (the “Pledged Equity Interests”); provided, however, that (i) the Pledged Equity Interests shall not include (1) more than 65% of the issued and outstanding voting Equity Interests in Level 3 Communications Canada Co. or (2) any Equity Interest of any Foreign Subsidiary other than Level 3 Communications Canada Co. and (ii) after the Enhanced Collateral Date, the Pledged Equity Interests shall exclude Equity Interests issued by (1) Software Spectrum, Inc. (“Software”), (2) Eldorado Marketing, Inc. (“Eldorado”), and (3) (i)Structure, LLC (together with Software and Eldorado, the “Excluded Subsidiaries”); (b) the debt securities owned by such Grantor on the date hereof (including those listed opposite the name of such Grantor on Schedule II) and any debt securities that are obtained in the future by such Grantor, and the promissory notes and any other instruments evidencing such debt securities (the “Pledged Debt Securities”); (c) all other property that may be delivered to and held by the Collateral Agent pursuant to the terms of this Section 2.01; (d) subject to Section 2.06, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other Proceeds received in respect of, the securities referred to in clauses (a) and (b) above; (e) subject to Section 2.06, all rights and privileges of such Grantor with respect to the securities and other property referred to in clauses (a), (b), (c) and (d) above; and (f) all Proceeds of any of the foregoing (the items referred to in clauses (a) through (f) above being collectively referred to as the “Pledged Collateral”).

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Collateral Agent, its successors and assigns, for the ratable benefit of the Secured Parties, forever; subject, however, to the terms, covenants and conditions hereinafter set forth.

SECTION 2.02. Delivery of the Pledged Collateral. (a) Each Grantor agrees promptly to deliver or cause to be delivered to the Collateral Agent any and all Pledged Securities. Notwithstanding the foregoing, promptly after the Enhanced Collateral Date, the Collateral Agent agrees to deliver or cause to be delivered to the applicable Grantors the Equity Interests issued by the Excluded Subsidiaries and their corresponding instruments of transfer.

(b) Each Grantor will cause the Loan Proceeds Note, the Offering Proceeds Note, the Parent Intercompany Note and any additional Indebtedness of Level 3 LLC to Level 3 to be evidenced by either the Parent Intercompany Note or another duly executed promissory note to be pledged and delivered to the Collateral Agent, duly endorsed in a manner satisfactory to the Collateral Agent. Each Grantor will cause the security interests granted hereby for Indebtedness for borrowed money owed to such Grantor to be at all times first priority perfected security interests. Upon the occurrence and during the continuance of an Event of Default, each Grantor will cause any other

Indebtedness for borrowed money owed to such Grantor by any person in an amount that exceeds \$1,000,000 that is evidenced by a duly executed promissory note to be pledged and delivered to the Collateral Agent, duly endorsed in a manner satisfactory to the Collateral Agent.

(c) Upon delivery to the Collateral Agent, (i) any Pledged Securities shall be accompanied by undated stock powers duly executed in blank or other instruments of transfer satisfactory to the Collateral Agent and by such other instruments and documents as the Collateral Agent may reasonably request and (ii) all other property comprising part of the Pledged Collateral shall be accompanied by proper instruments of assignment duly executed by the applicable Grantor and such other instruments or documents as the Collateral Agent may reasonably request. Each delivery of Pledged Securities shall be accompanied by a schedule describing the securities, which schedule shall be attached hereto as Schedule II and made a part hereof; provided that the failure to attach any such schedule hereto shall not affect the validity of such pledge of such Pledged Securities. Each schedule so delivered shall supplement any prior schedules so delivered.

SECTION 2.03. Representations, Warranties and Covenants. The Grantors jointly and severally represent, warrant and covenant to and with the Collateral Agent, for the benefit of the Secured Parties, that:

(a) on the date hereof, Schedule II correctly sets forth the percentage of the issued and outstanding Equity Interests of each class of the issuer thereof represented by the Pledged Equity Interests and includes all Equity Interests, debt securities and promissory notes required to be pledged hereunder in order to satisfy the Guarantee and Collateral Requirement;

(b) except for the security interests granted hereunder, each of the Grantors (i) is on the date hereof and, subject to any transfers made in compliance with the Credit Agreement, will continue to be the direct owner, beneficially and of record, of the Pledged Securities indicated on Schedule II as owned by such Grantor, (ii) on the date hereof holds the same free and clear of all Liens, (iii) will make no assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Pledged Collateral, other than Liens created by this Agreement or as permitted by the Credit Agreement and transfers made in compliance with the Credit Agreement, and (iv) subject to Section 2.06, will cause any and all Pledged Collateral, whether for value paid by the Grantor or otherwise, to be forthwith deposited with the Collateral Agent and pledged or assigned hereunder;

(c) except for restrictions and limitations imposed by the Loan Documents or securities laws generally, and subject to the obtaining of any approvals referred to in Section 5.18, the Pledged Collateral (other than Pledged Collateral representing less than all of the Equity Interests of a person) is on the date hereof and will continue to be freely transferable and assignable, and none of the Pledged Collateral is on the date hereof or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provision or contractual

restriction of any nature that might prohibit, impair, delay or otherwise affect the pledge of such Pledged Collateral hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder;

(d) each of the Grantors (i) on the date hereof, has the power and authority to pledge the Pledged Collateral pledged by it hereunder in the manner hereby done or contemplated and (ii) will defend its title or interest thereto or therein against any and all Liens (other than Liens created by this Agreement or as permitted by the Credit Agreement), however arising, of all persons whomsoever;

(e) on the date hereof, no consent or approval of any Governmental Authority, any securities exchange or any other person was or is necessary to the validity of the pledge of the Pledged Collateral effected hereby (other than such as have been obtained and are in full force and effect or as may required as provided in Section 5.18 hereof);

(f) by virtue of the execution and delivery by the Grantors of this Agreement, when any Pledged Securities are delivered to the Collateral Agent in accordance with this Agreement, the Collateral Agent will obtain a legal, valid and perfected first priority lien upon and security interest in such Pledged Securities as security for the payment and performance of the Obligations; and

(g) the pledge effected hereby is effective to vest in the Collateral Agent, for the benefit of the Secured Parties, the rights of the Collateral Agent in the Pledged Collateral as set forth herein.

SECTION 2.04. Certification of Limited Liability Company Interests and Limited Partnership Interests. Each Grantor represents and warrants that none of the interests in any limited liability company or limited partnership controlled by any Grantor and pledged hereunder are represented by a certificate or are “securities” within the meaning of Article 8 of the New York UCC, and covenants and agrees that it shall at no time elect to treat any such interest as a “security” within the meaning of Article 8 of the New York UCC or issue any certificate representing such interest, unless it provides prior written notification to the Collateral Agent of such election and immediately pledges and delivers any such certificate to the Collateral Agent pursuant to the terms hereof.

SECTION 2.05. Registration in Nominee Name; Denominations. The Collateral Agent, on behalf of the Secured Parties, shall have the right (in its sole and absolute discretion) to hold the Pledged Securities in its own name as pledgee, the name of its nominee (as pledgee or as sub-agent) or the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Agent. Each Grantor will promptly give to the Collateral Agent copies of any notices or other communications received by it with respect to Pledged Securities registered in the name of such Grantor. The Collateral Agent shall at all times have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement.

SECTION 2.06. Voting Rights; Dividends and Interest, etc. (a) Unless and until an Event of Default shall have occurred and be continuing and the Collateral Agent shall have given the Grantors at least two Business Days' notice of its intent to exercise its rights under this Agreement (which notice shall be deemed to have been given immediately upon the occurrence of an Event of Default with respect to Level 3 or the Borrower under paragraph (i) or (j) of Article VII of the Credit Agreement):

(i) Each Grantor shall be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Securities or any part thereof for any purpose consistent with the terms of this Agreement, the Credit Agreement and the other Loan Documents; provided, however, that such rights and powers shall not be exercised in any manner that could materially and adversely affect the rights inuring to a holder of any Pledged Securities or the rights and remedies of any of the Collateral Agent or the other Secured Parties under this Agreement or the Credit Agreement or any other Loan Document or the ability of the Secured Parties to exercise the same.

(ii) The Collateral Agent shall execute and deliver to each Grantor, or cause to be executed and delivered to each Grantor, all such proxies, powers of attorney and other instruments as a Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (i) above.

(iii) Each Grantor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Securities (including in respect of the Loan Proceeds Note) to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Credit Agreement, the other Loan Documents and applicable laws; provided, however, that any noncash dividends, interest, principal or other distributions that would constitute Pledged Equity Interests or Pledged Debt Securities, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Securities or received in exchange for Pledged Securities or any part thereof, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall be and become part of the Pledged Collateral, and shall not be commingled by such Grantor with any of its other funds or property but shall be held separate and apart therefrom, shall be held in trust for the benefit of the Collateral Agent and shall be forthwith delivered to the Collateral Agent in the same form as so received (with any necessary endorsement). This paragraph (iii) shall not apply to dividends between or among the Borrower and the Subsidiary Grantors only of property subject to a perfected security interest under this

Agreement; provided that the Borrower notifies the Collateral Agent in writing, specifically referring to this Section 2.06, at the time of such dividend and takes any actions the Collateral Agent reasonably specifies to ensure the continuance of its perfected security interest in such property under this Agreement.

(b) Upon the occurrence and during the continuance of an Event of Default, after the Collateral Agent shall have notified (or shall be deemed to have notified) the Grantors of the suspension of their rights under paragraph (a)(iii) of this Section 2.06, then all rights of any Grantor to dividends, interest, principal or other distributions (including in respect of the Loan Proceeds Note) that such Grantor is authorized to receive pursuant to paragraph (a)(iii) of this Section 2.06 shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions. All dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of this Section 2.06 shall be held in trust for the benefit of the Collateral Agent, shall be segregated from other property or funds of such Grantor and shall be forthwith delivered to the Collateral Agent upon demand in the same form as so received (with any necessary endorsement). Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this paragraph (b) shall be retained by the Collateral Agent in an account to be established by the Collateral Agent upon receipt of such money or other property and shall be applied in accordance with the provisions of Section 5.02. After all Events of Default have been cured or waived and the applicable Grantor or Grantors have delivered to the Administrative Agent certificates to that effect, the Collateral Agent shall, promptly after all such Events of Default have been cured or waived, repay to each Grantor (without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of paragraph (a)(iii) of this Section 2.06 and that remain in such account.

(c) Upon the occurrence and during the continuance of an Event of Default, after the Collateral Agent shall have notified (or shall be deemed to have notified) the Grantors of the suspension of their rights under paragraph (a)(i) of this Section 2.06, then all rights of any Grantor to exercise the voting and consensual rights and powers it is entitled to exercise pursuant to paragraph (a)(i) of this Section 2.06, and the obligations of the Collateral Agent under paragraph (a)(ii) of this Section 2.06, shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers; provided that, unless otherwise directed by the Required Lenders, the Collateral Agent shall have the right from time to time following and during the continuance of an Event of Default to permit the Grantors to exercise such rights.

(d) Any notice given by the Collateral Agent to the Grantors exercising its rights under paragraph (a) of this Section 2.06 (i) may be given by telephone if promptly confirmed in writing, (ii) may be given to one or more of the Grantors at the same or different times and (iii) may suspend the rights of the Grantors under paragraph (a)(i) or paragraph (a)(iii) in part without suspending all such rights (as specified by the Collateral

Agent in its sole and absolute discretion) and without waiving or otherwise affecting the Collateral Agent's rights to give additional notices from time to time suspending other rights so long as an Event of Default has occurred and is continuing.

ARTICLE III

Security Interests in Personal Property

SECTION 3.01. Security Interest. (a) As security for the payment or performance, as the case may be, in full of the Obligations, each Grantor hereby assigns and pledges to the Collateral Agent, its successors and assigns, for the ratable benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and assigns, for the ratable benefit of the Secured Parties, a security interest (the " Security Interest ") in, all right, title or interest in or to any and all of the following assets and properties now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the " Article 9 Collateral "):

- (i) all Accounts;
- (ii) all Chattel Paper;
- (iii) all cash and Deposit Accounts;
- (iv) all Documents;
- (v) all Equipment;
- (vi) all General Intangibles;
- (vii) all Instruments;
- (viii) all Inventory;
- (ix) all Investment Property;
- (x) all Letter-of-Credit Rights;
- (xi) all Commercial Tort Claims;
- (xii) all fixtures;
- (xiii) all books and records pertaining to the Article 9 Collateral; and
- (xiv) to the extent not otherwise included, all Proceeds and products of any and all of the foregoing and all collateral security and guarantees given by any person with respect to any of the foregoing.

Notwithstanding the foregoing, the Article 9 Collateral shall not include any of the following assets now owned or hereafter acquired which would otherwise be included in the Article 9 Collateral: (a) assets transferred to a person that is not a Grantor, and is not required under the Credit Agreement to become a Grantor, in compliance with the Credit Agreement, (b) assets subject to Liens permitted by Section 6.05(i), 6.05(ii)(2), (3) or (4), 6.05(iv) or 6.05(v) of the Credit Agreement to the extent the documentation creating such Liens or governing the Indebtedness secured thereby would prohibit Liens on such assets created hereunder and (c) assets which contain a valid and enforceable prohibition on the creation of a security interest therein to the extent and so long as such prohibition remains in effect and is valid and effective to prohibit the creation of a security interest therein notwithstanding Sections 9-406 through 9-408 of the applicable Uniform Commercial Code (d) Vehicles, (e) aircraft, (f) real estate interests (including but not limited to leasehold interests), other than fixtures, (g) Equity Interests expressly excluded by the proviso to Section 2.01(a), (h) Equity Interests issued by Subsidiaries that are not Material Subsidiaries and that are excluded from the Pledged Collateral and (i) rights created under foreign registrations and applications with respect to Intellectual Property (collectively, the “Excluded Collateral”).

(b) Each Grantor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any initial financing statements with respect to the Article 9 Collateral or any part thereof and amendments thereto that (i) indicate the Article 9 Collateral as all assets of such Grantor or words of similar effect (it being understood that such description shall not result in the creation of a security interest in any assets expressly excluded from the Article 9 Collateral by the immediately preceding paragraph), and (ii) contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment, including (A) whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor and (B) in the case of a financing statement filed as a fixture filing, a sufficient description of the real property to which such Article 9 Collateral relates. Each Grantor agrees to provide information, other than real property descriptions, to the Collateral Agent promptly upon request. It is understood that no Grantor shall have any obligation to provide a real property description for central fixture filings or local fixture filings.

Each Grantor also ratifies its authorization for the Collateral Agent to file in any relevant jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

The Collateral Agent is further authorized to file with the United States Patent and Trademark Office or United States Copyright Office (or any successor office) such documents as may be necessary or advisable for the purpose of perfecting, confirming, continuing, enforcing or protecting the Security Interest granted by each Grantor, without the signature of any Grantor, and naming any Grantor or the Grantors as debtors and the Collateral Agent as secured party.

(c) The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Article 9 Collateral.

SECTION 3.02. Representations and Warranties. The Grantors jointly and severally represent and warrant to the Collateral Agent and the Secured Parties that:

(a) On the date hereof, each Grantor has good and valid rights in and title to the Article 9 Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent the Security Interest in such Article 9 Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other person other than any consent or approval that has been obtained.

(b) The Effective Date Perfection Certificate has been duly prepared, completed and executed and the information set forth therein (including (x) the exact legal name of each Grantor and (y) the jurisdiction of organization of each Grantor) is correct and complete as of the Effective Date. Uniform Commercial Code financing statements (including fixture filings, as applicable) or other appropriate filings, recordings or registrations containing a description of the Article 9 Collateral have been prepared by the Collateral Agent based upon the information provided to the Administrative Agent in the Effective Date Perfection Certificate for filing in each governmental, municipal or other office specified in Schedule 2 to the Effective Date Perfection Certificate (or specified by notice from the Borrower to the Administrative Agent after the Effective Date in the case of filings, recordings or registrations required by Sections 5.03 or 5.12 of the Credit Agreement), which are all the filings, recordings and registrations (other than filings required to be made in the United States Patent and Trademark Office and the United States Copyright Office in order to perfect the Security Interest in Article 9 Collateral consisting of United States Patents, Trademarks and Copyrights) that are necessary as of the Effective Date to publish notice of and protect the validity of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the ratable benefit of the Secured Parties) in respect of all Article 9 Collateral in which the Security Interest may be perfected by filing, recording or registration in the United States (or any political subdivision thereof) and its territories and possessions, and no further or subsequent filing, refiling, recording, rerecording, registration or reregistration is necessary in any such jurisdiction, except as provided under applicable law with respect to the filing of continuation statements. Each Grantor represents and warrants on the date hereof, that a fully executed agreement in the form hereof and containing a description of all Article 9 Collateral consisting of Intellectual Property with respect to United States Patents and United States registered Trademarks (and Trademarks for which United States registration applications are pending) and United States registered Copyrights have been delivered to the Collateral Agent for recording by the United States Patent and Trademark Office

and the United States Copyright Office pursuant to 35 U.S.C. §261, 15 U.S.C. §1060 or 17 U.S.C. §205 and the regulations thereunder, as applicable, and otherwise as may be required pursuant to the laws of any other necessary jurisdiction, to protect the validity of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the ratable benefit of the Secured Parties) in respect of all Article 9 Collateral consisting of Patents, Trademarks and Copyrights in which a security interest may be perfected by filing, recording or registration in the United States (or any political subdivision thereof) and its territories and possessions, and no further or subsequent filing, refile, recording, rerecording, registration or reregistration is necessary (other than such actions as are necessary to perfect the Security Interest with respect to any Article 9 Collateral consisting of Patents, Trademarks and Copyrights (or registration or application for registration thereof) acquired or developed after the date hereof).

(c) The Security Interest constitutes (i) a legal and valid security interest in all the Article 9 Collateral securing the payment and performance of the Obligations, (ii) subject to the filings described in Section 3.02(b), a perfected security interest in all Article 9 Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code or other applicable law in such jurisdictions and (iii) a security interest that shall be perfected in all Article 9 Collateral in which a security interest may be perfected upon the receipt and recording of this Agreement with the United States Patent and Trademark Office and the United States Copyright Office, as applicable. The Security Interest is and shall be prior to any other Lien on any of the Article 9 Collateral, other than Liens expressly permitted pursuant to Section 6.05 of the Credit Agreement.

(d) The Article 9 Collateral is owned by the Grantors free and clear of any Lien, except for Liens expressly permitted pursuant to Section 6.05 of the Credit Agreement. None of the Grantors has filed or consented to the filing of (i) any financing statement or analogous document under the Uniform Commercial Code or any other applicable laws covering any Article 9 Collateral, (ii) any assignment in which any Grantor assigns any Collateral or any security agreement or similar instrument covering any Article 9 Collateral with the United States Patent and Trademark Office or the United States Copyright Office or (iii) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Liens expressly permitted pursuant to Section 6.02 of the Credit Agreement.

SECTION 3.03. Covenants. (a) Each Grantor agrees to maintain, at its own cost and expense, such complete and accurate records with respect to the Article 9

Collateral as is prudent in the conduct of its business, and, at such time or times as the Collateral Agent may reasonably request, to prepare and deliver as soon as reasonably practicable to the Collateral Agent a duly certified schedule or schedules in form and detail satisfactory to the Collateral Agent showing the identity, amount and location of any and all Article 9 Collateral.

(b) Each Grantor shall, at its own expense, take any and all actions necessary to defend title to the Article 9 Collateral against all persons and to defend the Security Interest of the Collateral Agent in the Article 9 Collateral and the priority thereof against any Lien not expressly permitted pursuant to Section 6.05 of the Credit Agreement. Notwithstanding the foregoing, in no event shall any Grantor be required to provide descriptions of real estate for central fixture filings or local fixture filings.

(c) Each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Collateral Agent may from time to time request to better assure, preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and Taxes required in connection with the execution and delivery of this Agreement, the granting of the Security Interest and the filing of any financing statements (including fixture filings, other than central fixture filings that require a real property description and local fixture filings) or other documents in connection herewith or therewith. Without limiting the generality of the foregoing, each Grantor hereby authorizes the Collateral Agent, with prompt notice thereof to the Grantors, to supplement this Agreement by supplementing Schedule III or adding additional schedules hereto to specifically identify any asset or item that may, in the Collateral Agent's judgment, constitute Copyrights, Licenses, Patents or Trademarks; provided that any Grantor shall have the right, exercisable within 10 days after it has been notified by the Collateral Agent of the specific identification of such Collateral, to advise the Collateral Agent in writing of any material inaccuracy of the representations and warranties made by such Grantor hereunder with respect to such Collateral. Each Grantor agrees that it will use its best efforts to take such action as shall be necessary in order that all representations and warranties hereunder shall be true and correct in all material respects with respect to such Collateral within 30 days after the date it has been notified by the Collateral agent of the specific identification of such Collateral.

(d) The Collateral Agent and such persons as the Collateral Agent may designate shall have the right, at the Grantors' own cost and expense, to inspect the Article 9 Collateral, all records related thereto (and to make extracts and copies from such records) and the premises upon which any of the Article 9 Collateral is located, to discuss the Grantors' affairs with the officers of the Grantors and their independent accountants and to verify under reasonable procedures, in accordance with Section 5.03 of the Credit Agreement, the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Article 9 Collateral, including, in the case of Accounts or Article 9 Collateral in the possession of any third person, by contacting Account Debtors (only during the existence of a Default) or the third person possessing such Article 9 Collateral for the purpose of making such a verification. The Collateral Agent shall have the absolute right to share any information it gains from such inspection

or verification with any Secured Party. The rights under this paragraph may only be exercised if an Event of Default has occurred and is continuing.

(e) At its option, the Collateral Agent may discharge past due Taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Article 9 Collateral and not expressly permitted pursuant to Section 6.05 of the Credit Agreement, and may pay for the maintenance and preservation of the Article 9 Collateral to the extent any Grantor fails to do so as required by the Credit Agreement or this Agreement, and each Grantor jointly and severally agrees to reimburse the Collateral Agent on demand for any payment made or any expense incurred by the Collateral Agent pursuant to the foregoing authorization; provided, however, that nothing in this paragraph shall be interpreted as excusing any Grantor from the performance of, or imposing any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to Taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Loan Documents.

(f) Upon the occurrence and during the continuance of an Event of Default, if at any time any Grantor shall take a security interest in any property of an Account Debtor or any other person to secure payment and performance of an Account in excess of \$1,000,000, such Grantor shall promptly assign such security interest to the Collateral Agent. Such assignment need not be filed of public record unless necessary to continue the perfected status of the security interest against creditors of and transferees from the Account Debtor or other person granting the security interest.

(g) As between each Grantor, the Collateral Agent and the Secured Parties, each Grantor shall remain liable to observe and perform all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Article 9 Collateral, all in accordance with the terms and conditions thereof, and each Grantor jointly and severally agrees to indemnify and hold harmless the Collateral Agent and the Secured Parties from and against any and all liability for such performance.

(h) None of the Grantors shall make or permit to be made an assignment, pledge or hypothecation of the Article 9 Collateral or shall grant any other Lien in respect of the Article 9 Collateral, except as expressly permitted by Section 6.05 of the Credit Agreement. None of the Grantors shall make or permit to be made any transfer of the Article 9 Collateral, except as expressly permitted by Sections 6.07, 6.08, 6.10 and 9.14 of the Credit Agreement.

(i) None of the Grantors will, without the Collateral Agent's prior written consent, grant any extension of the time of payment of any Accounts included in the Article 9 Collateral, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any person liable for the payment thereof or allow any credit or discount whatsoever thereon, other than extensions, credits, discounts, compromises, compoundings or settlements granted or made in good faith in the prudent conduct of the business of such Grantor.

(j) The Grantors, at their own expense, shall maintain or cause to be maintained insurance covering physical loss or damage to the Inventory and Equipment in accordance with the requirements set forth in Section 5.07 of the Credit Agreement. Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent) as such Grantor's true and lawful agent (and attorney-in-fact) for the purpose, upon the occurrence and during the continuance of an Event of Default, of making, settling and adjusting claims in respect of Article 9 Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto. In the event that any Grantor at any time or times shall fail to obtain or maintain any of the policies of insurance required hereby or under the Credit Agreement or to pay any premium in whole or part relating thereto, the Collateral Agent may, without waiving or releasing any obligation or liability of the Grantors hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Collateral Agent deems advisable. All sums disbursed by the Collateral Agent in connection with this paragraph, including attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Grantors to the Collateral Agent and shall be additional Obligations secured hereby.

(k) Each Grantor shall maintain, in form and manner reasonably satisfactory to the Collateral Agent, records of its Chattel Paper and its books, records and documents evidencing or pertaining thereto in accordance with prudent business practices.

SECTION 3.04. Other Actions. In order to further insure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, the Collateral Agent's security interest in the Article 9 Collateral, each Grantor agrees, in each case at such Grantor's own expense, to take the following actions with respect to the following Article 9 Collateral:

(a) Instruments. Upon the occurrence and during the continuance of an Event of Default, if any Grantor shall at any time hold or acquire any Instruments in excess of \$1,000,000, such Grantor shall forthwith endorse, assign and deliver the same to the Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time specify.

(b) Deposit Accounts. Each Grantor shall deposit the net cash proceeds from any sale of Collateral in a Deposit Account (the "Collateral Proceeds Deposit Account"). For each Collateral Proceeds Deposit Account that any Grantor at any time opens or maintains, such Grantor shall either (i) cause the depository bank to agree to comply at any time with instructions from the Collateral Agent to such depository bank directing the disposition of funds from time to time credited to such Collateral Proceeds Deposit Account, without further consent of such Grantor or any other person, pursuant to an agreement in form

and substance satisfactory to the Collateral Agent or (ii) arrange for the Collateral Agent to become the customer of the depository bank with respect to the Collateral Proceeds Deposit Account, and in either case the Grantor will be permitted to withdraw funds from such Collateral Proceeds Deposit Account only with the consent of the Collateral Agent. The Collateral Agent agrees with each Grantor that the Collateral Agent shall not give any such instructions or withhold any withdrawal rights from any Grantor (to the extent such rights are to be exercised in a manner consistent with the Credit Agreement), unless an Event of Default has occurred and is continuing, or, after giving effect to any withdrawal, would occur. The provisions of this paragraph shall not apply to (A) any Collateral Proceeds Deposit Account for which any Grantor, the depository bank and the Collateral Agent have entered into a cash collateral agreement specially negotiated among such Grantor, the depository bank and the Collateral Agent for the specific purpose set forth therein and (B) Collateral Proceeds Deposit Accounts for which the Collateral Agent is the depository. In no event shall a control agreement or a cash collateral agreement be required for any Deposit Account other than a Collateral Proceeds Deposit Account regardless of whether the Collateral Agent is the depository for such Deposit Account.

(c) Investment Property. Except to the extent otherwise provided in Article II, if any Grantor shall at any time hold or acquire any certificated securities, such Grantor shall forthwith endorse, assign and deliver the same to the Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time specify. If any securities now or hereafter acquired by any Grantor are uncertificated (other than the securities in Software, the limited liability companies and the limited partnerships pledged hereunder) and are issued to such Grantor or its nominee directly by the issuer thereof, such Grantor shall immediately notify the Collateral Agent thereof and, at the Collateral Agent's request and option, pursuant to an agreement in form and substance satisfactory to the Collateral Agent, either (a) cause the issuer to agree to comply with instructions from the Collateral Agent as to such securities, without further consent of any Grantor or such nominee, or (b) arrange for the Collateral Agent to become the registered owner of the securities. If any securities, whether certificated or uncertificated, or other Investment Property now or hereafter acquired by any Grantor are held by such Grantor or its nominee through a Securities Intermediary or Commodity Intermediary, such Grantor shall immediately notify the Collateral Agent thereof and, at the Collateral Agent's request and option, pursuant to an agreement in form and substance satisfactory to the Collateral Agent, either (a) cause such Securities Intermediary or Commodity Intermediary, as the case may be, to agree to comply with Entitlement Orders or other instructions from the Collateral Agent to such Securities Intermediary as to such securities or other Investment Property, or (as the case may be) to apply any value distributed on account of any commodity contract as directed by the Collateral Agent to such Commodity Intermediary, in each case without further consent of any Grantor or such nominee, or (b) in the case of Financial Assets (as governed by Article 8 of the New York UCC) or other Investment Property held through a Securities

Intermediary, arrange for the Collateral Agent to become the Entitlement Holder with respect to such Investment Property, with the Grantor being permitted, only with the consent of the Collateral Agent, to exercise rights to withdraw or otherwise deal with such Investment Property. The Collateral Agent agrees with each of the Grantors that the Collateral Agent shall not give any such Entitlement Orders or instructions or directions to any such issuer, Securities Intermediary or Commodity Intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by any Grantor, unless an Event of Default has occurred and is continuing, or, after giving effect to any such investment and withdrawal rights would occur. The provisions of this paragraph shall not apply to any Financial Assets credited to a Securities Account for which the Collateral Agent is the Securities Intermediary.

(d) Electronic Chattel Paper and Transferable Records. If any Grantor at any time holds or acquires an interest in any Electronic Chattel Paper or any “*transferable record*,” as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, such Grantor shall promptly notify the Collateral Agent thereof and, at the request of the Collateral Agent, shall take such action as the Collateral Agent may request to vest in the Collateral Agent control under New York UCC Section 9-105 of such Electronic Chattel Paper or control under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Collateral Agent agrees with such Grantor that the Collateral Agent will arrange, pursuant to procedures satisfactory to the Collateral Agent and so long as such procedures will not result in the Collateral Agent’s loss of control, for the Grantor to make alterations to the Electronic Chattel Paper or transferable record permitted under UCC Section 9-105 or, as the case may be, Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act for a party in control to allow without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by such Grantor with respect to such Electronic Chattel Paper or transferable record.

(e) Letter-of-Credit Rights. Upon the occurrence and during the continuance of an Event of Default, if any Grantor is at any time a beneficiary under any letter of credit now or hereafter issued in favor of such Grantor that is in an amount greater than \$5,000,000, such Grantor shall promptly notify the Collateral Agent thereof and, at the request and option of the Collateral Agent, such Grantor shall, pursuant to an agreement in form and substance satisfactory to the Collateral Agent, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to the Collateral Agent of the proceeds of any drawing under the letter of credit or (ii) arrange for the Collateral Agent to become the transferee beneficiary of the letter of credit, with the Collateral Agent agreeing, in each case, that the proceeds of any drawing under the letter of credit

are to be paid to the applicable Grantor unless an Event of Default has occurred or is continuing.

(f) Commercial Tort Claims. If any Grantor shall at any time hold or acquire any Commercial Tort Claims that, individually or in the aggregate, are in an amount greater than \$15,000,000, the Grantor shall, at the time that delivery of any financial statements is required pursuant to Section 5.01(a) or (b) of the Credit Agreement, notify the Collateral Agent thereof in a writing signed by such Grantor including a summary description of such claim and grant to the Collateral Agent in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Collateral Agent.

SECTION 3.05. Covenants regarding Patent, Trademark and Copyright Collateral. (a) Each Grantor (either itself or through its licensees or sublicensees) agrees, in accordance with the prudent practices of companies similarly situated and in the same or similar businesses, for each Patent that is material to the conduct of the business of Level 3 and its Subsidiaries, taken as a whole, (i) to maintain such Patent so that it will not become invalidated or dedicated to the public and (ii) that it shall continue to mark any products covered by such Patent with the relevant patent number as necessary and sufficient to establish and preserve its maximum rights under applicable patent laws.

(b) Each Grantor (either itself or through its licensees or its sublicensees) will, in accordance with the prudent practices of companies similarly situated and in the same or similar businesses, for each Trademark material to the conduct of the business of Level 3 and its Subsidiaries, taken as a whole, (i) maintain such Trademark in full force free from any claim of abandonment or invalidity for non-use, (ii) maintain the quality of products and services offered under such Trademark, (iii) display such Trademark with notice of Federal or foreign registration to the extent necessary and sufficient to establish and preserve its maximum rights under applicable law and (iv) not knowingly use or knowingly permit the use of such Trademark in violation of any third party rights.

(c) Each Grantor (either itself or through its licensees or sublicensees) will, in accordance with the prudent practices of companies similarly situated and in the same or similar businesses, for each work covered by a Copyright that is material to the conduct of the business of Level 3 and its Subsidiaries, taken as a whole, continue to publish, reproduce, display, adopt and distribute the work with appropriate copyright notice as necessary and sufficient to establish and preserve its maximum rights under applicable copyright laws.

(d) Each Grantor shall notify the Collateral Agent promptly if it knows or has reason to know that any Patent, Trademark or Copyright that is material to the conduct of the business of Level 3 and its Subsidiaries, taken as a whole, may become abandoned, lost or dedicated to the public, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, United States Copyright Office or any court or similar office of any country) regarding such Grantor's

ownership of any such Patent, Trademark or Copyright, its right to register the same, or its right to keep and maintain the same.

(e) In no event shall any Grantor, either itself or through any agent, employee, licensee or designee, file an application for any Patent, Trademark or Copyright (or for the registration of any Trademark or Copyright) with the United States Patent and Trademark Office, United States Copyright Office or any office or agency in any political subdivision of the United States or in any other country or any political subdivision thereof, with respect to any of the same which is material to the conduct of the business of Level 3 and its Subsidiaries, taken as a whole, unless it promptly informs the Collateral Agent, and, upon the reasonable request of the Collateral Agent, executes and delivers any and all agreements, instruments, documents and papers as the Collateral Agent may request to evidence the Collateral Agent's security interest in such Patent, Trademark or Copyright, and each Grantor hereby appoints the Collateral Agent as its attorney-in-fact to execute and file such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; such power, being coupled with an interest, is irrevocable.

(f) Each Grantor will take all necessary steps that it deems appropriate under the circumstances and are consistent with the practice in any proceeding before the United States Patent and Trademark Office, United States Copyright Office or any office or agency in any political subdivision of the United States or in any other country or any political subdivision thereof, to maintain and pursue each application relating to any Patent, Trademark and/or Copyright (and to obtain the relevant grant or registration) that is material to the conduct of the business of Level 3 and its Subsidiaries, taken as a whole, and to maintain each issued Patent and each registration of the Trademarks and Copyrights that is material to the conduct of the business of Level 3 and its Subsidiaries, taken as a whole, including timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if consistent with good business judgment, to initiate opposition, interference and cancellation proceedings against third parties.

(g) In the event that any Grantor knows or has reason to believe that any Article 9 Collateral consisting of a Patent, Trademark or Copyright that is material to the conduct of the business of Level 3 and its Subsidiaries, taken as a whole, has been or is about to be infringed, misappropriated or diluted by a third party, such Grantor promptly shall notify the Collateral Agent and shall, if consistent with its good business judgment, promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and take such other actions as are appropriate under the circumstances to protect such Article 9 Collateral. Such Grantor may discontinue or settle any such suit or other action if the Grantor deems such discontinuance or settlement to be appropriate in its reasonable business judgment.

(h) Upon the occurrence and during the continuance of an Event of Default, each Grantor shall, at the request of the Collateral Agent, use its best efforts to obtain all requisite consents or approvals by the licensor of each Copyright License,

Patent License or Trademark License to effect the assignment of all such Grantor's right, title and interest thereunder to the Collateral Agent or its designee.

ARTICLE IV

Remedies

SECTION 4.01. Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, each Grantor agrees to deliver each item of Collateral to the Collateral Agent on demand, and it is agreed that the Collateral Agent shall have the right to take any of or all the following actions at the same or different times: (a) with respect to any Article 9 Collateral consisting of Intellectual Property, on demand, to cause the Security Interest to become an assignment, transfer and conveyance of any of or all such Article 9 Collateral by the applicable Grantors to the Collateral Agent, or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or nonexclusive basis, any such Article 9 Collateral throughout the world on such terms and conditions and in such manner as the Collateral Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers cannot be obtained), (b) with or without legal process and with or without prior notice or demand for performance, to take possession of the Article 9 Collateral and without liability for trespass to enter any premises where the Article 9 Collateral may be located for the purpose of taking possession of or removing the Article 9 Collateral and, generally, to exercise any and all rights afforded to a secured party under the Uniform Commercial Code or other applicable law and (c) with respect to any of the Pledged Debt Securities, to demand payment of the principal of and interest on any Pledged Debt Securities (each Grantor hereby irrevocably making, constituting and appointing the Collateral Agent as such Grantor's true and lawful agent and attorney-in-fact for such purpose). Without limiting the generality of the foregoing, each Grantor agrees that the Collateral Agent shall have the right, subject to the mandatory requirements of applicable law, to sell or otherwise dispose of all or any part of the Collateral at a public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized at any such sale (if it deems it advisable to do so) to restrict the prospective bidders or purchasers to persons who will represent and agree that they are purchasing the Collateral for their own account for investment and not with a view to the distribution or sale thereof, and upon consummation of any such sale the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and the Grantors hereby waive (to the extent permitted by law) all rights of redemption, stay and appraisal which such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

The Collateral Agent shall give the applicable Grantors 10 days' written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the New York UCC or its equivalent in other jurisdictions) of the Collateral Agent's intention to make any sale of Collateral. Such notice, in the case of a

public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by law, private) sale made pursuant to this Section, any Secured Party may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all said rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 4.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the New York UCC or its equivalent in other jurisdictions.

SECTION 4.02. Application of Proceeds. The Collateral Agent shall apply the proceeds of any collection, sale, foreclosure or other realization upon any Collateral, including any Collateral consisting of cash, as follows:

FIRST, to the payment of all costs and expenses incurred by the Administrative Agent or the Collateral Agent (in their capacity as such hereunder or under any other Loan Document) in connection with such collection, sale, foreclosure or realization or otherwise in connection with this Agreement, any other Loan Document or any of the Obligations, including all court costs and the fees and expenses of its agents and legal counsel, the repayment of all advances made by the Administrative Agent hereunder or under any other Loan Document on behalf of any Grantor and any other costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other Loan Document;

SECOND, to the payment in full of the Obligations (the amounts so applied to be distributed among the Secured Parties pro rata in accordance with the amounts of the Obligations owed to them on the date of any such distribution); and

THIRD, to the Grantors, their successors or assigns, or as a court of competent jurisdiction may otherwise direct.

The Collateral Agent shall have absolute discretion (as between the Secured Parties and the Grantors) as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof.

SECTION 4.03. Grant of License to Use Intellectual Property. For the purpose of enabling the Collateral Agent to exercise rights and remedies under this Article at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to the Grantors) to use, license or sublicense any of the Article 9 Collateral consisting of Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof. The use of such license by the Collateral Agent shall be exercised, at the option of the Collateral Agent, only upon the occurrence and during the continuation of an Event of Default; provided, however, that any license, sublicense or other transaction entered into by the Collateral Agent in accordance herewith shall be binding upon the Grantors notwithstanding any subsequent cure of an Event of Default.

SECTION 4.04. Securities Act, etc. In view of the position of the Grantors in relation to the Pledged Collateral, or because of other current or future

circumstances, a question may arise under the Securities Act of 1933, as now or hereafter in effect, or any similar statute hereafter enacted analogous in purpose or effect (such Act and any such similar statute as from time to time in effect being called the “Federal Securities Laws”) with respect to any disposition of the Pledged Collateral permitted hereunder. Each Grantor understands that compliance with the Federal Securities Laws might very strictly limit the course of conduct of the Collateral Agent if the Collateral Agent were to attempt to dispose of all or any part of the Pledged Collateral, and might also limit the extent to which or the manner in which any subsequent transferee of any Pledged Collateral could dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Collateral Agent in any attempt to dispose of all or part of the Pledged Collateral under applicable “blue sky” or other state securities laws or similar laws analogous in purpose or effect. Each Grantor recognizes that in light of such restrictions and limitations the Collateral Agent may, with respect to any sale of the Pledged Collateral, limit the purchasers to those who will agree, among other things, to acquire such Pledged Collateral for their own account, for investment, and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that in light of such restrictions and limitations, the Collateral Agent, in its sole and absolute discretion (a) may proceed to make such a sale whether or not a registration statement for the purpose of registering such Pledged Collateral or part thereof shall have been filed under the Federal Securities Laws and (b) may approach and negotiate with such number of purchasers as the Collateral Agent determines to be reasonable to effect such sale. Each Grantor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, the Collateral Agent shall incur no responsibility or liability for selling all or any part of the Pledged Collateral at a price that the Collateral Agent, in its sole and absolute discretion, may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section 5.04 will apply notwithstanding the existence of a public or private market upon which the quotations or sales prices may exceed substantially the price at which the Collateral Agent sells.

ARTICLE V

Miscellaneous

SECTION 5.01. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 9.01 of the Credit Agreement. All communications and notices hereunder to any Grantor shall be given to it in care of the Borrower as provided in Section 9.01 of the Credit Agreement.

SECTION 5.02. Security Interest Absolute. All rights of the Collateral Agent hereunder, the Security Interest, the grant of a security interest in the Pledged Collateral and all obligations of each Grantor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit

Agreement, any other Loan Document, any agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Obligations, or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Obligations or this Agreement.

SECTION 5.03. Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Collateral Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended under the Credit Agreement, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under any Loan Document is outstanding.

SECTION 5.04. Binding Effect; Several Agreement. This Agreement shall become effective as to any Loan Party when a counterpart hereof executed on behalf of such Loan Party shall have been delivered to the Collateral Agent and a counterpart hereof shall have been executed on behalf of the Collateral Agent, and thereafter shall be binding upon such Loan Party and the Collateral Agent and their respective permitted successors and assigns, and shall inure to the benefit of such Loan Party, the Collateral Agent and the other Secured Parties and their respective successors and assigns, except that no Loan Party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement or the Credit Agreement. This Agreement shall be construed as a separate agreement with respect to each Loan Party and may be amended, modified, supplemented, waived or released with respect to any Loan Party without the approval of any other Loan Party and without affecting the obligations of any other Loan Party hereunder.

SECTION 5.05. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of any Grantor or the Collateral Agent that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

SECTION 5.06. Collateral Agent's Fees and Expenses; Indemnification. (a) The parties hereto agree that the Collateral Agent shall be entitled to reimbursement

of its expenses incurred hereunder to the extent provided in Section 9.03 of the Credit Agreement.

(b) Without limitation of its indemnification obligations under the other Loan Documents, each Grantor jointly and severally agrees to indemnify the Collateral Agent and the other Indemnitees against, and hold each Indemnitee harmless to the extent set forth in Section 9.03(b) of the Credit Agreement.

(c) Any such amounts payable as provided hereunder shall be additional Obligations secured hereby and by the other Security Documents. The provisions of this Section 5.06 shall remain operative and in full force and effect regardless of the termination of this Agreement or any other Loan Document, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Collateral Agent or any other Secured Party. All amounts due under this Section 5.06 shall be payable on written demand therefor and shall bear interest at the rate specified in Section 2.06 of the Credit Agreement.

SECTION 5.07. Collateral Agent Appointed Attorney-in-Fact. Each Grantor hereby appoints the Collateral Agent as the attorney-in-fact of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary or advisable to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, the Collateral Agent shall have the right, upon the occurrence and during the continuance of an Event of Default, with full power of substitution either in the Collateral Agent's name or in the name of such Grantor (a) to receive, endorse, assign and/or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof; (b) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral; (c) to sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral; (d) to send verifications of Accounts Receivable to any Account Debtor; (e) to commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral; (f) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral; (g) to notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Collateral Agent; and (h) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes; provided, however, that nothing herein contained shall be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby.

The Collateral Agent and the other Secured Parties shall be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

SECTION 5.08. Applicable Law. **THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.**

SECTION 5.09. Waivers; Amendment. (a) No failure or delay by the Collateral Agent or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Collateral Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Collateral Agent or any Lender may have had notice or knowledge of such Default at the time. No notice or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Loan Party or Loan Parties with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 9.02 of the Credit Agreement.

SECTION 5.10. *WAIVER OF JURY TRIAL* . EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER

THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.10.

SECTION 5.11. Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 5.12. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 5.04. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 5.13. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 5.14. Jurisdiction; Consent to Service of Process. (a) Each of the Loan Parties hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America, sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the Loan Parties hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the Loan Parties agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Collateral Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(b) Each of the Loan Parties hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (a) of this Section. Each of the Loan Parties hereby irrevocably waives, to

the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each of the Loan Parties hereby irrevocably consents to service of process in the manner provided for notices in Section 5.01. Nothing in this Agreement or any other Loan Document will affect the right of the Collateral Agent to serve process in any other manner permitted by law.

SECTION 5.15. Termination or Release. (a) This Agreement and the Security Interest and all other security interests granted hereby shall terminate when all the Obligations (other than wholly contingent indemnification obligations) then due and owing have been indefeasibly paid in full.

(b) The Liens created by this Agreement in the Collateral or any portion thereof shall be released under the circumstances, at the times and in the manner set forth in Section 9.14 of the Credit Agreement.

(c) In connection with any termination or release pursuant to paragraph (a), (b) or (c) above, the Collateral Agent shall execute and deliver to any Grantor, at such Grantor's expense, all documents that such Grantor shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section 5.15 shall be without recourse to or warranty by the Collateral Agent. Without limiting the provisions of Section 5.06, the Borrower shall reimburse the Collateral Agent upon demand for all costs and out of pocket expenses, including the fees, charges and disbursements of counsel, incurred by it in connection with any action contemplated by this Section 5.15.

SECTION 5.16. Additional Grantors. Upon the execution and delivery by the Collateral Agent and a Subsidiary of a supplement in the form of Exhibit A hereto, such Subsidiary shall become a Subsidiary Grantor hereunder with the same force and effect as if originally named as a Subsidiary Grantor herein. The execution and delivery of any such instrument shall not require the consent of any other Loan Party hereunder. The rights and obligations of each Subsidiary Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Loan Party as a party to this Agreement.

SECTION 5.17. Right of Setoff. If an Event of Default shall have occurred and is continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Grantor against any and all of the obligations of such Grantor now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 5.18. Compliance with Laws. Notwithstanding anything herein to the contrary, no action shall be taken by the Collateral Agent or the Secured Parties with respect to any license, permit, certificate or authorization issued by the Federal Communications Commission or any other Federal or state Governmental Authority applicable to or having jurisdiction over any Grantor, or with respect to the Equity Interests of any Person holding any such license, permit, certificate or authorization, unless and until any approval required for such action under the Federal Communications Act of 1934 or any other applicable Federal or state law, or any applicable rule or regulation thereunder, shall have been satisfied.

SECTION 5.19. Consent by Grantors. Each Grantor hereby consents to the execution, delivery and performance by each other party hereto that is a direct or an indirect Subsidiary of such Grantor.

SECTION 5.20. Conflicts. In the event that there is a conflict between this Agreement and the Credit Agreement, the Credit Agreement shall govern.

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

LEVEL 3 COMMUNICATIONS, INC.,
LEVEL 3 FINANCING, INC.,
SOFTWARE SPECTRUM, INC.,
ELDORADO MARKETING, INC.,
LEVEL 3 ENHANCED SERVICES, LLC,
LEVEL 3 INTERNATIONAL, INC.,
BTE EQUIPMENT, LLC, and
(i)STRUCTURE LLC,

by /s/ Neil J. Eckstein
Name: Neil J. Eckstein
Title: Senior Vice President

MERRILL LYNCH CAPITAL CORPORATION, as
Collateral Agent,

by /s/ Cecile Baker
Name: Cecile Baker
Title: Vice President

INDEMNITY, SUBROGATION AND CONTRIBUTION AGREEMENT

dated as of

December 1, 2004

among

LEVEL 3 COMMUNICATIONS, INC.,

LEVEL 3 FINANCING, INC.,

the Subsidiaries of LEVEL 3 COMMUNICATIONS, INC. identified herein,

and

MERRILL LYNCH CAPITAL CORPORATION,
as Collateral Agent

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INDEMNITY, SUBROGATION AND CONTRIBUTION AGREEMENT dated as of December 1, 2004, among LEVEL 3 FINANCING, INC., a Delaware corporation (the “Borrower”), LEVEL 3 COMMUNICATIONS, INC., a Delaware corporation (“Level 3”), the Subsidiaries of Level 3 identified herein and MERRILL LYNCH CAPITAL CORPORATION (“MLCC”), as administrative agent and collateral agent (in such capacity, the “Agent”).

PRELIMINARY STATEMENT

Reference is made to the Credit Agreement dated as of December 1, 2004 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”), among the Borrower, Level 3, the lenders from time to time party thereto and the Agent. The Lenders have agreed to extend credit to the Borrower pursuant to, and upon the terms and conditions specified in, the Credit Agreement. The Guarantors have guaranteed and granted security interests in certain of their assets to secure the Loans and other Obligations of the Borrower under the Credit Agreement pursuant to the Guarantee Agreement and the Collateral Agreement, respectively. The obligations of the Lenders to extend credit to the Borrower under the Credit Agreement are conditioned upon, among other things, the execution and delivery of this Agreement by Level 3, the Borrower and the Guarantors. Level 3 and the other Guarantors are affiliates of the Borrower, will derive substantial benefits from the extension of credit to the Borrower pursuant to the Credit Agreement and are willing to execute and deliver this Agreement in order to induce the Lenders to extend such credit.

Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Credit Agreement. (a) Capitalized terms used in this Agreement (including the preamble hereto) and not otherwise defined herein have the meanings set forth in the Credit Agreement.

(b) The rules of construction specified in Section 1.02 of the Credit Agreement also apply to this Agreement.

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

“Claiming Guarantor” has the meaning assigned to such term in Section 2.02.

“Contributing Guarantor” has the meaning assigned to such term in Section 2.02.

“Credit Agreement” has the meaning assigned to such term in the preliminary statement of this Agreement.

“Guarantee Agreement” means the Guarantee Agreement dated as of December 1, 2004 among the Guarantors listed therein and the Collateral Agent.

“Guarantors” means Level 3 and the Subsidiary Guarantors.

“Level 3” has the meaning assigned to such term in the preamble of this Agreement.

“MLCC” has the meaning assigned to such term in the preamble of this Agreement.

“Obligations” means (a) the due and punctual payment of (i) the principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans (including any Loans pursuant to an Additional Tranche), when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations of the Borrower to any of the Secured Parties under the Credit Agreement and each of the other Loan Documents, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), (b) the due and punctual performance of all other obligations of the Borrower under or pursuant to the Credit Agreement and each of the other Loan Documents, and (c) the due and punctual payment and performance of all the obligations of each other Loan Party under or pursuant to this Agreement and each of the other Loan Documents.

“Secured Parties” means (a) the Lenders, (b) the Administrative Agent, (c) the Collateral Agent, (d) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (e) the successors and assigns of each of the foregoing.

“Subsidiary Guarantors” means (a) the Subsidiaries identified on Schedule I ¹ and (b) each other Subsidiary (other than the Borrower) that becomes a party to this Agreement as a Subsidiary Guarantor.

¹ The listed Subsidiaries will not include the Borrower.

ARTICLE II

Indemnity, Subrogation and Subordination

SECTION 2.01. Indemnity and Subrogation. In addition to all such rights of indemnity and subrogation as the Subsidiary Guarantors may have under applicable law (but subject to Section 3.03), Level 3 and the Borrower agree, jointly and severally, that (a) in the event a payment shall be made by any Subsidiary Guarantor under the Guarantee Agreement, Level 3 and the Borrower shall indemnify such Subsidiary Guarantor for the full amount of such payment and such Subsidiary Guarantor shall be subrogated to the rights of the person to whom such payment shall have been made to the extent of such payment and (b) in the event any assets of any Subsidiary Guarantor shall be sold pursuant to the Collateral Agreement or any other Security Document to satisfy in whole or in part a claim of any Secured Party, Level 3 and the Borrower shall indemnify such Subsidiary Guarantor in an amount equal to the greater of the book value or the fair market value of the assets so sold.

SECTION 2.02. Contribution and Subrogation. Each Subsidiary Guarantor (a “Contributing Guarantor”) agrees (subject to Section 3.03) that, in the event a payment shall be made by any other Subsidiary Guarantor under the Guarantee Agreement in respect of any Obligation or assets of any other Subsidiary Guarantor shall be sold pursuant to the Collateral Agreement or any other Security Document to satisfy any Obligation owed to any Secured Party and such other Subsidiary Guarantor (the “Claiming Guarantor”) shall not have been fully indemnified by Level 3 and the Borrower as provided in Section 1.01, the Contributing Guarantor shall indemnify the Claiming Guarantor in an amount equal to the amount of such payment or the greater of the book value or the fair market value of such assets, as the case may be, in each case multiplied by a fraction of which the numerator shall be the net worth of the Contributing Guarantor on the date hereof and the denominator shall be the aggregate net worth of all the Subsidiary Guarantors on the date hereof (or, in the case of a Contributing Guarantor or any other Subsidiary Guarantor becoming a party hereto pursuant to Section 3.08, the date of the Supplement hereto executed and delivered by such Contributing Guarantor or other Subsidiary Guarantor). Any Contributing Guarantor making any payment to a Claiming Guarantor pursuant to this Section 2.02 shall be subrogated to the rights of such Claiming Guarantor under Section 2.01 to the extent of such payment.

SECTION 2.03. Subordination. (a) Notwithstanding any provision of this Agreement to the contrary, all rights of the Subsidiary Guarantors under Sections 2.01 and 2.02 and all other rights of indemnity, contribution or subrogation under applicable law or otherwise shall be fully subordinated to the indefeasible payment in full in cash of the Obligations. No failure on the part of Level 3, the Borrower or any Subsidiary Guarantor to make the payments required by Sections 2.01 and 2.02 (or any other payments required under applicable law or otherwise) shall in any respect limit the obligations and liabilities of any Subsidiary Guarantor with respect to its obligations hereunder, and each Subsidiary Guarantor shall remain liable for the full amount of the obligations of such Subsidiary Guarantor hereunder.

(b) Level 3, the Borrower and each Subsidiary Guarantor hereby agrees that all Indebtedness and other monetary obligations owed by it to the Borrower or any other Subsidiary shall be fully subordinated to the indefeasible payment in full in cash of the Obligations.

ARTICLE III

Miscellaneous

SECTION 3.01. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 9.01 of the Credit Agreement. All communications and notices hereunder to any Subsidiary Guarantor shall be given to it in care of the Borrower as provided in Section 9.01 of the Credit Agreement.

SECTION 3.02. Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Agent, the other Secured Parties and each Guarantor and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended under the Credit Agreement, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under any Loan Document is outstanding.

SECTION 3.03. Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 3.04. Applicable Law. **THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.**

SECTION 3.05. Waivers; Amendment. (a) No failure or delay by any Person in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further

exercise thereof or the exercise of any other right or power. No waiver of any provision of this Agreement or consent to any departure therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by Level 3, the Borrower, the Agent and the Subsidiary Guarantors with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 9.02 of the Credit Agreement.

SECTION 3.06. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective with respect to any party hereto when a counterpart bearing the signature of such party shall have been delivered to the Collateral Agent. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 3.07. Termination. (a) This Agreement shall terminate when all the Obligations (other than wholly contingent indemnification obligations) then due and owing have been indefeasibly paid in full. This Agreement and the obligations hereunder shall terminate as to any particular Guarantor under the circumstances, at the times and in the manner set forth in Section 6.07, 6.08, 6.10 or 9.14 of the Credit Agreement, as applicable.

SECTION 3.08. Additional Guarantors. Upon the execution and delivery by the Agent and a Subsidiary of a supplement in the form of Exhibit A hereto, such Subsidiary shall become a Subsidiary Guarantor hereunder with the same force and effect as if originally named as a Subsidiary Guarantor herein. The execution and delivery of any such instrument shall not require the consent of any other Subsidiary Guarantor hereunder. The rights and obligations of each Subsidiary Guarantor hereunder shall remain in full force and effect notwithstanding the addition of any new Subsidiary Guarantor as a party to this Agreement.

SECTION 3.09. Conflicts. In the event that there is a conflict between this Agreement and the Credit Agreement, the Credit Agreement shall govern.

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

LEVEL 3 COMMUNICATIONS, INC.,
SOFTWARE SPECTRUM, INC.,
ELDORADO MARKETING, INC.,
LEVEL 3 INTERNATIONAL, INC.,
LEVEL 3 ENHANCED SERVICES, LLC,
BTE EQUIPMENT, LLC, and
(i)STRUCTURE LLC,

by /s/ Neil J. Eckstein

Name: Neil J. Eckstein
Title: Senior Vice President and
Assistant General Counsel

MERRILL LYNCH CAPITAL CORPORATION, as
Agent,

by /s/ Cecile Baker

Name: Cecile Baker
Title: Vice President

Exhibit 10.5

OFFERING PROCEEDS NOTE SUBORDINATION AGREEMENT dated as of December 1, 2004 among LEVEL 3 COMMUNICATIONS, INC. (“Level 3”), LEVEL 3 FINANCING, INC. (the “Borrower”), LEVEL 3 COMMUNICATIONS, LLC (“Level 3 LLC”), each Restricted Subsidiary (as defined in the Credit Agreement described below) that becomes party hereto as provided in Section 4.12 hereof (each such Subsidiary and Level 3 LLC individually, a “Subordinated Borrower”, and collectively, the “Subordinated Borrowers”), the BORROWER in its capacity as obligee of the Offering Proceeds Note (as defined below), and each Subsidiary that becomes party hereto as provided in Section 4.13 hereof (each such Subsidiary, Level 3 and the BORROWER in its capacity as obligee of the Offering Proceeds Note individually, a “Subordinated Lender”, and collectively, the “Subordinated Lenders”).

Reference is made to (a) the Credit Agreement dated as of December 1, 2004 (the “Credit Agreement”), among the Borrower, Level 3 the Lenders party thereto and Merrill Lynch Capital Corporation, as Administrative Agent and Collateral Agent (in such capacity, the “Administrative Agent”), (b) the intercompany demand note dated October 1, 2003, in an initial principal amount equal to \$500,000,000, issued by Level 3 LLC to the Borrower, as it may be amended from time to time pursuant to Sections 301 and 1020 of the Indenture dated as of October 1, 2003, among Level 3, the Borrower and The Bank of New York, as trustee (the “Offering Proceeds Note”), (c) the intercompany demand note dated the date hereof, in an initial principal amount equal to \$730,000,000, issued by Level 3 LLC to the Borrower, as it may be amended from time to time pursuant to Sections 9.02 and 6.11 of the Credit Agreement (such note, together with any additional loan proceeds note issued pursuant to Section 9.02 of the Credit Agreement the “Loan Proceeds Note”) and (d) the Subordination Agreement, dated as of October 1, 2003, among the Borrower, Level 3 LLC and Level 3 (the “Existing Subordination Agreement”). Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

Pursuant to Section 4.14 of the Existing Subordination Agreement, the Borrower, Level 3 LLC, any other Subordinated Borrower and Level 3 may enter into an agreement which subordinates in any bankruptcy, liquidation or winding up proceeding the obligations of a Subordinated Borrower under the Offering Proceeds Note and any guarantee thereof to such Subordinated Borrower’s obligations under a Qualified Credit Facility.

The Lenders have agreed to provide to the Borrower, upon the terms set forth in the Credit Agreement, a secured term loan (the “Term Loan” and, together with any additional loan provided pursuant to Section 9.02 of the Credit Agreement, the “Loans”) to be guaranteed on a secured unsubordinated basis by Level 3. The obligation of the Lenders to provide such Term Loan is conditioned on, among other things, the execution and delivery by Level 3, the Borrower and Level 3 LLC of a subordination agreement in the form hereof. In order to induce the Lenders to provide the Term Loan, the Borrower has agreed that, pursuant

to the Collateral Agreement, it shall pledge all its rights, title and interest in, to and under the Loan Proceeds Note to the Collateral Agent. Additionally, upon the incurrence of certain intercompany indebtedness (including, without limitation, any guarantee of the Offering Proceeds Note), the Credit Agreement requires Restricted Subsidiaries of Level 3 (other than the Borrower) to guarantee the Loan Proceeds Note (each such guarantee, a “Loan Proceeds Note Guarantee”, and each such Restricted Subsidiary that provides such a guarantee, a “Loan Proceeds Note Guarantor”) and to subordinate, in any bankruptcy, liquidation or winding up proceeding, their obligations with respect to such newly incurred indebtedness to their obligations with respect to their Loan Proceeds Note Guarantee. Loan Proceeds Note Guarantors required to provide subordination with respect to intercompany indebtedness and the creditors on such indebtedness are required to become parties to this Subordination Agreement, if they are not yet parties. In order to induce the Lenders to provide the Term Loan, Level 3, the Borrower and Level 3 LLC are willing to execute and deliver this Agreement. Accordingly, Level 3, the Borrower (in its capacity as a Subordinated Lender as obligee of the Offering Proceeds Note), and Level 3 LLC, as a Subordinated Borrower, hereby agree as follows:

ARTICLE I Subordination

SECTION 1.1. Subordination. Each Subordinated Lender hereby agrees that all obligations in respect of any Indebtedness (including, without limitation, the Offering Proceeds Note and any guarantee of the Offering Proceeds Note) owed to such Subordinated Lender by any Subordinated Borrower, including the payment of principal, premium (if any), interest, Guarantees or all other amounts payable thereunder (including any payment by reason of subordination of any Indebtedness owed to such Subordinated Lender to any Indebtedness subordinated hereby) (the “Subordinated Obligations”), are subordinate and junior in right of payment, to the extent and in the manner provided in this Article I, to the prior payment in full in cash of all obligations of such Subordinated Borrower in respect of the Loan Proceeds Note, including the payment of principal, premium (if any), interest (including interest arising after the commencement of a bankruptcy or other proceeding, whether or not such a claim is permitted in such proceeding), Loan Proceeds Note Guarantees thereof or all other amounts payable thereunder (the “Senior Obligations”).

SECTION 1.2. Subordination in the Event of Dissolution or Insolvency of any Subordinated Borrower. Upon any distribution of the assets of any Subordinated Borrower in connection with its dissolution or insolvency or upon any dissolution, winding up, liquidation or reorganization of any Subordinated Borrower, whether in bankruptcy, insolvency, reorganization, arrangement or receivership or similar proceedings, or upon any assignment for the benefit of creditors or any other marshaling of the assets and liabilities of any Subordinated Borrower:

(a) the Borrower shall first be entitled to receive payment in full in cash of the Senior Obligations of such Subordinated Borrower in accordance with the terms of such Senior Obligations before any Subordinated Lender shall be entitled to receive any

payment on account of the Subordinated Obligations (including any payment by reason of subordination of any Indebtedness to any Subordinated Obligation) owed by such Subordinated Borrower to such Subordinated Lender, whether as principal, premium (if any), interest, pursuant to a Loan Proceeds Note Guarantee or otherwise; and

(b) any payment by, or distribution of the assets of, such Subordinated Borrower of any kind or character (including any payment by reason of subordination of any Indebtedness to any Subordinated Obligation), whether in cash, property or securities, to which any Subordinated Lender would be entitled except for the provisions of this Agreement shall be paid or delivered by the Person making such payment or distribution (whether a trustee in bankruptcy, a receiver, custodian or liquidating trustee or otherwise) directly to the Borrower to the extent necessary to make payment in full in cash of all Senior Obligations remaining unpaid, after giving effect to any concurrent payment or distribution to the Borrower in respect of the Senior Obligations.

In the event of any proceeding involving any Subordinated Borrower under any bankruptcy, insolvency, reorganization, receivership or similar law, each Subordinated Lender agrees, until the indefeasible payment in full of all monetary Senior Obligations, not to ask, demand, sue for or take or receive from any Subordinated Borrower in cash, securities or other property or by setoff, purchase or redemption (including, without limitation, from or by way of collateral), payment of all or any part of the Subordinated Obligations owed to such Subordinated Lender (other than payments permitted pursuant to clause (b) above) and agrees that in connection with any proceeding involving any Subordinated Borrower under any bankruptcy, insolvency, reorganization, receivership or similar law (i) the Borrower is irrevocably authorized and empowered (in its own name or in the name of such Subordinated Borrower or otherwise), but shall have no obligation, to demand, sue for, collect and receive every payment or distribution referred to in the preceding sentence and give acquittance therefor and to file claims and proofs of claim and take such other action (including, without limitation, voting the applicable Subordinated Obligations and enforcing any security interest or other lien securing payment of such Subordinated Obligations) as the Borrower may deem necessary or advisable for the exercise or enforcement of any of its rights or interests and (ii) each Subordinated Lender shall duly and promptly take such action as the Borrower may reasonably request to (A) collect amounts in respect of the applicable Subordinated Obligations for the account of the Borrower and to file appropriate claims or proofs of claim in respect of such Subordinated Obligations, (B) execute and deliver to the Borrower such irrevocable powers of attorney, assignments or other instruments as the Borrower may reasonably request in order to enable the Borrower to enforce any and all claims with respect to, and any security interests and other liens securing payment of, the applicable Subordinated Obligations and (C) collect and receive any and all payments or distributions which may be payable or deliverable upon or with respect to the applicable Subordinated Obligations. A copy of this Agreement may be filed with any court as evidence of the Borrower's right, power and authority hereunder.

SECTION 1.3. Certain Payments Held in Trust. In the event that any payment by, or distribution of the assets of, any Subordinated Borrower of any kind or character (including any payment by reason of subordination of any Indebtedness to any Subordinated Obligations), whether in cash, property or securities, and whether directly or otherwise, shall be received by or on behalf of any Subordinated Lender at a time when such payment is prohibited by this Agreement, such payment or distribution shall be held in trust for the benefit of, and shall be paid over to, the Borrower to the extent necessary to make payment in full in cash of all Senior Obligations remaining unpaid, after giving effect to any concurrent payment or distribution to the Borrower in respect of such Senior Obligations.

SECTION 1.4. Subrogation. Subject to the prior indefeasible payment in full in cash of the Senior Obligations, each Subordinated Lender shall be subrogated to the rights of the Borrower to receive payments or distributions in cash, property or securities of each applicable Subordinated Borrower in respect of the Senior Obligations until all amounts owing on the applicable Subordinated Obligations shall be paid in full, and as between and among a Subordinated Borrower, its creditors (other than the Borrower) and the applicable Subordinated Lender, no such payment or distribution made to the Borrower by virtue of this Agreement that otherwise would have been made to such Subordinated Lender shall be deemed to be a payment by such Subordinated Borrower on account of such Subordinated Obligations, it being understood that the provisions of this Agreement are intended solely for the purpose of defining the relative rights of the Subordinated Lenders, on the one hand, and the Borrower, on the other hand.

ARTICLE II

Other Matters Regarding the Subordinated Obligations

SECTION 2.1. Other Creditors. Except in the limited circumstances set forth in Article I, nothing contained in this Agreement is intended to or shall impair, as between and among a Subordinated Borrower, its creditors and any Subordinated Lender, the obligations of such Subordinated Borrower to pay to such Subordinated Lender the Subordinated Obligations of such Subordinated Borrower as and when the same shall become payable in accordance with the terms thereof, or affect the relative rights of such Subordinated Lender and the other creditors of such Subordinated Borrower.

SECTION 2.2. Proofs of Claims. In the event of any dissolution, winding up, liquidation or reorganization of any Subordinated Borrower, whether in bankruptcy, insolvency, reorganization, arrangement or receivership proceedings or otherwise, or any assignment for the benefit of creditors or any other marshaling of the assets and liabilities of any Subordinated Borrower, each Subordinated Lender agrees to file proofs of claim for the Subordinated Obligations owed to it upon demand of the Borrower, in default of which the Borrower or an authorized representative of the Borrower is hereby irrevocably authorized so to file in order to effectuate the provisions hereof. This Section shall not be construed to permit any Subordinated Lender to retain any payment received by it in respect of a Subordinated Obligation (including any payment by reason of subordination of any Indebtedness to any Subordinated Obligation) that such Subordinated Lender is not entitled to receive and retain under any other provision of this Agreement.

SECTION 2.3. Waivers. (a) Each Subordinated Lender waives the right to compel any assets or property of any Subordinated Borrower or the assets or property of any Loan Proceeds Note Guarantor or any other Person to be applied in any particular order to discharge the Senior Obligations. Each Subordinated Lender expressly waives the right to require the Borrower to proceed against any Subordinated Borrower, any Loan Proceeds Note Guarantor or any other Person, or to pursue any other remedy in the Borrower's power which such Subordinated Lender cannot pursue and which would lighten such Subordinated Lender's burden, notwithstanding that the failure of the Borrower to do so may thereby prejudice such Subordinated Lender. Each Subordinated Lender agrees that it shall not be discharged, exonerated or have its obligations hereunder to the Borrower reduced (i) by the Borrower's delay in proceeding against or enforcing any remedy against any Subordinated Borrower, any Loan Proceeds Note Guarantor or any other Person; (ii) by the Borrower releasing any Subordinated Borrower, any Loan Proceeds Note Guarantor or any other Person from all or any part of the Senior Obligations; or (iii) by the discharge of any Subordinated Borrower, any Loan Proceeds Note Guarantor or any other Person by operation of law or otherwise, with or without the intervention or omission of the Borrower, in each case unless all Senior Obligations due to the Borrower have been indefeasibly paid in full in cash. The Borrower's vote to accept or reject any plan of reorganization relating to any Subordinated Borrower, any Loan Proceeds Note Guarantor or any other Person, or the Borrower's receipt on account of all or part of the Senior Obligations of any cash, securities or other property distributed in any bankruptcy, reorganization, or insolvency case, shall not discharge, exonerate, or reduce the obligations of any Subordinated Lender hereunder to the Borrower, in each case unless all Senior Obligations have been indefeasibly paid in full in cash.

(b) Each Subordinated Lender waives all rights and defenses arising out of an election of remedies by the Borrower, even though that election of remedies, including, without limitation, any nonjudicial foreclosure with respect to security for the Senior Obligations, has impaired the value of such Subordinated Lender's rights of subrogation, reimbursement, or contribution against any Subordinated Borrower, any Loan Proceeds Note Guarantor or any other Person. Each Subordinated Lender expressly waives any rights or defenses it may have by reason of protection afforded to any Subordinated Borrower, any Loan Proceeds Note Guarantor or any other Person with respect to the Senior Obligations pursuant to any anti-deficiency laws or other laws of similar import which limit or discharge the principal debtor's indebtedness upon judicial or nonjudicial foreclosure of real property or personal property collateral for the Senior Obligations, if any.

(c) Each Subordinated Lender agrees that, without the necessity of any reservation of rights against it, and without notice to or further assent by it, any demand for payment of the Senior Obligations made by the Borrower may be rescinded in whole or in part by the Borrower, and any Senior Obligation may be continued, and the Senior

Obligations, or the liability of any Subordinated Borrower or any Loan Proceeds Note Guarantor or any other party upon or for any part thereof, or any Guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, modified, accelerated, compromised, waived, surrendered, or released by the Borrower, in each case without notice to or further assent by such Subordinated Lender, which will remain bound under this Agreement and without impairing, abridging, releasing or affecting the subordination and other agreements provided for herein.

(d) Each Subordinated Lender waives any and all notice of the creation, renewal, extension or accrual of any of the Senior Obligations and notice of or proof of reliance by the Borrower upon this Agreement. The Senior Obligations, and any of them, shall be deemed conclusively to have been created, contracted or incurred in reliance upon this Agreement, and all dealings between any Subordinated Borrower and the Borrower shall be deemed to have been consummated in reliance upon this Agreement. Each Subordinated Lender acknowledges and agrees that the Borrower has relied upon the subordination and other agreements provided for herein in consenting to this Agreement. Each Subordinated Lender waives notice of or proof of reliance on this Agreement and protest, demand for payment and notice of default.

SECTION 2.4. Legend. Any and all instruments or records now or hereafter creating or evidencing the Subordinated Obligations, whether upon refunding, extension, renewal, refinancing, replacement or otherwise, shall contain the following legend:

“Notwithstanding anything contained herein to the contrary, neither the principal of nor the interest on, nor any other amounts payable in respect of, the indebtedness created or evidenced by this instrument or record shall become due or be paid or payable, except to the extent permitted under the Subordination Agreement dated December 1, 2004, among Level 3 Communications, Inc., [any additional Subordinated Lenders,] Level 3 Communications, LLC[, any additional Subordinated Borrowers] and Level 3 Financing, Inc., which Subordination Agreement is incorporated herein with the same effect as if fully set forth herein.”

SECTION 2.5. Transfer of Subordinated Obligations. Each Subordinated Lender agrees that it will not sell, assign, transfer or otherwise dispose of all or any part of the Subordinated Obligations owed to it unless the Person to whom such sale, assignment, transfer or disposition is made shall acknowledge in writing (delivered to the Borrower and the Purchasers) that it shall be bound by the terms of this Agreement to the same extent as such Subordinated Lender, including the terms of this Section 2.5, as though it is a party hereto as of the date hereof.

SECTION 2.6. Obligations Hereunder Not Affected. (a) All rights and interests of the Borrower hereunder, and all agreements and obligations of each Subordinated Lender hereunder, shall remain in full force and effect irrespective of:

(i) any lack of validity or enforceability of the Loan Proceeds Note, the Credit Agreement or any document contemplated thereby;

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Senior Obligations, or any other amendment or waiver of or consent to departure from the Loan Proceeds Note;

(iii) any release, amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of, or consent to departure from, any Loan Proceeds Note Guarantee; or

(iv) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Subordinated Borrower in respect of its Senior Obligations or of any Subordinated Lender in respect of this Agreement.

(b) This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Senior Obligations or any part thereof is rescinded or must otherwise be returned by the Borrower upon the insolvency, bankruptcy or reorganization of any Subordinated Borrower or otherwise, all as though such payment had not been made.

ARTICLE III

Representations and Warranties of the Subordinated Lenders

Each Subordinated Lender represents and warrants to the Borrower that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized.

(b) The execution, delivery and performance by it of this Agreement and the consummation of the transactions contemplated hereby are within its powers, have been duly authorized by all necessary action on its part, require no action by or in respect of, or filing with, any court or governmental or regulatory body or agency (other than such as have been duly taken or made) and do not contravene, or constitute a default under, any provision of applicable law or regulation or of its certificate of incorporation or by-laws (or other organizational documents, as applicable) or of any material agreement, judgment, injunction, order, decree or other instrument binding upon it or any of its subsidiaries.

(c) This Agreement constitutes a valid and binding agreement of such Subordinated Lender, enforceable against such Subordinated Lender in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and equitable principles of general applicability.

ARTICLE IV
Miscellaneous

SECTION 4.1. Notices. All communications and notices hereunder shall be in writing and shall be mailed or delivered and sent by fax and confirmed at 1025 Eldorado Boulevard, Broomfield, Colorado 80021, attention: General Counsel (Telecopy No. 720-888-5127; Telephone Confirm 720-888-2505), with a copy in like manner to Merrill Lynch, Pierce, Fenner & Smith Incorporated, 4 World Financial Center, North Tower, New York, New York, 10080 (Telecopy No. 212-449-9435).

SECTION 4.2. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All representations, warranties, promises and agreements by or on behalf of each Subordinated Lender and each Subordinated Borrower that are contained in this Agreement shall bind its successors and assigns and inure to the benefit of the Borrower and the successors and assigns of the Borrower. Each Subordinated Lender and each Subordinated Borrower agrees that it shall not assign or delegate any of its obligations under this Agreement without the prior written consent of the Borrower, and any attempted assignment or delegation without such consent shall be void and of no effect.

SECTION 4.3. Governing Law; Jurisdiction; Consent to Service of Process. (a) **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.**

(b) Each Subordinated Lender hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Borrower may otherwise have to bring any action or proceeding relating to this Agreement against any Subordinated Lender or its properties in the courts of any jurisdiction.

(c) Each Subordinated Lender hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising

out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each Subordinated Lender hereby irrevocably consents to service of process in the manner provided for notices in Section 4.1 hereto. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 4.4. Waivers; Amendment. No failure or delay of the Borrower in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power by the Borrower preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Borrower hereunder and instruments creating or securing its respective Senior Obligations are cumulative and are not exclusive of any other rights or remedies provided by law. Neither this Agreement nor any provision hereof may be waived, amended or modified except in accordance with Section 6.11 of the Credit Agreement pursuant to an agreement or agreements in writing entered into by the Borrower, each Subordinated Lender and each Subordinated Borrower intended to be bound thereby.

SECTION 4.5. Waiver of Claims. (a) To the maximum extent permitted by law, each Subordinated Lender waives any claim it might have against the Borrower with respect to, or arising out of, any action or failure to act or any error of judgment, negligence, or mistake or oversight whatsoever on the part of the Borrower or its directors, officers, employees, agents or affiliates with respect to any exercise of rights or remedies under the Loan Proceeds Note. Neither the Borrower nor any of its respective directors, officers, employees, agents or affiliates shall be liable for failure to demand, collect or realize upon any Loan Proceeds Note Guarantee or for any delay in doing so or shall be under any obligation to take any other action whatsoever with regard to the Loan Proceeds Note or any part thereof.

(b) Each Subordinated Lender, for itself and on behalf of its successors and assigns, hereby waives any and all now existing or hereafter arising rights it may have to require the Borrower to marshal assets for the benefit of such Subordinated Lender, or to otherwise direct the timing, order or manner of any enforcement of the Loan Proceeds Note. The Borrower is under no duty or obligation, and each Subordinated Lender hereby waives any right it may have to compel the Borrower, to pursue any Loan Proceeds Note Guarantor or other Person who may be liable for the Senior Obligations.

(c) Each Subordinated Lender hereby waives and releases all rights which a guarantor or surety with respect to the Senior Obligations could exercise.

(d) Each Subordinated Lender hereby waives any duty on the part of the Borrower to disclose to it any fact known or hereafter known by the Borrower relating to the operation or financial condition of any Subordinated Borrower or any Loan Proceeds Note Guarantor, or their respective businesses. Each Subordinated Lender enters into this Agreement based solely upon its independent knowledge of the applicable Subordinated Borrower's results of operations, financial condition and business and such Subordinated Lender assumes full responsibility for obtaining any further or future information with respect to the applicable Subordinated Borrower or its results of operations, financial condition or business.

SECTION 4.6. Further Assurances. Each Subordinated Lender and each Subordinated Borrower, at its own expense and at any time from time to time, upon the written request of the Borrower, will promptly and duly execute and deliver such further instruments and documents and take such further actions as the Borrower reasonably may request for the purposes of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted.

SECTION 4.7. Provisions Define Relative Rights. This Agreement is intended solely for the purpose of defining the relative rights of the Borrower on the one hand and the Subordinated Lenders and the Subordinated Borrowers on the other, and no other Person shall have any right, benefit or other interest under this Agreement.

SECTION 4.8. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 4.9. Severability. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 4.10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one instrument.

SECTION 4.11. Headings. Article and Section headings used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 4.12. Additional Subordinated Borrowers. Upon execution and delivery by, as applicable, any Subsidiary of Level 3 of an instrument in the form of Annex I attached hereto or otherwise in a form acceptable to the Borrower, such Subsidiary of Level 3 shall become a Subordinated Borrower hereunder with the same force and effect as if originally named as a Subordinated Borrower herein. The execution and delivery of any such instrument shall not require the consent of any other Subordinated Borrower hereunder. The rights and obligations of each Subordinated Borrower herein shall remain in full force and effect notwithstanding the addition of any Subordinated Borrower as a party to this Agreement.

SECTION 4.13. Additional Subordinated Lenders. Upon execution and delivery by any Subsidiary of Level 3 of an instrument in the form of Annex II attached hereto or otherwise in a form acceptable to the Borrower, such Subsidiary of Level 3 shall become a Subordinated Lender hereunder with the same force and effect as if originally named as a Subordinated Lender herein. The execution and delivery of any such instrument shall not require the consent of any other Subordinated Lender hereunder. The rights and obligations of each Subordinated Lender herein shall remain in full force and effect notwithstanding the addition of any Subordinated Lender as a party to this Agreement.

IN WITNESS WHEREOF, Level 3, Level 3 LLC, as a Subordinated Borrower, the Borrower (in its capacity as a Subordinated Lender as obligee of the Offering Proceeds Note) and the Borrower have caused this Agreement to be duly executed by their respective authorized representatives as of the day and year first above written.

LEVEL 3 COMMUNICATIONS, LLC,

By /s/ Thomas C. Stortz

Name: Thomas C. Stortz
Title: Executive Vice President and
Chief Legal Officer

LEVEL 3 COMMUNICATIONS, INC.,

By /s/ Thomas C. Stortz

Name: Thomas C. Stortz
Title: Executive Vice President and
Chief Legal Officer

LEVEL 3 FINANCING, INC., in its capacity as a
Subordinated Lender as obligee of the Offering Proceeds
Note

By /s/ Neil J. Eckstein

Name: Neil J. Eckstein
Title: Senior Vice President and
Assistant General Counsel

LEVEL 3 FINANCING, INC.,

By /s/ Neil J. Eckstein

Name: Neil J. Eckstein
Title: Senior Vice President and Assistant General
Counsel

Exhibit 10.6

LOAN PROCEEDS NOTE

PRINCIPAL SUM: US\$730,000,000.00

ISSUE DATE: December 1, 2004

PAYEE: Level 3 Financing, Inc., a Delaware corporation

Level 3 Communications, LLC, a limited liability company organized under the laws of the State of Delaware (the “Payor”), for value received, hereby promises to pay ON DEMAND to the order of the Payee stated above, the Principal Sum stated above (or so much thereof as shall not have been prepaid) and to pay interest (computed on the basis of a 360-day year comprised of twelve 30-day months) on the unpaid principal hereof from the Issue Date stated above, or from the most recent date to which interest has been paid, at the rate payable by the Payee in respect of its \$730,000,000 term loan (the “Term Loan”) incurred under the Credit Agreement dated December 1, 2004 (the “Credit Agreement”), among the Payee, Level 3 Communications, Inc., the Lenders party thereto and Merrill Lynch Capital Corporation, as Administrative Agent and Collateral Agent, in cash in arrears on each Interest Payment Date (as defined in the Credit Agreement) commencing March 1, 2005 (or at such other time (and at such rate) when a payment of interest is due or made on the Term Loan until such principal sum shall have been paid in full. Payments of principal and interest shall be made in US dollars and in immediately available funds at the appropriate office of the Payee (as designated by the Payee to the Payor). The Payee may demand payment of the unpaid principal of this Note in whole or in part at any time. In the event the Payee shall demand payment in connection with a prepayment of the Term Loan which, pursuant to the Credit Agreement, requires a prepayment premium, fee or breakage cost payment, the Payor shall pay a premium, fee or breakage cost payment, as the case may be, on the principal amount repaid in an amount equal to the amount of such premium, fee or breakage cost payment under the Credit Agreement.

No failure or delay on the part of the Payee in exercising any of its rights, powers or privileges hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The remedies provided herein are cumulative and are not exclusive of any remedies provided by law.

Presentment and demand for payment, notice of default, dishonor or nonpayment, protest and notice of protest and all other demands and notices in connection with delivery, acceptance, performance or enforcement of this Note are hereby waived by the Payor.

Neither the Payor nor other parties hereafter becoming liable for payment of this Note shall ever be required to pay interest on this Note at a rate in excess of the maximum interest that may be lawfully charged under applicable law, and the provisions of this paragraph shall control over all provisions of this Note which may be in apparent

conflict herewith. In the event that the Payee shall collect monies which are deemed to constitute interest which would increase the effective interest rate on this Note to a rate in excess of that permitted to be charged by applicable law, all such sums deemed to constitute interest in excess of the lawful rate shall, upon such determination, at the option of the Payee, be either immediately returned to the Payor or credited against the principal balance of this Note then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable.

The Payee may assign this Note without the consent of the Payor. The Payor may not assign any of its rights and obligations under this Note without the prior written consent of the Payee. Any assignment made in violation of the foregoing prohibition shall be void.

This Note and the rights and obligations of the Payee and Payor hereunder shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without regard to conflicts of law principles thereof.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Note as of the date first above written.

LEVEL 3 COMMUNICATIONS, LLC

By: /s/ Thomas C. Stortz

Name: Thomas C. Stortz

Title: Manager

Agreed and Accepted:

Level 3 Financing, Inc.

By: /s/ Neil J. Eckstein

Name: Neil J. Eckstein

Title: Senior Vice President and
Assistant Secretary

[Signature page to Loan Proceeds Note]

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Exhibit 10.7

EXECUTION COPY

LOAN PROCEEDS NOTE
COLLATERAL AGREEMENT

dated as of

December 1, 2004

among

LEVEL 3 FINANCING, INC.

LEVEL 3 COMMUNICATIONS, LLC,

and

MERRILL LYNCH CAPITAL CORPORATION,
as Collateral Agent

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Exhibits

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COLLATERAL AGREEMENT dated as of December 1, 2004, among LEVEL 3 FINANCING, INC., a Delaware corporation (the “LPN Lender”), LEVEL 3 COMMUNICATIONS, LLC, a Delaware limited liability company (“LPN Borrower”) and MERRILL LYNCH CAPITAL CORPORATION (“MLCC”), as collateral agent (in such capacity, the “Collateral Agent”).

PRELIMINARY STATEMENT

Reference is made to (i) the Credit Agreement dated as of December 1, 2004 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”), among the LPN Lender as borrower, Level 3 Communications, Inc. (“Level 3”), the lenders from time to time party thereto (the “Lenders”) and Merrill Lynch Capital Corporation, as administrative agent (in such capacity, the “Administrative Agent”) and (ii) the Loan Proceeds Note dated as of December 1, 2004 (the “Loan Proceeds Note”) between the LPN Borrower as payor and the LPN Lender as payee. The lenders under the Credit Agreement have agreed to extend credit to the Borrower pursuant to, and upon the terms and conditions specified in, the Credit Agreement. The obligations of the Lenders to extend such credit to the Borrower are conditioned upon, among other things, (i) the pledge of the Loan Proceeds Note by the LPN Lender to the Collateral Agent for the benefit of the secured parties under the collateral agreement dated as of December 1, 2004 (as amended, supplemented or otherwise modified from time to time, the “Term Loan Collateral Agreement”), among the LPN Lender, Level 3, the subsidiaries of Level 3 identified therein and MLCC, as collateral agent and (ii) the execution and delivery of this Agreement by the LPN Borrower and the LPN Lender. The LPN Borrower is an affiliate of the LPN Lender, will derive substantial benefits from the extension of credit to the LPN Lender pursuant to the Credit Agreement and is willing to execute and deliver this Agreement in order to induce the Lenders to extend such credit.

Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Credit Agreement. (a) Capitalized terms used in this Agreement and not otherwise defined herein have the meanings set forth in the Credit Agreement. All terms defined in the New York UCC (as such term is defined herein) and not defined in this Agreement have the meanings specified therein. All references to the Uniform Commercial Code shall mean the New York UCC.

(b) The rules of construction specified in Section 1.02 of the Credit Agreement also apply to this Agreement.

SECTION 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“ Administrative Agent ” has the meaning assigned to such term in the preliminary statement of this Agreement.

“ Annual Perfection Certificate ” means a certificate substantially in the form of Exhibit A, completed and supplemented with the schedules and attachments contemplated thereby, and duly executed by an authorized officer of the LPN Borrower.

“ Article 9 Collateral ” has the meaning assigned to such term in Section 2.01.

“ Collateral ” means the Article 9 Collateral.

“ Collateral Agent ” has the meaning assigned to such term in the preamble of this Agreement.

“ Credit Agreement ” has the meaning assigned to such term in the preliminary statement of this Agreement.

“ Effective Date Perfection Certificate ” has the meaning assigned to such term in the Credit Agreement.

“ Lenders ” has the meaning assigned to such term in the preliminary statement of this Agreement.

“ Level 3 ” has the meaning assigned to such term in the preamble of this Agreement.

“ Loan Proceeds Note ” has the meaning assigned to such term in the preamble of this Agreement.

“ LPN Borrower ” has the meaning assigned to such term in the preamble of this Agreement.

“ LPN Lender ” has the meaning assigned to such term in the preamble of this Agreement.

“ MLCC ” has the meaning assigned to such term in the preamble of this Agreement.

“ New York UCC ” means the Uniform Commercial Code as from time to time in effect in the State of New York.

“ Obligations ” means (a) the due and punctual payment of (i) the principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or

allowable in such proceeding) on the Loan Proceeds Note, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations of the Loan Proceeds Note to the Secured Party under the Loan Proceeds Note and this Agreement, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) and (b) the due and punctual performance of all other obligations of the LPN Borrower under or pursuant to the Loan Proceeds Note and this Agreement.

“Secured Party” means the LPN Lender. It is understood that the Loan Proceeds Note, together with the rights of the LPN Lender hereunder, are being assigned to Collateral Agent as Collateral (as such term is defined in the Term Loan Collateral Agreement) pursuant to the Term Loan Collateral Agreement. The Grantor hereby consents to the assignment of the Loan Proceeds Note, together with the rights of the LPN Lender hereunder, to the Collateral Agent as Collateral (as such term is defined in the Term Loan Collateral Agreement) pursuant to the Collateral Agreement.

“Security Interest” has the meaning assigned to such term in Section 2.01.

“Specified Jurisdiction” means any state specified on Schedule 1 hereto, as it may be supplemented pursuant to Section 4.09(b).

ARTICLE II

Security Interests in Personal Property

SECTION 2.01. Security Interest. (a) As security for the payment or performance, as the case may be, in full of the Obligations, the Grantor hereby assigns and pledges to the Collateral Agent, its successors and assigns, for the ratable benefit of the Secured Party, and hereby grants to the Collateral Agent, its successors and assigns, for the ratable benefit of the Secured Party, a security interest (the “Security Interest”) in, all right, title or interest in or to any and all of the following assets and properties now owned or at any time hereafter acquired by the Grantor or in which the Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “Article 9 Collateral”):

- (i) all Equipment located in any Specified Jurisdiction;
- (ii) all Inventory located in any Specified Jurisdiction;
- (iii) all fixtures located in any Specified Jurisdiction; and
- (iv) to the extent not otherwise included, all Proceeds and products of any and all of the foregoing and all collateral security and

guarantees given by any person with respect to any of the foregoing.

Notwithstanding the foregoing, the Article 9 Collateral shall not include any of the following assets now owned or hereafter acquired which would otherwise be included in the Article 9 Collateral: (a) assets transferred to a person that is not the Grantor, and is not required under the Credit Agreement to become a Grantor (as defined in the Term Loan Collateral Agreement, in compliance with the Credit Agreement, (b) assets subject to Liens permitted by Section 6.05(ii)(2), (3) or (4), 6.05(iv) or 6.05(v) of the Credit Agreement to the extent the documentation creating such Liens or governing the Indebtedness secured thereby would prohibit Liens on such assets created hereunder, (c) assets which contain a valid and enforceable prohibition on the creation of a security interest therein to the extent and so long as such prohibition remains in effect and is valid and effective to prohibit the creation of a security interest therein notwithstanding Sections 9-406 through 9-408 of the applicable Uniform Commercial Code, (d) Vehicles, (e) aircraft, (f) real estate interests (including but not limited to leasehold interests), other than fixtures, (g) any Equipment, Inventory or fixtures not located in a Specified Jurisdiction or (h) any state certificate from any relevant state public utilities commission authorizing the Grantor to do business.

(b) The Grantor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any initial financing statements with respect to the Article 9 Collateral or any part thereof and amendments thereto that (i) indicate the Article 9 Collateral as all assets of the Grantor or words of similar effect provided that such description states that the collateral does not include any Equipment, Inventory or fixtures unless the same are located in a Specified Jurisdiction (as defined herein) (it being understood that such description shall not result in the creation of a security interest in any assets expressly excluded from the Article 9 Collateral by the immediately preceding paragraph), and (ii) contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment, including (A) whether the Grantor is an organization, the type of organization and any organizational identification number issued to the Grantor and (B) in the case of a financing statement filed as a fixture filing, a sufficient description of the real property to which such Article 9 Collateral relates. The Grantor agrees to provide information, other than real property descriptions, to the Collateral Agent promptly upon request. It is understood that the Grantor shall have no obligation to provide a real property description for central fixture filings or local fixture filings.

The Grantor also ratifies its authorization for the Secured Party to file in any relevant jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(c) The Security Interest is granted as security only and shall not subject the Collateral Agent or the Secured Party to, or in any way alter or modify, any obligation or liability of the Grantor with respect to or arising out of the Article 9 Collateral.

SECTION 2.02. Representations and Warranties. The Grantor represents and warrants to the Secured Party that:

(a) On the date hereof, the Grantor has good and valid rights in and title to the Article 9 Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent the Security Interest in such Article 9 Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other person other than any consent or approval that has been obtained.

(b) The Effective Date Perfection Certificate has been duly prepared, completed and executed and the information set forth therein (including (x) the exact legal name of the Grantor and (y) the jurisdiction of organization of the Grantor) is correct and complete as of the Effective Date. Uniform Commercial Code financing statements (including fixture filings, as applicable) or other appropriate filings, recordings or registrations containing a description of the Article 9 Collateral have been prepared by the Collateral Agent based upon the information provided to the Administrative Agent in the Effective Date Perfection Certificate for filing in each governmental, municipal or other office specified in Schedule 2 to the Effective Date Perfection Certificate (or specified by notice from the Grantor to the Administrative Agent after the Effective Date in the case of filings, recordings or registrations required by Sections 5.03, 5.12 or 5.13 of the Credit Agreement), which are all the filings, recordings and registrations that are necessary as of the Effective Date to publish notice of and protect the validity of and to establish a legal, valid and perfected security interest in favor of the Secured Party in respect of all Article 9 Collateral in which the Security Interest may be perfected by filing, recording or registration in the United States (or any political subdivision thereof) and its territories and possessions, and no further or subsequent filing, refiling, recording, rerecording, registration or reregistration is necessary in any such jurisdiction, except as provided under applicable law with respect to the filing of continuation statements.

(c) The Security Interest constitutes (i) a legal and valid security interest in all the Article 9 Collateral securing the payment and performance of the Obligations and (ii) subject to the filings described in Section 2.02(b), a perfected security interest in all Article 9 Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code or other applicable law in such jurisdictions. The Security Interest is and shall be prior to any other Lien on any of the Article 9 Collateral, other than Liens expressly permitted pursuant to Section 6.05 of the Credit Agreement.

(d) The Article 9 Collateral is owned by the Grantor free and clear of any Lien, except for Liens expressly permitted pursuant to Section 6.05 of the Credit Agreement. The Grantor has neither filed nor consented to the filing of

(i) any financing statement or analogous document under the Uniform Commercial Code or any other applicable laws covering any Article 9 Collateral, (ii) any assignment in which the Grantor assigns any Collateral or any security agreement or similar instrument covering any Article 9 Collateral with the United States Patent and Trademark Office or the United States Copyright Office or (iii) any assignment in which the Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Liens expressly permitted pursuant to Section 6.05 of the Credit Agreement.

SECTION 2.03. Covenants. (a) The Grantor agrees to maintain, at its own cost and expense, such complete and accurate records with respect to the Article 9 Collateral as is prudent in the conduct of its business, and, at such time or times as the Collateral Agent may reasonably request, to prepare and deliver as soon as reasonably practicable to the Collateral Agent a duly certified schedule or schedules in form and detail satisfactory to the Collateral Agent showing the identity, amount and location of any and all Article 9 Collateral.

(b) The Grantor shall, at its own expense, take any and all actions necessary to defend title to the Article 9 Collateral against all persons and to defend the Security Interest of the Collateral Agent in the Article 9 Collateral and the priority thereof against any Lien not expressly permitted pursuant to Section 6.05 of the Credit Agreement. Notwithstanding the foregoing, in no event shall the Grantor be required to provide descriptions of real estate for central fixture filings or local fixture filings.

(c) The Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Collateral Agent may from time to time request to better assure, preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and Taxes required in connection with the execution and delivery of this Agreement, the granting of the Security Interest and the filing of any financing statements (including fixture filings, other than central fixture filings that require a real property description and local fixture filings) or other documents in connection herewith or therewith. The Grantor agrees that it will use its best efforts to take such action as shall be necessary in order that all representations and warranties hereunder shall be true and correct in all material respects with respect to such Collateral within 30 days after the date it has been notified by the Collateral Agent of the specific identification of such Collateral.

(d) The Collateral Agent and such persons as the Collateral Agent may designate shall have the right, at the Grantor's own cost and expense, to inspect the Article 9 Collateral, all records related thereto (and to make extracts and copies from such records) and the premises upon which any of the Article 9 Collateral is located, to discuss the Grantor's affairs with the officers of the Grantor and their independent accountants and to verify under reasonable procedures, in accordance with Section 5.03

of the Credit Agreement, the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Article 9 Collateral, including, in the case of Accounts or Article 9 Collateral in the possession of any third person, by contacting Account Debtors (only during the existence of a Default) or the third person possessing such Article 9 Collateral for the purpose of making such a verification. The Collateral Agent shall have the absolute right to share any information it gains from such inspection or verification with the Secured Party. The rights under this paragraph may only be exercised if an Event of Default has occurred and is continuing.

(e) At its option, the Collateral Agent may discharge past due Taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Article 9 Collateral and not expressly permitted pursuant to Section 6.05 of the Credit Agreement, and may pay for the maintenance and preservation of the Article 9 Collateral to the extent the Grantor fails to do so as required by the Credit Agreement or this Agreement, and the Grantor agrees to reimburse the Collateral Agent on demand for any payment made or any expense incurred by the Collateral Agent pursuant to the foregoing authorization; provided, however, that nothing in this paragraph shall be interpreted as excusing the Grantor from the performance of, or imposing any obligation on the Collateral Agent or the Secured Party to cure or perform, any covenants or other promises of the Grantor with respect to Taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the Loan Documents.

(f) As between the Grantor, the Collateral Agent and the Secured Party, the Grantor shall remain liable to observe and perform all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Article 9 Collateral, all in accordance with the terms and conditions thereof, and the Grantor agrees to indemnify and hold harmless the Collateral Agent and the Secured Party from and against any and all liability for such performance.

(g) The Grantor shall not make or permit to be made an assignment, pledge or hypothecation of the Article 9 Collateral or shall not grant any other Lien in respect of the Article 9 Collateral, except as expressly permitted by Section 6.05 of the Credit Agreement. The Grantor shall neither make nor permit to be made any transfer of the Article 9 Collateral, except as expressly permitted by Sections 6.07, 6.08, 6.10 and 9.14 of the Credit Agreement.

(h) The Grantor, at its own expense, shall maintain or cause to be maintained insurance covering physical loss or damage to the Inventory and Equipment in accordance with the requirements set forth in Section 5.07 of the Credit Agreement. The Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent) as the Grantor's true and lawful agent (and attorney-in-fact) for the purpose, upon the occurrence and during the continuance of an Event of Default, of making, settling and adjusting claims in respect of Article 9 Collateral under policies of insurance, endorsing the name of the Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect

thereto. In the event that the Grantor at any time or times shall fail to obtain or maintain any of the policies of insurance required hereby or under the Credit Agreement or to pay any premium in whole or part relating thereto, the Collateral Agent may, without waiving or releasing any obligation or liability of the Grantor hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Collateral Agent deems advisable. All sums disbursed by the Collateral Agent in connection with this paragraph, including attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Grantor to the Collateral Agent and shall be additional Obligations secured hereby.

(i) Each year, at the time of delivery of the certificate pursuant to paragraph (c) of Section 5.01 of the Credit Agreement, the Grantor shall deliver to the Collateral Agent a certificate of an authorized officer of the Grantor (i) setting forth the information required pursuant to the Annual Perfection Certificate or confirming that there has been no change in such information since the date of the Effective Date Perfection Certificate or the date of the most recent certificate delivered pursuant to this Section and (ii) certifying that all Uniform Commercial Code financing statements (excluding fixture filings) or other appropriate filings, recordings or registrations, including all refilings, rerecordings and reregistrations, containing a description of the Collateral required to be set forth therein have been filed of record in each United States governmental, municipal or other appropriate office in each jurisdiction identified pursuant to clause (i) above to the extent necessary to perfect and continue the perfection of the security interests under this Agreement for a period of not less than 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period).

ARTICLE III

Remedies

SECTION 3.01. Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, the Grantor agrees to deliver each item of Collateral to the Collateral Agent on demand, and it is agreed that the Collateral Agent shall have the right to take any of or all the following actions at the same or different times: with or without legal process and with or without prior notice or demand for performance, to take possession of the Article 9 Collateral and without liability for trespass to enter any premises where the Article 9 Collateral may be located for the purpose of taking possession of or removing the Article 9 Collateral and, generally, to exercise any and all rights afforded to a secured party under the Uniform Commercial Code or other applicable law. Without limiting the generality of the foregoing, the Grantor agrees that the Collateral Agent shall have the right, subject to the mandatory requirements of applicable law, to sell or otherwise dispose of all or any part of the Collateral at a public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized at any such sale (if it deems it

advisable to do so) to restrict the prospective bidders or purchasers to persons who will represent and agree that they are purchasing the Collateral for their own account for investment and not with a view to the distribution or sale thereof, and upon consummation of any such sale the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of the Grantor, and the Grantor hereby waives (to the extent permitted by law) all rights of redemption, stay and appraisal which the Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

The Collateral Agent shall give the Grantor 10 days' written notice (which the Grantor agrees is reasonable notice within the meaning of Section 9-611 of the New York UCC or its equivalent in other jurisdictions) of the Collateral Agent's intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by law, private) sale made pursuant to this Section, the Secured Party may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay, valuation or appraisal on the part of the Grantor (all said rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to the Secured Party from the Grantor as a credit against the purchase price, and the Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to the Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and the Grantor shall not be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall

have been remedied and the Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 4.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the New York UCC or its equivalent in other jurisdictions.

SECTION 3.02. Application of Proceeds. The Collateral Agent shall apply the proceeds of any collection, sale, foreclosure or other realization upon any Collateral, including any Collateral consisting of cash, as follows:

FIRST, to the payment of all costs and expenses incurred by the Collateral Agent (in their capacity as such hereunder or under the Loan Proceeds Note) in connection with such collection, sale, foreclosure or realization or otherwise in connection with this Agreement, the Loan Proceeds Note or any of the Obligations, including all court costs and the fees and expenses of its agents and legal counsel, the repayment of all advances made by the Collateral Agent hereunder or under the Loan Proceeds Note on behalf of the Grantor and any other costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under the Loan Proceeds Note;

SECOND, to the payment in full of the Obligations (the amounts so applied to be distributed to the Secured Party in accordance with the amounts of the Obligations owed to it on the date of any such distribution); and

THIRD, to the Grantor, its successors or assigns, or as a court of competent jurisdiction may otherwise direct.

The Collateral Agent shall have absolute discretion (as between the Secured Party and the Grantor) as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof.

ARTICLE IV

Miscellaneous

SECTION 4.01. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in

Section 9.01 of the Credit Agreement. All communications and notices hereunder to the Grantor shall be given to it in care of the Borrower as provided in Section 9.01 of the Credit Agreement.

SECTION 4.02. Security Interest Absolute. All rights of the Collateral Agent hereunder, the Security Interest and all obligations of the Grantor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Loan Proceeds Note, the Credit Agreement, any Loan Document, any agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Loan Proceeds Note, the Credit Agreement, any Loan Document or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Obligations, or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Grantor in respect of the Obligations or this Agreement.

SECTION 4.03. Survival of Agreement. All covenants, agreements, representations and warranties made by the Grantor in the Loan Proceeds Note, the Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Proceeds Note, the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Secured Party, the Collateral Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended under the Credit Agreement, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under any Loan Document is outstanding.

SECTION 4.04. Binding Effect; Several Agreement. This Agreement shall become effective as to the Grantor and the Secured Party when a counterpart hereof executed on behalf of such party shall have been delivered to the Collateral Agent and counterparts hereof shall have been executed on behalf of the Collateral Agent, and thereafter shall be binding upon the Grantor and the Secured Party and their respective permitted successors and assigns, and shall inure to the benefit of the Grantor, the Secured Party and the Collateral Agent and their respective successors and assigns, except that the Grantor shall not have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement or the Credit Agreement. This Agreement shall be construed as a separate agreement with respect to the Grantor and the Secured Party and may be amended, modified, supplemented, waived or released with respect to the Grantor or the Secured Party without the approval of the Grantor or the Secured Party, as the case may be, and without

affecting the obligations of the Grantor or the Secured Party, as the case may be, hereunder.

SECTION 4.05. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Grantor, the Secured Party or the Collateral Agent that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

SECTION 4.06. Collateral Agent's Fees and Expenses; Indemnification. (a) The parties hereto agree that the Collateral Agent shall be entitled to reimbursement of its expenses incurred hereunder to the extent provided in Section 9.03 of the Credit Agreement.

(b) Without limitation of its indemnification obligations under the Loan Documents, the Grantor agrees to indemnify the Collateral Agent, the Secured Party and the other Indemnitees against, and hold each Indemnitee harmless to the extent set forth in Section 9.03(b) of the Credit Agreement (as if Section 9.03(b) of the Credit Agreement included the Secured Party as an Indemnitee).

(c) Any such amounts payable as provided hereunder shall be additional Obligations secured hereby. The provisions of this Section 4.06 shall remain operative and in full force and effect regardless of the termination of this Agreement, the Loan Proceeds Note or any Loan Document, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the invalidity or unenforceability of any term or provision of this Agreement, the Loan Proceeds Note or any Loan Document, or any investigation made by or on behalf of the Collateral Agent or the Secured Party. All amounts due under this Section 4.06 shall be payable on written demand therefor and shall bear interest at the rate specified in Section 2.06 of the Credit Agreement.

SECTION 4.07. Collateral Agent Appointed Attorney-in-Fact. The Grantor hereby appoints the Collateral Agent as its attorney-in-fact for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary or advisable to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, the Collateral Agent shall have the right, upon the occurrence and during the continuance of an Event of Default, with full power of substitution either in the Collateral Agent's name or in the name of the Grantor (a) to receive, endorse, assign and/or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof; (b) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral; (c) to sign the name of the Grantor on any invoice or bill of lading relating to any of the Collateral; (d) to commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in

respect of any Collateral; (e) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral; and (f) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes; provided, however, that nothing herein contained shall be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Collateral Agent and the Secured Party shall be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to the Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

SECTION 4.08. Applicable Law. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

SECTION 4.09. Waivers; Amendment. (a) No failure or delay by the Collateral Agent or the Secured Party in exercising any right or power hereunder or under the Loan Proceeds Note shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Collateral Agent and the Secured Party hereunder and under the Loan Proceeds Note are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or the Loan Proceeds Note or consent to any departure by the Grantor or the Secured Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Grantor or the Secured Party in any case shall entitle the Grantor or the Secured Party, as the case may be, to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent, the Grantor and the Secured Party with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 9.02 of the Credit Agreement, provided, however, the Grantor may amend Schedule 1 hereto add, but not delete, jurisdictions thereto by written notice to the Collateral Agent. Such notice shall constitute an amendment to Schedule 1 without further action by the Secured Party or the Collateral Agent.

SECTION 4.10. WAIVER OF JURY TRIAL . EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE

LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 410.

SECTION 4.11. Severability. In the event any one or more of the provisions contained in this Agreement, the Loan Proceeds Note or any Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 4.12. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 4.04. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 4.13. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 4.14. Jurisdiction; Consent to Service of Process. (a) Each of the Grantor and the Secured Party hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America, sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any Loan Document, or for recognition or enforcement of any judgment, and each of the Grantor and the Secured Party hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. The Grantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement, the Loan Proceeds

Note or any Loan Document shall affect any right that the Collateral Agent or the Secured Party may otherwise have to bring any action or proceeding relating to this Agreement, the Loan Proceeds Note or any Loan Document against the Grantor or the Secured Party or its respective properties in the courts of any jurisdiction.

(b) Each of the Grantor and the Secured Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the Loan Proceeds Note or any Loan Document in any court referred to in paragraph (a) of this Section. Each of the Grantor and the Secured Party hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each of the Grantor and the Secured Party hereby irrevocably consents to service of process in the manner provided for notices in Section 4.01. Nothing in this Agreement, the Loan Proceeds Note or any Loan Document will affect the right of the Collateral Agent to serve process in any other manner permitted by law.

SECTION 4.15. Termination or Release. (a) This Agreement and the Security Interest and all other security interests granted hereby shall terminate when all the Obligations (other than wholly contingent indemnification obligations) then due and owing have been indefeasibly paid in full.

(b) The Liens created by this Agreement in the Collateral or any portion thereof shall be released under the circumstances, at the times and in the manner set forth in Section 9.14 of the Credit Agreement as if the Collateral hereunder constitutes “Collateral” as such term is defined in the Credit Agreement.

(c) In connection with any termination or release pursuant to paragraph (a), (b) or (c) above, the Collateral Agent shall execute and deliver to the Grantor, at the Grantor’s expense, all documents that the Grantor shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section 4.15 shall be without recourse to or warranty by the Collateral Agent. Without limiting the provisions of Section 4.06, the Grantor shall reimburse the Collateral Agent upon demand for all costs and out of pocket expenses, including the fees, charges and disbursements of counsel, incurred by it in connection with any action contemplated by this Section 4.15.

SECTION 4.16. Right of Setoff. If an Event of Default shall have occurred and is continuing, the Secured Party and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by the Secured Party or Affiliate to or for the credit or the account of the Grantor against any and all of the obligations of the Grantor now or hereafter existing under this Agreement held by the Secured Party, irrespective of whether or not the Secured Party shall have made any

demand under this Agreement and although such obligations may be unmatured. The rights of the Secured Party under this Section are in addition to other rights and remedies (including other rights of setoff) which the Secured Party may have.

SECTION 4.17. Compliance with Laws. Notwithstanding anything herein to the contrary, no action shall be taken by the Collateral Agent or the Secured Party with respect to any license, permit, certificate or authorization issued by the Federal Communications Commission or any other Federal or state Governmental Authority applicable to or having jurisdiction over the Grantor, or with respect to the Equity Interests of any Person holding any such license, permit, certificate or authorization, unless and until any approval required for such action under the Federal Communications Act of 1934 or any other applicable Federal or state law, or any applicable rule or regulation thereunder, shall have been satisfied.

SECTION 4.18. Collateral Agent. The Secured Party hereby irrevocably appoints the Collateral Agent as its agent and authorizes the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Agent by the terms of this Agreement, together with such actions and powers as are reasonably incidental thereto. The Secured Party agrees as set forth in Article VIII of the Credit Agreement with respect to the matters specified therein relating to the Collateral Agent and its duties under this Agreement (as if the same were set forth in this Agreement). Notwithstanding the foregoing (including as set forth in Article VIII of the Credit Agreement), the Secured Party acknowledges and agrees that (i) it is assigning all of its rights hereunder and under the Loan Proceeds Note under the Term Loan Collateral Agreement to the Collateral Agent for the benefit of the secured parties under the Term Loan Collateral Agreement, (ii) the Collateral Agent shall act hereunder for the benefit of the secured parties under the Term Loan Collateral Agreement, (iii) the Collateral Agent shall not be subject to any duties or obligations, including fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (iii) the Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers contemplated by this Agreement, (iv) the Collateral shall not have any duty to disclose, and shall not be liable for the failure to disclose, to the Secured Party any information relating to Level 3 LLC and (iv) the Collateral Agent is undertaking the obligations hereunder solely for the benefit of the secured parties under the Term Loan Collateral Agreement.

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

LEVEL 3 FINANCING, INC.,

by /s/ Neil J. Eckstein
Name: Neil J. Eckstein
Title: Senior Vice President and
Assistant General Counsel

LEVEL 3 COMMUNICATIONS, LLC,

by /s/ Neil J. Eckstein
Name: Neil J. Eckstein
Title: Senior Vice President and
Assistant General Counsel

MERRILL LYNCH CAPITAL CORPORATION,
as Collateral Agent,

by /s/ Cecile Baker
Name: Cecile Baker
Title: Vice President

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Exhibit 10.8



Confirmation of OTC Convertible Note Hedge

Date: December 2, 2004
To: Level 3 Communications, Inc. (“Counterparty”)
Attention:
From: Merrill Lynch International (“ML”)
Merrill Lynch Financial Centre
2 King Edward Street
London EC1A 1HQ

ML Ref:

Dear Sir / Madam:

The purpose of this letter agreement (this “**Confirmation**”) is to confirm the terms and conditions of the above-referenced transaction entered into between Counterparty and ML through its agent Merrill Lynch, Pierce, Fenner & Smith Incorporated (“**MLPFS**” or “**Agent**”) on the Trade Date specified below (the “**Transaction**”). This Confirmation constitutes a “Confirmation” as referred to in the Agreement specified below.

The definitions and provisions contained in the 2000 ISDA Definitions (the “**Swap Definitions**”) and the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”) and, together with the Swap Definitions, the “**Definitions**”), in each case as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between the Swap Definitions and the Equity Definitions, the Equity Definitions will govern, and in the event of any inconsistency between the Definitions and this Confirmation, this Confirmation will govern. References herein to a “Transaction” shall be deemed to be references to a “Share Option Transaction” for purposes of the Equity Definitions and a “Swap Transaction” for the purposes of the Swap Definitions.

This Confirmation evidences a complete binding agreement between you and us as to the terms of the Transaction to which this Confirmation relates. This Confirmation (notwithstanding anything to the contrary herein), shall be subject to an agreement in the 1992 form of the ISDA Master Agreement (Multicurrency Cross Border) (the “**Master Agreement**” or “**Agreement**”) as if we had executed an agreement in such form (but without any Schedule and with elections specified in the “ISDA Master Agreement” Section of this Confirmation) on the Trade Date of the first such Transaction between us. In the event of any inconsistency between the provisions of that agreement and this Confirmation, this Confirmation will prevail for the purpose of this Transaction.

The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date: November 17, 2004

Effective Date: The date that the Reference Notes are originally issued under the Note Indenture.

Seller:	ML
Buyer:	Counterparty
Shares:	The shares of common stock, par value of \$0.01, of Counterparty (Security Symbol: “ LVL ”) or such other securities or property into which the Reference Notes are convertible on the date of determination.
Payment Amount Premium:	\$125.18 mm to be paid on the Effective Date.
Exchange:	As provided in the Note Indenture in the definition of “Closing Sale Price”
Related Exchange(s):	All Exchanges
Knock-in Event:	Not Applicable
Knock-out Event:	Not Applicable
Reference Notes:	5.25% Convertible Notes due 2011 having \$345 million principal amount
Conversion Event:	<p>Each conversion on a Conversion Date (as defined in the Note Indenture) of any Reference Note into Shares pursuant to the terms of the Note Indenture (the principal amount of Reference Notes so converted, the “Conversion Amount” with respect to such Conversion Event) occurring on or before the Scheduled Reference Date.</p> <p>If the Conversion Amount for any Conversion Event is less than the aggregate principal amount of Reference Notes then outstanding, then the terms of this Transaction shall continue to apply, subject to the terms and conditions set forth herein, with respect to the remaining outstanding principal amount of the Reference Notes.</p>
Note Indenture:	The Indenture, dated as of closing of the issuance of the Reference Notes, between Counterparty and The Bank of New York, as trustee relating to the Reference Notes, as the same may be amended, modified or supplemented, subject to the “Additional Termination Events” provisions of this Confirmation.
Option Expiration Date:	The final Valuation Date
Reference Date:	The earlier of (i) December 15, 2008 (the “ Scheduled Reference Date ”) and (ii) the first day on which none of the Reference Notes remain outstanding, whether by virtue of conversion or otherwise.
Termination Date:	The final Settlement Date
<u>Valuation:</u>	
Valuation Date:	The last Averaging Date in respect of any Conversion Event or of the Scheduled Reference Date
Averaging Dates:	With respect to each Conversion Event in the period prior to the third Full Exchange Business Day immediately preceding the Scheduled Reference Date (the “ First Period ”), the Full Exchange Business Days from and including the third Full Exchange Business Day following the Conversion Date to and including the fifteenth Full Exchange Business Day thereafter; with respect to

the period beginning on the third Full Exchange Business Day immediately preceding the Scheduled Reference Date to and including the Scheduled Reference Date (the “**Second Period**”), the Full Exchange Business Days from and including the Scheduled Reference Date to and including the fifteenth Full Exchange Business Day thereafter

Full Exchange Business Day: A “Trading Day”, as defined in the Note Indenture

Averaging Date Disruption: As provided for in the Note Indenture

Averaging Period Start Date: The first Averaging Date in respect of any Conversion Event or of the Scheduled Reference Date

Settlement Terms:

Settlement: Net Share Settlement or Net Cash Settlement, at Counterparty’s option

Settlement Price: The arithmetic mean of the Applicable Stock Price (as such term is defined in the Note Indenture) on each Averaging Date

Settlement Date: The third (3rd) Full Exchange Business Day following a Valuation Date

Conversion Notice: Counterparty agrees to provide ML with notice of any Conversion Event within two (2) Business Days (as such term is defined in the Note Indenture) of the Conversion Date and in any event no later than one (1) Business Day following Counterparty’s receipt of notice of such Conversion Event from the Trustee under the Note Indenture. With respect to Conversion Events in the First Period, such notice shall also specify whether Net Share Settlement or Net Cash Settlement shall apply to the relevant Settlement.

Second Period Settlement Notice: Counterparty agrees to provide ML with notice at least three (3) Business Days prior to the Scheduled Reference Date of whether Net Share Settlement or Net Cash Settlement shall apply to Settlement in respect of the Second Period.

Net Share Settlement: On a Settlement Date involving a Net Share Settlement, subject to receipt by ML of a timely Conversion Notice as provided for above, ML shall deliver to Counterparty, through the Agent, a number of Shares equal to the related Final Settlement Amount.

Final Settlement Amount: The number of Shares, rounded up to the nearest whole Share, determined by the Calculation Agent to be equal to the quotient of (x) the related Net Settlement Amount divided by (y) the related Settlement Price.

Net Cash Settlement: On a Settlement Date involving a Net Cash Settlement, subject to receipt by ML of a timely Conversion Notice as provided for above, ML shall deliver to Counterparty the related Net Settlement Amount in cash.

Net Settlement Amount: With respect to Conversion Events in the First Period, the product of (x) the number of Shares into which the Reference Notes are to be converted in connection with the related Conversion Event multiplied by (y) the Final Price Differential. For the Second Period, the product of (x) the number of Second Period Shares multiplied by (y) the Final Price Differential. The “**Second Period Shares**” means the sum of (a) the number of Shares into which the Second Period Converted Notes are to be converted and (b) the number of Shares into which the remaining Reference Notes outstanding on the Scheduled

Reference Date could be converted had they been converted on the Scheduled Reference Date (with the Scheduled Reference Date being their Conversion Date). The “**Second Period Converted Notes**” means those Reference Notes that are to be converted and whose Conversion Dates are in the Second Period.

Final Price Differential:

An amount equal to the greater of (x) the excess of the related Settlement Price over the related Adjusted Conversion Price and (y) zero.

Adjusted Conversion Price:

For each Conversion Event in the First Period and for the Second Period, a quotient, the numerator of which is \$1,000 and the denominator of which is the Conversion Rate (as defined in the Note Indenture and as adjusted from time to time pursuant to the terms thereof) as in effect on the related Valuation Date.

Method of Adjustment:

The Calculation Agent will make such adjustments to any payment, variable or other term of this Transaction as it deems necessary or appropriate, based on the adjustment and other applicable provisions of the Note Indenture.

Extraordinary Events:

Consequences for Merger Events:

Share-for-Share:	Cancellation and Payment
Agreed Model:	Applicable
Interest Rate:	USD-LIBOR-BBA
Share-for-Other:	Cancellation and Payment
Agreed Model:	Applicable
Interest Rate:	USD-LIBOR-BBA
Share-for-Combined:	Cancellation and Payment
Agreed Model:	Applicable
Interest Rate:	USD-LIBOR-BBA

Tender Offer:	Cancellation and Payment
Agreed Model:	Applicable
Interest Rate:	USD-LIBOR-BBA

Nationalization, Insolvency or Delisting: Not Applicable

Additional Disruption Events:

Change in Law:	Not Applicable
Failure to Deliver:	Applicable. If there is an “illiquidity on the market” on a day that would have been a Settlement Date, then the Settlement Date shall be the first succeeding Exchange Business Day on which there is no “illiquidity on the market,” but in no such event shall the Settlement Date be later than the date that is twenty (20) Exchange Business Days immediately following what would have been in the Settlement Date but for such “illiquidity on the market.”
Insolvency Filing:	Applicable
Hedging Disruption Event:	Not Applicable

Increased Cost of Hedging:	Not Applicable
Hedging Party:	ML
Loss of Stock Borrow:	Not Applicable
Increased Cost of Stock Borrow:	Not Applicable
Determining Party:	ML
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

Additional Agreements, Representations and Covenants of Counterparty, Etc.:

1. Counterparty hereby represents and warrants to ML, on each day from the Trade Date to and including the date by which ML is able to initially complete a hedge of its position created by this Transaction (within three Full Exchange Business Days of the date hereof, unless otherwise notified by ML), that:
 - a. it will not, and will not permit any person or entity subject to its control to, bid for or purchase Shares during such period except as disclosed in the Offering Memorandum relating to the Reference Notes; and
 - b. Counterparty has publicly disclosed all material information necessary for Counterparty to be able to purchase or sell Shares in compliance with applicable federal securities laws and that it has publicly disclosed all material information with respect to its condition (financial or otherwise).
2. The parties hereby agree that all documentation with respect to this Transaction is intended to qualify this Transaction as an equity instrument for purposes of EITF 00-19. If Counterparty would be obligated to receive cash from ML pursuant to the terms of this Agreement for any reason without having had the right (other than pursuant to this paragraph (2)) to elect to receive Shares in satisfaction of such payment obligation, then Counterparty may elect that ML deliver to Counterparty a number of Shares having a cash value equal to the amount of such payment obligation (such number of Shares to be delivered to be determined by the Calculation Agent acting in a commercially reasonable manner to determine the number of Shares that could be purchased over a reasonable period of time with the cash equivalent of such payment obligation). Settlement relating to any delivery of Shares pursuant to this paragraph (2) shall occur within a reasonable period of time.

Additional Termination Events:

The occurrence of any of the following shall be an Additional Termination Event with respect to Counterparty (which shall be the sole Affected Party and this Transaction shall be the sole Affected Transaction):

1. an Amendment Event occurs (in which case the entirety of this Transaction shall be subject to termination);
2. a Repayment Event occurs (in which case this Transaction shall be subject to termination only in respect of the principal amount of Reference Notes that cease to be outstanding in connection with or as a result of such Repayment Event); or

3. the transactions contemplated by the Purchase Agreement among the Counterparty and MLPFS, Morgan Stanley & Co. Incorporated, Citigroup Global Markets Inc., Credit Suisse First Boston LLC, Needham & Company, Inc. and UBS Securities LLC as Initial Purchasers, dated as of November 17, 2004 (the “**Purchase Agreement**”) relating to the purchase of the Reference Notes, shall fail to close as a result of any breach by the Counterparty or any Initial Purchaser of their respective obligations thereunder or as a result of any action, or failure to act, by the Counterparty or any Initial Purchaser thereunder or as a result of a failure or any condition thereunder, in which case the entirety of this Transaction shall terminate automatically.

If the transactions contemplated by the Purchase Agreement shall fail to close for any reason other than a breach of the Purchase Agreement by MLPFS, then the entirety of this Transaction shall terminate automatically and all payments previously made hereunder, including the Payment Amount Premium less the amount of any Closeout Losses, shall be promptly returned to the person making such payment; provided that in such case, Counterparty hereby indemnifies the Indemnified Parties from and against (a) any and all losses, claims, damages and liabilities, joint and several, which such Indemnified Party may incur or to which such Indemnified Party may become subject as a result of the termination of this Transaction and (b) except in the case of the exercise by MLPFS of its “market out” termination rights pursuant to Section 10 of the Purchase Agreement, the reasonable fees and expenses of counsel for MLPFS incurred in connection with this Transaction (the “Closeout Losses”), including, without limitation, any losses incurred by an Indemnified Party in connection with the initiating or unwinding of any hedging transactions related to this Transaction. If the transactions contemplated by the Purchase Agreement shall fail to close because of a breach of the Purchase Agreement by MLPFS, then the entirety of this Transaction shall terminate automatically, and all payments previously made hereunder, including the Payment Amount Premium, shall be promptly returned to the person making such payment. If an Amendment or Repayment Event occurs, no additional payments shall be required hereunder in connection with the Additional Termination Event arising as a result of such Amendment Event or Repayment Event.

As used in this Section Additional Termination Events:

“**Amendment Event**” means that the Counterparty amends, modifies, supplements or waives, without the prior written consent of ML (which consent shall not be unreasonably withheld), any term of the Note Indenture or the Reference Notes relating to the principal amount, coupon, maturity, repurchase obligation of the Counterparty, redemption right of the Counterparty, any term relating to conversion of the Notes (including changes to the conversion price, conversion settlement dates or conversion conditions), or any other term that would require consent of the holders of not less than 100% of the principal amount of the Reference Notes to amend.

“**Repayment Event**” means that, without the prior written consent of ML, (a) any Reference Notes are repurchased (whether in connection with or as a result of a change of control, howsoever defined, or for any other reason) by the Counterparty, (b) any Reference Notes are delivered to the Counterparty in exchange for delivery of any property or assets of the Counterparty or any of its subsidiaries (howsoever described), other than as a result of and in connection with a Conversion Event, (c) any principal of any of the Reference Notes is repaid prior to the Stated Maturity, as defined in the Note Indenture (whether following acceleration of the Reference Notes or otherwise), provided that no payments of cash made in respect of the conversion of a Note shall be deemed a payment of principal under this clause (c), (d) any Reference Notes are exchanged by or for the benefit of the holders thereof for any other securities of the Counterparty or any of its affiliates (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction by the Counterparty or (e) any of the Notes is surrendered by Counterparty to the trustee for cancellation, other than in connection with the registration of a transfer of such Notes, the replacement of mutilated Notes or as a result of and in connection with a Conversion Event.

Staggered Settlement:

If ML determines reasonably and in good faith that the number of Shares required to be delivered to Counterparty hereunder on any Settlement Date would exceed 4.5% of all outstanding Shares, then ML may, by notice to Counterparty on or prior to such Settlement Date (a “**Nominal Settlement Date**”), elect to deliver the Shares

comprising the Final Settlement Amount related to such Settlement Date on two or more dates (each, a “ **Staggered Settlement Date** ”) as follows:

1. in such notice, ML will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20th) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date;
2. the aggregate number of Shares that ML will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that ML would otherwise be required to deliver on such Nominal Settlement Date; and
3. the Net Share Settlement terms will apply on each Staggered Settlement Date as if it were a Settlement Date, except that the Shares comprising the Final Settlement Amount will be allocated among such Staggered Settlement Dates as specified by ML in the notice referred to in clause (1) above.

Notwithstanding anything herein to the contrary, ML shall be entitled to deliver Shares to Counterparty from time to time prior to the date on which ML would be obligated to deliver them to Counterparty pursuant to Net Share Settlement terms set forth above, and Counterparty agrees to credit all such early deliveries against ML’s obligations hereunder in the direct order in which such obligations arise. No such early delivery of Shares will accelerate or otherwise affect any of Counterparty’s obligations to ML hereunder. In addition, within 30 days of the Reference Date and any Settlement Date, Counterparty shall use its reasonable efforts to refrain from activities which could reasonably be expected to result in ML’s ownership of Shares exceeding 10% of all issued and outstanding Shares.

Compliance with Securities

Laws:

Each party represents and agrees that it has complied, and will comply, in connection with this Transaction and all contemporaneous sales and purchases of Shares related to this Transaction, with the applicable provisions of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended (the “ **Exchange Act** ”), and the rules and regulations each thereunder, including, without limitation, Rules 10b-5 and Regulation M under the Exchange Act; provided that each party shall be entitled to rely conclusively on any information communicated by the other party concerning such other party’s market activities; and provided further that Counterparty shall have no liability as a result of a breach of this representation due to ML’s gross negligence or willful misconduct.

Each party further represents that if such party (“X”) purchases any Shares from the other party pursuant to this Transaction, such purchase(s) will comply in all material respects with (i) all laws and regulations applicable to X and (ii) all contractual obligations of X.

Counterparty (and ML in the case of paragraphs (c) and (d) below) represents that as of the date hereof:

(a) each of its filings under the Exchange Act that are required to be filed by the Counterparty on or prior to the date hereof have been filed, and that, as of the respective dates thereof, there is no misstatement of material fact contained therein or omission of a material fact required to be stated therein or necessary to make the statements therein in light of the circumstances in which they were made not misleading;

(b) if Counterparty were to have purchased the number of Shares equal to the product of the aggregate principal amount of the Reference Notes multiplied by the Conversion Rate using MLPFS as broker, such

purchase(s) would have complied in all material respects with all contractual obligations and applicable legal and regulatory requirements of Counterparty, including without limitation Rule 10b-18 under the Exchange Act;

(c) Neither ML nor Counterparty, as the case may be, is entering into this Agreement to facilitate a distribution of the Shares or in connection with a future issuance of securities; and

(d) Neither ML nor Counterparty, as the case may be, is entering into this Agreement to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to manipulate the price of the Shares (or any security convertible into or exchangeable for Shares).

Account Details:

Account for payments to Counterparty:	Not Applicable
Account for payment to ML:	Chase Manhattan Bank, New York ABA# 021000021 FAO: ML Equity Derivatives A/C: 066213118

Bankruptcy Rights:

ML acknowledges that, in the event of Counterparty's bankruptcy, ML's rights in connections with this Transaction shall not exceed those rights held by common shareholders. For the avoidance of doubt, the parties acknowledge and agree that ML's rights with respect to any other claim arising from this Transaction prior to Counterparty's bankruptcy shall remain in full force and effect and shall not be otherwise abridged or modified in connection herewith.

Collateral:

None.

Transfer:

Neither party may transfer its rights or obligations under this Transaction except in accordance with Section 7 of the Agreement; provided however that ML may assign its rights and delegate its obligations hereunder, in whole or in part, to any affiliate (an "**Assignee**") of Merrill Lynch & Co., Inc. ("**ML&Co.**"), effective (the "**Transfer Effective Date**") upon delivery to Counterparty of (a) an executed acceptance and assumption by the Assignee (an "**Assumption**") of the transferred obligations of ML under this Transaction (the "**Transferred Obligations**"); and (b) an executed guarantee (the "**Guarantee**") of ML&Co. of the Transferred Obligations, substantially in the form of Exhibit A hereto; provided that no transfer shall be made where (a) such transfer would result in a violation of applicable securities laws, or (b) Counterparty will be required to pay to the Assignee an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii), or 6(e)) that it would otherwise not make in the absence of such transfer; or (c) after Counterparty complies with its obligations, if any, under Section 4(a)(iii), Counterparty will receive a payment from which an amount has been withheld or deducted, on account of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii), or 6(e)), in excess of that which ML would have been required to so withhold or deduct in the absence of such transfer; provided further, however, that a transfer may (notwithstanding the foregoing) be made in the event that a transfer is made where one party must withhold an amount of a Tax, and it is not a Tax Event specified in Section 5(b)(ii), and ML agrees to receive a payment from which an amount has been withheld or deducted in accordance with Section 5(b) or ML agrees to make any

additional payment amount in accordance with Section 5(b), as the case may be. On the Transfer Effective Date, (a) ML shall be released from all obligations and liabilities arising under the Transferred Obligations; and (b) the Transferred Obligations shall cease to be a Transaction(s) under the Agreement and shall be deemed to be a Transaction(s) under the ISDA Master Agreement between Assignee and Counterparty, provided that, if at such time Assignee and Counterparty have not entered into a ISDA Master Agreement, Assignee and Counterparty shall be deemed to have entered into an ISDA form of Master Agreement (Multicurrency-Cross Border) without any Schedule attached thereto.

Regulation:

ML is regulated by The Securities and Futures Authority Limited and has entered into this Transaction as principal.

Indemnity:

Counterparty agrees to indemnify ML and its Affiliates and their respective directors, officers, agents and controlling parties (ML and each such person being an “Indemnified Party”) from and against any and all losses, claims, damages and liabilities, joint and several, to which such Indemnified Party may become subject because of the untruth of any representation by Counterparty or a breach by Counterparty of any agreement or covenant hereunder or in the Agreement and will reimburse any Indemnified Party for all reasonable expenses (including reasonable legal fees and expenses) as they are incurred in connection with the investigation of, preparation for, or defense of, any pending or threatened claim or any action or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto.

ISDA Master Agreement

With respect to the Agreement, ML and Counterparty each agree as follows:

Specified Entities:

(i) in relation to ML, for the purposes of:

Section 5(a)(v) : not applicable
Section 5(a)(vi) : not applicable
Section 5(a)(vii) : not applicable
Section 5(b)(iv) : not applicable

and (ii) in relation to Counterparty, for the purposes of:

Section 5(a)(v) : not applicable
Section 5(a)(vi) : not applicable
Section 5(a)(vii) : not applicable
Section 5(b)(iv) : not applicable

“**Specified Transaction**” will have the meaning specified in Section 14 of the Agreement.

The “**Credit Event Upon Merger**” provisions of Section 5(b)(iv) of the Agreement will not apply to ML and Counterparty.

The “**Automatic Early Termination**” provision of Section 6(a) of the Agreement will not apply to ML or to Counterparty.

Payments on Early Termination for the purpose of Section 6(e) of the Agreement: (i) Market Quotation shall apply; and (ii) the Second Method shall apply.

“**Termination Currency**” means USD.

Tax Representations:

- (I) For the purpose of Section 3(e) of the Agreement, each party represents to the other party that it is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii), or 6(e) of the Agreement) to be made by it to the other party under the Agreement. In making this representation, each party may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of the Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of the Agreement, and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of the Agreement, and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of the Agreement; provided that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) of the Agreement by reason of material prejudice to its legal or commercial position.
- (II) For the purpose of Section 3(f) of the Agreement, each party makes the following representations to the other party:
- (i) ML represents that it is a corporation organized under the laws of England and Wales.
 - (ii) Counterparty represents that it is a corporation incorporated under the laws of the State of Delaware.

Delivery Requirements : For the purpose of Sections 3(d), 4(a)(i) and (ii) of the Agreement, each party agrees to deliver the following documents:

Tax forms, documents or certificates to be delivered are:

Each party agrees to complete (accurately and in a manner reasonably satisfactory to the other party), execute, and deliver to the other party, United States Internal Revenue Service Form W-9 or W-8 BEN, or any successor of such form(s): (i) before the first payment date under this agreement; (ii) promptly upon reasonable demand by the other party; and (iii) promptly upon learning that any such form(s) previously provided by the other party has become obsolete or incorrect.

Other documents to be delivered:

<u>Party Required to Deliver Document</u>	<u>Document Required to be Delivered</u>	<u>When Required</u>	<u>Covered by Section 3(d) Representation</u>
Counterparty	Evidence of the authority and true signatures of each official or representative signing this Confirmation	Upon or before execution and delivery of this Confirmation	Yes
Counterparty	Certified copy of the resolution of the Board of Directors or equivalent document authorizing the execution and delivery of this Confirmation	Upon or before execution and delivery of this Confirmation	Yes
ML	Guarantee of its Credit Support Provider, substantially in the form of Exhibit A attached hereto, together with evidence of the authority and true signatures of the signatories, if applicable	Upon or before execution and delivery of this Confirmation	Yes

Additional Notice Requirements: The Counterparty hereby agrees to promptly deliver to ML a copy of all notices and other communications required or permitted to be given to the holders of any Reference Notes pursuant to the terms of the Note Indenture on the dates so required or permitted in the Note Indenture and all other notices given and other communications made by Counterparty in respect of the Referenced Notes to holders of any Referenced Notes. The Counterparty further covenants to ML that it shall deliver a Conversion Notice as provided for above and shall promptly notify ML of each Amendment Event (including in such notice a detailed description of any such amendment) and Repayment Event (identifying in such notice the nature of such Repayment Event and the principal amount at maturity of Reference Notes being paid). The Counterparty shall deliver each Conversion Notice to ML within two Business Days following the occurrence of the related Conversion Event and in any event no later than one Business Day following Counterparty's receipt of notice of such Conversion Event from the Trustee under the Note Indenture. The Counterparty hereby acknowledges and agrees that its obligations under this Section shall continue as obligations of the Counterparty notwithstanding any transfer by it of any of its rights or obligations to any other person or entity in accordance with the Section titled Staggered Settlement above.

Addresses for Notices: For the purpose of Section 12(a) of the Agreement:

Address for notices or communications to ML:

Address: Merrill Lynch International
Merrill Lynch Financial Centre
2 King Edward Street, London EC1A 1HQ
Attention: Manager, Fixed Income Settlements
Facsimile No.: 44 207 995 2004 Telephone No.: 44 207 995 3769

(For all purposes)

Additionally, a copy of all notices pursuant to Sections 5, 6, and 7 as well as any changes to Counterparty's address, telephone number or facsimile number should be sent to:

GMI Counsel
Merrill Lynch World Headquarters
4 World Financial Center
New York, New York 10080
Attention: Global Equity Derivatives
Facsimile No.: 212 449-6576 Telephone No.: 212 449-6309

Address for notices or communications to Counterparty for all purposes:

Address: Level 3 Communications, Inc.
1025 Eldorado Boulevard
Broomfield, Colorado 80021
Attention: General Counsel
Facsimile No.: 720-888-5127 Telephone No.: 720-888-1000

Process Agent: For the purpose of Section 13(c) of the Agreement, ML appoints as its process agent:

Merrill Lynch, Pierce, Fenner & Smith Incorporated
222 Broadway, 16th Floor
New York, NY 10038
Attention: Litigation Department

[Counterparty does not appoint a Process Agent.]

Multibranch Party . For the purpose of Section 10(c) of the Agreement: Neither ML nor Counterparty is a Multibranch Party.

Calculation Agent . The Calculation Agent is ML; provided that if ML is the Defaulting Party Counterparty shall be entitled to appoint as the new Calculation Agent a Reference Market-maker that is acceptable to ML. The Calculation Agent's judgments, determinations and calculations in this Transaction and any related hedging transaction between the parties shall be made in good faith and in a commercially reasonable manner.

Credit Support Document.

ML: Guarantee of ML&Co in the form attached hereto as Exhibit A.

Counterparty: Not Applicable

Credit Support Provider.

With respect to ML: Merrill Lynch and Co. and with respect to Counterparty, Not Applicable.

Governing Law . This Confirmation will be governed by, and construed in accordance with, the substantive laws of the State of New York.

Netting of Payments . The provisions of Section 2(c) of the Agreement shall not be applicable to this Transaction; provided, however, that with respect to this Agreement or any other ISDA Master Agreement between the parties, any Share delivery obligations on any day of Counterparty, on the one hand, and ML, on the other hand, shall be netted. The resulting Share delivery obligation of a party upon such netting shall be rounded up to the nearest number of whole Shares, such that neither party shall be required to deliver any fractional Shares.

Accuracy of Specified Information . Section 3(d) of the Agreement is hereby amended by adding in the third line thereof after the word "respect" and before the period the words "or, in the case of audited or unaudited financial statements or balance sheets, a fair presentation of the financial condition of the relevant person."

Basic Representations . Section 3(a) of the Agreement is hereby amended by the deletion of "and" at the end of Section 3(a)(iv); the substitution of a semicolon for the period at the end of Section 3(a)(v) and the addition of Sections 3(a)(vi), as follows:

Eligible Contract Participant; Line of Business . It is an "eligible contract participant" as defined in the Commodity Futures Modernization Act of 2000 and it has entered into this Confirmation and this Transaction in connection with its business or a line of business (including financial intermediation), or the financing of its business.

Amendment of Section 3(a)(iii) . Section 3(a)(iii) of the Agreement is modified to read as follows:

No Violation or Conflict . Such execution, delivery and performance do not materially violate or conflict with any law known by it to be applicable to it, any provision of its constitutional documents, any order or judgment of any court or agency of government applicable to it or any of its assets or any material contractual restriction relating to Specified Indebtedness binding on or affecting it or any of its assets.

Amendment of Section 3(a)(iv). Section 3(a)(iv) of the Agreement is modified by inserting the following at the beginning thereof:

“To such party’s best knowledge,”

Additional Representations:

Counterparty Representations. Counterparty (i) has such knowledge and experience in financial and business affairs as to be capable of evaluating the merits and risks of entering into this Transaction; (ii) has consulted with its own legal, financial, accounting and tax advisors in connection with this Transaction; and (iii) is entering into this Transaction for a bona fide business purpose.

Counterparty is not and has not been the subject of any civil proceeding of a judicial or administrative body of competent jurisdiction that could reasonably be expected to impair materially Counterparty’s ability to perform its obligations hereunder.

Counterparty will by the next succeeding Business Day notify ML upon obtaining knowledge of the occurrence of any event that would constitute an Event of Default, a Potential Event of Default or a Potential Adjustment Event.

As of the date hereof, Counterparty is not insolvent.

Acknowledgments:

(1) The parties acknowledge and agree that there are no other representations, agreements or other undertakings of the parties in relation to this Transaction, except as set forth in this Confirmation.

(2) The parties hereto intend for:

(a) this Transaction to be a “securities contract” as defined in Section 741(7) of Title 11 of the United States Code (the “**Bankruptcy Code**”), qualifying for the protections under Section 555 of the Bankruptcy Code;

(b) a party’s right to liquidate this Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a “contractual right” as defined in the Bankruptcy Code;

(c) any cash, securities or other property provided as performance assurance, credit, support or collateral with respect to this Transaction to constitute “margin payments” as defined in the Bankruptcy Code; and

(d) all payments for, under or in connection with this Transaction, all payments for the Shares and the transfer of such Shares to constitute “settlement payments” as defined in the Bankruptcy Code.

Amendment of Section 6(d)(ii). Section 6(d)(ii) of the Agreement is modified by deleting the words “on the day” in the second line thereof and substituting therefor “on the day that is three Local Business Days after the day”. Section 6(d)(ii) is further modified by deleting the words “two Local Business Days” in the fourth line thereof and substituting therefor “three Local Business Days.”

Amendment of Definition of Reference Market-Makers. The definition of “Reference Market-Makers” in Section 14 is hereby amended by adding in clause (a) after the word “credit” and before the word “and” the words “or to enter into transactions similar in nature to Transactions.”

Consent to Recording. Each party consents to the recording of the telephone conversations of trading and marketing personnel of the parties and their Affiliates in connection with this Confirmation. To the extent that one party records telephone conversations (the “Recording Party”) and the other party does not (the Non-Recording

Party”), the Recording Party shall in the event of any dispute, make a complete and unedited copy of such party’s tape of the entire day’s conversations with the Non-Recording Party’s personnel available to the Non-Recording Party. The Recording Party’s tapes may be used by either party in any forum in which a dispute is sought to be resolved and the Recording Party will retain tapes for a consistent period of time in accordance with the Recording Party’s policy unless one party notifies the other that a particular transaction is under review and warrants further retention, at the notifying party’s expense.

Disclosure . Each party hereby acknowledges and agrees that ML has authorized Counterparty to disclose this Transaction and any related hedging transaction between the parties if and to the extent that Counterparty reasonably determines (after consultation with ML) that such disclosure is required by law or by the rules of Nasdaq or any securities exchange.

Severability . If any term, provision, covenant or condition of this Confirmation, or the application thereof to any party or circumstance, shall be held to be invalid or unenforceable in whole or in part for any reason, the remaining terms, provisions, covenants, and conditions hereof shall continue in full force and effect as if this Confirmation had been executed with the invalid or unenforceable provision eliminated, so long as this Confirmation as so modified continues to express, without material change, the original intentions of the parties as to the subject matter of this Confirmation and the deletion of such portion of this Confirmation will not substantially impair the respective benefits or expectations of parties to this Agreement; provided, however, that this severability provision shall not be applicable if any provision of Section 2, 5, 6 or 13 of the Agreement (or any definition or provision in Section 14 to the extent that it relates to, or is used in or in connection with any such Section) shall be so held to be invalid or unenforceable.

Affected Parties . For purposes of Section 6(e) of the Agreement, each party shall be deemed to be an Affected Party in connection with Illegality and any Tax Event.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us.

Very truly yours,

MERRILL LYNCH INTERNATIONAL

By: _____

Name:

Title:

Confirmed as of the date first above written:

LEVEL 3 COMMUNICATIONS, INC.

By: /s/ Neil J. Eckstein

Name: Neil J. Eckstein

Title: Senior Vice President

Acknowledged and agreed as to matters relating to the Agent:

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
solely in its capacity as Agent hereunder

By: _____

Name:

Title:

GUARANTEE OF MERRILL LYNCH & CO., INC.

FOR VALUE RECEIVED, receipt of which is hereby acknowledged, MERRILL LYNCH & CO., INC., a corporation duly organized and existing under the laws of the State of Delaware ("ML & Co."), hereby unconditionally guarantees to Level 3 Communications, Inc. (the "Company"), the due and punctual payment in full of any and all amounts payable by Merrill Lynch International, a company organized under the laws of England and Wales ("ML"), under the terms of the Confirmation of OTC Convertible Note Hedge between the Company and ML (ML as Seller), dated as of December 2, 2004 (the "Confirmation"), including, in case of default, interest on any amount due, when and as the same shall become due and payable, whether on the scheduled payment dates, at maturity, upon declaration of termination, designation of an Early Termination Event or otherwise, according to the terms thereof. In case of the failure of ML punctually to make any such payment, ML & Co. hereby agrees to make such payment, or cause such payment to be made, promptly upon demand made by the Company to ML & Co.; provided, however that delay by the Company in giving such demand shall in no event affect ML & Co.'s obligations under this Guarantee. This Guarantee shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any payment guaranteed hereunder, in whole or in part, is invalidated, rescinded or must otherwise be returned by the Company as a result of being declared fraudulent or preferential or upon the insolvency, bankruptcy or reorganization of ML or otherwise, all as though such payment had not been made.

ML & Co. hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Confirmation; the absence of any action to enforce the same; any waiver or consent by the Company concerning any provisions thereof; the rendering of any judgment against ML or any action to enforce the same; change of time, manner or place of payment or any other term of any payment due under the Confirmation; or any other circumstances that might otherwise constitute a legal or equitable discharge of a guarantor or a defense of a guarantor. ML & Co. covenants that this guarantee will not be discharged except by complete payment of the amounts payable under the Confirmation. This Guarantee shall continue to be effective if ML merges or consolidates with or into another entity, loses its separate legal identity or ceases to exist.

ML & Co. hereby waives set-offs; counterclaims; diligence; presentment; protest; notice of protest, acceleration, and dishonor; filing of claims with a court in the event of insolvency or bankruptcy of ML; all demands whatsoever, except as noted in the first paragraph hereof; and any right to require a proceeding first against ML.

ML & Co. hereby certifies and warrants that this Guarantee constitutes the valid obligation of ML & Co. and complies with all applicable laws.

This Guarantee shall be governed by, and construed in accordance with, the laws of the State of New York.

This Guarantee may be terminated at any time by notice by ML & Co. to the Company given in accordance with the notice provisions of the Confirmation, effective upon receipt of such notice by the Company or such later date as may be specified in such notice; provided, however, that this Guarantee shall continue in full force and effect with respect to any obligation of ML under the Confirmation.

This Guarantee becomes effective immediately upon its execution.

IN WITNESS WHEREOF, ML & Co. has caused this Guarantee to be executed in its corporate name by its duly authorized representative.

MERRILL LYNCH & CO., INC.

By: /s/ Patricia Kroplewnicki

Name: Patricia Kroplewnicki

Title: Designated Signatory

Date: December 2, 2004



COVER STATEMENT

CLIENT/COUNTERPARTY RELATIONSHIP

Dear Client/Counterparty:

Merrill Lynch is pleased to provide the attached statement of Generic Risks Associated with Over-the-Counter Derivative Transactions under this Cover Statement that concerns, among other things, the nature of our relationship with you in the context of such transactions. This statement was developed for our new and our ongoing client/counterparties in response to suggestions that OTC derivative dealers consider taking steps to ensure that market participants utilizing OTC derivatives understand their risk exposures and the nature of their relationships with dealers before they enter into OTC derivative transactions.

Merrill Lynch ("we") are providing to you and your organization ("you") the attached statement of Generic Risks Associated with Over-the-Counter Derivative Transactions in order to identify, in general terms, certain of the principal risks associated with individually negotiated over-the-counter ("OTC") derivative transactions. The attached statement does not purport to identify the nature of the specific market or other risks associated with a particular transaction.

Before entering into an OTC derivative transaction, you should ensure that you fully understand the terms of the transaction, relevant risk factors, the nature and extent of your risk of loss and the nature of the contractual relationship into which you are entering. You should also carefully evaluate whether the transaction is appropriate for you in light of your experience, objectives, financial resources, and other relevant circumstances and whether you have the operational resources in place to monitor the associated risks and contractual obligations over the term of the transaction. If you are acting as a financial adviser or agent, you should evaluate these considerations in light of the circumstances applicable to your principal and the scope of your authority.

If you believe you need assistance in evaluating and understanding the terms or risks of a particular OTC derivative transaction, you should consult appropriate advisers before entering into the transaction.

Unless we have expressly agreed in writing to act as your adviser with respect to a particular OTC derivative transaction pursuant to terms and conditions specifying the nature and scope of our advisory relationship, we are acting in the capacity of an arm's length contractual Counterparty to you in connection with the transaction and not as your financial adviser or fiduciary. Accordingly, unless we have so agreed to act as your adviser, you should not regard transaction proposals, suggestions or other written or oral communications from us as recommendations or advice or as expressing our view as to whether a particular transaction is appropriate for you or meets your financial objectives.

Finally, we and/or our affiliates may from time to time take proprietary positions and/or make a market in instruments identical or economically related to OTC derivative transactions entered into with you, or may have an investment banking or other commercial relationship with and access to information from the issuer(s) of securities, financial instruments, or other interests underlying OTC derivative transactions entered into with you. We may also undertake proprietary activities, including hedging transactions related to the initiation or termination of an OTC derivative transaction with you, that may adversely affect the market price, rate index or other market factor(s) underlying an OTC derivative transaction entered into with you and consequently the value of the transaction.

A. GENERIC RISKS ASSOCIATED WITH OVER-THE-COUNTER DERIVATIVE TRANSACTIONS

OTC derivative transactions, like other financial transactions, involve a variety of significant risks. The specific risks presented by a particular OTC derivative transaction necessarily depend upon the terms of the transaction and your circumstances. In general, however, all OTC derivative transactions involve some combination of market risk, credit risk, funding risk and operational risk.

Market risk is the risk that the value of a transaction will be adversely affected by fluctuations in the level or volatility of or correlation or relationship between one or more market prices, rates or indices or other market factors or by illiquidity in the market for the relevant transaction or in a related market.

Credit risk is the risk that a Counterparty will fail to perform its obligations to you when due.

Funding risk is the risk that, as a result of mismatches or delays in the timing of cash flows due from or to your counterparties in OTC derivative transactions or related hedging, trading, collateral or other transactions, you or your Counterparty will not have adequate cash available to fund current obligations.

Operational risk is the risk of loss to you arising from inadequacies in or failures of your internal systems and controls for monitoring and quantifying the risks and contractual obligations associated with OTC derivative transactions, for recording and valuing OTC derivative and related transactions, or for detecting human error, systems failure or management failure.

There may be other significant risks that you should consider based on the terms of a specific transaction. Highly customized OTC derivative transactions in particular may increase liquidity risk and introduce other significant risk factors of a complex character. Highly leveraged transactions may experience substantial gains or losses in value as a result of relatively small changes in the value or level of an underlying or related market factor.

Because the price and other terms on which you may enter into or terminate an OTC derivative transaction are individually negotiated, these may not represent the best price or terms available to you from other sources.

In evaluating the risks and contractual obligations associated with a particular OTC derivative transaction, you should also consider that an OTC derivative transaction may be modified or terminated only by mutual consent of the original parties and subject to agreement on individually negotiated terms. Accordingly, it may not be possible for you to modify, terminate or offset your obligations or your exposure to the risks associated with a transaction prior to its Scheduled Reference Date.

Similarly, while market makers and dealers generally quote prices or terms for entering into or terminating OTC derivative transactions and provide indicative or mid-market quotations with respect to outstanding OTC derivative transactions, they are generally not contractually obligated to do so. In addition, it may not be possible to obtain indicative or mid-market quotations for an OTC derivative transaction from a market maker or dealer that is not a Counterparty to the transaction. Consequently, it may also be difficult for you to establish an independent value for an outstanding OTC derivative transaction. You should not regard your Counterparty's provision of a valuation or indicative price at your request as an offer to enter into or terminate the relevant transaction at that value or price, unless the value or price is identified by the Counterparty as firm or binding.

This brief statement does not purport to disclose all of the risks and other material considerations associated with OTC derivative transactions. You should not construe this generic disclosure statement as business, legal, tax or accounting advice or as modifying applicable law. You should consult your own business, legal, tax and accounting advisers with respect to proposed OTC derivative transactions and you should refrain from entering into any OTC derivative transaction unless you have fully understood the terms and risks of NY1 5610383v13 the transaction, including the extent of your potential risk of loss.

Confirmation of OTC Warrant

Date: December 2, 2004

ML Ref:

To: Level 3 Communications, Inc. (“Counterparty”)

Attention:

From: Merrill Lynch International (“ML”)

Merrill Lynch Financial Centre

2 King Edward Street

London EC1A 1HQ

Dear Sir / Madam:

The purpose of this letter agreement (this “**Confirmation**”) is to confirm the terms and conditions of the above-referenced transaction entered into between Counterparty and ML through its agent Merrill Lynch, Pierce, Fenner & Smith Incorporated (“**MLPFS**” or “**Agent**”) on the Trade Date specified below (the “**Transaction**”). This Confirmation constitutes a “Confirmation” as referred to in the Agreement specified below.

The definitions and provisions contained in the 2000 ISDA Definitions (the “**Swap Definitions**”) and the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”) and, together with the Swap Definitions, the “**Definitions**”), in each case as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between the Swap Definitions and the Equity Definitions, the Equity Definitions will govern, and in the event of any inconsistency between the Definitions and this Confirmation, this Confirmation will govern. References herein to a “Transaction” shall be deemed to be references to a “Share Option Transaction” for purposes of the Equity Definitions and a “Swap Transaction” for the purposes of the Swap Definitions.

This Confirmation evidences a complete binding agreement between you and us as to the terms of the Transaction to which this Confirmation relates. This Confirmation (notwithstanding anything to the contrary herein), shall be subject to an agreement in the 1992 form of the ISDA Master Agreement (Multicurrency Cross Border) (the “**Master Agreement**” or “**Agreement**”) as if we had executed an agreement in such form (but without any Schedule and with elections specified in the “ISDA Master Agreement” Section of this Confirmation) on the Trade Date of the first such Transaction between us. In the event of any inconsistency between the provisions of that agreement and this Confirmation, this Confirmation will prevail for the purpose of this Transaction.

The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date: November 17, 2004

Effective Date: The date that the Reference Notes are originally issued under the Note Indenture.

Seller:	Counterparty
Buyer:	ML
Shares:	The shares of common stock, par value of \$0.01, of Counterparty (Security Symbol: “ LVL T”) or such other securities or property into which the Reference Notes are convertible on the date of determination
Payment Amount Premium:	\$63.68 mm to be paid on the Effective Date
Exchange:	As provided in the Note Indenture Provisions in the definition of “Closing Sale Price”
Related Exchange(s):	All Exchanges
Knock-in Event:	Not Applicable
Knock-out Event:	Not Applicable
Reference Notes:	5.25% Convertible Notes due 2011 having \$345 million principal amount
Note Indenture:	The Indenture, dated as of closing of the issuance of the Reference Notes, between Counterparty and The Bank of New York, as trustee relating to the Reference Notes, as the same may be amended, modified or supplemented, subject to the “Additional Termination Events” provisions of this Confirmation
Note Indenture Provisions	The relevant provisions of the Note Indenture, without giving effect to any termination or suspension of all or any part of the Note Indenture
Option Expiration Date:	In the case of Net Share Settlement or Net Cash Settlement, the Valuation Date; in the case of Physical Settlement, the final Physical Valuation Day specified by ML in the Physical Settlement Reply Notice.
Reference Date:	December 15, 2008
Termination Date:	The final Settlement Date
<u>Valuation:</u>	
Valuation Date(s):	In the case of Net Share Settlement or Net Cash Settlement, the last Averaging Date; in the case of Physical Settlement, each Physical Valuation Day specified by ML in the Physical Settlement Reply Notice.
Averaging Dates:	In the case of Net Share Settlement or Net Cash Settlement, the 15 consecutive Full Exchange Business Days beginning on the Averaging Period Start Date
Full Exchange Business Day:	A “Trading Day”, as defined in the Note Indenture Provisions
Averaging Date Disruption:	Modified Postponement
Averaging Period Start Date:	The Reference Date

Settlement Terms:

Settlement:	Net Share Settlement, Physical Settlement or Net Cash Settlement, at Counterparty's option
Settlement Price:	In the case of Net Share Settlement or Net Cash Settlement, the arithmetic mean of the Applicable Stock Price (as such term is defined in the Note Indenture Provisions) on each Averaging Date; in the case of Physical Settlement, in respect of each Physical Valuation Day, the Applicable Stock Price on such Physical Valuation Day.
Settlement Date(s):	In the case of Net Share Settlement and Net Cash Settlement, the third (3rd) Full Exchange Business Day following the Valuation Date. In the case of Physical Settlement, the Physical Settlement Date(s) specified by ML in the Physical Settlement Reply Notice; provided, however, that in the event a Physical Valuation Day is a Disrupted Date, the Calculation Agent shall make such changes to the number and dates of the Physical Settlement Dates as the Calculation Agent deems appropriate.
Settlement Notice:	No later than the fifth Business Day preceding the Reference Date, Counterparty shall provide ML with notice of whether Net Cash Settlement, Net Share Settlement or Physical Settlement will apply with respect to the Settlement.
Physical Settlement Reply Notice:	In the event that the Settlement Notice specifies Physical Settlement, ML shall, in a notice to Counterparty no later than the later of (i) three Full Exchange Business Days following receipt by ML of the Settlement Notice and (ii) two Full Exchange Business Days preceding the Reference Date, specify (a) the number of Physical Valuation Days (as defined below), which number shall be greater than or equal to 15 and less than or equal to 30 (the " <u>Number of Physical Valuation Days</u> "), and (b) one or more Full Exchange Business Days as dates for consummating the Physical Settlement (the " <u>Physical Settlement Dates</u> "), the last of such Physical Settlement Dates which (or if one, such date) shall be the third (3rd) Full Exchange Business Day following the Final Physical Valuation Day (as defined below). " <u>Physical Valuation Days</u> " shall mean the sequential Full Exchange Business Days (commencing on the Reference Date) on which Settlement Prices will be determined. The " <u>Final Physical Valuation Day</u> " shall mean the final Physical Valuation Day.
Net Share Settlement:	On the Settlement Date, if Net Share Settlement applies, Counterparty shall deliver to ML, through the Agent, a number of Shares equal to the Final Settlement Amount.
Final Settlement Amount:	The number of Shares, rounded up to the nearest whole Share, determined by the Calculation Agent to be equal to the quotient of (x) the Net Settlement Amount divided by (y) the Settlement Price
Physical Settlement	On each Settlement Date, if Physical Settlement applies, with respect to each Open Physical Valuation Day (as defined below) on which (i) the Settlement Price was greater than the Adjusted Strike Price or (ii) (A) the Settlement Price was less than or equal to the Adjusted Strike Price and (B) ML, in its sole discretion, elects to have Settlement effected with respect to such Open Physical Valuation Day (each of (i) and (ii), a " <u>Strike Day</u> "), Counterparty shall deliver to ML, through the Agent, a number of Shares equal to the Adjusted Daily Share Number (as defined below) against payment by ML of an amount in cash equal to the Adjusted Strike Price multiplied by the Adjusted Daily Share Number. The aggregate number of Shares to be delivered by Counterparty to ML on such

Settlement Date, therefore, shall be the product of the number of Strike Days and the Adjusted Daily Share Number, and the aggregate amount in cash payable by ML on such Settlement Date shall be the product of the number of Strike Days and the cash amount specified in the previous sentence. “**Open Physical Valuation Day**” means, with respect to any Physical Settlement Date, each Physical Valuation Day that had occurred and not yet settled, up to and including the third (3rd) Full Exchange Business Day immediately preceding such Physical Settlement Date. The “**Adjusted Daily Share Number**” means the quotient of the Adjusted Share Number divided by the Number of Physical Valuation Days.

Disruption:	If a Physical Valuation Day is a Disrupted Date, the Number of Physical Valuation Days shall remain the same and the Valuation Date in respect of such Disrupted Date shall be the next Full Exchange Business Day that is not a Disrupted Date and which is not already a Physical Valuation Day (i.e., the first succeeding “Valid Date” if such Disrupted Date were an “Averaging Date” and “Modified Postponement” applied).
Net Cash Settlement	On the Settlement Date, if Net Cash Settlement applies, Counterparty shall deliver to ML an amount in cash equal to the Net Settlement Amount.
Net Settlement Amount:	The product of (x) the Adjusted Share Number multiplied by (y) the Final Price Differential
Final Price Differential:	An amount equal to the greater of (x) the excess of the Settlement Price over the Adjusted Strike Price and (y) zero
Adjusted Strike Price:	\$6.00, as adjusted by the Calculation Agent
Adjusted Share Number:	86,596,380 Shares, as adjusted by the Calculation Agent

Extraordinary Events:

Consequences for Merger Events:

Share-for-Share:	Cancellation and Payment
Agreed Model:	Applicable
Interest Rate:	USD-LIBOR-BBA
Share-for-Other:	Cancellation and Payment
Agreed Model:	Applicable
Interest Rate:	USD-LIBOR-BBA
Share-for-Combined:	Cancellation and Payment
Agreed Model:	Applicable
Interest Rate:	USD-LIBOR-BBA
Tender Offer:	Cancellation and Payment
Agreed Model:	Applicable
Interest Rate:	USD-LIBOR-BBA
Nationalization, Insolvency or Delisting:	Not Applicable

Additional Disruption Events:

Change in Law:	Not Applicable
Failure to Deliver:	Applicable. If there is an “illiquidity on the market” on a day that would have been a Settlement Date, then such Settlement Date shall be the first succeeding Exchange Business Day on which there is no “illiquidity on the market,” but in no such event shall such Settlement Date be later than the date that is twenty (20) Exchange Business Days immediately following what would have been that Settlement Date but for such “illiquidity on the market.”
Insolvency Filing:	Applicable
Hedging Disruption Event:	Not Applicable
Increased Cost of Hedging:	Not Applicable
Hedging Party:	ML
Loss of Stock Borrow:	Not Applicable
Increased Cost of Stock Borrow:	Not Applicable
Determining Party:	ML
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

Method of Adjustment:

The Calculation Agent will make such adjustments to the Adjusted Strike Price, Adjusted Share Number and any other payment, variable or other term of this Transaction as it deems necessary or appropriate, based on the Note Indenture Provisions.

Registration Rights

Prior to the earlier of (i) the first date on which Shares are delivered to ML hereunder and (ii) the first Physical Valuation Day or the Averaging Period Start Date, as the case may be, Counterparty shall make available to ML an effective registration statement (the “**Resale Registration Statement**”) filed pursuant to Rule 415 under the Securities Act of 1933, as amended, and such prospectuses as ML may reasonably request to comply with the applicable prospectus delivery requirements for the resale by ML or short sales in anticipation of the delivery of such number of Shares as ML shall reasonably specify.

Counterparty shall enter into an agreement (the “**Resale Registration Rights Agreement**”) in the form of Exhibit B to this Confirmation providing for such covenants, conditions, representations and warranties, indemnities and contribution rights in connection, and the delivery of officers’ certificates, legal opinions and a comfort letter from the independent auditors of the Counterparty as set forth in the Resale Registration Rights Agreement.

As specified in the Resale Registration Rights Agreement, Counterparty shall provide ML or an affiliate of ML or other entities acting as underwriters in the sale of Shares subject to the Resale Registration Statement with access to

such information and employees or officers of Counterparty as is customary to allow a reasonable investigation with respect to the offering under the Resale Registration Statement anticipated by the Resale Registration Rights Agreement.

Counterparty shall only register Shares in an amount not exceeding 10% of the aggregate market value of Counterparty's outstanding voting stock held by non-affiliates of Counterparty (calculated as of a date within 60 days prior to the date of filing), unless Counterparty furnishes to ML a written opinion of a nationally recognized law firm that such sales do not violate Rule 415(a)(4) or its successor under the Securities Act of 1933 or any other applicable securities law, rule or regulation.

If (i) Counterparty is unable to provide for the sale of the Shares under the Registration Statement as provided in the Resale Registration Rights Agreement or (ii) if some Shares cannot be registered under the Registration Statement due to Rule 415(a)(4) under the Securities Act, Counterparty may deliver unregistered Shares, the value of which shall be discounted to reflect market value, for purposes of calculating the Delivered Shares. Any excess shares delivered shall be subject to a maximum of 150 million Shares. In no event shall Counterparty be required to top-up the delivery in cash.

Additional Agreements, Representations and Covenants of Counterparty, Etc.:

1. Counterparty hereby represents and warrants to ML, on each day from the Trade Date to and including the date by which ML is able to initially complete a hedge of its position created by this Transaction (within three Full Exchange Business Days of the date hereof, unless otherwise notified by ML), that:
 - a. it will not, and will not permit any person or entity subject to its control to, bid for or purchase Shares during such period except as disclosed in the Offering Memorandum relating to the Reference Notes and except as provided for in the Purchase Agreement among the Counterparty and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("**MLPFS**"), Morgan Stanley & Co. Incorporated, Citigroup Global Markets Inc., Credit Suisse First Boston LLC, Needham & Company, Inc. and UBS Securities LLC as Initial Purchasers, dated as of November 17, 2004 (the "**Purchase Agreement**") relating to the purchase of the Reference Notes; and
 - b. Counterparty has publicly disclosed all material information necessary for Counterparty to be able to purchase or sell Shares in compliance with applicable federal securities laws and that it has publicly disclosed all material information with respect to its condition (financial or otherwise).
2. The parties hereby agree that all documentation with respect to this Transaction is intended to qualify this Transaction as an equity instrument for purposes of EITF 00-19. If Counterparty would be obligated to pay cash to ML pursuant to the terms of this Agreement for any reason without having had the right (other than pursuant to this paragraph (2)) to elect to deliver Shares in satisfaction of such payment obligation, then Counterparty may elect that Counterparty deliver to ML a number of Shares having a cash value equal to the amount of such payment obligation (such number of Shares to be delivered to be determined by the Calculation Agent acting in a commercially reasonable manner to determine the number of Shares that could be purchased over a reasonable period of time with the cash equivalent of such payment obligation). Settlement relating to any delivery of Shares pursuant to this paragraph (2) shall occur within a reasonable period of time.

Additional Termination Events:

The occurrence of any of the following shall be an Additional Termination Event (which shall give ML the right but not the obligation to designate an Early Termination Date under the Agreement) with respect to Counterparty (which shall be the sole Affected Party and this Transaction shall be the sole Affected Transaction):

1. an Amendment Event occurs (in which case the entirety of this Transaction shall be subject to termination); or

2. the transactions contemplated by the Purchase Agreement shall fail to close as a result of any breach by the Counterparty or any Initial Purchaser of their respective obligations thereunder or as a result of any action, or failure to act, by the Counterparty or any Initial Purchaser thereunder or as a result of a failure or any condition thereunder, in which case the entirety of this Transaction shall terminate automatically.

If the transactions contemplated by the Purchase Agreement shall fail to close for any reason other than a breach of the Purchase Agreement by MLPFS, then the entirety of this Transaction shall terminate automatically and all payments previously made hereunder, including the Payment Amount Premium, shall be promptly returned to the person making such payment; provided that in such case, Counterparty hereby indemnifies the Indemnified Parties from and against (a) any and all losses, claims, damages and liabilities, joint and several, which such Indemnified Party may incur or to which such Indemnified Party may become subject as a result of the termination of this Transaction and (b) except in the case of the exercise by MLPFS of its “market out” termination rights pursuant to Section 10 of the Purchase Agreement, the reasonable fees and expenses of counsel for MLPFS incurred in connection with this Transaction (the “Closeout Losses”), including, without limitation, any losses incurred by an Indemnified Party in connection with the initiating or unwinding of any hedging transactions related to this Transaction. If the transactions contemplated by the Purchase Agreement shall fail to close because of a breach of the Purchase Agreement by MLPFS, then the entirety of this Transaction shall terminate automatically, and all payments previously made hereunder, including the Payment Amount Premium, shall be promptly returned to the person making such payment.

As used in this Section Additional Termination Events:

“**Amendment Event**” means that the Counterparty amends, modifies, supplements or waives, without the prior written consent of ML (which consent shall not be unreasonably withheld), any term of the Note Indenture or the Reference Notes relating to the principal amount, coupon, maturity, repurchase obligation of the Counterparty, redemption right of the Counterparty, any term relating to conversion of the Notes (including changes to the conversion price, conversion settlement dates or conversion conditions), or any other term that would require consent of the holders of not less than 100% of the principal amount of the Reference Notes to amend.

Staggered Settlement:

If ML determines reasonably and in good faith that the number of Shares required to be delivered by Counterparty hereunder on a Settlement Date would exceed 4.5% of all outstanding Shares, then ML may, by notice to Counterparty on or prior to such Settlement Date (a “**Nominal Settlement Date**”), elect to receive the Shares comprising the Final Settlement Amount related to such Settlement Date on two or more dates (each, a “**Staggered Settlement Date**”) as follows:

1. in such notice, ML will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20th) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will receive on each Staggered Settlement Date;
2. the aggregate number of Shares that ML will receive from Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that ML would otherwise be entitled to receive on such Nominal Settlement Date; and
3. Settlement terms on each Staggered Settlement Date shall be adjusted as appropriate by the Calculation Agent to conform to the number of Shares to be delivered on each Staggered Settlement Date, as specified by ML in the notice referred to in clause (1) above.

Within 30 days of the Reference Date or any Settlement Date, Counterparty shall use its reasonable efforts to refrain from activities which could reasonably be expected to result in ML’s ownership of Shares exceeding 10% of all issued and outstanding Shares.

**Compliance with Securities
Laws:**

Each party represents and agrees that it has complied, and will comply, in connection with this Transaction and all contemporaneous sales and purchases of Shares related to this Transaction, with the applicable provisions of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and the rules and regulations each thereunder, including, without limitation, Rules 10b-5 and Regulation M under the Exchange Act; provided that each party shall be entitled to rely conclusively on any information communicated by the other party concerning such other party’s market activities; and provided further that Counterparty shall have no liability as a result of a breach of this representation due to ML’s gross negligence or willful misconduct.

Each party further represents that if such party (“X”) purchases any Shares from the other party pursuant to this Transaction, such purchase(s) will comply in all material respects with (i) all laws and regulations applicable to X and (ii) all contractual obligations of X.

Counterparty (and ML in the case of paragraphs (c) and (d) below) represents that as of the date hereof:

(a) each of its filings under the Exchange Act that are required to be filed by Counterparty on or prior to the date hereof have been filed, and that, as of the respective dates thereof, there is no misstatement of material fact contained therein or omission of a material fact required to be stated therein or necessary to make the statements therein in light of the circumstances in which they were made not misleading;

(b) [RESERVED];

(c) Neither ML nor Counterparty, as the case may be, is entering into this Agreement to facilitate a distribution of the Shares or in connection with a future issuance of securities; and

(d) Neither ML nor Counterparty, as the case may be, is entering into this Agreement to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to manipulate the price of the Shares (or any security convertible into or exchangeable for Shares).

Account Details:

Account for payments to Counterparty:	US Bank, NA 950 17 th Street Denver, CO 80202 Account Holder: Level 3 Communications, L.L.C. Account No. 103657927002 ABA #: 102 000 021 Swift Code (Int’l transfers): USBKUS44IMT
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Account for payment to ML:	Not Applicable
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Bankruptcy Rights:

ML acknowledges that, in the event of Counterparty’s bankruptcy, ML’s rights in connections with this Transaction shall not exceed those rights held by common shareholders. For the avoidance of doubt, the parties acknowledge and agree that ML’s

rights with respect to any other claim arising from this Transaction prior to Counterparty's bankruptcy shall remain in full force and effect and shall not be otherwise abridged or modified in connection herewith.

Collateral:

None.

Transfer:

Neither party may transfer its rights or obligations under this Transaction except in accordance with Section 7 of the Agreement; provided however that ML may assign its rights and delegate its obligations hereunder, in whole or in part, to any affiliate (an "**Assignee**") of Merrill Lynch & Co., Inc. ("**ML&Co.**"), effective (the "**Transfer Effective Date**") upon delivery to Counterparty of (a) an executed acceptance and assumption by the Assignee (an "**Assumption**") of the transferred obligations of ML under this Transaction (the "**Transferred Obligations**"); and (b) an executed guarantee (the "**Guarantee**") of ML&Co. of the Transferred Obligations, substantially in the form of Exhibit A hereto; provided that no transfer shall be made where (a) such transfer would result in a violation of applicable securities laws, or (b) Counterparty will be required to pay to the Assignee an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii), or 6(e)) that it would otherwise not make in the absence of such transfer; or (c) after Counterparty complies with its obligations, if any, under Section 4(a)(iii), Counterparty will receive a payment from which an amount has been withheld or deducted, on account of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii), or 6(e)), in excess of that which ML would have been required to so withhold or deduct in the absence of such transfer; provided further, however, that a transfer may (notwithstanding the foregoing) be made in the event that a transfer is made where one party must withhold an amount of a Tax, and it is not a Tax Event specified in Section 5(b)(ii), and ML agrees to receive a payment from which an amount has been withheld or deducted in accordance with Section 5(b) or ML agrees to make any additional payment amount in accordance with Section 5(b), as the case may be. On the Transfer Effective Date, (a) ML shall be released from all obligations and liabilities arising under the Transferred Obligations; and (b) the Transferred Obligations shall cease to be a Transaction(s) under the Agreement and shall be deemed to be a Transaction(s) under the ISDA Master Agreement between Assignee and Counterparty, provided that, if at such time Assignee and Counterparty have not entered into a ISDA Master Agreement, Assignee and Counterparty shall be deemed to have entered into an ISDA form of Master Agreement (Multicurrency-Cross Border) without any Schedule attached thereto.

Regulation:

ML is regulated by The Securities and Futures Authority Limited and has entered into this Transaction as principal.

Indemnity:

Counterparty agrees to indemnify ML and its Affiliates and their respective directors, officers, agents and controlling parties (ML and each such person being an "**Indemnified Party**") from and against any and all losses, claims, damages and liabilities, joint and several, to which such Indemnified Party may become subject because of the untruth of any representation by Counterparty or a breach by Counterparty of any agreement or covenant hereunder or in the Agreement and will reimburse any Indemnified Party for all reasonable expenses (including reasonable legal fees and expenses) as they are incurred in connection with the investigation of, preparation for, or defense of, any pending or threatened claim or any action or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto.

ISDA Master Agreement

With respect to the Agreement, ML and Counterparty each agree as follows:

Specified Entities:

(i) in relation to ML, for the purposes of:

<u>Section 5(a)(v) :</u>	not applicable
<u>Section 5(a)(vi) :</u>	not applicable
<u>Section 5(a)(vii) :</u>	not applicable
<u>Section 5(b)(iv) :</u>	not applicable

and (ii) in relation to Counterparty, for the purposes of:

<u>Section 5(a)(v) :</u>	not applicable
<u>Section 5(a)(vi) :</u>	not applicable
<u>Section 5(a)(vii) :</u>	not applicable
<u>Section 5(b)(iv) :</u>	not applicable

“ **Specified Transaction** ” will have the meaning specified in Section 14 of the Agreement.

The “ **Credit Event Upon Merger** ” provisions of Section 5(b)(iv) of the Agreement will not apply to ML and Counterparty.

The “ **Automatic Early Termination** ” provision of Section 6(a) of the Agreement will not apply to ML or to Counterparty.

Payments on Early Termination for the purpose of Section 6(e) of the Agreement: (i) Market Quotation shall apply; and (ii) the Second Method shall apply.

“ **Termination Currency** ” means USD.

Tax Representations:

- (I) For the purpose of Section 3(e) of the Agreement, each party represents to the other party that it is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii), or 6(e) of the Agreement) to be made by it to the other party under the Agreement. In making this representation, each party may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of the Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of the Agreement, and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of the Agreement, and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of the Agreement; provided that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) of the Agreement by reason of material prejudice to its legal or commercial position.
- (II) For the purpose of Section 3(f) of the Agreement, each party makes the following representations to the other party:
 - (i) ML represents that it is a corporation organized under the laws of England and Wales.
 - (ii) Counterparty represents that it is a corporation incorporated under the laws of the State of Delaware.

Delivery Requirements : For the purpose of Sections 3(d), 4(a)(i) and (ii) of the Agreement, each party agrees to deliver the following documents:

Tax forms, documents or certificates to be delivered are:

Each party agrees to complete (accurately and in a manner reasonably satisfactory to the other party), execute, and deliver to the other party, United States Internal Revenue Service Form W-9 or W-8 BEN, or any successor of such form(s): (i) before the first payment date under this agreement; (ii) promptly upon reasonable demand by the other party; and (iii) promptly upon learning that any such form(s) previously provided by the other party has become obsolete or incorrect.

Other documents to be delivered:

Party Required to Deliver Document	Document Required to be Delivered	When Required	Covered by Section 3(d) Representation
Counterparty	Evidence of the authority and true signatures of each official or representative signing this Confirmation	Upon or before execution and delivery of this Confirmation	Yes
Counterparty	Certified copy of the resolution of the Board of Directors or equivalent document authorizing the execution and delivery of this Confirmation	Upon or before execution and delivery of this Confirmation	Yes
ML	Guarantee of its Credit Support Provider, substantially in the form of Exhibit A attached hereto, together with evidence of the authority and true signatures of the signatories, if applicable	Upon or before execution and delivery of this Confirmation	Yes

Additional Notice Requirements: The Counterparty hereby agrees to promptly deliver to ML a copy of all notices and other communications required or permitted to be given to the holders of any Reference Notes pursuant to the terms of the Note Indenture on the dates so required or permitted in the Note Indenture and all other notices given and other communications made by Counterparty in respect of the Referenced Notes to holders of any Referenced Notes. The Counterparty further covenants to ML that it shall promptly notify ML of each Amendment Event (including in such notice a detailed description of any such amendment). The Counterparty shall deliver each Conversion Notice to ML within two Business Days following the occurrence of the related Conversion Event and in any event no later than one Business Day following Counterparty's receipt of notice of such Conversion Event from the Trustee under the Note Indenture. The Counterparty hereby acknowledges and agrees that its obligations under this Section shall continue as obligations of the Counterparty notwithstanding any transfer by it of any of its rights or obligations to any other person or entity in accordance with the Section titled Staggered Settlement above.

Addresses for Notices: For the purpose of Section 12(a) of the Agreement:

Address for notices or communications to ML:

Address: Merrill Lynch International
Merrill Lynch Financial Centre
2 King Edward Street, London EC1A 1HQ
Attention: Manager, Fixed Income Settlements
Facsimile No.: 44 207 995 2004 Telephone No.: 44 207 995 3769

(For all purposes)

Additionally, a copy of all notices pursuant to Sections 5, 6, and 7 as well as any changes to Counterparty's address, telephone number or facsimile number should be sent to:

GMI Counsel
Merrill Lynch World Headquarters
4 World Financial Center
New York, New York 10080
Attention: Global Equity Derivatives
Facsimile No.: 212 449-6576 Telephone No.: 212 449-6309

Address for notices or communications to Counterparty for all purposes:

Address: Level 3 Communications, Inc.
1025 Eldorado Boulevard
Broomfield, Colorado 80021
Attention: General Counsel
Facsimile No.: 720-888-5127 Telephone No.: 720-888-1000

Process Agent: For the purpose of Section 13(c) of the Agreement, ML appoints as its process agent:

Merrill Lynch, Pierce, Fenner & Smith Incorporated
222 Broadway, 16th Floor
New York, NY 10038
Attention: Litigation Department

[Counterparty does not appoint a Process Agent.]

Multibranch Party . For the purpose of Section 10(c) of the Agreement: Neither ML nor Counterparty is a Multibranch Party.

Calculation Agent . The Calculation Agent is ML; provided that if ML is the Defaulting Party Counterparty shall be entitled to appoint as the new Calculation Agent a Reference Market-maker that is acceptable to ML. The Calculation Agent's judgments, determinations and calculations in this Transaction and any related hedging transaction between the parties shall be made in good faith and in a commercially reasonable manner.

Credit Support Document.

ML: Guarantee of ML&Co in the form attached hereto as Exhibit A.

Counterparty: Not Applicable

Credit Support Provider.

With respect to ML: Merrill Lynch and Co. and with respect to Counterparty, Not Applicable.

Governing Law . This Confirmation will be governed by, and construed in accordance with, the substantive laws of the State of New York.

Netting of Payments . The provisions of Section 2(c) of the Agreement shall not be applicable to this Transaction; provided, however, that with respect to this Agreement or any other ISDA Master Agreement between the parties, any Share delivery obligations on any day of Counterparty, on the one hand, and ML, on the other hand, shall be netted. The resulting Share delivery obligation of a party upon such netting shall be rounded up to the nearest number of whole Shares, such that neither party shall be required to deliver any fractional Shares.

Accuracy of Specified Information . Section 3(d) of the Agreement is hereby amended by adding in the third line thereof after the word “respect” and before the period the words “or, in the case of audited or unaudited financial statements or balance sheets, a fair presentation of the financial condition of the relevant person.”

Basic Representations . Section 3(a) of the Agreement is hereby amended by the deletion of “and” at the end of Section 3(a)(iv); the substitution of a semicolon for the period at the end of Section 3(a)(v) and the addition of Sections 3(a)(vi), as follows:

Eligible Contract Participant; Line of Business . It is an “eligible contract participant” as defined in the Commodity Futures Modernization Act of 2000 and it has entered into this Confirmation and this Transaction in connection with its business or a line of business (including financial intermediation), or the financing of its business.

Amendment of Section 3(a)(iii) . Section 3(a)(iii) of the Agreement is modified to read as follows:

No Violation or Conflict . Such execution, delivery and performance do not materially violate or conflict with any law known by it to be applicable to it, any provision of its constitutional documents, any order or judgment of any court or agency of government applicable to it or any of its assets or any material contractual restriction relating to Specified Indebtedness binding on or affecting it or any of its assets.

Amendment of Section 3(a)(iv) . Section 3(a)(iv) of the Agreement is modified by inserting the following at the beginning thereof:

“To such party’s best knowledge,”

Additional Representations:

Counterparty Representations . Counterparty (i) has such knowledge and experience in financial and business affairs as to be capable of evaluating the merits and risks of entering into this Transaction; (ii) has consulted with its own legal, financial, accounting and tax advisors in connection with this Transaction; and (iii) is entering into this Transaction for a bona fide business purpose.

Counterparty is not and has not been the subject of any civil proceeding of a judicial or administrative body of competent jurisdiction that could reasonably be expected to impair materially Counterparty’s ability to perform its obligations hereunder.

Counterparty will by the next succeeding Business Day notify ML upon obtaining knowledge of the occurrence of any event that would constitute an Event of Default, a Potential Event of Default or a Potential Adjustment Event.

As of the date hereof, Counterparty is not insolvent.

Acknowledgments:

(1) The parties acknowledge and agree that there are no other representations, agreements or other undertakings of the parties in relation to this Transaction, except as set forth in this Confirmation.

(2) The parties hereto intend for:

- (a) this Transaction to be a “securities contract” as defined in Section 741(7) of Title 11 of the United States Code (the “**Bankruptcy Code**”), qualifying for the protections under Section 555 of the Bankruptcy Code;
- (b) a party’s right to liquidate this Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a “contractual right” as defined in the Bankruptcy Code;
- (c) any cash, securities or other property provided as performance assurance, credit, support or collateral with respect to this Transaction to constitute “margin payments” as defined in the Bankruptcy Code; and
- (d) all payments for, under or in connection with this Transaction, all payments for the Shares and the transfer of such Shares to constitute “settlement payments” as defined in the Bankruptcy Code.

Amendment of Section 6(d)(ii) . Section 6(d)(ii) of the Agreement is modified by deleting the words “on the day” in the second line thereof and substituting therefor “on the day that is three Local Business Days after the day”. Section 6(d)(ii) is further modified by deleting the words “two Local Business Days” in the fourth line thereof and substituting therefor “three Local Business Days.”

Amendment of Definition of Reference Market-Makers . The definition of “Reference Market-Makers” in Section 14 is hereby amended by adding in clause (a) after the word “credit” and before the word “and” the words “or to enter into transactions similar in nature to Transactions.”

Consent to Recording . Each party consents to the recording of the telephone conversations of trading and marketing personnel of the parties and their Affiliates in connection with this Confirmation. To the extent that one party records telephone conversations (the “Recording Party”) and the other party does not (the Non-Recording Party”), the Recording Party shall in the event of any dispute, make a complete and unedited copy of such party’s tape of the entire day’s conversations with the Non-Recording Party’s personnel available to the Non-Recording Party. The Recording Party’s tapes may be used by either party in any forum in which a dispute is sought to be resolved and the Recording Party will retain tapes for a consistent period of time in accordance with the Recording Party’s policy unless one party notifies the other that a particular transaction is under review and warrants further retention, at the notifying party’s expense.

Disclosure . Each party hereby acknowledges and agrees that ML has authorized Counterparty to disclose this Transaction and any related hedging transaction between the parties if and to the extent that Counterparty reasonably determines (after consultation with ML) that such disclosure is required by law or by the rules of Nasdaq or any securities exchange.

Severability . If any term, provision, covenant or condition of this Confirmation, or the application thereof to any party or circumstance, shall be held to be invalid or unenforceable in whole or in part for any reason, the remaining terms, provisions, covenants, and conditions hereof shall continue in full force and effect as if this Confirmation had been executed with the invalid or unenforceable provision eliminated, so long as this Confirmation as so modified continues to express, without material change, the original intentions of the parties as to the subject matter of this Confirmation and the deletion of such portion of this Confirmation will not substantially impair the respective benefits or expectations of parties to this Agreement; provided, however, that this severability provision shall not be applicable if any provision of Section 2, 5, 6 or 13 of the Agreement (or any definition or provision in Section 14 to the extent that it relates to, or is used in or in connection with any such Section) shall be so held to be invalid or unenforceable.

Affected Parties . For purposes of Section 6(e) of the Agreement, each party shall be deemed to be an Affected Party in connection with Illegality and any Tax Event.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us.

Very truly yours,

MERRILL LYNCH INTERNATIONAL

By: _____

Name:

Title:

Confirmed as of the date first above written:

LEVEL 3 COMMUNICATIONS, INC.

By: /s/ Neil J. Eckstein_____

Name: Neil J. Eckstein

Title: Senior Vice President

Acknowledged and agreed as to matters relating to the Agent:

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
solely in its capacity as Agent hereunder

By: _____

Name:

Title:

GUARANTEE OF MERRILL LYNCH & CO., INC.

FOR VALUE RECEIVED, receipt of which is hereby acknowledged, MERRILL LYNCH & CO., INC., a corporation duly organized and existing under the laws of the State of Delaware ("ML & Co."), hereby unconditionally guarantees to Level 3 Communications, Inc. (the "Company"), the due and punctual payment in full of any and all amounts payable by Merrill Lynch International, a company organized under the laws of England and Wales ("ML"), under the terms of the Confirmation of OTC Warrant between the Company and ML (ML as Buyer), dated as of December 2, 2004 (the "Confirmation"), including, in case of default, interest on any amount due, when and as the same shall become due and payable, whether on the scheduled payment dates, at maturity, upon declaration of termination, designation of an Early Termination Date or otherwise, according to the terms thereof. In case of the failure of ML punctually to make any such payment, ML & Co. hereby agrees to make such payment, or cause such payment to be made, promptly upon demand made by the Company to ML & Co.; provided, however that delay by the Company in giving such demand shall in no event affect ML & Co.'s obligations under this Guarantee. This Guarantee shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any payment guaranteed hereunder, in whole or in part, is rescinded, invalidated or must otherwise be returned by the Company as a result of being declared fraudulent or preferential or upon the insolvency, bankruptcy or reorganization of ML or otherwise, all as though such payment had not been made.

ML & Co. hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Confirmation; the absence of any action to enforce the same; any waiver or consent by the Company concerning any provisions thereof; the rendering of any judgment against ML or any action to enforce the same; change of time, manner or place of payment or any other term of any payment due under the Confirmation; or any other circumstances that might otherwise constitute a legal or equitable discharge of a guarantor or a defense of a guarantor. ML & Co. covenants that this guarantee will not be discharged except by complete payment of the amounts payable under the Confirmation. This Guarantee shall continue to be effective if ML merges or consolidates with or into another entity, loses its separate legal identity or ceases to exist.

ML & Co. hereby waives set-offs; counterclaims; diligence; presentment; protest; notice of protest, acceleration, and dishonor; filing of claims with a court in the event of insolvency or bankruptcy of ML; all demands whatsoever, except as noted in the first paragraph hereof; and any right to require a proceeding first against ML.

ML & Co. hereby certifies and warrants that this Guarantee constitutes the valid obligation of ML & Co. and complies with all applicable laws.

This Guarantee shall be governed by, and construed in accordance with, the laws of the State of New York.

This Guarantee may be terminated at any time by notice by ML & Co. to the Company given in accordance with the notice provisions of the Confirmation, effective upon receipt of such notice by the Company or such later date as may be specified in such notice; provided, however, that this Guarantee shall continue in full force and effect with respect to any obligation of ML under the Confirmation.

This Guarantee becomes effective immediately upon its execution.

IN WITNESS WHEREOF, ML & Co. has caused this Guarantee to be executed in its corporate name by its duly authorized representative.

MERRILL LYNCH & CO., INC.

By: /s/ Patricia Kroplewnicki

Name: Patricia Kroplewnicki

Title: Designated Signatory

Date: December 2, 2004



COVER STATEMENT

CLIENT/COUNTERPARTY RELATIONSHIP

Dear Client/Counterparty:

Merrill Lynch is pleased to provide the attached statement of Generic Risks Associated with Over-the-Counter Derivative Transactions under this Cover Statement that concerns, among other things, the nature of our relationship with you in the context of such transactions. This statement was developed for our new and our ongoing client/counterparties in response to suggestions that OTC derivative dealers consider taking steps to ensure that market participants utilizing OTC derivatives understand their risk exposures and the nature of their relationships with dealers before they enter into OTC derivative transactions.

Merrill Lynch ("we") are providing to you and your organization ("you") the attached statement of Generic Risks Associated with Over-the-Counter Derivative Transactions in order to identify, in general terms, certain of the principal risks associated with individually negotiated over-the-counter ("OTC") derivative transactions. The attached statement does not purport to identify the nature of the specific market or other risks associated with a particular transaction.

Before entering into an OTC derivative transaction, you should ensure that you fully understand the terms of the transaction, relevant risk factors, the nature and extent of your risk of loss and the nature of the contractual relationship into which you are entering. You should also carefully evaluate whether the transaction is appropriate for you in light of your experience, objectives, financial resources, and other relevant circumstances and whether you have the operational resources in place to monitor the associated risks and contractual obligations over the term of the transaction. If you are acting as a financial adviser or agent, you should evaluate these considerations in light of the circumstances applicable to your principal and the scope of your authority.

If you believe you need assistance in evaluating and understanding the terms or risks of a particular OTC derivative transaction, you should consult appropriate advisers before entering into the transaction.

Unless we have expressly agreed in writing to act as your adviser with respect to a particular OTC derivative transaction pursuant to terms and conditions specifying the nature and scope of our advisory relationship, we are acting in the capacity of an arm's length contractual Counterparty to you in connection with the transaction and not as your financial adviser or fiduciary. Accordingly, unless we have so agreed to act as your adviser, you should not regard transaction proposals, suggestions or other written or oral communications from us as recommendations or advice or as expressing our view as to whether a particular transaction is appropriate for you or meets your financial objectives.

Finally, we and/or our affiliates may from time to time take proprietary positions and/or make a market in instruments identical or economically related to OTC derivative transactions entered into with you, or may have an investment banking or other commercial relationship with and access to information from the issuer(s) of securities, financial instruments, or other interests underlying OTC derivative transactions entered into with you. We may also undertake proprietary activities, including hedging transactions related to the initiation or termination of an OTC derivative transaction with you, that may adversely affect the market price, rate index or other market factor(s) underlying an OTC derivative transaction entered into with you and consequently the value of the transaction.

A. GENERIC RISKS ASSOCIATED WITH OVER-THE-COUNTER DERIVATIVE TRANSACTIONS

OTC derivative transactions, like other financial transactions, involve a variety of significant risks. The specific risks presented by a particular OTC derivative transaction necessarily depend upon the terms of the transaction and your circumstances. In general, however, all OTC derivative transactions involve some combination of market risk, credit risk, funding risk and operational risk.

Market risk is the risk that the value of a transaction will be adversely affected by fluctuations in the level or volatility of or correlation or relationship between one or more market prices, rates or indices or other market factors or by illiquidity in the market for the relevant transaction or in a related market.

Credit risk is the risk that a Counterparty will fail to perform its obligations to you when due.

Funding risk is the risk that, as a result of mismatches or delays in the timing of cash flows due from or to your counterparties in OTC derivative transactions or related hedging, trading, collateral or other transactions, you or your Counterparty will not have adequate cash available to fund current obligations.

Operational risk is the risk of loss to you arising from inadequacies in or failures of your internal systems and controls for monitoring and quantifying the risks and contractual obligations associated with OTC derivative transactions, for recording and valuing OTC derivative and related transactions, or for detecting human error, systems failure or management failure.

There may be other significant risks that you should consider based on the terms of a specific transaction. Highly customized OTC derivative transactions in particular may increase liquidity risk and introduce other significant risk factors of a complex character. Highly leveraged transactions may experience substantial gains or losses in value as a result of relatively small changes in the value or level of an underlying or related market factor.

Because the price and other terms on which you may enter into or terminate an OTC derivative transaction are individually negotiated, these may not represent the best price or terms available to you from other sources.

In evaluating the risks and contractual obligations associated with a particular OTC derivative transaction, you should also consider that an OTC derivative transaction may be modified or terminated only by mutual consent of the original parties and subject to agreement on individually negotiated terms. Accordingly, it may not be possible for you to modify, terminate or offset your obligations or your exposure to the risks associated with a transaction prior to its Scheduled Reference Date.

Similarly, while market makers and dealers generally quote prices or terms for entering into or terminating OTC derivative transactions and provide indicative or mid-market quotations with respect to outstanding OTC derivative transactions, they are generally not contractually obligated to do so. In addition, it may not be possible to obtain indicative or mid-market quotations for an OTC derivative transaction from a market maker or dealer that is not a Counterparty to the transaction. Consequently, it may also be difficult for you to establish an independent value for an outstanding OTC derivative transaction. You should not regard your Counterparty's provision of a valuation or indicative price at your request as an offer to enter into or terminate the relevant transaction at that value or price, unless the value or price is identified by the Counterparty as firm or binding.

This brief statement does not purport to disclose all of the risks and other material considerations associated with OTC derivative transactions. You should not construe this generic disclosure statement as business, legal, tax or accounting advice or as modifying applicable law. You should consult your own business, legal, tax and accounting advisers with respect to proposed OTC derivative transactions and you should refrain from entering into any OTC derivative transaction unless you have fully understood the terms and risks of the transaction, including the extent of your potential risk of loss.

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "Agreement") is made and entered into as of December 2, 2004, by and between LEVEL 3 COMMUNICATIONS, INC., a Delaware corporation (the "Company"), and MERRILL LYNCH INTERNATIONAL (the "Holder").

This Agreement is made in connection with the Confirmation, dated December 2, 2004 (the "Confirmation") of the OTC Warrant Transaction (the "Transaction"), between the Company and the Holder. In order to induce the Holder to enter into the Confirmation, the Company has agreed to provide the registration rights set forth in this Agreement.

The Company agrees with the Holder, for its benefit as a purchaser of the Common Stock as follows:

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

"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.

"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.

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

"Common Stock" means common stock, \$0.01 par value, of the Company and any securities of the Company or any successor which may be issued on or after the date of the Confirmation in respect of, or in exchange for, shares of Common Stock pursuant to a merger, consolidation, stock split, stock dividend, recapitalization of the Company or similar event.

"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.

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

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

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

“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 (in each case, other than the Holder and its Affiliates).

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

“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 415 promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, including post-effective amendments, and all materials incorporated by reference in such prospectus.

“Registrable Securities” means all shares of Common Stock delivered/to be delivered by the Company to the Holder pursuant to the Confirmation or, at the election of the Holder, such number of the shares of Common Stock that may be sold by the Holder in short sales or otherwise in anticipation of such deliveries and, in each case, 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 or (ii) 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) and (ii), any legend with respect to transfer restrictions are duly removed or removable.

“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.

“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.

2. Shelf Registration. (a) The Company shall prepare and file or cause to be prepared and filed with the Commission, 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 the

Holder (or an Affiliate of the Holder) of all of the Registrable Securities (the “Initial Shelf Registration Statement”); provided, that before filing any Registration Statement with the Commission, the Company shall furnish to the Holder and counsel for the Holder 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 Commission such comments as the Holder and counsel for the Holder reasonably shall propose within five (5) Business Days of the delivery of such copies to the Holder and counsel for the Holder. The Initial Shelf Registration Statement shall be on Form S-3 or another appropriate form permitting registration of such Registrable Securities for resale by the Holder (or an Affiliate of the Holder) in accordance with the methods of distribution elected by the Holder 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 (except for offerings by the Holder or an Affiliate of the Holder deemed to be an underwritten offering), 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 Business Day immediately preceding the earlier of (i) the date the Holder first receives Registrable Securities pursuant to the Confirmation and (ii) the first Physical Valuation Day or the Averaging Period Start Date, as the case may be (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.

(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 Holder; provided, that before filing any such amendments or supplements with the Commission, the Company shall furnish to the Holder and counsel for the Holder 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 Commission such comments as the Holder and counsel for the Holder reasonably shall propose within five (5) Business Days of the delivery of such copies to the Holder and counsel for the Holder.

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 Holder (and/or its Affiliates) 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, (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, and (iv) to the extent consistent with applicable law, any Registration Statement and any amendment thereto and any Prospectus forming part thereof and any amendment or supplement thereto contain in any description of the plan of distribution of the Registrable Securities the following language (or any alternative language agreed by the parties hereto): “The [Registrable Securities] may be sold by [Holder/Affiliate of Holder/subsequent holder] in short sale transactions. If so, [Holder/Affiliate of Holder/subsequent holder] may use shares received from [the Company] in settlement of the [Transaction] to close out any related open borrowings of shares.”

(c) (1) The Company shall advise the Holder and counsel for the Holder:

(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;

(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 the Holder (or an Affiliate of the Holder) furnished to the Company in writing by the 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 the Holder (or an Affiliate of the Holder) furnished to the Company in writing by the 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 Holder, and its counsel, if any, that the availability of the Shelf Registration Statement is suspended (a “ Deferral Notice ”) and, upon receipt of any Deferral Notice, the Holder agrees not to sell

any Registrable Securities pursuant to the Registration Statement until the 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 deliver unregistered shares in accordance with the terms of the Confirmation 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 the 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 the 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 the 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 the Holder and its Affiliates 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 Holder and its 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 the 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 Holder 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 the Holder may request prior to sales of Registrable Securities pursuant to such Registration Statement.

(i) The Company shall provide a CUSIP number for the Registrable Securities, registered under such Registration Statement, and provide the transfer agent for the 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.

(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 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 6 hereof (or such other provisions and procedures acceptable to the Holder), with respect to all parties to be indemnified pursuant to Section 6 hereof from the Holder to the Company.

(l) Make reasonable effort to provide such information as is required for any filings required to be made with the National Association of Securities Dealers, Inc.

(m) The Company shall (i) make reasonably available for inspection by the Holder, any underwriter participating in any disposition pursuant to a Registration Statement, and any attorney, accountant or other agent retained by the Holder (or an Affiliate of the Holder) 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 Holder (or an Affiliate of the Holder) 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 Holder (or an Affiliate of the Holder) 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 additional representations and warranties to the Holder (or an Affiliate of the Holder) 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 Holder and the Managing Underwriters, if any) addressed to the Holder (or an Affiliate of the 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 the Holder (or an Affiliate of the Holder) 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 the Holder (or an Affiliate of the 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 Holder 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) on the settlement date following the date of any sale of Registrable Securities by the Holder (or an Affiliate of the Holder).

(n) Upon the effectiveness of the Initial Shelf Registration Statement and any Subsequent Shelf Registration Statement, announce the same, 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. The Holder 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 the holder (severally or jointly), transfer taxes on resale of any of the securities by the Holder (or an Affiliate of the Holder) and any advertising expenses incurred by or on behalf of the Holder (and its Affiliates) in connection with any offers they may make.

5. Representations and Warranties by the Company. The Company shall make the following representations and warranties to the Holder on each date that Registrable

Securities are sold by the Holder (or an Affiliate of the Holder) and on each settlement date following the sale by the Holder (or an Affiliate of the Holder) of Registrable Securities (in each case, a "Representation Date"), subject, in each case, to (i) any and all appropriate modifications, amendments and updating changes to the following representations and warranties necessary to maintain the accuracy of the same at the time they are given and (ii) the information contained in the Incorporated Documents (as such term is defined below):

(a) The Company meets the requirements for use of Form S-3 under the 1933 Act. The Registration Statement (including any Rule 462(b) Registration Statement) has become effective under the Securities Act and no stop order suspending the effectiveness of the Registration Statement (or such Rule 462(b) Registration Statement) has been issued under the Securities Act and no proceedings for that purpose have been instituted or are pending or, to the knowledge of the Company, are contemplated by the Commission, and any request on the part of the Commission for additional information with respect to the Registration Statement (or any document incorporated therein by reference pursuant to the Exchange Act) has been complied with.

(b) Each document, if any, filed or to be filed pursuant to the Exchange Act and incorporated by reference in the Registration Statement and Prospectus (the "Incorporated Documents") complied or will comply when so filed in all material respects with the Exchange Act and the applicable rules and regulations of the Commission thereunder; (ii) at the respective times the Registration Statement (including any Rule 462(b) Registration Statement) and any post-effective amendments thereto became effective and at each Representation Date, the Registration Statement (including any Rule 462(b) Registration Statement) and any amendments thereto will comply in all material respects with the requirements of the Securities Act and will not 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) the Prospectus, at the date thereof and at each Representation Date will not (and any amendment or supplement thereto, at the date thereof 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. Notwithstanding the foregoing, that the Company makes no representations or warranties as to the information contained in or omitted from the Registration Statement (or any amendment thereto) or the Prospectus (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 Holder (or an Affiliate of the Holder) or any underwriter specifically for use in connection with the preparation the Registration Statement (or any amendment thereto) or the Prospectus (or any amendment or supplement thereto).

Each prospectus filed as part of the Registration Statement as originally filed or as part of any amendment thereto, or filed pursuant to Rule 424 under the 1933 Act, complied when so filed in all material respects with the 1933 Act Regulations and the Prospectus delivered to the Holder for use in connection with the offering of the Registrable Securities will, at the time of such delivery, be identical to any electronically

transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(c) Subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus, and except as set forth or contemplated therein, neither the Company nor any of its subsidiaries 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 Registration Statement and the Prospectus 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 Registration Statement and the Prospectus.

(d) 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 Prospectus or in the Incorporated Documents, 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 to issue, sell and deliver the Registrable Securities. The term “Subsidiaries” means each entity listed on Schedule I hereto, and the Company has no other significant subsidiaries as defined in Regulation S-X other than the Subsidiaries.

(e) The Company’s authorized equity capitalization is as set forth in the Prospectus; the capital stock of the Company conforms in all material respects to the description thereof contained in the Prospectus; the outstanding shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and nonassessable; the holders of outstanding shares of capital stock of the Company are not entitled to any preemptive or other similar rights to subscribe for the Registrable Securities or shares of Common Stock; and, except as set forth in the Prospectus 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 Prospectus, 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 Prospectus).

(f) The Company has all requisite corporate power and authority to execute, issue and deliver the Registrable Securities.

(g) This Agreement has been duly authorized and validly executed and delivered by the Company.

(h) The Common Stock has been duly authorized and conforms in all material respects to the description thereof incorporated by reference in the Prospectus.

(i) The execution and delivery of this Agreement and the Confirmation, the performance by the Company of this Agreement and the Confirmation, and the consummation of the other transactions in the Prospectus (including the sale of the Registrable Securities) 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 or the Confirmation, in connection with the sale of the Registrable Securities or the consummation of the transactions contemplated by this Agreement, or for the due execution, delivery or performance of this Agreement or the Confirmation, 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.

(j) Except as described in the Registration Statement and the Prospectus or in the Incorporated Documents, 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 in any manner to draw into question the validity of this Agreement or the Confirmation, or to result, singularly or when aggregated with other pending actions and actions known to be threatened that are not described in the Registration Statement and the Prospectus or the Incorporated Documents, in a Material Adverse Effect, or that is reasonably expected to materially and adversely affect the consummation of this Agreement, 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 (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 Registration Statement and the Prospectus 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 Registration Statement and the Prospectus, 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 Registration Statement and the Prospectus 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 Registration Statement and the Prospectus, 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 Registration Statement and the Prospectus 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 Prospectus, 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 Prospectus, 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. No holder of any of the outstanding shares of capital stock of the Company or any other person is entitled to preemptive or other similar rights.

(p) 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 Registrable Securities.

(q) The Company is not and, after giving effect to the offering and sale of the Registrable Securities and the application of the proceeds thereof as described in the Prospectus, will not be an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

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

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

(t) 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.

6. Indemnification and Contribution. (a) In connection with any Registration Statement, the Company (i) agrees to indemnify and hold harmless the Holder, the directors, officers, employees, agents and Affiliates of the Holder and each other person, if any, who controls the 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 the Holder specifically for inclusion therein; provided, further, however, that the indemnity agreement contained in this Section 6(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 the Holder (or an Affiliate of the 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 the 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 6(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 Holder provided in this Section 6(a) and shall, if requested by the Holder, enter into an underwriting agreement reflecting such agreement, as provided in Section 3(k) hereof.

(b) The Holder 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 the Holder, but only with reference to written information relating to the Holder furnished to the Company by or on behalf of the Holder specifically for inclusion in the documents referred to in the foregoing indemnity. This indemnity agreement will be in addition to any liability which the Holder may otherwise have.

(c) Promptly after receipt by an indemnified party under this Section 6 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 6, 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 the Holder and controlling persons. An indemnifying party shall not be liable under this Section 6 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 6 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 sale of the Registrable Securities which resulted in such Losses; provided, however, that in no case shall (1) 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 Prospectus which resulted in such Losses or (2) any holder of any Registrable 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 Prospectus 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 total net proceeds (before deducting expenses) as set forth on the cover page of the Prospectus. Benefits received by the Holder shall be deemed to be equal to the value of receiving Registrable 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 6, each person who controls the Holder within the meaning of either the Securities Act or the Exchange Act and each director, officer, employee, agent and Affiliate of the Holder shall have the same rights to contribution as the 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 6 will remain in full force and effect, regardless of any investigation made by or on behalf the Holder, the Company or any underwriter or any of the officers, directors or controlling persons referred to in this Section 6, and will survive the sale by the Holder (or an Affiliate of the Holder) of securities covered by a Registration Statement.

7. 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 Holder herein or otherwise conflicts with the provisions hereof.

(b) Amendments and Waivers. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the Holder and the Company, or in the case of a waiver, by the party against whom the waiver is to be effective.

No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and in addition to any rights or remedies provided by law.

(c) Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Holder shall be directed to Merrill Lynch at 4 World Financial Center, New York, New York 10080, attention: Equity Capital Markets; and notices to the Company shall be directed to it at 1025 Eldorado Boulevard, Broomfield, Colorado 80021, attention: General Counsel.

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 Affiliates of the Holder and subsequent holders of Registrable Securities and such Affiliates and subsequent holders 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.

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

LEVEL 3 COMMUNICATIONS, INC.,

by _____

Name:

Title:

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

MERRILL LYNCH INTERNATIONAL

by _____

Name:

Title:

SCHEDULE I

Subsidiaries

Level 3 Financing, Inc.
Eldorado Marketing, Inc.
Software Spectrum, Inc.
Level 3 Communications, LLC
BTE Equipment, LLC
Level 3 International, Inc.
Level 3 Holdings, B.V.
Level 3 Communications Limited (UK)
Level 3 Communications GmbH (Germany)
Level 3 Holdings, Inc.
KCP, Inc.

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Exhibit 99.1



1025 Eldorado Boulevard
Broomfield, Colorado 80021
www.Level3.com

NEWS RELEASE

Level 3 contacts:

Media: Josh Howell
720-888-2517

Arthur Hodges
720-888-6184

Investors: Robin Grey
720-888-2518

Sandra Curlander
720-888-2501

Level 3 Accepts for Purchase \$1.105 Billion Aggregate Amount of Notes in Debt Tender Offers

BROOMFIELD, Colo., December 2, 2004 — Level 3 Communications, Inc. (Nasdaq:LVT) announced today that it has accepted for purchase \$1.105 billion aggregate principal amount of its outstanding debt securities due 2008 specified in the table below (the “Notes”) under its cash tender offers (the “Offers”), which commenced on October 29, 2004. 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.

A total of approximately \$1.127 billion aggregate principal amount of Notes were tendered prior to the expiration of the Offers at 12:00 midnight, New York City time, on December 1, 2004 (the “Expiration Date”). Level 3 accepted for purchase \$1.105 billion aggregate principal amount of Notes. The settlement will be completed today, and accrued interest up to, but not including, today will be paid in cash on all validly tendered and accepted Notes.

The table below shows, by series, the Notes included in the Offers, the principal amount tendered prior to the Expiration Date, the principal amount repurchased pursuant to the Offers and the principal amount remaining outstanding.

Title of Security	Principal Amount	Principal Amount	Principal Amount
	Tendered	Repurchased	Remaining Outstanding
9 ¹ / 8 % Senior Notes due 2008	\$ 249,457,000	\$ 249,457,000	\$ 954,195,000
11% Senior Notes due 2008	\$ 229,541,000	\$ 229,541,000	\$ 132,495,000
10 ¹ / 2 % Senior Discount Notes due 2008	\$ 265,880,000	\$ 265,880,000	\$ 143,582,000
10 ³ / 4 % Senior Euro Notes due 2008	€ 287,250,000	€ 271,053,000	€ 49,773,000

The Offers were oversubscribed. In accordance with the procedures set forth in the Offer to Purchase, Level 3 accepted for purchase (i) all validly tendered 9 ¹ / 8 % Senior Notes due 2008, 11% Senior Notes due 2008 and 10 ¹ / 2 % Senior Discount Notes due 2008 and (ii) €944 principal amount of 10 ³ / 4 % Senior Euro Notes due 2008 (the “Euro Notes”) for each €1,000 principal amount of Euro Notes validly tendered, on a *pro rata* basis (i.e. approximately 94.4% of the tendered Euro Notes).

Merrill Lynch & Co. was the Dealer Manager for the Offers.

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.

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Exhibit 99.2



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NEWS RELEASE

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Level 3 Completes Offering of \$345 Million Of 5.25% Convertible Senior Notes

BROOMFIELD, Colo., December 2, 2004 — Level 3 Communications, Inc. (Nasdaq:LVT) announced today that it has completed the offering of \$345 million aggregate principal amount 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 final offering amount included the exercise by the initial purchasers in full of their option to purchase up to an additional \$25 million aggregate principal amount of the Notes. The Notes are convertible into shares of Level 3’s common stock at an initial conversion price of \$3.984 per share.

Level 3 used a portion of the net proceeds from the offering of the Notes, together with borrowings under a new \$730 million senior secured term loan that its subsidiary, Level 3 Financing, Inc., completed today, to fund the purchase of certain debt securities due 2008 pursuant to Level 3's previously announced debt tender offers. The settlement of the debt tender offers will be completed today.

In addition, Level 3 used 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 effectively increase the conversion premium to approximately 80.7%. The cost of the bond hedge and warrant transactions is approximately 17.8% of the gross proceeds from the offering of the Notes.

The Notes were not 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.

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