

Section 7.04. *Certain Prohibitions.* From the date hereof until May 23, 2014, neither Parent nor any of its Subsidiaries shall enter into any agreements (written or oral) providing for the divestiture of in excess of 25,000 subscribers in the aggregate.

Section 7.05. *Approval by Sole Stockholder of Merger Subsidiary.* Immediately following the execution and delivery of this Agreement by the parties hereto, Parent, as sole stockholder of Merger Subsidiary, shall adopt this Agreement and approve the Merger, in accordance with Delaware Law, by written consent.

Section 7.06. *Voting of Shares.* Parent shall vote all shares of Company Stock beneficially owned by it or any of its Subsidiaries (other than, for the avoidance of doubt, any such shares held by any employee benefit plan of Parent or any of its Subsidiaries or any trustee or other fiduciary in such capacity under any employee benefit plan) in favor of adoption of this Agreement at the Company Stockholder Meeting.

Section 7.07. *Director and Officer Indemnification.* (a) From and after the Effective Time, the Surviving Corporation shall, and Parent shall cause the Surviving Corporation to, indemnify and hold harmless and provide advancement of expenses to, the present (as of the date hereof or any time prior to the Effective Time) and former officers and directors of the Company and its Subsidiaries and any individual who is as of the date of this Agreement or commences, prior to the Effective Time, serving at the request of the Company or any Subsidiary of the Company as a director or officer of another Person (each, an “**Indemnified Person**”) in respect of (i) acts or omissions occurring at or prior to the Effective Time, (ii) the fact that such Indemnified Person is or was a director or officer, or is or was serving at the request of the Company or any of its Subsidiaries as a director or officer of another Person prior to the Effective Time and (iii) this Agreement and the transactions contemplated hereby, in each case, to the fullest extent permitted by Delaware Law or any other Applicable Law or provided under the Company’s or its Subsidiaries’ certificate of incorporation and bylaws or comparable organizational documents in effect on the date hereof; provided that such indemnification and advancement of expenses shall be subject to any limitation imposed from time to time under Applicable Law; provided, further, that any Person to whom expenses are advanced shall provide an undertaking to repay such advances to the extent required by Applicable Law. From and after the Effective Time, Parent hereby irrevocably and unconditionally guarantees the payment and performance obligations of the Surviving Corporation under this Section 7.07(a).

(b) From and after the Effective Time, Parent shall cause to be maintained in effect provisions in the Surviving Corporation’s and each Subsidiary of the Company’s certificates of incorporation and bylaws and comparable organizational documents (or in such documents of any successor to the business of the Surviving Corporation) regarding elimination of liability of

directors, indemnification of officers, directors and employees and advancement of expenses with respect to matters existing or occurring at or prior to the Effective Time that are no less advantageous to the intended beneficiaries than the corresponding provisions in existence on the date of this Agreement in the Company's and the or such Subsidiary of the Company's certificate of incorporation and bylaws and comparable organization documents, as applicable.

(c) Parent shall cause the Surviving Corporation, and the Surviving Corporation hereby agrees, to either (i) continue to maintain in effect for six years after the Effective Time the Company's directors' and officers' insurance policies and fiduciary liability insurance policies (collectively, "**D&O Insurance**") in place as of the date hereof or (ii) purchase comparable D&O Insurance for such six-year period, in each case with respect to any claim related to any period of time at or prior to the Effective Time with coverage not less than the existing coverage and other terms, conditions, retentions and limits of liability that are at least as favorable as those contained in the D&O Insurance in effect as of the date hereof; *provided* that in no event shall Parent or the Surviving Corporation be required to expend for such policies pursuant to this sentence an aggregate premium amount in excess of 300% of the amount per annum the Company paid in its last full fiscal year, which amount is set forth in Section 7.07(c) of the Company Disclosure Schedule; and provided, further, that if the aggregate premiums of such insurance coverage exceed such amount, the Surviving Corporation shall be obligated to obtain a policy with the greatest coverage available, with respect to matters occurring prior to the Effective Time, for a cost not exceeding such amount. At the Company's option, the Company may purchase, prior to the Effective Time, a six-year prepaid "tail policy" with coverage not less than the existing coverage and other terms, conditions, retentions and limits of liability that are at least as favorable as those contained in the D&O Insurance in effect as of the date hereof, in which event Parent shall cease to have any obligations under the first sentence of this Section 7.07(c); *provided* that the aggregate premium for such policies shall not exceed 300% of the amount per annum the Company paid in its last full fiscal year. In the event the Company elects to purchase such a "tail policy," the Surviving Corporation shall (and Parent shall cause the Surviving Corporation to) maintain such "tail policy" in full force and effect and continue to honor their respective obligations thereunder.

(d) If Parent, the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, Parent shall cause proper provision to be made so that the successors and assigns of Parent or the Surviving Corporation, as the case may be, shall assume the applicable obligations of such party set forth in this Section 7.07.

(e) The rights of each Indemnified Person under this Section 7.07 shall be in addition to any rights such Person may have under the certificate

of incorporation or bylaws of the Company or any of its Subsidiaries, or under Delaware Law or any other Applicable Law or under any agreement of any Indemnified Person with the Company or any of its Subsidiaries. These rights shall survive consummation of the Merger and are intended to benefit, and shall be enforceable by, each Indemnified Person.

Section 7.08. *Stock Exchange Listing.* Parent shall use its reasonable best efforts to cause the shares of Parent Class A Common Stock to be issued as part of the Merger Consideration to be listed on NASDAQ, subject to official notice of issuance.

Section 7.09. *Employee Matters.* (a) During the period beginning at the Effective Time and ending on the first anniversary of the Effective Time (the “**Continuation Period**”), Parent shall provide, or shall cause to be provided, to each employee of the Company and its Subsidiaries who continues to be employed by Parent or its Subsidiaries (including, for the avoidance of doubt the Surviving Corporation and its Subsidiaries) immediately following the Effective Time (each, a “**Continuing Employee**”), other than any Continuing Employee included in a collective bargaining unit covered by the Collective Bargaining Agreements as in effect on the Closing Date (each, a “**Union Employee**”), with, to the extent employed by Parent or its Subsidiaries, (i) base pay, commission opportunities and cash bonus opportunities, as applicable, that are no less favorable in the aggregate than provided to each such Continuing Employee immediately prior to the Closing Date and (ii) employee benefits that are no less favorable in the aggregate than provided to each such Continuing Employee immediately prior to the Closing Date; *provided*, that, for purposes of determining whether such pay, opportunities and benefits are no less favorable in the aggregate, equity compensation, defined benefit pension plan benefits, severance, retention (including, for the avoidance of doubt, any supplemental cash bonus opportunity set forth on Section 6.01(m) of the Company Disclosure Schedule), sale, stay, or change in control payments or awards or any similar compensation or benefit, shall not be taken into account. With respect to Union Employee, Parent shall retain, or shall cause to be retained, any and all of the rights and obligations it may have pursuant to Applicable Law.

(b) Notwithstanding Section 7.09(a), beginning on the Closing Date, Parent shall, or shall cause one of its Subsidiaries to, for the benefit of each Continuing Employee, other than any Union Employee, (i) honor all contracts providing for severance to the extent and in accordance with their terms and (ii) honor, without amendment, all plans providing for severance for the Continuation Period or for any longer period during which such amendments are prohibited under the terms of the applicable plan, in all cases, as long as such contract or plan is set forth on Section 7.09(b) of the Company Disclosure Schedule. It is intended that Section 7.09(a) and this Section 7.09(b) shall not result in any duplication of benefits to any Continuing Employee.

(c) To the extent that Continuing Employees, other than Union Employees, become eligible to participate in any “**employee benefit plan**,” as defined in Section 3(3) of ERISA, maintained by Parent or any of its Subsidiaries (collectively, the “**Parent Plans**”), then, for purposes of determining (i) eligibility to participate and vesting and, (ii) solely with respect to any Parent Plan that provides for severance, vacation or paid-time off benefits, for purposes of benefit accrual, service with the Company or any of its Subsidiaries prior to the Effective Time shall be treated as service with Parent or any of its Subsidiaries to the extent recognized by the Company and its Subsidiaries prior to the Effective Time; *provided, however*, that such service shall not be recognized to the extent that such recognition would result in any duplication of benefits and the Parent shall not be required to provide credit for such service for eligibility, vesting or benefit accrual purposes under any Parent Plan that is an equity compensation plan, defined benefit pension plan or postretirement medical plan. In addition, subject to the terms of the applicable Parent Plan and Legal Requirements, Parent shall use reasonable best efforts to (x) waive all limitations as to preexisting conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to Continuing Employees under any Parent Plan that is a welfare benefit plan in which such Continuing Employees may be eligible to participate after the Effective Time and (y) provide each Continuing Employee with credit for any co-payments and deductibles paid during the plan year in which the Effective Time occurs in satisfying any applicable deductible or out-of-pocket requirements under any Parent Plans that are welfare plans in which such Continuing Employee is eligible to participate after the Effective Time.

(d) For the avoidance of doubt and to the extent required by any Company Plan or Applicable Law, Parent shall, or shall cause one of its Subsidiaries to, expressly assume such Company Plan and all obligations thereunder.

(e) Upon the request of Parent prior to the Effective Time but after the date the conditions set forth in Article 9 (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permissible, waiver of those conditions at the Closing) have been satisfied or, to the extent permissible, waived by the party or parties entitled to the benefits of such conditions, effective as of immediately prior to the Effective Time, the Company shall terminate or shall cause the termination of any or all U.S. tax-qualified defined contribution plans provided to current and former employees of the Company and its Subsidiaries, as directed by the Parent and in compliance with Applicable Law.

(f) Without limiting the generality of Section 11.06, nothing contained in this Section 7.09, expressed or implied, shall (i) be treated as the establishment, amendment or modification of any Company Plan or Parent Plan or, subject to compliance with the requirements of Section 7.09(a) and 7.09(b), constitute a limitation on rights to amend, modify, merge or terminate after the Effective Time any Company Plan or Parent Plan, (ii) give any current or former

employee, director or other independent contractor of the Company and its Subsidiaries (including any beneficiary or dependent thereof), any third-party beneficiary or other rights or (iii) obligate Parent or any of its Affiliates to (A) maintain any particular Company Plan or Parent Plan or (B) retain the employment or services of any current or former employee, director or other independent contractor.

ARTICLE 8

Covenants of Parent and the Company

The parties hereto agree that:

Section 8.01. *Reasonable Best Efforts.* (a) Subject to the terms and conditions of this Agreement, each of the Company and Parent shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, and assist and cooperate with the other in doing, all things necessary, proper or advisable under Applicable Law to consummate and make effective the Merger and the other transactions contemplated by this Agreement, including (i) preparing and filing as promptly as practicable with any Governmental Authority or other Third Party all documentation to effect all necessary, proper or advisable filings, notices, petitions, statements, registrations, submissions of information, applications and other documents and (ii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Authority or other Third Party that are necessary, proper or advisable to consummate and make effective the Merger and the other transactions contemplated by this Agreement (whether or not such approvals, consents, registrations, permits, authorizations and other confirmations are conditions to the consummation of the Merger pursuant to Article 9).

(b) In furtherance and not in limitation of the foregoing, each of Parent and the Company shall make, and not withdraw, as promptly as practicable and in any event within 30 Business Days (or, in the case of the succeeding clauses (iii) and (iv), 60 days) of the date hereof, (i) an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby, (ii) all necessary filings to obtain consents from the FCC (including FCC Forms 394 or other appropriate forms) that are required in connection with the Merger, (iii) all necessary filings to obtain consents from the state regulators and the Franchise authorities that are required in connection with the Merger and (iv) all other registrations, declarations, notices and filings with Governmental Authorities that are required in connection with the Merger. Each of the Company and Parent shall use its reasonable best efforts to supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the foregoing, and use its reasonable best efforts to take all other actions necessary to cause the expiration or termination of the applicable waiting periods regarding the foregoing as soon as practicable.

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

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

(e) Notwithstanding anything in this Agreement to the contrary, the parties hereto understand and agree that “**reasonable best efforts**” shall not require Parent to (i) divest or otherwise hold separate (including by establishing a trust or otherwise) any businesses, assets or properties of Parent or any of its Subsidiaries or any businesses, assets or properties of the Company or any of its Subsidiaries, (ii) accept any conditions or take any other actions that would apply to, or affect, any businesses, assets or properties of Parent or any of its Subsidiaries or any businesses, assets or properties of the Company or any of its Subsidiaries or (iii) litigate or participate in the litigation of any proceeding

involving the FCC, the Federal Trade Commission or Department of Justice, whether judicial or administrative, in order to (A) oppose or defend against any action by any such Governmental Authority to prevent or enjoin the consummation of the Merger or any of the other transactions contemplated by this Agreement or (B) overturn any regulatory action by any such Governmental Authority to prevent consummation of the Merger or any of the other transactions contemplated by this Agreement, including by defending any suit, action or other legal proceeding brought by any such Governmental Authority in order to avoid the entry of, or to have vacated, overturned or terminated or appealing any order, except, in the case of this clause (iii), to the extent Parent determines in its reasonable good faith judgment that there is a reasonable prospect of success in relation to such litigation and that the participation by Parent in such litigation would not pose a material risk of the imposition of a Burdensome Condition; provided, however, that, (x) notwithstanding the preceding clause (i), Parent is prepared to divest up to approximately 3 million subscribers of the combined company and (y) Parent and its Subsidiaries shall be required, notwithstanding the preceding clause (ii), (A) to take the actions and accept the conditions described in the immediately preceding clause (ii) to the extent such actions are consistent in scope and magnitude with the conditions and actions (other than any condition that was subsequently suspended by the agency that imposed the condition) required or imposed by Governmental Authorities in connection with prior acquisitions of United States domestic Cable Systems consummated within the past twelve years with an aggregate purchase price of at least \$500 million and (B) to implement the undertakings set forth on Section 8.01 of the Parent Disclosure Schedule (other than any undertaking to divest subscribers, the “**Undertakings**”), with such modifications to the Undertakings that, taken in the aggregate, are no more adverse to the businesses, assets and properties of Parent and its Subsidiaries, taken as a whole, or the businesses, assets and properties of the Company and its Subsidiaries, taken as a whole (each condition and action described in clause (i) or (ii) that Parent is not required to accept or take after giving effect to the proviso to this Section 8.01(e), a “**Burdensome Condition**”). In that regard, the Company agrees to work in good faith in connection with Parent’s efforts to structure any divestitures (whether by sale, spin off or otherwise) in a manner that Parent believes in good faith is in the best interests of the combined company and its shareholders. In addition, the Company shall not accept any of the conditions or take any of the foregoing actions (whether or not consistent in scope and magnitude with such prior conditions and actions) without Parent’s prior written consent. Notwithstanding the foregoing, no party shall be required to commit to or effect any action contemplated by this Section 8.01(e) that is not conditioned upon the consummation of the Merger.

(f) Notwithstanding anything to the contrary herein, the Company shall not accept, agree to or accede to any modifications or amendments to, or in connection with, or any conditions to the transfer of, any Franchises that are not approved by Parent in writing; provided, however, that if the Company affords Parent reasonable notice of, and opportunity to attend and participate in, meetings or other discussions relating to Franchise approvals where

modifications, amendments or conditions are expected to be discussed or negotiated, Parent shall approve any such modifications, amendments or conditions that are approved by the Company so long as such modifications, amendments or conditions are commercially reasonable and are similar in nature, extent and impact (giving due consideration to such factors as the relative size of the Franchise involved, the proximity of other Franchises, the financial and operational impact of the change and the precedential impact thereof) to modifications, amendments or conditions agreed to by Parent in connection with material acquisitions of cable assets effected since 2001. In addition, if Parent seeks any Franchise approval pursuant to the transactions contemplated by this Agreement, Parent shall agree to any modifications, amendments or conditions that are commercially reasonable and are similar in nature, extent and impact (giving due consideration to such factors as the relative size of the Franchise involved, the proximity of other Franchises, the financial and operational impact of the change and the precedential impact thereof) to modifications, amendments or conditions agreed to by Parent in connection with material acquisitions of cable assets effected since 2001.

(g) Each of Parent and the Company shall not, and shall cause their respective Subsidiaries and Affiliates not to, (i) take any action that would reasonably be expected to have the effect of materially delaying, impairing or impeding the receipt of any regulatory approvals required in connection with the transactions contemplated hereby or the Closing, or (ii) acquire (by merger consolidation, acquisition of stock or assets or otherwise), directly or indirectly, any assets, securities (other than securities issued by such party as permitted by Section 6.01 or Section 7.01, as the case may be), properties, interests or business in any transaction or series of related transactions, if such acquisition would (A) require approval of the FCC, or (B) (without the consent of the other, not to be unreasonably withheld, conditioned or delayed by the Company) have a value, or involve the payment of consideration, in excess of \$1 billion; provided, however, that the foregoing sentence shall not prohibit Parent, the Company, or any of their respective Subsidiaries or Affiliates from taking any action set forth on Section 8.01(g) of the Parent Disclosure Schedule.

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

contractual arrangements and (iii) as necessary to address reasonable attorney-client or other privilege or confidentiality concerns.

Section 8.02. *Joint Proxy Statement/Prospectus; Registration Statement.*

(a) As promptly as practicable, the Company and Parent shall prepare and file the Joint Proxy Statement/Prospectus and the Registration Statement (in which the Joint Proxy Statement/Prospectus will be included) with the SEC. The Company and Parent shall use their reasonable best efforts to cause the Registration Statement to become effective under the 1933 Act as soon after such filing as practicable and to keep the Registration Statement effective as long as is necessary to consummate the Merger. Subject to Section 6.03, the Joint Proxy Statement/Prospectus shall include the recommendation of the Board of Directors of the Company in favor of approval and adoption of this Agreement and the Merger and the recommendation of the Board of Directors of Parent in favor of approval of the Parent Stock Issuance. The Company and Parent shall cooperate with one another in (x) setting a mutually acceptable date for the Company Stockholder Meeting and the Parent Shareholder Meeting, so as to enable them to occur, to the extent practicable, on the same date and (y) setting the dates for their respective annual meetings of stockholders. The Company and Parent shall use its reasonable best efforts to cause the Joint Proxy Statement/Prospectus to be mailed to its respective stockholders or shareholders, as the case may be, as promptly as practicable after the Registration Statement becomes effective. Each of the Company and Parent shall use its reasonable best efforts to ensure that the Registration Statement and the Joint Proxy Statement/Prospectus comply as to form in all material respects with the rules and regulations promulgated by the SEC under the 1933 Act and the 1934 Act, respectively.

(b) The Company and Parent shall make all necessary filings with respect to the Merger and the transactions contemplated hereby under the 1933 Act and the 1934 Act and applicable state “blue sky” laws and the rules and regulations thereunder.

(c) Each of the Company and Parent shall promptly provide the other parties and their respective counsel with (i) any comments or other communications, whether written or oral, that such party or its counsel may receive from time to time from the SEC or its staff with respect to the Joint Proxy Statement/Prospectus or the Registration Statement, as applicable, promptly after receipt of those comments or other communications and (ii) a reasonable opportunity to participate in the response to those comments.

(d) No amendment or supplement to the Joint Proxy Statement/Prospectus or the Registration Statement will be made by Parent or the Company without the approval of the other parties hereto, which approval shall not be unreasonably withheld or delayed; provided that the Company, in connection with a Company Adverse Recommendation Change made in compliance with the terms hereof may amend or supplement the Joint Proxy Statement/Prospectus (including by incorporation by reference) pursuant to an

amendment or supplement (including by incorporation by reference) to the extent it contains (i) a Company Adverse Recommendation Change, (ii) a statement of the reason of the Company's Board of Directors for making such Company Adverse Recommendation Change, and (iii) additional information reasonably related to the foregoing. Each party will advise the other parties, promptly after it receives notice thereof, of the time when the Registration Statement has become effective or any supplement or amendment has been filed, the issuance of any stop order, the suspension of the qualification of Parent Class A Common Stock issuable in connection with the Merger for offering or sale in any jurisdiction, or any request by the SEC for amendment of the Joint Proxy Statement/Prospectus or the Registration Statement. If, at any time prior to the Effective Time, Parent or the Company discovers any information relating to any party, or any of their respective Affiliates, officers or directors, that should be set forth in an amendment or supplement to the Joint Proxy Statement/Prospectus or the Registration Statement, so that none of those documents would include any misstatement of a material fact or omit to state any material fact necessary to make the statements in any such document, in light of the circumstances under which they were made, not misleading, the party that discovers that information shall promptly notify the other party and an appropriate amendment or supplement describing that information shall be promptly filed with the SEC and, to the extent required by law or regulation, disseminated to the shareholders and stockholders, respectively, of Parent and the Company.

Section 8.03. *Public Announcements.* (a) Except with respect to any Company Adverse Recommendation Change made in accordance with this Agreement, or Parent's response thereto, or any communication made in accordance with Section 6.03, the Company and Parent shall consult with each other before issuing any press release, making any other public statement or scheduling any press conference or conference call with investors or analysts with respect to this Agreement or the transactions contemplated by this Agreement and, except for any public statement or press release as may be required by Applicable Law, order of a court of competent jurisdiction or any listing agreement with or rule of any national securities exchange or association, shall not issue any such press release, make any such other public statement or schedule any such press conference or conference call before that consultation and providing each other the opportunity to review and comment upon any such press release or public statement; *provided, however*, that the foregoing shall not apply to any press release or other public statement to the extent it contains substantially the same information as previously communicated by one or more of the parties. The initial press release of the parties announcing the execution of this Agreement shall be a joint press release of Parent and the Company in a form that is mutually agreed.

(b) Except with respect to any Company Adverse Recommendation Change made in accordance with this Agreement, or Parent's response thereto, or any communication made in accordance with Section 6.03, before any Merger Communication of the Company, Parent or any of their

respective “**participants**” (as defined in Rule 165 of the 1933 Act or Item 4 of Schedule 14A of the 1934 Act) is (i) disseminated to any investor, analyst, member of the media, employee, client, customer or other third-party or otherwise made accessible on the website of the Company, Parent or any such participant, as applicable (whether in written, video or oral form via webcast, hyperlink or otherwise), or (ii) utilized by any officer, senior manager, key employee or advisor of the Company, Parent or any such participant, as applicable, as a script in discussions or meetings with any such third parties, then, in each case, the Company or Parent, as the case may be, shall (or shall cause any such participant to) cooperate in good faith with respect to any such Merger Communication for purposes of, among other things, determining whether that communication (x) is required to be filed under Rules 165 and 425 of the 1934 Act or (y) constitutes “**soliciting material**” that is required to be filed by Rule 14a-6(b) or Rule 14a-12(b) of the 1934 Act, as applicable, by the Company, Merger Subsidiary or Parent, as applicable, and shall (or shall cause any such participant to) give reasonable and good faith consideration to any comments made by the other such party or parties and their counsel on any such Merger Communication; provided, however, that the foregoing shall not apply to any Merger Communication that contains substantially the same information as has previously been communicated by such Person. For purposes of the foregoing, the term “**Merger Communication**” shall mean, with respect to any Person, any document or other written communication prepared by or on behalf of that Person, or any document or other material or information posted or made accessible on the website of that Person (whether in written, video or oral form via webcast, hyperlink or otherwise), that is related to any of the transactions contemplated by this Agreement and, if reviewed by a relevant stockholder, could reasonably be deemed to constitute either (x) an offer to sell or a solicitation of an offer to buy Parent Class A Common Stock or (y) a “**solicitation**” of “**proxies**” (in each case, as defined in Rule 14a-1 of the 1934 Act) in favor of the Merger or the Parent Stock Issuance.

Section 8.04. *Further Assurances.* At and after the Effective Time, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of the Company or Merger Subsidiary, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company or Merger Subsidiary, any other actions and things to vest, perfect or confirm of record or otherwise in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets of the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

Section 8.05. *Notices of Certain Events.* Each of the Company and Parent shall promptly notify and provide copies to the other of:

(a) any written notice from any Person alleging that the approval or consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(b) any written notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(c) any actions, suits, claims, investigations or proceedings commenced or, to its knowledge, threatened against, relating to or involving or otherwise affecting the Company or any of its Subsidiaries or Parent and any of its Subsidiaries, as the case may be, that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to any of such party's representations or warranties, as the case may be, or that are material and relate to the consummation of the transactions contemplated by this Agreement;

provided that the delivery of any notice pursuant to this Section 8.05 shall not affect or be deemed to modify any representation or warranty made by any party hereunder or limit or otherwise affect the remedies available hereunder to the party receiving such notice.

Section 8.06. *Access to Information.* From the date hereof until the Effective Time and subject to Applicable Law and the Confidentiality Agreement, the Company and Parent shall (i) upon reasonable advance notice, give to the other party, its counsel, financial advisors, auditors and other authorized representatives reasonable access during regular business hours to the offices, properties, books and records of such party (except that neither party shall conduct any environmental sampling or analysis without the advance written consent of the other party, which may be withheld in such other party's sole discretion, and without executing a customary access and indemnity agreement in respect thereto), (ii) furnish to the other party, its counsel, financial advisors, auditors and other authorized representatives such financial and operating data and other information as such Persons may reasonably request and (iii) instruct its employees, counsel, financial advisors, auditors and other authorized representatives to cooperate with the other party in its investigation; *provided*, however, that the each party may restrict the foregoing access and the disclosure of information pursuant to this Section 8.06 to the extent that (A) in the reasonable good faith judgment of such party, any Applicable Law requires such party or its Subsidiaries to restrict or prohibit access to any such properties or information, (B) in the reasonable good faith judgment of such party, the information is subject to confidentiality obligations to a Third Party or (C) disclosure of any such information or document would result in the loss of attorney-client privilege; *provided, further*, that with respect to clauses (A) through (C) of this Section 8.06, Parent or the Company, as applicable, shall use its commercially reasonable efforts to (1) obtain the required consent of any such Third Party to provide such access or disclosure, (2) develop an alternative to providing such information so as to address such matters that is reasonably acceptable to Parent and the Company and (3) in the case of clauses (A) and (C), enter into a joint defense agreement or implement such other techniques if the parties determine that doing so would reasonably permit the disclosure of such information without violating Applicable Law or jeopardizing such privilege.

Any investigation pursuant to this Section shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the other party. No information or knowledge obtained in any investigation pursuant to this Section shall affect or be deemed to modify any representation or warranty made by any party hereunder.

Section 8.07. *Tax-free Reorganization.* (a) Prior to the Effective Time, each of Parent and the Company shall use its reasonable best efforts to cause the Merger to qualify as a reorganization as defined in Section 368(a) of the Code, and shall not take any action reasonably likely to cause the Merger not so to qualify. Provided the opinion conditions contained in Sections 9.02(b) and 9.03(b) of this Agreement have been satisfied, each of Parent and the Company shall report the Merger for U.S. federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code.

(b) Officers of Parent, Merger Subsidiary and the Company shall execute and deliver to Davis Polk & Wardwell LLP, tax counsel for Parent, and Paul, Weiss, Rifkind, Wharton & Garrison LLP, tax counsel for the Company, Tax Representation Letters. Each of Parent, Merger Subsidiary and the Company shall use its reasonable best efforts not to take or cause to be taken any action that would cause to be untrue (or fail to take or cause to take any action which would cause to be untrue) any of the Tax Representation Letters.

Section 8.08. *Section 16 Matters.* Prior to the Effective Time, each party shall take all such steps as may be required to cause any dispositions of Company Stock (including derivative securities with respect to Company Stock) or acquisitions of Parent Class A Common Stock (including derivative securities with respect to Parent Class A Common Stock) resulting from the transactions contemplated by Article 2 of this Agreement by each individual who is subject to the reporting requirements of Section 16(a) of the 1934 Act with respect to the Company or will become subject to such reporting requirements with respect to Parent to be exempt under Rule 16b-3 promulgated under the 1934 Act.

Section 8.09. *Stock Exchange De-listing; 1934 Act Deregistration.* Prior to the Effective Time, the Company shall cooperate with Parent and use its reasonable best efforts to take, or cause to be taken, all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under Applicable Laws and rules and policies of the NYSE to enable the de-listing by the Surviving Corporation of the Company Stock from the NYSE and the deregistration of the Company Stock and other securities of the Company under the 1934 Act as promptly as practicable after the Effective Time, and in any event no more than ten days after the Closing Date.

Section 8.10. *Dividends.* After the date of this Agreement, each of Parent and the Company shall coordinate with the other the declaration of any dividends in respect of Parent Class A Common Stock and the Company Stock in order that holders of Parent Class A Common Stock and the Company Stock shall not

receive two dividends or fail to receive one dividend, for any quarter with respect to shares of Company Stock, on the one hand, and the Parent Class A Common Stock issuable in respect of those shares pursuant to the Merger, on the other.

Section 8.11. *Stockholder Litigation.* Each party hereto shall promptly notify the other parties hereto in writing of any litigation related to this Agreement, the Merger or the other transactions contemplated by this Agreement that is brought, or, to the knowledge of the Company or Parent (as applicable), threatened in writing, against the Company or Parent and/or the members of the Board of Directors of the Company or the Board of Directors of Parent, as applicable (any such litigation relating to the Company and/or the executive officers or members of the Board of Directors of the Company, a “**Company Transaction Litigation**”, and any such litigation relating to Parent and/or the executive officers or members of the Board of Directors of Parent, a “**Parent Transaction Litigation**”) prior to the Effective Time and shall keep such other party reasonably informed with respect to the status thereof. The Company shall give Parent the opportunity to participate in the defense or settlement of any Company Transaction Litigation, and, except to the extent required by applicable Law, the Company shall not settle, agree to any undertakings or approve or otherwise agree to any waiver that may be sought in connection with such Company Transaction Litigation, without the prior written consent of Parent (which shall not be unreasonably withheld, conditioned or delayed). Without limiting in any way the parties’ obligations under Section 8.01, each of the Company and Parent shall cooperate, shall cause their respective Subsidiaries, as applicable, to cooperate, and shall use its reasonable best efforts to cause its Representatives to cooperate, in the defense against any litigation contemplated by this Section 8.11.

ARTICLE 9

Conditions to the Merger

Section 9.01. *Conditions to the Obligations of Each Party.* The obligations of the Company, Parent and Merger Subsidiary to consummate the Merger are subject to the satisfaction or waiver of the following conditions:

(a) (i) the Company Stockholder Approval shall have been obtained in accordance with Delaware Law and (ii) the Parent Shareholder Approval shall have been obtained in accordance with Pennsylvania Law;

(b) (i) any applicable waiting period (or extensions thereof) under the HSR Act relating to the transactions contemplated by this Agreement shall have expired or been terminated and (ii) any applicable waiting period (or extensions thereof) or approvals under each other applicable Competition Law relating to the transactions contemplated by this Agreement and set forth on Section 9.01(b) of the Company Disclosure Schedule shall have expired, been terminated or been obtained (solely with respect to the obligations of Parent and

Merger Subsidiary, in each case without the imposition of any Burdensome Condition);

(c) the FCC Order and all other filings consents and approvals of (or filings or registrations with) any Governmental Authority required in connection with the execution, delivery and performance of this Agreement and set forth on Section 9.01(c) of the Company Disclosure Schedule shall have been obtained or made and shall be in full force and effect, and any applicable waiting periods in respect thereof shall have expired or been terminated (solely with respect to the obligations of Parent and Merger Subsidiary, in each case without the imposition of any Burdensome Condition);

(d) except for the matters that are the subject of Section 9.01(b) or Section 9.01(c), there shall not be any (i) Applicable Law of any Governmental Authority of competent jurisdiction in a jurisdiction in which any of the Company, Parent or their respective Subsidiaries has substantial operations or (ii) order or injunction (whether temporary, preliminary or permanent) by any Governmental Authority of competent jurisdiction that, in each case, (A) prohibits the consummation of the Merger or (B) solely with respect to the obligations of Parent and Merger Subsidiary, imposes any Burdensome Condition.

(e) the Registration Statement shall have been declared effective and no stop order suspending the effectiveness of the Registration Statement shall be in effect and no proceedings for such purpose shall be pending before the SEC; and

(f) the shares of Parent Class A Common Stock to be issued in the Merger shall have been approved for listing on the NASDAQ, subject to official notice of issuance.

Section 9.02. *Conditions to the Obligations of Parent and Merger Subsidiary.* The obligations of Parent and Merger Subsidiary to consummate the Merger are subject to the satisfaction or waiver of the following further conditions:

(a) (i) the Company shall have performed in all material respects all of its material obligations hereunder required to be performed by it at or prior to the Effective Time, (ii) (A) the representations and warranties of the Company contained in Sections 4.01, 4.02, 4.04(i), the first sentence and the last two sentences of Section 4.05(a) and the last sentence of 4.05(b), 4.07(l), 4.10(a)(ii), 4.23, 4.24 and 4.25 that are not qualified by materiality or Company Material Adverse Effect shall be true and correct in all material respects and any such representations and warranties that are qualified by materiality or Company Material Adverse Effect shall be true and correct at and as of the date of this Agreement and at and as of the Effective Time as if made at and as of such time (other than any such representations and warranties that by their terms address matters only at and as of another specified time, which shall be true and correct in

all material respects or true and correct, as the case may be, only at and as of such time), (B) the representations and warranties of the Company contained in Section 4.05 (other than the first sentence and the last two sentences of Section 4.05(a) and the last sentence of Section 4.05(b)) shall be true and correct, subject only to de minimis exceptions, at and as of the date of this Agreement and at and as of the Effective Time as if made at and as of such time (other than any such representations and warranties that by their terms address matters only at and as of another specified time, which shall be true and correct, subject only to de minimis exceptions, only at and as of such time), and (C) all other representations and warranties of the Company contained in this Agreement or in any certificate or other writing delivered by the Company pursuant hereto shall be true and correct (disregarding all materiality and Company Material Adverse Effect qualifications contained therein) at and as of the date of this Agreement and at and as of the Effective Time as if made at and as of such time (other than any such representations and warranties that by their terms address matters only as of another specified time, which shall be true and correct (disregarding all materiality and Company Material Adverse Effect qualifications contained therein) only at and as of such time), with, in the case of this clause (C) only, only such exceptions as have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect; and (iii) Parent shall have received a certificate signed by an executive officer of the Company to the foregoing effect and certifying that the condition set forth in Section 9.02(c) has been satisfied;

(b) Parent shall have received the opinion of Davis Polk & Wardwell LLP, counsel to Parent, in form and substance reasonably satisfactory to Parent, dated the Closing Date, rendered on the basis of facts, representations and assumptions set forth in such opinion and the certificates obtained from officers of Parent, Merger Subsidiary and the Company, all of which are consistent with the state of facts existing as of the Effective Time, to the effect that (i) the Merger will qualify as a reorganization within the meaning of Section 368(a) of the Code and (ii) the Company and Parent will each be a “**party to the reorganization**” within the meaning of Section 368(b) of the Code, which opinion shall not have been withdrawn or modified in any material respect. In rendering the opinion described in this Section 9.02(b), Davis Polk and Wardwell LLP shall have received and may rely upon the Tax Representation Letters referred to in Section 8.07(b) hereof; and

(c) since the date hereof, there shall not have occurred and be continuing any event, occurrence, development or state of circumstances or facts which, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect.

Section 9.03. *Conditions to the Obligations of the Company.* The obligations of the Company to consummate the Merger are subject to the satisfaction or waiver of the following further conditions:

(a) (i) each of Parent and Merger Subsidiary shall have performed in all material respects all of its material obligations hereunder required to be performed by it at or prior to the Effective Time, (ii) (A) the representations and warranties of Parent contained in Sections 5.01, 5.02, 5.04(i), 5.05, the last sentence of Section 5.05(b), 5.07(j), 5.10(b), 5.18 and 5.19, and that are not qualified by materiality or Parent Material Adverse Effect shall be true and correct in all material respects and any such representations and warranties that are qualified by materiality or Parent Material Adverse Effect shall be true and correct at and as of the date of this Agreement and at and as of the Effective Time as if made at and as of such time (other than any such representations and warranties that by their terms address matters only at and as of another specified time, which shall be true and correct in all material respects or true and correct, as the case may be, only at and as of such time), and (B) all other representations and warranties of Parent and Merger Subsidiary contained in this Agreement or in any certificate or other writing delivered by Parent or Merger Subsidiary pursuant hereto shall be true and correct (disregarding all materiality and Parent Material Adverse Effect qualifications contained therein) at and as of the date of this Agreement and at and as of the Effective Time as if made at and as of such time (other than any such representations and warranties that by their terms address matters only as of another specified time, which shall be true and correct (disregarding all materiality and Parent Material Adverse Effect qualifications contained therein) only at and as of such time), with, in the case of this clause (B) only, only such exceptions as have not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect; and (iii) the Company shall have received a certificate signed by an executive officer of Parent to the foregoing effect and certifying that the condition set forth in Section 9.03(c) has been satisfied;

(b) the Company shall have received the opinion of Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to the Company, in form and substance reasonably satisfactory to the Company, dated the Closing Date, rendered on the basis of facts, representations and assumptions set forth in such opinion and the certificates obtained from officers of Parent, Merger Subsidiary and the Company, all of which are consistent with the state of facts existing as of the Effective Time, to the effect that (i) the Merger will qualify as a reorganization within the meaning of Section 368(a) of the Code and (ii) the Company and Parent will each be a “**party to the reorganization**” within the meaning of Section 368(b) of the Code, which opinion shall not have been withdrawn or modified in any material respect. In rendering the opinion described in this Section 9.03(b), Paul, Weiss, Rifkind, Wharton & Garrison LLP shall have received and may rely upon the Tax Representation Letters referred to in Section 8.07(b) hereof; and

(c) since the date hereof, there shall not have occurred and be continuing any event, occurrence, development or state of circumstances or facts which, individually or in the aggregate, has had or would reasonably be expected to have a Parent Material Adverse Effect.

ARTICLE 10
Termination

Section 10.01. *Termination.* This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time (notwithstanding any approval of this Agreement by the stockholders of the Company):

(a) by mutual written agreement of the Company and Parent;

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

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

(ii) there shall be any Applicable Law in effect that (A) makes consummation of the Merger illegal or otherwise prohibited or (B) permanently enjoins the Company or Parent from consummating the Merger and, in the case of clauses (A) and (B) any such Applicable Law, including an injunction, shall have become final and nonappealable; *provided* that the right to terminate this Agreement pursuant to this Section 10.01(b)(ii) shall not be available to any party whose breach of any provision of this Agreement results in such Applicable Law being in effect; or

(iii) (A) at the Parent Shareholder Meeting (including any adjournment or postponement thereof), the Parent Shareholder Approval shall not have been obtained, or (B) at the Company Stockholder Meeting (including any adjournment or postponement thereof), the Company Stockholder Approval shall not have been obtained.

(c) by Parent, if:

(i) (A) the Company's Board of Directors shall have made a Company Adverse Recommendation Change or (B) the Company's Board of Directors shall have failed to reaffirm the Company Board Recommendation as promptly as practicable (but in any event within ten Business Days) after receipt of any written request to do so from Parent following the public announcement of any Company Acquisition Proposal (provided that Parent shall only make such request once with respect to any Company Acquisition Proposal or any material amendment thereto); provided that Parent shall no longer be entitled to terminate this Agreement pursuant to this Section 10.01(c)(i) at any time after the Company Stockholder Approval shall have been obtained;

(ii) there shall be any Applicable Law in effect, including an injunction, which shall have become final and nonappealable, of any Governmental Authority of competent jurisdiction in a jurisdiction in which any of the Company, Parent or their respective Subsidiaries has substantial operations that imposes any Burdensome Condition;

(iii) a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Company set forth in this Agreement shall have occurred that would cause the condition set forth in Section 9.02(a) not to be satisfied, and such breach is not cured within 30 days' notice thereof or is incapable of being cured within such time period, but only so long as neither Parent nor Merger Subsidiary are then in breach of their respective representations, warranties, covenants or agreements contained in this Agreement, which breach would cause the condition set forth in Section 9.03(a) not to be satisfied; or

(iv) prior to the Company Stockholder Approval having been obtained, an intentional and material breach of (A) Section 6.03 that is authorized or permitted by the Company that results in a Third Party making a Company Acquisition Proposal that is reasonably likely to materially interfere with or delay consummation of the Merger or (B) the first sentence of Section 6.02 (taking into account the right of the Company to postpone the Company Stockholder Meeting in accordance with Section 6.02) shall have occurred.

(d) by the Company, if:

(i) an intentional and material breach of the first sentence of Section 7.03 shall have occurred (taking into account

the right of Parent to postpone the Parent Shareholder Meeting in accordance with Section 7.03);

(ii) a material breach of the Voting Agreement shall have occurred that is noncurable or, if curable, is not cured within 30 days' notice thereof; or

(iii) a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Parent or Merger Subsidiary set forth in this Agreement shall have occurred that would cause the condition set forth in Section 9.03(a) not to be satisfied, and such breach is not cured within 30 days' notice thereof of is incapable of being cured within such time period, but only so long as the Company is not then in breach of its representations, warranties, covenants or agreements contained in this Agreement, which breach would cause the condition set forth in Section 9.02(a) not to be satisfied.

The party desiring to terminate this Agreement pursuant to this Section 10.01 (other than pursuant to Section 10.01(a)) shall give written notice of such termination to the other party specifying the provision of this Agreement pursuant to which such termination is effected.

Section 10.02. *Effect of Termination.* If this Agreement is terminated pursuant to Section 10.01, this Agreement shall become void and of no effect without liability of any party (or any stockholder, director, officer, employee, agent, consultant or representative of such party) to the other party hereto; provided that, if such termination shall result from the (i) intentional and willful failure of any party to fulfill a condition to the performance of the obligations of any other party hereunder, (ii) failure of any party to perform a covenant hereof or (iii) willful and material breach by any Party of any representation or warranty herein, such party shall be fully liable for any and all liabilities and damages incurred or suffered by any other party as a result of such failure, which the parties acknowledge and agree shall not be limited to reimbursement of expenses or out-of-pocket costs, and may include to the extent proven the benefit of the bargain lost by a party's stockholders (taking into consideration relevant matters, including other combination opportunities and the time value of money), which shall be deemed in such event to be damages of such party. The provisions of this Section 10.02 and Article 11 shall survive any termination hereof pursuant to Section 10.01.

ARTICLE 11

Miscellaneous

Section 11.01. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission) and shall be given,

if to Parent or Merger Subsidiary, to:

Comcast Corporation
One Comcast Center
1701 John F. Kennedy Boulevard
Philadelphia, PA 19103
Attention: Arthur R. Block
Facsimile No.: (215) 981-7794

with a copy (which shall not constitute notice) to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: David L. Caplan
William J. Chudd
Facsimile No.: (212) 450-3800

if to the Company, to:

Time Warner Cable Inc.
60 Columbus Circle
New York, NY 10023
Attention: General Counsel
Facsimile No.: (212) 364-8459

with a copy (which shall not constitute notice) to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Attention: Robert B. Schumer
Ariel J. Deckelbaum
Ross A. Fieldston
Facsimile No.: (212) 757-3990

or to such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day in the place of receipt.

Section 11.02. *Survival of Representations and Warranties.* The representations and warranties contained herein and in any certificate or other writing delivered pursuant hereto shall not survive the Effective Time. This

Section 11.02 shall not limit Section 10.02 or any covenant or agreement of the parties which by its terms contemplates performance after the Effective Time.

Section 11.03. *Amendments and Waivers.* (a) Any provision of this Agreement (including any Schedule hereto) may be amended or waived prior to the Effective Time if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement or, in the case of a waiver, by each party against whom the waiver is to be effective; provided that (i) after the Company Stockholder Approval has been obtained there shall be no amendment or waiver that would require the further approval of the stockholders of the Company under Applicable Law without such approval having first been obtained and (ii) after the Parent Stockholder Approval has been obtained there shall be no amendment or waiver that would require the further approval of the stockholders of Parent under Applicable Law without such approval having first been obtained.

(b) 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 further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

Section 11.04. *Expenses.* (a) General. Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense. Notwithstanding the foregoing, Parent and the Company each shall pay 50% of (i) any and all filing fees due in connection with the filings required by or under the HSR Act or any other Competition Laws and (ii) any and all filing fees and printing and mailing costs for the Joint Proxy Statement/Prospectus.

Section 11.05. *Disclosure Schedule and SEC Document References.* (a) The parties hereto agree that any reference in a particular Section of either the Company Disclosure Schedule or the Parent Disclosure Schedule shall be deemed to be an exception to (or, as applicable, a disclosure for purposes of) (a) the representations and warranties (or covenants, as applicable) of the relevant party that are contained in the corresponding Section of this Agreement and (b) any other representations and warranties of such party that is contained in this Agreement (regardless of the absence of an express reference or cross reference thereto), but only if the relevance of that reference as an exception to (or a disclosure for purposes of) such representations and warranties would be reasonably apparent.

(b) The parties hereto agree that any information contained in any part of any Specified Company SEC Document or Specified Parent SEC Document shall only be deemed to be an exception to (or a disclosure for purposes of) the applicable party's representations and warranties if the relevance

of that information as an exception to (or a disclosure for purposes of) such representations and warranties would be reasonably apparent; provided that, except for any specific factual information contained therein, in no event shall any information contained in any part of any Specified Company SEC Document or Specified Parent SEC Document entitled “**Risk Factors**” (or words of similar import) or containing a description or explanation of “**Forward-Looking Statements**” be deemed to be an exception to (or a disclosure for purposes of) any representations and warranties of any party contained in this Agreement.

Section 11.06. *Binding Effect; Benefit; Assignment.* (a) The provisions of this Agreement shall be binding upon and, except as provided in Section 7.07, shall inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement is not intended to confer upon any Person other than the parties any rights or remedies, other than (a) as specifically provided in Section 7.07 and Section 10.02 and (b) the right of the Company, on behalf of its stockholders, to pursue damages and other relief, including equitable relief, in the event of Parent’s or Merger Subsidiary’s (i) intentional and willful failure to fulfill a condition to the performance of the obligations of any other party hereunder, (ii) failure to perform a covenant hereof or (iii) willful and material breach of any representation or warranty herein, which right is hereby acknowledged and agreed by Parent and Merger Subsidiary; provided, however, that the rights granted pursuant to clause (b) above shall be enforceable on behalf of holders of Company Stock only by the Company in its sole and absolute discretion.

(b) No party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto, except that Parent or Merger Subsidiary may transfer or assign its rights and obligations under this Agreement, in whole or from time to time in part, to (i) one or more of their Affiliates at any time and (ii) after the Effective Time, to any Person; provided that such transfer or assignment shall not relieve Parent or Merger Subsidiary of its obligations hereunder or enlarge, alter or change any obligation of any other party hereto or due to Parent or Merger Subsidiary.

Section 11.07. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law rules of such state.

Section 11.08. *Jurisdiction.* The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby (whether brought by any party or any of its Affiliates or against any party or any of its Affiliates) shall be brought in the Delaware Chancery Court or, if such court shall not have jurisdiction, any federal court located in the State of Delaware or other Delaware state court, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the

fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 11.01 shall be deemed effective service of process on such party.

Section 11.09. *WAIVER OF JURY TRIAL*. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 11.10. *Counterparts; Effectiveness*. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by all of the other parties hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). Electronic or facsimile signatures shall be deemed to be original signatures.

Section 11.11. *Entire Agreement*. This Agreement, the Confidentiality Agreement, the Voting Agreement and the exhibits, schedules and annexes hereto constitute the entire agreement between the parties with respect to their subject matter and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to that subject matter.

Section 11.12. *Severability*. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 11.13. *Specific Performance*. The parties hereto acknowledge and agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with its specific terms or were otherwise

breached, and that monetary damages, even if available, would not be an adequate remedy therefor. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof in any federal court located in the State of Delaware or any Delaware state court, without proof of actual damages (and each party hereby waives any requirement for the security or posting of any bond in connection with such remedy), this being in addition to any other remedy to which they are entitled at law or in equity. The parties further agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to Applicable Law or inequitable for any reason, nor to assert that a remedy of monetary damages would provide an adequate remedy for any such breach.

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