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AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

BY AND AMONG

PANMURE GORDON & CO PLC,

BROADWAY ACQUISITION 2007, LLC,

THINKEQUITY HOLDINGS LLC,

AND

DEBORAH QUAZZO, as

Shareholder Representative

Dated February 19, 2007

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CERTIFIED AS A TRUE COPY OF THE ORIGINAL

*S. Angley*  
COMPANY SECRETARY  
PANMURE GORDON & CO. PLC

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## AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

THIS AGREEMENT AND PLAN OF MERGER AND REORGANIZATION (the "**Agreement**") is made and entered into as of February 19, 2007, by and among Panmure Gordon & Co. plc, a public limited company incorporated in England and Wales under registered number 02700769 ("**Parent**"), Broadway Acquisition 2007, LLC, a Delaware limited liability company and indirect wholly-owned subsidiary of Parent ("**Merger Sub**"), ThinkEquity Holdings LLC, a Delaware limited liability company and being a body corporate (the "**Company**"), and Deborah Quazzo, as the Shareholder Representative.

### RECITALS

A. The Boards of Directors of Parent and Merger Sub and the Executive Committee of the Company believe it is in the best interests of their respective companies and the equity holders of their respective companies to enter into a business combination by means of a statutory merger of Merger Sub with and into the Company (the "**Merger**") and, in furtherance thereof, have approved the Merger

B. The Executive Committee of the Company has, pursuant to Section 6 10 of the Third Amended and Restated Limited Liability Company Agreement of the Company, dated as of December 31, 2003 (as amended, the "**Company LLC Agreement**"), approved the Merger and in accordance therewith no additional vote, consent or approval with respect to the Merger or any other agreement and transaction contemplated by this Agreement is required of the holders of the outstanding limited liability interests of the Company (collectively, the "**Company Shares**").

C Pursuant to the Merger, all of the Company Shares shall be cancelled and in consideration of such cancellation the holders of the Company Shares shall receive fully paid ordinary shares of Parent, having a par value 4 pence per share ("**Parent Shares**"), and cash, all on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants and representations set forth herein, and for other good and valuable consideration, the parties agree as follows:

### ARTICLE I

#### CERTAIN DEFINITIONS

##### 1.1 Certain Definitions

(a) For purposes of this Agreement, the term:

"**Additional Share Payment I**" means the number of Parent Shares that is obtained by dividing the Additional Payment Amount 1 by the Relevant Share Price. "**Additional Payment Amount I**" means the amount that is equal to the sum of (i) the Assumed Obligations Holdback Amount (together with any dividends or other distributions made or that would have been made in respect of such Parent Shares constituting the Assumed Obligations Holdback Amount had they been issued to the Company Shareholders as of the Effective Time) plus (ii) the excess of

the Estimated Assumed Obligations Amount over the finally determined Assumed Obligations Amount.

**"Additional Share Payment 2"** means the number of Parent Shares that is obtained by dividing the Additional Payment Amount 2 by the Relevant Share Price **"Additional Payment Amount 2"** means the amount that is equal to (i) the Assumed Obligations Holdback Amount (together with any dividends or other distributions made or that would have been made in respect of such Parent Shares constituting the Assumed Obligations Holdback Amount had they been issued to the Company Shareholders as of the Effective Time) minus (ii) the excess of the finally determined Assumed Obligations Amount as of the Closing Date over the Estimated Assumed Obligations Amount.

**"Affiliate"** means, with respect to any specified Person, any Person that, directly or indirectly, controls, is controlled by, or is under common control with, such specified Person, through one or more intermediaries or otherwise For the purposes of this definition, "control," when used with respect to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms of "affiliated," "controlling" and "controlled" have meanings correlative to the foregoing

**"Assumed Obligations"** means the types and categories of obligations and liabilities of the Company and its subsidiaries, net of current assets (including all deposits and prepayments appearing on the Company's balance sheet), as set forth on Schedule 1.1 hereto.

**"Assumed Obligations Amount"** means the amount of the Assumed Obligations at the Effective Time.

**"Authority"** means any federal, state, local or foreign court, arbitrator, administrative or other governmental department, agency, commission, authority or instrumentality, (including without limitation, the SEC, the Commodity Futures Trading Commission, the National Futures Association and any Self-Regulatory Organization

**"Business Day"** means any day other than a Saturday, Sunday or other day on which banks in New York City or London are required or authorized to be closed.

**"Closing Schedule"** means a schedule setting forth (i) the name of each Company Shareholder, including holders of Company Options or other securities convertible into Company Shares (ii) the number of Company Shares held by each, including the number of Company Shares issuable upon the exercise of Company Options or the exercise or conversion of other securities convertible into Company Shares, (iii) the aggregate dollar amount of the Aggregate Merger Consideration payable to each such holder, (iv) the number of Parent Shares to be issued and allotted to such Company Shareholder, (v) the amount of cash to be paid to such Company Shareholder, (vi) the portion of the Assumed Obligations Amount attributable to each Company Shareholder and (vii) the portion of the Indemnification Holdback Amount attributable to each Company Shareholder, in each case based on the updated exchange ratios provided for in Section 2.6(b).

**"Code"** means the Internal Revenue code of 1986, as amended.

**"Contract"** means any written or oral note, bond, indenture, mortgage, deed of trust, contract, instrument, binding arrangement, lease, license or other agreement

**"Environmental Laws"** means all foreign, federal, state or local environmental, land use, health, chemical use, safety and sanitation laws, statutes, ordinances, rules, regulations (including, without limitation, with respect to the Business, specific licenses, permits, authorizations, directives, approvals, consents, court orders, injunctions or decrees, orders or agreements with governmental agencies) and codes, as in effect on the date hereof, relating to the protection of the Environment and/or governing the discharge of pollutants or the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances, including but not limited to the Resource Conservation and Recovery Act of 1976 as amended ("RCRA"), the Clean Air Act as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended ("CERCLA"), the Toxic Substances Control Act as amended, the Occupational Safety and Health Act of 1970, and state and foreign statutes similar to or based upon the foregoing, as the same are in effect on the date hereof.

**"Environmental Permits"** means all approvals, authorizations, consents, permits, licenses, registrations and certificates required by any applicable Environmental Laws relating to (A) pollution or protection of the Environment including those relating to a Release of any Hazardous Substances into the Environment, (B) the use, treatment, storage, disposal, generation, transport or handling of pollutants, contaminants or chemicals, or industrial, toxic or Hazardous Substances, or (C) the ownership, use, operation, cleanup or remediation of leased or owned properties.

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

**"Form ADV"** means the filing on Form ADV required to be made under the Investment Advisers Act with the SEC in connection with the registration of the filing party as an investment adviser under the Investment Advisers Act.

**"Hazardous Substance"** means any substance, whether solid, liquid or gaseous that is listed, defined or regulated as a "hazardous substance", "hazardous waste" or "solid waste", or is otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law; or which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or which causes or poses a threat to cause contamination or a nuisance or a hazard to the Environment or to the health or safety of persons

**"Knowledge"** or similar phrases means, with respect to the Company, the actual knowledge, following due inquiry, of any of the following persons: Jerry Joondeph, Robert McClanahan, Michael Moe, Deborah Quazzo and Greg Wright; and with respect to Parent, the actual knowledge, following due inquiry, of any of the following persons: Tom Forcier, David Liddell, Tim Linacre and Sarah Wigley.

**"Indebtedness"** means, with respect to any Person, (a) all indebtedness of such Person, whether or not contingent, for borrowed money, (b) all obligations of such Person for the

deferred purchase price of property or services, (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with U.S. GAAP, recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities, (g) all indebtedness of others referred to in clauses (a) through (f) above guaranteed directly or indirectly in any manner by such Person, and (h) all Indebtedness referred to in clauses (a) through (g) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

**"Investment Advisers Act"** means the Investment Advisers Act of 1940, as amended.

**"Investment Company Act"** means the Investment Company Act of 1940, as amended

**"Legal Requirements"** means any and all applicable (a) federal, territorial, state, local and foreign laws, ordinances, regulations; (b) codes, standards, rules, requirements, orders and criteria issued under any federal, territorial, state, local or foreign laws, ordinances and regulations; (c) codes, standards, rules, regulations, requirements, orders, criteria, guidelines or published interpretations of any Self-Regulatory Organization; and (d) any and all judgments, orders, writs, directives, rulings, decisions, injunctions, decrees, assessments, settlement agreements (other than settlement agreements which are no longer in effect) or awards of any Authority or arbitrator.

**"Liens"** means any lien, encumbrance, pledge, mortgage or security interest in respect of a property or asset.

**"Material Adverse Effect"** with respect to any entity means any event, change or effect that is materially adverse to the condition (financial or otherwise), properties, assets (including intangible assets), liabilities, or business of such entity and its subsidiaries, taken as a whole, other than any such event, change or effect that results or arises from or relates to (i) the announcement of the execution of this Agreement or the transactions contemplated hereby, (ii) changes in general economic or market conditions or prevailing interest rates, (iii) changes, circumstances or conditions generally affecting the business or industry in which such party operates that do not have a disproportionate adverse impact on such entity, (iv) changes in applicable accounting principles or rules, or (v) changes in generally applicable laws, regulations or interpretations.

**"MSRB"** means the Municipal Securities Rulemaking Board.

**"NASD"** means the National Association of Securities Dealers, Inc. or its wholly-owned subsidiary, NASD Regulation, Inc., or any successor entity or entities thereto.

**"Net Aggregate Merger Consideration"** means the Aggregate Merger Consideration less (i) the Indemnification Holdback Amount, (ii) the Shareholder Representative Payment and (iii) the Assumed Obligations Holdback Amount



**"Net Per Share Merger Consideration"** means the consideration payable in respect of, as applicable, each Class A Share, Class A-1 Share, Class B Share, Class B-1 Share or Class C Share, in each case as more fully set forth in Section 2.6(b), it being understood that in no event shall the sum of all payments of Net Per Share Merger Consideration exceed the Net Aggregate Merger Consideration

**"Permitted Liens"** mean such of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding shall have been commenced and as to which the Company is not otherwise subject to liability due to its existence: (a) Liens for Taxes or governmental assessments, charges or claims the payment of which is not yet due (b) Liens of carriers, warehousemen, mechanics, materialmen and other similar persons and other Liens imposed by applicable Legal Requirements incurred in the ordinary course of business for sums not yet delinquent or being contested in good faith, (c) any interest of a governmental entity or instrumentality in any lawfully made pledge or deposit under workers' compensation, unemployment insurance or other social security statutes, or (d) interests of lessors or licensors with regard to leased or licensed property.

**"Person"** means an individual, limited liability company, corporation, partnership, association, trust, joint venture or Authority.

**"Pro Rata Interest"** means, with respect to a Company Shareholder, a fraction the numerator of which is the aggregate portion of the Aggregate Merger Consideration that such Company Shareholder is entitled to receive pursuant to Section 1.6(b) and the denominator of which is the Aggregate Merger Consideration being delivered to all Company Shareholders

**"Release"** means any past or present spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a Hazardous Substance into the Environment (including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance).

**"Relevant Share Price"** means the average of the middle market price (i.e. the mid-point between the bid and ask prices) of a Parent Share traded on the AIM market operated by the London Stock Exchange plc as derived from the AIM appendix to the Daily Official List of the London Stock Exchange plc for the twenty (20) dealing days ending on the date (the **"Measurement Date"**) that is one (1) Business Day prior to the date of this Agreement, as if converted to U.S. dollars based on the average of the Noon buying rate for U.S. dollars, as reported by Bloomberg, for the twenty (20) dealing days ending on the Measurement Date

**"Securities Act"** means the U.S. Securities Act of 1933, as amended.

**"Self-Regulatory Organization"** means, with respect to any Person, the NASD, the Pacific Stock Exchange LLC, The Nasdaq Stock Market, Inc., the American Stock Exchange, LLC, the National Futures Association, the MSRB, the Chicago Board Options Exchange, Incorporated, the Chicago Board of Trade, the New York Stock Exchange and any other similar federal, state or foreign self-regulatory body or organization having jurisdiction over such Person or any of its Subsidiaries or Affiliates or any of their respective business operations, and any successors thereto.

**"Subsidiaries"** shall have the meaning set forth in Section 3.3, and shall include, without limitation, TEPL

**"Tax"** or **"Taxes"** means any and all taxes, including any interest, penalties, or other additions to tax that may become payable in respect thereof, imposed by any domestic or foreign Authority, including without limiting the generality of the foregoing, all income or profits taxes, payroll and employee withholding taxes, unemployment insurance taxes, social security taxes, severance taxes, license charges, taxes on stock, sales and use taxes, ad valorem taxes, excise taxes, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, real and personal property taxes, stamp taxes, environmental taxes, transfer taxes, workers' compensation, and other obligations of the same or of a similar nature to any of the foregoing.

**"Tax Return"** means a report, return or other information (including any attached schedules or any amendments to such report, return or other information) required to be supplied to or filed with an Authority with respect to any Tax, including an information return, claim for refund, amended return or declaration of estimated Tax

**"TEPL"** means ThinkEquity Partners LLC, a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 600 Montgomery Street, 8<sup>th</sup> Floor, San Francisco, California 94111

(b) The following terms shall have the meanings defined for such terms in the sections of this Agreement set forth below

<u>Term</u>	<u>Section</u>
Accrued Bonuses .. . . .	5.7(c)
Action..... . . . .	3.9(a)
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## ARTICLE II

### THE MERGER

**2.1 The Merger.** At the Effective Time (as defined in Section 2.2) and subject to and upon the terms and conditions set forth in this Agreement and the applicable provisions of the Delaware General Corporation Law ("*Delaware Law*"), Merger Sub shall be merged with and into the Company, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving company and as a wholly-owned subsidiary of Parent. The Company, as the surviving entity after the Merger, is sometimes referred to in this Agreement as the "*Surviving Company*."

**2.2 Closing; Effective Time.** The closing of the Merger (the "*Closing*") shall take place as soon as practicable (and in any event within five (5) Business Days) after the satisfaction or waiver of each of the conditions set forth in Article VI or at such other time as the parties hereto agree (the "*Closing Date*"). The Closing shall take place at the offices of Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, or at such other location as the parties hereto agree. At the Closing and simultaneously therewith, the parties hereto shall cause the Merger to be consummated by filing a Certificate of Merger in the form annexed hereto as Exhibit A (the "*Delaware Certificate of Merger*") with the Secretary of State of the State of Delaware in accordance with the relevant provisions of Delaware Law (the time of filing of the Delaware Certificate of Merger being the "*Effective Time*").

**2.3 Effect of the Merger** At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Delaware Certificate of Merger and the applicable provisions of Delaware Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Company, and all debts, liabilities and

duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Company, and the Surviving Company shall be a wholly-owned subsidiary of Parent.

**2.4 Certificate of Formation and Operating Agreement of Surviving Company.**

(a) The certificate of formation of Merger Sub in effect immediately prior to the Effective Time shall be the certificate of formation of the Surviving Company.

(b) The operating agreement of Merger Sub in effect immediately prior to the Effective Time shall be the operating agreement of the Surviving Company.

**2.5 Directors and Officers of Surviving Company.** The persons identified on Schedule 2.5 hereto shall be the initial directors and officers of the Surviving Company.

**2.6 Merger Consideration.**

(a) General. The aggregate consideration payable to Company Shareholders in the Merger (the "**Aggregate Merger Consideration**") by the Parent shall be the difference between Sixty Two Million Three Hundred Thousand Dollars (\$62,300,000) (the "**Purchase Price**") and the Assumed Obligations Amount. Parent shall cause ninety percent (90%) of the Aggregate Merger Consideration to be satisfied by the allotment of Parent Shares valued at the Relevant Share Price and ten percent (10%) of the Aggregate Merger Consideration to be paid in cash. The calculation of the Aggregate Merger Consideration to be paid at Closing shall be based on the Estimated Assumed Obligations Amount. Five percent (5%) of the Estimated Assumed Obligations Amount shall be withheld by Parent from the payment made at Closing (the "**Assumed Obligations Holdback Amount**"), to be paid to the Company Shareholders or retained by Parent depending on the finally determined Assumed Obligations Amount, as further provided below in Section 2.6(g). An additional fifteen percent (15%) of the Aggregate Merger Consideration shall be withheld as provided below in Section 2.7. Both of the holdbacks described in the preceding two sentences shall be in the form of Parent Shares valued at the Relevant Share Price.

(b) Cancellation of the Company Shares The following calculation of exchange ratios assumes that (i) the Assumed Obligations Amount is \$26,900,000 (and accordingly the Aggregate Merger Consideration is \$35,400,000), and (ii) the Assumed Obligations Holdback Amount is \$1,345,000. No less than three (3) Business Days prior to the Closing Date, the Company shall deliver to Parent the following two items: (1) an updated calculation of the exchange ratios set forth in this Section, which shall give effect to (i) the Estimated Assumed Obligations Amount (as defined in Section 2.6(g)(i) below), and (ii) the actual Assumed Obligations Holdback Amount, and (2) the Closing Schedule. By virtue of the Merger and without any further action on the part of Parent, Merger Sub, the Company or the holders of any of the Company's securities, and subject to Sections 2.6(g) and 2.7 below, at the Effective Time:

(i) each Class A (Member Common Share) ("**Class A Share**") issued and outstanding immediately prior to the Effective Time, and all rights in respect thereof, shall be cancelled and cease to exist and in consideration of such

cancellation Parent shall allot and issue (x) 199.898 Parent Shares (the "*Class A Exchange Ratio*") and (y) \$79.10 in cash;

(ii) each Class A Option (Member Common Share Option) ("*Class A Option*") issued and outstanding immediately prior to the Effective Time, and all rights in respect thereof, shall be cancelled and cease to exist and in consideration of such cancellation Parent shall allot and issue (x) 97.836 Parent Shares (the "*Class A Option Exchange Ratio*") and (y) \$38.71 in cash;

(iii) each Class A-1 (Sales Member Common Share) ("*Class A-1 Share*") issued and outstanding immediately prior to the Effective Time, and all rights in respect thereof, shall be cancelled and cease to exist and in consideration of such cancellation Parent shall allot and issue (x) 199.898 Parent Shares (the "*Class A-1 Exchange Ratio*") and (y) \$79.10 in cash;

(iv) each Class A-1 Option (Sales Member Common Share Option) ("*Class A-1 Option*") issued and outstanding immediately prior to the Effective Time, and all rights in respect thereof, shall be cancelled and cease to exist and in consideration of such cancellation Parent shall allot and issue (x) 97.836 Parent Shares (the "*Class A-1 Option Exchange Ratio*") and (y) \$38.71 in cash;

(v) each Class B (Founders Share) ("*Class B Share*") issued and outstanding immediately prior to the Effective Time, and all rights in respect thereof, shall be cancelled and cease to exist and in consideration of such cancellation Parent shall allot and issue (x) 9,768.221 Parent Shares (the "*Class B Exchange Ratio*") and (y) \$3,865.09 in cash;

(vi) the Warrant to purchase shares of Class B-1 (Lender Shares) ("*Class B-1 Lender Shares*") shall be exercised on a cash-less basis immediately prior to the Effective Time and Parent shall allot and issue to the holder of such Warrant in respect of each Class B-1 Lender Share issuable thereunder (x) 264.555 Parent Shares (the "*Class B-1 Exchange Ratio*") and (y) \$104.68 in cash;

(vii) each Class C (Third Party Share) ("*Class C Share*") issued and outstanding immediately prior to the Effective Time, and all rights in respect thereof, shall be cancelled and cease to exist and in consideration of such cancellation Parent shall allot and issue (x) 1,818.171 Parent Shares (the "*Class C Exchange Ratio*") and (y) \$719.41 in cash,

(viii) each Phantom Equity Unit ("*Phantom Equity Unit*") issued and outstanding immediately prior to the Effective Time, and all rights in respect thereof, shall be cancelled and cease to exist and in consideration of such cancellation Parent shall allot and issue (x) 249.172 Parent Shares (the "*Phantom Equity Unit Exchange Ratio*") and (y) \$98.59 in cash;

(ix) each share of Restricted Stock ("*Restricted Share*") issued and outstanding immediately prior to the Effective Time, and all rights in respect

thereof, shall be cancelled and cease to exist and in consideration of such cancellation Parent shall allot and issue (x) 0.723 Parent Shares (the "**Restricted Share Exchange Ratio**") and (y) \$0.29 in cash; and

(x) each dollar of the principal and accrued but unpaid interest outstanding immediately prior to the effective Effective Time of the Third Party Convertible Bridge Notes ("**Bridge Note Conversion Value**") issued and outstanding immediately prior to the Effective Time, and all rights in respect thereof, shall be deemed paid in full and thereby cancelled and in consideration of such repayment and cancellation Parent shall allot and issue (x) 0.261 Parent Shares (the "**Bridge Note Conversion Value Exchange Ratio**") and (y) \$0.10 in cash

(c) Company Options, etc. All actions necessary to effectuate the acceleration of the vesting of all options to purchase Company Shares ("**Company Options**") and to provide for the automatic cancellation of all Company Options that remain unexercised and outstanding at the Effective Time shall have been taken (including the withholding of any applicable Taxes) by all required corporate and other action of the Company. All actions necessary to effectuate the conversion of any other securities that are exercisable for or convertible into Company Shares that remain unexercised or unconverted and outstanding at the Effective Time shall have been taken by all required corporate and other action of the Company

(d) Fractional Shares Fractional Parent Shares will not be issued in connection with the cancellation of Company Shares pursuant to subsection (b) above and in lieu thereof any such fractional shares shall instead be rounded up to the nearest whole number of Parent Shares.

(e) Adjustments to Exchange Ratios for Stock Splits, etc Each of the Class A Exchange Ratio, the Class A-1 Exchange Ratio, the Class B Exchange Ratio, the Class B-1 Exchange Ratio and the Class C Exchange Ratio shall be adjusted to reflect fully the effect of any stock split, reverse split, stock dividend (including any dividend or distribution of securities convertible into Parent Shares or Company Shares), reorganization, recapitalization or other like change with respect to Parent Shares or Company Shares occurring after the date hereof and prior to the Effective Time

(f) Merger Sub Common Stock Held by Parent Each share of Merger Sub Common Stock issued and outstanding immediately prior to the Effective Time and held by Parent shall be converted into the equivalent number of membership interests in the Surviving Company

(g) Assumed Obligations Adjustment

(i) Company's Delivery of Pre-Closing Estimate. Not later than the fifth (5<sup>th</sup>) Business Day prior to the Closing Date, the Company will deliver to Parent a good faith estimate, prepared in accordance with U.S. generally accepted accounting principles ("**U.S. GAAP**"), and otherwise on a basis consistent with the Company's Unaudited Balance Sheet, of the likely amount of the Assumed



Obligations on the Closing Date (such estimate, the "***Estimated Assumed Obligations Amount***"), setting forth in reasonable detail the basis of the calculation thereof. Subject to Parent's approval of the amount thereof (which approval shall not be unreasonably withheld, conditioned or delayed) the Estimated Assumed Obligations Amount shall be used to determine the Assumed Obligations Holdback Amount as provided herein.

(ii) Shareholder Representative's Delivery of Post-Closing Statement

As soon as practicable but in any event within fifteen (15) days after the Closing Date, the Shareholder Representative will prepare (or cause to be prepared), at the expense of the Company, and deliver to Parent a statement (the "***Post-Closing Statement***") showing the Shareholder Representative's calculation of the Assumed Obligations as of the Closing Date in reasonable detail, as well as reasonable back-up and supporting data relating to the preparation of the Post-Closing Statement and the calculation of Assumed Obligations as of the Closing Date reflected thereon. Such statement shall be prepared in accordance with U.S. GAAP and otherwise on a basis consistent with the Company's Unaudited Balance Sheet.

(iii) Review Period Parent shall, within the thirty (30) day period (the "***Review Period***") following receipt of the Post-Closing Statement, review such statement and the calculation of the Assumed Obligations as of the Closing Date reflected thereon and notify the Shareholder Representative of its acceptance or non-acceptance thereof. If Parent gives notice (a "***Notice***") to the Shareholder Representative within the Review Period that Parent does not agree with the calculation of the Assumed Obligations as of the Closing Date reflected in the Post-Closing Statement, Parent shall describe in such Notice in reasonable detail the basis for its disagreement (such disagreement, a "***Dispute Item***"). Parent and the Shareholder Representative shall endeavor in good faith to resolve all such disagreements within the thirty (30) day period (the "***Negotiating Period***") following the delivery by Parent of such Notice.

(iv) Determination of Disputes. If Parent and the Shareholder Representative are unable to resolve any Dispute Item within the Negotiating Period, the dispute shall be promptly referred to an independent accounting firm mutually acceptable to Parent and the Shareholder Representative or, if the parties cannot agree on such a firm, a firm shall be appointed by the New York Office of the American Arbitration Association in accordance with the rules of such organization (the "***Neutral Accounting Firm***"). The Neutral Accounting Firm shall be instructed to resolve all outstanding Dispute Items within thirty (30) days of the referral of such Dispute Items thereto, and the determination of the Neutral Accounting Firm shall be final and binding upon all parties to this Agreement for all purposes of this Agreement. The fees and expenses of the Neutral Accounting Firm shall be borne by Parent.

(v) Final Adjustment. Promptly following the final resolution of all Dispute Items, if any, relating to the Post-Closing Statement calculations and

amounts reflected thereon in accordance with this Section 2.6(g), but in no event more than five (5) business days thereafter:

(A) if the finally determined Assumed Obligations Amount is equal to or less than the Estimated Assumed Obligations Amount, then Parent shall deliver to each of the Company Shareholders as of the Effective Time such Company Shareholder's Pro Rata Interest in 85% of Additional Share Payment 1, rounded to the nearest whole Parent Share, in further consideration of the cancellation of Company Shares as provided in this Agreement; and

(B) if the finally determined Assumed Obligations Amount is greater than the Estimated Assumed Obligations Amount, but less than the sum of (x) the Estimated Assumed Obligations Amount plus (y) the Assumed Obligations Holdback Amount, then Parent shall deliver to each of the Company Shareholders as of the Effective Time such Company Shareholder's Pro Rata Interest in 85% of Additional Share Payment 2, rounded to the nearest whole Parent Share, in further consideration of the cancellation of Company Shares as provided in this Agreement,

(C) if the finally determined Assumed Obligations Amount is greater than the sum of the Estimated Assumed Obligations Amount and the Assumed Obligations Holdback Amount, then the Company Shareholders shall not be entitled to any payment under this Section 2.6(g)(v) and such excess amount (the "*Shortfall*") shall be deemed to be Damages for which Parent may seek indemnification in accordance with Article VIII hereof; and

(D) Any portion of Additional Share Payment 1 and Additional Share Payment 2 not delivered to the Company Shareholders shall be added to the Parent Shares in the "Indemnification Holdback Amount" subject to Section 2.7.

**2.7 Indemnification Holdback Amount.** Parent shall withhold from the payment made at Closing fifteen percent (15%) of the Aggregate Merger Consideration, which shall be solely in the form of Parent Shares valued at the Relevant Share Price (together with any dividends or other distributions made or that would have been made in respect of such Parent Shares had they been issued to the Company Shareholders as of the Effective Time, the "*Indemnification Holdback Amount*"). The Indemnification Holdback Amount shall be available to compensate Parent Indemnified Persons for Damages by way of set-off against such amount as provided in Article VIII, and to pay up to \$300,000 of expenses of the Shareholder Representative pursuant to Section 9.16. To the extent not used to compensate Parent Indemnified Persons pursuant to the terms of Article VIII or to pay such expenses of the Shareholder Representative pursuant to Section 9.16, Parent shall release the Indemnification Holdback Amount by issuing Parent Shares at the Relevant Share Price (or any remaining portion thereof) to the Company Shareholders in proportion to their respective Pro Rata Interest on the first business day after the eighteen month anniversary of the Closing Date (the

"**Holdback Termination Date**"), in further consideration of the cancellation of Company Shares as provided in this Agreement, provided, that to the extent that there are any pending and unresolved claims for indemnification under Article VIII for which Parent has timely provided notice, the portion of the Indemnification Holdback Amount (or any remaining portion thereof) that is reasonably necessary to satisfy such claims, as measured by the fair market value of the Parent Shares (or any other property) forming part of the Indemnification Holdback Amount as of the Holdback Termination Date, may be retained by Parent (by not issuing the related number of Parent Shares) until such claims are resolved. For the avoidance of doubt, any indemnification obligations of the Company or the Company Shareholders under Article VIII shall be satisfied solely out of the Indemnification Holdback Amount.

## **2.8 Surrender and Payment**

(a) Each holder of Company Shares that have been cancelled in consideration for the payment by Parent of the Net Per Share Merger Consideration will be entitled to receive in consideration for such cancellation a certificate, bearing appropriate legends as provided herein (a "**Parent Certificate**"), representing the number of whole Parent Shares equivalent to the Net Per Share Merger Consideration payable in respect of such Company Shares. After the Effective Time, each Parent Certificate shall, until so surrendered, represent for all purposes only the right to receive such Net Merger Consideration Per Share.

(b) After the Effective Time, there shall be no further registration of transfers of Company Shares outstanding prior to the Effective Time.

(c) Parent shall be entitled to deduct and withhold from the Merger Consideration or any other amounts payable by Parent pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of any such payment under the Code or any provision of state, local, provincial or foreign tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of Company Shares in respect of which such deduction and withholding was made.

**2.9 Exemption from Registration; Restrictive Legends.** The Parent Shares to be issued in connection with the Merger will be issued in a transaction or transactions exempt from registration under the Securities Act of 1933, as amended (the "**Securities Act**") Certificates for Parent Shares shall be affixed with appropriate legends indicating that such Parent Shares (i) have not been registered under the Securities Act and may not be disposed of in the United States without being registered thereunder or in a transaction exempt from registration, (ii) as applicable, are subject to a lock-in agreement with Parent restricting their transfer inside or outside of the United States, and (iii) such other legends as may in Parent's reasonable determination be appropriate in order to comply with state or foreign securities laws, including those of the United Kingdom.

**2.10 Lock-In for Employee Equity Holders** All Parent Shares issued to any Employee Equity Holder in connection with the Merger will be subject to an 18-month lock-in beginning on the date of issuance of such Parent Shares pursuant to a lock-in agreement in substantially the form attached hereto as Exhibit C (a "**Lock-In Agreement**"). Each Employee

Equity Holder will be required to execute a Lock-In Agreement as a condition to receiving the Parent Shares issued to such holder

**2.11 Taking of Necessary Action; Further Action.** If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest Parent with control over, and to vest the Surviving Company with full right, title and possession to, all assets, property, rights, privileges, powers and franchises of the Company, the officers and directors of the Company, Parent and Merger Sub shall, in the name of their respective corporations or otherwise, take all such lawful and necessary action as may be requested by Parent.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

Except as disclosed in a document of even date herewith and delivered by the Company to Parent prior to the execution and delivery of this Agreement and referring by section and, where applicable, by subsection, to the representations and warranties in this Agreement, it being understood that to the extent it would be apparent to a reasonable person that an item disclosed in one section of the Company Disclosure Schedule also applies to another section, such item shall be deemed to be set forth in such other section (the "*Company Disclosure Schedule*"), the Company represents and warrants to Parent and Merger Sub as follows:

**3.1 Authorization and Validity of Agreement.** The Company has all requisite limited liability company power and authority to execute and deliver this Agreement, the Escrow Agreement and any other agreement contemplated hereunder (the "*Transaction Agreements*"), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby (the "*Transactions*") The execution, delivery and performance by the Company of this Agreement and the Transaction Agreements, and the consummation of the Transactions, have been duly and validly authorized by all necessary action of the Company. This Agreement has been duly executed and delivered by the Company and at the Closing, the Transaction Agreements to which the Company is a party shall have been duly executed and delivered by the Company, and, assuming the due authorization, execution and delivery by Parent and Merger Sub, constitute the valid and binding obligations of the Company enforceable against the Company in accordance with its terms, except that such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to creditors' rights generally, and is subject to general principles of equity.

**3.2 Capital Structure** The authorized, issued and outstanding equity interests of the Company are set forth on Schedule 3.2 (all references to Schedules in this Article III being to the applicable schedule in the Company Disclosure Schedules). Schedule 3.2 sets forth the names of the holders of the issued and outstanding equity interests of the Company and such interests are held of record by such holder in the respective amounts set forth on such schedule, and except as set forth on Schedule 3.2, there are no outstanding equity interests of the Company. All of the Company Shares are duly authorized, validly issued, fully paid and non-assessable and are free of any Liens other than Liens created by or imposed upon the holders

thereof, and are not subject to preemptive rights or rights of first refusal created by statute, the Third Amended and Restated Limited Liability Agreement of the Company or any agreement to which the Company is a party or by which it is bound. Except as set forth on Schedule 3.2, there are no options, warrants, calls, rights, commitments or agreements of any character, to which the Company is a party or by which it is bound obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any equity interests of the Company or obligating the Company to grant, extend, accelerate the vesting of, change the price of, or otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. Except for the agreements contemplated by this Agreement and the Governing Documents of the Company, there are no contracts, commitments or agreements relating to voting, purchase or sale of the Company's equity interests (i) between or among the Company and any of its shareholders and (ii) to the Company's Knowledge, between or among any of the Company Shareholders. All outstanding Company Shares were issued in compliance with all applicable federal and state securities laws. Except as set forth on Schedule 3.2, there is no accrued and unpaid dividend or other distribution with respect to any class or series of the Company Shares.

**3.3 Subsidiaries.** Schedule 3.3 sets forth each firm, corporation, partnership, limited liability company, trust, joint venture, joint stock company, incorporated or unincorporated association, or other organization in which the Company holds any equity or other interest of any kind (each of which is referred to herein individually as a "*Subsidiary*" and collectively as the "*Subsidiaries*") Schedule 3.3 sets forth (i) the name of each Subsidiary, (ii) its jurisdiction of incorporation, (iii) its authorized, issued and outstanding capital, (iv) all of the legal and beneficial owner(s) thereof, and (v) a general description of its business, including the services and products that it provides. All of the issued and outstanding shares of capital stock or other equity interests of each Subsidiary have been duly authorized and are validly issued, fully paid and nonassessable, and are held of record and beneficially by the Company or one of the Subsidiaries, free and clear of any restrictions on transfer (other than pursuant to the Governing Documents) and any Liens, other than Permitted Liens or Liens that will be released at Closing. There are no options, warrants, calls, rights, commitments or agreements of any character, to which any Subsidiary is a party or by which it is bound obligating the Subsidiary to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any equity interests of such Subsidiary or obligating the Company to grant, extend, accelerate the vesting of, change the price of, or otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. Except for the agreements contemplated by this Agreement, there are no contracts, commitments or agreements relating to voting, purchase or sale of any Subsidiary's outstanding capital stock or other equity interests.

**3.4 Organization and Qualification.** The Company and each of its Subsidiaries is a limited liability company or corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. The Company and each of the Subsidiaries has the full limited liability company or corporate power to own its properties and to carry on its business as now being conducted and as proposed to be conducted. The Company and each of the Subsidiaries is duly qualified or registered to do business and is in good standing in each jurisdiction where it is required by law to be so qualified, except where the failure to be so qualified or registered would not have, individually or in the aggregate, a Material Adverse Effect on the Company. Schedule 3.4 sets forth each jurisdiction in which the Company and

each Subsidiary is qualified or registered to do business. True, correct and complete copies of the certificate of formation and limited liability company operating agreement or other charter documents, as applicable, of the Company and each of the Subsidiaries, as amended to date, have been delivered to Parent. Neither the Company nor any of the Subsidiaries is in violation in any material respect of any of the provisions of its certificate or articles of formation, limited liability company operating agreement, certificate of incorporation, bylaws or any other governing documents (the "**Governing Documents**")

### 3.5 Financial Statements.

(a) Attached as Schedule 3.5 are copies of (i) the audited consolidated balance sheet of the Company as of December 31, 2005 and the related audited income statements and statements of cash flow of the Company for the three years then ended, accompanied by the notes thereto and the auditor's report thereon (the "**Audited Financial Statements**"); (ii) the unaudited consolidated balance sheet of the Company as of December 31, 2006 and the related consolidated statements of income and cash flows for the fiscal year then ended (the "**Unaudited Financial Statements**"), and the audited financial statements of TEPL for each of its three fiscal years ended December 31, 2005, and each of its FOCUS Reports during such periods through and including December 31, 2006 (the "**TEPL Financial Statements**", and together with the Audited Financial Statements and Unaudited Financial Statements, the "**Financial Statements**"). Each of the Financial Statements (including, in each case, the related notes thereto) was prepared in accordance with the books and records of the Company and the Subsidiaries, as applicable, and in accordance with U.S. GAAP applied on a consistent basis throughout the periods involved (except as may be indicated therein or in the notes thereto) and fairly presents in all material respects the consolidated financial position of the Company and the Subsidiaries at the respective dates thereof and the consolidated results of its operations and cash flows for the periods indicated, (subject, in the case of the Unaudited Financial Statements, to normal recurring immaterial year-end adjustments and the absence of notes).

(b) The Company and its Subsidiaries maintain a system of internal accounting controls designed 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 U.S. GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(c) TEPL has adopted recordkeeping systems that comply with the requirements of Section 17 of the Exchange Act and the rules and regulations promulgated thereunder, including, without limitation, Rules 17a-3, 17a-4 and 17a-5, and the rules of all Self-Regulatory Organizations having jurisdiction over TEPL, and maintains its records in accordance therewith.

(d) Neither the Company nor any Subsidiary, or, to the Company's Knowledge, any director, officer, employee, auditor, accountant or representative of thereof has received or otherwise had or obtained knowledge of any complaint, allegation, assertion or

claim, whether made in writing or made orally, regarding the accounting or auditing practices, procedures, methodologies or methods of the Company, any of its Subsidiaries or any of their respective internal accounting controls, including any complaint, allegation, assertion or claim that the Company or any Subsidiary has engaged in questionable accounting or auditing practices or any notification whether made in writing or made orally, of a (i) "reportable condition" or (ii) "material weakness" in the Company's internal controls. For purposes of this Agreement, the terms "reportable condition" and "material weakness" shall have the meanings assigned to them in the Statements on Auditing Standards 60, as in effect on the date hereof. To the Company's Knowledge, no attorney representing the Company or any Subsidiary, whether or not employed by the Company or such Subsidiary, has reported evidence of a violation of securities laws, rules or industry practice or custom breach of fiduciary duty or similar violation by the Company or any Subsidiary or any of their respective members, managers, directors, officers, employees or agents to any of their respective governing bodies or any committee thereof or to any director, officer, manager or member thereof. There have been no internal investigations regarding accounting or revenue recognition discussed with, reviewed by or initiated at the direction of any of their respective chief executive officers, chief financial officers, general counsels or similar legal officer, executive committee or any other governing body thereof.

(e) Neither the Company nor any Subsidiary is a party to, and neither the Company nor any Subsidiary has any commitment to become a party to, any joint venture, off-balance sheet arrangement, partnership or any similar contract or arrangement (including any such contract or arrangement relating to any transaction or relationship between or among the Company, on the one hand, and any Subsidiary or Affiliate of the Company, including any structured finance, special purpose or limited purpose entity or Person, on the other hand, and any "off-balance sheet arrangements" (as that term is defined in Item 303(a) of Regulation S-K of the SEC)).

(f) Except as set forth on Schedule 3.5(f).

(i) there are no contracts among or between the Company any Subsidiary;

(ii) there are no contracts among or between the Company or any Subsidiary, on the one hand, and any of the directors, officers, members, managers of the Company or any Subsidiaries or any Affiliates of such Persons (an "Insider") or a Related Party of any Insider (an "Insider Related Party"), on the other hand,

(iii) to the Company's Knowledge, no Insider and no Insider Related Party is a director or officer of, or has any direct or indirect interest in (other than the ownership of not more than 5% of the publicly traded shares of), any Person which is a customer, supplier, vendor, landlord, sales agent, clearing agency or competitor of the Company or any of the Subsidiaries;

(iv) no Insider and no Insider Related Party owes any money or other amounts to, nor is any Insider or any Insider Related Party owed any money or other amounts by, the Company or any Subsidiary;

(v) neither the Company nor any Subsidiary has, directly or indirectly, guaranteed or assumed any Indebtedness for the benefit of any Insider or any Insider Related Party, and

(vi) neither the Company nor any Subsidiary has made any loans, payments or transfers of assets to any Insider or to any Insider Related Party.

**3.6 No Violation; Consents and Approvals.** (a) The execution and delivery of this Agreement and the Transaction Agreements by the Company does not, and, assuming receipt of the Required Company Regulatory Approvals and any Required Company Contractual Consents, each as defined below, the performance of this Agreement and the Transaction Agreements to which the Company is a party and the consummation of the Transactions do not and will not violate, conflict with or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default), or result in termination of, or accelerate the performance required by, or result in a right of termination or acceleration (other than as contemplated by this Agreement), or require any offer to purchase or any prepayment of any debt or result in the creation of any Lien (other than a Permitted Lien or a Lien that will be released at Closing) upon any of the properties or assets of the Company or any of the Subsidiaries, in each case, under any of the terms, conditions or provisions of (i) the Governing Documents of the Company or any of the Subsidiaries, (ii) any Legal Requirement applicable to the Company, the Subsidiaries or any of their respective properties or assets, or (iii) any Contract to which the Company or a Subsidiary is a party or by which the Company, the Subsidiaries or any of their respective properties or assets may be bound or affected, except, in the case of clauses (ii) and (iii), such violations, conflicts, breaches or defaults that would not have, individually or in the aggregate, a Material Adverse Effect on the Company.

(b) Except for the filings with and receipt of approvals from the Authorities listed on Schedule 3.6(b) (such filings and approvals, the "*Required Company Regulatory Approvals*") and the consent of, or notice to, any other Person under the Contracts listed on Schedule 3.6(b) (such consents and notices, the "*Required Company Contractual Consents*"), no declaration, filing or registration with, or notice to, authorization, order, consent or approval of, or action of, any Authority is necessary for the execution and delivery of this Agreement and the Transaction Documents to which the Company is a party by the Company or the consummation by the Company and the Subsidiaries of the Transactions other than such declarations, filings, registrations, notices, authorizations, consents or approvals which are required or become applicable due to the nature or status of, or actions taken by, Parent or its Affiliates.

**3.7 Absence of Certain Changes or Events with Respect to the Company and its Subsidiaries.** Since the date of the balance sheet of the Company as of December 31, 2006 as reported in the Unaudited Financial Statements (the "*Company's Unaudited Balance Sheet*"), and except as set forth on Schedule 3.7, the Company's business has in all material respects been conducted in the ordinary course and consistent with past practice. As amplification and not limitation of the foregoing, except as set forth on Schedule 3.7, since the date of the Company's Unaudited Balance Sheet, (i) no event, change, development or fact has occurred that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect on the Company, and (ii) neither the Company nor any Subsidiary has:



(a) permitted or allowed any of its assets or properties to be subjected to any Lien, other than Permitted Liens and Liens that are released at or prior to the Closing,

(b) made any change in any method of accounting or accounting practice or policy used by it, other than such changes required by U.S. GAAP,

(c) amended, terminated, cancelled or compromised any material claims or waived any other rights valued at \$25,000 or more to the Company or such Subsidiary,

(d) sold, transferred, leased, subleased, licensed or otherwise disposed of any properties or assets, real, personal or mixed (including leasehold interests and intangible property) other than in the ordinary course of business and consistent with past practice;

(e) made any capital expenditure or commitment for any capital expenditure in excess of \$25,000 individually or \$100,000 in the aggregate;

(f) filed any amendments to any previously filed material Tax Returns or Tax refund claim; made, revoked or changed any express or deemed material Tax election or method of Tax accounting or settled or compromised any material liability with respect to Taxes, or consented to any material claim or assessment relating to Taxes or any waiver of the statute of limitations for any such claim or assessment, in each case, with respect to taxes payable by the Company or such Subsidiary,

(g) incurred any Indebtedness other than in the ordinary course of business and consistent with past practice,

(h) granted any increase, or announced any increase, in the wages, salaries, compensation, bonuses, incentives, pension or other benefits payable by the Company to any of its employees, including any increase or change pursuant to the Benefit Plans, or established or increased or promised to increase any benefits under the Benefit Plans, in either case except as required by any Legal Requirements or the terms of any Benefit Plan;

(i) amended or modified in any material respect, or consented to the termination of, any Material Contract or the Company's or such Subsidiary's rights thereunder;

(j) amended or restated the Governing Documents of the Company and such Subsidiary;

(k) disclosed to a third party, without an appropriate confidentiality agreement, any secret or confidential Company Intellectual Property or permitted to lapse or become abandoned any Company Intellectual Property (or any registration or grant thereof or any application relating thereto);

(l) entered into any agreement or arrangement with any third party the result of which would be the acceleration of the payment to the Company or such Subsidiary of any cash payments due to the Company or such Subsidiary; or

(m) agreed, whether in writing or otherwise, to take any of the actions specified in this Section 3.7

**3.8 Absence of Certain Changes or Events with respect to TEPL.** Except as set forth on Schedule 3.8, since the date TEPL became registered as a broker-dealer with the SEC and a member organization of the NASD, TEPL has conducted its business in all material respects in accordance with its Form BD, its restriction or membership agreement with the NASD, including maintaining at all times not less than 120% of its minimum net capital requirement as set forth therein and in accordance with Rule 15c3-1 under the Exchange Act, and in its capacity as an investment adviser since it became registered in such capacity with the SEC, in accordance with its Form ADV, and its written supervisory procedures, including its operational and compliance procedures, as each has been amended from time to time. Except as set forth on Schedule 3.8, since its last FOCUS Report for its fiscal period ended December 31, 2006, TEPL has in all material respects conducted its business in the ordinary course and consistent with past practice

**3.9 Legal Proceedings.**

(a) As of the date hereof, there is no material claim, action, suit, arbitration, inquiry, proceeding, investigation or examination by or before any Authority (each, an "Action") (whether criminal or civil) pending against or, to the Company's Knowledge, threatened against or affecting, the Company or any Subsidiary or any of their respective properties before any Authority, except those set forth in Schedule 3.9 (which, with respect to each Action set forth therein, sets forth the parties, nature of the proceeding, date and method commenced, amount of charges or other relief sought, and if applicable, paid or granted)

(b) Except with respect to matters that are the subject of the representations and warranties in Sections 3.16 and 3.17, neither the Company nor any Subsidiary, nor, to the Knowledge of the Company, any director, officer, manager, member, employee or agent thereof (i) is subject to any order, decree, agreement, memorandum of understanding or similar arrangement with, or commitment letter or similar submission to, or (ii) has received any supervisory or post-examination letter (including any letter of caution) from, or adopted any board or other resolutions at the request of, any Self-Regulatory Organization or other Authority charged with the supervision or regulation of broker-dealers or investment advisers or the supervision or regulation of the Company's business, in each case in relation to the Company's business (each such item referred to in clauses (i) and (ii) of this Section 3.9(b), a "**Regulatory Order**"), including any such Regulatory Order that restricts the conduct of the business of the Company or a Subsidiary, or in any manner relates to its supervisory or compliance procedures, or to its capital adequacy, credit policies or management. Neither the Company nor any Subsidiary has received notice from any Self-Regulatory Organization or other Authority that such organization or authority is contemplating issuing or requesting any such Regulatory Order

**3.10 Compliance with Legal Requirements and Permits.**

(a) Except as set forth in Schedule 3.10 and except with respect to matters that are the subject of the representations and warranties in Sections 3.16 and 3.17, (i) the Company and each Subsidiary is in compliance in all material respects with all Legal Requirements; (ii) the

Company and each Subsidiary is in compliance in all material respects with all applicable Permits, (iii) all Permits currently used by the Company and each Subsidiary that are material to the operation of its respective business are in full force and effect; and (iv) the Company and each Subsidiary has, to the extent required, made all filings necessary to request the timely renewal or issuance of all Permits necessary to the operation of its business prior to the Closing for the Company and each Subsidiary to own, operate and maintain its assets and to conduct its business as it is currently being conducted. Neither the Company nor any Subsidiary has received any written or oral notification or communication from any Authority which is pending as of the date hereof (i) asserting that the Company or such Subsidiary is in non-compliance with any Legal Requirement or has otherwise engaged in any unlawful business practice, (ii) threatening to revoke any Permit, franchise, seat or membership in any securities exchange, commodities exchange or Self-Regulatory Organization, or governmental authorization, (iii) requiring the Company or such Subsidiary to enter into a cease and desist order, memorandum of understanding, or other agreement, (iv) requiring the Company, such Subsidiary or any of their respective managers, members, board of directors or other governing body to adopt any resolution or policy or procedure, or (v) restricting or disqualifying the Company's or such Subsidiary's activities (except for restrictions generally imposed with respect to all broker-dealers by rule, regulation or administrative policy)

(b) Without limiting the generality of the preceding paragraph (a):

(i) Neither the Company nor any Subsidiary has exceeded the activities in which it is authorized to engage as enumerated in any agreements with any Authority or any registration form (including Form BD and Form ADV) and including any membership or restriction agreement between the Company or any Subsidiary and any Self-Regulatory Authority;

(ii) the Company and the Subsidiaries have made or provided all reports, registrations, notifications, disclosures, filings and statements required by Legal Requirements; and

(iii) the Company and the Subsidiaries have complied in all material respects with all Legal Requirements applicable to them or to the Company Employees, and with the applicable rules of all Self-Regulatory Organizations, including all regulatory net capital requirements, including, without limitation, Rules 15c3-1 and 17a-5 thereunder.

(c) As of the date hereof, there is no pending or, to the Company's Knowledge, threatened investigation, examination, review or disciplinary proceeding by any Authority against the Company or any Subsidiary and, to the Company's Knowledge, there is no pending or threatened investigation, examination, review or disciplinary proceeding by any Authority against any of their respective managers, members, directors, officers, or employees (in each case, in their capacities as such).

(d) Except for normal examinations and inquiries conducted by any Authority in the regular course of the Company's or a Subsidiary's business, (i) no Authority has initiated any proceeding or investigation into the business or operations of the Company or any

Subsidiary and (ii) there is no unresolved violation or exception by any Authority with respect to any report, statement or filing relating to any examinations of the Company or any Subsidiary, and since the date of its formation and except as listed on Schedule 3.10(d), neither the Company nor any of the Subsidiaries has been notified by any Authority that any past inspection has revealed any material deficiency in the Company or such Subsidiary's record keeping or compliance with the Investment Advisers Act, the Exchange Act, the Securities Act, the Investment Company Act or applicable state statutes

(e) The Company has made available to Parent copies of all requested written reports and other communications received by, the Company or any of its Subsidiaries from any Authority or its independent public accountants relating to the Company's and/or any of the Subsidiaries internal controls and procedures

(f) The Company has made available to Parent copies of all other requested written reports, exit conference summaries, amended exit conference summaries, deficiency letters and other correspondence received by the Company or by any of its Subsidiaries from any Authority with respect to such entity's business, operations, financial condition or any of its personnel or agents.

**3.11 Absence of Undisclosed Liabilities** Except (i) as disclosed on Schedule 3.11, (ii) as set forth or reserved against on the Company's Unaudited Balance Sheet, (iii) as set forth or reserved against on the balance sheet of TEPL as reported in its FOCUS Report for the month ended December 31, 2006, or (iv) for liabilities incurred since the date of the Company's Unaudited Balance Sheet in the ordinary course and consistent with past practice and that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, neither the Company nor any of its Subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise), which is of a nature required by U.S. GAAP to be reflected on a consolidated balance sheet of the Company and its Subsidiaries, including the related notes

**3.12 Environmental Compliance** The Company and each Subsidiary has all material Environmental Permits, as defined below, as are necessary for the lawful operation of the Company and each Subsidiary's business. The ongoing activities of the Company and each Subsidiary are in material compliance with the terms and conditions of the Environmental Permits, and are in compliance with and are not in default under, nor are subject to any court order or order of any federal, state or local government body or agency with respect to, any Environmental Laws, as defined below, and neither the Company nor any Subsidiary has received notice of, or is aware of facts in connection with the activities of the Company or any Subsidiary that could constitute, a violation or claim under any Environmental Laws. There are no past or present circumstances, activities or actions with respect to the operation of the Company or any Subsidiary that may interfere with or prevent material compliance with the Environmental Permits or any Environmental Law. There have been no Releases by the Company or any Subsidiary, or to the Knowledge of the Company, any other party, of any Hazardous Substances at, on, or under any of the properties currently or formerly owned or used by the Company or any Subsidiary, nor, to the Knowledge of the Company, have any such properties been used at any time by the any person as landfill or storage, treatment or disposal site for any type of Hazardous Substance or non-hazardous solid wastes as defined under RCRA.

Neither the Company nor any Subsidiary has voluntarily assumed any environmental liabilities affecting the business of the Company or any Subsidiary by undertaking, contract or agreement (written or otherwise) with any party other than pursuant to this Agreement. The Company has delivered to Parent copies of all documents, records and information in the possession or control or available to the Company or any Subsidiary concerning the condition of the environment at any of the properties currently or formerly owned or used by the Company or any Subsidiary.

**3.13 Title to Property.** Except as set forth in Schedule 3.13, the Company has good and marketable title to all of its respective assets and properties (real and personal) and interests in assets and properties (real and personal), reflected in the Company's Unaudited Balance Sheet or acquired after the date thereof, or with respect to leased properties and assets, valid leasehold interests in, free and clear of all Liens, other than Permitted Liens and Liens that will be released at Closing. All properties used in the operations of the Company or any Subsidiary are reflected in the Company's Unaudited Balance Sheet to the extent U.S. GAAP requires the same to be reflected. To the Knowledge of the Company, all buildings, and all fixtures, equipment and other property and assets that are material to its business on a consolidated basis, held under leases or sub-leases by the Company or any Subsidiary are held under valid instruments enforceable in accordance with their respective terms, subject to applicable laws of bankruptcy, insolvency or similar laws relating to creditors' rights generally and to general principles of equity (whether applied in a proceeding in law or equity). Schedule 3.13 sets forth a list of all leased assets and facilities and the material terms of each. Substantially all of the Company's and the Subsidiaries' equipment in regular use has been reasonably maintained and is in serviceable condition, reasonable wear and tear excepted. The Company and each Subsidiary owns or has the valid and subsisting right to use all assets and properties necessary to operate its business in the manner presently conducted.

**3.14 Intellectual Property.**

(a) Schedule 3.14(a) contains a true and complete list of the Company's patents, patent applications, registered trademarks, trademark applications, trademarks, trade names, registered service marks, service mark applications, service marks, Internet domain names, Internet domain name applications, copyright registrations and applications and other filings and formal actions made or taken pursuant to federal, state, local and foreign laws by the Company to protect its interests in the Company Intellectual Property (as defined in Section 3.13(f) below), and includes details of all due dates for further filings, maintenance, payments or other actions falling due in respect of the Company Intellectual Property within twelve (12) months of the Effective Time. All of the Company's and the Subsidiaries' patents, patent applications, registered trademarks, trademark applications and registered copyrights remain in good standing with all fees and filings due as of the date hereof.

(b) Except as set forth in Schedule 3.14(b), the Company Intellectual Property contains only those items and rights which are: (i) owned by the Company; (ii) in the public domain; or (iii) rightfully used by the Company pursuant to a valid and enforceable license or other agreement (the "*Company Licensed Intellectual Property*"), the parties, date, term and subject matter of each such license or other agreement (each, a "*License Agreement*") being set forth on such schedule. Except as set forth in Schedule 3.14(b), the Company or a Subsidiary has all rights in the Company Intellectual Property, which includes all rights necessary to carry

out the Company's and the Subsidiaries' current activities and future activities, to the extent such future activities are already planned. Except as set forth in Schedule 3.14(b), (i) the Company Intellectual Property is free and clear of any and all mortgages, pledges, liens, security interests, conditional sale agreements, encumbrances or charges of any kind and (ii) neither the Company nor any Subsidiary owes nor will it owe any royalties or other payments to third parties in respect of the Company Intellectual Property.

(c) Except as set forth in Schedule 3.14(c), to the Company's Knowledge, the reproduction, distribution, licensing, sublicensing, sale or any other exercise of rights in any Company Intellectual Property by the Company or a Subsidiary does not infringe on any proprietary or personal right, such as patent, design right, trademark, trade name, service mark, trade dress, Internet domain name, copyright, database right, statistical model, technology, invention, supplier list, trade secret, know-how, computer software program or application of any person, anywhere in the world. Neither the Company nor any Subsidiary has received notice of any pending or, to the Company's Knowledge, threatened, claims (i) challenging the validity, effectiveness or, other than with respect to the Company Licensed Intellectual Property, ownership by the Company of any Company Intellectual Property, or (ii) to the effect that the use, distribution, licensing, sublicensing, sale or any other exercise of rights in any product, work, technology or process by the Company or the Subsidiaries or use by their customers infringes or will infringe on or misappropriate any intellectual property or other proprietary or personal right of any person. To the Company's Knowledge, no such claims have been threatened by any person, nor are there any valid grounds for any bona fide claim of any such kind. All of the material rights within the Company Intellectual Property are enforceable and subsisting. To the Knowledge of the Company, there is no unauthorized use, infringement or misappropriation of any Company Intellectual Property by any third party, employee or former employee.

(d) Schedule 3.14(d) contains a true and complete list of all the Company's and its Subsidiaries' software programs (the "**Company Software Programs**"). The Company or a Subsidiary owns full and unencumbered right and good, valid and marketable title to such Company Software Programs that it owns, free and clear of all mortgages, pledges, liens, security interests, conditional sales agreements, encumbrances or charges of any kind. The Company has full and unrestricted rights to use the Company Software Programs that it licenses, pursuant to license agreements listed in Schedule 3.14(b). The source code and system documentation relating to the owned Company Software Programs have been maintained in strict confidence and (i) have been disclosed only to those of the Company's and its Subsidiaries' employees who have executed nondisclosure agreements with the Company or a Subsidiary, and (ii) have been disclosed to only those third parties who have executed nondisclosure agreements with the Company or a Subsidiary.

(e) It is the Company's and its Subsidiaries' practice to routinely scan the Company Software Programs and other Company Intellectual Property with a commercially available virus-scan software, and to the Company's Knowledge, the Company Software Programs and other Company Intellectual Property contain no "viruses."

(f) "**Company Intellectual Property**" shall mean all patents (including, without limitation, all U.S. and foreign patents, patent applications, patent disclosures, and any

and all divisions, continuations, continuations-in-part, reissues, re-examinations and extensions thereof), design rights, trademarks, trade names and service marks (whether or not registered), trade dress, Internet domain names, copyrights (whether or not registered) and any renewal rights therefor, *sui generis* database rights, statistical models, technology, inventions, supplier lists, trade secrets, know-how, computer software programs or applications in both source and object code form, databases, technical documentation of such software programs, registrations and applications for any of the foregoing and all other tangible or intangible proprietary information or materials that were or are material to the Company's or a Subsidiary's business or are currently used in the Company's or a Subsidiary's business in any product, technology or process (i) currently being or formerly manufactured, published or marketed by the Company or a Subsidiary or (ii) previously or currently under development for possible future manufacturing, publication, marketing or other use by the Company

### 3.15 Taxes.

(a) All material Tax Returns for Taxes payable by the Company or any Subsidiary that are required to be filed on or before the Closing Date by the Company or any Subsidiary have been or will be duly and timely filed (after giving effect to any valid extensions of time in which to make such filings) and all such Tax Returns were (or if such Tax Returns have not been filed, will be) true, accurate and complete in all material respects.

(b) All material Taxes of the Company and each of its Subsidiaries that have become due and payable on or before the Closing Date have been timely paid, except for Taxes for which adequate reserves have been established in accordance with GAAP

(c) Except to the extent relating to any misclassification of workers as either employees or independent contractors, the Company and each of its Subsidiaries have withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, shareholder or other third party.

(d) There are no outstanding requests by the Company or any of its Subsidiaries for any extension of time within which to file any Tax Return or to pay any Taxes

(e) Neither the Company nor any of its Subsidiaries have executed any waivers or extensions of any applicable statute of limitation to assess any amount of Taxes

(f) There are no liens for Taxes upon the assets of the Company or any of its Subsidiaries, except for statutory liens for current Taxes not yet due and payable.

(g) No material deficiency for any Taxes or adjustment relating to any Tax Return has been proposed, asserted, or assessed against the Company or any of its Subsidiaries by any Authority that has not been resolved other than such a deficiency or adjustment that is being contested in good faith and for which adequate reserves have been established in accordance with GAAP, and there are no pending or, to the Company or any of its Subsidiaries' Knowledge, threatened audits, investigations, claims, or assessments for or relating to any Tax or Tax Returns of the Company or any of its Subsidiaries.

(h) No material claim has been made by any Authority in a jurisdiction where the Company or any of its Subsidiaries do not file Tax Returns that the Company or any of its Subsidiaries are or may be subject to any Taxes assessed by such jurisdiction.

(i) Neither the Company nor any of its Subsidiaries (i) has been a member of an affiliated group filing a consolidated federal income Tax Return or (ii) has any liability for Taxes of any person under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law)

(j) Neither the Company nor any of its Subsidiaries have engaged in any transaction which requires its participation to be disclosed under Treasury Regulation section 1.6011-4.

(k) Except for (i) customary agreements to indemnify lenders or security holders in respect of Taxes, (ii) Taxes of the Company or any Subsidiary, or (iii) pursuant to contracts listed on Schedule 3 21, neither the Company nor any of its Subsidiaries is liable for Taxes of any other Person, or is under any contractual obligation to indemnify any Person with respect to Taxes, or is a party to or bound by any Tax sharing agreement or any other agreement providing for payments by the Company or any of its Subsidiaries with respect to Taxes

(l) The Company has been treated as a "partnership" for U S federal, state and local tax purposes since its inception

(n) Except for Taxes for which Parent is responsible under 5.13(d), the accrued (in accordance with GAAP) and unpaid Taxes of the Company and each of the Subsidiaries as of the Closing Date will not exceed the total accrual for Taxes taken into account as an Assumed Obligation.

### **3.16 Employee Benefit Plans.**

(a) Schedule 3.16(a) sets forth a list of each plan, program, policy or Contract providing for compensation, severance, termination pay, performance awards, stock or stock-related awards, pension, savings, retirement, incentive, bonus, deferred compensation, cafeteria, medical, disability, life, accident or other insurance, fringe benefits or other employee benefits of any kind, including any "employee benefit plan" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), which is, or, if the Company or any Subsidiary may have liability with respect thereto, ever was, sponsored, maintained, or contributed to by the Company or its Subsidiaries, and in which any current, former or retired employee, officer, consultant, independent contractor, agent or director of the Company or any of its Subsidiaries (an "**Employee**") participates or with respect to which the Company or its Subsidiaries has or may have any liability, including but not limited to any obligation to contribute (collectively, the "**Benefit Plans**"). Other than the Subsidiaries, the Company does not have any ERISA Affiliates. "**ERISA Affiliate**" means any entity (whether or not incorporated) other than the Company or its Subsidiaries that, together with the Company or its Subsidiaries, is a member of a controlled group of corporations within the meaning of Section 414(b) of the Code, of a group of trades or businesses under common control within the meaning



of Section 414(c) of the Code, or in the case of any Benefit Plan subject to Part 3 of Subtitle B of Title I of ERISA, of an affiliated service group within the meaning of Section 414(m) of the Code.

(b) The Company has made available to Parent true and complete copies of (i) each Benefit Plan document and any amendments thereto (including written summaries of any unwritten Benefit Plan or amendment), (ii) to the extent applicable, trust agreements, insurance and other contracts (including policies), summary plan descriptions, and summaries of material modifications distributed to the participants of each Benefit Plan, (iii) to the extent annual reports on Form 5500 are required with respect to any Benefit Plan, the two most recent annual reports with accompanying schedules and attachments, and (iv) where applicable, the most recent opinion or determination letter, audited financial statements, actuarial valuation reports and nondiscrimination tests performed under the Code for each Benefit Plan

(c) Each Benefit Plan has been established and maintained in accordance with its terms and in material compliance with all applicable Legal Requirements, including but not limited to ERISA and the Code. Each Benefit Plan intended to qualify under Section 401 of the Code is so qualified and either has received a favorable determination letter or can rely on an opinion letter as to its qualification covering all amendments required by the General Agreement on Tariff and Trade of 1994 and subsequent legislation which constitute what is generally referred to as "GUST amendments," and nothing has occurred that could adversely affect such qualification. As of and including the Closing Date, the Company and its Subsidiaries shall have made all contributions required to be made by it up to and including the Closing Date with respect to each Benefit Plan, or adequate accruals therefor will have been provided for and will be properly reflected on the books of the Companies and its Subsidiaries

(d) With respect to each Benefit Plan, (i) there is no Action pending, or, to the Knowledge of the Company, threatened (other than routine claims for benefits) against the Company or its Subsidiaries, (ii) to the Knowledge of the Company, there is no Action pending, or threatened (other than routine claims for benefits) against any person or entity other than the Company or its Subsidiaries; and (iii) no event has occurred in connection with which the Company, its Subsidiaries or any Benefit Plan, directly or indirectly, could be subject to any material liability, including under ERISA, the Code or any other Legal Requirement or governmental order.

(e) Neither the Company nor any Subsidiary or ERISA Affiliate maintains or contributes to or has ever maintained or contributed to a Benefit Plan (including, without limitation, any "multiemployer plan" within the meaning of Section 3(37) of ERISA) subject to Title IV of ERISA, and no condition exists or is reasonably likely to exist as a result of which the Company or any of its Subsidiaries could have any material liability under Title IV of ERISA.

(f) No Benefit Plan is (i) under an audit of which such Benefit Plan, the Company or a Subsidiary has been notified, or (ii) the subject of an Action, or, to the Knowledge of the Company, under investigation in each case by the IRS, the DOL or the PBGC.

(g) Except as set forth on Schedule 3 16(g) or as otherwise contemplated by this Agreement, the execution of, and performance of the transactions contemplated in, this

Agreement will not constitute an event under any Benefit Plan that, either alone or in connection with any other event, will result in any payment (whether of severance pay or otherwise, including any "parachute payment" under Section 280G of the Code), acceleration, forgiveness of Indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Employees

(h) With respect to each Benefit Plan, (i) no "party in interest" or "disqualified person" (as defined in Section 3(14) of ERISA or Section 4975 of the Code, respectively) has engaged in a transaction which could subject the Company or any of their respective Subsidiaries, directly or indirectly, to a tax, penalty or liability for prohibited transactions imposed by ERISA or the Code and (ii) the Company does not have any material liability with respect to a breach by a fiduciary (as defined in Section 3(21) of ERISA) of any of the responsibilities or obligations imposed upon the fiduciary under Title I of ERISA

(i) The Company has provided Parent with true and correct copies of any communications or election forms sent to participants by the Company or any Subsidiary in any Benefit Plan, employment agreement or similar contract regarding compliance with Section 409A of the Code.

(j) Each Benefit Plan which is a "welfare plan" within the meaning of Section 3(1) of ERISA and which provides health, disability or death benefits is fully insured and the Company and its Subsidiaries are not obligated to directly pay any such benefits or to reimburse any third party payor for the payment of such benefits, excluding for the avoidance of doubt, any premium payment made by the Company or its Subsidiaries.

(k) No Benefit Plan provides for post-retirement (or other post-termination) medical or health, life insurance or death benefits (through insurance or otherwise) for any Employee or any dependent or beneficiary of any Employee except as may be required by COBRA or any other similar law

(l) No Benefit Plan is a "multiple employer plan" as described in Section 3(40) of ERISA or Section 413(c) of the Code.

(m) Except as set forth on Schedule 3.16(m), the Company and its Subsidiaries have not agreed or communicated their respective intention in writing to create any additional Benefit Plans or to amend or modify any Benefit Plan in a manner that would (i) cause an increase in benefits under such Benefit Plan, (ii) cause the creation of new benefits or (iii) change any Employee coverage that would cause an increase in the expense of maintaining such Benefit Plan, except in each case as required pursuant to the terms of any Benefit Plan agreement or applicable law.

(n) No Benefit Plan is an employee stock ownership plan (within the meaning of Section 4975(e)(7) of the Code) or otherwise invests in Company Stock.

(o) No Benefit Plan covers any non-U S Employees.

(p) No Benefit Plan, other than a "pension plan" within the meaning of Section 3(2) of ERISA, is funded through a trust intended to be exempt from Tax pursuant to Section 501 of the Code.

### **3.17 Employees; Employee Matters.**

(a) Neither the Company nor any of its Subsidiaries is a party to any labor or collective bargaining Contract and (i) no other such Contract is currently being negotiated by the Company or any of its Subsidiaries, and (ii) as of the date hereof, neither the Company nor any such Subsidiary is under any obligation to negotiate any such Contract. To the Knowledge of the Company, no union organizational efforts are underway, pending or threatened with respect to employees of the Company, nor have any such taken place or been threatened during the three (3) year period prior to the date hereof

(b) The Company has complied in all material respects with all Legal Requirements regarding employment and labor. There are no (i) strikes, work stoppages, work slowdowns or lockouts pending or, to the knowledge of the Company, threatened against or involving the Company or any of its Subsidiaries nor have any strikes, work stoppages, slowdowns or lockouts occurred within three (3) years prior to the date hereof, or (ii) unfair labor practices or other labor-related charges, grievances or complaints pending or, to the knowledge of the Company, threatened by or on behalf of any employee or group of employees Schedule 3.17(b) sets forth a true, correct and complete list of any employment-related claims that have been asserted in writing or are pending against the Company or any of its Subsidiaries within the past three (3) years

(c) Schedule 3.17(c) sets forth a true, correct and complete list of all of the Company's employees, and with respect to each such employee, such individual's current title and the date of hire of such employee. The Company has made available to Parent the total compensation (including base salary, target bonus percentage and total bonus payout) received by such individual in the immediately preceding fiscal year of the Company or the applicable Subsidiary, as the case may be and such individual's base salary for the current fiscal year. Other than as set forth on Schedule 3.17(c), there are no outstanding loans from the Company or a Subsidiary to such individuals.

(d) To the Knowledge of the Company, as of the date hereof no key employee and no group of employees has notified the Company of his, her or its plans to terminate or modify his, her or its status as an employee or employees (including upon consummation of the transactions contemplated hereby) To the Company's Knowledge, no employee or consultant of the Company or any Subsidiary is in violation in any material respect of any term of any employment agreement, confidentiality agreement, non-solicitation agreement, patent disclosure agreement, noncompetition agreement, or any restrictive covenant, in each case to a former employer relating to the right of any such employee or consultant to be employed or engaged by the Company or any Subsidiary because of the nature of the business conducted or presently proposed to be conducted by the Company or to the use of trade secrets or proprietary information of others.

(e) Neither the Company nor any of its Subsidiaries has any material liability based upon, arising out of or relating to the classification of any individual working for or related to the Company or its Subsidiaries as an independent contractor or "leased employee" (within the meaning of Section 414(n) of the Code) rather than as an employee, and no facts exist as a result of which the Company or any of its Subsidiaries would reasonably be expected to have any such liability.

(f) All material levies, assessments and penalties made against the Company or any of its Subsidiaries pursuant to all applicable workers compensation legislation as of the date hereof have been paid by the Company and such Subsidiaries or accrued on their respective balance sheets.

(g) Except as disclosed on Schedule 3.17(g), no employee has any Contract with the Company or any of its Subsidiaries providing for the payment of severance or other compensation or benefits upon a termination of employment.

**3.18 Insurance.** The Company and its Subsidiaries are presently insured, and since inception have been insured, against such risks as a company engaged in a similar business would, in accordance with good business practice, customarily be insured. The policies of fire, theft, liability, fidelity, and other insurance maintained with respect to the assets or businesses of the Company and the Subsidiaries provide adequate coverage against loss. There is no claim pending under any of such policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies. Schedule 3.18 contains a true and complete list of all insurance policies maintained by the Company and the Subsidiaries and the expiration date of each, all of which have been made available to Parent together with all riders and amendments thereto. All such policies are in full force and effect and all premiums due thereon have been paid to the date hereof. The Company and the Subsidiaries have complied in all material respects with the terms of such policies. The Company has no Knowledge of any threatened termination of, or premium increase with respect to, any of such policies.

**3.19 Bank Accounts.** Schedule 3.19 sets forth the names and addresses of all banks, brokerage firms, other institutions and state governmental departments at which the Company or a Subsidiary has accounts, deposits or the like, and the names of all persons authorized to draw on or give instructions with respect thereto or holding a power-of-attorney on behalf of the Company or any Subsidiary. Except as set forth on Schedule 3.19, all cash and securities held in such accounts is not subject to any restrictions or limitations as to withdrawal.

**3.20 Accounts Receivable.** Except as set forth in Schedule 3.20, subject to any reserves set forth in the Financial Statements, the accounts receivable shown on the Financial Statements represent bona fide claims against debtors for sales and other charges, and are not subject to discount except for normal cash and immaterial trade discounts.

**3.21 Material Contracts.** Schedule 3.21 sets forth each of the following contracts to which the Company or any Subsidiary is a party as of the date hereof (collectively, the "*Material Contracts*")

(a) any broker (other than broker agreements with any Person to whom the Company provides services, a "*Client*", pursuant to which the Company acts as a broker), agency, market research, marketing, consulting, sales, advertising, distribution, co-branding, or sponsorship agreement;

(b) any contract for the clearance and settlement or custody of securities or other assets;

(c) any currently effective engagement letter agreement, and any other continuing contract for the provision of products or services involving more than \$50,000 per year,

(d) any continuing contract for the purchase of materials, supplies, equipment or services involving in the case of any such contract more than \$50,000 per year;

(e) any contract that expires or may be renewed at the option of any person other than the Company so as to expire more than one year after the date of this Agreement, except for such contracts, if any, that are not material to the Company or any Subsidiary,

(f) any trust indenture, mortgage, promissory note, loan agreement or other contract for the borrowing of money, or any contract granting a Lien (other than a Permitted Lien) upon any material property or asset of the Company or any Subsidiary;

(g) any agreement of guarantee, support, indemnification, assumption or endorsement of, or any similar commitment with respect to, the obligations, liabilities (whether accrued, absolute, contingent or otherwise) or indebtedness of any other Person;

(h) any currency exchange, commodities or other hedging arrangement or any leasing transaction of the type required to be capitalized in accordance with U.S. GAAP,

(i) any contract for capital expenditures in excess of \$50,000 in the aggregate,

(j) any contract limiting the freedom of the Company or any Subsidiary to engage in any line of business or to compete in any geographic area or during any period of time, or which requires the Company or any Subsidiary to maintain the confidentiality of any proprietary information of any third party, or any other non-competition or material confidentiality, secrecy or non-disclosure contract;

(k) any contract pursuant to which the Company is a lessor of any equipment, motor vehicles, office furniture, fixtures or other personal property, pursuant to which payments in excess of \$25,000 remain outstanding;

(l) any employment contract, arrangement or policy (including without limitation any collective bargaining contract or union agreement) which may not be immediately terminated without penalty (or any augmentation or acceleration of benefits),

(m) any contract that is terminable by the other party or parties thereto upon a change of control of the Company or a Subsidiary;

- (n) any contract which is a joint venture agreement;
- (o) any contract providing for the acquisition or disposition after the date of this Agreement of any material portion of the Company's or any Subsidiary's assets;
- (p) any contract with any Authority;
- (q) any stockholders agreement, operating agreement, voting agreement, registration rights agreement or other agreement to which the Company and any stockholder, member, manager, director or officer of the Company or a Subsidiary is a party other than the Governing Documents, or
- (r) any contract with any person or entity with whom the Company or any Subsidiary does not deal at arm's length.

**3.22 No Breach of Material Contracts** Except as set forth in Schedule 3.22, the Company and each Subsidiary has performed in all material respects all of the obligations required to be performed by it and is entitled to all benefits under each, and is not alleged to be in default in respect of any Material Contract. Except as set forth in Schedule 3.22, each of the Material Contracts is in full force and effect, and there exists no default or event of default or event, occurrence, condition or act, with respect to the Company, any Subsidiary, or, to their Knowledge, with respect to the other contracting party, which, with the giving of notice, the lapse of time or the happening of any other event or conditions, would become a default or event of default under any Material Contract. True, correct and complete copies of all Material Contracts have been delivered to Parent.

**3.23 Affiliates.** Schedule 3.23 sets forth the names and addresses of each person who is, to the Company's Knowledge, an affiliate (as such term is used in Rule 145 under the Securities Act) of the Company or any of its Subsidiaries. Except as set forth in Sections 3.16 and 3.17 and the Schedules thereto, neither the Company nor any Subsidiary is indebted to, nor does it owe any contractual commitment or arrangement to, with or for the benefit of, any director, officer, employee, affiliate or agent of the Company (except for amounts due as normal salaries and bonuses, distributions in respect of their equity interests and in reimbursement of ordinary expenses). To the Company's Knowledge, no current or former director, officer, employee, affiliate or agent of the Company or any Subsidiary is presently or at the Effective Time shall be, or, in the last three years has been, the direct or indirect owner of an interest in excess of 5% in any corporation, firm, association, or business organization which is a present competitor, supplier or customer of the Company. Except as set forth in Schedule 3.23, and except for normal salaries, bonuses, other employee benefits pursuant to Benefit Plans, distributions in respect of their equity interests in the Company and reimbursement of ordinary expenses, neither the Company nor any Subsidiary has made any payments, loans or advances of any kind, or paid any dividends or distributions of any kind, to or for the benefit of any of the Company's affiliates, including any of the Subsidiaries, or any of their respective affiliates, associates or family members.

**3.24 Brokers; Transaction Expenses.**

(a) No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from the Company or any Subsidiary in connection with the Merger based upon arrangements made by or on behalf of the Company or any Subsidiary or, to the Company's Knowledge, any of the Company Shareholders.

(b) Schedule 3.24 sets forth an itemized list of the Company's reasonable estimate of all expenses expected to be incurred by the Company in connection with the negotiation of the Transaction Agreements and effectuation of the Merger.

### **3.25 Regulatory Registrations and Memberships.**

(a) TEPL has been continually registered as a broker-dealer with the SEC since February 25, 1998, and has been continually registered as an investment adviser with the SEC since January 14, 2005, and such registrations are in full force and effect

(b) TEPL has been, and continues to be, a member organization in good standing with the markets, commissions and other securities industry organizations as set forth on Schedule 3.25(b), and such memberships and registration are in full force and effect.

(c) TEPL has been, and continues to be, registered as a broker-dealer in good standing in those jurisdictions listed on Schedule 3.25(c), and such registrations are in full force and effect.

(d) Each of the directors, officers, managers, members and employees, and to the Company's Knowledge, agents of the Company, and each Subsidiary, particularly TEPL, who is required to be registered as a broker-dealer, a principal, a registered representative, a salesperson or agent (or any limited subcategory thereof) with any Authority, including without limitation, the SEC, each Self-Regulatory Organization having jurisdiction over such Person, and the securities commission or similar authority of any State or foreign Authority, has been duly registered since commencing any activities requiring such registrations on behalf of the Company and such Subsidiary. All of such Persons, their respective capacities, and the effective dates of such registrations are set forth on Schedule 3.25(d), and such registrations are in full force and effect.

(e) The Company has made available to Parent a true and complete copy of TEPL's Form BD, as amended to date, as filed with the SEC and any other Authority; copies of all state filings, as amended to date, and copies of all current books, records and reports required to be kept by the Company and TEPL pursuant to the Exchange Act, including without limitation, Section 17 and the rules promulgated thereunder, including without limitation, Rules 17a-3, 17a-4 and 17a-5, and those required pursuant to applicable state statutes, the rules and policy statements promulgated thereunder. The information contained in such forms and reports was true and complete at the time of filing in all material aspects. TEPL has filed all amendments required to be filed to its Form BD and all other required registration forms under federal and state law

(f) Except as set forth on Schedule 3.25(f), since the effective date of their registrations and memberships with the respective Authorities, the Company and each Subsidiary has complied with, and has remained in compliance with, all Legal Requirements applicable to

its business, operations, trading, financial status and personnel, and has timely filed all application forms, periodic and other forms and reports, including, without limitation, all FOCUS Reports required to be filed with respect thereto. The information contained in such applications, forms and reports was true and complete in all material respects as of the date of the filing thereof, and timely amendments were filed, as necessary, to correct or update any information reflected in such applications, forms or reports.

(g) Except as set forth on Schedule 3.25(g), TEPL has adopted, implemented and enforced, on a timely basis, in accordance with all applicable Legal Requirements, including, without limitation, an effective supervisory system to govern its business activities and operations, financial responsibilities, and supervision of all of its associated persons, and has otherwise adopted and implemented, a complete set of Written Supervisory Procedures, Supervisory Control Procedures, Anti-Money Laundering Procedures, Insider Trading Procedures, and has prepared and timely delivered Firm Element Training and Annual Compliance Meetings, as well as all adopted, administered and maintained evidence of supervisory reviews of the same.

(h) Since it became registered as an investment adviser under the Investment Adviser Act, TEPL has been, and continues to be, in compliance with all federal and state laws requiring registration, notification, licensing or qualifications as an investment adviser. Each such federal and state registration or notice is in full force and effect as of the date hereof. The Company has made available to Parent a true and complete copy of TEPL's Form ADV, as amended to date, as filed with the SEC, copies of all state notices, as amended to date; and copies of all current books, records and reports required to be kept by the Company and TEPL pursuant to the Investment Adviser Act and rules promulgated thereunder, and required pursuant to applicable state statutes. The information contained in such forms and reports was true and complete at the time of filing in all material aspects. TEPL has filed all amendments required to be filed to its Form ADV and state notice or registration forms under federal and state law. Schedule 3.25(h) identifies the examination and/or certification qualifications of each of TEPL's adviser representatives, each of which is duly licensed where required.

(i) TEPL does not act as an investment adviser or sub-adviser to any investment company, as defined in the Investment Company Act, which is registered under such Act. Except as set forth on Schedule 3.25(i), TEPL has a written investment advisory agreement with each Client pursuant to which TEPL serves as an investment adviser to such Client, and has delivered to Parent true and complete copies of such agreements. Each of such agreements is in full force and effect as of the date hereof.

(j) Except as set forth on Schedule 3.25(j), neither the Company nor any of the Subsidiaries has received any written investor complaints that have not been resolved.

(k) TEPL has adopted a formal code of ethics regarding insider trading. Except as set forth on Schedule 3.25(k), such code of ethics complies with Section 204A of the Investment Advisers Act. The policies of the Company's Subsidiaries with respect to avoiding conflicts of interest have been made available to Parent. The Company and the Subsidiaries are in compliance with such policies and there have been no material violations or allegations of material violations of such policies that have occurred or been made.



(l) Except for TEPL as reflected on Schedule 3.25(b), Schedule 3.25(c) and Schedule 3.25(l) neither the Company nor any of the other Subsidiaries is required to be registered or obtain a license, membership or similar authorization from any jurisdiction or Authority, or with the Commodity Futures Trading Commission, the National Futures Association or any other domestic or foreign regulatory authority,

### **3.26 Regulatory Compliance.**

(a) Neither the Company nor any Subsidiary has been convicted of any crime, nor is the Company or any Subsidiary currently, nor has it ever been subject to any disqualification that would be a basis for denial, suspension or revocation of registration of an investment adviser under Section 203(e) of the Investment Advisers Act or Rule 206(4)-(4)(b) thereunder or of a broker-dealer under Section 15 of the Exchange Act, or for disqualification as an investment adviser for any investment company pursuant to Section 9(a) of the Investment Company Act, and, to the Company's Knowledge, there is no basis for, or proceeding or investigation that is reasonably likely to become the basis for, any such disqualification, denial, suspension or revocation

(b) Neither the Company nor any Subsidiary or any associated person as defined in Section 3(a)(18) of the Exchange Act, subject to a "statutory disqualification" as defined in Section 3(a)(39) of the Exchange Act or in Article III Section 4 of the by-laws of the NASD; is not subject to a disqualification that would be a basis for censure, limitations on the activities, functions or operations of, or suspension or revocation of, the registration of any broker-dealer Subsidiary as broker-dealer under Section 15, or municipal securities dealer, government securities broker or government securities dealer under Section 15, Section 15B or Section 15C of the Exchange Act; is not, nor are any of their employees, subject to any of the provisions of Section 8a that would permit the United States Commodities Futures Trading Commission, subject to the terms of such section, to refuse to register or to suspend or revoke the registration of any of them or their respective employees; and, to the Knowledge of the Company, there is no current investigation, whether formal or informal, or whether preliminary or otherwise, that is reasonably likely to result in, any such censure, limitations, suspension or revocation

(c) None of the current or former associated persons, employees or agents of the Company or any Subsidiary has been convicted of any crime arising out of the association of such associated person, employee or agent with the Company or any Subsidiary. With respect to any associated person, employee or agent that is employed by the Company or any Subsidiary as of the date hereof, to the Company's Knowledge, none has been convicted of any crime whether or not arising out of such individual's employment or association with the Company. To the Company's Knowledge, none of the current associated persons, employees or agents of the Company or any Subsidiary is subject to any disqualification that would be a basis for denial, suspension or revocation of registration of an investment adviser under Section 203(e) of the Investment Advisers Act or Rule 206(4)-(4)(b) thereunder or of a broker-dealer under Section 15 of the Exchange Act, or for disqualification as an investment adviser for any investment company pursuant to Section 9(a) of the Investment Company Act, in each case arising out of such individual's employment or association with the Company or Subsidiary, and there is no

basis for, or proceeding or investigation that is reasonably likely to become the basis for, any such disqualification, denial, suspension or revocation.

(d) Correct and complete copies of the marketing materials currently used by the Company and each Subsidiary have been supplied or made available to Parent.

(e) Neither the Company nor any Subsidiary, including, without limitation, TEPL, or, to the Company's Knowledge, any of their respective directors, officers, managers, members, employees, consultants or agents acting on their behalf has made, directly or indirectly, any payment or promise to pay, or made a gift, promised to give or authorized such a promise or gift, of any money or anything of value, directly or indirectly, to: (i) any Person employed by or officials of any Governmental Entity for the purpose of influencing any official act or decision of such Person or inducing him or her to use his influence to affect any act or decision of any federal, state or local or quasi-government authority, or (ii) any political party or official thereof or candidate for political office for the purpose of influencing any official act or decision of such party, official or candidate or inducing such party, official or candidate to use his, her or its influence to affect any act or decision of any such federal, state or local governmental or quasi-governmental authority, in the case of both (i) and (ii) above, in order to assist the Company or any Subsidiary to obtain or retain business for or direct business to the Company or any Subsidiary thereof, including, without limitation, TEPL.

(f) No exemptive orders have been obtained, nor are any requests pending therefor, with respect to the Company under the Exchange Act, the Securities Act, the Investment Company Act or the Investment Advisers Act.

**3.27 Investments.** Except as set forth in Schedule 3.27, neither the Company nor any Subsidiary owns of record or beneficially, directly or indirectly, any interests of any kind in, or participate in any way in, any partnership, joint venture, association, subsidiary or other entity, or any right (contingent or otherwise) to acquire the same

**3.28 Books and Records.** The books, records and accounts of the Company and each Subsidiary are true, accurate and complete in all material respects and reflect actual, bona fide transactions. The Company and the Subsidiaries maintain records that reflect, in cases in which it holds funds or other assets on behalf of any third party, such third party's transactions, dispositions and acquisitions of assets and receipt of funds.

**3.29 Derivatives; Etc.** Except in connection with the Company's or its Subsidiaries' business in the ordinary course, neither the Company nor any Subsidiary has entered into any swap, cap, floor, option, futures or forward contract or other similar arrangement, whether for its own account or for the account of one or more Clients

**3.30 Certain Business Practices.** Neither the Company nor any Subsidiary nor, to the Company's Knowledge, any of their respective managers, directors, officers or employees or agents (in their capacities as such) has (i) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to

foreign or domestic political parties or campaigns or violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, or (iii) made any other unlawful payment.

#### **ARTICLE IV**

#### **REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB**

Parent and Merger Sub, jointly and severally, represent and warrant to the Company as follows.

**4.1 Authorization and Validity of Agreement** Each of Parent and Merger Sub has all requisite corporate power and authority to execute and deliver this Agreement and the Transaction Agreements, to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance by each of Parent and Merger Sub of this Agreement and the Transaction Agreements, and the consummation of the Transactions, have been duly and validly authorized by all necessary action of each of Parent and Merger Sub, respectively. This Agreement has been duly executed and delivered by Parent and Merger Sub and at the Closing, the Transaction Agreements to which Parent and Merger Sub are a party shall have been duly executed and delivered by Parent and/or Merger Sub, as applicable, and, assuming the due authorization, execution and delivery by the Company, constitutes the valid and binding obligation of Parent and Merger Sub enforceable against each in accordance with its terms, except that such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to creditors' rights generally, and is subject to general principles of equity.

**4.2 Capital Structure of Parent and Merger Sub.**

(a) The authorized share capital of Parent consists of 100,507,117 Parent Shares, of which 63,250,198 were issued and of which 3,984,463 were subject to outstanding options as of December 31, 2006. All Parent Shares have been duly authorized, validly issued, fully paid and are free of any Liens other than any liens or encumbrances created by or imposed upon the holders thereof. The Parent Shares to be issued in connection with the Merger will be duly authorized, validly issued and fully paid.

(b) The authorized, issued and outstanding equity interests of Merger Sub consist of ten (10) units, all of which are held by Parent.

**4.3 Organization and Qualification.** Parent is a company duly incorporated and in good standing under the laws of England and Wales. Parent has the power and authority to own its properties and to carry on its business as now being conducted and as proposed to be conducted. Merger Sub is a limited liability company duly organized, validly existing and in good standing in Delaware. Merger Sub has the full limited liability company power to own its properties and to carry on its business as now being conducted and as proposed to be conducted. Merger Sub is duly qualified or registered to do business and is in good standing in each jurisdiction where it is required by law to be so qualified.

**4.4 AIM Filings; Financial Statements of Parent.**

(a) Since January 1, 2005, Parent has timely filed all forms, reports, statements and documents required to be filed by it (i) pursuant to Companies Act 1985, as amended and (ii) pursuant to the rules of the AIM Market of the London Stock Exchange (collectively together with any such forms, reports, statements and documents Parent may file subsequent to the date hereof until the Closing, the "**Parent Reports**"). Each Parent Report was prepared in accordance with the requirements of the Companies Act 1985 and the requirements of the AIM Market of the London Stock Exchange, as the case may be, and did not at the time it was filed contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading or, to the extent any such statement or omission was subsequently discovered by Parent, the applicable Parent Report has been amended.

(b) Except as provided in the Parent Reports, each of (i) the audited consolidated balance sheet of Parent as of December 31, 2005 and the related audited income statements and statements of cash flow of Parent for the year then ended, accompanied by the notes thereto and the auditor's report thereon (the "**Parent Audited Financial Statements**"); and (ii) the unaudited consolidated balance sheet of Parent as of June 30, 2006 and the related consolidated statements of income and cash flows for the six months then ended (the "**Parent Unaudited Financial Statements**" and together with the Parent Audited Financial Statements, the "**Parent Financial Statements**"), including in each case the related notes thereto, was prepared in accordance with the books and records of Parent and in accordance with U.K. GAAP applied on a consistent basis throughout the periods involved (except as may be indicated therein or in the notes thereto) and fairly presents in all material respects the consolidated financial position of Parent and its subsidiaries at the respective dates thereof and the consolidated results of its operations and cash flows for the periods indicated, (subject, in the case of the Parent Unaudited Financial Statements, to normal recurring immaterial year-end adjustments and the absence of notes).

**4.5 No Violation; Consents and Approvals.** (a) Except as set forth on Schedule 4.5(a), the execution and delivery of this Agreement and the Transaction Agreements by Parent and Merger Sub do not, and, assuming receipt of the Required Parent Regulatory Approvals and any Required Parent Contractual Consents, as defined below, the performance of this Agreement and the Transaction Agreements to which Parent or Merger Sub is a party and the consummation of the Transactions do not and will not violate, conflict with or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or require any offer to purchase or any prepayment of any debt or result in the creation of any Lien (other than a Permitted Lien) upon any of the properties or assets of Parent under any of the terms, conditions or provisions of (i) the Governing Documents of Parent or Merger Sub, (ii) any Legal Requirement applicable to Parent or Merger Sub, or (iii) any material Contract to which Parent or Merger Sub is a party or by which Parent or Merger Sub or any of their respective properties or assets may be bound or affected, except, in the case of clauses (ii) and (iii), such violations, conflicts, breaches or defaults that would not have, individually or in the aggregate, a Material Adverse Effect on Parent.

(b) Except for the filings with and receipt of approvals from the Authorities listed on Schedule 4.5(b) (such filings and approvals, the "***Required Parent Regulatory Approvals***") and the consent of, or notice to, any other Person under the Contracts listed on Schedule 4.5(b) (such consents and notices, the "***Required Parent Contractual Consents***"), no declaration, filing or registration with, or notice to, authorization, order, consent or approval of, or action of, any Authority is necessary for the execution and delivery of this Agreement and the Transaction Documents to which Parent is a party or the consummation by Parent of the Transactions other than such declarations, filings, registrations, notices, authorizations, consents or approvals which are required or become applicable due to the nature or status of, or actions taken by, the Company or its Affiliates

**4.6 Litigation** Except as described in the Parent Reports, there is no Action (whether criminal or civil) pending against or, to Parent's Knowledge, threatened against or affecting, Parent or Merger Sub or any of their respective properties before any Authority.

**4.7 Compliance with Legal Requirements and Permits.** Parent and each of its subsidiaries is in compliance in all material respects with (i) all Legal Requirements and (ii) all applicable Permits. All Permits currently used by Parent and each subsidiary that are material to the operation of its respective business are in full force and effect. Parent and each subsidiary has, to the extent required, made all filings necessary to request the timely renewal or issuance of all Permits material to the operation of its business prior to the Closing for Parent and each of its subsidiaries to own, operate and maintain its assets and to conduct its business as it is currently being conducted. Neither Parent nor any of its subsidiaries has received any written or oral notification or communication from any Authority which is pending as of the date hereof (i) asserting that Parent or such subsidiary is in non-compliance with any Legal Requirement or has otherwise engaged in any unlawful business practice, (ii) threatening to revoke any Permit, franchise, seat or membership in any securities exchange, commodities exchange or Self-Regulatory Organization, or governmental authorization, (iii) requiring Parent or such subsidiary to enter into a cease and desist order, memorandum of understanding, or other agreement, (iv) requiring Parent, such subsidiary or any of their respective managers, members, board of directors or other governing body to adopt any resolution or policy, or (v) restricting or disqualifying Parent's or such subsidiary's activities (except for restrictions generally imposed on companies with a similar business to Parent and its subsidiaries by rule, regulation or administrative policy)

**4.8 Absence of Undisclosed Liabilities.** Except as (i) set forth on or reserved against the Parent Financial Statements, or (ii) incurred since the date of Parent's Unaudited Audited Financial Statements in the ordinary course of business and consistent with past practice and that would not reasonably be expected to have, in the aggregate, a Material Adverse Effect, neither Parent nor any of its subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) which is of a nature required by U.K. GAAP to be reflected on a consolidated balance sheet of Parent and its subsidiaries, included the related notes.

**4.9 No Breach of Material Contracts** Parent and each of its subsidiaries has performed in all material respects all of the obligations required to be performed by it and is entitled to all benefits under each, and is not alleged to be in default in respect of any contract

that is material to its business. Each of such contracts is in full force and effect, and there does not exist any default or event of default or event, occurrence, condition or act, with respect to Parent, any of its subsidiaries, or, to their knowledge, with respect to the other contracting party, which, with the giving of notice, the lapse of time or the happening of any other event or conditions, would become a default or event of default under any such contract.

**4.10 Certain Business Practices** Neither Parent nor any of its subsidiaries nor, to Parent's Knowledge, any of their respective managers, directors, officers or employees or agents (in their capacities as such) has used any funds (i) for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns or violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, or (iii) made any other unlawful payment.

**4.11 Books and Records** The books, records and accounts of Parent and each of its subsidiaries are true, accurate and complete in all material respects and reflect actual, bona fide transactions. Parent and each such subsidiary maintain records that reflect, in cases in which it holds funds or other assets on behalf of any third party, such third party's transactions, dispositions and acquisitions of assets and receipt of funds.

**4.12 Brokers** Except for Freeman & Co, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Merger based upon arrangements made by or on behalf of Parent.

## **ARTICLE V**

### **COVENANTS**

**5.1 Access to Information** (a) From the date of this Agreement through the Closing, the Company shall (and shall cause the Subsidiaries to) afford to representatives of Parent such access to the offices, properties, books and records and personnel of the Company during normal business hours as Parent may reasonably request. Without limiting the foregoing, the Company shall (and shall cause the Subsidiaries to) make available to Parent such monthly updates as are prepared in the ordinary course of business by the Company or the Subsidiaries with respect to the performance of the Company or the Subsidiaries, including copies of all financial reports prepared for senior management, and to make reasonably available for meetings with Parent the senior management personnel of the Company and the Subsidiaries. All requests for access to the offices, properties, books, and records and personnel of the Company and the Subsidiaries shall be made to such representatives of the Company as the Company shall designate. Notwithstanding the foregoing, no such review, inquiry or investigation shall affect any representations or warranties of the Company contained herein or in any Transaction Agreement or the conditions to the obligations of Parent and Merger Sub.

(b) Parent acknowledges that all information provided to it or its representatives in connection with this Agreement and the consummation of the Transactions shall be deemed to be confidential information subject to the terms of letter agreement dated January 9, 2007, by and between Parent and the Company (the "*Letter of Intent*") The terms of

the Letter of Intent as they relate to confidentiality and confidential information are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Notwithstanding the previous sentence, the Company acknowledges that certain of such confidential information will be provided to Authorities in connection with obtaining Required Regulatory Approvals and that the Authorities may release the Confidential Information to the public pursuant to the Freedom of Information Act or similar Legal Requirements

**5.2 Conduct of Business** From the date of this Agreement through the Closing, except as contemplated by this Agreement or as consented to or approved by Parent in writing, the Company covenants and agrees that

(a) the Company and the Subsidiaries shall operate their business in the ordinary course consistent with past practice in all material respects,

(b) the Company and the Subsidiaries shall not amend their Governing Documents;

(c) the Company and the Subsidiaries shall not (i) issue, sell or agree to issue or sell (A) any membership interests or other equity interests, or (B) any securities convertible into, or options with respect to, or warrants to purchase or rights to subscribe for, any membership interests or other equity interests, or (ii) adjust, split, combine, redeem, reclassify, purchase or otherwise acquire any membership interests or other equity interests,

(d) the Company and the Subsidiaries shall not (i) sell, transfer, lease, pledge or otherwise dispose of or encumber any of their material assets, (ii) create any new Lien on their properties or assets, other than Permitted Liens, or (iii) make any loans, advances or capital contributions to, or investments in, any other Person,

(e) the Company and the Subsidiaries shall not terminate or materially amend any Material Contract other than in the ordinary course of business;

(f) the Company and the Subsidiaries shall not commence a lawsuit,

(g) the Company and the Subsidiaries shall not make or authorize any capital expenditure or expenditures that is in excess of \$50,000 in the aggregate;

(h) the Company and the Subsidiaries shall not incur, assume or otherwise become liable for any indebtedness for borrowed money, issue any debt securities or assume guarantee or endorse the obligations of any other Persons;

(i) the Company shall not make any material change in any of its present financial accounting methods and practices or change its fiscal year, except as required by changes in U.S. GAAP;

(j) the Company and the Subsidiaries shall not (i) enter into or amend any employment, severance, special pay arrangement with respect to the termination or employment or other similar arrangements or agreements with any managers, directors, officers or employees to which the Company is a party or is otherwise liable or (ii) grant any salary, wage or other

increase in compensation or increase in any employee benefit (including incentive, profit sharing or bonus payments) except with respect to any newly hired employee replacing a departed employee at compensation and benefits levels not substantially in excess of that applicable to the departed employee, except, in each case, as may be required under applicable Legal Requirements or pursuant to the terms of a Benefit Plan;

(k) neither the Company nor any Subsidiary shall enter into, establish, adopt, amend or modify any pension, retirement, stock option, stock purchase, savings, profit sharing, deferred compensation, consulting, bonus, commission, group insurance or other employee benefit, incentive or welfare Contract, plan or arrangement, or any trust agreement (or similar arrangement) related thereto, in respect of any of its managers, directors, officers, employees or independent contractors, including taking any action that accelerates the vesting or exercisability of compensation or benefits payable thereunder, except, in each such case, as may be required by applicable Legal Requirements, pursuant to the terms of a Benefit Plan, to maintain qualification pursuant to the Code or as permitted under Section 5.2(j) or as contemplated by this Agreement,

(l) the Company and the Subsidiaries shall not terminate any of their existing insurance policies, nor shall the Company or the Subsidiaries permit any existing insurance policies that cover the Company or the Subsidiaries but are not held by the Company or the Subsidiaries to be terminated (in each case, except to the extent that substantially similar or more extensive replacement coverage is obtained),

(m) the Company and the Subsidiaries shall not (i) enter into any new line of business outside the ordinary course of business or (ii) wind-up, liquidate or dissolve or enter into any merger or consolidation;

(n) neither the Company nor any Subsidiary shall enter into any Contract or incur any obligation, the terms of which would be violated by the consummation of the Transactions,

(o) neither the Company nor any Subsidiary shall settle or compromise, or agree to settle or compromise, any suit, claim or other litigation matter, on terms which would require the Company to take any action or assume any liability for the period after the Closing,

(p) neither the Company nor any Subsidiary shall enter into any contract for which disclosure as a Material Contract would be required had such contract been in effect on the date hereof,

(q) the Company shall not declare, pay, or make regular or special dividends or other distributions consisting of cash or cash equivalents; and

(r) the Company shall not, and shall cause the Subsidiaries to not, agree to take any action prohibited by this Section 5.2

**5.3 Notification of Certain Matters.** From the date hereof through the Closing Date:



(a) The Company shall, as promptly as practicable, notify Parent and Merger Sub, and Parent and Merger Sub shall, as promptly as practicable, notify the Company of (a) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Transactions, (b) any notice or other communication from any Authority in connection with the Transactions and (c) the commencement or threatened commencement of any material lawsuits, claims, proceedings or investigations against the Company or any Subsidiary or Parent, as applicable, affecting the Company, any Subsidiary or Parent or seeking to enjoin the Transactions

(b) The Company shall give prompt notice to Parent and Merger Sub of (i) the occurrence, or non-occurrence, of any event the occurrence, or non-occurrence, of which would be likely to cause any representation or warranty of the Company contained in this Agreement to be untrue or inaccurate and (ii) any failure of the Company materially to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder, provided, however, that the delivery of any notice pursuant to this Section shall not limit or otherwise affect the remedies available hereunder to Parent or Merger Sub.

(c) Parent and Merger Sub shall give prompt notice to the Company of (i) the occurrence, or non-occurrence, of any event the occurrence, or non-occurrence, of which would be likely to cause any representation or warranty of Parent or Merger Sub contained in this Agreement to be untrue or inaccurate and (ii) any failure of Parent or Merger Sub materially to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this Section shall not limit or otherwise affect the remedies available hereunder to the Company.

**5.4 Cooperation.** (a) Subject to the terms and conditions of this Agreement and applicable Legal Requirements, each of Parent and Company shall use its commercially reasonable efforts to take, or cause to be taken, all action and do, or cause to be done, all things necessary, proper or advisable under applicable Legal Requirements and regulations to consummate and make effective the Transactions, including to obtain all Required Regulatory Approvals and all Required Contractual Consents and to effect all necessary registrations, filings and submissions and to lift any injunction, order or decree of a court or other Authority of competent jurisdiction or other legal bar to consummation of the Transactions or otherwise restraining or prohibiting the consummation of the Transactions (and, in such case, to proceed with the consummation of the Transactions as expeditiously as possible), including through all possible appeals.

(a) At all times prior to the Closing, the parties shall cooperate and coordinate with each other as appropriate with respect to filings and notifications to Authorities in connection with obtaining the Required Regulatory Approvals. Without limiting the generality of the foregoing, the Company, on the one hand, and Parent, on the other hand, shall make or cause to be made available all information reasonably requested by the other party to permit all necessary filings or notices to be made with or to Authorities as promptly as practicable after the date hereof. Each party shall promptly furnish or cause to be furnished all information and documents reasonably required by the relevant Authorities as may be appropriate in order to obtain the Required Regulatory Approvals.

(b) The Company shall have made available to Parent prior to the date hereof copies of all correspondence or other communications received from the NASD or other Authority relating to the Transactions and shall have disclosed in writing to Parent the substance of any oral communications between the Company or the Subsidiaries and the NASD or other Authority relating thereto.

**5.5 Restrictions Before Closing** Each of the Company and Parent agrees that, from and after the date hereof and prior to the Closing, and except as may be agreed in writing by Parent and the Company, neither the Company nor Parent shall, and neither shall permit any of its respective subsidiaries to, take any action, or agree to take any action, which could reasonably be expected to prevent, impede or delay in any material sense the consummation of the Transactions or result in the failure to satisfy any condition to the consummation of the Transactions

**5.6 Further Assurances**. The Company and Parent agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the Transactions and effectuate the purposes and intent of this Agreement

**5.7 Employee Matters**.

(a) **Company Options** The Company shall cause all of the Company Options to be fully vested prior to the Closing, and shall take all necessary corporate and other action such that any Company Options that are not exercised prior to the Closing shall be cancelled immediately prior to the Closing.

(b) **Parent Option Pool** Prior to Closing, Parent will establish an equity incentive plan under which it will award options with respect to a number of Parent Shares equal to 10% of the Aggregate Merger Consideration (as measured by the Relevant Share Price as of the Closing Date) to employees of the Surviving Company, in substantially the form attached hereto as Exhibit D

(c) **Accrued Bonuses**. The Assumed Obligations include employee bonuses accrued ("***Accrued Bonuses***") with respect to services received by the Company employees for the year ended December 31, 2006. An aggregate of twenty five percent (25%) of the Accrued Bonuses will be paid in Parent Shares, pursuant to the employee bonus scheme (the "***Employee Bonus Scheme***") attached hereto as Exhibit E. Such allocation shall be subject to compliance with applicable federal and state securities laws. Parent Shares will be issued at the value equal to the Relevant Share Price, and the Parent Shares shall vest in three equal installments on each of the first three anniversaries of the Closing Date. The certificates representing the Parent Shares shall bear appropriate restrictive legends. The Accrued Bonuses will be paid in full no later than the first Business Day following the Closing.

(d) **Performance Pool Plan**. Prior to Closing, Parent will establish the ThinkEquity Performance Pool Plan in the form attached hereto as Exhibit F. Parent will comply with the terms of the ThinkEquity Performance Pool Plan.

(e) Employment Agreements; Non-Competition Agreements. Prior to or at the Closing, the Surviving Company will enter into employment and non-competition agreements with the persons set forth on Schedule 5 7(e) hereto in substantially the form set forth as Exhibit G hereto (the "*Employment Agreements*").

(f) At-will Employees. Each employee of the Company will remain an "at will" employee of the Surviving Company after the Closing subject to Parent's or the Company's right to terminate the employment of such employee in accordance with Parent's policies and procedures and any applicable employment agreement

**5.8 No Other Bids** The Company shall not, nor shall the Company authorize or permit any Subsidiary or any officer, director, employee or Affiliate thereof or any representative retained by the Company to, solicit or initiate any inquires or the making of any proposal that may reasonable be expected to lead to any proposal for a merger or other business combination involving the Company, or the acquisition of more than 5% of the outstanding shares of the Company or a substantial portion of the assets of the Company, in each case other than the Transactions or participate in any discussions or negotiations, or provide third parties with any confidential information, relating to any such inquiry or proposal. The Company shall immediately notify Parent if any such proposal or offer, or any inquiry or contact with any person with respect thereto, is made and disclose to Parent the terms and conditions of such proposal or offer and the identity of the offeror or potential offeror.

**5.9 Satisfaction of Conditions Precedent** The Company and Parent shall use their respective reasonable best efforts to satisfy or cause to be satisfied all the conditions precedent that are set forth in Article VI, as applicable to each of them, and to cause the Transactions to be consummated.

**5.10 Publicity** No party may, nor shall it permit its Affiliates to, issue or cause the publication of any press release or other public announcement with respect to this Agreement or the Transactions without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that Parent and the Company may reasonably comply with all applicable Legal Requirements and provide appropriate notices to customers. Parent shall be afforded sufficient time to review and comment on any proposed notices to customers of the Company or the Subsidiaries.

**5.11 Focus Reports.** The Company will cause TEPL to make available to Parent, as promptly as practicable following filing thereof with the NASD or SEC, as applicable, copies of the following that are filed by TEPL prior to Closing. (i) each Focus Report, if any, filed by TEPL with respect to any fiscal period ended after the date hereof and (ii) each year-end Focus Report, if any, filed by TEPL with respect to any fiscal year ended after the date hereof.

**5.12 Update Schedule of Company Shareholders; Options Certificate.**

(a) The Company shall provide to Parent, three (3) Business Days prior to the scheduled Effective Time, a schedule (the "*Update Schedule*") listing all Company Shareholders as of such date, as well as the number, class and series of shares of Company Shares held by each such holder. In the event that any of the information contained in the Update Schedule shall

not be true and correct as of immediately prior to the Effective Time, the Company shall provide to Parent, prior to the Effective Time, a revised Update Schedule setting forth in reasonable detail all relevant changes thereto.

(b) The Company shall provide to Parent at the Effective Time a certificate executed by a senior executive of the Company certifying that all of the Company Options have been canceled and all other securities exercisable for or convertible into Company Shares have been exercised, converted or canceled (the "*Options Certificate*").

### 5.13 Certain Tax Matters.

(a) U.S. Tax Treatment The parties agree that (1) in accordance with Revenue Ruling 99-6, the Merger shall be treated for U.S. federal income tax purposes (i) by the Company Shareholders, as a taxable sale of all of the partnership interests of the Company to Parent under Code Section 741 and (ii) by the Parent, as a taxable acquisition, by purchase, of all of the Company's assets, (2) they shall report, act and file Tax Returns for U.S. federal income tax purposes and all other purposes consistent with such treatment, (3) the Company's status as a partnership for U.S. federal income tax purposes shall terminate pursuant to Code Section 708 as a result of the Merger and the Company's final taxable year as a partnership shall close as of the end of the Closing Date, and (4) the Company and its Subsidiaries will not report the incurrence of any New York City Unincorporated Business Tax as a result of the Merger

(b) Purchase Price Allocation The Shareholder Representative shall propose an allocation of the Purchase Price including the Assumed Obligations to be used for the purpose of applying (to the extent applicable) Code Sections 743, 751(a) and 1060 and in determining the character of the amounts includible by each Company Shareholder under Section 751(a) (or otherwise) as a result of the Merger. Parent and the Shareholder Representative shall cooperate and coordinate with each other to agree on such allocation and if they cannot agree on such allocation it shall be determined in the same manner as the Assumed Obligations adjustment shall be determined in Section 2.6(g)(iv). Except as otherwise required by a final decision to the contrary, the parties shall file all federal income tax returns in a manner consistent with such allocation. The Parent shall make or cause to be made available all information reasonably requested by the Shareholder Representative in connection with the determination of such allocation.

(c) Pre-Closing Tax Returns. The Company shall prepare or cause to be prepared, at the cost of the Company, the Tax Returns of the Company and each of its Subsidiaries for all taxable periods ending on or before the Closing Date and cause any amount of Taxes due on such Tax Returns to be paid in a timely manner (provided that the payment of such Taxes shall not deprive the Parent Indemnified Persons of any rights to indemnification under this Agreement, including pursuant to Section 3.15 and Article VIII, or applicable law). All Tax Returns of the Company relating to periods through the Closing Date shall be completed in accordance with past practice to the extent permitted by applicable law. The Shareholder Representative shall have the right to review and comment on such Tax Returns and the Company shall submit a copy of any such Tax Return to the Shareholder Representative not less than fifteen (15) days before the date on which such Tax Return is due to be filed (including valid extensions of time to file). The Shareholder Representative shall have ten (10) days in

which to convey its comments to the Company. Failure of the Shareholder Representative to convey its comments in a timely manner shall not deprive the Shareholder Representative of any rights that it may have under this Agreement or applicable law. The parties shall endeavor in good faith to resolve any differences that they may have regarding such Tax Returns

(d) Transfer Taxes The Company Shareholders on the one hand and the Parent on the other hand shall each bear fifty percent (50%) of the aggregate amount of any transfer, conveyance, recording, sales, use and similar taxes and fees arising from the Merger ("Transfer Taxes"). Parent shall be responsible for paying and shall indemnify and hold the Company Indemnified Parties harmless for any such Transfer Taxes required to be paid by the Company Indemnified Parties. The Company Shareholders' portion of such Transfer Taxes shall be borne by the Company Shareholders by including fifty percent (50%) of such Taxes as an Assumed Obligation

#### **5.14 Indemnification and Insurance.**

(a) From and after the Effective Time, Parent will, and will cause the Surviving Company to, fulfill and honor in all respects the obligations of the Company pursuant to any indemnification agreements between the Company and its directors and officers (the "*Indemnified Parties*") in effect immediately prior to the Effective Time, subject to applicable law. The certificate of incorporation and by-laws of the Surviving Company will contain provisions with respect to exculpation and indemnification that are at least as favorable to the Indemnified Parties as those contained in the Company's Governing Documents as in effect on the date hereof, which provisions will not be amended, repealed or otherwise modified for a period of six years from the Effective Time in any manner that would adversely affect the rights thereunder of individuals who, immediately prior to the Effective Time, were directors, officers, employees or agents of the Company, unless such modification is required by law

(b) For a period of six years after the Effective Time, the Surviving Company shall cause to be maintained in effect the current policies of directors' and officers' and fiduciary liability insurance maintained by the Company (provided that the Surviving Company may substitute therefor policies of at least the same coverage and amounts containing terms and conditions which are no less advantageous to former officers and directors of the Company) with respect to claims arising from facts or events which occurred at or before the Effective Time

#### **5.15 Operation of Company Business.**

(a) General. Following the Effective Time and until June 30, 2010, Parent shall (i) cause the Surviving Company and its subsidiaries to be operated as a separate business within Parent's group of companies and (ii) cause the Surviving Company and its subsidiaries to maintain books and records with respect to the Surviving Company's and its subsidiaries' business in a manner which is sufficient to permit the calculation of the factors upon which the share allocations under the ThinkEquity Performance Pool Plan are to be based. Parent expressly agrees that after the Effective Time and until June 30, 2010, without prejudice to Parent's rights under Sections 5.15(b)(i) and (ii): (i) Parent and the Surviving Company shall not discontinue the Surviving Company's business, and (ii) Parent and the Surviving Company shall not take, or cause any other Person to take, directly or indirectly, any action that would

circumvent the purpose or intent of, or intentionally interfere with the ability of management of the Surviving Company to earn the amounts set forth in, the ThinkEquity Performance Pool. Notwithstanding the foregoing, the operation of the Surviving Company's business by the Company Board following the occurrence of a Triggering Event (as defined below) in good faith and sound business practice will not constitute a violation of the foregoing clause (ii). For the avoidance of doubt, it is expressly agreed that (x) Parent shall not be required to fund any regulatory capital requirements beyond the initial \$5,000,000 to be contributed at Closing or to provide any other funding of any nature to the Surviving Company or its subsidiaries and (y) it is the intention of the parties that excess capital of the Surviving Company and/or its Subsidiaries will be deployed in a manner which will reduce the tax burden of Parent's group of companies, including the Surviving Company, and to maximize the return on capital, provided that no such deployment is effected in a manner that would prejudice the business or adversely effect the earnings potential of the Surviving Company.

(b) Surviving Company Board and Management Matters.

(i) Board Composition. Following the Effective Time and until June 30, 2010, Parent shall cause the Surviving Company to have a board of directors or equivalent body (the "**Company Board**"). Subject to subsection (c) below, following the Effective Time and until June 30, 2010, the Company Board will have at least three members, a majority of which will be officers and senior management employees of the Surviving Company who are identified on Schedule 5.15 (the "**Majority Members**"), provided that (x) the Company Board need not include all of the persons identified on Schedule 5.15 if the total number of persons identified on such schedule who are officers and senior management employees of the Surviving Company exceeds the number of persons that would constitute a majority of the Company Board, and (y) to the extent that at any time there are not at least two persons identified on Schedule 5.15 who continue to be officers or senior management employees of the Surviving Company, the Majority Members may also include such other person(s) who have been approved by the participants of the ThinkEquity Performance Pool Plan (acting by a majority determined on the basis of their interests therein) and who participate(s) in the ThinkEquity Performance Pool Plan at a level at least equal to that of the person with the greatest interest in the ThinkEquity Performance Pool Plan who is an officer or employee of the Surviving Company but not on the Company Board.

(ii) Management. Following the Effective Time and until June 30, 2010, the Surviving Company and its subsidiaries will be managed by the Company Board and by the officers appointed by the Company Board consistent with the provisions of this Section 5.15. The initial members of the Company Board will be as set forth on Schedule 2.5. The fact that any member of the Company Board participates in the ThinkEquity Performance Pool Plan will not disqualify such member from voting or otherwise acting in his or her capacity as a director in respect of matters relating to the ThinkEquity Performance Pool Plan (including but not limited to making allocations of interests in the ThinkEquity Performance Pool Plan). Subject to subsection (b)(iii) below and the proviso to

this sentence, the Company Board will act by majority vote, provided that the unanimous approval of the Company Board will be required (x) to approve or pay bonuses or other compensation that would cause the aggregate compensation expenses payable by the Surviving Company or its Subsidiaries (excluding compensation expenses in respect of the ThinkEquity Performance Pool Plan) to exceed (i) for the fiscal year ending on December 31, 2007, 65% of the Surviving Company's Net Revenue for such fiscal year, (2) for the fiscal year ending on December 31, 2008, 62.5% of the Surviving Company's Net Revenue for such fiscal year and (3) for the fiscal year ending on December 31, 2009, 60% of the Surviving Company's Net Revenue for such fiscal year (each of such thresholds being a "**Compensation Threshold**") or (y) entering into by the Surviving Company or its subsidiaries of any transaction outside the ordinary course of business not set forth in the annual budget, including without limitation, making any alterations to the capital structure of the Surviving Company or its Subsidiaries, granting any options or other securities convertible into the share capital or equity interests of the Surviving Company or its Subsidiaries, incurring any indebtedness outside the ordinary course of business, creating any security interest over assets of the Company or its Subsidiaries outside the ordinary course of business, making any loans, guarantees or indemnities by the Surviving Company or its Subsidiaries outside the ordinary course of business, the Surviving Company or its Subsidiaries incorporating any new subsidiaries, instigating or settling litigation other than in the ordinary course, the Surviving Company or its Subsidiaries acquiring or disposing of real estate (including entering into a material lease for real property), the Surviving Company or its Subsidiaries changing the auditors or accounting policies of the Surviving Company or its Subsidiaries, or approving any aspect of the annual budget that would require a capital infusion. The failure to achieve such unanimous approval shall not constitute a breach of Section 5.15(a)(ii). For the purposes of this Section 5.15, the "**Surviving Company**" shall mean the Surviving Company and any successor thereto (other than Parent) including the subsidiaries thereof, and "**Net Revenue**" shall mean revenues less trading losses, excluding the normal costs of trade processing and execution.

(iii) Employee Matters Notwithstanding that such members may not constitute a majority and/or quorum of the Company Board, the members of the Company Board designated by Parent shall be permitted to (i) enforce and interpret any Tax Loans; and (ii) enforce the terms of the Employment Agreements, including all matters relating to the termination of employment thereunder.

Notwithstanding anything to the contrary herein, (i) the full Company Board will meet (telephonically or in person) to discuss and review the annual bonus allocation to the employees of the Surviving Company and its Subsidiaries at least one week prior to the granting of such bonuses, and (ii) the annual compensation of the five most senior executive officers and, to the extent different, the five most highly compensated employees, of the Surviving Company and its Subsidiaries must be approved in advance

by the Board of Directors of Parent or the Compensation Committee of the Board of Directors of Parent.

(c) Change in Size and Composition of Board Notwithstanding anything to the contrary in this Agreement or the ThinkEquity Performance Pool Plan, upon the occurrence of a Triggering Event, the size of the Company Board shall be automatically increased by such number as required for Parent designees to constitute a majority of the Company Board and subsection (b) shall have no further force or effect. A "*Triggering Event*" shall be any of the following (i) a Compensation Threshold is exceeded by more than 2.5% or the Surviving Company agrees to pay compensation that, if paid, would exceed the Compensation Threshold by more than 2.5%, in either case without the consent of Parent, (ii) ATE (as defined in the ThinkEquity Performance Pool Plan) for the 2007 Plan Year is (\$3,500,000) or less; (iii) ATE for the 2008 Plan Year is less than \$0, (iv) the sum of ATE for the 2007 Plan Year and ATE for the 2008 Plan Year is less than \$0, (v), a material breach other than by Parent of any provisions of subsection (b) above, or a material breach of any covenant in subsection (d) below which, in the case of clauses (iii) and (iv), if curable, is not cured within 30 days following written notice of such breach, (vi) the Surviving Company and/or any of its Subsidiaries being required by any statutory or regulatory authority to take, or desist from taking, an action that (otherwise than with the approval of Parent) is not remedied to the reasonable satisfaction of Parent within such period of time as is reasonable in the opinion of Parent to remedy such action or inaction, or (vii) if all three "Key Employees" (as defined in the ThinkEquity Performance Pool Plan) voluntarily terminate their employment other than by reason of Death, Disability or for "Good Reason" (as defined herein) or there is an acceleration of the vesting of all Units under the ThinkEquity Performance Pool Plan pursuant to Section 5.3(c)(3) thereunder. The bylaws or other Governing Documents of the Surviving Company shall at all relevant times provide for the foregoing.

(d) Budgets, Financial Reporting and Parent Policies. For the avoidance of doubt, (i) the Company Board will produce an annual budget for the Surviving Company and its Subsidiaries in reasonable detail as to income, expenditure and headcount at least 30 days prior to the end of each Parent fiscal year, (ii) the Company Board will produce monthly reports in conformity with Parent's general financial reporting and monthly financial reporting timetable (it being understood that in all cases reports must be provided in sufficient time for Parent to timely file its financial statements with applicable regulatory bodies), (iii) in the operation of its business the Surviving Company shall comply with Parent's written market risk parameter policies, and (iv) the Surviving Company shall comply with generally applicable group-wide company policies of Parent.

(e) Third Party Beneficiaries. The participants in the ThinkEquity Performance Pool Plan shall be third party beneficiaries of the covenants and agreements set forth in Section 5.7(d), the ThinkEquity Performance Pool Plan and this Section 5.15

**5.16 Loans to Employee Equity Holders** Each holder of Company Shares who is employed by the Surviving Company immediately following the Effective Time ("*Employee Equity Holder*") may elect to receive a loan from the Surviving Company or, at the Surviving Company's election, a trust or other entity established by the Surviving Company, in order to assist such holder to satisfy the holder's tax liability arising as a result of the consummation of the Merger (each a "*Tax Loan*" and collectively, the "*Tax Loans*"). Such



elections must be in the form attached hereto as Exhibit B and provided to the Surviving Company within one year following the Closing Date. The material terms of the Tax Loans are set forth on Schedule 5.16 hereto. Notwithstanding the foregoing, the aggregate amount of the Tax Loans of all holders shall not exceed ten percent (10%) of the Purchase Price (the "**Maximum Aggregate Tax Loan Amount**") In the event that the Employee Equity Holders request Tax Loans in an aggregate amount greater than the Maximum Aggregate Tax Loan Amount, the amount of any such Tax Loans to which any holder shall be entitled will be reduced on a *pro rata* basis with all such holders so that the aggregate amount of Tax Loans to be paid by Parent will equal, but not exceed, the Maximum Aggregate Tax Loan Amount. Notwithstanding anything to the contrary herein, the obligation to make a Tax Loan shall not apply if the election to receive a Tax Loan or the making of a Tax Loan would be in contravention of any Legal Requirement applicable to Parent or its Subsidiaries (it being understood that as of the date of this Agreement, the only Employee Equity Holders affected by such Legal Requirements are Michael Moe and Deborah Quazzo, by virtue of their appointment to the Board of Directors of Parent).

**5.17 Customer Consents** The Company will use reasonable efforts to obtain all applicable client consents to the Merger in accordance with the terms of applicable law.

**5.18 Appointment of Directors** As soon as a practicable following the Effective Time, both Michael Moe and Deborah Quazzo shall be appointed as members of the Board of Directors of Parent.

**5.19 Surviving Company Operating Agreement.** Prior to Closing, Parent will amend and restate, in form and substance reasonably satisfactory to the Company, the limited liability company operating agreement of the Surviving Company, attached hereto as Exhibit H, to reflect as appropriate the matters provided for in Sections 5.15(b) and (c) of this Agreement and any other matters contemplated by this Agreement

## **ARTICLE VI**

### **CONDITIONS TO THE MERGER**

**6.1 Conditions to Obligations of Each Party to Consummate the Merger.** The respective obligations of each party to this Agreement to consummate the Merger shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, by agreement of all the parties hereto:

(a) **No Injunctions or Restraints; Illegality.** No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger shall be in effect, nor shall any proceeding brought by an administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, seeking any of the foregoing be pending; nor shall there be any action taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the Merger, which makes the consummation of the Merger illegal. In the event an injunction or other order shall have been issued, each party agrees to use commercially reasonable efforts to have such injunction or other order lifted.

(b) Governmental Approval. Parent, Merger Sub and the Company shall have obtained from each Governmental Entity all approvals, waivers and consents, if any, necessary for the consummation of the Merger and the transactions contemplated hereby.

**6.2 Additional Conditions to Obligations of Company** The obligation of the Company to consummate the Merger shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, by the Company:

(a) Representations, Warranties and Covenants The representations and warranties of Parent and Merger Sub in this Agreement shall be true and correct on and as of the Effective Time as though such representations and warranties were made on and as of such time, except to the extent that the failure to be so true and correct would not have a Material Adverse Effect on Parent. Parent and Merger Sub shall have performed and complied in all material respects with all covenants, obligations and conditions of this Agreement required to be performed and complied with by them prior to the Effective Time. Parent and Merger Sub shall have provided to the Company and the Shareholder Representative a certificate as to the satisfaction of the foregoing conditions.

(b) Corporate Certificates and Resolutions The Company shall have received from Parent and Merger Sub (i) a certificate of existence and, to the extent applicable, good standing from the jurisdiction of incorporation of each of Parent and Merger Sub as to the corporate status of each of Parent and Merger Sub, respectively, (ii) a true and complete copy of the resolutions, certified by the Secretary of Parent and of Merger Sub, respectively, adopted on behalf of each of Parent and Merger Sub, respectively, authorizing the execution, delivery and performance of this Agreement and all transactions contemplated hereby, and (iii) a certified copy of Parent and Merger Sub's Governing Documents.

(c) No Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Material Adverse Effect with respect to Parent, it being understood and agreed that a change in the market price of Parent Shares, in and of itself, shall not be deemed to constitute a Material Adverse Effect.

**6.3 Additional Conditions to Obligations of Parent and Merger Sub** The obligations of Parent and Merger Sub to consummate the Merger and the other transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, by Parent and Merger Sub:

(a) Representations, Warranties and Covenants The representations and warranties of the Company in this Agreement shall be true and correct on and as of the Effective Time as though such representations and warranties were made on and as of such time, except to the extent that the failure to be so true and correct would not have a Material Adverse Effect on the Company. The Company shall have performed and complied in all material respects with all covenants, obligations and conditions of this Agreement required to be performed and complied with by it prior to the Effective Time. The Company shall have provided to Parent and Merger Sub a certificate as to the satisfaction of the foregoing conditions.

(b) Certificates and Resolutions. As of the Effective Time, Parent and Merger Sub shall have received from the Company:

(i) a certificate of existence and good standing from the state of formation as to the corporate status of the Company and each of its Subsidiaries,

(ii) a true and complete copy of the resolutions, certified by the Secretary of the Company adopted on behalf of the Company, authorizing the execution, delivery and performance of this Agreement and all transactions contemplated hereby,

(iii) a certified copy of the Company's and each Subsidiary's Governing Documents,

(iv) the Options Certificate, and

(v) a certificate signed on behalf of the Company by the Chief Financial Officer of the Company, which shall certify that the allocation of the Net Aggregate Merger Consideration among the Company Shareholders set forth thereon is accurate and which allocation shall constitute the Net Merger Consideration Per Share issuable to each of the Company Shareholders in exchange for the Company Shares held by them pursuant to this Agreement (the information and the calculations set forth in such certificate shall be binding on the Company Shareholders, Merger Sub and Parent shall have the right to rely on such information and calculations)

(c) No Material Adverse Effect Since the date of this Agreement, there shall not have occurred any Material Adverse Effect with respect to the Company.

(d) Resignation of Directors and Officers The directors and officers of the Company in office immediately prior to the Effective Time shall have resigned as directors and officers, as applicable, of the Company effective as of the Effective Time.

(e) Employment Agreements Each of the persons listed on Schedule 5.7(d) shall have entered into an Employment Agreement;

(f) Lock-in Agreements. Each of the Employee Equity Holders shall have executed a Lock-in Agreement.

(g) Required Approvals and Consents. Each of the Required Company Regulatory Approvals and each of the Required Company Contractual Consents shall have been obtained

## **ARTICLE VII**

### **TERMINATION AND AMENDMENT**

**7.1 Termination** At any time prior to the Effective Time this Agreement may be terminated:

(a) by mutual agreement in writing, duly authorized by the Board of Directors of Parent and the Executive Committee of the Company;

(b) by Parent, by written notice to the Company, if the Company shall breach in any material respect any representation, warranty, obligation or agreement hereunder such that the condition precedent set forth in Section 6.3(a) and 6.3(c) cannot be satisfied by the Closing Date; provided that the right to terminate this Agreement by Parent under this Section 7.1(b) shall not be available to Parent where Parent is at that time in breach of this Agreement;

(c) by the Company, by written notice to Parent, if Parent shall breach in any material respect any representation, warranty, obligation or agreement hereunder such that the condition precedent set forth in Section 6.2(a) and 6.2(c) cannot be satisfied by the Closing Date; provided, that the right to terminate this Agreement by the Company under this Section 7.1(c) shall not be available to the Company where the Company is at that time in breach of this Agreement; or

(d) by either the Company or Parent by written notice to the other party, if the Effective Time has not occurred by June 30, 2007 (the "*End Date*"), unless the Effective Time has not occurred solely as a result of a breach of this Agreement by the party serving notice of termination.

**7.2 Effect of Termination** In the event of termination of this Agreement as provided in Section 7.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent or the Company or their respective officers, directors, shareholders or affiliates, except to the extent that such termination results from the bad faith or intentional breach by a party hereto of any of its representations, warranties or covenants set forth in this Agreement, provided that the provisions of Section 5.1(b) (confidentiality), Section 9.2 (Expenses) and this Section 7.2 shall remain in full force and effect and survive any termination of this Agreement.

**7.3 Amendment** This Agreement may not be amended except by an instrument in writing signed by the parties hereto.

## **ARTICLE VIII**

### **INDEMNIFICATION**

**8.1 Indemnification by the Company Shareholders** Subject to the terms and conditions set forth herein, prior to the Effective Time, the Company, and from and after the Effective Time, the Company Shareholders, jointly and severally, shall indemnify Parent, the Surviving Company (and prior to the Effective Time, Merger Sub) and their respective directors,

officers, employees, agents or advisors, or any of their respective successors and assigns (collectively, the "**Parent Indemnified Persons**"), in respect of, and hold each of them harmless against, any and all demands, claims, debts, actions, assessments, judgments, settlements, sanctions, obligations and other liabilities (whether absolute, accrued, contingent, fixed or otherwise, known or unknown, due or to become due or otherwise), monetary damages, fines, taxes, fees, penalties, interest obligations, deficiencies, losses and expenses (including, without limitation, amounts paid in settlement, interest, court costs, costs of investigation, reasonable fees and expenses of attorneys, accountants, financial advisors and other experts, and other expenses of litigation) (collectively, "**Damages**"), incurred or suffered by them resulting from, relating to, or arising out of or constituting

(i) any breach of representation or warranty or failure to perform any covenant or agreement of the Company contained in this Agreement or in any certificate delivered hereby;

(ii) any claim arising out of any dispute among any Company Shareholders or between any Company Shareholders and the Shareholder Representative, or any claims by Company Shareholders regarding the allocation of consideration in the Merger to them; or

(iii) any Shortfall;

provided, however, that the liability of the Company and each Company Shareholder shall not exceed such Company Shareholder's Pro Rata interest in the Indemnification Holdback Amount. In the event of any indemnification claim pursuant to this Section 8.1, the value of Parent Shares (and any other property) forming part of the Indemnification Holdback Amount shall be based on the fair market value thereof as of the date of the indemnification claim (or, if such claim is disputed, the date such dispute is finally resolved).

**8.2 Indemnification by Parent and Merger Sub.** Parent and the Surviving Company, jointly and severally, shall indemnify the Company and the Company Shareholders (collectively, the "**Company Indemnified Persons**" and, together with the Parent Indemnified Persons, the "**Indemnified Persons**") and hold each of them harmless against any and all Damages incurred or suffered by them resulting from, relating to, arising out of or constituting any breach of representation or warranty or any failure to perform any covenant or agreement of Parent or Merger Sub contained in this Agreement or in any certificate delivered hereby

**8.3 Method of Asserting Claims.** All claims for indemnification by any Indemnified Person pursuant to this Article VIII shall be made in accordance with the provisions of this Section 8.4.

(a) The Indemnified Person shall give prompt written notification to the party obligated to provide such indemnification (the "**Indemnifying Person**") of the commencement of any action, suit or proceeding relating to a third party claim for which indemnification pursuant to this Article VIII may be sought, provided, however, that no delay on the part of the Indemnified Person in notifying the Indemnifying Person shall relieve the Indemnifying Person

from any liability or obligation under this Article VIII unless such notification delay shall materially prejudice the Indemnifying Person. Within fifteen (15) days after delivery of such notification, the Indemnifying Person may, upon written notice thereof to the Indemnified Person, assume control of the defense of such action, suit or proceeding with counsel reasonably satisfactory to the Indemnified Person (and the Indemnified Person agrees to execute such documents as are necessary to permit the Indemnifying Person to control such defense) If the Indemnifying Person does not so assume control of such defense, the Indemnified Person shall control such defense. The party not controlling such defense may participate therein at its own cost and expense; provided, that if the Indemnifying Person assumes control of such defense and the Indemnified Person is advised by counsel in writing that the Indemnifying Person and the Indemnified Person may have materially conflicting interests or different defenses available with respect to such action, suit or proceeding, the reasonable fees and expenses of counsel to the parties shall be considered "Damages" for purposes of this Agreement The party controlling such defense shall keep the other party advised of the status of such action, suit or proceeding and the defense thereof and shall consider in good faith recommendations made by the other party with respect thereto. The Indemnified Person shall not agree to any settlement or the entry of a judgment in any action, suit or proceeding without the prior written consent of the Indemnifying Person The Indemnifying Person shall not settle any such action, suit or proceeding without obtaining a full and unconditional release of each Indemnified Person from and against any and all claims asserted in such action, suit or proceeding.

(b) In determining the amount of any Damages attributable to a breach (but, for the avoidance of doubt, not whether a breach has occurred), any materiality standard contained in a representation, warranty or covenant of the Company shall be disregarded.

**8.4 Limitations.** Notwithstanding anything to the contrary contained in this Agreement, (i) other than with respect to the obligation to indemnify for the Shortfall pursuant to Section 8.1(iii) above, no Indemnifying Person shall be liable for indemnification unless and until the aggregate of all Damages incurred by the Indemnified Person shall exceed \$400,000, and then only for the amount of such excess, (ii) the liability of Parent and Merger Sub hereunder shall in no event exceed fifteen percent (15%) of the Purchase Price, and (iii) except in the case of fraud, the sole remedy that Parent Indemnified Persons shall have is the Indemnification Holdback Amount and the sole remedy that Company Indemnified Persons shall have is as provided in this Article VIII.

## **ARTICLE IX**

### **GENERAL PROVISIONS**

**9.1 Survival.** The representations and warranties set forth in Articles III and IV will survive 18 months from the Closing. The agreements set forth in this Agreement shall terminate at the Effective Time, except that the agreements which by their terms are to be performed after the Effective Time, shall survive the Effective Time.

**9.2 Expenses** All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby (including, without limitation, the fees and

expenses of its advisers, accountants and legal counsel) shall be paid by the party incurring such expense, whether or not the Merger is consummated

**9.3 Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with confirmation of receipt) to the parties at the following address (or at such other address for a party as shall be specified by like notice)

(a) if to Parent or Merger Sub, to.

Panmure Gordon & Co.  
Moorgate Hall  
155 Moorgate  
London, EC2M 6XB  
United Kingdom  
Attention Sarah Wigley, Company Secretary  
Facsimile No.: +44(0)20 7459 3609

with copies to

Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, New York 10036  
Attention Richard H. Gilden, Esq.  
Facsimile No.: (212) 715-8000

Berwin Leighton Paisner LLP  
Adelaide House  
London Bridge  
London EC4R 9HA  
United Kingdom  
Attention: Benjamin Lee  
Facsimile No.: +44 (0)20 7760 1111  
Telephone No.: +44 (0)20 7760 1000

(b) if to the Company, to

ThinkEquity Partners LLC  
600 Montgomery Street  
San Francisco, CA 94111  
Attention: Jerome Joondeph, Chief Administrative Officer and General Counsel  
Facsimile No.: (415) 772-9888

with a copy to:

Debevoise & Plimpton LLP  
919 Third Avenue  
New York, New York 10022  
Attention: Gregory V. Gooding, Esq.  
Facsimile No (212) 909-6836

if to the Shareholder Representative, to.

ThinkEquity Partners, LLC  
150 N. Wacker Drive, Suite 1950  
Chicago, IL 60606  
Attention: Deborah Quazzo  
Facimile No (312)-827-6301

with a copy to

Debevoise & Plimpton LLP  
919 Third Avenue  
New York, New York 10022  
Attention: Gregory V Gooding, Esq  
Facsimile No : (212) 909-6836

**9.4 Interpretation.** When a reference is made in this Agreement to a Section, an Article or an Exhibit, such reference shall be to a Section or Article of this Agreement or an Exhibit to this Agreement unless otherwise indicated. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "but are not limited to," "but is not limited to" and "but not limited to," respectively. The phrase "made available" in this Agreement shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Reference to any gender includes the other gender.

**9.5 Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart.

**9.6 Entire Agreement; Parties in Interest; Nonassignability** This Agreement and the documents and instruments and other agreements specifically referred to herein or delivered pursuant hereto, including the Exhibits and Schedules and the Company Disclosure Schedule constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, except for the confidentiality provisions contained in the Letter of Intent, which shall continue in full force and effect, and shall survive any termination of this Agreement or the Closing, in accordance with its terms.



Neither this Agreement nor any right, interest or obligation hereunder may be assigned (by operation of law or otherwise) by any party without the prior written consent of the other party and any attempt to do so will be void. Subject to the preceding sentence, this Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors and assigns.

**9.7 Severability** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible

**9.8 Remedies Cumulative.** Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

**9.9 Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of New York without reference to such state's principles of conflicts of law. 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 shall be brought exclusively in any federal court located in the Southern District of New York or any state court located in the Borough of Manhattan in New York City, 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 9.3 shall be deemed effective service of process on such party

**9.10 Rules of Construction** The parties hereto agree that they have been represented by counsel during the negotiation, preparation and execution of this Agreement and therefore waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

**9.11 Extension; Waiver.** At any time prior to the Effective Time any party hereto may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the

representations and warranties made to such party contained herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

**9.12 No Third-Party Beneficiary.** The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors and permitted assigns, and it is not the intention of the parties to confer upon any other person or entity any rights or remedies, except (i) as provided in Section 5.15 and (ii) the rights of Company Shareholders to (x) receive Parent Shares and cash as a result of the Merger, (y) to indemnification under Article VIII and (z) to recover, solely through an action brought by the Company, damages from Parent in the event of a willful or intentional breach of this Agreement by Parent, in which event the damages recoverable by the Company for itself and on behalf of the Company Shareholders (without duplication) shall be determined by reference to the total amount that would have been recoverable by the equityholders of the Company if all such holders brought an action against Parent and were recognized as intended third party beneficiaries hereunder.

**9.13 Attorneys' Fees.** If any action at law or equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and disbursements in addition to any other relief to which that party may be entitled.

**9.14 Specific Performance.** The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity

**9.15 No Personal Liability.** No director or officer of the Company shall have any personal liability whatsoever to Parent under this Agreement, or any other document delivered in connection with the Merger on behalf of the Company. No director or officer of Parent shall have any personal liability whatsoever to the Company under this Agreement, or any other document delivered in connection with the Merger on behalf of Parent.

**9.16 Appointment of Shareholder Representative.**

(a) Each Company Shareholder that accepts payment of Net Per Share Merger Consideration shall be deemed by such acceptance to have (i) irrevocably constituted and appointed Deborah Quazzo (such person and any successor or successors being the "***Shareholder Representative***") as such Company Shareholder's true and lawful agent, proxy and attorney-in-fact pursuant to this Section 9.16 and (ii) agreed to the provisions of this Section 9.16. The Shareholder Representative shall have full power and authority to act for each Company Shareholder in any and all capacities to do and perform every act and thing required or

permitted to be done, in the reasonable judgment of the Shareholder Representative, in connection with the transactions contemplated by this Agreement upon and immediately following the Effective Time, including, without limitation, all decisions relating to the defense and/or settlement of any claims for which any Parent Indemnitee or Company Indemnified Person may claim to be entitled to indemnity pursuant to Article VIII hereof, the amendment of this Agreement, the receipt of all payments and notices and the giving of all consents and waivers. All decisions and actions by the Shareholder Representative shall be binding upon all of the Company Shareholders, and no Company Shareholder shall have the right to object to, dissent from, protest or otherwise contest the same.

(b) Each Company Shareholder that accepts payment of Net Per Share Merger Consideration shall be deemed by such acceptance to have agreed that the provisions of this Section 9.16 are independent and severable, are irrevocable and coupled with an interest and shall be enforceable notwithstanding any rights or remedies any Company Shareholder may have in connection with the transactions contemplated by this Agreement and (11) the provisions of this Section 9.16 shall be binding upon the heirs, successors and assigns of each Company Shareholder.

(c) Any notice or communication delivered by Parent, Merger Sub or the Surviving Company to the Shareholder Representative shall, as between Parent, Merger Sub and the Surviving Company, on the one hand, and the Company Shareholders, on the other, be deemed to have been delivered to all Company Shareholders. Parent, Merger Sub and the Surviving Company shall be entitled to rely exclusively upon any communications or writings given or executed by the Shareholder Representative and shall not be liable in any manner whatsoever for any action taken or not taken in reliance upon the actions taken or not taken or communications or writings given or executed by the Shareholder Representative. Any Company Shareholder that wishes to deliver any notice, or take any other action with respect to any matter arising, under this Agreement must do so through the Shareholder Representative, and Parent, Merger Sub and the Surviving Company shall be explicitly entitled to disregard any notices or communications given or made by the Company Shareholders unless given or made through the Shareholder Representative, and such notices or communications shall be of no force or effect.

(d) Notwithstanding anything to the contrary contained in this Agreement, the Shareholder Representative shall have no liabilities, duties or responsibilities except those expressly set forth in this Section 9.16, and no implied covenants, functions, responsibilities, duties, obligations or liabilities on behalf of the Company or any Company Shareholder shall otherwise exist against the Shareholder Representative. The Shareholder Representative shall not, by virtue of acting in such capacity or any of its actions taken in such capacity, be deemed to have assumed any liability or become responsible for any obligation of any the Company. The Shareholder Representative will not be liable to the Company or any Company Shareholder, or Parent or Merger Sub with respect to actions taken or omitted to be taken in his capacity as the Shareholder Representative (except in the case of gross negligence, intentional misconduct or fraud by the Shareholder Representative). The Shareholder Representative, his agents and assigns (collectively, the "Indemnitees") shall be indemnified, held harmless and defended by the Company Shareholders against all Damages arising out of or in connection with (i) the Shareholder Representative's omissions to act, or actions taken, resulting from, arising out of, or

incurred in connection with, or otherwise with respect to this Agreement, or (11) services taken with respect to this Agreement or believed by the Shareholder Representative to be in the scope of such Indemnitee's authority; provided that such Damages do not arise out of or in connection with the gross negligence, intentional misconduct or fraud of such Indemnitee.


(e) The Shareholder Representative may consult with legal counsel, independent public accountants and other experts selected by the Shareholder Representative. The Shareholder Representative shall not be responsible or liable to any Company Shareholder for any act or omission of any kind so long as he has acted in good faith (any such action or omission pursuant to an order, judgment or decree of any court or administrative agency, or advice of legal counsel, public accountants and other experts selected by the Shareholder Representative shall be conclusive evidence of such good faith), or for the expiration of rights under any statute of limitations with respect to this Agreement.


(f) In order to pay expenses incurred by the Shareholder Representative in connection with his/her services in such capacity, Parent shall pay to the Shareholder Representative \$300,000 in cash on Closing (and the Indemnification Holdback Amount shall be reduced accordingly). Any portion of such amount not expended pursuant to the immediately preceding sentence shall be distributed to the Company Shareholders, on the later of the Holdback Termination Date or the resolution of the final pending claim with respect to the Indemnification Holdback Amount.

(g) Prior to the Effective Time, in the case of the death, disability, unwillingness to serve or other unavailability of the Shareholder Representative, the Company Shareholders who own a majority in interest of Company Shares shall have the right, exercisable by written notice to Parent, to designate a replacement Shareholder Representative. Upon and after the Effective Time, in the case of the death, disability, unwillingness to serve or other unavailability of the Shareholder Representative, the Company Shareholders who receive a majority in interest of the Aggregate Merger Consideration shall have the right, exercisable by written notice to Parent, to designate a replacement Shareholder Representative.

IN WITNESS WHEREOF, Panmure Gordon & Co plc, Broadway Acquisition 2007, LLC and ThinkEquity Holdings LLC have caused this Agreement and Plan of Merger and Reorganization to be executed and delivered by their respective officers thereunto duly authorized, and the Shareholder Representative has executed and delivered this Agreement and Plan of Merger and Reorganization, in each case as of the date first written above


**PANMURE GORDON & CO. PLC**


By   
Name TIMOTHY LINACRE  
Title Director

By   
Name DAVID LIDDELL  
Title Director

**BROADWAY ACQUISITION 2007, LLC**

By Panmure Gordon & Co. plc,  
Its Sole Member

By   
Name TIMOTHY LINACRE  
Title Director

By   
Name DAVID LIDDELL  
Title Director

**THINKEQUITY HOLDINGS LLC**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
Deborah Quazzo, as  
Shareholder Representative

IN WITNESS WHEREOF, Panmure Gordon & Co. plc, Broadway Acquisition 2007, LLC and ThinkEquity Holdings LLC have caused this Agreement and Plan of Merger and Reorganization to be executed and delivered by their respective officers thereunto duly authorized, and the Shareholder Representative has executed and delivered this Agreement and Plan of Merger and Reorganization, in each case as of the date first written above.

**PANMURE GORDON & CO. PLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Director

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Director

**BROADWAY ACQUISITION 2007, LLC**

By: Panmure Gordon & Co. plc,  
Its Sole Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Director

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Director

**THINKEQUITY HOLDINGS LLC**

By: Deborah Quazzo  
Name: Deborah Quazzo  
Title: President

Deborah Quazzo  
Deborah Quazzo, as  
Shareholder Representative