

Exhibit A

**Terms and Conditions of Employment
between
William T. Schleyer ("WTS")
and
Adelphia Communications Corporation (the "Company")**

The board of directors of the Company (the "Board") seeks to elect and retain WTS as Chief Executive Officer ("CEO") of the Company and as Chairman of the Board subject to the acceptance by WTS of the terms and conditions of employment set forth in this agreement and approval of this agreement by the U.S. Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

1. **Position.** Upon approval of this agreement by the Bankruptcy Court, WTS shall become CEO and Chairman of the Board.

2. **Term.** (a) The initial term of this agreement shall commence upon the approval set forth in Section 1 above (the "Effective Date") and continue through and including December 31, 2005. Absent notice by either party prior to June 30, 2005 (and in the case of extensions, prior to each subsequent June 30), this agreement shall be extended automatically for an additional year, and annually thereafter.

(b) Notwithstanding any other provisions hereof, for the period between the date of execution of this Agreement and the Effective Date (the "Common-Law Employment Period"), WTS shall be employed as a common-law employee of the Company (but shall not serve as either any officer or director). During the Common-Law Employment Period the Company shall (i) pay to WTS a salary of \$9,600 per day, and (ii) reimburse WTS for all reasonable expenses incurred pursuant to his employment during such period, including, but not limited to, expenses for travel and entertainment.

3. **Base Salary.** WTS's salary shall be \$1,275,000, which amount shall not be decreased except upon mutual consent. The Board shall review the base salary annually, but shall not have any obligation to increase such amount.

4. **Bonus.** A bonus equal to 100 percent of base salary will be guaranteed pro rata for the period between the Effective Date and December 31, 2003, and such bonus shall be paid in December 2003. For years 2004 and 2005 and during any subsequent annual extensions of this agreement, there shall not be any minimum guaranteed bonus. However, WTS will have the opportunity to earn a bonus of 100 percent of base salary for performance at target levels based on performance standards, with smaller or greater bonus opportunities for performance below or above target levels, all as determined by the Board.

Such performance targets are expected to include criteria such as:

- (i) specific increased levels of EBITDA, net income, or other financial performance measures;
- (ii) successfully exiting from bankruptcy protection at the earliest possible time, consistent with the best interests of the Company and its stakeholders, and generating sustainable levels of profitability;
- (iii) implementing revised governance and ethical standards; and
- (iv) retention of existing customers and revenue base while developing new business and retention and recruitment of personnel for key leadership positions.

5. **Signing Bonus.** WTS shall receive a signing bonus of \$1.7 million, which amount shall be payable to WTS in ratable monthly installments based on the number of full and partial calendar months from the month in which the Effective Date occurs until December, 2005. No portion of the signing bonus shall be payable after the date upon which WTS voluntarily

terminates employment without Good Reason or is terminated by the Company for Cause and, in the event of termination for Cause, any portion of the signing bonus previously paid to WTS shall be repaid within ten days of the date of such termination. If WTS does not complete the initial term of employment by reason of termination by the Company without Cause, resignation by WTS for Good Reason, death or disability, the then remaining unpaid balance of the signing bonus shall be paid to WTS (or his estate) within 30 days after the date of such termination.

6. **Benefits.** WTS will be eligible to participate in all normal Company benefits for employees and executives.

7. **Liability Insurance.** WTS will be covered under the Company's directors and officers liability insurance policy, and the Company will indemnify WTS as and to the extent required by the Indemnity Agreement attached hereto as Exhibit A.

8. **Termination of Employment.**

(a) If WTS's employment is terminated by Company not for Cause or by WTS for Good Reason, in addition to any amounts due under Section 5, WTS will receive a lump sum payment within 30 days after termination of employment equal to three times the sum of WTS's base salary and guaranteed bonus (target bonus during 2004 and thereafter). In any such event, WTS also will be entitled to continued health coverage at employee rates at his sole cost for 18 months following termination of employment.

(b) "Good Reason" shall mean (i) a demotion or removal from the positions of CEO or Chairman of the Board; (ii) a material adverse change by the Company in WTS's duties or responsibilities; (iii) a decrease in Base Salary or failure to provide an opportunity to earn

performance bonuses as provided in Sections 4 above and 10(a) below; or (iv) any other material breach of this agreement by the Company. "Good Reason" does not include (x) non-renewal of this agreement at the conclusion of its initial term or upon any extension thereof, (y) the failure to grant any annual equity award if established performance standards are satisfied, provided equivalent compensation is provided, (z) implementation of any changes in corporate governance required by laws, rules or regulations of general applicability, (xx) section 8(b)(i) notwithstanding, any order by a court of competent jurisdiction or of any governmental agency removing WTS as Chairman of the Board, or (yy) the failure for any reason of the Company and WTS to enter into a definitive employment agreement embodying the terms of this agreement (which until a definitive agreement is entered into shall be deemed to constitute WTS's employment agreement). Termination by WTS or the Company based on an alleged breach of this agreement, including the alleged existence of Good Reason, shall require not less than 30 days notice to the other party, which shall have an opportunity to cure any such breach within said 30-day period, and WTS shall be required to make any assertion of "Good Reason" within 45 days of the events allegedly giving rise to "Good Reason".

(c) If WTS's employment is terminated by Company for Cause or WTS not for Good Reason, WTS will receive salary and other amounts earned but not yet paid (not including any pro-ration for bonuses, which shall not be payable) through the date of termination of employment (except to the extent subject to disgorgement under any applicable legal requirement). The Company shall be entitled to net the amount of any required repayment of the signing bonus against any amounts due to WTS, without waiving or limiting the Company's rights to recover any excess amount due to it.

(d) "Cause" shall mean (i) the commission by WTS of (x) a felony or (y) a misdemeanor (excluding a petty misdemeanor) involving dishonesty, fraud, financial impropriety, or moral turpitude; (ii) any knowing or deliberate violation by WTS of a requirement of the Sarbanes-Oxley Act of 2002 or other material provision of the federal securities laws; (iii) neglect or misconduct in the discharge of his duties by WTS (after receiving written notice from the Board specifying the manner in which he is alleged to have failed properly to discharge his duties and after having had the opportunity to cure such failure within 30 days from receipt of such notice); (iv) any conduct that could reasonably be anticipated to result in or materially contribute to (whether by act or by omission to act) a violation by the Company of orders binding on the Company issued by a court of competent jurisdiction resolving material governmental proceedings or investigations relating to governance; (v) material breach by WTS of this agreement, including any of the covenants contained herein (e.g., non-competition, non-solicitation, cooperation with investigations), subject to the notice and cure provisions set forth in the last sentence of Section 8(b) above. "Cause" does not include the non-renewal of this agreement at the conclusion of its initial term or upon any extension thereof. If, after the expiration of any applicable cure period, the Company asserts that grounds exist for termination with Cause, it shall so notify WTS and within 15 days shall afford WTS a hearing before the Board regarding any disputed facts. The Board shall make a final determination regarding the existence of "Cause" upon completion of any such hearing; *provided, however*, that any determination that "Cause" exists shall require an affirmative vote of two-thirds of the non-employee directors of the Board. If any such determination remains pending after such 15-day period, the Company shall be entitled to suspend WTS's duties pending determination of the existence of "Cause".

(e) *If WTS's employment is terminated upon Death or Disability.* In the event of WTS's death or disability during the term of this agreement, in addition to any amounts due under Section 5, his estate or WTS shall receive a lump sum payment in an amount equal to his then current years' base salary plus a pro rata portion of WTS's target bonus. At the Company's option, this obligation may be satisfied in whole or in part through life insurance or disability policies purchased by the Company. Disability shall be defined as WTS's physical or mental incapacity which continues for a period of not less than six consecutive months or six months in any twelve-month period, as determined by a doctor mutually agreeable to WTS and the Board. WTS and/or his eligible dependents, as applicable, shall be entitled to continued health care coverage at employee rates at their sole cost for 18 months following death or disability.

9. Initial Equity Award. Upon the Company's emergence from bankruptcy, WTS will be entitled to receive an initial equity award of restricted shares valued at \$10.2 million at the date of emergence. The fair market value ("FMV") of the restricted shares at the date of emergence will be determined based on the average closing price of the Company's common stock determined over the 15 trading days immediately preceding the 90th day following the date of emergence. All such restricted shares shall vest ratably over a period of three years, such three-year period to commence on the first anniversary of the Effective Date (e.g., if the date of emergence occurs on the second anniversary of the Effective Date, one-third of the restricted shares would be fully vested when granted, and the remaining two-thirds would have vested by the third and fourth anniversaries of the Effective Date, respectively). After releasing such number of shares as shall be necessary to cover taxes due as a result of vesting, 75 percent of the remaining shares shall be restricted as to resale until a date that shall be 6 months following

WTS's termination of employment with the Company. With the prior consent of the Company and WTS, awards may be made in the form of restricted deferred share units rather than restricted shares. For the avoidance of doubt, any amount of restricted shares vesting prior to the date of grant shall not be considered vested for tax purposes.

10. Potential Equity Awards.

(a) *Annual Equity Award.* During the tenure of WTS's employment, for each full calendar year following the calendar year in which the Company emerges from bankruptcy, WTS shall be eligible at the targeted performance levels to receive an annual equity award valued at two times the sum of base salary plus target annual bonus based upon achievement of performance objectives to be set for each such year by the Board. Such equity awards shall consist of such mix of restricted shares or stock options as the Board may determine, and shall vest ratably over a period to be determined by the Board of not less than three years from the date of issuance. No such award shall be required if WTS fails to achieve performance levels established by the Board for the applicable year.

(b) *Stock Options.* During the tenure of WTS's employment, commencing at the time of the Company's emergence from bankruptcy and in each calendar year thereafter, WTS shall be eligible to receive grants of stock options to be awarded by the Board on an annual basis in such amount as the Board may determine from shares made available for such purpose in the Company's Plan of Reorganization or in any plan adopted by a vote of the holders of the Company's outstanding equity securities. The decision to issue any such future options shall be discretionary on the part of the Board, which may determine in any given year whether or not to issue additional options to WTS or other executives.

(c) If awarded, any initial grant of options received by WTS upon the Company's emergence from bankruptcy shall vest ratably over a period of three years, such three-year period to commence on the first anniversary of the Effective Date (i.e., in the same manner as the initial award of restricted shares), shall be exercisable for a 10-year term and shall have an exercise price equal to the FMV of the shares underlying the options upon emergence (as determined in accordance with Section 9 above).

(d) Future discretionary grants of options shall be awarded by the Board reflecting such performance factors as the Board may determine and shall be at such strike prices (equal to or greater than market value at the date of grant) and may contain such vesting periods and other terms as the Board may determine. After providing for sales in amounts necessary to pay income tax on option-related income and the exercise price of options, (i) no such shares received upon exercise of options shall be sold until a date which shall be 12 months following the date of option exercise and (ii) 75 percent of the shares acquired by WTS upon exercise of options shall not be sold until the date that is 6 months following the date WTS's employment with the Company ceases unless the Board shall set a different requirement.

(e) *Emergence Date Special Award.* In addition to the award of restricted shares provided in Section 9 above, upon the Company's emergence from bankruptcy WTS shall receive an additional grant of restricted shares (subject to the same terms and conditions applicable to the award provided for in Section 9 above) of up to \$5.1 million if the Board determines that WTS's performance during the pre-emergence period has been exemplary or significantly exceeded the level of performance that could reasonably have been expected. If the Board fails to make any such determination, such additional amount of restricted shares shall not be issued to WTS.

11. Treatment of Equity Grants on Termination.

(a) In the event of termination of WTS's employment (1) by the Company without Cause, or (2) by WTS for Good Reason (in each case other than due to non-renewal of this agreement at the conclusion of its initial term or upon any extension thereof), all restricted shares, restricted deferred share units, or options then held by WTS shall vest and any options granted (i) upon emergence from bankruptcy shall remain exercisable until the fifth anniversary of WTS's termination of employment, and (ii) subsequent to emergence from bankruptcy (but following the initial grant) shall remain exercisable until the third anniversary of WTS's termination of employment. In the event that either party shall not extend the term of this agreement past the initial term, the vesting period of the initial grants of restricted shares and, if awarded, stock options shall accelerate to the expiration date of this agreement, and such options shall remain exercisable until the fifth anniversary of WTS's termination of employment.

(b) In the event of termination of WTS's employment by WTS not for Good Reason or by the Company for Cause (in each case other than due to non-renewal of this agreement at the conclusion of its initial term or upon any extension thereof), any unvested restricted shares, restricted deferred share units, or options shall be forfeited and the exercise period for any vested stock options shall be limited to 30 days in the case of a termination by WTS other than for Good Reason and shall immediately expire in the case of a termination by the Company for Cause. In the event of WTS's death or disability, any unvested restricted shares or restricted deferred share units will be vested ratably in the proportion that WTS's completed months of service bear to the months of service required for vesting, and options will vest and continue to be exercisable until the earlier of the original expiration date or one year following death or disability.

12. Relocation. WTS shall be entitled to reimbursement of all reasonable transaction costs and moving expenses associated with relocation in accordance with normal Company policies.

13. Non-Competition/Non-Solicitation. In the event WTS's employment is terminated for any reason, other than expiration of this agreement (including any extensions) without renewal, WTS shall not, during the one-year period from the date of termination, solicit customers on behalf of or become an employee, consultant, advisor, director or assume any other position with any "Competing Enterprise." For purposes of this Agreement, "Competing Enterprise" shall mean any Direct Broadcast Satellite or other multi-channel video provider (including, but not limited to, EchoStar Communications Corp. or DirecTV Broadband, Inc.), any multiple system operator (including, but not limited to Comcast) or any Digital Subscriber Line provider in the continental United States and/or Puerto Rico, in each case that has a service area that overlaps with 10% or more of the service area of the Company. WTS shall also agree to customary confidentiality provisions, which shall continue in effect following expiration of this agreement or other termination of employment other than as to information that has independently become a part of the public domain. WTS shall not solicit employees of the Company for one year following the expiration of this agreement or other termination of employment. WTS shall also agree to customary provisions concerning intellectual property, including copyrights and trademarks, etc.

14. Parachute Gross-Up. The Company will provide a gross-up for any excise tax imposed upon WTS under Internal Revenue Code Section 4999 or similar provisions sufficient to put WTS in the same after-tax position as if such excise tax were not due. The amount of such gross-up shall be determined by the Company's external auditors assuming the highest marginal

federal and applicable state tax rates, and WTS shall be entitled to continuing indemnification for any additional tax imposed by taxing authorities relating to such excise tax or gross-up.

15. Legal Fees. Company shall pay WTS's reasonable legal fees at standard hourly rates (but not to exceed \$150,000) directly related to negotiation of this agreement and of any definitive employment agreement, and shall gross-up WTS for any taxes payable by WTS resulting from such payment.

16. Dispute Resolution. In the event of any dispute under this agreement or a definitive employment agreement, including without limitation if WTS shall assert the existence of Good Reason or any other breach of this agreement and the Company shall disagree as to the existence of Good Reason or any other asserted breach, WTS and the Company agree that such dispute shall be resolved by binding arbitration to be conducted in the Southern District of New York, unless upon notice the Bankruptcy Court shall determine that any such dispute shall be resolved by the Bankruptcy Court, in which event the Bankruptcy Court shall resolve such dispute. In the event of any such proceeding, the losing party shall reimburse the winning party upon entry of a final award resolving the subject of the dispute for all reasonable legal expenses incurred, unless the arbitrator (or the Bankruptcy Court, if applicable) determines that to do so would be unjust. This agreement shall be governed by the substantive provisions of the laws of the State of New York.

17. Mutual Cooperation. The parties agree to take reasonable steps (without cost to WTS) to minimize the Company's tax obligations with respect to annual compensation.

18. Cooperation with Investigations. WTS agrees that he will fully cooperate, and that he will as CEO direct the Company and all officers, employees, agents, and consultants employed

by the Company to cooperate fully, with all governmental investigations of the Company and all orders entered by the Bankruptcy Court.

19. Corporate Aircraft. WTS will be permitted use of corporate aircraft in accordance with the corporate aircraft policy approved by the Board; *provided, however*, that personal use of corporate aircraft shall not be permitted.

AGREED TO AND ACCEPTED:

William T. Schleyer

January 17, 2003

AGREED TO AND ACCEPTED:

Adelphia Communications Corporation

Name: Erkie Kailbourne
Title: Chairman and Interim
Chief Executive Officer
January 17, 2003

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Name: Erkie Kailbourne
 Title: Chairman and Interim
 Chief Executive Officer
 January 17, 2003

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "Agreement") is made and entered into this ___ day of November, 2002 between Adelphia Communications Corporation, a Delaware corporation (the "Company"), and _____ ("Indemnitee"), an officer and a director of the Company.

WHEREAS, Indemnitee has been offered employment as an officer of the Company pursuant to an Employment Agreement dated on or about the date hereof (the "Employment Agreement") and has agreed, on the condition that he be indemnified on the terms set forth in this Agreement, to serve as an officer of the Company and in such capacity will render services to the Company;

WHEREAS, the Company has agreed pursuant to the Employment Agreement to nominate Indemnitee to serve on the Company's board of directors (the "Board") and Indemnitee has agreed, on the condition that he be indemnified on the terms set forth in this Agreement, to serve as a director of the Company and in such capacity will render services to the Company;

WHEREAS, Indemnitee has agreed pursuant to the Employment Agreement to serve as a common-law employee of the Company for a limited period of time prior to the commencement of his service as an officer and director, on the condition that he be indemnified on the terms set forth in this Agreement, and in such capacity will render services to the Company;

WHEREAS, the Company is aware that because of the increased exposure to litigation subjecting employees, officers and directors to expensive litigation risks, talented and experienced persons are increasingly reluctant to serve or continue to serve as employees, directors and officers of corporations unless they are appropriately indemnified;

WHEREAS, the Company is also aware that statutes and judicial decisions regarding the duties of employees, directors and officers are often difficult to apply, ambiguous or conflicting and therefore fail to provide directors with adequate guidance regarding the proper course of action;

WHEREAS, the Company desires to attract and retain the services of highly experienced and capable individuals, such as Indemnitee, to serve as employees, officers and directors of the Company and to indemnify its employees, officers and directors so as to provide them with the maximum protection permitted by law;

WHEREAS, the Company believes that it is fair and proper to protect the Company's employees, officers and directors from the risk of judgments, settlements and other expenses which may occur as a result of their service to the Company, even in cases in which such persons received no personal profit or were not otherwise culpable;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Indemnitee, intending to be legally bound, hereby agree as follows:

SECTION 1. Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

(a) *"Change of Control"* shall be deemed to have occurred in any one of the following circumstances occurring after the date hereof: (i) there shall have occurred an event required to be reported with respect to the Company in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item or any similar schedule or form) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), regardless of whether the Company is then subject to such reporting requirement; (ii) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) shall have become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 15% or more of the combined voting power of the Company's then outstanding voting securities; (iii) the Company is a party to a merger, consolidation, sale of assets or other reorganization, or a proxy contest, as a consequence of which members of the Board in office immediately prior to such transaction or event constitute less than a majority of the Board thereafter; (iv) all or substantially all the assets of the Company are sold or disposed of in a transaction or series of related transactions; or (v) the individuals who on the date hereof constitute the Board (including, for this purpose, any new director whose election or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who were directors on the date hereof) cease for any reason to constitute at least a majority of the Board.

(b) *"Enterprise"* means any Person of which Indemnitee is or was a Fiduciary.

(c) *"Expenses"* means all direct and indirect costs (including, without limitation, attorneys' fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or out-of-pocket expenses) actually, reasonably and customarily incurred in connection with (i) any Proceeding, (ii) establishing or enforcing any right to indemnification or advancement of expenses under this Agreement, applicable law, any other agreement or provision of the Company's Certificate of Incorporation or By-laws now or hereafter in effect or otherwise, or (iii) the review and preparation of this Agreement on behalf of Indemnitee; provided, however, that "Expenses" shall not include any Liabilities.

(d) *"Fiduciary"* means an individual serving as a director, officer, trustee, general partner, managing member, fiduciary, board of directors' committee member, employee or agent of (i) the Company, (ii) any resulting corporation in connection with a consolidation or merger to which the Company is a party, or (iii) any other Person (including an employee benefit plan) at the request of the Company, including any service with respect to an employee benefit plan, its participants or its beneficiaries.

(e) *"Independent Counsel"* means a nationally recognized law firm, or a member of a nationally recognized law firm, that is experienced in matters of corporate law and neither currently is, nor in the five years previous to its selection or appointment has been, retained to represent (i) the Company or the Indemnitee in any matter material to either such party (other than with respect to matters concerning the rights of Indemnitee under this Agreement or of other indemnities under similar indemnification agreements) or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. For the avoidance of doubt, any law firm or member of a law

firm that shall have advised either party with respect to the review and preparation of this Agreement shall not be Independent Counsel for the purposes of this Agreement.

(f) “*Liabilities*” means liabilities of any type whatsoever incurred by reason of (i) the fact that Indemnitee is or was a Fiduciary, or (ii) any action taken (or failure to act) by him or on his behalf in his capacity as a Fiduciary, including, but not limited to, any judgments, fines (including any excise taxes assessed on Indemnitee with respect to an employee benefit plan), ERISA excise taxes and penalties, and penalties and amounts paid in settlement of any Proceeding (including all interest, assessments and other charges paid or payable in connection with or in respect of such judgments, fines, penalties or amounts paid in settlement).

(g) “*Person*” means any individual, partnership, joint venture, firm, corporation, association, limited liability company, trust, estate, governmental unit or other enterprise or entity.

(h) “*Proceeding*” shall mean any threatened, pending or completed investigation, civil or criminal action, third-party action, derivative action, claim, suit, arbitration, counterclaim, cross claim, alternative dispute resolution mechanism, inquiry, administrative hearing or any other proceeding whether civil, criminal, administrative, legislative or investigative, formal or informal, including any appeal therefrom, in which Indemnitee was involved as a party or witness or otherwise by reason of (i) the fact that Indemnitee is or was a Fiduciary, or (ii) any action taken (or failure to act) by him or on his behalf in his capacity as a Fiduciary.

(i) “*Subsidiary*” means any Person of which a majority of the outstanding voting securities or other voting equity interests are owned, directly or indirectly by the Company.

SECTION 2. Services by the Indemnitee. Subject to the effectiveness of this Agreement pursuant to Section 13 hereof, the Indemnitee agrees to serve as an employee, officer and director in accordance with the terms of his Employment Agreement.

SECTION 3. Indemnification.

(a) Indemnification. Subject to the further provisions of this Agreement, the Company hereby agrees to and shall indemnify Indemnitee and hold him harmless from and against any and all Expenses and Liabilities incurred by Indemnitee or on Indemnitee’s behalf, to the fullest extent permitted by applicable law in effect on the date hereof, and to such greater extent as applicable law may thereafter permit or authorize.

(b) Presumptions.

(i) Upon making any request for indemnification or advancement of Expenses under this Agreement, Indemnitee shall be presumed to be entitled to such indemnification or advancement of Expenses, as the case may be, under this Agreement and, in connection with any determination with respect to entitlement to indemnification under Section 4(c) hereof, the Company shall have the burdens of coming forward with evidence and of persuasion to overcome

that presumption in connection with the making by any Person of any determination contrary to that presumption. Neither the failure of any Person to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by any Person that Indemnitee has not met any applicable standard of conduct, shall be a defense to any such action by Indemnitee or create a presumption that Indemnitee has not met the applicable standard of conduct.

(ii) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of any Enterprise, including financial statements, or on information supplied to Indemnitee by the officers, directors or employees of such Enterprise in the course of their duties, or on the advice of legal counsel for such Enterprise or on information or records given or reports made to such Enterprise by an independent certified public accountant or by an appraiser or other expert selected by such Enterprise. The provisions of this Section 3(b) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(iii) If the Person empowered or selected under Section 4(c) hereof to determine whether Indemnitee is entitled to indemnification shall not have made a determination within twenty (20) calendar days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (A) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (B) a prohibition of such indemnification under applicable law.

(iv) The knowledge and/or actions, or failure to act, of any other Fiduciary shall not be imputed to Indemnitee for purposes of determining any right to indemnification under this Agreement.

(c) Effect of Certain Proceedings. The termination of any Proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, that Indemnitee had reason to believe his or her conduct was unlawful.

SECTION 4. Expenses; Indemnification Procedure.

(a) Advancement of Expenses. The Company shall advance all Expenses incurred by Indemnitee or on Indemnitee's behalf, without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. Indemnitee hereby undertakes to repay such amounts advanced if, and only to the extent that, it shall be determined by a final judgment or other final adjudication,

not subject to further appeal or review, that Indemnitee is not entitled to be indemnified by the Company as authorized hereby, or under applicable law or otherwise. The advances to be made hereunder shall be paid by the Company to Indemnitee within twenty (20) calendar days following delivery of any written request, from time to time, by Indemnitee to the Company. Any overdue amount of such Expenses to be paid by the Company hereunder shall bear interest, compounded monthly, at a rate of 8% per annum. Advances payable hereunder shall include any and all reasonable Expenses incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding any statements to the Company to support the advances claimed.

(b) Notice by Indemnitee. To obtain indemnification under this Agreement, Indemnitee shall, as promptly as reasonably practicable under the circumstances, notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or any other matter which may be subject to indemnification of Liabilities or advancement of Expenses covered by this Agreement; provided however, that any delay or failure to so notify the Company shall relieve the Company of its obligations hereunder only to the extent, if at all, that the Company is actually and materially prejudiced by reason of such delay or failure. Notice to the Company shall be directed to the [] of the Company, with a copy to the Company's outside counsel, at the addresses shown on the signature page of this Agreement (or such other address as the Company shall designate in writing to Indemnitee) in accordance with Section 18 hereof.

(c) Determination of Entitlement to Indemnification. Upon the receipt of any notice pursuant to Section 4(b) hereof, a determination, if expressly required by applicable law, with respect to Indemnitee's entitlement to indemnification hereunder shall be made within twenty (20) calendar days by (i) a majority vote of the Board who are not parties to the Proceeding in respect of which indemnification is sought by Indemnitee, even though less than a quorum or (ii) by a committee of such directors designated by majority vote of such directors even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by Independent Counsel in a written opinion to the Board (a copy of which opinion shall be delivered to Indemnitee); provided, however, that if there has been a Change of Control at or prior to the time of such notice by Indemnitee, Indemnitee's entitlement to indemnification shall be determined within the foregoing time period by Independent Counsel selected by Indemnitee, such determination to be set forth in a written opinion to the Board (a copy of which opinion shall be delivered to Indemnitee). The Company agrees to pay the reasonable fees of any Independent Counsel and to fully indemnify such Independent Counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto. If, pursuant to the foregoing, it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within twenty (20) calendar days from the date of notice by Indemnitee pursuant to Section 4(b) hereof. Indemnitee shall reasonably cooperate in the making of such determination, including providing upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. For the avoidance of doubt, any costs or expenses (including

attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the Person making such determination shall be included as Expenses for the purposes of this Agreement. Nothing in this Section 4(c) shall be construed to limit or modify the presumptions in favor of Indemnitee set forth in Section 3(b).

(d) Notice to Insurers. If, at the time of the receipt of any notice of any Proceeding pursuant to Section 4(b) hereof, the Company has directors' and officers' liability insurance in effect, then the Company shall give prompt notice of the commencement of such Proceeding to the directors' and officers' liability insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or appropriate action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. The failure or refusal of such insurers to pay any such amount shall not affect or impair the obligations of the Company under this Agreement.

(e) Control of Defense; Counsel Costs; Settlement. In connection with paying the Expenses of any Proceeding against Indemnitee under Section 4(a), the Company shall be entitled to elect to assume the defense of such Proceeding, with counsel approved by Indemnitee, which approval shall not be unreasonably withheld, by the delivery to Indemnitee of written notice of its election to do so. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company shall not be liable to Indemnitee under this Agreement for any fees of separate counsel subsequently incurred by Indemnitee with respect to the same Proceeding; provided, that (i) Indemnitee shall have the right to employ counsel in any such Proceeding at Indemnitee's expense; and provided, further (ii) if (A) the employment of counsel by Indemnitee has been authorized by the Company, (B) Indemnitee shall have reasonably concluded that there is an actual conflict of interest between the Company and Indemnitee in the conduct of any such defense, or (C) the Company shall not have employed counsel to assume the defense of such Proceeding, then in any such event the fees and expenses of Indemnitee's counsel shall be at the expense of the Company. The Company shall not be entitled to assume the defense of any Proceeding brought in the name of or on behalf of the Company or as to which Indemnitee shall have made the conclusion provided for in (B) above. Notwithstanding the foregoing, if at any time the Company fails to pay any Expenses with respect to any Proceeding in accordance with Section 4(a) hereof, Indemnitee shall immediately be entitled to assume and control his own defense in such Proceeding with counsel of his own choice (by notice to the Company), and will have all rights to indemnification of those counsel Expenses hereunder. The Company shall not settle any action or claim in any manner that would impose any limitation or unindemnified penalty on Indemnitee without Indemnitee's written consent, which consent shall not be unreasonably withheld.

SECTION 5. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 4(c) of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 4(a) hereof, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 4(c) hereof within twenty (20) calendar days after receipt by the Company of notice pursuant to Section 4(b) hereof, or (iv) payment of indemnification is not made pursuant to the third last sentence of Section 4(c) hereof within twenty (20)

calendar days after the date of notice by Indemnitee pursuant to Section 4(b) hereof, Indemnitee shall be entitled to an adjudication by the Delaware Court of Chancery or other court of competent jurisdiction of his entitlement to such indemnification, advancement of Expenses, or to recover damages for breach of this Agreement. The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 4(c) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 5 shall be conducted in all respects as a *de novo* trial and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding commenced pursuant to this Section 5 the Company shall have the burdens of coming forward with evidence and of persuasion to prove that Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be, and the Company may not refer to or introduce into evidence any determination pursuant to Section 4(c) of this Agreement adverse to Indemnitee for any purpose. If a determination shall have been made pursuant to Section 4(c) hereof that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 5, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(c) In the event that Indemnitee, pursuant to this Section 5, seeks a judicial adjudication to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnitee shall be entitled to recover from the Company, and shall be indemnified by the Company against, any and all Expenses actually and reasonably incurred by him in such judicial adjudication. If it shall be determined in said judicial adjudication that Indemnitee is entitled to receive part but not all of the indemnification or advancement of Expenses sought, the Indemnitee shall be entitled to recover from the Company, and shall be indemnified by the Company against, any and all Expenses reasonably incurred by Indemnitee in connection with such judicial adjudication.

(d) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 5 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement.

SECTION 6. Nonexclusivity. The indemnification provided by this Agreement shall be in addition to any rights to which Indemnitee may be entitled under the Employment Agreement, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, any vote of shareholders or disinterested directors, the General Corporation Law of the State of Delaware (the "DGCL") or otherwise, both as to action in Indemnitee's official capacity and as to action in another capacity while holding such office.

SECTION 7. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the Expenses or Liabilities actually or reasonably incurred by Indemnitee in investigation, defense, appeal or settlement of any Proceeding, but not, however, for the total amount thereof, the

Company shall nevertheless indemnify Indemnitee for the portion of such Expenses and Liabilities to which Indemnitee is entitled.

SECTION 8. Mutual Acknowledgment. Both the Company and Indemnitee acknowledge that in certain instances, U.S. Federal law or applicable public policy may prohibit the Company from advancing expenses or indemnifying its directors under this Agreement or otherwise. Indemnitee understands and acknowledges that the Company may be required in the future to undertake with the Securities and Exchange Commission to submit the question of indemnification to a court in certain circumstances for a determination of the Company's right under public policy to indemnify Indemnitee. Any action taken pursuant to the terms of this Section 8 shall not constitute a breach of this Agreement.

SECTION 9. Directors' and Officers' Liability Insurance. The Company shall use its best efforts to obtain and maintain on an ongoing basis a policy or policies of insurance on commercially reasonable terms with reputable insurance companies providing liability insurance for Fiduciaries, including Indemnitee, in respect of acts or omissions occurring while serving in such capacity, and to ensure the Company's performance of its indemnification obligations under this Agreement, on terms with respect to coverage and amount (including with respect to the payment of Expenses) no less favorable than those of such policy or policies of insurance in effect on the date hereof. To the extent that the Company maintains a policy or policies of insurance pursuant to this Section 9, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any Fiduciary under such policy or policies.

SECTION 10. Severability. If this Agreement or any portion hereof shall be invalidated or ruled to be unenforceable on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify Indemnitee to the full extent permitted by applicable law and the court is expressly requested and authorized to construe this Agreement in order, as closely as possible, to provide the benefits to Indemnitee intended by this Agreement.

SECTION 11. Duration of Agreement. The indemnification provided under this Agreement shall continue as to the Indemnitee for any action taken or not taken while serving as a Fiduciary even though Indemnitee may have ceased to serve in such capacity at the time of any action or other covered proceeding.

SECTION 12. Exceptions. Any other provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee as follows:

(a) Excluded Acts. No indemnification shall be made for any acts or omissions or transactions of Indemnitee in his capacity as director, if and to the extent that it shall be determined by a final judgment or other final adjudication, not subject to further appeal or review, that a director may not be relieved of liability arising from any such acts or omissions or transactions under the DGCL.

(b) Indemnitee Liable to Company. No indemnification shall be made in respect of any Proceeding, claim, issue or matter as to which it shall have been determined by a final judgment or other final adjudication, not subject to further appeal or review, that Indemnitee is liable to the Company unless and only to the extent that such final judgment or other final adjudication shall determine that, despite the

adjudication of liability but in view of all of the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such Expenses as the court deems proper and then only to the extent that the court shall determine.

(c) Claims Initiated by Indemnitee. No indemnification or advance of Expenses to Indemnitee shall be made with respect to Proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, except with respect to such Proceedings brought to establish or enforce a right to indemnification or advancement of Expenses under this Agreement or any other statute or applicable law or otherwise as required under Section 145(c) of the DGCL or any other provision of the Certificate of Incorporation or Bylaws of the Company, unless (i) the Board of Directors has approved the initiation or bringing of such Proceeding (or any part of any Proceeding) or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

(d) Lack of Good Faith. No indemnification shall be made to indemnify Indemnitee for any Expenses or Liabilities incurred by Indemnitee with respect to any Proceedings instituted by Indemnitee to enforce or interpret this Agreement, if it shall be determined by a final judgment or other final adjudication, not subject to further appeal or review, that each of the material assertions made by Indemnitee in such proceeding was not made in good faith or was frivolous;

(e) Insured Claims. No indemnification shall be made to indemnify Indemnitee for Expenses or Liabilities of any type whatsoever if, but only to the extent that, Indemnitee shall have actually received payment with respect to any such Expenses or Liabilities from an insurer under any policy of directors' and officers' liability insurance maintained by the Company, and any such payment shall not be recovered (in whole or in part) from Indemnitee by such insurer;

(f) Claims under Section 16(b). No indemnification shall be made under this Agreement for Expenses, Liabilities and the payment of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 16(b) of the Exchange Act or any similar state or local law with respect to the disgorgement of "short swing" profits; or

(g) Unauthorized Settlements. No indemnification shall be made under this Agreement for any amounts paid in settlement of any Proceedings covered hereby without the prior consent of the Company to such settlement, which consent shall not be unreasonably withheld;

provided, that nothing in this Section 12 shall be construed to limit or modify the presumptions in favor of Indemnitee set forth in Section 3(b).

SECTION 13. Effectiveness of Agreement. The indemnification permitted hereunder shall be effective as of the date of approval of this Agreement by the U.S. Bankruptcy Court overseeing the Company's case under chapter 11 of title 11 of the U.S. Code (the "Bankruptcy Court"), in an order stating that no further approval by the Bankruptcy Court shall be required before the Company makes any payment to Indemnitee hereunder, and shall apply to acts or omissions of Indemnitee which occurred prior to such date if Indemnitee was a Fiduciary at the time such act or omission occurred.

SECTION 14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

SECTION 15. Successors and Assigns.

(a) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, spouses, heirs, and executors, administrators, personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all, or a substantial part of the business or assets of the Company, by written agreement in the form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(b) The indemnification and advancement of Expenses provided by, or granted pursuant to this Agreement shall continue as to a person who has ceased to be a Fiduciary. If the Indemnitee is deceased and is entitled to indemnification under any provision of this Agreement, when requested in writing by the spouse of the Indemnitee, and/or the Indemnitee's heirs, executors, administrators, legatees or assigns, the Company shall provide appropriate evidence of the Company's agreement set out herein to indemnify the Indemnitee against and to itself assume such Expenses.

SECTION 16. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) by the party entitled to enforce such term only by a writing signed by the party against which such waiver is to be asserted. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

SECTION 17. Notice. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed duly given (i) if delivered by hand or by courier and receipted for by the part addressee, on the date of such receipt, (ii) if mailed by domestic certified or registered mail with postage prepaid, on the third business day after the date postmarked or (iii) if sent by facsimile transmission and fax confirmation is received, on the next business day following the date on which such facsimile transmission was sent. Addresses for notice to either party are as shown on the signature page of this Agreement, or as subsequently modified by written notice.

SECTION 18. Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee, who shall, at the Company's expense, execute all documents required and do all acts that may be necessary to secure such rights and to enable the Company effectively to bring suit to enforce such rights.

SECTION 19. Evidence of Coverage. Upon request by Indemnitee, the Company shall provide copies of any and all directors' and officers' liability insurance policies obtained and maintained in accordance with Section 9 of this Agreement. The Company shall promptly notify Indemnitee of any changes in the Company's directors' and officers' liability insurance coverage.

SECTION 20. Governing Law. The parties agree that this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware without application of the conflict of laws principles thereof.

SECTION 21. Consent to Jurisdiction. The Company and Indemnitee each hereby irrevocably consent to the jurisdiction and venue of the Bankruptcy Court and the courts of the State of New York for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement.

SECTION 22. Entire Agreement. This Agreement and the documents referred to herein constitute the entire agreement between the parties hereto with respect to the matters covered hereby, and any other prior or contemporaneous oral or written understandings or agreements with respect to the matters covered hereby are superseded by this Agreement.

