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June 3, 2008

Via FedEx Overnight Delivery

Ms. Sharla Dillon, Docket Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

FILED ELECTRONICALLY IN DOCKET OFFICE ON 06/03/08
DOCKET NO. 08-00094

Re: Joint Petition of U.S. South Communications, Inc. and First Data Corporation for Approval of an Indirect Transfer of Control

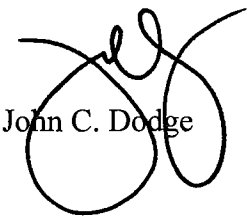
Dear Ms. Dillon:

Further to our electronic filing submitted on June 3, 2008, please find one (1) original and four (4) copies of the Joint Petition of U.S. South Communications, Inc. and First Data Corporation for Approval of an Indirect Transfer of Control. Please also find the enclosed check in the amount of $25.00 for the filing fees.

Please acknowledge receipt of this filing by date-stamping and returning the enclosed Stamp & Return copy in the self addressed, stamped envelope that is provided for this purpose. If you should have any questions, please call me at the above telephone number. Thank you for your assistance.

Very truly yours,

Davis Wright Tremaine LLP



John C. Dodge

Enclosures

BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

Joint Petition of	)	
	)	
U.S. South Corporation, Inc.	)	
d/b/a US South and d/b/a INCOMM	)	
and	)	
First Data Corporation	)	
	)	Docket No. _____
	)	
For Approval of an Indirect Transfer	)	
of Control of U.S. South	)	
Communications, Inc. to First Data	)	
Corporation	)	

JOINT PETITION

U.S. South Communications, Inc., a Georgia Corporation, d/b/a U.S. South d/b/a INCOMM ("U.S. South") and First Data Corporation, a Delaware corporation ("First Data," collectively "Petitioners"), through their undersigned counsel and pursuant to T.C.A. § 65-4-113, respectfully request that the Tennessee Regulatory Authority ("TRA") grant approval or such authority as may be necessary or required to enable the parties to consummate certain transactions whereby First Data will indirectly acquire control of U.S. South, a company that holds authority from the TRA to provide long distance telecommunications services in Tennessee. The Petitioners request that the TRA act expeditiously to grant the authority requested herein, so that the Petitioners can timely consummate the proposed transaction to meet important business objectives. In support of their Petition, the Petitioners state as follows:

I. PETITIONERS' FULL NAMES AND BUSINESS ADDRESSES ARE AS FOLLOWS:

FIRST DATA CORPORATION
c/o Timothy G. Pfeifer
Managing Attorney, Strategy & Business Development
6200 S. Quebec Street, Suite 270A
Greenwood Village, CO 80111

U.S. SOUTH COMMUNICATIONS, INC. d/b/a U.S. SOUTH d/b/a INCOMM
c/o Michael D. Gruenhut
General Counsel
250 Williams Street, Suite M100
Atlanta, GA 30303

II. CORRESPONDENCE AND COMMUNICATIONS CONCERNING THIS PETITION SHOULD BE ADDRESSED TO:

First Data

Timothy G. Pfeifer
Managing Attorney, Strategy & Business Development
First Data Corporation
6200 S. Quebec Street, Suite 270A
Greenwood Village, CO 80111
Office: (303) 967-5254
Facsimile: (303) 967-7219
Timothy.Pfeifer@firstdata.com

John C. Dodge
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue NW, Suite 200
Washington, D.C. 20006
Office: (202) 973-4200
Facsimile: (202) 973-4499
johndodge@dwt.com

U.S. South

Michael D. Gruenhut
General Counsel
U.S. South Communications, Inc.
250 Williams Street, Suite M100
Atlanta, GA 30303
Office: (770) 240-6145
Facsimile: (404) 601-1000
MGruenhut@incomm.com

Bobbi Ferguson
Senior Regulatory Analyst
Visi Consulting Services, LLC
1130 University Blvd.
Suite B9 #254
Tuscaloosa, AL 35401
Office: (205) 909-3783
Facsimile: (866) 273-5751
bobbi.vcs@comcast.net

Monique Byrnes
Vice President & Consultant
Technologies Management, Inc.
2600 Maitland Center Parkway, Suite 300
Maitland, FL 32751
407.740.3005
mbyrnes@tminc.com

III. DESCRIPTION OF THE PROPOSED TRANSACTION:

U.S. South is a wholly-owned subsidiary of inComm Holdings, Inc. ("inComm"), a Georgia corporation. Under the terms of a Merger Agreement executed on April 25, 2008, inComm, and indirectly U.S. South as a wholly-owned subsidiary of inComm, will become a wholly-owned subsidiary of First Data Merchant Services Corporation, a Florida corporation that is an indirect wholly-owned subsidiary of First Data, which is indirectly owned and controlled by New Omaha Holdings L.P. ("New Omaha Holdings"), a Delaware limited partnership.[1] New Omaha Holdings is capitalized and owned by KKR 2006 Fund, L.P. ("2006 Fund"), a Delaware limited partnership, and other investors, and certain entities that control New Omaha Holdings. The 2006 Fund is an investment partnership formed and managed by affiliates of Kohlberg Kravis Roberts & Co. L.P. ("KKR"). KKR, headquartered in New York, New York, is one of the world's oldest and most experienced private equity firms specializing in management buyouts. KKR operates its primary website through www.kkr.com.

[1] New Omaha Holdings made its investment in First Data through a subsidiary/holding company, First Data Holdings Inc. (f/k/a New Omaha Holdings Corporation), a Delaware corporation.

First Data and New Omaha Holdings are affiliated with KKR through common individuals that are members of both the general partner of KKR and KKR 2006 GP LLC ("2006 GP LLC"), a Delaware limited liability company which controls the general partner of 2006 Fund. KKR itself does not own any voting shares or equity in First Data or any of the entities that control First Data. New Omaha Holdings has one general partner, New Omaha Holdings LLC ("NOH LLC"), a recently formed Delaware limited liability company formed solely for the purpose of effecting the acquisition of First Data and managing New Omaha Holdings.[2]

The 2006 Fund owns approximately 36.7% of New Omaha Holdings. No person other than the 2006 Fund owns 10% or more of the equity of New Omaha Holdings, other than a collective co-investment vehicle, New Omaha Holdings Co-Invest L.P. ("New Omaha Holdings Co-Invest"), a Delaware limited partnership, which collectively owns approximately 21.9% but none of the owners of which indirectly own a 10% or greater interest in New Omaha Holdings. New Omaha Holdings Co-Invest is ultimately managed by the same affiliates of KKR as the 2006 Fund.

Although First Data is no longer a publicly-traded company, First Data continues to make securities filings with the Securities and Exchange Commission (the "SEC"). First Data's most recent unaudited consolidated financial statements are contained in First Data's SEC Form 10-Q for the quarterly period ended March 31, 2008. In addition, First Data's SEC Form 10-K Annual Reports for the fiscal year ended December 31, 2007 contains audited financial statements and First Data's 2007 Annual Report to shareholders.

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[2] To the extent the parties have not received federal or state approvals for transfer of control prior to their scheduled closing, the parties have agreed to assign the stock associated with US South to a new holding company owned either by all present beneficial owners of US South or to Mr. Brooks Smith. Mr. Smith currently is the beneficial owner of 90% of the stock of US South, and no other shareholder beneficially owns at least five percent (5%) of US South stock. Consequently, no regulatory approval would be implied by either such interim, *pro forma* stock transfer described herein. Thereafter and upon receipt of all federal and state regulatory approvals, all beneficial owners of US South or Mr. Smith will transfer all shares of US South to First Data.

After the transaction, U.S. South will provide the same products and services as it does at present, at the same rates and on the same terms and conditions, and without changes to any billing protocol. By way of example, there will be no changes to any U.S. South tariff, contract or other service arrangement as a result of this transaction. The transaction will not result in any loss or impairment of service to U.S. South's customers, and customers will use the same contact information for inquiries or other communications with U.S. South.

A chart showing the post-transaction ownership structure of U.S. South is attached as **Exhibit A**.

IV. DESCRIPTION OF THE ENTITIES, SERVICES AND PROPERTY INVOLVED IN THE PROPOSED TRANSACTION:

a. U.S. South Communications, Inc.:

U.S. South is a Georgia corporation, with offices located at 250 Williams Street N.W., Atlanta, GA 30303-1032, and, as noted above, is a wholly owned subsidiary of inComm. inComm is controlled by Brooks Smith who owns 90% of inComm with the other 10% owned by over 100 investors, none of whom owns more than 3%. U.S. South is a provider of resold intrastate long distance services to small and large businesses, as well as residential customers.

In Tennessee, U.S. South is authorized to provide intrastate long distance telecommunications resale services pursuant to an Order issued by the Commissioners on February 29, 1996 in Case No. 95-03396. U.S. South has approximately fifty-one (51) customers in Tennessee at this time. U.S. South is also authorized by the Federal Communications Commission ("FCC") to provide international and domestic interstate telecommunications services as a non-dominant carrier. (File No. ITC-95-314, effective June 23, 1995; *see* Report No. I-8068, rel. June 28, 1995).

A chart showing the current corporate structure of U.S. South is attached as **Exhibit A**. Further information concerning U.S. South's legal, technical, managerial and financial qualifications to provide service was submitted with its application for certification with the Commission as noted above and is, therefore, a matter of public record. U.S. South respectfully requests that the Commission take official notice of that information and incorporate it herein by reference.

b. First Data Corporation

First Data is a leading provider of electronic commerce and payment solutions for businesses worldwide. With operations in 37 countries, First Data serves over 5.4 million merchant locations, over 2,000 card issuers and their customers. First Data makes it easy, fast and secure for people and businesses around the world to buy goods and services using virtually any form of payment. First Data's portfolio of services and solutions includes merchant transaction processing services; credit, debit, private-label, gift, payroll and other prepaid card offerings; fraud protection and authentication solutions; receivables management solutions; electronic check acceptance services through TeleCheck; as well as Internet commerce, loyalty and mobile payment solutions. First Data's STAR Network offers PIN-secured debit acceptance at 2.1 million ATM and retail locations.

Biographies of First Data's key managerial personnel are attached as **Exhibit B**.

First Data does not currently hold any federal or state authorizations to provide telecommunications services.

V. PUBLIC INTEREST STATEMENT

Petitioners submit that the transactions will serve the public interest. Under new ownership, U.S. South will continue to provide high-quality telecommunications services to consumers, while gaining critically important access to the additional resources and operational

expertise of First Data. This transfer of control, therefore, will give U.S. South the ability to become a stronger competitor, to the ultimate benefit of consumers. Further, U.S. South will not change its name or rates, terms or conditions of service as an immediate result of the transfer of control. The transfer of control, therefore, will be transparent to end user customers. The only change will be that U.S. South will be under the ultimate ownership and control of First Data rather than InComm.

The public interest will also be served by expeditious consideration and approval of the transactions. For various important business and financial reasons, Petitioners require that the transfer of control be closed as quickly as possible. Petitioners anticipate that this transaction may provide U.S. South increased access to additional corporate resources, thereby putting U.S. South in a better position to sustain or expand its service offerings, meet its regulatory compliance obligations, both of which ensure to the ultimate benefit of its customers.

Petitioners emphasize that the proposed indirect transfer of control will be seamless and completely transparent to the customers of U.S. South, and in no event will it result in the discontinuance, reduction, loss, or impairment of service to customers. Accordingly, Petitioners request that the TRA retain this case and commence its examination of the Petition as soon as possible and complete its review so that it will be considered and approved not later than June 30, 2008.

VI. SUPPORTING INFORMATION AND REQUIRED FORMS:

In support of this petition, the Petitioners include the following information as Exhibits:

Exhibit A	Pre and Post-Transaction Corporate Structure of US South
Exhibit B	First Data Managerial Biographies
Exhibit C	First Data SEC Form 10-K
Exhibit D	Petitioners' Merger Agreement
Exhibit E	FCC Public Notice – Streamlined Pleading Cycle Established for Domestic Section 214 Application

The Petitioners believe that this Petition satisfies the filing requirements of the TRA and stand ready to respond to requests for further information. It is respectfully requested that the TRA waive any further requirement to provide additional forms or financial information related to this transaction that might otherwise be required by the TRA's Rules.

VII. CONCLUSION

For the reasons stated above, Petitioners submit that the public interest, convenience, and necessity would be furthered by a grant of this Petition. Petitioners therefore respectfully request that the Tennessee Regulatory Authority consider and approve this Petition expeditiously to permit Petitioners to consummate the proposed transfer of control as soon as possible.

Respectfully submitted,

John C. Dodge
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue NW, Suite 200
Washington, D.C. 20006
Office: (202) 973-4200
Facsimile: (202) 973-4499
johndodge@dwt.com

Michael D. Gruenhut
General Counsel
U.S. South Communications, Inc.
250 Williams Street, Suite M100
Atlanta, GA 30303
Office: (770) 240-6145
Facsimile: (404) 601-1000
MGruenhut@incomm.com

Counsel for the Petitioners

Dated: 6/3/09

VERIFICATION

I, Michael D. Gruenhut, state that I am an officer employed by U.S. South Communications, Inc. ("U.S. South"); that I am authorized to make this Verification on behalf of U.S. South; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

Michael D. Gruenhut
General Counsel
U.S. South Communications, Inc.

Sworn and subscribed before me this 2nd day of June, 2008.

NOTARY PUBLIC

My commission expires Notary Public, DeKalb County, Georgia
My Commission Expires March 1, 2010

VERIFICATION

I, Timothy G. Pfeifer, state that I am an officer employed by First Data Corporation. ("First Data"); that I am authorized to make this Verification on behalf of First Data; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

Timothy G. Pfeifer, Asst. Secretary and
Managing Attorney, Strategy & Business
Development
First Data Corporation

Sworn and subscribed before me this 2nd day of June, 2008.

NOTARY PUBLIC

My commission expires 01-17-2012.

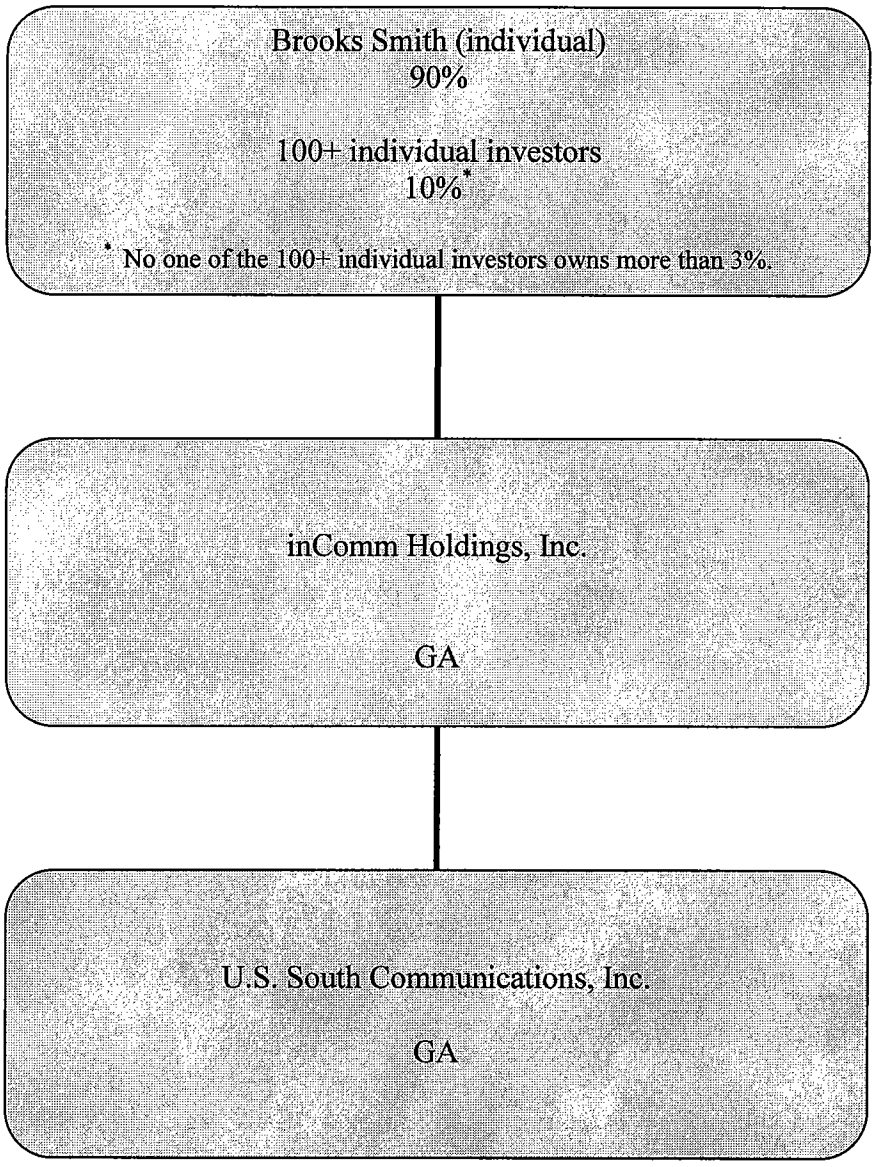
ELENA L. PADILLA-VIGIL
NOTARY
PUBLIC
STATE OF COLORADO

EXHIBIT A

Charts of Pre- and Post-Transaction Corporate Structure

U.S. SOUTH COMMUNICATIONS, INC.

PRE-MERGER CORPORATE STRUCTURE



U.S. SOUTH COMMUNICATIONS

POST-MERGER CORPORATE STRUCTURE

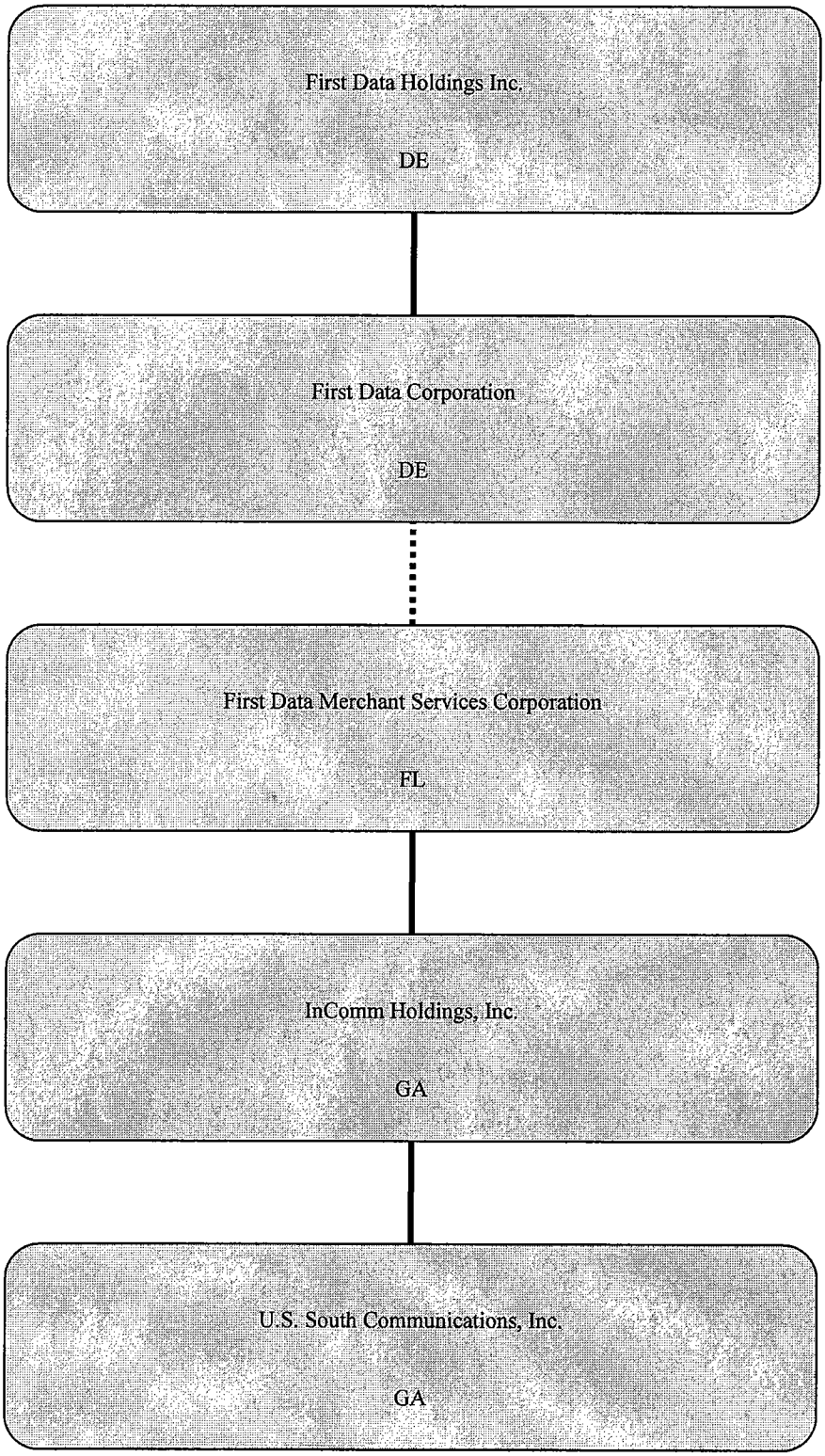


EXHIBIT B

Managerial Biographies

Executive Committee Biographies

Michael D. Capellas – Chairman & Chief Executive Officer

A 30-year veteran of the IT industry, Michael Capellas became First Data's chairman and chief executive officer upon the close of the acquisition of First Data by an affiliate of Kohlberg Kravis Roberts & Co. (KKR) in September 2007.

Capellas is a two-time, former CEO of Compaq Computer Corporation and MCI and a recognized global thought leader in the technology space. He began his career with Schlumberger Limited and went on to hold senior management positions at Schlumberger as well as Oracle Corporation and SAP Americas. He joined Compaq in 1998 as their chief information officer and was named Chairman and CEO in July 1999. After the merger with HP, Capellas served as President of HP. In 2002, he accepted the challenge of leading MCI (then WorldCom) through the largest corporate reorganization in history. For three years, he served as MCI's president and CEO and oversaw the successful rebuilding of the company. Turnaround completed, Verizon Communications ultimately acquired MCI in 2006.

Post MCI, Capellas has been serving as a senior advisor to Silver Lake Partners, an investment firm that focuses on large scale investments in technology and related industries.

Capellas serves on the board of directors of Cisco Systems, Inc. and the national board of the Boys and Girls Clubs of America. He holds a B.B.A degree from Kent State University.

Thomas R. Bell Jr. – Executive Vice President, Chief Strategy Officer

Tom Bell joined First Data in October 2007 as Chief Strategy Officer. Bell has primary responsibility for the company's Centers of Excellence (COE). The COEs are 1) mobile payments, 2) loyalty, 3) data analytics and 4) fraud and security. The COEs drive enterprise-wide collaboration on key strategic initiatives to generate innovative payment solutions for clients and to extend First Data's leadership position in the industry.

Bell joins First Data from Accenture where he served as managing partner in the Communications & High Tech practice, spearheading the company's media and entertainment practice in North America. In this role, Tom was responsible for Accenture's work at the world's leading studios, broadcasters and publishers including Disney, Time Warner, NewsCorp and the NFL. Prior to leading Accenture's media and entertainment practice, Tom managed Accenture's relationship at a number of global clients including BellSouth, Compaq Computer, Samsung Electronics, Nokia, Vignette, and Harrah's Casinos.

Bell possesses extensive industry and professional experience, including mergers and acquisitions, business transformation/supply chain reengineering, electronic commerce, sales force effectiveness, relationship marketing, enterprise applications, off-shoring and business process management.

Bell has served on the board of directors for several organizations in the Houston area, including serving as chairman of The Education Foundation of Harris County and on the board of 4 Market Square.

Bell holds a Bachelor of Science degree from Auburn University, with a major in Finance.

Peter W. Boucher – Executive Vice President, Human Resources

Peter Boucher joined First Data in April 2006 as Executive Vice President, Human Resources. In this role, Boucher oversees the company's global Human Resources functions, including staffing, compensation, benefits, leadership development and HR technology. He is a member of First Data's Executive Committee.

Boucher has a long tenure of serving in Human Resources leadership positions. Prior to joining First Data, Boucher was Senior Vice President of Human Resources for Janus Capital Group in Denver. He also has held senior Human Resources positions with Citigroup, Inc., AlliedSignal, Inc., Honeywell, Inc., CS First Boston Corp., Philip Morris Companies, Inc. and Pepsico, Inc.

Boucher serves on the advisory board for the Denver Mayor's Office of Workforce Development, which builds partnerships between businesses, employees and government agencies.

Edward A. Labry III – President, First Data USA

Edward (Ed) Labry is president of First Data USA which provides transaction processing for approximately 1,100 card issuers with 603 million card accounts on file as well as serving more than 3.5 million merchant locations in the U.S.

Prior to this appointment, Labry served as president of First Data's Commercial Services segment, which included the domestic merchant, TeleCheck and Prepaid Services units.

When First Data acquired Concord EFS, Inc. in 2004, he was president of this high-growth processing company. He joined Concord in 1984 and over the years, evolved the company beyond payment services for retailers into network services for financial institutions, engineering three strategic acquisitions that propelled Concord to the forefront of the ATM and debit card industry.

In April 2007, Labry was awarded the first-ever Distinguished Payments Professional of the Year Award by the Electronic Transactions Association. In addition, Labry was recognized as Payments Executive of the Year by Cards & Payments Magazine/SourceMedia. Both awards were presented to Labry for his more than 20 years of industry innovation and visionary leadership.

Labry serves on the boards of Hutchison School and Cumberland University. He has also served on the boards of Concord EFS, M.S. Carriers/Swift Transportation, Dixon Gallery and Gardens, Memphis Tomorrow and Children's Museum of Memphis.

Labry holds a B.S. degree from Cumberland University, which granted him the "Award of the Phoenix" for Outstanding Service in 2002 and an honorary doctorate in 2003.

David R. Money – Executive Vice President, General Counsel

David R. Money was named as Executive Vice President, General Counsel, and Secretary of First Data in 2007. In this position, he oversees the Legal, Corporate Compliance, and Public Policy teams. Before becoming General Counsel, Money served as Deputy General Counsel beginning in March 2004. During the preceding thirteen years he filled a series of positions with increasing levels of responsibility in the legal departments of First Data and its predecessors.

For eight years prior to joining First Data, Money was a partner in the law firm of Jones, Waldo, Holbrook and McDonough in Salt Lake City. He is a member of the Colorado and Utah State Bar associations. Money attended the University of Oregon School of Law and was awarded Bachelor of Science, Master of Business Administration, and Juris Doctor degrees from the University of Utah.

Kimberly S. Patmore – Executive Vice President, Chief Financial Officer

Kim Patmore was named executive vice president and chief financial officer for First Data Corporation in February 2000. First Data is a leading provider of electronic commerce and payment solutions for businesses worldwide.

Patmore joined First Data in June 1992 as controller after 11 years with the public accounting firm Ernst & Young. She is a Certified Public Accountant in Colorado and a member of the American Institute of Certified Public Accountants, as well as the Colorado Society of Certified Public Accountants. She has served on the board of directors of Girl Scouts and Family Tree, as a commission member for the Colorado Governor's Commission on Science and Technology, and on the Colorado Economic Futures Panel chaired by James Griesemer , Professor and Dean Emeritus, Daniels College of Business, University of Denver. Patmore currently serves on the board of the First Data Foundation.

In August of 2005, Patmore was awarded the Denver Business Journal's Outstanding Women in Business Award for her leadership, business and community contributions. In 2001, she was honored with a "Best Workplaces" award from CFO Magazine for her innovative management style, and the Girl Scouts Woman of Distinction award. In 2000, Patmore received CFO Magazine's "CFO Excellence Award" for training and building a finance team.

Grace Chen Trent – Executive Vice President, Marketing & Communications

Grace Trent joined First Data in September 2007 as executive vice president, corporate communications and global marketing. In this role, she oversees worldwide internal and external communications, brand and marketing activities for the company. Most recently she served as senior vice president of communications and chief of staff to the chief executive officer of MCI Inc. Prior to MCI, she held senior corporate communications positions at Compaq Computer Corporation, Hewlett-Packard Company, and Exxon. She started her career in media and politics

and spent several years managing Fortune 100 clients for Fleishman-Hillard International Communications.

In 2004, the Public Relations Society of America recognized her with its highest honor, the Silver Anvil for Public Relations Professional of the Year for her leadership in restoring MCI's corporate reputation from its days as WorldCom. She was also named one of the Top 200 Women Executives in Northern Virginia by The Washington Post in 2004. She holds a B.A. from Rice University.

David Yates – President, First Data International

David G. Yates was named president of First Data International in September 2007. In this role, he has executive management responsibility for all of First Data's activities outside the United States.

Yates joined the company in 2004 as president of First Data's Europe, Middle East and Africa region, where his oversight led to a period of rapid growth, trebling business volumes and extending the company's presence into new markets. Under his leadership, First Data acquired and successfully integrated leading payments processors in Austria, Germany, Greece, Poland and the Baltics.

Yates has extensive international IT, banking and payment systems experience. During his more than 20-year career, he has sold, consulted and run major systems integration projects throughout the United States, Europe and Asia. He has established outsourcing businesses in all these regions as well as Australia.

Yates has worked with major international corporations including IBM, General Electric and American Management Systems. He was a Divisional Managing Director with GE in Germany before joining AMS, an international IT systems integration and consulting firm. Here, as senior vice president, he managed the firm's New York based financial services consulting business, before returning to Europe as Managing Director, AMS Europe, realigning the firm's European operations and providing payments and clearing consulting services to Europe's leading financial institutions as well as advisory services to major telecom operators.

An Irish and British citizen, David is fluent in German, English and French. He holds a Master's degree in Law from Oxford University.

EXHIBIT C

Form 10-K

FIRST DATA CORP

FORM 10-K
(Annual Report)

Filed 03/13/08 for the Period Ending 12/31/07

Address	6200 SOUTH QUEBEC ST GREENWOOD VILLAGE, CO 80111
Telephone	402-951-7008
CIK	0000883980
SIC Code	6199 - Finance Services
Industry	Computer Services
Sector	Technology
Fiscal Year	12/31

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2007

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____to

Commission file number 001-11073

FIRST DATA CORPORATION

www.firstdata.com

DELAWARE	**47-0731996**
(State of incorporation)	**(I.R.S. Employer Identification No.)**

6200 SOUTH QUEBEC STREET, GREENWOOD VILLAGE, COLORADO 80111
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code (303) 967-8000

Securities registered pursuant to Section 12(b) of the Act:
None

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes ☒ No ☐

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☐ No ☒

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒ Smaller Reporting Company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the registrant's voting stock held by non-affiliates is zero. The registrant is privately held. There were 1,000 shares of the registrant's common stock outstanding as of March 1, 2008.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

FIRST DATA CORPORATION

INDEX TO FINANCIAL STATEMENTS
COVERED BY REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

(Item 15(a))

All other schedules for First Data Corporation and subsidiaries have been omitted since the required information is not present or not present in amounts sufficient to require submission of the schedule, or because the information required is included in the respective financial statements or notes thereto.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders of First Data Corporation

We have audited the accompanying consolidated balance sheet of First Data Corporation as of December 31, 2006, and the related consolidated statements of income, cash flows and stockholders' equity for the period from January 1, 2007 through September 24, 2007 and for each of the two years in the period ended December 31, 2006 (predecessor period) and the consolidated balance sheet of First Data Corporation as of December 31, 2007, and the related consolidated statements of income, cash flows and stockholders' equity for the period from September 25, 2007 through December 31, 2007 (successor period) (collectively consolidated financial statements). Our audits also included the financial statement schedule listed in the Index at Item 15(a). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of First Data Corporation at December 31, 2006, and the consolidated results of its operations and cash flows for the period from January 1, 2007 through September 24, 2007 and for each of the two years in the period ended December 31, 2006 (predecessor period) and the consolidated financial position of First Data Corporation as of December 31, 2007, and the consolidated results of its operations and cash flows for the period from September 25, 2007 through December 31, 2007 (successor period), in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

As discussed in Note 9 to the consolidated financial statements on January 1, 2007, First Data Corporation changed its method for accounting for Uncertainty in Income Taxes in accordance with Financial Accounting Standards Board Interpretation No. 48. As discussed in Note 1 to the consolidated financial statements on January 1, 2006, First Data Corporation changed its method for accounting for Share-Based Payments in accordance with Statement of Financial Accounting Standards No. 123 (revised 2004) and on December 31, 2006 its method of accounting for postretirement benefit plans in accordance with Statement of Financial Accounting Standards No. 158.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), First Data Corporation's internal control over financial reporting as of December 31, 2007, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 12, 2008 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Denver, Colorado
March 12, 2008

FIRST DATA CORPORATION

CONSOLIDATED STATEMENTS OF INCOME

(in millions)	Successor	Predecessor		
	Period from September 25 through December 31, 2007 (a)	Period from January 1 through September 24, 2007	Year ended December 31, 2006	Year ended December 31, 2005
Revenues (b):				
Transaction and processing service fees:				
Merchant services (c)	$ 808.4	$ 2,063.5	$ 2,675.6	$ 2,398.4
Check services	110.5	293.2	334.5	328.6
Card services	531.2	1,342.9	1,682.8	1,594.7
Other services	103.2	266.3	344.7	337.2
Investment income, net	(8.2)	(66.9)	(128.6)	(33.6)
Product sales and other	223.0	616.4	699.8	617.4
Reimbursable debit network fees, postage and other	510.4	1,257.5	1,467.6	1,283.4
	2,278.5	5,772.9	7,076.4	6,526.1
Expenses:				
Cost of services	1,142.4	2,632.0	3,064.9	2,858.7
Cost of products sold	92.0	230.4	300.9	271.7
Selling, general and administrative	378.9	1,089.3	1,157.5	1,047.2
Reimbursable debit network fees, postage and other	510.4	1,257.5	1,467.6	1,283.4
Other operating expenses:				
Restructuring, net	(0.2)	7.9	24.0	76.2
Impairments	—	20.6	16.1	40.8
Litigation and regulatory settlements	—	2.5	(34.8)	—
Other	—	(7.7)	(0.3)	25.6
	2,123.5	5,232.5	5,995.9	5,603.6
Operating profit	155.0	540.4	1,080.5	922.5
Interest income	17.9	30.8	55.5	12.4
Interest expense	(584.7)	(103.6)	(248.0)	(190.9)
Other income (expense)	(74.0)	4.9	22.6	145.8
	(640.8)	(67.9)	(169.9)	(32.7)
(Loss) income before income taxes, minority interest, equity earnings in affiliates and discontinued operations	(485.8)	472.5	910.6	889.8
Income tax (benefit) expense	(176.1)	125.8	203.7	188.3
Minority interest	(39.0)	(105.3)	(142.3)	(126.9)
Equity earnings in affiliates	46.8	223.0	283.1	232.9
(Loss) income from continuing operations	(301.9)	464.4	847.7	807.5
(Loss) income from discontinued operations, net of taxes of $0, $3.0, $360.0 and $402.1, respectively	—	(3.6)	665.7	909.9
Net (loss) income	$ (301.9)	$ 460.8	$ 1,513.4	$ 1,717.4

(a) Includes the results of operations (reflecting the change in fair value of forward starting contingent interest rate swaps) of Omaha Acquisition Corporation for the period prior to the merger with and into First Data Corporation from March 29, 2007 (its formation) through September 24, 2007. Also includes post merger results of First Data Corporation for the period from September 25, 2007 to December 31, 2007.

(b) Includes revenue from Western Union and Primary Payment Systems commercial relationships previously eliminated in consolidation of $18.5 million and $24.5 million for the years ended December 31, 2006 and 2005, respectively.

(c) Includes processing fees, administrative service fees and other fees charged to merchant alliances accounted for under the equity method of $61.3 million for the successor period from September 25, 2007 through December 31, 2007, $165.1 million for the predecessor period from January 1, 2007 through September 24, 2007, $226.1 million and $248.6 million for the years ended December 31, 2006 and 2005, respectively.

See Notes to Consolidated Financial Statements.

FIRST DATA CORPORATION

CONSOLIDATED BALANCE SHEETS

December 31, (in millions, except common stock share amounts)	Successor 2007	Predecessor 2006
ASSETS		
Cash and cash equivalents	$ 606.5	$ 1,154.2
Settlement assets	18,228.4	19,149.8
Accounts receivable, net of allowance for doubtful accounts of $21.7 (2007) and $29.0 (2006)	2,783.6	2,150.3
Property and equipment, net of accumulated depreciation of $61.2 (2007) and $1,711.3 (2006)	939.3	768.0
Goodwill	16,817.2	7,359.5
Customer relationships, net of accumulated amortization of $230.5 (2007) and $968.9 (2006)	6,785.5	1,598.7
Other intangibles, net of accumulated amortization of $76.9 (2007) and $1,147.0 (2006)	1,738.1	978.8
Investment in affiliates	3,526.3	756.5
Other assets	899.4	544.9
Total Assets	$52,324.3	$ 34,460.7
LIABILITIES AND STOCKHOLDERS' EQUITY		
Liabilities:		
Settlement obligations	$18,228.4	$ 19,166.5
Accounts payable and other liabilities	4,693.1	2,636.8
Borrowings	22,573.8	2,516.2
Total Liabilities	45,495.3	24,319.5
Commitments and contingencies (See Note 13)		
Stockholders' Equity:		
Common stock, $.01 par value; authorized and issued 1,000 shares (2007) and authorized 2.0 billion shares and issued 1.1 billion shares (2006)	—	10.7
Additional paid-in capital	7,224.4	9,713.6
Paid-in capital	7,224.4	9,724.3
Retained earnings (loss)	(301.9)	10,900.6
Accumulated other comprehensive loss	(93.5)	(16.9)
Less treasury stock at cost, 0 shares (2007) and 0.3 billion shares (2006)	—	(10,466.8)
Total Stockholders' Equity	6,829.0	10,141.2
Total Liabilities and Stockholders' Equity	$52,324.3	$ 34,460.7

See Notes to Consolidated Financial Statements.

FIRST DATA CORPORATION

CONSOLIDATED STATEMENTS OF CASH FLOWS

(in millions)	Successor	Predecessor		
	Period from September 25 through December 31, 2007	Period from January 1 through September 24, 2007	Year Ended December 31, 2006	2005
Cash and cash equivalents at beginning of period, including cash of discontinued operations in 2006 and 2005	—	$ 1,154.2	$ 1,180.9	$ 895.4
CASH FLOWS FROM OPERATING ACTIVITIES				
Net (loss) income from continuing operations	$ (301.9)	464.4	847.7	807.5
Net (loss) income from discontinued operations	—	(3.6)	665.7	909.9
Adjustments to reconcile to net cash provided by operating activities:				
Depreciation and amortization	427.2	540.2	700.8	689.0
Charges (gains) related to restructuring, impairments, litigation and regulatory settlements, other and other income (expense)	73.8	20.9	(17.6)	(3.2)
Other non-cash and non-operating items, net	(35.6)	67.8	(38.5)	(9.2)
Increase (decrease) in cash, excluding the effects of acquisitions and dispositions, resulting from changes in:				
Accounts receivable	(316.9)	(145.4)	(183.8)	(110.9)
Other assets	130.0	5.8	81.0	3.3
Accounts payable and other liabilities	(100.8)	(4.8)	(60.0)	(82.5)
Income tax accounts	(61.4)	69.6	117.8	(73.6)
Excess tax benefit from share-based payment arrangement	—	(219.8)	(124.2)	—
Net cash (used in) provided by operating activities from continuing operations	(185.6)	798.7	1,323.2	1,220.4
Net cash (used in) provided by operating activities from discontinued operations	—	(9.7)	796.0	1,091.0
Net cash (used in) provided by operating activities	(185.6)	789.0	2,119.2	2,311.4
CASH FLOWS FROM INVESTING ACTIVITIES				
Merger, net of cash acquired	(25,756.2)	—	—	—
Current year acquisitions, net of cash acquired	(136.6)	(690.3)	(287.5)	(443.9)
Payments related to other businesses previously acquired	(0.5)	(50.0)	(51.1)	(55.8)
Proceeds from dispositions, net of expenses paid	—	—	198.7	56.2
Additions to property and equipment, net	(55.2)	(275.5)	(170.4)	(189.5)
Payments to secure customer service contracts, including outlays for conversion and capitalized systems development costs	(57.5)	(123.7)	(129.7)	(137.9)
Proceeds from the sale of marketable securities	14.1	11.8	45.0	224.5
Dividend received from discontinued operations	—	—	2,500.0	—
Cash retained by Western Union	—	—	(1,327.8)	—
Other investing activities	108.7	(9.5)	202.6	(88.5)
Net cash (used in) provided by investing activities from continuing operations	(25,883.2)	(1,137.2)	979.8	(634.9)
Net cash used in investing activities from discontinued operations	—	—	(280.3)	(125.1)
Net cash (used in) provided by investing activities	(25,883.2)	(1,137.2)	699.5	(760.0)
CASH FLOWS FROM FINANCING ACTIVITIES				
Short-term borrowings, net	238.5	26.3	176.0	39.6
Proceeds from issuance of long-term debt	21,245.7	—	—	995.6
Principal payments on long-term debt	(2,033.3)	(126.6)	(2,412.8)	(242.2)
Proceeds from issuance of common stock	7,224.4	187.4	729.8	319.5
Excess tax benefit from share-based payment arrangement	—	219.8	124.2	—
Purchase of treasury shares	—	(371.8)	(1,252.5)	(2,222.7)
Cash dividends	—	(67.7)	(183.6)	(155.0)
Net cash provided by (used in) financing activities from continuing operations	26,675.3	(132.6)	(2,818.9)	(1,265.2)
Net cash used in financing activities from discontinued operations	—	—	(26.5)	(0.7)
Net cash provided by (used in) financing activities	26,675.3	(132.6)	(2,845.4)	(1,265.9)
Change in cash and cash equivalents	606.5	(480.8)	(26.7)	285.5

Cash and cash equivalents at end of period, including cash of discontinued operations in 2005	$ 606.5	$ 673.4	$ 1,154.2	$ 1,180.9

See Notes to Consolidated Financial Statements.

FIRST DATA CORPORATION

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

(in millions, except per share amounts)	Total	Comprehensive Income	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Common Shares	Paid-In Capital	Treasury Stock Shares	Treasury Stock Cost
Predecessor								
Balance, December 31, 2004	$ 8,886.1		$ 7,961.1	$ (1.8)	1,067.7	$ 9,516.8	(263.7)	$ (8,590.0)
Comprehensive income								
Net income	1,717.4	$ 1,717.4	1,717.4					
Other comprehensive income (loss):								
Unrealized losses on securities	(120.6)	(120.6)						
Unrealized gains on hedging activities	11.6	11.6						
Foreign currency translation adjustment	(77.5)	(77.5)						
Minimum pension liability adjustment	22.0	22.0						
Other comprehensive loss		(164.5)		(164.5)				
Comprehensive income		$ 1,552.9						
Purchase of treasury shares	(2,175.0)						(53.7)	(2,175.0)
Stock issued for compensation and benefit plans	374.1		(181.7)			41.4	12.5	514.4
Stock option accelerated vesting	11.5					11.5		
Other	(7.7)					(7.7)		
Cash dividends declared ($0.24 per share)	(184.9)		(184.9)					
Balance, December 31, 2005	8,457.0		9,311.9	(166.3)	1,067.7	9,562.0	(304.9)	(10,250.6)
Comprehensive income								
Net income	1,513.4	$ 1,513.4	1,513.4					
Other comprehensive income:								
Unrealized gains on securities	68.9	68.9						
Unrealized gains on hedging activities	2.3	2.3						
Foreign currency translation adjustment	58.4	58.4						
Minimum pension liability adjustment	4.0	4.0						
Other comprehensive income		133.6		133.6				
Comprehensive income		$ 1,647.0						
Purchase of treasury shares	(1,286.9)						(35.5)	(1,286.9)
Stock issued for compensation and benefit plans	930.8		(309.4)			178.8	25.2	1,061.4
Stock issued for exercise of warrant	—		(9.3)				0.4	9.3
Adjustment to initially apply SFAS No. 158	(46.3)			(46.3)				
Other	(0.6)					(0.6)		
Western Union dividend	600.7		554.5	62.1		(15.9)		
Cash dividends declared ($0.21 per share)	(160.5)		(160.5)					
Balance, December 31, 2006 (as previously reported)	10,141.2		10,900.6	(16.9)	1,067.7	9,724.3	(314.8)	(10,466.8)
Adjustment to record adoption of FIN 48	(22.7)		(22.7)					
Balance, December 31, 2006 (Adjusted)	10,118.5		10,877.9	(16.9)	1,067.7	9,724.3	(314.8)	(10,466.8)
Comprehensive income								
Net income	460.8	$ 460.8	460.8					
Other comprehensive income (loss):								
Unrealized losses on securities	(18.2)	(18.2)						
Unrealized gains on hedging activities	0.4	0.4						
Foreign currency translation adjustment	123.1	123.1						
Other comprehensive income		105.3		105.3				
Comprehensive income		$ 566.1						
Purchase of treasury shares	(335.3)						(11.2)	(335.3)
Stock issued for compensation and benefit plans	659.2		(84.0)			394.1	12.5	349.1
Cash dividends declared ($0.06 per share)	(45.3)		(45.3)					
Balance, September 24, 2007	$10,963.2		$11,209.4	$ 88.4	1,067.7	$10,118.4	(313.5)	$(10,453.0)
Successor								
Investment by Parent Company	$ 7,224.4				0.0	$ 7,224.4		
Net loss	(301.9)	$ (301.9)	$ (301.9)					
Other comprehensive income (loss):								

Unrealized losses on hedging activities	(109.1)	(109.1)						
Foreign currency translation adjustment	14.0	14.0						
Minimum pension liability adjustment	1.6	1.6						
Other comprehensive loss		(93.5)		$ (93.5)				
Comprehensive loss		$ (395.4)						
Balance, December 31, 2007	$ 6,829.0		$ (301.9)	$ (93.5)	0.0	$ 7,224.4	—	$ —

See Notes to Consolidated Financial Statements.

EXHIBIT D

Petitioner's Merger Agreement

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

by and among

InComm Holdings, Inc.,

Rings Acquisition Corp.,

First Data Holdings, Inc.,

First Data Corporation

and

First Data Merchant Services Corporation

Dated as of April 25, 2008

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EXHIBITS

TABLE OF DEFINED TERMS

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") is made and entered into on April 25, 2008, by and among First Data Merchant Services Corporation, a Florida corporation ("Purchaser"), First Data Corporation, a Delaware corporation ("FDC"), InComm Holdings, Inc., a Georgia corporation (the "Company"), Rings Acquisition Corp., a Georgia corporation ("Mergerco"), and solely for purposes of Article I, Article II, Section 6.2, Section 8.10, Section 8.17 and Article XI, First Data Holdings, Inc., a Delaware corporation ("Holdings"). Unless otherwise defined elsewhere in this Agreement, capitalized terms shall have the meanings given to them in Annex A of this Agreement. The foregoing parties to this Agreement are each a "Party" and collectively, the "Parties".

RECITALS

WHEREAS, the Company and the Company Subsidiaries are in the business of providing point of sale activation transaction services and prepaid and postpaid products and retail solutions to telecommunications and retail distribution customers (the "Business"); and

WHEREAS, Mergerco is a Georgia corporation having an authorized capital of 10,000 shares of common stock, par value $0.01 per share, 100 of which are issued and outstanding and owned of record and beneficially by Purchaser; and

WHEREAS, M. Brooks Smith ("Smith") owns _____ shares of the Company's common stock, no par value per share ("Common Stock"), which represents approximately _____ % of the issued and outstanding capital stock of the Company; and

WHEREAS, the Boards of Directors of the Company, the Purchaser, Mergerco, FDC and Holdings have approved the merger of Mergerco with and into the Company (the "Merger") pursuant to the terms and conditions of this Agreement, whereby the shares of capital stock of the Company outstanding as of the Closing owned by the stockholders of the Company will be converted into the right to receive cash and/or validly issued, fully-paid and non-assessable shares of the common stock of Holdings (the "Holdings Shares"); and

WHEREAS, the Company has directed that this Agreement be submitted to its stockholders for approval and adoption; and

WHEREAS, the Parties hereto desire to make certain representations, warranties and agreements in connection with the Merger and also to prescribe various conditions to the Merger;

WHEREAS, contemporaneously with the execution hereof, Smith has executed and delivered to Purchaser a Voting Agreement pursuant to which he has agreed to vote his Common Stock in favor of the Merger, and granted to Purchaser a proxy in furtherance of such voting agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, it is hereby agreed among the parties as follows:

ARTICLE I

MERGER

1.1 **The Merger**.

(a) **Merger**. Subject to the conditions contained herein and in accordance with the provisions of this Agreement and the Georgia Business Corporation Code (the "GBCC"), at the Effective Time, Mergerco shall be merged with and into the Company, which, as the corporation surviving in the Merger, shall continue unaffected and unimpaired by the Merger to exist under and be governed by the laws of the State of Georgia. The Merger shall have the effects set forth in applicable provisions of the GBCC.

(b) **Articles of Incorporation and Bylaws of the Company; Officers and Directors**. The Restated Articles of Incorporation and Amended and Restated By-Laws of the Company, as in effect immediately prior to the Effective Time, shall, upon the Merger, remain the Articles of Incorporation and By-Laws of the Company until amended in accordance with their terms and the GBCC. The directors and officers of the Company immediately prior to the Effective Time shall remain the directors and officers of the Company, until their successors are duly elected and qualified.

(c) **Merger Consideration**. The aggregate merger consideration (the "Merger Consideration") shall be an amount equal to the difference between (A) the sum of (i) the Closing Merger Consideration, plus to the extent earned or otherwise payable pursuant to the provisions of this Agreement, (ii) the Earn-Out, (iii) the [ABC] Reserve Amount, (iv) the Additional Acquisition Reserve Amount, (v) the [XYZ Consideration Payment], (vi) any additional Merger Consideration payments that are required to be made pursuant to Section 10.1 hereof, and (vii) any portion of the Closing Date Bonus Pool Payments that are reserved by the Company at Closing for payment to the Bonus Pool Participants, which are deducted from the Merger Consideration when calculating the Closing Merger Consideration as set forth below in Section 1.1(d) and which are not ultimately paid to the Bonus Pool Participants pursuant to the Company Bonus Pool Plan, less (B) the Merger Consideration Reduction Amount, if any.

(d) **Closing Merger Consideration**. The term "Closing Merger Consideration" means the portion of the Merger Consideration that is required to be paid by the Purchaser and Holdings at Closing. The Closing Merger Consideration shall equal the difference between (A) the sum of (i) $_____ (representing $_____ minus the [ABC] Reserve Amount and the Additional Acquisition Reserve Amount), (ii) any portion of the [ABC] Reserve Amount and/or the Additional Acquisition Reserve Amount that is required to be paid at Closing pursuant to Sections 8.9(a) and 8.9(b) hereof, and (iii) the [XYZ Consideration Payment] that is required to be paid at Closing pursuant to Section 8.11 hereof, less (B) the sum of (i) the aggregate amount of outstanding Indebtedness under the

Chase Loan Agreement as of the Closing Date and (ii) the Closing Date Bonus Pool Payments that are paid by the Company or reserved for payment under the Company Bonus Pool Plan.

(e) **HSR Costs**. Purchaser will reimburse Smith for up to $_____ of the filing fee under the HSR Act incurred by him with respect to his acquisition of Holdings Shares in connection with the Merger.

(f) **Merger Consideration Adjustment**.

(i) Reduction in Merger Consideration. In the event Company EBITDA (as defined below) for the 2008 calendar year, as finally determined pursuant to the provisions of Section 1.6 ("2008 Company EBITDA"), is less than Target Company EBITDA, then the Merger Consideration shall be reduced as follows (the amount of such reduction is referred to herein as the "Merger Consideration Reduction Amount"):

(A) if 2008 Company EBITDA is greater than or equal to $_____ but less than Target Company EBITDA then the Merger Consideration Reduction Amount shall equal the product of (x) _____ multiplied by (y) the difference between Target Company EBITDA and 2008 Company EBITDA;

(B) if 2008 Company EBITDA is greater than or equal to $_____ but less than $_____ then the Merger Consideration Reduction Amount shall equal the product of (x) _____ multiplied by (y) the difference between Target Company EBITDA and 2008 Company EBITDA;

(C) if 2008 Company EBITDA is greater than or equal to $_____ but less than $_____ then the Merger Consideration Reduction Amount shall equal the product of (x) _____ multiplied by (y) the difference between Target Company EBITDA and 2008 Company EBITDA; or

(D) if 2008 Company EBITDA is less than $_____ then the Merger Consideration Reduction Amount shall equal the lesser of (1) the product of (x) _____ multiplied by (y) the difference between Target Company EBITDA and 2008 Company EBITDA, or (2) $_____;

provided that, notwithstanding the above, the Merger Consideration Reduction Amount shall be capped and subject to the limitations set forth in Section 1.1(f)(ii) below.

(ii) Allocation and Payment of Merger Consideration Reduction Amount. In the event the Merger Consideration is reduced in accordance with Section 1.1(f)(i) above, then each Stockholder shall be required to repay the Purchaser (or, in the case of Holdings Shares received by Smith, return to Holdings), in the manner and subject to the limitations set forth in this Section 1.1(f)(ii), an amount equal to such Stockholder's pro rata portion (which shall be based upon the total amount of Closing Merger Consideration allocated to each Stockholder at the

Closing) of the Merger Consideration Reduction Amount. The payment of the Merger Consideration Reduction Amount by the Stockholders is subject to each of the following:

(A) Smith's obligations under this Section 1.1(f) shall, in the first instance, be satisfied by surrendering Holdings Shares to Holdings out of the Purchase Price Stock Holdback. The parties hereby acknowledge and agree that the value of the Holdings Shares in the Purchase Price Securities Account shall be conclusively deemed to be $_____ per share (as adjusted for any stock splits, stock dividends, combinations, reclassifications or similar events occurring following the date hereof).

(B) The Minority Stockholders' obligations under this Section 1.1(f) shall, in the first instance, be satisfied by paying the Purchaser cash out of the Purchase Price Cash Holdback.

(C) In the event that the Stockholders' obligations under this Section 1.1(f)(ii) exceed the aggregate value of the Holdings Shares in the Purchase Price Stock Holdback and the amount of cash in the Purchase Price Cash Holdback, then the Stockholders' remaining obligations under this Section 1.1(f)(ii) (the aggregate amount of such obligations is referred to herein as the "Stockholders Remaining Repayment Amount") shall be satisfied exclusively by distributing to the Purchaser an additional cash amount out of the Indemnity Holdback equal to the lesser of (i) the Stockholders Remaining Repayment Amount and (ii) the aggregate amount of remaining funds in the Indemnity Holdback.

(D) Other than the Purchaser's right to receive distributions out of the Purchase Price Escrow Accounts, or, to the extent applicable in accordance with Section 1.1(f)(ii)(C) above, out of the Indemnity Escrow Account, the Stockholders shall have no payment or other obligations of any kind to the Purchaser or any of its Affiliates under this Section 1.1(f). Accordingly, the obligations of each of the Stockholders under this Section 1.1(f) shall be limited and capped at an amount equal to their respective interests in the Purchase Price Cash Holdback, Purchase Price Stock Holdback, and, if applicable, Indemnity Holdback.

(iii) Definition of Company EBITDA. "Company EBITDA" means, with respect to the 2008 calendar year, the consolidated earnings of the Company, the Company Subsidiaries and ITCFL before interest expense and interest income (other than Interest from Operations), federal, state, foreign and other taxes with respect to income (and payments in lieu of income taxes) and depreciation and amortization expenses of the Company, the Company Subsidiaries and ITCFL for the 2008 calendar year, all of which shall be calculated in accordance with United States Generally Accepted Accounting Principles ("GAAP") in effect on the Closing Date and consistently applied and consistent with the Company's accounting policies in effect on the Closing Date; provided that, in making such determination:

(A) the costs, expenses and income items set forth in Section 1.5(d)(C), to the extent they otherwise would be included in determining Company EBITDA for the 2008 calendar year, shall be excluded from Company EBITDA;

(B) all Interest from Operations that the Company, the Company Subsidiaries and ITCFL earn during the 2008 calendar year shall be included in the consolidated net revenues of the Company for the 2008 calendar year for purposes of calculating Company EBITDA hereunder;

(C) the deferred financing costs, expenses or any loss resulting from the early extinguishment of the related debt that were previously paid by the Company (or any of the Company Subsidiaries) to JPMorgan Chase Bank, N.A. shall be excluded for purposes of calculating Company EBITDA hereunder;

(D) in the event that the Company (or the Company Subsidiaries or ITCFL) incurs losses during the 2008 calendar year as a result of its business operations in _____ in excess of U.S. $_____ in the aggregate, then all such losses in excess of U.S. $_____ shall be disregarded for purposes of calculating Company EBITDA hereunder;

(E) the Company EBITDA for the period commencing on January 1, 2008 and ending on the Effective Date (the "Pre-Closing Period") shall be increased by an amount equal to the product of (x) the aggregate amount of the annualized net cost savings experienced by the Company, the Company Subsidiaries and ITCFL during the 2008 calendar year arising as a direct or indirect result of _____ [certain businesses] (net cost savings shall be calculated by reducing the aggregate cost savings by any expenses that are incurred in _____), multiplied by (y) the percentage figure that expresses the ratio between the number of calendar days in the Pre-Closing Period, and 365; provided, however, that the aggregate amount of any increase to Company EBITDA pursuant to this clause (E) shall not exceed $_____;

(F) the amount paid or reserved for payment by the Company (or the Company Subsidiaries or ITCFL) in settlement of the [DEF] Litigation or in connection with paying any judgment award rendered against the Company by a court of competent jurisdiction in connection with the [DEF] Litigation shall be excluded from Company EBITDA; and

(G) the costs or expenses that the Company (or the Company Subsidiaries or ITCFL) incurs in connection with settling any other Action disclosed on Schedule 3.9 will only be included in determining Company EBITDA to the extent such settlement was approved in writing by the CEO, if Smith is then serving as the CEO, or by the Stockholders Representative, if Smith

is not then serving as the CEO, such approval not to be unreasonably withheld.

(iv) No Merger Consideration Reduction upon the Occurrence of Certain Events. In the event that during the 2008 calendar year, the Purchaser or any of its Affiliates terminates Smith's employment under the Smith Employment and Restrictive Covenant Agreement without "Cause" (as such term is defined in the Smith Employment and Restrictive Covenant Agreement), or if Smith terminates his own employment for "Good Reason" (as such term is defined in the Smith Employment and Restrictive Covenant Agreement) for any of the reasons enumerated in clauses (1), (2), (3) or (5) of Section 4(d)(ii) of the Smith Employment and Restrictive Covenant Agreement (after, to the extent provided in the Smith Employment and Restrictive Covenant Agreement, giving effect to FDC's right to cure a breach in the case of a Good Reason termination), then there shall be no reduction in the Merger Consideration pursuant to this Section 1.1(f) and any portion of the Merger Consideration that is then being held in the Purchase Price Escrow Accounts shall be released and delivered by the Escrow Agent to the Payment Agent for subsequent distribution to the Stockholders.

(v) Fundamental Changes. If any Fundamental Change (which for purposes of this Section 1(f) only shall be determined without regard to the materiality qualifier contained in the definition of "Fundamental Change" that is set forth in Section 1.5(e)(vi) hereof) occurs during the 2008 calendar year that could, at the time such Fundamental Change is approved or the implementation of which is commenced, reasonably be expected to have an adverse impact (whether or not materially adverse) on 2008 Company EBITDA, then the parties shall follow the provisions set forth in Section 1.5(e)(vi) to reach an agreement upon what, if any, appropriate modification shall be made to Target Company EBITDA for purposes of this Section 1.1(f), in the same manner as is applicable to potential adjustments to the Earn-Out Schedule and the calculation of EBITDA under such Section (including provisions requiring the timely delivery of a Modification Notice where a modification is sought).

(vi) Operation of the Company. During the 2008 calendar year, FDC shall, to the extent necessary to calculate Company EBITDA hereunder, maintain and operate the Company, the Company Subsidiaries and ITCFL as a separate division or business unit within FDC, and Smith shall cooperate with FDC to so maintain and operate ITCFL for so long as he remains the majority stockholder of ITCFL pending the closing under the ITCFL Acquisition Agreement.

(vii) Recoupment of Merger Consideration Reduction Amount. In the event that the Merger Consideration is reduced in accordance with Section 1.1(f) hereof, the full Merger Consideration Reduction Amount will be "re-earned" by the Stockholders if (A) the Stored Value Business achieves EBITDA of at least _____% of 2009 EBITDA Target Achievement in accordance with Exhibit B hereto (currently $_____) for the 2009 Measuring Period; or (B) the Stored Value Business achieves EBITDA of at least _____% of 2010 EBITDA Target Achievement in accordance with Exhibit B hereto (currently $_____) for the 2010 Measuring Period; or (C) the Stored Value Business achieves cumulative EBITDA of at least _____% of 2008, 2009 and 2010 Cumulative EBITDA Target Achievement in accordance with Exhibit B hereto (currently $_____) for the 2008, 2009 and 2010 Measuring Periods combined (the Merger

Consideration Reduction Amount that is re-earned by the Stockholders is referred to herein as a "Recoupment Payment"). For the avoidance of doubt, the dollar amounts set forth above for the EBITDA Target Achievement correspond to those on Exhibit B, and thus are subject to change if Exhibit B is modified in accordance with Section 1.5(e)(vi) to reflect the change(s) made to Exhibit B. Each Recoupment Payment shall be paid by the Purchaser to the Stockholders (i) on a pro rata basis (which shall be based upon the portion of the Merger Consideration Reduction Amount paid by each Stockholder to the Purchaser pursuant to Section 1.1(f)(ii) hereof) and (ii) in the form (i.e., cash or Holdings Shares) that such Stockholder initially paid to the Purchaser as part of the Merger Consideration Reduction Amount (it being understood that in the event Smith's portion of the Merger Consideration Reduction Amount was paid in both cash and Holdings Shares (i.e., the Merger Consideration Reduction Amount that was paid exceeds the amounts reserved in the Purchase Price Escrow Accounts), then the first portion of the Recoupment Payment to be paid to Smith shall be paid in cash, and such portion shall equal the cash amount that was paid on Smith's behalf out of the Indemnity Holdback to satisfy Smith's obligations under Section 1.1(f)) and the remaining portion shall be paid in Holdings Shares with an agreed upon value of $_____ per share (as adjusted for any stock splits, stock dividends, combinations, reclassifications or similar events occurring following the date hereof).

Notwithstanding anything to the contrary contained in this Section 1.1(f)(vii), in the event that (i) a Stockholders Remaining Repayment Amount became due and payable in accordance with Section 1.1(f)(ii)(C) and (ii) there were insufficient funds available in the Indemnity Holdback to satisfy the repayment of the full amount of the Stockholders Remaining Repayment Amount, then the Purchaser shall have the right to offset the portion of the Stockholders Remaining Repayment Amount that was not satisfied in accordance with Section 1.1(f)(ii)(C) against the Recoupment Payment, or any portion thereof.

1.2 **Conversion Terms**. As of the Effective Time, by virtue of the Merger and without any action on the part of any stockholder of the Company or Mergerco:

(a) Each share of Mergerco common stock, $.01 par value, issued and outstanding immediately prior to the Effective Time shall be converted into and become one fully paid and nonassessable share of Common Stock.

(b) All shares of Common Stock that immediately prior to the Effective Time are held in the treasury of the Company shall be canceled and no cash or other consideration shall be paid or delivered in exchange therefor.

(c) Each share of Common Stock issued and outstanding immediately prior to the Effective Time (other than shares to be canceled in accordance with Section 1.2(b) and Dissenting Shares) shall be converted into the right to receive a pro rata share of the Merger Consideration, based upon the percentage such share represents of the total number of shares of Common Stock outstanding immediately prior to the Effective Time; provided that (i) a portion of the Closing Merger Consideration payable to Smith equal to the difference between (x) $_____ less (y) the aggregate amount of Closing Date Stock Bonus Pool Payments shall be paid in the form of Holdings Shares, based on an agreed value of $_____ per share (such portion of the Merger Consideration is referred to herein as the "Stock Consideration"); (ii) $_____ of the cash portion of the Closing Merger

Consideration that would otherwise be payable to the Stockholders, shall not be paid to the Stockholders at Closing but shall instead be deposited by the Purchaser into the Indemnity Escrow Account in accordance with the terms of Section 1.8, (iii) a portion of the Closing Merger Consideration equal to the product of (A) a fraction, the numerator of which is the value of the Stock Consideration (based upon an agreed value of $_____ per share) and the denominator of which it the total Closing Merger Consideration payable to Smith hereunder, multiplied by (B) the aggregate Closing Merger Consideration payable to the Minority Stockholders hereunder (such portion of the Closing Merger Consideration that would otherwise be payable to the Minority Stockholders is referred to herein as the "Purchase Price Cash Holdback") shall not be paid to the Minority Stockholders at Closing but shall instead be deposited by the Purchaser into the Purchase Price Cash Account in accordance with the terms of Section 1.8, (iv) the Stock Consideration shall not be paid to Smith at Closing but shall instead be deposited by the Purchaser into the Purchase Price Securities Account in accordance with the terms of Section 1.8, and (v) the cash portion of the Closing Merger Consideration payable to Smith shall be reduced by an amount equal to the ITCFL Purchase Price Amount. For all federal, state, local, and other Tax purposes, the parties hereto (and, by acceptance of the consideration payable hereunder, the shareholders of the Company (each, individually, a "Stockholder", and collectively the "Stockholders") shall treat the Merger as resulting in a taxable disposition of Common Stock.

(d) Any issued and outstanding shares of Common Stock held by a Person (each, a "Dissenting Stockholder") who properly exercises such Person's dissenters' rights under the GBCC (the "Dissenting Shares") shall not be converted as described in Section 1.2(c), but rather shall be converted into the right to receive such consideration as may be determined to be due to such Dissenting Stockholder pursuant to the GBCC. Subject to the foregoing, if, after the Effective Time, such Dissenting Stockholder withdraws the demand for payment or fails to perfect or otherwise loses the right of payment, in any case pursuant to the GBCC, as the case may be, the Dissenting Shares of such Dissenting Stockholder shall be deemed to be converted as of the Effective Time into the right to receive the amount to which such Dissenting Stockholder would otherwise have been entitled to pursuant to Section 1.2(c). The Company shall give Purchaser prompt notice of any demands made by any Dissenting Stockholder and received by the Company. The Company shall not, without the prior written consent of Purchaser, make any payment with respect to, or settle or offer to settle, any such demands, and, prior to the Effective Time, Purchaser shall have the right to participate in all negotiations and proceedings with respect to such demands. The Purchaser shall be entitled to indemnification pursuant to Section 9.1 hereof for _____% of any incremental costs incurred by Purchaser related to the exercise of any dissenter's rights by a Stockholder pursuant to the GBCC (in which case Purchaser shall be entitled to recover _____% of the amount by which the "fair value" as finally determined pursuant to the GBCC of the Common Stock held by Dissenting Stockholders exceeds the consideration to be paid for such shares of Common Stock pursuant to Article I, together with _____% of all Expenses related to the determination, adjudication or settlement of such Dissenting Stockholders' claims).

1.3 **Exchange of Certificates.**

(a) **Paying Agent**. Prior to the Effective Time, Purchaser shall designate a third-party paying agent reasonably acceptable to the Company to act as paying agent in the Merger (the "Paying Agent"), and at the Effective Time, Purchaser shall make available to the Paying Agent cash in the amount necessary for the payment of the cash portion of the Closing Merger Consideration upon compliance with the procedures set forth in Section 1.3(b). Any and all interest earned on funds made available to the Paying Agent pursuant to this Agreement shall be paid over to Purchaser.

(b) **Exchange Procedure**.

(i) Transmittal Letter. Promptly following, or at any time prior to, the date the Company obtains Stockholder Approval, the Company shall deliver to each Stockholder a letter (the "Transmittal Letter") substantially in the form of Exhibit A.

(ii) Common Stock. Upon receipt by the Paying Agent of the Certificates representing the Common Stock held by a Stockholder and a duly executed Transmittal Letter (and such other documents as may reasonably be required by the Paying Agent), such Stockholder shall be entitled, at the Effective Time (or thereafter if such items are received by the Paying Agent thereafter), to receive the portion of the Merger Consideration into which the Common Stock theretofore represented by such Certificate(s) shall have been converted pursuant to Section 1.2(c), and the Certificates so surrendered shall forthwith be canceled. Until the Effective Time, the Paying Agent shall hold any Certificates received by it in escrow pursuant to the terms of the Paying Agent Agreement and the Transmittal Letter. The Paying Agent shall return such Certificate(s) to the holder thereof in the event the Closing does not occur as provided hereunder. Each Certificate (other than Certificates representing Dissenting Shares) shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the Merger Consideration into which the Common Stock theretofore represented by such Certificate shall have been converted pursuant to Section 1.2(c). No interest will be paid or will accrue on the cash payable upon the surrender of any Certificate.

(iii) Holdings Shares. Holdings shall deliver the certificate(s) representing the Holdings Shares to be issued to [Equityholder] as Closing Merger Consideration (or other appropriate evidence of [Equityholder]'s ownership of such Holdings Shares) upon (i) the surrender by [Equityholder] of his Certificate(s), together with an executed Transmittal Letter, and (ii) the execution and delivery by [Equityholder] of the [Equityholder's] Stockholder's Agreement and the [Equityholder's] Sale Participation Agreement.

(c) **No Further Ownership Rights in Shares**. The Merger Consideration paid and/or issued following the surrender of Certificates in accordance with the terms of Section 1.3(b) shall be deemed to have been paid in full satisfaction of all rights pertaining to each share of Common Stock theretofore represented by such Certificates. At the Effective Time, the stock transfer books of the Company shall be closed, and there shall be no further

registration of transfers on the stock transfer books of the Company of the Common Stock that was outstanding immediately prior to the Effective Time.

(d) **Termination of Payment Fund**. Any portion of the funds made available to the Paying Agent to pay the Closing Merger Consideration which remains undistributed to the Stockholders one year after the Effective Time shall be delivered to Purchaser. Any holders of Common Stock who have not theretofore complied with this Section 1.3 and the instructions set forth in the Transmittal Letter for payment of the applicable portion of the Closing Merger Consideration shall thereafter look only to Purchaser for satisfaction of amounts to which they are entitled hereunder, without interest or dividends.

(e) **No Liability**. None of Purchaser, Mergerco, the Company or the Paying Agent shall be liable to any person in respect of any cash delivered to a public official pursuant to any applicable abandoned property, escheat or similar law. Any amounts remaining unclaimed by Stockholders as of a date immediately prior to such date on which any payment pursuant to this Article I would otherwise escheat to or become the property of any Governmental Entity shall, to the extent permitted by applicable law, become the property of the Company, free and clear of all claims or interests of any person previously entitled thereto.

(f) **Lost, Stolen or Destroyed Certificates**. If any Certificate outstanding prior to the Effective Time shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and an indemnity (as Purchaser or Paying Agent may reasonably require), the Paying Agent will pay in exchange for such lost, stolen or destroyed certificate the amount of cash to which the holders thereof are entitled pursuant to this Section 1.3, and to the extent the lost, stolen or destroyed Certificate was held by Smith, Purchaser shall deliver to Smith one or more certificates representing the Holdings Shares or other evidence of Smith's ownership of such Holdings Shares to which he would otherwise be entitled to pursuant to this Section 1.3.

1.4 **Working Capital Adjustment.**

(a) **Computation**. Within 90 calendar days after the Closing, Purchaser shall cause the Company to prepare and deliver to the Stockholders' Representative a certificate (the "Working Capital Certificate") which (i) sets forth Closing Working Capital as of the opening of business on the Closing Date (but giving effect to payments of transaction expenses or other payments made by the Company on the Closing Date and prior to the Effective Time in connection with the Closing); and (ii) certifies that such Closing Working Capital has been derived in accordance with GAAP.

(b) **Final Working Capital; Adjustment Amount**. The calculation of the Closing Working Capital, (i) as set forth in the Working Capital Certificate, if the Stockholders' Representative does not timely dispute such calculations in accordance with Section 1.4(d); or (ii) as settled between Purchaser and the Stockholders' Representative, if the Stockholders' Representative timely disputes such calculations in accordance with Section 1.4(d) and Purchaser and the Stockholders' Representative are able to resolve the disputes as to the calculation of the Closing Working Capital among themselves; or (iii) as determined by the Accounting Firm, if the Stockholders' Representative timely disputes such calculations in accordance with

Section 1.4(d) and Purchaser and the Stockholders' Representative are incapable of resolving all of the disputes as to the calculation of the Closing Working Capital, shall be referred to as the "Final Closing Working Capital." If the Final Closing Working Capital is less than the Target Working Capital (the amount of such deficiency is referred to herein as the "Adjustment Amount") then the Purchaser shall be entitled to indemnification pursuant to Section 9.1.2 and Section 1.8 in accordance with Section 1.4(c) below.

(c) **Payment of Adjustment Amount**. In the event that the Final Working Capital is less than the Target Working Capital, then the Stockholders shall, promptly (but no later than 30 days) after the determination of the Final Closing Working Capital pursuant to this Section 1.4, pay the Purchaser the Adjustment Amount plus interest at the AFR Rate (or, with respect to any portion of the Adjustment Amount paid from the Indemnity Holdback, at the rate set forth in the Escrow Agreement) from the Closing Date in accordance with Section 9.1.2 and Section 1.8 hereof.

(d) **Dispute Resolution**.

(i) Following receipt of the Working Capital Certificate, the Stockholders' Representative may review the same and, within 90 days after the date of such receipt, may deliver to Purchaser a certificate setting forth any objections to the determinations set forth in Working Capital Certificate, together with a summary of the reasons therefor and calculations which, in his view, are necessary to eliminate such objections. If the Stockholders' Representative does not object within such 90-day period, the determinations set forth in the Working Capital Certificate shall be final and binding on the Stockholders and the parties hereto. If the Stockholders' Representative timely objects within such 90-day period, Purchaser and the Stockholders' Representative (or his designees) shall use their respective reasonable best efforts to resolve within 90 days after such timely objection by written agreement (the "Agreed Changes") any differences as to the determinations set forth in the Working Capital Certificate. If Purchaser and the Stockholders' Representative so resolve all such differences, the determinations set forth in Working Capital Certificate, as adjusted by the Agreed Changes, shall be final and binding on the Stockholders and the parties hereto.

(ii) If any objections timely raised by the Stockholders' Representative are not resolved by Agreed Changes within the 90-day period contemplated above, Purchaser and the Stockholders' Representative shall submit the objections that are then unresolved to the Accounting Firm who shall be directed by Purchaser and the Stockholders' Representative to seek to resolve the unresolved objections as promptly as reasonably practicable. The Accounting Firm shall deliver written notice to each of Purchaser and the Stockholders' Representative setting forth its resolution of the disputed matters, and the determinations set forth in the Working Capital Certificate as adjusted by any Agreed Changes and by the Accounting Firm's resolution of such objections shall be final and binding on the parties hereto. Any resolution by the Accounting Firm shall have the same status as an arbitration award and may be

confirmed by a court. The fees and expenses of the Accounting Firm shall be paid _____% by Purchaser and _____% by the Stockholders in accordance with Section 9.1.2 (any payments made by or on behalf of the Stockholders shall, to the extent funds remain in the Indemnity Escrow Account, be deducted from the Indemnity Holdback in accordance with the terms of the Escrow Agreement).

(iii) The parties hereto shall make available to Purchaser, the Stockholders' Representative (and their respective representatives) and, if applicable, the Accounting Firm, such books, records and other information (including work papers) as any of the foregoing may reasonably request to prepare or review any Working Capital Certificate and to determine the Final Closing Working Capital or any matters submitted to the Accounting Firm.

1.5 **Earn Out.**

(a) **Generally**. To the extent provided in this Section 1.5, the Stockholders shall be entitled to receive additional Merger Consideration (the "Earn-Out") based on the EBITDA performance of the Stored Value Business during each of the years in the three-year period commencing on January 1, 2008 and ending on December 31, 2010. Such three-year period is the "Earn-Out Period," and each calendar year during such period is a "Measuring Period."

(b) **Calculation of Earn-out for Each Measuring Period**. If the Stored Value Business's EBITDA in a Measuring Period equals or exceeds the EBITDA floor for such Measuring Period, as set forth on the Earn-Out Schedule attached hereto as Exhibit B (the "Earn-Out Schedule"), then the Stockholders shall be entitled to an aggregate cash payment (an "Earn-Out Payment") following the end of such Measuring Period in an amount set forth on the Earn-Out Schedule. In the event that the Stockholders do not earn the maximum Earn-Out Payment with respect to any Measuring Period, any shortfall may be earned by the Stockholders during subsequent Measuring Periods based upon the Stored Value Business's cumulative EBITDA for the Measuring Periods then ended, as and to the extent provided in the Earn-Out Schedule. Each Earn-Out Payment shall be paid to the Stockholders in accordance with Section 1.5(f) below.

(c) **Stored Value Business**. "Stored Value Business" means FDC's business unit after the Closing comprised of the Company, the Company Subsidiaries, ITCFL and First Data Prepaid. "First Data Prepaid" shall mean FDC's business unit comprised of the Valuelink LLC closed loop processing and card issuing services, Concord Financial Technologies open loop processing and card issuing services, Money Network LLC payroll distribution services and retail general purpose reloadable product, and the EFS Transportation and ATM businesses, but excludes revenues and expenses related to loyalty card issuance and loyalty card processing and related services. The Stored Value Business shall include expansions and derivative products of existing product lines operated by First Data Prepaid, the Company, ITCFL or any Company Subsidiaries, as well as new product lines and product lines and business purchased by the Company or any Company Subsidiary or First Data Prepaid as provided in Section 8.9 herein or as otherwise mutually approved by FDC and the Stockholders' Representative, in

each case to the extent such product lines strategically fit within the Stored Value Business based on the historical operations of First Data Prepaid or the Company, ITCFL or any Company Subsidiary, provided that the Stored Value Business shall not be deemed to include other parts of FDC's business that have not historically been operated as part of First Data Prepaid but that have some relation to prepaid products or services (e.g., merchant acquiring services that enable merchants to accept prepaid as well as debit and credit cards at the point of sale).

(d) **EBITDA**. "EBITDA" means, for any applicable Measuring Period, the earnings of the Stored Value Business before interest expense and interest income (other than Interest from Operations), federal, state, foreign and other taxes with respect to income (and payments in lieu of income taxes) and depreciation and amortization expenses of the Stored Value Business for such Measuring Period, all of which shall be calculated in accordance with GAAP in effect on the Closing Date and consistently applied and consistent with the Company's accounting policies in effect on the Closing Date, provided that in making such determination:

(A) The EBITDA of the portion of the Stored Value Business comprising First Data Prepaid with respect to the 2008 Measuring Period shall be deemed to equal the greater of (x) $_____ or (y) the actual amount of EBITDA that is earned by First Data Prepaid during the 2008 Measuring Period (such actual amount is referred to herein as the "Actual FDP 2008 EBITDA").

(B) In the event that the Actual FDP 2008 EBITDA is less than $_____ as finally determined pursuant to Section 1.6, then the EBITDA target levels set forth on the Earn-Out Schedule shall be reduced for each of the 2009 and 2010 Measuring Periods by a percentage amount equal to a fraction, the numerator of which is the difference between (x) $_____ less (y) Actual FDP 2008 EBITDA, and the denominator of which is 2008 Target EBITDA.

(C) The following costs, expenses and income items shall be excluded from EBITDA:

(i) extraordinary items of income and expense as determined under GAAP;

(ii) any compensation expense resulting from the payment of the bonuses from the Company Bonus Pool Plan or the Guaranteed Bonus Plan or the issuance of stock or options under stock purchase or stock option plans to employees of the Stored Value Business;

(iii) any management fees, directors' fees or similar charges paid to FDC or its officers, employees or Affiliates;

(iv) any cost or expense, including transaction expenses, incurred in connection with the issuance of debt or equity securities or any refinancing transaction or any charge against earnings arising from factoring accounts, securitizing assets or similar transactions or actions, where inconsistent with the Company's past practices;

(v) costs, expenses and liabilities of First Data Prepaid to the extent relating to the conduct of the business of First Data Prepaid prior to the Closing Date (provided that, for the avoidance of doubt, costs, expenses and liabilities arising from contracts or other obligations of First Data Prepaid that were entered into prior to the Closing Date, but that relate to the conduct and execution of the business after the Closing Date, shall not be excluded);

(vi) any charge for services provided by FDC or any Affiliate (including those characterized or charged as overhead or similar corporate support charges) in excess of what would be charged in an arms-length transaction with an unrelated third party; provided, however, that the foregoing shall not restrict FDC or its Affiliates from charging the Stored Value Business for costs directly related to the Stored Value Business that are actually borne by FDC or its Affiliates (including the cost of employee benefit programs provided by FDC or its Affiliates to employees of the Stored Value Business and financial, tax and legal support and other "back-office" functions provided by FDC or its Affiliates), provided such costs shall be charged without a profit mark-up to the Stored Value Business on the same basis as the costs and charges that are charged to the other similarly situated Subsidiaries of FDC;

(vii) the Company Transaction Costs and any other cost or expense incurred by FDC or its Affiliates, or by the Company or its Affiliates, in connection with the Merger and related transactions contemplated by this Agreement, including any fees and expenses of the Accounting Firm in determining the Final Closing Working Capital in accordance with Section 1.4(d);

(viii) the costs and expenses the Company incurs in connection with the negotiation, execution and consummation of the [ABC] Acquisition and any Additional Acquisition in accordance with Section 8.9, including, without limitation, investment banking fees, accounting fees and legal fees;

(ix) allocation of expenses related to the establishment of global outsourcing services;

(x) any income that is derived as a result of any [XYZ Payment];

(xi) in the event the [ABC] Acquisition is consummated on the terms set forth in Section 8.9, then _____% of the EBITDA that is earned by the Stored Value Business from the [ABC] Target during any Measurement Period shall be disregarded for purposes of calculating EBITDA for such Measurement Period;

(xii) any premium expense related to any life insurance policy maintained on Smith or any other officers or employees of the Stored Value Business under which the Company or any of its Affiliates is named beneficiary or otherwise entitled to recovery;

(xiii) any Losses of a Purchaser Group Member which give rise to an indemnity payment pursuant to the indemnification provisions of Section 9.1 as to which the Purchaser Group Member has been reimbursed (by offset or otherwise), shall not be treated as an expense, and there shall be excluded from income any amount received by the Purchaser Group Member pursuant thereto;

(xiv) the fees and expenses related to the Company's compliance with the Sarbanes-Oxley Act of 2002, as amended or modified from time to time, or any successor statute, and any rules and regulations promulgated thereunder, only to the extent such fees and expenses are inconsistent with the historical expenses incurred by the Company;

(xv) any third party costs and expenses incurred by the Stored Value Business in connection with the preparation of any calculation of EBITDA under this Section 1.5 or Company EBITDA under Section 1.1(f) or contesting such calculation of EBITDA or Company EBITDA, as the case may be, pursuant hereto, including any fees and expenses of the Accounting Firm;

(xvi) the fees and expenses of any Third Party Expert that is retained to determine the appropriate modifications to Target Company EBITDA or the Earn-Out Schedule in accordance with Section 1.1(f)(v) or Section 1.5(e)(vi) hereof or any arbitrator who is appointed to select the Third Party Expert in accordance with Section 1.5(e)(vi);

(xvii) any costs incurred in connection with the maintenance or use of the Company's aircraft conveyed to the Purchaser, other than costs incurred in connection with the use of such jet by personnel of the Stored Value Business in connection with the business operations of the Stored Value Business;

(xviii)reserves or write-offs related to the abandonment or the anticipated abandonment of patents and trademarks pending will be disregarded as an expense;

(xix) any costs and expenses incurred by the Company (or the Company Subsidiaries) in connection with terminating the Company's 401(k) Plan in accordance with the terms set forth in Section 8.8(c);

(xx) the excess, if any, on an average per employee basis, of (A) the aggregate expense of providing benefits under the Benefit Plans maintained, sponsored or contributed to by First Data Prepaid, over (B) the aggregate expense of providing benefits under the Benefit Plans maintained, sponsored or contributed to by the Company. For this purpose, "Benefit Plans" means (1) all employee benefit plans (as defined in Section 3(3) of ERISA), (2) each loan to a non-officer employee, loans to officers and directors and any stock option, stock purchase, phantom stock, stock appreciation right, supplemental retirement, severance, sabbatical, medical, dental, vision care, disability, employee relocation, cafeteria benefit (Code Section 125) or dependent care (Code Section

129), life insurance or accident insurance plans, programs or arrangements, (3) all contracts and agreements relating to employment or any leased employee, independent contractor, consultant or agency arrangement and all severance or change in control agreements, with any of the directors, officers, employees or independent contractors, (4) all bonus, pension, profit sharing, savings, nonqualified deferred compensation or other incentive compensation plans, programs or arrangements, (5) other fringe benefit or perquisite plans, programs or arrangements, and (6) any current or former employment, independent contractor or executive compensation or severance agreements, written or otherwise, relating to, any present or former employee, leased employee, independent contractor, consultant, agent or director.

(D) Interest earned by the Stored Value Business on Restricted Funds ("Interest from Operations"), shall be included in the net revenues of the Stored Value Business for the Measurement Period in which such interest is received.

(E) The EBITDA of the Stored Value Business for the Pre-Closing Period shall be increased by an amount equal to the product of (x) the sum of (1) aggregate amount of the annualized cost savings and revenue synergies experienced by the Stored Value Business during the Earn-Out Period arising as a direct or indirect result of the Merger and (2) the average annualized amount of additional EBITDA that the Stored Value Business earns during the Earn-Out Period arising as a result of the consummation by the Company of the [ABC] Acquisition or any Additional Acquisition, multiplied by (y) the percentage figure that expresses the ratio between the number of calendar days in the Pre-Closing Period, and 365; provided, however, that the aggregate amount of any increase to EBITDA pursuant to this subsection (E) will not exceed $_____.

(e) **Operation of the Stored Value Business; Certain Adjustments**. During the Earn-Out Period, the following shall apply:

(i) FDC shall maintain and operate the Stored Value Business as a division or business unit within FDC, with its own management and financial statements, subject to customary FDC parent oversight comparable to other similarly situated business units of FDC.

(ii) FDC shall provide the Company, the Company Subsidiaries and the other businesses comprising the Stored Value Business with sufficient working capital, consistent with past practice, to allow such entities to meet their ongoing working capital obligations.

(iii) FDC shall provide the Stockholders' Representative with annual, quarterly and if prepared in the ordinary course of business monthly financial statements, including calculations of EBITDA for the period covered, and such other information, including detailed support as reasonably requested by the Stockholders' Representative, as to overhead or other charges made by FDC and its Affiliates to the Stored Value Business.

(iv) If FDC or its Affiliates sell or transfer to an unrelated third party all or substantially all of the Stored Value Business's assets during the Earn-Out Period (whether in a single transaction or in multiple transactions and whether by asset sale, stock sale, merger, share exchange or other transaction), then the Earn-Out shall be fully vested and accelerated with respect to the Measuring Period during which such sale or transfer occurs and each succeeding Measuring Period (if any) based on achievement of target EBITDA at the _____% level, or, if greater as to the Measuring Period in which such sale or transfer occurs, the projected EBITDA achievement for such Measuring Period (the projected EBITDA achievement for the year the sale or transfer occurs shall be based on the actual EBITDA of the Stored Value Business as of the date the sale or transfer occurs plus the reasonably estimated projected EBITDA for the remaining portion of such Measuring Period, which shall be determined by the Purchaser and the Stockholders' Representative or in the absence of an agreement by a third party expert selected with the mutual consent of the Purchaser and the Stockholders' Representative); provided that the Stockholders shall not be entitled to any additional payment for any prior Measuring Period at the time of such sale or transfer. Any Earn-Out Payment that is required to be paid shall be paid within 30 days of the closing of such sale or transfer (or, to the extent there is a dispute, within 10 days after the determination of the third party expert).

(v) For the avoidance of doubt, any termination of Smith's employment with the Company shall not require a modification of the Earn-Out payments or computation thereof, or any acceleration thereof.

(vi) In the event that a Fundamental Change (as defined below) occurs during the Earn-Out Period, the Purchaser and the Stockholders' Representative shall, subject to the notice requirements set forth below, enter into good faith negotiations regarding the costs and benefits of the Fundamental Change and the appropriate modifications to the EBITDA thresholds set forth on the Earn-Out Schedule to reflect a fair estimation of the change in the EBITDA of the Stored Value Business that is expected to arise during the remaining portion of the Earn-Out Period as a result of such Fundamental Change. If the Stockholders' Representative and the Purchaser agree on the appropriate changes and modifications to the EBITDA thresholds, then the Earn-Out Schedule shall be modified in the agreed upon manner and the Stockholders' Representative, the Purchaser and FDC shall execute an amendment to this Agreement to give effect to such modifications. If the Stockholders' Representative and the Purchaser are unable to reach agreement upon the appropriate modifications to the Earn-Out Schedule resulting from a Fundamental Change, the Stockholders' Representative and the Purchaser shall mutually agree upon a third party expert (the "Third Party Expert") to determine the appropriate modifications to the Earn-Out Schedule. If the Stockholders' Representative and the Purchaser are unable to agree upon an appropriate Third Party Expert within a period of 30 days after one party provides the other party with written notice of its desire that a Third Party Expert be retained, then the selection of the Third Party Expert

shall be made by a single arbitrator appointed by the American Arbitration Association in Atlanta, Georgia, who shall be instructed to nominate three firms which, based on the respective firms' qualifications, are suitable to serve as the Third Party Expert, and each of the Stockholders' Representative and Purchaser shall be entitled to disqualify one of the three firms (with the Purchaser choosing first), with the remaining firm to serve as the Third Party Expert. Once selected, the Third Party Expert shall consider only the Fundamental Change(s) at issue and shall be instructed to make its determination as to the appropriate modification to the Earn-Out Schedule within 30 days (or such longer period as the Stockholders' Representative and the Purchaser may agree) of its engagement. The Purchaser shall cause all of the books and records of the Stored Value Business to be made available to the Third Party Expert to the extent required to make its determination. In addition, the Third Party Expert shall also be given reasonable opportunities to meet with and discuss the effect of the Fundamental Change(s) at issue with the officers of the Stored Value Business. The Purchaser shall make available to the Third Party Expert any back-up materials generated by the Purchaser or its Affiliates that relate to the Fundamental Change. When delivered, the determination by the Third Party Expert shall be final and binding on the Purchaser, the Stockholders and each of the other parties to the Merger Agreement. All of the fees and expenses of the Third Party Expert and the fees and expenses of the arbitrator, if any, that is appointed to select the Third Party Expert, shall be paid by the Purchaser; provided that if the Third Party Expert's determination is, on balance, less beneficial to the Stockholders than that which was originally made in writing by the Purchaser to the Stockholders' Representative, then the fees and expenses of the Third Party Expert shall be paid by the Stockholders' Representative.

Notwithstanding the foregoing, in the event a Fundamental Change occurs while Smith is serving as the CEO, then the parties agree that there will be no adjustment to the Earn-Out Schedule or the calculation of EBITDA hereunder unless the Stockholders' Representative or the Purchaser provides written notice to the other, which notice must be given within 30 days of the date such party acquires actual knowledge that such Fundamental Change is scheduled to occur or (to the extent a party did not have prior knowledge) has occurred (a "Modification Notice"), stating that such party believes a change or modification to the Earn-Out Schedule is needed as a result of such Fundamental Change. For purposes of this Section 1.5(e)(vi), the actual knowledge of any one of the executive officers of FDC (other than the Stockholders' Representative, if he also serves as an executive officer of Purchaser) shall constitute actual knowledge of the Purchaser for purposes of this provision. If a Modification Notice is delivered by the Purchaser or the Stockholders' Representative in a timely manner, then the parties shall follow the dispute resolutions provisions set forth in the first paragraph of this Section 1.5(e)(vi).

In the event the Stored Value Business elects to make a Fundamental Change at a time when Smith is no longer serving as the CEO, then the Purchaser shall be required to send the Stockholders' Representative written notice of the

Fundamental Change promptly, but no later than 30 days, after the decision is made to effect the Fundamental Change (a "Fundamental Change Notice"), which notice shall describe the Fundamental Change in reasonable detail and shall also set forth the Purchaser's good faith estimate of the change in EBITDA that is likely to occur as a result of such Fundamental Change during the remaining portion of the Earn-Out Period. After receiving the Fundamental Change Notice, the Stockholders' Representative shall have a period of 60 days to deliver a Modification Notice to the Purchaser. During such 60 day period the Stockholders' Representative and/or his financial and legal advisors shall have reasonable access to the books and records of the Stored Value Business and shall also be given a reasonable opportunity to meet with and discuss the effect of the Fundamental Change with the officers of the Stored Value Business. If a Modification Notice is delivered by the Purchaser or the Stockholders' Representative during such 60 day period, then the parties shall follow the dispute resolutions provisions set forth in the first paragraph of this Section 1.5(e)(vi). If a Modification Notice is not delivered by the Stockholders' Representative or the Purchaser within such 60 day period, then there will be no adjustment to the Earn-Out Schedule or the calculation of EBITDA hereunder with respect to the Fundamental Change described in the Fundamental Change Notice.

For the avoidance of doubt, nothing in this Section 1.5(e)(vi) provides the CEO the right to make a Fundamental Change without the approval of FDC in accordance with its standard corporate procedures.

For purposes of this Agreement, the term "Fundamental Change" shall mean any action that is taken or omitted to be taken by the Stored Value Business during the Earn-Out Period that is outside of the ordinary course of business that could, at the time such Fundamental Change is approved or the implementation of which is commenced, reasonably be expected to have a materially adverse impact on the EBITDA of the Stored Value Business during any Measuring Period, including without limitation, the following:

(A) any sale, lease or disposition of any significant assets of the Stored Value Business or any acquisition by the Stored Value Business of the assets, stock or business of another Person (other than the [ABC] Acquisition and any Additional Acquisition);

(B) entering into any line of business not related to the business then being conducted by the Stored Value Business;

(C) the institution of any bonus or other compensation plan that requires levels of compensation that are in excess by any significant amount of those historically provided by the Company to similarly situated employees (taking into account customary cost of living increases);

(D) any material across-the-board reduction in salary or reduction in workforce that is inconsistent with the Company's historical practices;

(E) the relocation of the Stored Value Business' primary headquarters office from the Company's current headquarters location in Atlanta, Georgia;

(F) the merger, consolidation or amalgamation of any portion of the Stored Value Business with or into any Person or of another Person with and into the Stored Value Business; or

(G) any transfer of any portion of the Stored Value Business (other than de minimis transfers) to another Purchaser Group Member, or the diverting of the sale of products sold in the ordinary course of the Stored Value Business, in whole or in part, to another Purchaser Group Member, unless accounted for after such transfer or diversion as part of the Stored Value Business.

(f) **Payment of Earn-Out**. Within 90 days of the end of any Measuring Period, Purchaser shall pay, or shall deposit funds with the Paying Agent and cause the Paying Agent to pay, the Stockholders the amount of the Earn-Out Payment that the Purchaser believes (based upon its calculation of the Stored Value Business's EBITDA for such Measuring Period, as delivered to the Stockholders' Representative in accordance with Section 1.6) is due for such Measuring Period. If it is finally determined either by the mutual agreement of the Purchaser and the Stockholders' Representative or by the Accounting Firm in accordance with Section 1.6 hereof, that an additional amount of Earn-Out Payment is due to the Stockholders, such additional amount, plus interest at the AFR Rate from the date that is 90 days after the end of the applicable Measuring Period, shall be paid by the Purchaser (through the Paying Agent if desired by the Purchaser) to the Stockholders within 10 days of such final determination. If a final determination by the Accounting Firm results in a decrease in the amount of the Earn-Out from the amount proposed and paid by Purchaser, such decreased amount payable to the Stockholders shall be repaid to Purchaser by the Stockholders within 10 days of the final determination, plus interest at the AFR Rate from the date that is 90 days after the end of the applicable Measuring Period.

(g) **Limited Transferability of Earn-Out**. Without the Purchaser's consent, which shall not be unreasonably withheld or delayed, the Stockholders' right to receive Earn-Out Payments, if any, is personal to the Stockholders and shall not, in whole or in part, be sold, transferred, assigned or otherwise conveyed or pledged or encumbered or have liens or other adverse interests whatsoever created with respect to it; provided, however, that a Stockholder may transfer such right to (i) a trust, partnership, limited liability company or similar entity established for the sole benefit of the Stockholder or any of the Stockholder's spouse, children, lineal descendents or other family members (born or unborn), or (ii) the personal representatives, beneficiaries, heirs or estate of the Stockholder upon the Stockholder's death, in each case subject to the transferee's agreeing in writing to the terms and conditions of this Section 1.5 (including the rights of the Stockholders) and with a copy of such written agreement being provided to Purchaser.

(h) **Forfeiture of Earn-Out Payments**. In the event the Purchaser believes Smith is in material breach of any of his restrictive covenants in the Smith Employment and Restrictive Covenant Agreement that relate to Smith's non-competition or non-solicitation obligations to the Purchaser or any of Purchaser's Affiliates (each a "Smith Non-Competition Obligation"), the Purchaser shall, prior to commencing any action or proceeding against Smith, send written notice to Smith describing such breach. After receiving written notice from the Purchaser, Smith shall have an opportunity for a period of 30 days to cure any such alleged violation of a Smith Non-Competition Obligation (the "Notice and Cure Period") (it being acknowledged and agreed that for purposes of this provision Smith shall be deemed to have "cured" the alleged breach if Smith terminates his "offending conduct" after receiving written notice from the Purchaser). In the event Smith has not cured the alleged violation during the Notice and Cure Period, the Purchaser shall have the right to commence an action or lawsuit against Smith in a court of competent jurisdiction. If following the Notice and Cure Period, a final judgment is entered by a court of competent jurisdiction that Smith has materially breached a Smith Non-Competition Obligation, then, at Purchaser's option and in addition to any other available remedies available to it, the Purchaser may terminate all of Smith's rights under this Agreement to any Earn-Out Payments from and after the date of such material breach that are payable to Smith (which if already paid shall be refunded to Purchaser by Smith). The judgment or decree of a court shall be deemed final when the time for appeal, if any, shall have expired and no appeal shall have been taken or when all appeals taken shall have been finally determined. Such termination with respect to Smith shall not affect the rights of any other Stockholder under this Agreement to any Earn-Out Payments.

(i) **Guaranteed Minimum for Employee Bonus Plan**. An aggregate amount of $_____ of the Earn-Out (the "Guaranteed Pool") will be paid to qualifying employees of the Stored Value Business other than Stockholders (each a "Guaranteed Pool Participant") whether or not any portion of the Earn-Out is earned pursuant to this Section 1.5. The amounts reserved under the Guaranteed Pool shall be paid in accordance with an employee bonus plan to be established by the Company in its discretion prior to the Closing Date (the "Guaranteed Bonus Plan"), provided that the Guaranteed Bonus Plan (i) complies with applicable Law, (ii) creates no adverse Tax consequences for FDC or any FDC Subsidiary, and (iii) has no negative financial impact on FDC or any of its Subsidiaries other than the expected financial impact relating to or arising out of the Stored Value Business's obligation to make the payments thereunder. Payments under the Guaranteed Bonus Plan shall be payable in the aggregate amount of $_____ each with respect to calendar years 2008, 2009 and 2010, and shall be paid on or before March 15 following the close of each year in accordance with the terms of the Guaranteed Bonus Plan. Amounts paid to Guaranteed Pool Participants with respect to the Guaranteed Bonus Plan shall reduce any Earn-Out earned with respect to the 2008, 2009 and 2010 Measuring Periods by the amount of $_____ for each such Measuring Period; provided, for the avoidance of doubt, there shall be no reduction of the Earn-Out for any amounts that are reserved under the Guaranteed Pool that are not actually paid to Guaranteed Pool Participants and, if not paid to Guaranteed Pool Participants, such amounts shall be paid to the Stockholders only if earned as Earn-Out pursuant to this Section 1.5.

1.6 **Accounting Procedures**.

(a) Generally. The Purchaser shall deliver to the Stockholders' Representative its calculation of the Stored Value Business's EBITDA for each Measuring Period and, with respect to the 2008 Measuring Period, its calculation of Company EBITDA and Actual FDP 2008 EBITDA (together with information setting forth with reasonable specificity its calculations). If within 90 days following delivery by Purchaser of such calculation(s) (the "Review Period"), the Stockholders' Representative has not delivered to Purchaser notice of objection to Purchaser's calculation of the Stored Value Business's EBITDA for such Measuring Period (or, with respect to the 2008 Measuring Period, Company EBITDA or Actual FDP 2008 EBITDA), then Purchaser's calculation of the Stored Value Business's EBITDA (and, if applicable, Company EBITDA and Actual FDP 2008 EBITDA) and the resulting amount of the Earn-Out Payment, if any, due for such Measuring Period (or, with respect to the calculation of Company EBITDA, the Merger Consideration Reduction Amount, if any) shall be final, binding and conclusive on the parties. During the Review Period, the Stockholders' Representative, his accountants and independent advisers shall have access to the Stored Value Business's books and records during normal business hours for the purpose of determining the Stored Value Business's EBITDA (and, if applicable, Company EBITDA and Actual FDP 2008 EBITDA) for the relevant Measuring Periods.

(b) Notice of Objection. If the Stockholders' Representative provides a notice of objection, then the parties shall attempt to resolve any disagreements by negotiation. If any such disagreements are not resolved within 30 days following the receipt by Purchaser of the Stockholders' Representative's notice of objection, then either Purchaser or the Stockholders' Representative may submit the issues in dispute to the Accounting Firm and instruct the Accounting Firm to promptly review this Agreement, Purchaser's and the Stockholders' Representative's calculation of the Stored Value Business's EBITDA (or, if applicable, Company EBITDA and Actual FDP 2008 EBITDA) and any other documents reasonably necessary to calculate the Stored Value Business's EBITDA and the Earn-Out Payments due for such Measurement Period, if any (or, with respect to the calculation of Company EBITDA, the Merger Consideration Reduction Amount, if any).

(c) Process. In making the calculations of the Stored Value Business's EBITDA (and, if applicable, Company EBITDA and Actual FDP 2008 EBITDA) and the determination of the additional Earn-Out Payment, if any, that is due for such Measurement Period (or, with respect to the calculation of Company EBITDA, the Merger Consideration Reduction Amount, if any), the Accounting Firm shall act as an expert and not an arbitrator, solely in accordance with the terms of this Agreement. The Accounting Firm shall deliver to Purchaser and the Stockholders' Representative, as promptly as practicable and in any event no later than 60 days after its engagement, a report setting forth such calculations of the Stored Value Business's EBITDA (and, if applicable, Company EBITDA and Actual FDP 2008 EBITDA) for such Measurement Period and the additional Earn-Out Payment, if any, that is due for such Measurement Period (or, with respect to the calculation of Company EBITDA, the Merger Consideration Reduction Amount, if any). Such report shall be final and binding upon Purchaser and the Stockholders. The Accounting Firm's reasonable fees and expenses shall be paid as follows: (1) if there is an adjustment that increases the amount of the Earn-Out from the amount proposed by Purchaser by more than _____% of such amount (or with respect to the calculation of Company EBITDA, that decreases the Merger Consideration Reduction Amount by more than _____%), then Purchaser shall pay such fees and

expenses, and (2) if the adjustment to the amount of the Earn-Out or the Merger Consideration Reduction Amount from the amount proposed by Purchaser is less than _____% of such amount, or if there is an adjustment that decreases the amount of the Earn-Out (or increases the amount of the Merger Consideration Reduction Amount) from the amount proposed by Purchaser, the Stockholders shall pay such fees and expenses in accordance with Section 9.1.2 hereof (any payments made by or on behalf of the Stockholders shall, to the extent funds remain in the Indemnity Escrow Account, be deducted from the Indemnity Holdback in accordance with the terms of the Escrow Agreement).

1.7 **Stockholders' Representative Appointment**.

(a) **Acceptance of Appointment**. At the Closing and by operation of this Agreement, Smith, and his successor (the "Stockholders' Representative"), acting as hereinafter provided, is fully authorized and empowered to act for and on behalf of the Stockholders, and any of them, as their attorney-in-fact and agent with respect to (i) any dispute related to this Agreement, and (ii) the taking by the Stockholders of any and all actions and the making of any decisions required or permitted to be taken by the Stockholders or any Stockholder under this Agreement, including the exercise by the Stockholders of the power to: (a) agree to, negotiate, enter into settlements and compromises of, demand arbitration of, comply with the orders of courts and awards of arbitrators with respect to, such disputes; (b) initiate any dispute regarding the Working Capital adjustment set forth in Section 1.4, the calculation of the Earn-Out Payments in accordance with Section 1.5 or the calculation of the Merger Consideration Reduction Amount in accordance with Section 1.1(f), arbitrate, resolve, settle or compromise any dispute regarding the Closing Working Capital, the calculation of Company EBITDA or the calculation of EBITDA of the Stored Value Business for any Measurement Period, including, without limitation, any adjustments to the EBITDA target levels arising as a result of the consummation of a Fundamental Change; (c) receive on behalf of each Stockholder any funds due any Stockholder related to this Agreement; (d) give and receive notices and communications, receive service of process, organize or assume the defense of claims related to, agree to, negotiate, or enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to, claims related to this Agreement; and (e) take all actions necessary in the judgment of the Stockholders' Representative for the accomplishment of any of the foregoing. The Stockholders' Representative will have authority and power to and shall act on behalf of any Stockholder with respect to the disposition, settlement or other handling of any dispute and any other rights or obligations arising under or related to this Agreement. Each Stockholder shall be bound by all actions taken and all documents executed by the Stockholders' Representative in connection with any dispute arising under or related to this Agreement. Each Stockholder acknowledges and agrees that: (i) in performing the functions specified in this Agreement, the Stockholders' Representative will not be liable to any such Stockholder in the absence of willful misconduct or fraud on the part of the Stockholders' Representative, and the Stockholders agree to indemnify and hold the Stockholders' Representative harmless against any and all Losses, including reasonable attorneys' fees incurred by the Stockholders' Representative by reason of him taking any action or omitting to take any action pursuant to this Agreement other than Losses incurred as a result of willful misconduct or fraud on the part of the Stockholders' Representative; and (ii) any claims against the Stockholders' Representative shall be properly asserted against the Stockholders' Representative only in the Stockholders' Representative's capacity as the

Stockholders' Representative and shall not be asserted against the Stockholders' Representative in his individual capacity or against the Company. Notices or communications to or from the Stockholders' Representative shall constitute notice to or from any applicable Stockholder. Any decision, act, consent or instruction of the Stockholders' Representative shall constitute a decision, act, consent or instruction of all Stockholders and shall be final, binding, and conclusive upon each such Stockholder.

(b) **Actions**. The Proxy Statement, which shall be delivered to the Stockholders, shall provide that each of the Stockholders, by approval of this Agreement, expressly acknowledges and agrees that the Stockholders' Representative is authorized to act on its, his or her behalf as his or her attorney in fact, notwithstanding any dispute or disagreement between the Stockholders, or any one of them, with the Stockholders' Representative. The Company and Purchaser may rely upon any written decision, act, consent or instruction of the Stockholders' Representative as being the decision, act, consent or instruction of each and every Stockholder. Each Stockholder hereby relieves Purchaser and the Company from any liability for any acts done by either of them in accordance with any written decision, act, consent or instruction of the Stockholders' Representative.

(c) **Successors**. Smith shall serve as the Stockholders' Representative until he resigns or is otherwise unable or unwilling to serve. In the event that the Stockholders' Representative resigns from such position or is otherwise unable or unwilling to serve, the Stockholders shall, by vote of a majority-in-interest, select a successor representative to fill such vacancy, shall provide prompt written notice to Purchaser of such change, and such substituted representative shall then be deemed to be the Stockholders' Representative for all purposes of this Agreement.

(d) **Effectiveness**. The authorization of the Stockholders' Representative shall be effective until his rights and obligations under this Agreement terminate by virtue of the termination of any and all obligations of the parties under this Agreement and the Escrow Agreement.

1.8 **Holdbacks**.

(a) **Deposit of Indemnity Holdback and Purchase Price Holdback With Escrow Agent**. At the Closing, Purchaser shall deposit (i) $_____ from the cash portion of the Closing Merger Consideration (the "Indemnity Holdback") into an interest bearing account (the "Indemnity Escrow Account") at a national bank selected with the mutual consent of the Purchaser and the Stockholders' Representative (the "Escrow Agent"), (ii) the Purchase Price Cash Holdback into a separate interest bearing account at the Escrow Agent (the "Purchase Price Cash Account"), and (iii) the Stock Consideration (the "Purchase Price Stock Holdback" and together with the Purchase Price Cash Holdback, the "Purchase Price Holdback") into a separate account at the Escrow Agent (the "Purchase Price Securities Account" and together with the Purchase Price Cash Account, the "Purchase Price Escrow Accounts"; and the Purchase Price Escrow Accounts together with the Indemnity Escrow Account, the "Escrow Accounts").

As an inducement to the Purchaser, FDC, Holdings and Mergerco to enter into this Agreement and to consummate the Merger, the Company and each of the Stockholders by their collective approval of the Merger, have agreed to permit Purchaser to place the Indemnity Holdback into the Indemnity Escrow Account for the periods of time set forth in Section 1.8(b) below in order to secure the payment of the Stockholders' indemnity obligations under Section 9.1.2 of this Agreement and to secure the payment of the Stockholders obligations under Section 1.1(f)(ii)(C) hereof. In addition, the Stockholders, by their collective approval of the Merger, have agreed to permit Purchaser to place the Purchase Price Holdback into the Purchase Price Escrow Accounts for the period of time set forth in Section 1.8(d) below in order to secure the obligations of the Stockholders to pay the Merger Consideration Reduction Amount to the Purchaser in accordance with Section 1.1(f)(ii) hereof. The Escrow Agent shall hold the Indemnity Holdback and the Purchase Price Holdback pursuant to an escrow agreement, in substantially the form of Exhibit C attached hereto (the "Escrow Agreement"), by and among the Purchaser, the Escrow Agent and the Stockholders' Representative.

The Indemnity Holdback is not a cap or limit on the Stockholders' indemnification obligations, and Losses of Purchaser Group Members in excess of the Indemnity Holdback shall, subject to the other limitations set forth in Section 9.1.2, be the obligation of the Stockholders pursuant to the terms of Section 9.1.2. The parties acknowledge and agree that the Purchase Price Cash Holdback and the Purchaser Price Stock Holdback (together with any portion of the Indemnity Holdback or Recoupment Payment that may be used to satisfy the Stockholders' payment obligations under Section 1.1(f)(ii)(C) hereof) are intended to and shall serve and constitute a cap on the Stockholders' respective obligations to pay any portion of the Merger Consideration Reduction Amount to the Purchaser under Section 1.1(f) hereof.

(b) **Distributions of the Indemnity Holdback from the Indemnity Escrow Account**.

(i) Distributions to Purchaser Group Members. The Stockholders' Representative and Purchaser shall jointly direct the Escrow Agent to make distributions out of the Indemnity Escrow Account to a Purchaser Group Member in amounts equal to the amount of Losses that are incurred by or imposed on a Purchaser Group Member, which are subject to indemnification and determined to be due and payable in accordance with Section 9.1.

(ii) Final Working Capital Distribution. In the event that the Final Closing Working Capital is less than Target Working Capital, then within five business days after the determination of the Final Working Capital has become binding on the parties pursuant to the procedures set forth in Section 1.4, the Stockholders' Representative and Purchaser shall jointly direct the Escrow Agent to make a distribution out of the Indemnity Escrow Account in an amount equal to the Adjustment Amount, plus an additional amount equal to the interest earned on such amount (computed under the terms of the Escrow Agreement) during the period beginning on the Closing Date and ending on the date on which the Adjustment Amount is paid by the Escrow Agent to Purchaser; provided, however, that the maximum portion of the Indemnity Holdback that may be used to satisfy the Stockholders' obligations to pay the Adjustment

Amount to the Purchaser pursuant to Section 1.4(c) shall be $_____ and the remaining portion of the Adjustment Amount (and interest on such remaining portion calculated using the AFR Rate), if any, shall be paid by the Stockholders to the Purchaser in accordance with Section 9.1.2.

(iii) Stockholders Remaining Repayment Amount. In the event the Stockholders Remaining Repayment Amount becomes due and payable under Section 1.1(f)(ii)(C) hereof, then within five business days after the determination of the 2008 Company EBITDA has become binding on the parties pursuant to the procedures set forth in Section 1.6, the Stockholders' Representative and the Purchaser shall, if so elected by Purchaser, jointly direct the Escrow Agent to make a distribution out of the Indemnity Escrow Account in an amount equal to the Stockholders Remaining Repayment Amount, plus an additional amount equal to the interest earned on such amount (computed under the terms of the Escrow Agreement) during the period beginning on the Closing Date and ending on the date on which the Stockholders Remaining Repayment Amount is paid by the Escrow Agent to the Purchaser.

(iv) Initial Stockholder Distribution from the Indemnity Escrow Account. On the first business day following the later of (x) five (5) business days following the date on which FDC's audited financial statements for the 2008 calendar year are finalized or (y) the _____ anniversary of the Closing Date (such date is referred to herein as the "Initial Indemnity Distribution Date"), the Stockholders' Representative and Purchaser shall jointly direct the Escrow Agent to make a distribution to the Stockholders (who have validly tendered their Certificates in accordance with Section 1.3) in an aggregate amount equal to the following (the "Initial Stockholder Indemnity Distribution"):

(1) (i) $_____, *less* (ii) the sum of (A) the portion of the Adjustment Amount, if any, paid from the Indemnity Escrow Account pursuant to Section 1.8(b)(ii), *less* the interest component of such amount, (B) the Stockholders Remaining Repayment Amount, if any, (C) an amount equal to the aggregate amount of indemnifiable Losses that have been paid to a Purchaser Group Member from the Indemnity Escrow Account as of the Initial Indemnity Distribution Date, *less* the interest component of such amount, and (D) (without duplication) the reasonable estimated value of all unresolved or unpaid indemnification claims made against the Indemnity Escrow Account pursuant to Article IX hereof as of such date; plus

(2) interest thereon in an amount equal to the interest earned on the amount determined in clause (1) above during the period commencing on the Closing Date and ending on the Initial Indemnity Distribution Date;

provided, however, if the foregoing results in a negative number, then the Initial Stockholder Indemnity Distribution shall be zero.

(v) Final Stockholder Distribution from the Indemnity Escrow Account. Within five (5) business days following the date which is the _____ anniversary of the Closing Date (such date is referred to herein as the "Final Indemnity Distribution Date"), the Stockholders' Representative and Purchaser shall jointly direct the Escrow Agent to make a distribution to the Stockholders (who have validly tendered their Certificates in accordance with Section 1.3) in an aggregate amount (the "Final Stockholder Indemnity Distribution", and together with the Initial Stockholder Indemnity Distribution, the "Stockholder Holdback Indemnity Distributions") equal to the difference between (i) the remaining amount in the Indemnity Escrow Account, *less* (ii) the reasonable estimated value of all unresolved or unpaid indemnification claims made against the Indemnity Escrow Account pursuant to Article IX hereof as of the one year anniversary of the Closing Date and, in the event that as of the Final Indemnity Distribution Date, the Merger Consideration Reduction Amount remains subject to final determination pursuant to the procedures set forth in Section 1.6, an additional amount equal to the Purchaser's good faith estimate of the Stockholders Remaining Repayment Amount that is likely to become due and payable under Section 1.1(f)(ii)(C), if any; provided, however, if the foregoing results in a negative number, then the Final Stockholder Indemnity Distribution shall be zero.

(c) **Resolution of Existing Claims**. If after the date on which all of the Stockholder Holdback Indemnity Distributions are required to be made, any claims for indemnity are resolved in favor of the Stockholders' Representative (on behalf of the Stockholders) by mutual agreement or otherwise, or if the amount withheld exceeds the amount ultimately payable to a Purchaser Group Member in respect of such claim (or in respect of the amount withheld to satisfy the Stockholders Remaining Repayment Amount), Purchaser and the Representative shall direct the Escrow Agent to pay to the Stockholders an aggregate amount equal to the excess amount withheld together with interest on any cash amounts, in accordance with the terms of the Escrow Agreement.

(d) **Distribution of the Purchase Price Holdback from the Purchase Price Escrow Accounts**.

(i) Distributions to the Stockholders in the event there is no Merger Consideration Reduction. In the event that 2008 Company EBITDA, as finally determined pursuant to the provisions of Section 1.6, is greater than or equal to Target Company EBITDA, then within five business days after the determination of the 2008 Company EBITDA has become binding on the parties pursuant to the procedures set forth in Section 1.6, the Stockholders' Representative and the Purchaser shall jointly direct the Escrow Agent to distribute to the Stockholders the full Purchase Price Holdback, together with interest earned on the Purchase Price Cash Holdback (computed under the terms of the Escrow Agreement) during the period commencing on the Closing Date

and ending on the date such payment is made (with the portion of such amount that consists of interest earned on the Purchase Price Cash Holdback constituting a payment of interest to the Stockholders).

(ii) Distributions in the Event of a Merger Consideration Reduction. In the event that 2008 Company EBITDA, as finally determined pursuant to the provisions of Section 1.6, is less than the Target Company EBITDA, then the Stockholders' Representative and the Purchaser shall jointly direct the Escrow Agent to distribute (i) to the Purchaser (and Holdings, solely as to the Holdings Shares) out of the Purchase Price Escrow Accounts an amount equal to the Merger Consideration Reduction Amount, plus an additional amount equal to the interest earned on such amount (computed under the terms of the Escrow Agreement) during the period commencing on the Closing Date and ending on the date such payment is made to the Purchaser, and (ii) to the Stockholders out of the Purchase Price Escrow Accounts any remaining portion of the Purchase Price Holdback plus interest earned on such amount (computed under the terms of the Escrow Agreement, and constituting a payment of interest to the Stockholders). All payments and distributions to Purchaser or Holdings from the Purchase Price Escrow Accounts (other than interest payments which shall be made exclusively in cash out of the Purchase Price Cash Account) shall be made on a pro rata basis in cash and Holdings Shares (based upon the initial values on the Closing Date of the Purchase Price Cash Holdback and Purchase Price Stock Holdback). The parties hereby acknowledge and agree that the value of the Holdings Shares in the Purchase Price Securities Account shall be conclusively deemed to be $_____ per share (as adjusted for any stock splits, stock dividends, combinations, reclassifications or similar events occurring following the date hereof).

(e) **Allocation of Holdback Distributions Among Stockholders; Tax Treatment**. Any distributions from the Indemnity Escrow Account to the Stockholders shall be distributed among the Stockholders (who have validly tendered their Certificates in accordance with Section 1.3) on a pro rata basis, in proportion to the total amount of Closing Merger Consideration allocated to each Stockholder at the Closing. Any distributions from the Purchase Price Escrow Accounts to the Stockholders shall be distributed among the Stockholders (who have validly tendered their Certificates in accordance with Section 1.3) on a pro rata basis, in proportion to the total amount of Closing Merger Consideration allocated to each Stockholder at the Closing; provided that it is understood that Smith shall be allocated and shall receive all of the Holdings Shares that are distributed from the Purchase Price Securities Account and the Minority Stockholders shall be allocated and shall receive all of the cash that is distributed from the Purchase Price Cash Account. All distributions of the Indemnity Holdback and the Purchase Price Cash Holdback from the Escrow Accounts to the Stockholders pursuant to this Section 1.8 shall be made by the Escrow Agent to the Payment Agent for subsequent distribution to the Stockholders as directed by the Purchaser and the Stockholders' Representative. All distributions of the Purchase Price Stock Holdback to Smith shall be made by the Escrow Agent directly to Smith. The parties agree that the Indemnity Holdback and the Purchase Price Holdback will be reported by the Stockholders on the installment method of

reporting, and all the parties hereto agree to file their tax returns and make all other reports consistently with such treatment.

ARTICLE II

CLOSING

2.1 **Closing**.

(a) **Closing Date**. The closing of the Merger (the "Closing") shall be held at a location mutually acceptable to the parties at noon, Eastern time, on a date mutually agreed by the Purchaser and the Company, which shall be no later than the third business day after the satisfaction or waiver of the latest to occur of the conditions set forth in Article VI (other than the conditions that, by their terms, cannot be satisfied until the Closing Date), such time and date being referred to herein as the "Closing Date."

(b) **Filing Certificate of Merger and Effectiveness**. Subject to the fulfillment or waiver of the conditions to the respective obligations of each of the parties pursuant to this Agreement, the parties shall cause the Merger to be consummated by filing a Certificate of Merger, executed and acknowledged in accordance with the laws of the State of Georgia, in the office of the Secretary of State of the State of Georgia. The Merger shall become effective upon such filing as provided by the GBCC, or, if the Purchaser and the Company agree, such later date and time as are specified in the Certificate of Merger. The date and time of such effectiveness are herein called, respectively, the "Effective Date" and the "Effective Time."

(c) **Actions at the Closing**. At the Closing, the Company, FDC, Holdings, Purchaser and Mergerco shall take such actions and execute and deliver such agreements and other instruments and documents as necessary or appropriate to effect the transactions contemplated by this Agreement in accordance with its terms.

ARTICLE III

REPRESENTATIONS AND WARRANTIES AS TO THE COMPANY

The Company represents and warrants to Purchaser as of the date hereof and as of the Closing Date, as set forth in this Article III.

3.1 **Organization, Standing and Power; Subsidiaries.**

(a) Each of the Company and the Company Subsidiaries, as listed in Schedule 3.1(a) of the Company's disclosure schedules to this Agreement delivered by the Company to the Purchaser contemporaneously with the execution and delivery of this Agreement (collectively, the "Company Disclosure Schedule"), which constitute all the Company Subsidiaries, is a corporation, limited liability company, limited liability limited partnership or partnership duly incorporated or organized, validly existing and in good standing under the laws of its jurisdiction of organization or incorporation.

(b) Except as set forth on Schedule 3.1(b), the Company and each Company Subsidiary has the requisite corporate power and authority and all necessary material government approvals to own, lease and operate its properties and to carry on its business as now being conducted. The Company and each Company Subsidiary is duly qualified or licensed as a foreign entity to do business, and is in good standing, in each jurisdiction in which such qualification is required by applicable Law, except where such failure would not reasonably be expected to have a Company Material Adverse Effect.

(c) Except as set forth in Schedule 3.1(c), there are no outstanding subscriptions, options, warrants, puts, calls, rights, exchangeable or convertible securities or other commitments or agreements of any character relating to the issued or unissued capital stock or other securities of any Company Subsidiary, or otherwise obligating the Company or any of the Company Subsidiaries to issue, transfer, sell, purchase, redeem or otherwise acquire any such securities, or to grant, extend, accelerate vesting of, change the price of or otherwise amend or enter into any option, warrant, call, right, commitment or agreement with respect to any such securities. Except as set forth in Schedule 3.1(c), there are no agreements, contracts or commitments relating to voting of the capital stock or other securities of any Company Subsidiary.

(d) Except as set forth on Schedule 3.1(d), the Company (directly or through one or more Company Subsidiaries) is the record and beneficial owner of all of the issued and outstanding capital stock, membership interests or partnership interests of each Company Subsidiary. The outstanding shares of capital stock, membership interests or partnership interests of each Company Subsidiary are duly authorized, validly issued and fully paid, and are owned by the Company (directly or through one or more Company Subsidiaries) free and clear of all Encumbrances, except for Permitted Encumbrances, and except as set forth in Schedule 3.1(d), are free of preemptive rights or rights of first refusal. Except as set forth in Schedule 3.1(d), the Company does not directly or indirectly own any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for, any equity or similar interest in, any corporation, partnership, limited liability company, joint venture, trust or other business association or entity other than the Company Subsidiaries and ITCFL.

3.2 **Certificate of Incorporation and Bylaws**. The Company has delivered a true and correct copy of its Restated Articles of Incorporation and Amended and Restated Bylaws and the Articles of Incorporation, Bylaws or equivalent organizational and governance documents of each Company Subsidiary, each as amended to date, to Purchaser and Holdings. Neither the Company nor any Company Subsidiary is in violation of any provisions of its Articles or Certificate of Incorporation or Bylaws or equivalent organizational or governance documents.

3.3 **Capital Structure**. The authorized capital stock of the Company consists of 100,000,000 shares of Common Stock, of which 49,999,936 shares of Common Stock are issued and outstanding, and based entirely on the corporate records of the Company, Schedule 3.3 contains a list of the Stockholders of the Company and the Shares of Common Stock owned by each Stockholder. Except as set forth on Schedule 3.3, there are no other outstanding shares of capital stock or voting securities and no outstanding commitments to issue any shares of capital stock or voting securities, and there are no outstanding options or other commitments to issue any shares of capital stock or voting securities. All outstanding shares of Common Stock are

duly authorized, validly issued, fully paid and non-assessable and are free of any Encumbrances or any preemptive rights or rights of first refusal created by the Restated Articles of Incorporation or Amended and Restated Bylaws of the Company or, except as disclosed in Schedule 3.3, any agreement to which the Company is a party. All outstanding shares of Common Stock were issued in compliance with all applicable federal and state securities laws. Except (i) for the rights created pursuant to this Agreement, and (ii) as set forth in Schedule 3.3, there are no options, warrants, calls, rights, commitments, agreements or arrangements of any character to which the Company is a party or by which the Company is bound that obligate the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of capital stock of the Company or to grant, extend, accelerate the vesting of, change the price of, or otherwise amend or enter into any option, warrant, call, right, commitment or agreement with respect to its capital stock. Except as set forth in Schedule 3.3, there are no contracts, commitments or agreements relating to voting, purchase or sale of the Company's capital stock to which the Company is a party. Except as set forth in Schedule 3.3, the Company has no outstanding Indebtedness for borrowed money other than the Indebtedness under the Chase Loan Agreement, the Airplane Indebtedness and the Oracle Indebtedness.

3.4 **Authority; Enforceability**.

(a) The Company has all requisite corporate power and authority to enter into this Agreement, and subject to obtaining the Stockholder Approval, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been duly and validly authorized by the Board of Directors of the Company. The Board of Directors of the Company has resolved to recommend the adoption of this Agreement by the Stockholders and has directed that this Agreement be submitted to the Company Stockholders for their consideration, and except for Stockholder Approval, no other corporate proceedings on the part of the Company are necessary to authorize the Company's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

(b) This Agreement has been duly and validly executed and delivered by the Company, and assuming due authorization, execution and delivery by the other parties hereto, and constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to the laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief and equitable remedies.

3.5 **No Conflicts; Required Filings and Consents.**

(a) Except as set forth in Schedule 3.5(a), the execution and delivery of this Agreement by the Company does not, and the performance by the Company of its obligations hereunder and the consummation of the transactions contemplated hereby will not, conflict with, or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit or rights under, or result in the creation or imposition of any

Encumbrance upon any of the assets or properties of the Company or any Company Subsidiary under (i) any provision of the Articles or Certificate of Incorporation, Bylaws or other equivalent organizational or governance documents of the Company or any of the Company Subsidiaries, (ii) any Material Contract, (iii) any instrument, permit, concession, franchise, license, or Order of any Governmental Entity to which the Company or any Company Subsidiary or any of their respective assets or properties is subject or by which the Company or any Company Subsidiary is bound which are material to the Business, or (iv) any Law or Payment Authority Rule applicable to the Company or any Company Subsidiary or any of their respective properties or assets which are material to the Business.

(b) No consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other Governmental Entity, Payment Authority or other Person is required by or with respect to the Company or any Company Subsidiary in connection with the execution and delivery of this Agreement, the performance by the Company of its respective obligations hereunder or the consummation of the transactions contemplated hereby, except for (i) such filings as may be required under the GBCC and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") or any other sovereign anti-trust filing; (ii) those disclosed on Schedule 3.5(b); and (iii) such other consents, authorizations, filings, approvals and registrations which, if not obtained or made, would not prevent, or materially alter or materially delay any of the transactions contemplated by this Agreement.

3.6 **Financial Statements.**

(a) Schedule 3.6 includes a true and complete copy of the Company's audited consolidated balance sheets, consolidated statements of operations and retained earnings and consolidated statements of cash flows for the fiscal years ended December 31, 2005 (the "2005 Financial Statements") and December 31, 2006 (the "2006 Financial Statements"), and its consolidated unaudited financial statements (balance sheet, statement of operations and retained earnings and consolidated statements of cash flows) on a consolidated basis as at, and for the year ended December 31, 2007 (the "2007 Financial Statements" and, collectively with the 2005 Financial Statements and the 2006 Financial Statements, the "Financial Statements").

(b) The Financial Statements have been prepared in accordance with GAAP (except that the 2007 Financial Statements do not have information ordinarily contained in footnotes to audited financial statements and are subject to year end audit adjustments made in accordance with GAAP and which adjustments are not necessary to make the 2007 Financial Statements GAAP compliant) throughout the periods indicated. The Financial Statements fairly present in all material respects the financial condition and results of operations of the Company and the Company Subsidiaries as of the dates, and for the periods, indicated therein (subject to year end audit adjustments made in accordance with GAAP and which adjustments are not required to make the 2007 Financial Statements GAAP compliant).

3.7 **Absence of Undisclosed Liabilities**. Neither the Company nor any Company Subsidiary has material obligations or liabilities of any nature (including unasserted claims, matured or unmatured, absolute, accrued, fixed, contingent, off balance sheet or otherwise) other than (i) those set forth on Schedule 3.7, (ii) those set forth or adequately provided for in the 2007

Financial Statements, (iii) those under contracts or agreements of the type required to be disclosed by the Company on any Schedule and so disclosed or which because of the dollar amount or other qualifications are not required to be listed on such Schedule, and in each case incurred in the ordinary course of business and consistent with the terms of such contracts and agreements, (iv) those incurred in the ordinary course of business since December 31, 2007 and consistent with past practice, and (v) those incurred in connection with the negotiation and execution of this Agreement.

3.8 **Absence of Certain Changes.**

(a) Except as set forth on Schedule 3.8(a), since Balance Sheet Date, no event has occurred or condition exists, which individually or in the aggregate, has had or is reasonably expected to have a Company Material Adverse Effect.

(b) Except as set forth in Schedule 3.8(b), since the Balance Sheet Date, the Company and each Company Subsidiary has conducted its business only in the ordinary course and in conformity with past practice and, without limiting the generality of the foregoing, has not:

(i) sold, leased (as lessor), transferred or otherwise disposed of (including any transfers from the Company or any Company Subsidiary to any Stockholder), or mortgaged or pledged, or imposed or suffered to be imposed any Encumbrance (other than a Permitted Encumbrance) on, any of the assets reflected on the balance sheet included in the 2007 Financial Statements or any assets acquired by the Company or any Company Subsidiary after December 31, 2007 (the "Balance Sheet Date"), other than in the ordinary course of business consistent with past practice or in an amount not in excess of $_____;

(ii) canceled any debts owed to or claims held by the Company or any Company Subsidiary (including the settlement of any claims or litigation and excluding any accounts receivable) or waived any other rights held by the Company or any Company Subsidiary other than in the ordinary course of business consistent with past practice or in an amount not in excess of $_____ to any one third party;

(iii) paid any claims against the Company or any Company Subsidiary (including the settlement of any claims and litigation against the Company or any Company Subsidiary or the payment or settlement of any obligations or liabilities of the Company or any Company Subsidiary) other than in the ordinary course of business consistent with past practice or in an amount not in excess of $_____ to any one third party;

(iv) created, incurred or assumed, or agreed to create, incur or assume, any indebtedness for borrowed money other than pursuant to the Chase Loan Agreement and the Airplane Indebtedness or entered into, as lessee, any capitalized lease obligations (as defined in Statement of Financial Accounting Standards No. 13) with aggregate payments exceeding $_____ during

any 12-month period during the term of such lease or entered into or drawn down on any line of credit;

(v) accelerated or delayed collection of notes or accounts receivable involving an amount in excess of $_____ in advance of or beyond their regular due dates or the dates when the same would have been collected in the ordinary course of business consistent with past practice, other than in the ordinary course of business consistent with past practice;

(vi) delayed or accelerated payment of any account payable or other liability of the Company or any Company Subsidiary involving an amount in excess of $_____ beyond or in advance of its due date or the date when such liability would have been paid, other than in the ordinary course of business consistent with past practice;

(vii) acquired any real property;

(viii) made, or agreed to make, any payment of cash or distribution of assets to any Stockholder, except for salaries paid to Stockholders in the ordinary course of business or as otherwise contemplated or permitted under the terms of this Agreement;

(ix) instituted any increase in any compensation payable to any officer or employee or in any profit-sharing, bonus, incentive, deferred compensation, insurance, pension, retirement, medical, hospital, disability, welfare or other benefits made available to officers or employees other than in the ordinary course of business consistent with past practice or as otherwise contemplated or permitted in this Agreement or adopted any new employee benefit plans, programs or arrangements;

(x) made any change in the accounting principles and practices used by the Company from those applied in the preparation of the balance sheet included in the 2007 Financial Statements and the related statements of income and cash flow for the period ended on the Balance Sheet Date;

(xi) prepared or filed any Tax Return inconsistent with past practice or, on any such Tax Return, taken any position, made any election, or adopted any method that is inconsistent with positions taken, elections made or methods used in preparing or filing similar Tax Returns in prior periods (including, without limitation, positions, elections or methods which would have the effect of deferring income to periods for which Purchaser is liable pursuant to this Agreement or accelerating deductions to periods for which any Stockholder Group Member is entitled to indemnification pursuant to this Agreement);

(xii) allowed the levels of raw materials, supplies, work-in-process or other materials included in the inventory of the Company and the Company Subsidiaries to vary in any material respect from the levels customarily maintained in the Business;

(xiii) other than renewals, extensions or expansion of business and business relationships with existing clients and vendors, entered into or become committed to enter into any other material contract except in the ordinary course of business or as contemplated by this Agreement.

(xiv) made any change in the Business which could reasonably be expected to have a Company Material Adverse Effect.

3.9 **Litigation.** Except as set forth in Schedule 3.9, there is no private or governmental action, suit, proceeding, claim, arbitration or investigation (each, an "Action") pending before any agency, court or tribunal, foreign or domestic, or, to the Company's Knowledge, threatened against, the Company or any Company Subsidiary or any of their respective properties or any of their respective officers or directors (in their capacities as such) that, individually or in the aggregate, would prevent the consummation of the transactions contemplated by this Agreement or in which the amount in controversy exceeds $_____. Except as set forth on Schedule 3.9, there is no Order or Payment Authority judgment, order, award or decree against the Company any Company Subsidiary or, to the Company's Knowledge, any of their respective directors or officers (in their capacities as such), that could prevent, enjoin, or materially alter or delay any of the transactions contemplated by this Agreement.

3.10 **Restrictions on Business Activities**. There is no agreement, judgment, injunction, order or decree binding upon the Company or any Company Subsidiary, which has or could reasonably be expected to have the effect of prohibiting or impairing in any material respect any current business practice of the Company or any Company Subsidiary which is material to the Business or the overall conduct of the Business as currently conducted by the Company.

3.11 **Permits; Company Products; Regulation.**

(a) Except as set forth on Schedule 3.11(a), each of the Company and each Company Subsidiary is in possession of all material franchises, grants, authorizations, licenses (other than Intellectual Property licenses), permits, easements, variances, exceptions, consents, certificates, approvals, orders or other authorizations necessary for the Company or that Company Subsidiary, to own, lease and operate its properties or to carry on its business as it is now being conducted (the "Company Authorizations"), and no material suspension or cancellation of any Company Authorization is pending or, to the Company's Knowledge, threatened.

(b) Except as set forth in Schedule 3.11(b), (i) to the Company's Knowledge, each of the Company and the Company Subsidiaries has fulfilled and performed its obligations under each of the Company Authorizations in all material respects, (ii) no event has occurred or condition or state of facts exists which constitutes or, after notice or lapse of time or both, would constitute a breach or default under any such Company Authorization or which permits or, after notice or lapse of time or both, would permit revocation or termination of any such Company Authorization, or which might adversely affect the rights of the Company or the Subsidiaries, as the case may be, under any such Company Authorization; (iii) no notice of

cancellation or of any dispute concerning any Company Authorization has been received by, or is known to the Company; and (iv) each Company Authorization is valid, subsisting and in full force and effect, and to the Company's Knowledge, will continue to be in full force and effect immediately after the Closing, in each case without (x) the occurrence of any breach, default or forfeiture of rights thereunder, or (y) the consent, approval, or act of, or the making of any filing with, any Governmental Entity or Payment Authority, except for such breaches, revocations, terminations or invalidations, which alone or in the aggregate, are not material.

3.12 **Property.**

(a) Schedule 3.12(a) sets forth a list and description of all real property owned or leased by the Company and by each Company Subsidiary, and, for leased real property, the name of the lessor, the date of the lease and each amendment thereto. Each of the Company and each Company Subsidiary has good, valid, and marketable title in fee absolute to all of its owned real property, free and clear of all Encumbrances (other than Permitted Encumbrances), including any rights of way or easements running to the benefit of such owned real property. The Company has delivered to Purchaser true and complete copies of all deeds and other documents pertaining to such property. All real property leases listed in Schedule 3.12(a) are in good standing, are valid and effective in accordance with their respective terms, and there is not under any such lease any existing default or event of default (or event which with notice or lapse of time, or both, would constitute a default) by the Company or any Company Subsidiary or, to the Company's Knowledge, any party thereto. To the Company's Knowledge, all improvements on the real property owned by, leased to, or used by the Company or a Company Subsidiary (i) substantially conform to all applicable state and local Law, including zoning and building ordinances and health and safety ordinances, and such real property is zoned for the various purposes for which the real property and improvements thereon are presently being used, (ii) are in good repair (ordinary wear and tear excepted) and are suitable for the use presently being made of such improvements and (iii) subject to the Company's rapid growth, are adequate and sufficient for the Company's operation of its Business. Except as set forth on Schedule 3.12(a), to the Company's Knowledge, (w) all improvements on owned real property lie wholly within the boundaries of such property, are owned by the Company or a Company Subsidiary, and do not encroach upon the property of or otherwise conflict with the property rights of any other Person; (x) neither the Company nor a Company Subsidiary has received notice from any Governmental Entity or lessor requiring material work to be done or material improvements to be made upon any of the real property; (y) any and all rights and easements necessary for the Company and the Company Subsidiaries to conduct business as presently conducted on such real property are available to the Company and the Company Subsidiaries, and (z) no zoning or similar land use restrictions are presently in effect that would impair the operation of the Business as presently conducted or which would impair the use, occupancy and enjoyment of any of the Company's or any Company Subsidiary's owned real property, and all of the Company's or any Company Subsidiary's owned real property is in compliance with all applicable zoning, planning, building, fire, water, or other applicable Law, all orders of all Governmental Entities having jurisdiction thereof, and with all recorded restrictions, covenants and conditions affecting any such real property. No claim or right of adverse possession by any Person has been claimed, threatened in writing to the Company or any Company Subsidiary with respect to the Company's or any Company Subsidiary's owned real property. No portion of the Company's or any Company Subsidiary's owned real property is subject to any order by

a Governmental Entity for sale, condemnation, expropriation or taking (by eminent domain or otherwise).

(b) Schedule 3.12(b) sets forth a list of all machinery, equipment, vehicles, furniture and other personal property owned by the Company or any Company Subsidiary having an original cost of $_____ or more per item of personal property (the "Equipment"). Except as set forth in Schedule 3.12(b), the Company and the Company Subsidiaries have good and valid title to all of their owned assets and properties free and clear of all Encumbrances, except for Permitted Encumbrances.

(c) Schedule 3.12(c) contains a list of each lease or other agreement or right, whether written or oral, under which the Company or any Company Subsidiary is lessee of, or holds or operates, any machinery, equipment, vehicle or other tangible personal property owned by a third Person, except for any such lease, agreement or right that is terminable by the Company or any Company Subsidiary without penalty or payment on notice of 30 days or less, or which involves the payment by the Company or any Company Subsidiary of rentals of less than $_____ per year.

(d) Except as set forth in Schedule 3.12(d), the assets owned, leased or licensed by the Company and the Company Subsidiaries constitute all the assets and properties (other than assets and properties that are not individually in excess of $_____ or are not in the aggregate in excess of $_____) used in, or necessary for, the operation of the business of the Company and the Company Subsidiaries (including all books, records, computers and computer programs and data processing systems) and are in serviceable condition and are suitable for the uses for which intended (ordinary wear and tear excepted).

(e) Schedule 3.12(e) sets forth a description of all material services provided either by the Company or any Company Subsidiary which utilize subcontractors or consultants which are not terminable on 90 days notice.

3.13 **Intellectual Property and Technology.**

(a) Except as set forth in Schedule 3.13(a), the Company and each of the Company Subsidiaries either owns, free and clear of any Encumbrance other than Permitted Encumbrances, the entire right, title and interest in and to, or has the right to use, all Intellectual Property that is material to the conduct of the Business as currently conducted.

(b) Schedule 3.13(b)(i) lists all owned or exclusively licensed Company Intellectual Property that is material to the conduct of the Business as currently conducted. Schedule 3.13(b)(ii) lists all Company Intellectual Property that is licensed to the Company on a non-exclusive basis, excluding Software subject to shrink-wrap or click-wrap agreements, that is material to the conduct of the Business as currently conducted. Schedule 3.13(b)(iii) separately identifies all Software that is material to the conduct of the Business as currently conducted ("Company Software"), excluding Software subject to shrink-wrap or click-wrap agreements utilized in connection with providing products and services, software development tools and related documentation and internally generated information databases. As of the Closing Date, no fees are due or payable to maintain such registrations or applications for

registration of Company Intellectual Property owned by the Company or any of the Company Subsidiaries or for which the Company or any of the Company Subsidiaries has an obligation or duty to pay, except those due in the ordinary course and consistent with past practice.

(c) Except as set forth in Schedule 3.13(c), to the Company's Knowledge, there is no infringement, dilution or misappropriation of any Intellectual Property rights owned or exclusively licensed by the Company or any of the Company Subsidiaries and no unauthorized use, disclosure or misappropriation of any Technology owned by the Company or any of the Company Subsidiaries.

(d) Except as set forth in Schedule 3.13(d): (i) to the Company's Knowledge, the conduct of the Business of the Company and each Company Subsidiary as currently conducted does not infringe on, dilute, misappropriate or otherwise violate any Intellectual Property right of any Person; (ii) to the Company's Knowledge, the conduct of the Business of the Company and each Company Subsidiary as currently conducted does not misappropriate, improperly use or incorporate or otherwise violate any right in Technology of any Person; (iii) no claim of any infringement, dilution, misappropriation or other violation of any Intellectual Property right of any other Person has been Formally Asserted in respect of the operations of the Company's or any Company Subsidiary's business; (iv) no claim of any misappropriation, unauthorized use or disclosure or other violation of any right in Technology of any other Person has been Formally Asserted in respect of the operations of the Company's or any Company Subsidiary's business; (v) no claim of invalidity of any Company Intellectual Property has been Formally Asserted; (vi) no proceedings are pending or, to the Company's Knowledge, threatened which challenge the validity, ownership or use of any Company Intellectual Property; (vii) the Company and the Company Subsidiaries have not received Formal Assertions of, nor to the Company's Knowledge is there any valid basis for, a claim against the Company or a Company Subsidiary that the operations, activities, products, Software, equipment, machinery or processes of the Company or a Company Subsidiary infringe on, misappropriate, improperly use or disclose or otherwise violate any right in the Intellectual Property of any other Person. As used herein the term "Formally Asserted" shall mean the receipt of any written communication that reasonably provides notice of a claim.

(e) The Company and the Company Subsidiaries have taken reasonable and appropriate steps to protect and preserve the confidentiality of all Intellectual Property owned by the Company or any of the Company Subsidiaries not otherwise protected by patents, patent applications subject to publication or registered copyrights. Except as set forth in Schedule 3.13(e), each employee, agent or contractor of the Company and Company Subsidiaries who creates Intellectual Property has executed a proprietary information and confidentiality agreement and assignment substantially in the Company's standard forms, except where the failure of which would not reasonably be expected to have a material adverse effect on the Company or any Company Subsidiary, or has assigned his/her rights in such Intellectual Property to the Company by operation of law.

(f) Except as set forth in Schedule 3.13(f), the consummation of the transactions contemplated by this Agreement will not (i) alter, encumber, impair or extinguish any Company Intellectual Property; (ii) impair the ability of Purchaser to develop, use, sell, license, otherwise exploit or dispose of, or to bring any Action for violation of, any Intellectual

Property owned by the Company or the Company Subsidiaries; or (iii) infringe, misappropriate, dilute or otherwise violate the Intellectual Property rights of any Person that would not be infringed, misappropriated, diluted or otherwise violated, but for the consummation thereof.

(g) Except as set forth on Schedule 3.13(g), the Software purported to be owned by, or exclusively licensed to, the Company or any Company Subsidiary does not include and has not in the past included any "open source" software or any derivative work thereof. The Company periodically audits its major systems and principal development projects using code-scanning systems designed to detect "open source" software. For purposes of this Agreement, "open source" software means any software (which is considered to include, without limitation, programming, libraries, utilities, tools or data sets) that is licensed or provided, in whole or in part, pursuant to a license or terms of use that allows users to run, copy, distribute, study, change and improve the software without any obligation of the user to pay fees or royalties, and that is subject to any restriction requiring that (i) the user may not sublicense, resell or distribute the same software or any derivate work thereof under different terms of use, (ii) the user may not charge license fees for the sublicense, resale or distribution thereof, (iii) the user must release source code to any third party to whom such software or any derivative work thereof is distributed, (iv) the user may not claim copyright or other intellectual property rights in any derivative work thereof, or (v) the user is prohibited from discriminating by restricting the persons or purposes for which the software is used.

3.14 **Environmental Matters**. Except as set forth in Schedule 3.14: (i) the operations of the Company and each Company Subsidiary comply with applicable Environmental Laws in all material respects; (ii) each of the Company and each Company Subsidiary has obtained all environmental, health and safety Company Authorizations necessary for the operation of its business, and all such Company Authorizations are in full force and effect and the Company and each Company Subsidiary is in compliance with all terms and conditions of such authorizations; (iii) to the Company's Knowledge, neither the Company nor any of the present Company Property or operations, or the past Company Property or operations, is subject to any on-going investigation by, order from or agreement with any Person (including without limitation any prior owner or operator of Company Property) respecting (a) any Environmental Law, (b) any Remedial Action or (c) any claim of Losses and Expenses arising from the Release or threatened Release of a Contaminant into the environment; (iv) the Company or a Company Subsidiary is not subject to any judicial or administrative proceeding, order, judgment, decree or settlement alleging or addressing a violation of or liability under any Environmental Law; (v) the Company or a Company Subsidiary has not: (a) reported a Release of a hazardous substance pursuant to Section 103(a) of CERCLA, or any state equivalent; (b) filed a notice pursuant to Section 103(c) of CERCLA; (c) filed notice pursuant to Section 3010 of RCRA, indicating the generation of any hazardous waste, as that term is defined under 40 CFR Part 261 or any state equivalent; or (d) filed any notice under any applicable Environmental Law reporting a substantial violation of any applicable Environmental Law; (vi) to the Company's Knowledge, there is not now nor has there ever been, on or in any Company Property: (a) any treatment, recycling, storage or disposal of any hazardous waste, as that term is defined under 40 CFR Part 261 or any state equivalent, that requires or required a permit or license from any Governmental Entity pursuant to Section 3005 of RCRA; or (b) any underground storage tank or surface impoundment or landfill or waste pile; (vii) to the Company's Knowledge, there is not now on or in any Company Property any polychlorinated biphenyls (PCBs) used in pigments, hydraulic oils, electrical transformers or

other equipment; (viii) the Company or a Company Subsidiary has not received any written communication to the effect that it is or may be liable to any Person as a result of the Release or threatened Release of a Contaminant; (ix) to the Company's Knowledge, no Environmental Encumbrance has attached to any Company Property; and (x) to the Company's Knowledge, any asbestos-containing material which is on or part of any Company Property is in good repair according to the current standards and practices governing such material, and its presence or condition does not violate any currently applicable Environmental Law.

3.15 **Taxes.**

(a) Except as set forth in Schedule 3.15(a), (i) all Tax Returns required to be filed by or on behalf of the Company or any Company Subsidiary have been duly filed on a timely basis and such Tax Returns are complete and correct in all material respects; (ii) such Tax Returns disclose all Taxes required to be paid by the Company and each Company Subsidiary for the periods covered thereby and all Taxes shown to be due on such Tax Returns have been timely paid or are being contested in good faith; (iii) all Taxes (whether or not shown on any Tax Return) owed by the Company or any Company Subsidiary have been timely paid or are being contested in good faith; (iv) the Company and each Company Subsidiary have withheld and paid over all Taxes required to have been withheld and paid over to the appropriate governmental authority, and complied with all information reporting and backup withholding in connection with amounts paid or owing to any employee, creditor, independent contractor, or other third party; and (v) there are no liens on any of the assets of the Company or any Company Subsidiary with respect to Taxes, other than liens for Taxes not yet due and payable or for Taxes that the Company or any Company Subsidiary is contesting in good faith through appropriate proceedings.

(b) Except as set forth on Schedule 3.7, the Company's audited Financial Statements properly accrue in accordance with GAAP all liabilities for unpaid Taxes for all periods through the date of such audited Financial Statements. No liability for Taxes of the Company, Company Group or any Company Subsidiary has been incurred (or prior to and including the Closing will be incurred) since the Balance Sheet Date other than in the ordinary course of business.

(c) Except as set forth in Schedule 3.15(c), (i) to the Company's Knowledge, no audit, action, suit, investigation, claim or assessment of the Taxes or Tax Returns of or including the Company or any Company Subsidiary by a government or taxing authority is in process, proposed or threatened; (ii) no deficiencies have been asserted in writing with respect to Taxes of the Company or any of the Company Subsidiaries, and the Company or any Company Subsidiary has not received notice in writing that it has not filed a Tax Return or paid Taxes required to be filed or paid; (iii) no waiver or extension of any statute of limitations is in effect with respect to Taxes or Tax Returns of the Company or any Company Subsidiary; (iv) no claim has ever been made by a Taxing authority in a jurisdiction where the Company or any Company Subsidiary has never paid Taxes or filed Tax Returns asserting that the Company or any Company Subsidiary is or may be subject to Taxes assessed by such jurisdiction; (v) there are no Tax rulings, request for rulings, or closing agreements relating to the Company or any Company Subsidiary which could affect the Company's or any Company Subsidiary's liability for Taxes for any period for which the applicable statute of limitations has not expired; and (vi)

as a result of any "closing agreement" (as described in Section 7121 of the Code or any corresponding provision of state or local Tax law), none of the Company or any Company Subsidiary will be required to include any item of income in, or exclude any item of deduction from, any taxable period ending after the Closing Date.

(d) The Company and the Company Subsidiaries are not (nor have they ever been) parties to any tax sharing agreement, except for standard indemnities in contracts related to the ordinary course purchase or sale of goods or services by the Company or any Company Subsidiary. Except as set forth on Schedule 3.15(d), neither the Company nor any Company Subsidiary has been a member of an affiliated, consolidated, combined or unitary group for any Tax purposes (other than a group of which the Company was the common parent) since the date it was formed or acquired by the Company.

(e) (i) The Company is not, nor has it been, a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code; (ii) neither the Company nor any Company Subsidiary is a "consenting corporation" under Section 341(f) of the Code; (iii) neither the Company nor any Company Subsidiary has agreed to, nor is it required to make any adjustment under Code Section 481(a) or include any adjustment under Section 481(c) of the Code (or any corresponding provision of state, local or other Tax law) in taxable income for any Tax period ending after the Closing Date by reason of, a change in accounting method; (iv) neither the Company nor any Company Subsidiary has been a "distributing corporation" or a "controlled corporation" in any transaction occurring during the two-year period ending on the date of this Agreement that was intended to qualify under Section 355 of the Code (or any similar provision of state or local law); (v) neither the Company nor any Company Subsidiary has any deferred items with respect to intercompany transactions within the meaning of Treas. Reg. § 1.1502-13 and no Company Subsidiary has an excess loss account within the meaning of Treas. Reg. § 1.1502-19; and (vi) neither the Company nor any Company Subsidiary has engaged in a "reportable transaction" within the meaning of Section 6707A(c) of the Code.

(f) With respect to each taxable period during which the Company or a Company Subsidiary filed federal or state Tax Returns as an "S corporation" or a "qualified subchapter S subsidiary" within the meaning of Section 1361 of the Code or comparable provision of state law, such entity made a valid election to be classified under such tax status and such election remained effective at all times during such taxable period.

3.16 **Employee Benefit Plans.**

(a) Schedule 3.16(a) lists, with respect to the Company, each Company Subsidiary, including any non-U.S. Company Subsidiary, and any trade or business (whether or not incorporated) which is treated as a single employer with the Company or any Company Subsidiary (an "ERISA Affiliate") within the meaning of Section 414(b), (c), (m) or (o) of the Code, (i) all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) and all comparable plans of non-US Subsidiaries not subject to ERISA, (ii) each loan to a non-officer employee, loans to officers and directors and any stock option, stock purchase, phantom stock, stock appreciation right, supplemental retirement, severance, sabbatical, medical, dental, vision care, disability,

employee relocation, cafeteria benefit (Code Section 125) or dependent care (Code Section 129), life insurance or accident insurance plans, automobile or transportation allowances programs or subsidies, tuition and educational programs or subsidies and all similar plans, programs or arrangements, (iii) all contracts and agreements relating to employment or any leased employee, independent contractor, consultant or agency arrangement and all severance or change in control agreements, with any of the directors, officers, employees or independent contractors of the Company or a Company Subsidiary, (iv) all bonus, pension, profit sharing, savings, deferred compensation or incentive plans, programs or arrangements, (v) other fringe or employee benefit plans, programs or arrangements, and (vi) any employment, independent contractor or executive compensation or severance agreements, written or otherwise, to which any unsatisfied obligations of the Company or any Company Subsidiary or any ERISA Affiliate remain for the benefit of, or relating to, any current or former employee, leased employee, independent contractor, consultant, agent or director of the Company, any Company Subsidiary or any ERISA Affiliate of either (together, the "Company Employee Plans"). For the avoidance of doubt, all arrangements described in the foregoing shall be Company Employee Plans without regard to whether they are maintained by a U.S. or a non-U.S. Company Subsidiary.

(b) Except as set forth on Schedule 3.16(b), the Company has made available to Purchaser a copy of each of the Company Employee Plans and related plan documents (including trust documents, insurance policies or contracts, employee booklets, summary plan descriptions and other authorizing documents and any material employee communications relating thereto) and has, with respect to each Company Employee Plan which is subject to ERISA reporting requirements, made available copies of the Form 5500 reports filed for the last 3 plan years. The Company has made available to Purchaser copies of all nondiscrimination tests performed for the two most recent plan years to which such tests apply for all applicable plans. The Company has provided Purchaser all contracts and other service agreements with any third party in connection with the Company Employee Plan. Each Company Employee Plan intended to be qualified under Section 401(a) of the Code (i) has, since the inception, obtained and maintained from the Internal Revenue Service a favorable opinion or determination letter as to its qualified status under the Code; (ii) relies on an opinion letter issued to a prototype plan sponsor with respect to a standardized plan adopted by the Company in accordance with the requirements for such reliance; or (iii) has applied to the Internal Revenue Service ("IRS") for such a determination letter (or has time remaining to apply for such a determination letter) prior to the expiration of the requisite period under applicable Treasury Regulations or IRS pronouncements in which to apply for such determination letter and to make any amendments necessary to obtain a favorable determination with respect to all periods since the date of adoption of such Company Employee Plan. The Company has also furnished Purchaser with the most recent IRS opinion or determination letter issued with respect to each such Company Employee Plan. As of the date hereof, no event has occurred since the date of the most recent determination letter that would adversely affect the qualified status of such Company Employee Plan. The Company has made available any other correspondence or materials submitted to or received from the IRS, U.S. Department of Labor or any other federal or state governmental agency.

(c) Except as set forth in Schedule 3.16(c), (i) none of the Company Employee Plans promises or provides retiree medical or other retiree welfare or life insurance benefits to any person (except as required under the Consolidated Omnibus Budget

Reconciliation Act of 1985 ("COBRA") or similar applicable state law); (ii) there have been no "prohibited transactions," as such term is defined in Section 406 of ERISA and Section 4975 of the Code, and not exempt under Section 408 of ERISA or Section 4975 of the Code, with respect to any Company Employee Plan, and neither the Company nor any Company Subsidiary has liability under Section 502(i) or Section 502(l) of ERISA; (iii) each Company Employee Plan has been administered in accordance with its terms and in compliance in all material respects with the requirements prescribed by any and all statutes, rules and regulations (including ERISA and the Code), there has been no notice issued by any governmental authority questioning or challenging such compliance, and, in the case of each Company Employee Plan intended to be tax-qualified, no circumstance exists which might cause such Plan to cease being so qualified; (iv) neither the Company nor any Company Subsidiary or ERISA Affiliate is subject to any liability or penalty under Sections 4976 through 4980D of the Code or Title I of ERISA with respect to any of the Company Employee Plans; (v) all contributions required to be made by the Company or any Company Subsidiary or ERISA Affiliate to any Company Employee Plan have been made on or before their due dates and a reasonable amount has been accrued for contributions to each Company Employee Plan for the current year; (vi) no Company Employee Plan, and no employee benefit plan maintained by any entity which has ever been an ERISA Affiliate, is or has ever been subject to Title IV of ERISA or Section 412 of the Code; (vii) no Company Employee Plan providing medical or health benefits is self-insured; (viii) no compensation paid or payable to any employee of the Company or any Company Subsidiary has been, or will be, in connection with the transactions contemplated by this Agreement, non-deductible by reason of application of Section 162(m) or 280G of the Code and (ix) the Company and each of the Company Subsidiaries are in compliance in all material respects with all currently applicable Laws and regulations respecting the Company Employee Plans, as well as with all Company Employee Plan documents, terms and conditions and Company obligations thereunder, and the Company and each of the Company Subsidiaries has complied with all obligations under the Company Employee Plans and all financial obligations have been reflected on the Financial Statements and books and records of the Company and each of the Company Subsidiaries and no event has occurred that would reasonably be expected to result in a Company Material Adverse Effect. With respect to each Company Employee Plan subject to ERISA as either an employee pension plan within the meaning of Section 3(2) of ERISA or an employee welfare benefit plan within the meaning of Section 3(1) of ERISA, the Company has prepared in good faith and timely filed all requisite governmental reports (which were true and correct as of the date filed) and has properly and timely filed and distributed or posted all notices and reports to employees required to be filed, distributed or posted with respect to each such Company Employee Plan. No suit, administrative proceeding, action or other litigation has been brought, or, to the Company's Knowledge, is threatened, against or with respect to any such Company Employee Plan, including any audit or inquiry by the IRS or United States Department of Labor or other governmental authority. Neither the Company nor any Company Subsidiary or ERISA Affiliate nor their respective directors, officers, employees, or other fiduciaries (as defined in Section 3(21) of ERISA) has any liability for the failure to comply with ERISA or the Code for any action or failure to act in connection with the administration of or investment of assets of any Company Employee Plan. Neither the Company nor any Company Subsidiary or ERISA Affiliate is a party to, or has made or is obligated to make any contribution to or has otherwise incurred any current or future obligation under, any (1) "multiemployer plan" as defined in

Section 3(37) of ERISA, (2) "multiple employer welfare arrangement" as defined in Section 3(40) of ERISA, (3) "multiple employer plan" as described in Section 413(c) of the Code, or (4) "voluntary employees' beneficiary association" within the meaning of Section 501(c)(9) of the Code.

(d) Except as set forth in Schedule 3.16(d), with respect to each Company Employee Plan, the Company and each of its U.S. Company Subsidiaries have complied in all material respects with (i) the applicable health care continuation and notice provisions of COBRA and the regulations thereunder or any similar applicable state law, (ii) the applicable requirements of the Health Insurance Portability Amendments Act and the regulations thereunder and (iii) the applicable requirements of the Family Medical Leave Act of 1993 and the regulations thereunder or any similar applicable state law.

(e) There has been no amendment to, written interpretation or announcement (whether or not written) by the Company, any Company Subsidiary or other ERISA Affiliate relating to, or change in participation or coverage under, any Company Employee Plan which would increase the expense of maintaining such plan above the level of expense incurred with respect to that Company Employee Plan for the most recent fiscal year included in the Financial Statements, except as otherwise required under applicable law.

(f) Except as set forth in Schedule 3.16(f), neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will (i) result in a material payment (including, without limitation, severance, unemployment compensation, golden parachute or otherwise) becoming due from the Company, a Company Subsidiary or an ERISA Affiliate under any Company Employee Plan, (ii) materially increase any benefit otherwise payable under any such Company Employee Plan, or (iii) accelerate the time of payment or vesting, or increase the amount of, any compensation due to any individual under any such Company Employee Plan.

(g) Except as set forth on Schedule 3.16(g), neither the Company, any Company Subsidiary nor any ERISA Affiliate has issued a stock option or stock appreciation right or other equity or equity based right under any Company Employee Plan or otherwise.

(h) Any Company Employee Plan (or portion of such Company Employee Plan) that constitutes a nonqualified deferred compensation plan (within the meaning of Section 409A of the Code) is listed on Schedule 3.16(h) (each a "409A Plan"). Each 409A Plan has been operated in reasonable good faith compliance with Section 409A of the Code, IRS Notice 2005-1, and Proposed Regulation Sections 1.409A-1 through 1.409A-6 or Final Regulation Sections 1.409A-1 through 1.409A-6 (to the extent applicable), and any other applicable guidance issued under Section 409A of the Code so as to avoid the imposition of taxation under Code Section 409A(a)(1).

3.17 **Certain Agreements Affected by the Purchase of the Common Stock by Purchaser**. Neither the Company nor any Company Subsidiary has entered into any compensatory agreements with respect to the performance of services which payment or acceleration of the vesting of any options or other benefits, as a direct or indirect result of the transactions contemplated by this Agreement, thereunder would result in a nondeductible

expense to the Company or to such Company Subsidiary pursuant to Section 280G of the Code. Except as contemplated by this Agreement, including the payments under the Company Bonus Pool Plan and the Guaranteed Bonus Plan, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in any payment (including, without limitation, severance, unemployment compensation, golden parachute, bonus or otherwise) becoming due to any director, in such capacity, or employee of the Company or any of the Company Subsidiaries, (ii) increase the amount of any benefits otherwise payable by the Company or any of the Company Subsidiaries or (iii) result in the acceleration of the time of payment or vesting of any such benefits.

3.18 **Employee Matters**. The Company and each of the Company Subsidiaries are in compliance in all material respects with all currently applicable laws and regulations respecting employment, discrimination in employment, statutory and mandatory benefits, recruiting, discipline and promoting terms and conditions of employment, wages and working, hours, occupational safety and health and labor and employment practices, reporting, withholding and remittance of all individual income and social insurance taxes and payments, and are not engaged in any unfair labor practice. There are no pending claims against the Company or any of the Company Subsidiaries under any workers compensation plan or policy or for long term disability. Except as set forth in Schedule 3.18, there are no actions, lawsuits, arbitrations, administrative claims or other adversarial proceedings pending or, to the Company's Knowledge, threatened, between the Company or any of the Company Subsidiaries and any of their respective employees, former employees, independent contractors, consultants, or commission salespeople. Neither the Company nor any of the Company Subsidiaries is a party to any collective bargaining agreement or other labor unions contract nor does the Company or any of the Company Subsidiaries know of any activities or proceedings of any labor union or to organize any such employees. The Company is in compliance with the requirements of the Workers Adjustment and Retraining Notification Act ("WARN") and has no liabilities pursuant to WARN. The Company has delivered to the Purchaser a complete and accurate list of all employees or commission salespersons of the Company as of the date hereof and their annual compensation for the 2007 calendar year. Schedule 3.18 contains (i) a list of all employees or commission salespersons of the Company as of the date hereof (ii) a list of all employees or commission salespersons of the Company who are currently on paid or unpaid leaves of absence, disability leaves, workers' compensation leaves, military leaves, or other absences from active work status, (iii) a list of all present or former employees or commission salespersons of the Company paid in excess of $_____ during calendar year 2007 who have (a) terminated or given notice of their intention to terminate their relationship with the Company or (b) received notice from the Company of the Company's intent to terminate their employment, since December 31, 2007; and (iv) a list of any increase, effective after December 31, 2007, in the rate of compensation of any employees or commission salespersons if such increase exceeds _____% of the previous annual salary of such employee or commission salesperson. Before the Closing Date, the Company shall make available to Purchaser copies of all contracts of employment, offer letters and currently applicable terms of employment with respect to all employees of the Company and each Company Subsidiary.

3.19 **Material Contracts; Customers and Suppliers.**

(a) Schedule 3.19(a) lists the following written contracts and agreements to which the Company or any Company Subsidiary is a party (such contracts and agreements being referred to herein collectively as the "Material Contracts"):

(i) any agreement with a client or vendor required to be listed on Schedule 3.19(d);

(ii) any agreement or arrangement pursuant to which the Company or any Company Subsidiary is required to make aggregate payments in excess of $_____ within any 12-month period;

(iii) any capital or operating leases or conditional sales agreements relating to vehicles or equipment obligating the Company or the Company Subsidiaries to pay in excess of $_____ per annum;

(iv) insurance policies;

(v) any agreements or licenses related to Company Intellectual Property listed in Schedule 3.13(b)(i) and Schedule 3.13(b)(ii);

(vi) any employment or consulting agreements that include aggregate payments in any calendar year in excess of $_____ which are not terminable upon 90 days' notice or any collective bargaining or separation agreement, union or labor agreements or arrangements;

(vii) any settlement, consent or similar agreement, the performance of which will involve monitoring or reporting obligations to any Governmental Entity;

(viii) any agreement evidencing, securing, guarantying or otherwise relating to Indebtedness for which the Company or any Company Subsidiary has any liability in excess of $_____;

(ix) to Company's Knowledge, any agreement, other than an employment related agreement, with or for the benefit of any Stockholder, director or other employee of the Company or any Company Subsidiary or any of their respective Affiliates or family members;

(x) any contract not made in the ordinary course of business that involves payments to or by the Company or any Company Subsidiary in excess of $_____ in any 12-month period;

(xi) any contract that obligates the Company or any Company Subsidiary containing non-competition or non-solicitation provisions limiting the ability of the Company or any Company Subsidiary to conduct its business anywhere in the world;

(xii) any (A) contract containing exclusivity or most favored nation provisions that obligates the Company or any Company Subsidiary; or (B) contract containing change of control provisions which would be triggered under the terms of such contracts as a result of the consummation of the Merger, excluding for purposes of this clause (B) ordinary course contracts that are not individually or in the aggregate material to the Business; or

(xiii) any royalty or advertising agreement generating revenues or requiring payment in excess of $_____ annually, other than pass through payments and marketing allowances or advertising cooperative payments paid to retailers in connection with the sale of the products of the Company or any Company Subsidiary which do not result in an expense to the Company or a Company Subsidiary.

(b) Except as set forth in Schedule 3.19(b), each Material Contract constitutes a valid and binding obligation of the Company or the Company Subsidiaries, as the case may be, and is in full force and effect and (except for those Material Contracts which by their terms will expire prior to the Closing Date or are otherwise terminated prior to the Closing Date in accordance with the provisions hereof) will continue in full force and effect after the Closing, in each case without breaching the terms thereof or resulting in the forfeiture or impairment of any rights thereunder and without the consent, approval or act of, or the making of any filing with, any other party. Except as set forth in Schedule 3.19(b), neither the Company nor any Company Subsidiary has received any written or oral notice of breach or default under any Material Contract and no material default by the Company or the Company Subsidiaries has occurred thereunder and to the Company's Knowledge, no event, occurrence or condition exists which, with the lapse of time, the giving of notice, or both would become a material default thereunder or basis for termination thereunder which have not been cured or waived. The Company has furnished Purchaser with true and complete copies of all such agreements together with all amendments, waivers or other changes thereto.

(c) Except as set forth in Schedule 3.19(c), none of the Company or the Company Subsidiaries are providing services to any Governmental Entity and none of the Company or the Company Subsidiaries have received any notice that any client of the Company or any Company Subsidiary is providing the Company's or any Company Subsidiary's products or services to any Governmental Entity.

(d) Schedule 3.19(d) sets forth a list of names of the 30 largest customers of the Business (who maintained accounts with the Company as of the Balance Sheet Date) and the 30 largest vendors (measured in each case by dollar volume of purchases or sales during the 2007 calendar year) of the Business and the dollar amount of purchases or sales which each such customer or vendor represented during the 2007 calendar year. Except as set forth in Schedule 3.19(d), there exists no actual or, to the Company's Knowledge, threatened termination, cancellation or limitation of, or any material modification or change in, the business relationship of the Company with any customer or group of customers listed in Schedule 3.19(d).

3.20 **Interested Party Transactions.**

(a) Except as disclosed in Schedule 3.20(a), none of the Company or any of the Company Subsidiaries is a party to any contract, agreement or arrangement (written or oral) with Smith or any of Smith's Affiliates or family members.

(b) Except as disclosed in Schedule 3.20(b), neither Smith, any other director or executive officer of the Company or any Company Subsidiary, any of such individuals' respective Affiliates or family members, or, to the Company's Knowledge, any of the Stockholders has any interest in any property (whether real, personal or mixed and whether tangible or intangible) used by the Company or any Company Subsidiary.

(c) Except as set forth in Schedule 3.20(c), and except for employment related agreements, neither Smith or any other director or executive officer of the Company or any Company Subsidiary, nor to the Company's Knowledge, any such individuals' respective Affiliates or family members is now, or has been since January 1, 2007, (i) a party to any transaction, contract or arrangement (written or oral) with the Company or any Company Subsidiary, or (ii) the direct or indirect owner, of record or as a beneficial owner, of an equity interest or any financial or profit interest in any Person which is a present or potential competitor, supplier, lessor, or customer of the Company or any Company Subsidiary (other than non-affiliated holdings in publicly held companies).

3.21 **Insurance**. Schedule 3.21 lists all insurance and bonds maintained by the Company or any Company Subsidiary. Except as set forth in Schedule 3.21, there is no material claim pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been paid and, to the Company's Knowledge, the Company and the Company Subsidiaries are otherwise in compliance with the terms of such policies and bonds. The Company has not received in writing any threatened termination of, or material premium increase with respect to, any of such policies or bonds.

3.22 **Compliance With Laws and Payment Authority Rules**.

(a) Except as set forth on Schedule 3.22, each of the Company and each of the Company Subsidiaries has complied in all material respects with, is not in violation of, and has not received any notices of violation, audit, or investigation with respect to, any Laws, Payment Authority Rules or orders with respect to the conduct of its business, or the ownership or operation of its business, except for such violations or failures that would not cause the Company or a Company Subsidiary to incur Losses in excess of $_____ in the aggregate, including: (i) any state, federal, local or other laws or regulations relating to telemarketing, including the Telemarketing and Consumer Fraud and Abuse Prevention Act; (ii) any state, federal, local or other laws or regulations relating to debt collection, including, without limitation, the Fair Debt Collection Practices Act; (iii) any state, federal, local or other laws related to money transfers, remittances, payments and licensing; (iv) the operating rules and regulations of the National Automated Clearing House Association; (v) the rules and regulations of the Board of Governors of the Federal Reserve System; (vi) any state, federal, local or other laws or regulations arising in connection with any Company or Company

Subsidiary product or service provided either directly by the Company or a Company Subsidiary or indirectly by any client of the Company or any Company Subsidiary pursuant to any contract with a Governmental Entity or Payment Authority (including pursuant to Governmental procurement laws, rules, regulations, any Payment Authority Rules and any other requirements set forth in any such contracts); (vii) any state, federal, local or other laws or regulations relating to anti-money laundering, anti-terrorism, including the Bank Secrecy Act; the Uniting and Strengthening America Act by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism; the Foreign Corrupt Practices Act of 1977, as amended; the Money Laundering Control Act of 1986; the Anti-Drug Abuse Act of 1988; the Annunzio-Wylie Anti-Money Laundering Act of 1992; the U.S. Intelligence Reform and Terrorism Prevention Act of 2004; the Communications Assistance for Law Enforcement Act and any statute, regulation or rule or requirement associated therewith; all material economic sanctions programs administered by the Office of Foreign Assets Control of the Department of the Treasury in effect since the respective commencement of operations of the Company and each Company Subsidiary; (viii) any state, federal, local or other laws or regulations relating to abandoned property and escheatment, dormancy fees and expiration dates, which is material to the Business, (ix) any state, federal, local or other laws or regulations relating to unfair and deceptive trade practices, and (x) the Communications Act of 1934, as amended, and the rules and regulations of the Federal Communications Commission and other related or similar foreign, federal or state Governmental Entities.

(b) Except as set forth on Schedule 3.22, the Company and each Company Subsidiary is in compliance in all material respects with the Gramm-Leach-Bliley Act, the Healthcare Insurance Portability and Accountability Act, EU Member States' laws promulgated in accordance with the European Data Protection Directive, other individual country laws governing the collection, processing, storage, and transmittal of personal information, and all other applicable data protection and privacy laws, regulations and guidelines, the failure of which could reasonably be expected to materially and adversely affect the Company or any Company Subsidiary. The Company and the Company Subsidiaries have established and maintained commercially reasonable safeguards against the destruction, loss, alteration of or unauthorized access to confidential information of its customers in the possession of its personnel, including policies for the disposal/destruction of any such confidential information that are commensurate with the sensitivity of the materials to be disposed. To the Company's Knowledge, the Company's and the Company Subsidiaries' information security procedures and tools meet or exceed in all material respects applicable information security standards, including those established by applicable U.S. and/or foreign governmental regulatory agencies, applicable Payment Authority Rules or regulations, the payment card industry security standards, and the written standards required by each customer.

(c) Except as disclosed on Schedule 3.22, neither Company nor any Company Subsidiary has conducted or initiated any internal investigations (other than internal audits or employee investigations or supervisory duties conducted in the ordinary course of business) or made any disclosure to any Governmental Entity with respect to any alleged act of material non-compliance arising under any applicable Laws.

3.23 **Complete Copies of Materials**. Except where prohibited by confidentiality agreements with third parties or applicable Law, the Company has delivered or made available

true and complete copies of each document (including, without limitation, the Company's minute books) which has been requested by Purchaser or its counsel in connection with their legal and accounting review of the Company and the Company Subsidiaries.

3.24 **Brokers' and Finders' Fees**. The Company has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or investment bankers' fees or any similar charges in connection with this Agreement or any transactions contemplated hereby (other than fees paid to BlackRock Investments, the Company's "Financial Advisor"). The Company has heretofore furnished to Purchaser a complete and correct copy of all agreements between the Company and the Financial Advisor pursuant to which such firm would be entitled to any payment relating to the purchase of the Common Stock.

3.25 **Accounts Receivable/Reserve Accounts, Inventory.**

(a) The Company has made available to Purchaser a list of all accounts receivable of the Company and each Company Subsidiary reflected on the 2007 Financial Statements ("Accounts Receivable") along with a range of days elapsed since invoice.

(b) All Accounts Receivable of the Company and the Company Subsidiaries arose in the ordinary course of business, are carried at values determined in accordance with GAAP consistently applied and have arisen from bona fide transactions by the Company or any Company Subsidiary. Except as provided in Schedule 3.25(b), to the Company's Knowledge, all Accounts Receivable in excess of $_____ are good and collectible in the ordinary course of business at the aggregate recorded amounts thereof, subject to reconciliation of billing disputes in the ordinary course of business and net of any applicable allowance for doubtful accounts reflected in the Financial Statements. Except as provided in Schedule 3.25(b), none of the Accounts Receivable is more than 90 days old.

(c) Except as set forth on Schedule 3.25(c), all of the inventories of the Company and each Company Subsidiary reflected in the 2007 Financial Statements and the Company's books and records on the date hereof were purchased, acquired or produced in the ordinary and regular course of business and in a manner consistent with the Company's regular inventory practices and are set forth on the Company's books and records in accordance with the practices and principles of the Company consistent with the method of treating said items in prior periods.

(d) Schedule 3.25(d) discloses each Person for whom the Company or any of the Company Subsidiaries is holding a deposit, reserve, escrow or similar account and the amount and location of such account, other than in the ordinary course of business (it is understood and acknowledged that the Company and the Company Subsidiaries regularly retain restricted cash from the sale of its stored value cards in the ordinary course of business and none of such accounts are listed on Schedule 3.25(d)).

3.26 **Exclusive Representations and Warranties**. The Company hereby acknowledges and agrees that, except as set forth in Article IV hereof, no representations or warranties have been made by Purchaser, FDC, Holdings, Mergerco or any of their respective

officers, directors or stockholders, or any agent, employee, representative or any Affiliate thereof relating to the business, operations or financial condition of Holdings or any of its Subsidiaries (including First Data Prepaid), and that in entering into the transactions contemplated by this Agreement, the Company (and through their approval of the Merger, the Stockholders) is not relying upon information, other than that contained in this Agreement and the results of the Company's own independent investigations. The Company (and through their approval of the Merger, the Stockholders) hereby confirms that it is not relying upon any representation or warranty contained in any business plan, presentation, investment memorandum or other offering documents which may have been distributed by or on behalf of Purchaser, FDC, Holdings or Mergerco, and that in entering into the transactions contemplated by this Agreement, the Company is not relying upon information contained in any such documents, and is relying solely on the information contained in this Agreement, and the results of its own independent investigation.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PURCHASER, FDC AND MERGERCO

Purchaser, FDC and Mergerco hereby, jointly and severally, represent and warrant to the Company as of the date hereof and the Stockholders other than the Dissenting Stockholders as of the Closing Date, as follows:

4.1 **Organization, Standing and Power**. Each of Purchaser, Holdings, FDC and Mergerco is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of organization and has the requisite corporate power and authority and all necessary governmental approvals to own, lease and operate its properties and to carry on its business as now being conducted, except where the failure to have such power, authority and governmental approvals would not, in the aggregate, have a Holdings Material Adverse Effect or a First Data Prepaid Material Adverse Effect. Each of the Purchaser, Holdings, FDC and Mergerco is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except for such failures to be so qualified or licensed and in good standing that would not, in the aggregate, have a Holdings Material Adverse Effect or a First Data Prepaid Material Adverse Effect.

4.2 **Authority**. Each of Purchaser, Holdings, FDC and Mergerco has all requisite corporate power and authority to enter into this Agreement and to perform its respective obligations hereunder and to consummate the Merger. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Purchaser, Holdings, FDC and Mergerco. This Agreement has been duly executed and delivered by Purchaser, Holdings, FDC and Mergerco, and assuming due authorization, execution and delivery by the Company, constitutes the valid and binding obligation of Purchaser, Holdings, FDC and Mergerco enforceable against each of them in accordance with its terms, subject to the laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief and equitable remedies.

4.3 **Capitalization, Merger Consideration**.

(a) **Capitalization of Holdings**. As of the Execution Date, the authorized capital stock of Holdings consists of 1,600,000,000 Holdings Shares, of which _____ are issued and outstanding and are held by the stockholders (or groups thereof) on Schedule 4.3. Except as set forth on Schedule 4.3, there are no existing options, warrants, calls, subscriptions, convertible securities, phantom equity or other rights, agreements or commitments of any kind that obligate Holdings or any of the Subsidiaries of Holdings to issue, transfer, sell, repurchase, redeem or otherwise acquire any shares of capital stock of Holdings.

(b) **Capitalization of FDC and Purchaser**. All of the outstanding capital stock of FDC is held by Holdings and all of the outstanding capital stock of Purchaser is held indirectly by FDC.

(c) **Capitalization of Mergerco**. The authorized capital stock of Mergerco consists of 10,000 shares of common stock, par value $0.01. As of the Execution Date, there are 100 shares of common stock of Mergerco outstanding. As of the Execution Date and the Effective Time, all of the issued and outstanding shares of capital stock of Mergerco are and will be directly owned by Purchaser. There are not as of the Execution Date and there will not be at the Effective Time any outstanding or authorized options, warrants, calls, rights, commitments or any other agreements requiring Mergerco to issue, transfer, sell, purchase, redeem or acquire any shares of capital stock.

(d) **Stock Consideration**. The Stock Consideration has been duly authorized for issuance by all requisite corporate action by Holdings, and when delivered as provided herein, will be validly issued and outstanding Holdings Shares, fully paid and non-assessable, and will not be subject to preemptive rights of any Person. Except as otherwise provided in this Agreement, there exist no circumstances that would operate to terminate, reduce, alter, or impair the obligation of Holdings to issue the Holdings Shares to Smith or that would constitute or give rise to (i) a right of set off by Holdings, FDC, Purchaser or Mergerco or (ii) a defense to the performance of Holdings' obligation to issue the Holdings Shares in accordance with the terms of this Agreement.

4.4 **No Conflict; Required Filings and Consents**.

(a) The execution and delivery of this Agreement by Purchaser, Holdings, FDC and Mergerco does not, the performance by each of Purchaser, Holdings, FDC and Mergerco of their respective obligations hereunder and the consummation of the transactions contemplated hereby will not, conflict with, or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit or a loss of rights under, or result in the creation or imposition of any Encumbrance upon any of the assets or properties of Purchaser, Holdings, FDC or Mergerco under: (i) any provision of the Articles or Certificate of Incorporation or Bylaws of Purchaser, Holdings, FDC or Mergerco, as amended, (ii) any material mortgage, indenture, lease, contract or other agreement or instrument, permit, concession, franchise, license, Order to which Purchaser, Holdings, FDC or Mergerco or any of

their respective assets or properties is subject or by which Purchaser, Holdings, FDC or Mergerco is bound or (iii) Law applicable to Purchaser, Holdings, FDC or Mergerco or any of their respective properties or assets, that would prevent, materially alter or delay the transaction contemplated in this Agreement or that could reasonably be expected to result in a Holdings Material Adverse Effect or a First Data Prepaid Material Adverse Effect.

(b) No consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other Governmental Entity, Payment Authority or other Person, is required by or with respect to Purchaser, Holdings, FDC or Mergerco in connection with the execution and delivery of this Agreement by Purchaser, or the performance by Purchaser, Holdings, FDC or Mergerco of their respective obligations hereunder or the consummation by Purchaser, Holdings, FDC or Mergerco of the transactions contemplated hereby, except for (i) such filings as may be required under the GBCC and HSR Act and such filings as may be required to be made jointly with Company under the Communications Act of 1934, as amended, and the rules and regulations of the Federal Communications Commission and other related or similar foreign, federal or state Governmental Entities, and (ii) such consents, authorizations, filings, approvals and registrations which, if not obtained or made, would not prevent, materially alter or delay any of the transactions contemplated by this Agreement, provided that, in giving the foregoing representation, Purchaser, Holdings, FDC and Mergerco have assumed that ITCFL is not controlled by the Company for purposes of state money transmitter laws.

4.5 **Certain Financial Statements and Information**. Each form, report, schedule and other document (together with all amendments thereof and supplements thereto) filed by FDC or Holdings with the United States Securities and Exchange Commission (the "SEC") since January 1, 2007 (as such documents have since the time of their filing been amended or supplemented, collectively the "SEC Documents"), as of their respective dates, (i) complied in all material respects with the requirements of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, as applicable, and (ii) did not 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 therein, in light of the circumstances under which they were made, not misleading. The financial statements of FDC and Holdings included in the SEC Documents (including the related notes and schedules thereto) complied as of their respective dates in all material respects with the then applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto and except with respect to unaudited statements as permitted by the SEC) and fairly present in all material respects the consolidated financial position of FDC and Holdings, as the case may be, and their respective Subsidiaries at the respective dates thereof and the consolidated results of their operations and cash flows for the respective periods then ended (subject, in the case, of unaudited statements, to GAAP exceptions permitted by the SEC). Except as disclosed in the SEC Documents filed prior to the date of this Agreement, since December 31, 2006, there has not been any change, event or development having, or that could be reasonably expected to have, individually or in the aggregate, a Holdings Material Adverse Effect or a First Data Prepaid Material Adverse Effect.

4.6 **First Data Prepaid**.

(a) **Financial Statements**. Schedule 4.6(a) includes a true and complete copy of the unaudited balance sheets and statements of operations of First Data Prepaid for the fiscal years December 31, 2006, and December 31, 2007 (the "First Data Prepaid Financial Statements"). Except as set forth on Schedule 4.6(a), the First Data Prepaid Financial Statements have been prepared in accordance with GAAP throughout the periods indicated and fairly present in all material respects the financial condition and results of operations of First Data Prepaid as of the dates, and for the periods, indicated therein.

(b) **Absence of Undisclosed Liabilities.** First Data Prepaid has no material obligations or liabilities of any nature (including unasserted claims, matured or unmatured, absolute, accrued, fixed, contingent, off balance sheet or otherwise) other than (i) those set forth on any Schedule hereto, (ii) those set forth or adequately provided for in the First Data Prepaid Financial Statements for the fiscal year ended December 31, 2007, (iii) those under contracts or agreements of the type required to be disclosed by First Data Prepaid and so disclosed or which because of the dollar amount or other qualifications are not required to be listed on such Schedule, and (iv) those incurred in the ordinary course of business since December 31, 2007 and consistent with past practice.

(c) **Absence of Certain Changes**. Since December 31, 2007, no event has occurred or condition exists, which individually or in the aggregate, has had or is reasonably expected to have a First Data Prepaid Material Adverse Effect. Since December 31, 2007, FDC has conducted First Data Prepaid only in the ordinary course and in conformity with past practice.

(d) **Restrictions on Business Activities**. There is no agreement, judgment, injunction, order or decree binding upon Holdings or any of its Subsidiaries, which has or could reasonably be expected to have the effect of prohibiting or materially impairing any current business practice of First Data Prepaid, or the overall conduct of First Data Prepaid, except for such prohibitions or impairments which would not reasonably be expected to have a First Data Prepaid Material Adverse Effect.

(e) **Permits; Products of First Data Prepaid**. First Data Prepaid is in possession of all material franchises, grants, authorizations, licenses (other than Intellectual Property licenses), permits, easements, variances, exceptions, consents, certificates, approvals, orders or other authorizations necessary for First Data Prepaid to own, lease and operate its properties or to carry on its business as it is now being conducted (the "First Data Prepaid Authorizations"), and no suspension or cancellation of any First Data Prepaid Authorization is pending or, to FDC's Knowledge, threatened, except where the failure to have such First Data Prepaid Authorizations would not reasonably be expected to have a First Data Prepaid Material Adverse Effect. To FDC's Knowledge, (i) First Data Prepaid has fulfilled and performed its obligations under each of the First Data Prepaid Authorizations in all material respects, and (ii) no event has occurred or condition or state of facts exists which constitutes or, after notice or lapse of time or both, would constitute a breach or default under any such First Data Prepaid Authorization or which permits or, after notice or lapse of time or both, would permit revocation or termination of any such First Data Prepaid Authorization, or which might adversely affect the rights of First Data Prepaid under any such First Data Prepaid Authorization; (iii) no notice of cancellation or of any dispute concerning any First Data

Prepaid Authorization has been received by, or is known to the Purchaser; and (iv) each First Data Prepaid Authorization is valid, subsisting and in full force and effect, and to FDC's Knowledge, will continue to be in full force and effect immediately after the Closing, in each case without (x) the occurrence of any breach, default or forfeiture of rights thereunder, or (y) the consent, approval, or act of, or the making of any filing with, any Governmental Entity or Payment Authority, except for such breaches, revocations, terminations or invalidations, which alone or in the aggregate, would not reasonably be expected to have a First Data Prepaid Material Adverse Effect.

(f) **Intellectual Property and Technology**.

(i) Except as set forth in Schedule 4.6(f)(i), First Data Prepaid either owns, free and clear of any Encumbrance, other than Permitted FDC Encumbrances, the entire right, title and interest in and to, or has the right to use, all Intellectual Property that is material to the conduct of the business of First Data Prepaid as currently conducted ("First Data Prepaid Intellectual Property").

(ii) Except as set forth in Schedule 4.6(f)(ii), to FDC's Knowledge, (a) there is no infringement, dilution or misappropriation of any Intellectual Property rights owned or exclusively licensed by First Data Prepaid, and (b) there is no actual unauthorized use, disclosure or misappropriation of any Technology owned by First Data Prepaid, except where the failure to list such incidences would not reasonably be expected to have a First Data Prepaid Material Adverse Effect.

(iii) Except as set forth in Schedule 4.6(f)(iii), to FDC's Knowledge: (a) the conduct of the business of First Data Prepaid as currently conducted does not infringe on, dilute, misappropriate or otherwise violate any Intellectual Property of any Person; (b) the conduct of the business of First Data Prepaid as currently conducted does not misappropriate, improperly use or incorporate or otherwise violate any right in Technology of any Person; (c) no claim of any infringement, dilution, misappropriation or other violation of any Intellectual Property of any other Person has been Formally Asserted in respect of the operations of First Data Prepaid's business; (d) no valid claim of any misappropriation, unauthorized use or disclosure or other violation of any right in Technology of any other Person has been Formally Asserted in respect of the operations of First Data Prepaid's business; (e) no valid claim of invalidity of any First Data Prepaid Intellectual Property has been Formally Asserted; (f) no proceedings are pending or, to FDC's Knowledge, threatened which challenge the validity, ownership or use of any First Data Prepaid Intellectual Property; (g) First Data Prepaid has not received Formal Assertions of, nor, is there any valid basis for, a valid claim against First Data Prepaid that the operations, activities, products, Software, equipment, machinery or processes owned by First Data Prepaid infringe on, misappropriate, improperly use or disclose or otherwise violate any right in the Intellectual Property of any other Person.

(iv) First Data Prepaid has taken reasonable and appropriate steps to protect and preserve the confidentiality of all Intellectual Property owned by First Data Prepaid not otherwise protected by patents, patent applications subject to publication or registered copyrights. Substantially all employees, agents or contractors of First Data Prepaid who create Intellectual Property have executed a proprietary information and confidentiality agreement and assignment substantially in First Data Prepaid's standard forms, except where the failure of which would not reasonably be expected to have a First Data Prepaid Material Adverse Effect, or have assigned their rights in such Intellectual Property or Technology to First Data Prepaid by operation of law.

(g) **Employee Matters**. First Data Prepaid is in compliance in all material respects with all currently applicable laws and regulations respecting employment, discrimination in employment, terms and conditions of employment, wages, hours and occupational safety and health and employment practices, and is not engaged in any unfair labor practice.

(h) **Compliance with Laws and Payment Authority Rules**. (1) First Data Prepaid has complied in all material respects with, is not in violation of, and has not received any notices of violation, audit, or investigation with respect to, any Laws, Payment Authority Rules or orders with respect to the conduct of its business, or the ownership or operation of its business, except for such violations or failures that would not cause First Data Prepaid to incur Losses in excess of $_____ in the aggregate, including: (i) any state, federal, local or other laws or regulations relating to telemarketing, including the Telemarketing and Consumer Fraud and Abuse Prevention Act; (ii) any state, federal, local or other laws or regulations relating to debt collection, including, without limitation, the Fair Debt Collection Practices Act; (iii) any state, federal, local or other laws related to money transfers, remittances, payments and licensing; (iv) the operating rules and regulations of the National Automated Clearing House Association; (v) the rules and regulations of the Board of Governors of the Federal Reserve System; (vi) any state, federal, local or other laws or regulations arising in connection with any First Data Prepaid product or service provided directly by First Data Prepaid pursuant to any contract with a Governmental Entity or Payment Authority (including pursuant to Governmental procurement laws, rules, regulations, any Payment Authority Rules and any other requirements set forth in any such contracts); (vii) any state, federal, local or other laws or regulations relating to anti-money laundering, anti-terrorism, including the Bank Secrecy Act; the Uniting and Strengthening America Act by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism; the Foreign Corrupt Practices Act of 1977, as amended; the Money Laundering Control Act of 1986; the Anti-Drug Abuse Act of 1988; the Annunzio-Wylie Anti-Money Laundering Act of 1992; the U.S. Intelligence Reform and Terrorism Prevention Act of 2004; to FDC's Knowledge, all material economic sanctions programs administered by the Office of Foreign Assets Control of the Department of the Treasury in effect since the respective commencement of operations of First Data Prepaid; (viii) any state, federal, local or other laws or regulations relating to abandoned property and escheatment, including dormancy fees and expiration dates, which is material to First Data Prepaid, and (ix) any state, federal, local or other laws or regulations relating to unfair and deceptive trade practices.

(2) To FDC's Knowledge, First Data Prepaid is in compliance with the Gramm-Leach-Bliley Act, the Healthcare Insurance Portability and Accountability Act, EU Member States' laws promulgated in accordance with the European Data Protection Directive, other individual country laws governing the collection, processing, storage, and transmittal of personal information, and all other applicable data protection and privacy laws, regulations and guidelines, the failure of which could reasonably be expected to have a material and adverse effect on First Data Prepaid, and First Data Prepaid has established and maintained commercially reasonable safeguards against the destruction, loss, alteration of or unauthorized access to confidential information of its customers in the possession of its personnel, including policies for the disposal/destruction of any such confidential information that are commensurate with the sensitivity of the materials to be disposed. To FDC's Knowledge, First Data Prepaid's information security procedures and tools meet or exceed in all material respects applicable information security standards, including those established by applicable U.S. and/or foreign governmental regulatory agencies, applicable Payment Authority Rules or regulations, the payment card industry security standards, and the written standards required by each customer.

(3) First Data Prepaid has not conducted or initiated any internal investigations (other than internal audits or employee investigations conducted in the ordinary course of business) or made any disclosure to any Governmental Entity with respect to any alleged act of material non-compliance arising under any applicable Laws which are material to the business and operations of First Data Prepaid.

4.7 **Litigation**. There is no judgment, decree or order against Purchaser, Holdings, FDC or Mergerco or any of their Subsidiaries or, to FDC's Knowledge, any of their respective directors or officers (in their capacities as such) that, individually or in the aggregate, could prevent, enjoin, or materially alter or delay any of the transactions contemplated by this Agreement. Except as set forth in Schedule 4.7, there is no Action pending before any agency, court or tribunal, foreign or domestic, or, to FDC's Knowledge, threatened against First Data Prepaid which involves an amount in excess of $_____.

4.8 **Actions**. There is no Action pending or, to FDC's Knowledge, threatened, against Purchaser, Holdings, FDC or Mergerco which questions the legality or propriety of the transactions contemplated by this Agreement.

4.9 **Brokers' and Finders' Fees**. Purchaser, Holdings, FDC and Mergerco have not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or investment bankers' fees or any similar charges in connection with this Agreement or any transactions contemplated hereby.

4.10 **Available Funds to Consummate the Merger**. The Purchaser has adequate cash available and/or has the ability to borrow such amount of additional funds to enable it to pay the full amount of the cash portion of the Merger Consideration when such payments are due.

4.11 **Exclusive Representations and Warranties**. Purchaser, FDC and Mergerco hereby acknowledge and agree that, except as set forth in Article III hereof, no representations or warranties have been made to Purchaser, FDC, Holdings and Mergerco by the Company or any Company Subsidiary or any of their respective officers, directors or stockholders, or any agent,

employee, representative or any Affiliate thereof relating to the business, operations or financial condition of the Company or any Company Subsidiary, and that in entering into the transactions contemplated by this Agreement, none of the Purchaser, FDC, Holdings and Mergerco is relying upon information, other than that contained in this Agreement and the results of such Parties' own independent investigations. Each of the Purchaser, FDC and Mergerco hereby confirm that Purchaser and its Affiliates are not relying upon any representation or warranty contained in any business plan, presentation, investment memorandum or other offering documents which may have been distributed by or on behalf of the Company, and that in entering into the transactions contemplated by this Agreement, none of the Purchaser, FDC, Holdings and Mergerco is relying upon information contained in any such documents, and is relying solely on the information contained in this Agreement, and the results of such Parties' own independent investigations.

ARTICLE V

FDC GUARANTY

5.1 **Unconditional Guaranty**. FDC hereby unconditionally and irrevocably guarantees (such guarantee to be referred to herein as the "Guaranty") to the Company and each of the Stockholders, other than the Dissenting Stockholders, as a primary obligor and not merely as a surety, all of the Purchaser's payment and performance obligations under the terms and conditions of this Agreement (including, without limitation, the obligations to pay the Merger Consideration, or any portion thereof, in full when due), however such payment and performance obligations may be amended, modified or supplemented from time to time (collectively, the "Purchaser's Obligations"). FDC hereby agrees that its obligations under this Article V shall be absolute and unconditional and other than as specifically set forth in this Agreement, shall not be subject to offset on account of any claim that it or its Affiliates may have against the Company or any Stockholder.

5.2 **Obligations Not Waived**. To the fullest extent permitted by applicable law, FDC hereby unconditionally and irrevocably (i) waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Purchaser, any right to receive notice of any change, amendment, modification or supplementation to the Agreement, any right to require demand for payment or a proceeding first against the Purchaser, protest, notice and all demands whatsoever, all rights to subrogation or to demand any payment from the Purchaser until the indefeasible payment in full of all the Purchaser's Obligations, and (ii) covenants that its obligations under this Article V will not be discharged except by payment in full of the Purchaser's Obligations. To the fullest extent permitted by applicable law, FDC's obligations under this Article V shall not be affected by the failure of the Company or the Stockholders' Representative to assert any claim or demand or to enforce or exercise any right or remedy against the Purchaser under the provisions of this Agreement, or otherwise.

5.3 **Guarantee of Payment**. FDC further agrees that its Guaranty hereunder constitutes a guarantee of payment when due and not of collection, and that its obligations under this Article V shall be primary and unconditional, irrespective of any action to enforce the same or any other circumstances that might otherwise constitute a legal or equitable discharge to FDC.

5.4 **No Discharge or Diminishment of Guaranty**. FDC's obligations under this Article V shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration, duty to mitigate or compromise of any of the Purchaser's Obligations, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Purchaser's Obligations or otherwise.

5.5 **Assignment**. FDC may not transfer or assign its obligations under this Article V or delegate its obligations hereunder without the prior written consent of (x) prior to the Effective Time, the Company and (y) following the Effective Time, the Stockholders' Representative, and any purported transfer, assignment or delegation in violation of this Section 5.5 shall be void.

ARTICLE VI

CONDITIONS TO CLOSING

6.1 **Conditions to Obligations of Each Party**. The respective obligations under this Agreement of each party hereto shall be subject to the satisfaction on or prior to the Closing of each of the following conditions, any of which may be waived, in writing, by agreement of Purchaser and the Company:

(a) **Conditions to Obligations of Each Party**. 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 transactions contemplated hereby shall be in effect, nor shall any proceedings 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 transactions contemplated hereby, which makes the consummation of such transactions illegal.

(b) **Governmental Approvals**.

(i) Purchaser, the Company and their respective Affiliates (other than with respect to the Company, ITCFL) and Subsidiaries shall have obtained from each Governmental Entity all approvals, authorizations, licenses, waivers and consents, if any, necessary for consummation of or in connection with the transactions contemplated hereby, including, without limitation, such approvals, waivers and consents as may be required under the HSR Act, the Communications Act of 1934, as amended, and the rules and regulations of the Federal Communications Commission and any other relevant federal or state regulatory body, or under any similar law or regulation of a jurisdiction within or outside of the United States of America, except for such approvals, authorizations, licenses, waivers or consents the failure of which to obtain will not materially impair the Purchaser's ability to operate the Business in substantially the same manner as it was operated prior to the Closing.

(ii) The waiting period under the HSR Act shall have expired or been terminated, and no action, suit, investigation or proceeding shall have been instituted or threatened to restrain or prohibit or otherwise challenge the legality or validity of the transactions contemplated hereby.

6.2 **Additional Conditions to Obligations of the Company**. The obligations of the Company under this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, by the Company:

(a) **Representations, Warranties and Covenants**. Each of the representations and warranties of Purchaser, FDC and Mergerco in this Agreement that is expressly qualified by a reference to materiality shall be true in all respects as so qualified, and each of the representations and warranties of Purchaser, FDC and Mergerco in this Agreement that is not so qualified shall be true and correct in all material respects, on and as of the Closing as though such representations or warranties had been made on and as of the Closing (after taking into account the effects of actions contemplated or permitted under this Agreement), except for such failures to be true and correct which in the aggregate would not reasonably be expected to result in a Holdings Material Adverse Effect or a First Data Prepaid Material Adverse Effect since the Execution Date, or a material adverse effect on the consummation of the transactions contemplated hereby. Purchaser, Holdings, FDC and Mergerco 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 Purchaser, Holdings, FDC or Mergerco as of the Closing.

(b) **No Material Adverse Changes**. Since the Execution Date, there shall not have occurred any Holdings Material Adverse Effect or any First Data Prepaid Material Adverse Effect.

(c) **Good Standing Certificates**. Purchaser, Holdings, FDC and Mergerco shall have delivered to the Company a certificate from the Secretary of State of the States of Delaware and Georgia to the effect that Purchaser, Holdings, FDC and Mergerco are each in good standing in Delaware and Georgia, respectively.

(d) **Compliance Certificate of Purchaser, Holdings, FDC and Mergerco**. The Company shall have been provided with certificates executed on behalf of Purchaser, Holdings, FDC and Mergerco by an authorized officer to the effect that, as of the Closing, each of the conditions set forth in Section 6.2(a) and (b) above has been satisfied with respect to Purchaser, Holdings, FDC and Mergerco, as applicable.

(e) **Certificate of Secretary of Purchaser, Holdings, FDC and Mergerco**. The Company shall have been provided with a certificate executed by the Secretary or Assistant Secretary of Purchaser, Holdings, FDC and Mergerco certifying: (i) Resolutions duly adopted by the Board of Directors of Purchaser, Holdings, FDC and Mergerco authorizing the execution of this Agreement and the execution, performance and delivery of all agreements, documents and transactions contemplated hereby; (ii) the Certificate or Articles of Incorporation and Bylaws of Purchaser, Holdings, FDC and Mergerco, as in effect immediately prior to the Closing, including all amendments thereto; and (iii) the incumbency of the officers of

Purchaser, Holdings, FDC and Mergerco executing this Agreement and all agreements and documents contemplated hereby.

(f) **Stockholder Approval**. Stockholder Approval shall have been obtained.

(g) **[Equity] Agreements**. Holdings shall have delivered to [Equityholder] executed copies of (i) the Management Stockholder's Agreement, in the form of Exhibit D (the "[Equityholder's] Stockholder's Agreement"), which shall be signed by each of Holdings and New Omaha Holdings L.P., a Delaware limited partnership that owns a majority of the outstanding capital stock of Holdings ("Parent"), and (ii) the Sale Participation Agreement, in the form of Exhibit E (the "[Equityholder's] Sale Participation Agreement"), which shall be signed by Parent, each of _____ (collectively, the "[FUND] Investors") and, if applicable, each other Affiliate of the [FUND] Investors who hold an equity interest in Parent on the Closing Date. In addition, notwithstanding the form of the [Equityholder's] Sale Participation Agreement, which is attached as Exhibit E hereto, if on the Closing Date, any Senior Management Stockholder (as such term is defined in the [Equityholder's] Stockholder's Agreement) has contractual rights under a Sale Participation Agreement (or any other similar agreement) that are materially more beneficial to such Senior Management Stockholder than those rights which would have been granted to [Equityholder] under the form of [Equityholder's] Sale Participation Agreement which is attached hereto as Exhibit E, then the additional rights which have been granted to one or more of the Senior Management Stockholders shall be incorporated into the [Equityholder's] Sale Participation Agreement, and Holdings shall execute and cause Parent and the [FUND] Investors to execute the revised [Equityholder's] Sale Participation Agreement (a "Revised Sale Participation Agreement"); provided that the Revised Sale Participation Agreement shall contain a provision whereby Parent and the [FUND] Investors shall have the right to unilaterally amend the agreement so that it reverts to the form of [Equityholder's] Sale Participation Agreement, which is attached hereto as Exhibit E, at such time as each of the Senior Management Stockholders agree to amend their Sale Participation Agreements so that such agreements no longer contain any provisions which are materially more beneficial to such Senior Management Stockholders.

(h) **Escrow Agreement**. Purchaser shall have executed and delivered the Escrow Agreement to the Company and the Stockholders' Representative.

(i) **Injunctions or Restraints; Conduct of Business**. No proceeding brought by any Person seeking to prevent the consummation of the transactions contemplated by this Agreement shall be pending. In addition, no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint provision limiting or restricting FDC's conduct or operation of the business of the Company and the Company Subsidiaries following the Closing shall be in effect, nor shall any proceeding brought by any Person seeking the foregoing be pending.

6.3 **Additional Conditions to the Obligations of Purchaser**. The obligations of Purchaser under this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, by Purchaser:

(a) **Representations, Warranties and Covenants**. Each of the representations and warranties of the Company in this Agreement that is expressly qualified by a reference to materiality shall be true in all respects as so qualified, and each of the representations and warranties of the Company in this Agreement that is not so qualified shall be true and correct in all material respects, on and as of the Closing as though such representation or warranty had been made on and as of the Closing (after taking into account the effects of actions contemplated or permitted under this Agreement), except for such failures to be true and correct which in the aggregate would not reasonably be expected to result in a Company Material Adverse Effect since the Execution Date, or a material adverse effect on the consummation of the transactions contemplated hereby. 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 as of the Closing.

(b) **No Material Adverse Changes**. Since the Execution Date, there shall not have occurred any Company Material Adverse Effect.

(c) **Compliance Certificate of the Company**. Purchaser shall have been provided with a certificate executed on behalf of the Company by its President to the effect that, as of the Closing, each of the conditions set forth in Sections 6.3(a) (solely with respect to the Company and the Company Subsidiaries) and (b) above has been satisfied.

(d) **Certificate of Secretary of the Company**. Purchaser shall have been provided with a certificate executed by the Secretary of the Company certifying: (i) resolutions duly adopted by the Board of Directors of the Company authorizing the execution of this Agreement and the execution, performance and delivery of all agreements, documents and transactions contemplated hereby to which the Company is a party; (ii) the Articles of Incorporation and Bylaws of the Company, as in effect immediately prior to the Closing, including all amendments thereto; and (iii) the incumbency of the officers of the Company executing this Agreement and all agreements and documents contemplated hereby to which the Company is a party.

(e) **Third Party Consents**. Purchaser shall have been furnished with evidence satisfactory to it that the Company and the Company Subsidiaries have obtained those consents, waivers, approvals or authorizations of any Governmental Entity or any Person who is a party to a Material Contract of the Company, whose consent or approval are required in connection with this Agreement.

(f) **Injunctions or Restraints; Conduct of Business**. No proceeding brought by any Person seeking to prevent the consummation of the transactions contemplated by this Agreement shall be pending. In addition, no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint provision limiting or restricting Purchaser's conduct or operation of the business of the Company and the Company Subsidiaries, following the Closing shall be in effect, nor shall any proceeding brought by any Person seeking the foregoing be pending.

(g) **FIRPTA Certificate**. The Company shall, prior to the Closing Date, provide Purchaser with a properly executed statement in accordance with Treasury Regulation

Section 1.1445-2(c)(3) and Section 1.897-2(h) and a form of notice to the Internal Revenue Service in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2) along with written authorization for Purchaser to deliver such notice form to the Internal Revenue Service on behalf of the Company upon the Closing in a form satisfactory to Purchaser.

(h) **Exercise of Options/Termination of Other Rights**. Reasonable proof shall have been delivered to Purchaser that all of the Company's Options, if any, have been terminated, cancelled or surrendered and all change of control obligations to employees or third parties have been satisfied, including _____.

(i) **Good Standing**. The Company and the Company Subsidiaries shall have delivered to Purchaser a certificate or certificates of the relevant Governmental Entity from each jurisdiction in which such entity is domiciled or qualified as a foreign entity, certifying as of a date no greater than five business days prior to the Closing that such entity has filed all required reports, paid all required fees and taxes and is, as of such date, in good standing and authorized to transact business in such jurisdiction.

(j) **Stockholder Approval**. Stockholder Approval shall have been obtained.

(k) **[Equity] Agreements**. [Equityholder] shall have executed and delivered to Purchaser the [Equityholder's] Stockholder's Agreement and the [Equityholder's] Sale Participation Agreement.

(l) **Escrow Agreement**. The Company and the Stockholders' Representative shall have executed and delivered the Escrow Agreement to the Purchaser.

(m) **Pay-Off Letters and Releases**. Purchaser shall have received pay-off letters and lien releases from JPMorgan Chase Bank, N.A. evidencing the pay off and termination of the Chase Loan Agreement.

(n) **ITC Financial Licenses, Inc**. Purchaser or one of its Affiliates and Smith shall have executed a purchase agreement pursuant to which Purchaser or such Affiliate will acquire Smith's capital stock in ITC Financial Licenses, Inc. ("ITCFL"), such agreement to be in substantially the form attached hereto as Exhibit F (the "ITCFL Acquisition Agreement").

ARTICLE VII

TERMINATION; SURVIVAL AND EFFECT OF TERMINATION

7.1 **Termination**. This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing Date:

(a) by mutual written consent of the Company and Purchaser;

(b) by either the Company or Purchaser if the Closing has not been consummated by July 31, 2008; provided, however, that the right to terminate this Agreement under this subsection (b) shall not be available to any party whose failure to fulfill any

obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing Date to occur on or before such date;

(c) by either the Company or Purchaser if there shall be any law or regulation that makes consummation of the transactions contemplated hereby illegal or if any judgment, injunction, order or decree enjoining the Company, FDC, Purchaser or Mergerco from consummating the transactions contemplated hereby is entered and such judgment, injunction, order or decree shall become final, binding and nonappealable; provided, however, that the party seeking to terminate this Agreement pursuant to this subsection (c) shall have used commercially reasonable efforts to remove such judgment, injunction, order or decree;

(d) by the Company, in the event of a material breach by Purchaser, FDC or Mergerco of any representation, warranty or agreement contained herein that has not been cured, or as to which best efforts are not being employed to cure within 30 days after notice thereof is given to Purchaser;

(e) by Purchaser, in the event of a material breach by the Company of any representation, warranty or agreement contained herein that has not been cured or as to which best efforts are not being employed to cure within 30 days after notice thereof is given to the Company; or

(f) by either Purchaser, FDC or Mergerco, on the one hand, or the Company, on the other hand, at any time prior to the scheduled Closing Date if the conditions of such parties' obligations to close set forth in Article VI shall not have been satisfied or shall have become incapable of being satisfied by the close of business on July 31, 2008; provided, however, that the right to terminate this Agreement under this subsection (f) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the closing to occur before the scheduled July 31, 2008 termination date.

7.2 **Effect of Termination; Survival**. If this Agreement is terminated prior to Closing and the transactions contemplated hereby are not consummated as described above, this Agreement shall become void and of no further force and effect, except for the provisions of Section 7 (relating to termination); Section 8.2 (relating to the obligations of confidentiality); Section 8.3 (relating to publicity); and Article XI (relating to certain miscellaneous provisions) which shall survive such termination. Notwithstanding the foregoing, in the event of a non-permitted termination or a failure to close the transaction contemplated by this Agreement by reason of a breach by a party hereto, nothing herein shall preclude any action or claim for damages to which any party is otherwise entitled as a result of a breach by any other party hereto.

7.3 **Notice of Termination**. Any party desiring to terminate this Agreement pursuant to Section 7.1 shall give written notice of such termination to the other parties to this Agreement.

7.4 **Amendment**. This Agreement may be amended by the parties pursuant to a writing executed and delivered by all of the parties at any time before the Effective Time; provided, however, that, after approval of this Agreement by the Stockholders, no amendment

may be made which would (a) alter or change the amount or character of the Merger Consideration or (b) alter or change any of the terms and conditions of this Agreement, in each case, if such alteration or change would materially adversely affect any Stockholder who has not consented to such alteration or change. This Agreement may not be amended except by an instrument in writing signed by the parties.

7.5 **Waiver**. At any time before the Effective Time, the Company, on the one hand, and Purchaser, FDC and Mergerco, on the other hand, may (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the agreements or conditions contained herein. Any waiver must be set forth in an instrument in writing signed the applicable parties. To the extent that (x) a failure to comply with any of the agreements or conditions contained herein to be performed prior to the Closing or (y) a breach of a representation or warranty, is disclosed to the Company, on the one hand, or Purchaser, FDC and Mergerco, on the other hand, in an officer's certificate delivered by the disclosing party to the other party at Closing, such disclosing party shall not be liable pursuant to Article IX for such failure or breach following the Closing.

ARTICLE VIII

ADDITIONAL COVENANTS

8.1 **Conduct of Business**.

8.1.1 **Conduct of Business of the Company**. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Closing Date, the Company agrees, except to the extent set forth on Schedule 8.1.1 or as expressly contemplated by this Agreement or as consented to in writing by Purchaser, to carry on its business and the business of the Company Subsidiaries and ITCFL in all material respects in the usual, regular and ordinary course in substantially the same manner as heretofore conducted, to pay and to cause the Company Subsidiaries and ITCFL to pay debts and Taxes when due subject to good faith disputes over such debts or Taxes, to pay or perform other obligations when due, and to use its reasonable efforts consistent with past practice and policies (i) to preserve intact its and the Company Subsidiaries and ITCFL's present business organization (other than as contemplated in Section 1.1(f)(iii)(E) hereof), (ii) preserve its and the Company Subsidiaries and ITCFL's relationships with material customers, suppliers, distributors, licensors and licensees and (iii) retain the services of its and the Company Subsidiaries' officers or employees. The Company agrees to promptly notify Purchaser of any event or occurrence which is reasonably likely to have a Company Material Adverse Effect. Without limiting the foregoing, except: (i) as expressly contemplated by this Agreement; or (ii) as set forth in Schedule 8.1.1, the Company shall not do, cause or permit any of the following, or allow, cause or permit any of the Company Subsidiaries or ITCFL to do, cause or permit any of the following, without the prior written consent of Purchaser (which consent shall be deemed given if Stan Wilson (a Vice President of FDC) does not respond to a written request of the Company within five days after his receipt of any such written request):

(a) **Charter Documents**. Cause or permit any amendments to its Articles of Incorporation or Bylaws or similar organizational documents;

(b) **Issuance of Securities**. Issue, deliver, grant, encumber or sell or authorize or propose the issuance, granting, encumbrance, delivery or sale of, or purchase or propose the purchase of, any shares of its capital stock or securities convertible into, or subscriptions, rights, warrants or options to acquire, or other agreements or commitments of any character obligating it to issue any such shares or other convertible securities;

(c) **Dividends; Changes in Capital Stock**. Declare or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any of its capital stock (other than dividends or distributions by a Company Subsidiary), or split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, or repurchase or otherwise acquire, directly or indirectly, any shares of its capital stock;

(d) **Stock Option Plans, Etc**. Accelerate, amend or change the period of exercise or vesting of options or other rights granted under its stock plans or authorize cash payments in exchange for any options or other rights granted under any of such plans, other than in connection with the termination of all rights under such plans prior to the Closing;

(e) **Material Contracts**. Enter into any material contract or commitment, or violate, amend or otherwise modify or waive any of the terms of any of its Material Contracts, other than in the ordinary course of business consistent with past practice;

(f) **Intellectual Property**. Transfer, assign, convey, sell or license to any Person any rights to its Intellectual Property or make any modifications thereto, other than in ordinary course of business transactions that are consistent with past practice, and other than any expansion or extension of the Company's Card Package License Program which is in the ordinary course of business;

(g) **Dispositions**. Sell, lease, license or otherwise dispose of or encumber any of its properties or assets which are material, individually or in the aggregate, to its and the Company Subsidiaries' business, taken as a whole, except in the ordinary course of business consistent with past practice;

(h) **Indebtedness**. Incur any indebtedness for borrowed money or guarantee any such indebtedness or issue or sell any debt securities or guarantee any debt securities of others or enter in any new line of credit, other than indebtedness incurred under the Chase Loan Agreement (including any additional indebtedness incurred to finance the [ABC] Acquisition or any Additional Acquisition) or guarantees, surety bonds or similar obligations imposed by statutory requirements or by vendors, distributors, processors or customers, in each case, in the ordinary course of the Company's business consistent with past practice;

(i) **Leases**. Enter into any (i) real estate lease; or (ii) operating lease obligating the Company to pay in excess of $_____ per annum other than in the ordinary course of business consistent with past practice;

(j) **Payment of Obligations**. Pay, discharge or satisfy in an amount in excess of $_____ in any one case or $_____ in the aggregate, any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise) arising other than in the ordinary course of business, other than the payment, discharge or satisfaction of liabilities reflected or reserved against in the Financial Statements;

(k) **Capital Expenditures**. Make any capital expenditures, capital additions or capital improvements involving amounts in excess of $_____ except in the ordinary course of business and consistent with past practice;

(l) **Insurance**. Materially reduce the amount of any material insurance coverage provided by existing insurance policies;

(m) **Termination or Waiver**. Terminate or waive any right other than in the ordinary course of business involving an amount in excess of $_____;

(n) **Employee Benefit Plans; New Hires; Pay Increases**. Adopt or amend any employee benefit or stock purchase or option plan, or hire any new director level or senior executive officer level employee pursuant to a written contract that is not terminable on a maximum of 90 days' notice, pay any special bonus or special remuneration to any employee or director that is not consistent with past practice, or increase the salaries or wage rates of any

employee by more than _____% whose total annual base salary compensation would after such increase exceed $_____;

(o) **Severance Arrangement**. Grant any severance or termination pay in an amount of more than $_____ (i) to any director or senior executive officer or (ii) to any other employee except payments made pursuant to standard written agreements outstanding on the date hereof or otherwise made in the ordinary course of business consistent with past practice;

(p) **Acquisitions**. Except with respect to the [ABC] Acquisition and the Additional Acquisitions, (i) acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any Person or division thereof, or (ii) otherwise acquire or agree to acquire any assets that individually exceed $_____ or that in the aggregate exceed $_____;

(q) **Taxes**. Enter into any closing agreement, settle any claim or assessment in respect of Taxes, consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes, adopt or change any material accounting method in respect of Taxes, or prepare or file any Tax Return substantially inconsistent with past practice or, on any such Tax Return, take any position, make any election, or adopt any method that is materially inconsistent with past practice;

(r) **Notices**. Fail to give any notices or other information required to be given to the employees of the Company, any collective bargaining unit representing any group of employees of the Company, and any applicable government authority under the National Labor Relations Act, the Code, the COBRA, and other applicable law in connection with the transactions provided for in this Agreement, which failure would result in a Company Material Adverse Effect;

(s) **Revaluation**. Revalue any of its assets, including without limitation writing down the value of inventory or writing off notes or accounts receivable other than in the ordinary course of business;

(t) **Accounting Policies**. Make any material change in the accounting policies or procedures applied in the preparation of the Financial Statements;

(u) **Collections**. Accelerate or delay collection in any material manner that is inconsistent with past practice of any material notes or accounts receivable in advance of or beyond their regular due dates or the dates when the same would have been collected in the ordinary course of business consistent with past practice;

(v) **Payments**. Delay or accelerate payment of any material account payable or other material liability in any manner that is inconsistent with past practice beyond or in advance of its due date or the date when such liability would have been paid in the ordinary course of business consistent with past practice; or

(w) **Other**. Agree to take any of the actions prohibited in Sections 8.1.1(a) through (v) above.

8.1.2 **Conduct of Business of First Data Prepaid**. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Closing Date, FDC agrees (except to the extent expressly contemplated by this Agreement or as consented to in writing by the Company), to carry on the business of First Data Prepaid in all material respects in the usual, regular and ordinary course in substantially the same manner as heretofore conducted, to pay and to cause First Data Prepaid to pay debts and Taxes of a material nature when due subject to good faith disputes over such debts or Taxes, to pay or perform other material obligations when due, and to use its reasonable efforts consistent with past practice and policies (i) to preserve intact First Data Prepaid's present business organization, and (ii) preserve First Data Prepaid's relationships with material customers, suppliers, distributors, licensors and licensees. FDC agrees to promptly notify the Company of any event or occurrence which is reasonably likely to have a material and adverse effect on First Data Prepaid, including a Holdings Material Adverse Effect. Without limiting the foregoing, except: (i) as expressly contemplated by this Agreement; or (ii) as set forth in Schedule 8.1.2, FDC shall not do, cause or permit First Data Prepaid to do, cause or permit any of the following, without the prior written consent of the Company (which consent shall be deemed given if Smith does not respond to a written request of FDC within five days after his receipt of any such written request):

(a) **Material Contracts**. Enter into any material contract or commitment, or violate, amend or otherwise modify or waive any of the terms of any of its material contracts, other than in the ordinary course of business consistent with past practice;

(b) **Intellectual Property and Technology**. Transfer, assign, convey, sell or license to any Person any rights to its Intellectual Property or make any modifications thereto, other than in ordinary course of business transactions that are consistent with past practice;

(c) **Dispositions**. Sell, lease, license or otherwise dispose of or encumber any of its properties or assets which are material, individually or in the aggregate, to its business, except in the ordinary course of business consistent with past practice;

(d) **Payment of Obligations**. Pay, discharge or satisfy any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise) arising other than in the ordinary course of business, other than the payment, discharge or satisfaction of liabilities reflected or reserved against in the First Data Prepaid 2007 Financial Statements;

(e) **Capital Expenditures**. Make any capital expenditures, capital additions or capital improvements except in the ordinary course of business and consistent with past practice;

(f) **Termination or Waiver**. Terminate or waive any right other than in the ordinary course of business;

(g) **New Hires; Pay Increases**. Hire any new director level or senior executive officer level employee pursuant to a written contract that is not terminable on a maximum of 90 days' notice, pay any special bonus or special remuneration to any employee or director that is not consistent with past practice, or increase the salaries or wage rates of any

employee by more than _____% whose total annual base salary compensation would after such increase exceed $_____;

(h) **Acquisitions**. Acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any Person or division thereof other than the acquisition of the remaining minority interest in Money Networks, LLC;

(i) **Collections**. Accelerate or delay collection in any material manner that is inconsistent with past practice of any material notes or accounts receivable in advance of or beyond their regular due dates or the dates when the same would have been collected in the ordinary course of business consistent with past practice;

(j) **Payments**. Delay or accelerate payment of any material account payable or other material liability in any material manner that is inconsistent with past practice beyond or in advance of its due date or the date when such liability would have been paid in the ordinary course of business consistent with past practice; or

(k) **Other**. Agree to take any of the actions prohibited in Sections 8.1.2(a) through (j) above.

8.2 **Access; Confidentiality**. The Company agrees to make available all books, records, facilities, executive officers and employees of the Company who have material responsibility for the conduct of the Business, non-employee agents and representatives (such as accountants and patent and regulatory counsel) and information necessary for FDC to evaluate the business, operations, properties and financial condition of the Company during normal business hours on reasonable prior written notice. At FDC's request, the Company shall arrange meetings with the Company's material customers and vendors; provided that the Company shall have the right to have representatives present at all such meetings. The parties hereto shall keep confidential and shall not make use of any information treated by the other party as confidential (including, without limitation, the existence of this Agreement), obtained from the other party concerning the negotiation and preparation of this Agreement and the assets, properties, business or operations of the other party other than to legal counsel, consultants, financial advisors, key employees, lenders and investment bankers where such disclosure is related to the performance of obligations under this Agreement or the consummation of the transactions contemplated under this Agreement (all of whom shall be similarly bound by the provisions of this Section 8.2), except as may be required to be disclosed by applicable law. Notwithstanding the foregoing, the foregoing confidentiality restrictions shall not apply to any information which (a) becomes generally available to the public through no fault of the receiving party or its employees, agents or representatives; (b) is independently developed by the receiving party without benefit of the above-described information (and such independent development is substantiated in writing), or rightfully received from another source on a non-confidential basis; and (c) when such disclosure is required by a court or governmental authority or is otherwise required by law (including, without limitation, filings required to be made with the Securities and Exchange Commission or any other governmental or regulatory agency) or is necessary to establish rights under this Agreement or any agreement contemplated hereby(and the disclosing party has taken all

reasonable efforts to limit the scope of such disclosure and to protect the confidential nature of the information disclosed).

8.3 **Public Announcements**. The initial press release issued by FDC and the Company concerning this Agreement and the transactions contemplated hereby shall be a joint press release and thereafter FDC and the Company shall consult with each other before issuing any press release or otherwise making any public statements with respect to the transactions contemplated by this Agreement and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable law or by obligations pursuant to any listing agreement with any national securities exchange.

8.4 **Cooperation**.

(a) Each party hereto will cooperate with the other parties, their counsel and accountants in connection with any reasonable steps required to be taken as part of its obligations under this Agreement. Each party will use reasonable efforts to cause all conditions to this Agreement to be satisfied as promptly as possible and to obtain all consents and approvals necessary for the due and punctual performance of this Agreement and for the satisfaction of the conditions hereof; provided, however, that in connection with seeking any approval of a Governmental Entity relating to this Agreement, no party shall be required to or commit to divest, sell, hold separate or otherwise dispose of any business, assets, properties, services or product lines or any change or restriction on any business, asset, property, service or product line.

(b) The parties hereto commit to instruct their respective counsel to cooperate with each other to facilitate and expedite the identification and resolution of any issues arising under the HSR Act at the earliest practicable dates. Such efforts shall include each party's counsel undertaking to keep each other appropriately informed of communications from and to personnel of the reviewing Governmental Entity, subject to applicable Law.

(c) Notwithstanding anything set forth herein, nothing in this Agreement shall require, or be construed to require, Purchaser to offer to, or agree to, sell or hold separate and agree to sell, before or after the Closing Date, any assets, businesses, or interest in any assets or businesses of Purchaser or any of its Affiliates (or to consent to any such sale or agreement to sell) or to agree to any changes or restriction in the use or operation of any assets or businesses of Purchaser or any of its Affiliates, including any of the foregoing with respect to the Business after the Closing Date, nor shall the Company agree to any of the foregoing in connection with obtaining the approval of any Governmental Entity to the transactions contemplated by this Agreement.

8.5 **Employees of the Business**. Between the date of this Agreement and the Closing Date, the Company shall allow the Purchaser to have controlled access to all the executive officers and supervisory employees of the Company who have material responsibility for the conduct of the Business for discussions regarding employment with the Company after the Closing Date. Purchaser shall be required to provide the Company with reasonable advance notice, which notice shall identify the executive officers and supervisory employees with whom the Purchaser wishes to communicate.

8.6 **Notification of Claims**. From the date of this Agreement to and including the Closing Date, the Company shall promptly notify Purchaser in writing of the commencement or threat of any material claims, litigation or proceedings against or affecting the Company or the Company Subsidiaries of which the Company or the Company Subsidiaries have Knowledge.

8.7 **Further Acts**. After the Closing Date, each party hereto, at the request of and at the cost and expense of the Purchaser will take any further actions necessary or desirable to carry out the purposes of this Agreement and to vest in Purchaser full title to all properties, assets and rights of the Company. In addition, without in any way limiting the generality of the foregoing, the Company hereby agrees at the cost and expense of Purchaser, to take any and all further actions reasonably necessary or desirable to carry out the assignment to Purchaser of all Company Intellectual Property.

8.8 **Employee Benefits.**

(a) The Company has provided to Purchaser for each individual employed by the Company on the Closing Date (including employees who are not actively at work on account of illness or disability) (the "Affected Employees") including for each Affected Employee on leave of absence or layoff status: name; employer company; job title; current employment status; date of hire; and current total compensation, including target bonus; and current accrued vacation and time off. Purchaser shall or shall cause each Affected Employee to be credited for their length of service with the Company for purposes of eligibility to participate and vesting under FDC's 401(k) plan, and shall commence participation in FDC's 401(k) plan (if eligible) as soon as practicable following the Closing Date. In addition, Purchaser shall or shall cause each Affected Employee to be credited for their length of service with the Company for purposes of FDC's vacation, sick leave, severance, and other benefit plans and policies at the time each Affected Employee becomes eligible to participate in FDC's plans and policies. On and after the Closing Date, Affected Employees shall be subject to FDC's employment standards, policies and procedures including background checks.

(b) During the Earn-Out Period, FDC shall, or shall cause the Company to provide all Affected Employees, while employed by the Stored Value Business, (i) with base salary that is substantially comparable to the base salary provided to such Affected Employees as of the Closing, and (ii) incentive compensation opportunities (excluding any equity-based compensation opportunities), retirement and welfare benefits and perquisites that are substantially comparable to the incentive compensation opportunities (excluding any equity-based compensation opportunities), retirement and welfare benefits and perquisites provided to similarly situated employees of FDC and its Affiliates. Except as may otherwise be provided in an employment agreement, nothing contained in this Section 8.8 shall be deemed to (X) grant to any Affected Employees any right to continued employment after the Effective Time, (Y) ensure a continued amount of commission-based compensation or (Z) interfere with the Company's right or obligation to make changes to any compensation programs as may be necessary to conform to applicable law. FDC shall, or shall cause the Company to take all necessary action so that each Affected Employee shall, after the Effective Time, continue to be credited with unused vacation and sick leave ("Accrued PTO") credited to each Affected Employee through the Effective Time under the Company's vacation and sick leave policies,

and the Purchaser shall permit or cause the Company to permit each Affected Employee to use any such Accrued PTO in accordance with PTO policy(ies) under FDC's PTO Plan.

(c) The Company shall use its reasonable best efforts to cause each Company Employee Plan that is intended to satisfy Section 401(k) of the Code (each, a "Company 401(k) Plan") to be in compliance with all applicable Laws (including Section 401(k) of the Code) prior to Closing. Before the Closing, the Company shall take or shall cause to be taken any action necessary and appropriate to terminate the Company 401(k) Plan, including but not limited to any applicable participant notification, vest all affected participants, and distribute plan benefits as soon as administratively possible. The Company shall be responsible for making reports to or filings with any Governmental Entity with respect to any Company Employee Plan, including an IRS determination letter upon a termination of any Company 401(k) Plan and any remaining IRS Form 5500 filings. The Company shall indemnify the Purchaser pursuant to Section 9.1 hereof for any amounts paid by Purchaser and any fees incurred by Purchaser in connection with the termination of such Company 401(k) Plan.

(d) Nothing in this Agreement shall preclude Purchaser from altering, amending, or terminating any of its employee benefit plans or policies with respect to any covered employees (including Affected Employees who commence participation in such plans or policies) at any time.

(e) The Company shall, on or before the Closing Date, provide Purchaser with a complete and accurate list of all individuals who (1) are currently receiving coverage under its plans pursuant to COBRA, (2) have been provided notice prior to the Closing Date of their eligibility date to elect COBRA coverage and who are still within the applicable election period, and (3) have, to the Knowledge of the Company, experienced a COBRA "qualifying event" prior to the Closing Date but have not yet been provided notice of their eligibility to elect continuation coverage pursuant to COBRA.

(f) The Purchaser shall, or shall cause the Company to assume, maintain and honor the bonus and incentive compensation programs covering Affected Employees as of the Effective Time and listed on Schedule 3.16(a) and to pay to each Affected Employee any bonus or incentive compensation earned, pursuant to the terms therein, payable with respect to 2008 as of the end of the applicable determination period that includes the Effective Time.

(g) The Purchaser shall, or shall cause the Company to (i) waive any pre-existing condition or eligibility limitations and (ii) give effect, in determining any deductible, co-payments and maximum out-of-pocket limitations, to claims incurred and amounts paid by, and amounts reimbursed to any Affected Employee under any employee benefit plan maintained by the Company on and after the Effective Time, to the same extent recognized under the corresponding welfare plan maintained by Purchaser for similarly situated employees of Purchaser. Immediately following the Effective Time, the Parties shall effectuate any necessary amendments to such employee benefit plans to achieve the intent of this Section 8.8(g).

(h) The Parties do not intend for this Agreement to amend or modify any Company Employee Plan in effect immediately prior to the Effective Time, except and to the

extent such amendment or modification is explicitly contemplated by the express language of this Agreement.

(i) The Purchaser and the Company agree that none of the provisions of this Section 8.8 are intended to, and do not, confer upon any Person other than the Parties hereto any rights or remedies hereunder, including the right to enforce any obligations of the Purchaser or the Company contained herein.

8.9 **Certain Business Acquisitions.**

(a) **[ABC] Acquisition**. The Company presently is in discussions regarding a potential acquisition (the "[ABC] Acquisition") involving a stored value business based in _____ (the "[ABC] Target"). The parties have come to the following agreements and arrangements with respect to the proposed [ABC] Acquisition:

(i) The decision whether or not to consummate the [ABC] Acquisition shall (x) prior to the Effective Time, be determined by the Company, and (y) on or after the Effective Time, be determined by the CEO so long as Smith remains the CEO and, if Smith is not then serving as the CEO, shall be determined by the individual then serving as the CEO with the consent of the Stockholders' Representative (such consent may be withheld in the Stockholders' Representative sole discretion); provided in the case of both (x) and (y) above, the consummation of the [ABC] Acquisition shall be subject to the consent of FDC in accordance with FDC's standard policies and requirements related to approval of business acquisitions.

(ii) In the event that the [ABC] Acquisition is consummated prior to the Effective Time, then the cash portion of the Closing Merger Consideration shall be increased by an amount equal to:

(A) if the [ABC] Purchase Price is greater than or equal to $_____, the sum of (x) the [ABC] Reserve Amount (as defined below) plus (y) the lesser of (1) _____% of the aggregate purchase price for the [ABC] Acquisition (including reasonable transaction costs) (the "[ABC] Purchase Price"), or (2) $_____; or

(B) if the [ABC] Purchase Price is less than $_____, the sum of (x) the [ABC] Reserve Amount plus (y) _____% of the [ABC] Purchase Price.

(iii) If the [ABC] Acquisition is not consummated prior to the Effective Time, then either the CEO and/or the Stockholder's Representative shall have the right at any time after the Closing Date to unilaterally terminate the Company's option under this Section 8.9(a) to effect the [ABC] Acquisition by providing the Purchaser with written notice of such election (the "[ABC] Termination Election"). The Purchaser hereby agrees that it will promptly (but no later than fifteen days) after it receives the [ABC] Termination Election pay, or cause the

Paying Agent to pay, the Stockholders as additional Merger Consideration an amount in cash equal to $_____ (such amount is referred to herein as the "[ABC] Reserve Amount").

(iv) In the event that the CEO, and, if applicable, the Stockholder's Representative (with the approval of FDC as required pursuant to clause (i) above), elects to consummate the [ABC] Acquisition after the Effective Time, then the Purchaser hereby agrees to provide sufficient funds to the Company to allow it to consummate the [ABC] Acquisition; provided, however, that the Purchaser's obligation under this clause (iv) shall be capped at and shall not exceed $_____ in the aggregate. In the event that the [ABC] Acquisition is consummated after the Effective Time and the [ABC] Purchase Price is less $_____, then the Purchaser hereby agrees that it will promptly (but no later than fifteen days) after the date that the [ABC] Acquisition is consummated pay, or cause the Paying Agent to pay, the Stockholders as additional Merger Consideration an amount in cash equal to the positive difference between (x) $_____ and (y) _____% of the [ABC] Purchase Price.

(b) **Other Business Acquisitions**. In addition to the [ABC] Acquisition, the Company shall have the right during the period commencing on the Execution Date and ending on the one year anniversary of the Closing Date (the "Acquisition Period") to consummate one or more additional acquisitions ("Additional Acquisitions") provided that the aggregate purchase price for such Additional Acquisitions shall not exceed, without the Purchaser's additional consent, $_____. The parties have come to the following agreements and arrangements with respect to the contemplated Additional Acquisitions:

(i) The decision whether or not to consummate any Additional Acquisition shall (x) prior to the Effective Time, be determined by the Company in its sole discretion, and (y) on or after the Effective Time, be determined by the CEO so long as Smith remains the CEO and, if Smith is not then serving as the CEO, shall be determined by the individual then serving as the CEO with the consent of the Stockholders' Representative (such consent may be withheld in the Stockholders' Representative sole discretion), provided that in the case of both (x) and (y) above, the consummation of any Additional Acquisition shall be subject to the consent of FDC in accordance with FDC's standard policies and requirements related to approval of business acquisitions.

(ii) In the event that one or more Additional Acquisitions are consummated prior to the Effective Time, then the cash portion of the Closing Merger Consideration shall be increased by an amount equal to the lesser of (x) _____% of the aggregate purchase price for such Additional Acquisitions (including reasonable transaction costs) (the "Additional Acquisitions Purchase Price"), and (y) the Additional Acquisition Reserve Amount (as defined below).

(iii) Either the CEO and/or the Stockholders' Representative shall have the right at any time after the Closing Date to unilaterally terminate the Company's option under this Section 8.9(b) to effect the Additional Acquisition by providing the Purchaser with written notice of such election (the "Additional Acquisition Termination Election"). The Purchaser hereby agrees that it will promptly (but no later than fifteen days) after it receives the Additional Acquisition Termination Election pay, or cause the Paying Agent to pay, the Stockholders as additional Merger Consideration an amount in cash equal to $_____ (such amount is referred to herein as the "Additional Acquisition Reserve Amount").

(iv) In the event that the CEO, and, if applicable, the Stockholders' Representative (with the approval of FDC as required pursuant to clause (i) above), elects to consummate one or more Additional Acquisitions after the Effective Time, then the Purchaser hereby agrees to provide sufficient funds to the Company to allow it to consummate such Additional Acquisitions; provided, however, that the Purchaser's obligation under this clause (iv) shall be capped at and shall not exceed $_____ in the aggregate.

(v) In the event that at the end of the Acquisition Period or at such earlier time as the CEO and/or the Stockholders' Representative shall otherwise elect, the aggregate Additional Acquisitions Purchase Price is less than $_____, then Purchaser hereby agrees that it will promptly (but no later than fifteen days) after the last day of the Acquisition Period or such earlier date elected by the CEO or the Stockholders' Representative pay, or cause the Paying Agent to pay, the Stockholders as additional Merger Consideration an amount in cash equal to the difference between (x) $_____ and (y) the aggregate Additional Acquisitions Purchase Price.

8.10 **Company Bonus Program**.

(a) Prior to the Closing, the Company, in its discretion, may establish a bonus pool (the "Company Bonus Pool") of up to $_____ to be paid by the Company to certain of its current and former employees, directors, officers and consultants to be designated by the Company, in its discretion (each such individual a "Bonus Pool Participant"); provided that (1) the Company Bonus Pool (i) complies with applicable Law, (ii) creates no adverse Tax consequences for FDC or any of its Subsidiaries, and (iii) has no negative financial impact on FDC or any of its Subsidiaries other than the expected financial impact relating to or arising out of the Company's obligation to make the Company Bonus Pool payments, and (2) as a condition precedent to the receipt of any payments under the Company Bonus Pool, each Bonus Pool Participant that is an employee of the Company or a Company Subsidiary shall be required to release the Company from any and all claims related to any liquidity bonus plan or other similar plan, and execute and deliver to the Purchaser a Restrictive Covenant Agreement, in substantially the form set forth as Exhibit G (a "Restrictive Covenant Agreement"). Prior to the Closing, the Company shall consult with the Purchaser with respect to the establishment of the Company Bonus Pool, but the selection of Bonus Pool Participants, the amounts of such bonuses and terms under which such bonuses shall be paid shall, subject to the other provisions in this

Section 8.10, be in the sole discretion of the Company. All payments under the Company Bonus Pool shall be made pursuant to the terms of a Bonus Pool Plan, which will be adopted by the Board of Directors and the Stockholders prior to the Effective Time (the "Company Bonus Pool Plan"). The Purchaser, FDC and Mergerco acknowledge and agree that the Company shall be permitted to take, and the Purchaser, FDC and Mergerco hereby consent to the Company taking, such actions as are required, necessary or appropriate to establish the Company Bonus Pool Plan and to make the payments therefrom as contemplated herein.

(b) All payments from the Company Bonus Pool that are fully awarded and vested as of the Effective Time (contingent upon the occurrence of the transactions contemplated by this Agreement) or that are reserved for payment upon the release of the Indemnity Holdback and/or the Purchase Price Holdback to the Stockholders (such payments are referred to herein as the "Closing Date Bonus Pool Payments") shall reduce the Closing Merger Consideration in accordance with Section 1.1(d) hereof. All other payments from the Company Bonus Pool that vest after the Effective Time shall reduce the Earn-Out Payments. Each of the parties hereby acknowledge that it is currently contemplated that a portion of the Closing Date Bonus Pool Payments will be paid to certain Bonus Pool Participants in the form of Holdings Shares, based on an agreed value of $_____ per share (the portion of the Closing Date Bonus Pool Payments that are paid in the form of Holdings Shares is referred to herein as the "Closing Date Stock Bonus Pool Payments"); provided, however, that the ratio of the amount of the Closing Date Stock Bonus Pool Payments to the total amount of the Closing Date Bonus Pool Payments shall be no greater than the ratio of the amount of Stock Consideration to be paid to Smith to the total amount of the Closing Merger Consideration to be paid to Smith under the terms of this Agreement; and provided, further, it is acknowledged and agreed that (i) only Bonus Pool Participants who are employees of the Company or the Company Subsidiaries shall receive Holdings Shares; (ii) such employees shall be senior executives of the Company and shall otherwise satisfy the standards (with respect to office and title held) applicable to issuances of Holdings Shares to members of FDC's senior management, consistent with prior issuances of such shares; (iii) each such employee shall, as a condition to receipt of Holdings Shares, execute a Restrictive Covenant Agreement, and a Stockholder's Agreement and a Sale Participation Agreement in substantially the same form as those executed by members of FDC's senior management generally; and (iv) the Closing Date Stock Bonus Payment shall not consist of more than $_____ in Holdings Shares, based on an agreed value of $_____ per share. Holdings and the Purchaser hereby agree that promptly following the date on which the Holdings Shares are awarded to the Bonus Pool Participants pursuant to the terms of the Company Bonus Pool Plan, Holdings will, upon its receipt of a Restrictive Covenant Agreement, a Stockholder's Agreement and a Sale Participation Agreement in the appropriate form, deliver the certificate(s) representing the Holdings Shares to be issued as Closing Date Stock Bonus Pool Payments (or other appropriate evidence of such individual's ownership of such Holdings Shares) to each employee that the Company selects to receive such shares as part of the Company Bonus Pool in accordance with this Section 8.10.

8.11 **Settlement of [XYZ] Liabilities, Retention of [XYZ Payment]**. [DELTA] amounts related to periods prior to the Closing Date as to which the Company is entitled to a _____, and that are collected by the Company during the 2008 calendar year or thereafter (collectively, the "[XYZ Payment]"), will be paid to the Stockholders as additional cash Merger Consideration. The aggregate portion of the [XYZ Payment] that is payable to the

Stockholders as additional cash Merger Consideration (collectively, the "[XYZ Consideration Payment]") shall be computed by (x) first decreasing the [XYZ Payment] by an amount equal to the sum of (i) the aggregate amount of the Company's or the Purchaser's out of pocket expenses (other than Taxes), if any, related to the collection of the [XYZ Payment], and (ii) the aggregate amount of payments made by the Company to satisfy any third Person claims or potential claims to any portion of the [XYZ Payment] (the portion of the [XYZ Payment] remaining after the deduction of the specified amounts set forth in this clause (x) is referred to herein as the "Adjusted [XYZ Payment]"), and (y) then, second, by reducing the Adjusted [XYZ Payment] by an amount equal to the [XYZ] Offset Amount.

The Purchaser hereby agrees that it will (i) pay, or cause the Paying Agent to pay, as additional Closing Merger Consideration, a portion of the [XYZ Consideration Payment] based upon the aggregate [XYZ Payment] that was collected by the Company prior to the Closing Date, and (ii) promptly (but no later than fifteen days) after the Company receives any [XYZ Payment] following the Closing Date pay, or cause the Paying Agent to pay, any additional portion of the [XYZ Consideration Payment] to the Stockholders as additional Merger Consideration. The Purchaser hereby agrees that the Company will be permitted to collect the full amount of the [XYZ Payment] in a manner consistent with the Company's historical practices.

The portion of the [XYZ Payment] that the Company (or any Company Subsidiary) receives prior to the Effective Time shall be set aside in a separate bank account. The Company shall not use the proceeds from the [XYZ Payment] that are set aside in such bank account for any purpose other than (i) to pay the Company's (or the Company Subsidiaries') out of pocket expenses (including, if applicable, Taxes) related to the collection of the [XYZ Payment], and (ii) to pay any amounts to third Persons to satisfy any claims or potential claims to any portion of the [XYZ Payment].

8.12 **Transition Matters Regarding State Licenses**. Prior to the Closing, ITCFL shall respond to any state audits or other remedial requirements imposed by any Governmental Entity.

8.13 **Proxy Statement; Special Meeting of the Stockholders**.

(a) Promptly, but in no event later than 30 days, following the Execution Date, the Company shall prepare materials for the purpose of (i) soliciting proxies from the Stockholders to vote in favor of the adoption of this Agreement and the approval of the Merger at the Special Meeting and (ii) providing the notice of dissenters' rights granted to the Stockholders under the GBCC (such proxy statement, together with any accompanying letter to Stockholders, notice of meeting and notice of dissenters' rights and form of proxy, shall be referred to herein as the "Proxy Statement"). The Purchaser and its counsel shall be given a reasonable opportunity to review and comment on the Proxy Statement prior to the distribution of the Proxy Statement to the Stockholders.

(b) The Purchaser agrees that it will promptly provide to the Company all disclosure regarding the Purchaser, its business, and the Purchaser's financial condition and results of operations that it desires, or that the Company reasonably requests, to have included

in the Proxy Statement. The Purchaser will furnish to the Company any information which may be necessary in order that the material furnished to the Company for inclusion in the Proxy Statement, at the time and in the light of the circumstances under which it is to be furnished to the Stockholders, will not be misleading with respect to any material fact, and will not omit to state any material fact necessary in order to make the statements therein not misleading. The Purchaser will furnish to the Company any information which it believes may be necessary in order to supplement the Proxy Statement in such manner that, as so supplemented, such Proxy Statement will not be misleading with respect to any material fact and will not omit to state any material fact necessary in order to make the statements therein not misleading.

(c) The Company shall distribute the Proxy Statement to the Stockholders and, pursuant thereto, shall call and hold a special meeting of the Stockholders (the "Special Meeting") for the purpose of voting on the approval of the Merger and the consummation of each of the transactions contemplated by this Agreement (including the making by the Company of the bonus payments under the Company Bonus Pool Plan and the Guaranteed Bonus Plan), in accordance with the GBCC and subject to the other provisions of this Agreement, solicit proxies from the Stockholders to vote in favor of the adoption of this Agreement and the approval of the Merger at the Special Meeting.

(d) Notwithstanding anything in this Agreement to the contrary, it is understood that, prior to the Closing, at a time of its choosing, the Company shall submit to all Stockholders entitled to vote, within the meaning of Treas. Reg. Sec. 1.280G-1, Q/A (7), a resolution by which such Stockholders shall approve or disapprove the Company Bonus Pool Plan and the Guaranteed Bonus Plan and such other payments or benefits to the recipients or potential recipients of such Plans as the Company may decide in its sole discretion (the Company Bonus Pool Plan and the Guaranteed Bonus Plan and any other such payments or benefits being in aggregate the "Payment Plans"). If _____% of the Stockholders approve the Payment Plans, it shall be put into effect and, if not, it shall not be put into effect. The Parties understand that prior to the vote or other approval referred to in the preceding sentences of this Section 8.13(d), the Company shall deliver to each such Stockholder the information necessary under Code Section 280G and Treas. Reg. Sec. 1.280G-1 to provide to such Stockholders "adequate disclosure" of all material facts concerning the Payment Plan, within the meaning of Treas. Reg. Sec. 280G-1 Q/A 7 (a)(2).

(e) Simultaneously with the execution hereof, Smith shall execute and deliver to Purchaser (i) a voting agreement (the "Voting Agreement"), in form and substance mutually satisfactory to the parties thereto, (ii) the voting proxies required by the Voting Agreement, and (iii) a Letter of Transmittal.

8.14 **Exclusivity**. From the date hereof until the earlier of the Closing or the termination of this Agreement, neither the Company nor any of its directors, officers, agents or Affiliates will: (i) solicit, encourage, initiate or participate in any negotiations or discussions with respect to any offer or proposal to acquire the Company or a significant portion of the business or properties of the Company, whether by merger, stock purchase, purchase of assets or otherwise; (ii) except as required by law or Order or as contemplated by this Agreement, disclose any information not customarily disclosed to any Person concerning the business or properties of the Company or afford to any Person access to the properties, books or records of the Company;

or (iii) cooperate with any Person to make any proposal to purchase all or any part of the capital stock or all or substantially all of the assets of the Company (other than non-essential or excess assets in the ordinary course of business), unless the failure to take such action could reasonably cause the Board of Directors of the Company to breach its fiduciary duties under the GBCC.

8.15 **Cooperation Regarding Business Continuity and Disaster Recovery Plan.** Prior to the Closing, the Company and Purchaser shall use their reasonable best efforts to coordinate and begin to implement a business continuity and disaster recovery plan that is consistent with FDC's requirements for its Subsidiaries and proceed to establish supporting infrastructure and execute necessary third party agreements pursuant to which, in the event of a material disruption of the Business (a "Material Disruption"), the Company will be able to restore its Business operations and services to its customers; provided that the parties acknowledge and agree that such plan and standards will evolve and be subject to change based on the facts and circumstances of the Business, including without limitation, the closing of the FDC call centers.

8.16 **Indemnification; Directors and Officers Insurance.**

(a) For a period of six years from and after the Effective Time, the Purchaser and the Company will provide director and officer exculpation, indemnification and expense reimbursement in the manner contemplated by the Company's articles of incorporation and bylaws, for the benefit of each present and former director and officer of the Company, the Company Subsidiaries and ITCFL (each, an "Indemnified Person") (it being understood that such indemnification protection shall include protection against any costs and expenses that a director or officer incurs arising out of or in connection with the transactions or actions contemplated by this Agreement, whether asserted or claimed prior to, at or after the Effective Time).

(b) Prior to the Effective Time, the Company shall and if the Company is unable to, the Purchaser shall cause the Company as of the Effective Time to obtain and fully pay the premium for the extension of (i) the Side A coverage part (Directors' and Officers' Liability), the Side B coverage part (Employment Practices Liability Insurance), Side C coverage part (Fiduciary Duties) and Side D coverage part (Outside Executive Liability Insurance) of the Company's existing directors' and officers' insurance policies, and (ii) the Company's existing fiduciary liability insurance policies, in each case for a claims reporting or discovery period of at least six years from and after the Effective Time from an insurance carrier with the same or better credit rating as the Company's current insurance carrier with respect to directors' and officers' liability insurance and fiduciary liability insurance (collectively, "D&O Insurance") with terms, conditions, retentions and limits of liability that are at least as favorable as the Company's existing policies with respect to any matter claimed against an Indemnified Person by reason of him or her serving in such capacity that existed or occurred at or prior to the Effective Time (including in connection with this Agreement or the transactions or actions contemplated hereby). If the Company for any reason fails to obtain such "tail" insurance policies as of the Effective Time, the Purchaser shall cause the Company to, continue to maintain in effect for a period of at least six years from and after the Effective Time the D&O Insurance in place as of the date hereof, or comparable coverage under FDC enterprise insurance policies, with terms, conditions, retentions and limits of liability that are at

least as favorable as provided in the Company's existing policies as of the date hereof, or the Purchaser shall cause the Company to, purchase comparable D&O Insurance for such six-year period with terms, conditions, retentions and limits of liability that are at least as favorable as provided in the Company's existing policies as of the date hereof; provided, however, that in no event shall the Purchaser or the Company be required to expend for such policies an annual premium amount in excess of _____% of the annual premiums currently paid by the Company for such insurance; and provided, further, that if the annual premiums of such insurance coverage exceed such amount, the Company shall obtain a policy with the greatest coverage available for a cost not exceeding such amount.

(c) If the Purchaser or the Company or any of its successors or assigns (i) shall consolidate with or merge into any other corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger or shall cease to continue to exist for any reason or (ii) shall transfer all or substantially all of its properties and assets to any individual, corporation or other entity, then, and in each such case, proper provisions shall be made so that the successors and assigns of the Purchaser or the Company, as applicable, shall assume all of the obligations set forth in this Section 8.16.

(d) The provisions of this Section 8.16 are intended to be for the benefit of, and shall be enforceable by, each Indemnified Person, his or her heirs and his or her personal representatives, shall be binding on all successors and assigns of the Purchaser and the Company and shall not be amended in a manner that is adverse to the Indemnified Persons (including their successors, assigns and heirs) without the consent of the Indemnified Person (including the successors, assigns and heirs) affected thereby.

(e) The rights of each Indemnified Person under this Section 8.16 shall be in addition to any rights such Indemnified Person may have under the restated certificate of incorporation or by-laws of the Company, or under any applicable indemnification agreements or laws.

8.17 **Amendment of Agreements Governing Indebtedness**. The Purchaser, FDC and Holdings hereby agree that from and after the Execution Date and until such time as the entire Earn-Out is paid to the Stockholders in accordance with the terms set forth in Section 1.5 hereof, neither Holdings, FDC nor the Purchaser nor any of their respective Subsidiaries will enter into any agreements governing Indebtedness or amend any existing agreements governing Indebtedness if the covenants, events of default and other terms of which, taken as a whole, place additional material restrictions on the Purchaser's ability to pay the full amount of the Earn-Out when due beyond those restrictions which currently exist under Holdings, FDC and their respective Subsidiaries' existing Debt Agreements.

8.18 **Telecommunications Compliance**. Prior to the Closing, the Company shall use its commercially reasonable best efforts to commence the implementation of a plan that will bring the Company and all Company Subsidiaries into compliance with the Communications Act of 1934, as amended, and the rules and regulations of the Federal Communications Commission and other related or similar foreign, federal or state Governmental Entities.

ARTICLE IX

INDEMNIFICATION

9.1 **Indemnification Obligations of the Company and the Stockholders.**

9.1.1 Indemnification Obligations of the Company. (a) During the period prior to the Effective Time, the Company agrees to indemnify and hold harmless each Purchaser Group Member from and against any and all Losses incurred by such Purchaser Group Member in connection with or arising from:

(i) any breach by the Company of any of its covenants or obligations in this Agreement;

(ii) any breach of any warranty or the inaccuracy of any representation (in each case without regard to any materiality, Material Adverse Effect or like qualifier contained in any such representation or warranty) of the Company contained in this Agreement or any certificate or instrument delivered by or on behalf of the Company pursuant hereto;

(iii) any action, cause of action, claim, controversy, suit or demand brought by any Option Holder, employee or former employee arising out of or in connection with the calculation or determination of any payment made or to be made to such Option Holder pursuant hereto or the cancellation, termination or surrender of any options of the Company or any of the Company Subsidiaries;

(iv) any breach by ITCFL or any Stockholder of any of its covenants or obligations in the ITCFL Acquisition Agreement;

(v) any breach of any warranty or the inaccuracy of any representation (in each case without regard to any materiality, Material Adverse Effect or like qualifier contained in any such representation or warranty) of ITCFL or any Stockholder contained in the ITCFL Acquisition Agreement (and subject to the limitations on survival set forth in the ITCFL Acquisition Agreement) or any certificate or instrument delivered by or on behalf of ITCFL or any Stockholder pursuant thereto;

(vi) any claim by any third Person to any portion of the [XYZ Payment]; or

(vii) any obligation of the Company set forth in Article X;

provided that: without limitation of the Company's indemnification obligations under clauses (i), (iii), (iv) or (vi) of this Section 9.1.1, the Company shall be required to indemnify and hold harmless under clauses (ii), (v) and (vii) of this Section 9.1.1 with respect to Losses incurred by Purchaser Group Members only if and to the extent such Losses exceed $_____ (the "Deductible") in the aggregate; provided, further, that this limitation shall not apply to any Losses incurred as a result of the breach of Sections 3.1 (other than Section 3.1(b)), 3.3, 3.4, 3.24

and 3.26 (such Sections are referred to herein as the "Core Representations") or in the event such breach was the result of fraud or intentional misconduct of the Company.

(b) The obligation of the Company to indemnify Purchaser or any Purchaser Group Member shall terminate in all respects upon the consummation of the Merger at Closing. After the consummation of the Merger, Purchaser and the Purchaser Group Members shall be entitled to seek indemnification for all indemnifiable Losses from the Stockholders in accordance with Section 9.1.2 below.

9.1.2 Indemnification Obligations of the Stockholders.

(a) **General Indemnification Obligations**. The Stockholders, by their approval of the Merger and as an integral part of the Merger Consideration, hereby agree, subject to the limitations set forth in this Section 9.1.2 that upon the consummation of the Merger at the Closing, the Stockholders shall, on a several and not joint basis, indemnify and hold harmless each Purchaser Group Member from and against any and all Losses incurred by such Purchaser Group Member in connection with or arising from:

(i) any breach by the Company of any of its covenants or obligations in this Agreement;

(ii) any breach of any warranty or the inaccuracy of any representation (in each case without regard to any materiality, Material Adverse Effect or like qualifier contained in any such representation or warranty) of the Company contained in this Agreement or any certificate or instrument delivered by or on behalf of the Company pursuant hereto;

(iii) any failure to make those payments set forth in Section 6.3(h) and any action, cause of action, claim, controversy, suit or demand brought by any Option Holder, employee or former employee arising out of or in connection with the calculation or determination of any payment made or to be made to such Option Holder pursuant hereto or the cancellation, termination or surrender of any options of the Company or any of the Company Subsidiaries;

(iv) any breach by ITCFL or any Stockholder of any of its covenants or obligations in the ITCFL Acquisition Agreement;

(v) any breach of any warranty or the inaccuracy of any representation (in each case without regard to any materiality, Material Adverse Effect or like qualifier contained in any such representation or warranty) of ITCFL or any Stockholder contained in the ITCFL Acquisition Agreement (and subject to the limitations on survival set forth in the ITCFL Acquisition Agreement) or any certificate or instrument delivered by or on behalf of ITCFL or any Stockholder pursuant thereto;

(vi) any claim by any third Person to any portion of the [XYZ Payment];

(vii) any obligation of the Company set forth in Article X;

(viii) any breach of the Stockholders to satisfy their collective obligations to pay (x) _____% of the incremental costs incurred by the Purchaser related to the exercise of any dissenter's rights by a Stockholder pursuant to Section 1.2(d) hereof or (y) the Adjustment Amount to the Purchaser in accordance with Section 1.4(c) hereof, provided that the parties acknowledge that the Stockholders' indemnification obligations under this clause (viii) shall (consistent with the other clauses (i) through (vii) above) be on a several and not joint basis so that the failure by one Stockholder to pay its respective pro rata amount owed to the Purchaser shall not trigger additional indemnification obligations of the remaining Stockholders; and

(ix) the failure of the Company to have complied, prior to the Effective Time, in any way with the Communications Act of 1934, as amended, the rules and regulations of the Federal Communications Commission and other relevant foreign, federal, state or foreign regulatory bodies, including, without limitation, the payment of any fees, fines, penalties, taxes, tariffs or other costs associated with or owed as a result of the failure to comply with such Laws, prior to the Effective Time, and/or such as are required to attain or restore full compliance with such Laws, based on the nature of the operations of the Business as of the Effective Time (even if such compliance is achieved after the Effective Time), under the jurisdiction of any Governmental Entity in connection therewith.

(b) **Limitations on Certain Indemnification Obligations**. Without limitation of the Stockholder's indemnification obligations under clauses (i), (iii), (iv), (vi), (viii) or (ix) of Section 9.1.2(a), the Stockholders shall not be required to indemnify and hold the Purchaser Group Members harmless under clauses (ii), (v) and (vii) of Section 9.1.2(a) (x) until such time as the indemnifiable Losses exceed the Deductible, and (y) in an amount that exceeds the Liability Cap; provided, further, that these limitations shall not apply to any Losses incurred as a result of the breach by the Company of a Core Representation, or any breach of Sections 3.1, 3.3, 3.4, or 3.5 of the ITCFL Acquisition Agreement. The provisions set forth in Section 9.1.2(c) below shall also apply in the event of any Losses incurred as a result of the breach by the Company of Sections 3.15, 3.16 and 3.17 (such Sections are referred to herein as the "Limited Core Representations"), or any breach of Sections 3.19, 3.20, or 3.23 of the ITCFL Acquisition Agreement (the "ITCFL Limited Core Representations).

(c) **Additional Offset Rights With Respect to Breaches of Limited Core Representations**. The Stockholders agree that in addition to their direct indemnification obligations to the Purchaser Group Members set forth in Section 9.1.2(a) above, in the event Purchaser Group Members incur Losses in an amount in excess of the Liability Cap as a result of a breach by the Company of a Limited Core Representation, the Purchaser shall be entitled, subject to the limitations set forth in Section 9.1.2(e), to offset any claim for indemnity by any Purchaser Group Member based upon such a breach of a Limited Core Representation against and up to any payment of Future Merger Consideration due under Article I. Such offset rights shall be made in accordance with Section 9.1.2(d) hereof.

(d) **Stockholders' Indemnification Obligations are Made on a Several and Not Joint Basis**. With respect to any claim for indemnification arising under this Section 9.1.2, each Stockholder shall be liable only for his, her or its pro rata portion of the Loss related to such

claim based upon his, her or its shares of Common Stock converted in the Merger as a percentage of all such shares (excluding Dissenting Shares); provided that, except in the case of fraud or intentional misconduct by such Stockholder, no Stockholder shall be required to indemnify Purchaser pursuant to this Article IX in an amount in excess of the Merger Consideration received by such Stockholder (including in determining such maximum amount any Merger Consideration otherwise payable to such Stockholder as to which the Purchaser has exercised a right of offset pursuant to this Article IX).

(e) **Satisfaction of Indemnity Claims**. The parties agree that the Indemnity Escrow Account has been established to satisfy the indemnification claims by Purchaser and the Purchaser Group Members following the Closing. Purchaser, Holdings, FDC and Mergerco acknowledge and agree (subject to the limitations as to use of the Indemnity Holdback to satisfy the payment of the Adjustment Amount under Section 1.4(c) and Section 1.8 hereof, provided that Purchaser may, at its election, utilize the Holdback to satisfy all or any portion of the Adjustment Amount in excess of $_____), that until such time as there are no remaining amounts in the Indemnity Escrow Account, the Purchaser and each Purchaser Group Member shall look solely to the Indemnity Holdback for satisfaction of each of its indemnification claims under this Section 9.1.2.

Upon the distribution of the Indemnity Holdback in accordance with Section 1.8 or at such earlier time in the event that the Purchaser Group Members make claims for indemnification under this Section 9.1.2 in amounts that are in excess of the amounts remaining in the Indemnity Escrow Account, the Purchaser shall be entitled, subject to the limitations set forth in this Section 9.1.2(e), to offset any claim for indemnity made pursuant to this Section 9.1.2 against any payment of Future Merger Consideration; provided that Purchaser may only exercise such right of offset in respect of claims (i) relating to indemnifiable Losses that are actually incurred as of the date such payment is due (in which case the amount of such offset shall be the amount of such actual Loss), (ii) to the extent such claims have been asserted by a third Person (in which case the amount of the offset shall not exceed the Purchaser's good faith estimate of the amount of indemnifiable Losses that will ultimately be payable to a Purchaser Group Member in respect of such claims), or (iii) to the extent such claims represent a reasonable estimate made by the Purchaser, acting in good faith, of additional Tax liability for Pre-Closing Periods that is attributable to issues specifically identified in good faith by the Purchaser and with respect to which there is a better than _____% risk of assessment (in which case the amount of the offset shall not exceed the Purchaser's good faith estimate of the amount of indemnifiable Losses that will ultimately be payable as a result of such additional Tax liability); provided, further, that if the Stockholders' Representative disputes the Purchaser's claim that an indemnifiable Loss has occurred, the reasonable estimated amount of a third-Person claim or an additional Tax liability for a Pre-Closing Period or that a better than _____% risk of assessment exists with respect to an additional Tax liability for a Pre-Closing Period, then Purchaser will be required to deposit any amount offset pursuant to this Section 9.1.2(e) into a separate escrow with the Escrow Agent pending resolution of the claim. If any such claims for indemnity are resolved in favor of the Stockholders' Representative on behalf of the Stockholders by mutual agreement or otherwise, or if the amount withheld exceeds the amount ultimately payable to the Purchaser Group Members in respect of such claim, the Purchaser shall pay the Stockholders the excess amount withheld with respect to such claim, together with interest thereon for the period such amount has been withheld at the AFR Rate. The Parties

hereby acknowledge and agree that the Purchaser's right to offset set forth in this Section 9.1.2(e) is subject to each of the limitations set forth in Section 9.1.2(b) and the termination provision set forth in Section 9.1.3 below. For the avoidance of doubt no portion of the Guaranteed Pool that is reserved for payment to the Guaranteed Pool Participants shall be used to offset any indemnification claims by the Purchaser Group Members, provided, however, the Purchaser shall be entitled to offset any portion of the Guaranteed Pool that is forfeited by the Guaranteed Pool Participants under the terms of the Guaranteed Bonus Plan or that would otherwise be paid to the Stockholders as additional Merger Consideration under the terms of Section 1.5(i) hereof.

In addition to the right of offset set forth above, upon the distribution of the Indemnity Holdback in accordance with Section 1.8 or at such earlier time in the event that the Purchaser Group Members make claims for indemnification under this Section 9.1.2 in amounts that are in excess of the amounts remaining in the Indemnity Escrow Account, the Purchaser shall also be entitled to seek indemnification directly from each of the Stockholders, subject to the applicable limitations set forth in this Section 9.1.2.

(f) **Exclusive Remedy**. Purchaser, Holdings, FDC and Mergerco acknowledge and agree that, other than with respect to Losses caused by fraud or intentional misconduct committed by the Company or any officer, director or Stockholder, upon the consummation of the Merger, Purchaser and the Purchaser Group Members' sole and exclusive remedy for any indemnifiable Losses that it incurs under this Agreement shall be satisfied solely as set forth in accordance with the provisions of this Section 9.1.2 (and to the extent applicable, Section 1.8 hereof), and, absent fraud or intentional misconduct, the remedies in this Section 9.1.2 constitute the sole and exclusive remedies for recovery against the Stockholders, or any one of them, for any breaches by the Company or the Stockholders under this Agreement (it being understood that the limitation shall not apply to any breach by a Stockholder of any of its, his or her individual representations, warranties and covenants set forth in such Stockholder's Letter of Transmittal). Other than indemnity obligations arising as the result of such Stockholder's fraud or intentional misrepresentation, in no event will any Stockholder be required to indemnify Purchaser Group Members for any amount in excess of the aggregate Merger Consideration received by such Stockholder.

9.1.3 **Termination Provisions**. (a) The indemnification obligations set forth in Section 9.1.2(a)(ii) shall terminate one (1) year after the Closing Date (and no claims shall be made by any Purchaser Group Member under Section 9.1.2(a)(ii) thereafter), except that the indemnification shall continue as to:

(i) Core Representations, as to which no time limits shall apply;

(ii) Limited Core Representations, which shall survive for 30 days after the expiration of any applicable statute of limitations; and

(iii) any Loss of which any Purchaser Group Member has notified the Stockholders in accordance with the requirements of Section 9.3 on or prior to the date such indemnification would otherwise terminate in accordance with this Section 9.1.3, as to which the obligation of the Stockholders shall continue until the liability of the

Stockholders shall have been determined pursuant to this Article IX, and, to the extent applicable, the Stockholders shall have reimbursed the Purchaser Group Members for the full amount of such Loss in accordance with this Article IX.

(b) The indemnification obligations set forth in Section 9.1.2(a)(v) shall survive following the closing under the ITCFL Acquisition Agreement for the periods specified therein applicable to such representations and warranties.

(c) The limitations on indemnification provided in this Section 9.1 shall not apply in the case of fraud or intentional misconduct of the Company or any Company Subsidiary.

9.2 **Indemnification by Purchaser and FDC**.

(a) Purchaser and FDC, jointly and severally, agree to indemnify and hold harmless the Company, those Persons who were Affiliates of the Company prior to the Closing, and each Stockholder Group Member from and against any and all Losses incurred by such Persons in connection with or arising from:

(i) any breach or failure by Purchaser, FDC, Holdings or Mergerco of any of its covenants or obligations in this Agreement; or

(ii) any breach of any warranty or the inaccuracy of any representation (in each case without regard to any materiality, Holdings Material Adverse Effect, First Data Prepaid Material Adverse Effect or like qualifier contained in any such representation or warranty) of Purchaser, FDC or Mergerco contained or referred to in this Agreement or in any certificate delivered by or on behalf of Purchaser, FDC or Mergerco pursuant hereto;

provided, that: (A) without limitation of Purchaser's and FDC's indemnification obligations under clause (i) of this Section 9.2(a), Purchaser and FDC shall be required to indemnify and hold harmless under clause (ii) of this Section 9.2(a) with respect to Losses incurred by the Stockholder Group Members only if and to the extent such Losses exceed $_____ in the aggregate; and (B) the aggregate amount that Purchaser and FDC shall be required to indemnify and hold harmless all Stockholder Group Members pursuant to clause (ii) of this Section 9.2(a) shall not exceed the Liability Cap; provided, further, that the limitations provided in clauses (A) and (B) shall not apply to any Losses incurred as a result of the breach of Sections 4.1, 4.2, 4.3, 4.9 and 4.11 or in the event such breach was the result of fraud or intentional misconduct of Purchaser, FDC, Holdings or Mergerco.

(b) The indemnification provided for in Section 9.2(a)(ii) shall terminate with respect to the Company itself (but not the obligation to indemnify the Stockholder Group Members) on the Closing Date, and the indemnification obligations owing to the Stockholder Group Members under Section 9.2(a)(ii) shall terminate one (1) year after the Closing Date (and no claims shall be made by any by Stockholder Group Member under Section 9.2(a)(ii) thereafter), except that the indemnification by Purchaser and FDC shall continue as to:

(i) the representations and warranties of Purchaser and FDC set forth in Sections 4.1, 4.2, 4.3, 4.9 and 4.11 as to all of which no time limitation shall apply; and

(ii) any Loss of which by any Stockholder Group Member has notified Purchaser and FDC in accordance with the requirements of Section 9.3 on or prior to the date such indemnification would otherwise terminate in accordance with this Section 9.2, as to which the obligation of the Purchaser and FDC shall continue until the liability of the Purchaser and FDC shall have been determined pursuant to this Article IX, and, to the extent applicable, the Purchaser and/or shall have reimbursed the Stockholder Group Members for the full amount of such Loss in accordance with this Article IX.

(c) Except as set forth in Section 9.2(b), the representations and warranties set forth in Article IV shall survive the Closing Date for a period of one (1) year.

9.3 **Notice of Claims**.

(a) Any Person (the "Indemnified Party") seeking indemnification hereunder shall give to the party obligated to provide indemnification to such Indemnified Party (the "Indemnitor") a notice (a "Claim Notice") describing in reasonable detail the facts giving rise to any claim for indemnification hereunder and shall include in such Claim Notice (if then known) the amount or the method of computation of the amount of such claim, and a reference to the provision of this Agreement or any other agreement, document or instrument executed hereunder or in connection herewith upon which such claim is based; provided that (i) a Claim Notice in respect of any action at law or suit in equity by or against a third Person as to which indemnification will be sought shall be given promptly after the action or suit is commenced; and (ii) failure to give such notice shall not relieve the Indemnitor of its obligations hereunder except to the extent it shall have been prejudiced by such failure.

(b) After the giving of any Claim Notice pursuant hereto, the amount of indemnification to which an Indemnified Party shall be entitled under this Article IX shall be determined: (i) by the written agreement between the Indemnified Party and the Indemnitor; (ii) by a final judgment or decree of any court of competent jurisdiction; or (iii) by any other means to which the Indemnified Party and the Indemnitor shall agree. The judgment or decree of a court shall be deemed final when the time for appeal, if any, shall have expired and no appeal shall have been taken or when all appeals taken shall have been finally determined. The Indemnified Party shall have the burden of proof in establishing the amount of Loss suffered by it.

9.4 **Tax Effect on Indemnification Payments**. Any indemnification payment hereunder with respect to any Loss shall be an amount which is sufficient to compensate the indemnified party for the amount of such Loss, after taking into account to the extent not previously taken into consideration in computing any Loss, all decreases in Taxes payable by the Indemnified Party by reason of a Tax deduction, credit or other benefit resulting from the Loss. Each Indemnified Party agrees to report each indemnification payment made in respect of a Loss as an adjustment to the Merger Consideration for federal income tax purposes unless the Indemnified Party determines in good faith that such reporting position is incorrect (it being understood that if any reporting position is later disallowed in any administrative or court

proceedings, the Indemnitor shall indemnify the Indemnified Party for the effects of such disallowance, and it being further understood that the obligations under this parenthetical clause shall remain in effect without limitation as to time).

9.5 **Third Person Claims**.

(a) Subject to Section 9.5(b), an Indemnitor shall have the right to conduct the control, through counsel of its choosing, the defense, compromise or settlement of any third Person claim, action or suit against any Indemnified Party as to which indemnification has been sought by such Indemnified Party from the Indemnitor hereunder, provided that the Indemnitor shall only have the right to conduct the control of such third Person claim if it acknowledges and agrees in writing that, if such claim, action or suit shall be adversely determined, the Indemnitor has an obligation to provide indemnification hereunder to such Indemnified Party. In the event that the Indemnitor assumes control of such third Person claim, the Indemnified Party shall cooperate in connection therewith and shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnitor in connection therewith. The Indemnified Party may participate, through counsel chosen by it and at its own expense, in the defense of any such claim, action or suit as to which the Indemnitor has so elected to conduct and control the defense thereof. The Indemnitor shall not, without the written consent of the Indemnified Party (which written consent shall not be unreasonably withheld), pay, compromise or settle any such claim, action or suit; provided such consent may be withheld by the Indemnified Party if, as a result of such compromise or settlement (i) injunctive relief or specific performance would be imposed against the Indemnified Party, or (ii) such settlement or compromise would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder. Notwithstanding the foregoing, the Indemnified Party shall have the right to pay, settle or compromise any such claim, action or suit, provided that in such event the Indemnified Party shall waive any right to indemnity therefor hereunder unless the Indemnified Party shall have sought the consent of the Indemnitor to such payment, settlement or compromise and such consent was unreasonably withheld, in which event no claim for indemnity therefor hereunder shall be waived.

(b) Notwithstanding Section 9.5(a) above, the Indemnitor shall not be entitled to control, but may participate in, and the Indemnified Party shall have the right to conduct and control, through counsel of its choosing, the defense, compromise or settlement of (x) that part of any third Person claim (i) that seeks a temporary restraining order, a preliminary or permanent injunction or specific performance against the Indemnified Party, or (ii) to the extent such third Person claim involves criminal allegations against the Indemnified Party or (y) the entire third Person claim (i) if such third Person Claim would impose liability on the part of the Indemnified Party in an amount which is greater than the amount as to which the Indemnified Party is entitled to indemnification under this Agreement or (ii) that if unsuccessful, would set a precedent that would have a material adverse effect on, the business or financial condition of the Indemnified Party; provided that the Indemnitor may participate, through counsel chosen by it and at its own expense, in the defense of any such claim, action or suit as to which the Indemnified Party has so assumed the conduct and control the defense thereof. In the event the Indemnified Party retains control of the third Person claim, the Indemnitor shall cooperate in connection therewith and shall furnish such records, information and testimony and attend such conferences, discovery

proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnified Party in connection therewith. In addition, if the Indemnified Party assumes control of any such claim, action or suit, the Indemnified Party shall not settle the subject claim without the prior written consent of the Indemnitor, which consent will not be unreasonably withheld or delayed.

(c) Notwithstanding the other provisions of this Section 9.5, if a third Person that is a material customer or supplier of the Indemnified Party asserts (other than by means of a lawsuit) that an Indemnified Party is liable to such third Person for a monetary or other obligation which may constitute or result in Losses for which such Indemnified Party may be entitled to indemnification pursuant to this Article IX, and such Indemnified Party reasonably determines that it has a valid business reason to fulfill such obligation, then (A) such Indemnified Party may elect to satisfy such obligation, with prior written notice to the Indemnitor, (B) such Indemnified Party may subsequently make a claim for indemnification in accordance with the provisions of this Article IX and (C) such Indemnified Party shall be reimbursed, in accordance with the provisions of this Article IX, for only such amount of such Losses which the Indemnified Party proves, by a preponderance of the evidence, was the minimum necessary to be incurred to settle such third Person claim (subject to the right of the Indemnitor to dispute the Indemnified Party's entitlement to indemnification, the reasonableness of the amount the Indemnified Party expended to satisfy such obligation, or the amount for which it is entitled to indemnification under the terms of this Article IX); provided that if the Indemnified Party is a Purchaser Group Member then such Purchaser Group Member shall consult with the Stockholders' Representative prior to taking any action pursuant to this Section 9.5(c).

(d) If there shall be any conflict between the provisions of this Section 9.5 and Section 10.3 (relating to Tax contests), the provisions of Section 10.3 shall control with respect to Tax contests.

9.6 **Effect of Knowledge**. Subject to the other terms of this Agreement, the rights to indemnification set forth in this Article IX shall not be affected by any investigation conducted by or on behalf of the Indemnified Party or any knowledge acquired (or capable of being acquired) by the Indemnified Party, whether before or after the date of this Agreement or the Closing Date, with respect to the inaccuracy or noncompliance with any representation, warranty, covenant or obligation which is the subject of indemnification hereunder.

9.7 **Exclusive Remedy**. The rights of the Indemnified Parties set forth in this Article IX are, absent fraud, exclusive and in lieu of any other rights and remedies under this Agreement with respect to Losses based upon the inaccuracy, untruth, incompleteness or breach of any representation or warranty contained herein or in any agreement, certificate, Schedule or exhibit furnished in connection herewith, and such Losses shall be satisfied solely as set forth in accordance with the provisions of this Article IX (and to the extent applicable, Section 1.8 hereof), and, absent fraud, the remedies in this Article IX constitute the sole and exclusive remedies for recovery against the Company, Purchaser, FDC, Holdings, Mergerco, and each Stockholder, as the case may be, based upon the inaccuracy, untruth, incompleteness or breach of any representation or warranty contained herein or in any agreement, certificate, Schedule or exhibit furnished in connection herewith.

ARTICLE X

TAX MATTERS

10.1 **Liability for Taxes.**

(a) The Company prior to the Effective Time and the Stockholders on and after the Effective Time shall be responsible and shall pursuant to Article IX indemnify and hold harmless each Purchaser Group Member from and against any and all Losses incurred by such Purchaser Group Member in connection with or arising from all Taxes imposed on the Company or any Company Subsidiary, or for which the Company or any Company Subsidiary may otherwise be liable, for any taxable year or period or part thereof that ends before the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period ending on and including the day prior to the Closing Date (such periods or parts thereof being ("Pre-Closing Tax Periods") including, without limitation, any liability imposed pursuant to Treas. Reg. § 1.1502-6 or similar provisions of state, local or foreign law (it being understood that, except for any Taxes described in Section 10.1(d) and any Taxes incurred with respect to transactions not in the ordinary course of business effected on the Closing Date by or under the direction of any Stockholder Group Member, the Stockholders shall have no liability with respect to any Taxes (or Losses attributable thereto) incurred on account of operations, activities, sales, or other transactions occurring on the Closing Date or thereafter, including, without limitation, Losses due to any Taxes triggered by transactions taken by Purchaser, either on or after the Closing Date (including, without limitation, any Taxes due to any election under Section 338 of the Code made by the Purchaser), even though for federal tax purposes the separate taxable year of the Company will not end until the close of the Closing Date and the Company will not enter the consolidated federal income tax return of the federal affiliated group of which Purchaser is a member until the day after the Closing Date); provided, however, that the Purchaser shall not be entitled to indemnity for and the Company and/or the Stockholders shall not indemnify and hold harmless any Purchaser Group Member from and against Losses incurred by such Purchaser Group Member in connection with or arising from any Tax liability to the extent such Tax liability (when combined with provisions Tax liabilities covered in this Section 10.1(a)) does not exceed the aggregate liability or reserve for Tax liabilities in the Closing Date Tax Accrual. Correspondingly, other than the [XYZ Payment] which is addressed in Section 8.11, the Purchaser shall be liable for and pay to the Stockholders as additional Merger Consideration any Tax refund to the Company attributable to a Pre-Closing Tax Period (not including any refund resulting from the carryback of an item from a taxable period or portion thereof beginning after the Closing Date) that is not reflected in the computation of Final Closing Working Capital. Notwithstanding anything to the contrary in this Article X, the Stockholders shall not be liable for or pay, and shall not indemnify or hold harmless the Purchaser from and against any Losses incurred by the Purchaser Group Members in connection with or arising from any Taxes for which the Purchaser is liable under this Agreement (including, without limitation, under Section 9.2 or Section 10.1(b)).

(b) Purchaser shall be liable for and pay, and pursuant to Section 9.2 shall indemnify and hold harmless each Stockholder Group Member from and against any and all Losses incurred by such Stockholder Group Member in connection with or arising from all Taxes imposed on the Company or any Company Subsidiary for any taxable year or period that begins

after the day prior the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period beginning after the day prior to the Closing Date, except for any Taxes described in Section 10.1(d) and any Taxes incurred with respect to transactions not in the ordinary course of business effected on the Closing Date by or under the direction of any Stockholder Group Member; provided, however, that Purchaser shall not be liable for or pay, and shall not indemnify or hold harmless any Stockholder Group Member from and against any Losses incurred by such Stockholder Group Member in connection with or arising from any Taxes for which the Stockholders are liable under this Agreement (including, without limitation, under Section 9.1.2(a) or Section 10.1(a)).

(c) For purposes of paragraphs (a) and (b) above, whenever it is necessary to determine the liability for Taxes of the Company or any Company Subsidiary for a Straddle Period, the determination of the Taxes of the Company or such Company Subsidiary for the portion of the Straddle Period ending on and including, and the portion of the Straddle Period beginning after, the day prior to the Closing Date shall be determined by assuming that the Straddle Period consisted of two taxable years or periods, one which ended at the close of the day prior to the Closing Date and the other which began at the beginning of the day following the day prior to the Closing Date and items of income, gain, deduction, loss or credit of the Company or such Company Subsidiary for the Straddle Period shall be allocated between such two taxable years or periods on a "closing of the books basis" by assuming that the books of the Company or such Company Subsidiary were closed at the close of the day prior to the Closing Date, provided, however, that exemptions, allowances or deductions that are calculated on an annual basis, such as the deduction for depreciation, shall be apportioned between such two taxable years or periods on a daily basis, and items for the month in which the Closing occurs shall be allocated in the same manner provided under Section 10.2(a). Notwithstanding the foregoing, Taxes imposed on an ad-valorem basis shall be allocated on a per diem basis.

(d) The Company prior to the Effective Time and the Stockholders on and after the Effective Time shall be responsible and shall pursuant to Article IX indemnify and hold harmless each Purchaser Group Member from and against any and all Losses incurred by such Purchaser Group Member in connection with or arising from any real property transfer or gains Tax, sales Tax, use Tax, stamp Tax, stock transfer Tax, or other similar Tax imposed on the transactions contemplated by this Agreement.

10.2 **Tax Returns.**

(a) The Company shall cause to be prepared when due (taking into account all extensions properly obtained), subject to the direction of the Stockholder's Representative, all federal and state Tax Returns that are required to be filed by or with respect to the Company and each Company Subsidiary for taxable periods ending on or prior to the Closing Date, and the fees of the accounting firm selected by the Stockholder's Representative (and reasonably acceptable to the Purchaser) to prepare such returns shall be paid by the Stockholders, and the Purchaser hereby agrees that Habif, Arogeti & Wynne, LLP is a reasonably acceptable accounting firm for purposes of this Section 10.2(a). The parties hereby acknowledge and agree that it is understood that for federal and state income tax purposes, the Company will, commencing with the day after the Closing Date, be a part of Purchaser's consolidated federal and state income tax returns, and, as such, its federal taxable year as a separate corporate group

will end as of the close of the Closing Date (subject to the income allocation rules of Treas. Reg. Sec. 1.1502-76; provided that the parties agree that Purchaser and the Company shall make the election under Treas. Reg. Sec. 1.1502-76 (b)(2)(iii) to ratably allocate income for the month in which the Closing occurs, and further agree that the deduction of the Closing Date Bonus Pool Payments shall be treated as an "extraordinary item" within the meaning of such regulations and allocated to the taxable period ending on the Closing Date. Notwithstanding the required tax periods described in the preceding sentence, as set forth in Section 10.1, the Stockholders shall have no liability with respect to any Taxes (or Losses attributable thereto) incurred on account of operations, activities, sales, or other transactions occurring on the Closing Date, except for any Taxes described in Section 10.1(d) and any Taxes incurred with respect to transactions not in the ordinary course of business effected on the Closing Date by or under the direction of any Stockholder Group Member. All Tax Returns which the Company is required to file or cause to be filed in accordance with this Section 10.2 shall be prepared and filed in a manner consistent with past practice and on such Tax Returns no position shall be taken, election made or method adopted that is inconsistent with positions taken, elections made or methods used in preparing and filing similar Tax Returns in prior periods (including, but not limited to, positions, elections or methods which would have the effect of deferring income to periods for which Purchaser is liable under Section 10.1(b) or accelerating deductions to periods for which the Company and/or the Stockholders are required to indemnify the Purchaser for under Section 10.1(a)).

(b) Purchaser shall have the right to review and comment on each federal and state income Tax Return relating to the Company and any Company Subsidiary that is required to be prepared and filed by the Company and that is filed after the Closing Date. The Company and Purchaser agree to consult and to attempt to resolve in good faith any issue arising as a result of the review of such Tax Returns.

10.3 **Contest Provisions.**

(a) Purchaser shall notify the Stockholders' Representative in writing upon receipt by Purchaser, any of its Affiliates, the Company or any Company Subsidiary of notice of any pending or threatened federal, state, local or foreign Tax audits or assessments which may affect the Tax liabilities of the Company or any Company Subsidiary for which the Stockholders would be required to indemnify Purchaser Group Members pursuant to Sections 10.1(a) and 9.1.2 hereof, provided that failure to comply with this provision shall not affect Purchaser's right to indemnification hereunder except to the extent such failure materially impairs the Stockholders' Representative's ability to contest any such Tax liabilities.

(b) The Stockholders' Representative shall have the sole right to represent the Company's and each Company Subsidiary's interests in any Tax audit or administrative or court proceeding relating to Tax liabilities for which the Stockholders would be required to indemnify Purchaser Group Members pursuant to Sections 10.1(a) and 9.1.2 hereof and which relate to taxable periods ending on or before the Closing Date, and to employ counsel of the Stockholders' Representative's choice at the Stockholders' expense; provided, however, that the Stockholders' Representative shall have no right to represent the Company's or any Company Subsidiary's interests in any Tax audit or administrative or court proceeding unless the Stockholders' Representative shall have first notified Purchaser in writing of the

Stockholders' Representative intention to do so and shall have agreed with Purchaser in writing that the Stockholders would be required to indemnify the Purchaser pursuant to Sections 10.1(a) and 9.1.2 for any Taxes that result from such audit or proceeding; provided, further that Purchaser and its representatives shall be permitted, at Purchaser's expense, to be present at, and participate in, any such audit or proceeding. Nothing herein shall be construed to impose on Purchaser or any Affiliate thereof any obligation to defend the Company or any Company Subsidiary in any Tax audit or administrative or court proceeding. Purchaser shall have the sole right to defend the Company or any Company Subsidiary with respect to any issue arising with respect to any such Tax audit or administrative or court proceeding to the extent Purchaser shall have agreed in writing to forego any indemnification under this Agreement with respect to such issue. Notwithstanding the foregoing, neither the Stockholders' Representative nor any representative of the Stockholders shall be entitled to settle, either administratively or after the commencement of litigation, any claim for Taxes which could adversely affect the liability for Taxes of any Purchaser Group Member, the Company, any Company Subsidiary or any thereof for any period after the Closing Date to any extent unless the Stockholders have indemnified each Purchaser Group Member against the effects of any such settlement (including, but not limited to, the imposition of income Tax deficiencies, the reduction of asset basis or cost adjustments, the lengthening of any amortization or depreciation periods, the denial of amortization or depreciation deductions, or the reduction of loss or credit carry forwards) without the prior written consent of Purchaser, which consent may be withheld in the sole discretion of Purchaser.

10.4 **Assistance and Cooperation**. After the Closing Date, each of the Company, the Stockholders' Representative and Purchaser shall (and shall cause their respective Affiliates to):

(i) timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or other reports with respect to, Taxes described in Section 10.1(d) (relating to sales, transfer and similar Taxes);

(ii) assist the other party in preparing any Tax Returns which such other party is responsible for preparing and filing in accordance with Section 10.2, and in connection therewith provide the other party necessary powers of attorney;

(iii) cooperate fully in preparing for and conducting any audits of, or disputes with taxing authorities regarding, any Tax Returns of the Company and each Company Subsidiary;

(iv) make available to the other and to any taxing authority as reasonably requested all information, records, and documents relating to Taxes of the Company and each Company Subsidiary; and

(v) furnish the other with copies of all correspondence received from any taxing authority in connection with any Tax audit or information request with respect to any such taxable period.

10.5 **Stockholders Payment Obligations**. The parties hereby acknowledge and agree that the Stockholders payment obligations under this Article X, if any, shall be qualified in their entirety by each of the limitations set forth in Section 9.1.2. Accordingly, the Stockholders shall not be required to pay or indemnify the Purchaser for any amounts under this Article X (i) until such time as the aggregate payment obligations under this Article X (together will all other indemnifiable Losses incurred by the Purchaser Group Members) exceed the Deductible, and (ii) in an amount (together will all other indemnifiable Losses incurred by the Purchaser Group Members that are subject to the Liability Cap) that exceeds the Liability Cap.

ARTICLE XI

MISCELLANEOUS

11.1 **Notices**. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier or overnight delivery service, if such notice is addressed to the party to be notified at such party's address as set forth below, or as subsequently modified by written notice,

(i) if to Purchaser, FDC, Holdings or Mergerco to:

First Data Corporation
6200 S. Quebec Street
Suite 320-B
Greenwood Village, Colorado 80111
Attn: President

With a copy to:

First Data Corporation
6200 S. Quebec Street
Suite 320-B
Greenwood Village, Colorado 80111
Attn: General Counsel

(ii) if to the Company prior to the Closing Date, to:

InComm Holdings, Inc.
250 Williams Street, NW
Atlanta, Georgia 30303-1032
Attn: M. Brooks Smith

With a copy to:

Tobin & Reyes, P.A.
5355 Town Center Road
Suite 204
Boca Raton, Florida 33486
Attn: David Tobin, Esq.

(iii) if to the Stockholders or the Stockholders' Representative, to:

M. Brooks Smith
c/o InComm Holdings, Inc.
250 Williams Street, NW
Atlanta, Georgia 30303-1032

With a copy to:

Tobin & Reyes, P.A.
5355 Town Center Road
Suite 204
Boca Raton, Florida 33486
Attn: David Tobin, Esq.

11.2 **Expenses**. Each Party will pay its own expenses and costs incurred in connection with the negotiation, execution, delivery and performance of this Agreement (including legal, accounting, consulting, investment banker and other advisory fees and expenses).

11.3 **Interpretation.**

(i) When a reference is made in this Agreement to Exhibits, such reference shall be to 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 "without limitation." 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.

(ii) If any fact or item is included on the Company Disclosure Schedule, Company Disclosure Schedule or Purchaser Disclosure Schedule referenced by a particular section in this Agreement and the existence of the fact or item or its contents is relevant to any other section in this Agreement, the fact or item shall be deemed to be disclosed with respect to such other section whether or not an explicit cross-reference appears in such schedules if such relevance is reasonably apparent from examination of such schedules.

11.4 **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

11.5 **Entire Agreement; Parties in Interest; Successors and Assigns.**

(a) This Agreement and the documents referred to herein is the product of all of the parties hereto, and constitute the entire agreement between such parties pertaining to the subject matter hereof and thereof, and merge all prior negotiations and drafts of the parties with regard to the transactions contemplated herein and therein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions: (i) are expressly canceled; (ii) are not intended to confer upon any other person any rights or remedies hereunder; and (iii) shall not be assigned by operation of law or otherwise except as otherwise specifically provided.

(b) The rights of each party under this Agreement shall not be assignable by such party hereto prior to the Closing without the written consent of the others, except that the rights of Purchaser and Mergerco hereunder may be assigned prior to the Closing, without the consent of the Company or the Stockholders, to any corporation or limited liability company all of the outstanding capital stock or equity interests of which is owned or controlled by FDC or to any general or limited partnership in which FDC or any such corporation or limited liability company is a general partner; provided that (i) the assignee shall assume in writing all of Purchaser's obligations to the Company and the Stockholders hereunder, and (ii) Purchaser shall not be released from any of its obligations hereunder by reason of such assignment. Following the Closing, either party may assign any of its rights hereunder, but no such assignment shall relieve it of its obligations hereunder; provided that FDC may only transfer or assign its obligations set forth in Article V in accordance with Section 5.5.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns. The successors and permitted assigns hereunder shall include without limitation, in the case of Purchaser, any permitted assignee as well as the successors in interest to such permitted assignee (whether by merger, liquidation (including successive mergers or liquidations) or otherwise).

11.6 **Severability**. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

11.7 **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.

11.8 **Governing Law**. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Georgia, without giving effect to principles of conflicts of law. Each of the parties to this Agreement consents to the exclusive jurisdiction and venue of the courts of the state and federal courts of Fulton County, Georgia.

11.9 **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.

11.10 **Waiver of Restrictions**. The Company hereby consents to the transfers of Common Stock that are the subject of this Agreement and waives any restrictions on transfer applicable to such Common Stock with respect to the transfers contemplated by this Agreement.

11.11 **Amendments and Waivers**. Any term of this Agreement may be amended or waived only with the written consent of the parties or their respective successors and assigns. Any amendment or waiver effected in accordance with this Section 11.11 shall be binding upon the parties and their respective successors and assigns.

11.12 **Third Party Beneficiaries**. This Agreement is made for the sole benefit of the parties hereto, their respective successors and permitted assigns, and nothing contained herein, express or implied, is intended to or shall confer upon any other Person any third party beneficiary right or any other legal or equitable rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

11.13 **Jurisdiction**. Except as otherwise expressly provided in this Agreement, 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 in any Federal or any state court sitting in Atlanta, Georgia so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Georgia, 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 suit, action or proceeding in any such court or that any such suit, action or proceeding which is 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 court. Without limiting the foregoing, each party agrees that service of process on such party as provided for herein shall be deemed effective service of process on such party.

11.14 **Specific Performance**.. The Parties acknowledge that the rights of each Party to consummate the transactions contemplated hereby are special, unique, and of extraordinary character, and that, in the event that any Party violates or fails and refuses to perform any

covenant made by it herein, the other Party or Parties will be without adequate remedy at Law. In the event that any party violates, fails or refuses to perform any covenant made by it herein, the other Party or Parties may, in addition to any remedies at Law, institute and prosecute an action in a court of competent jurisdiction to enforce specific performance of such covenant or seek any other equitable relief; provided that this provision shall only apply to the Company and the Stockholders prior to, but not after, the consummation of the Merger. No exercise of a remedy available to a Party shall be deemed an election excluding any other remedy available to such Party (any such claim by any other Party being hereby waived).

11.15 **Waiver of Jury Trial**. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

11.16 **Mediation**. In the event of any dispute, controversy, or claim arising out of or relating to this Agreement or the parties hereto are unable to reach mutual agreement upon a matter as to which mutual agreement of the parties is contemplated by the terms of this Agreement, the parties shall follow the procedures set forth in this Section 11.16 to resolve such dispute or lack of agreement; provided, however, that this Section 11.16 shall not apply to disputes arising over matters made pursuant to the Escrow Agreement, all of which shall be governed exclusively by the dispute resolution procedures set forth in the Escrow Agreement. The parties shall cooperate and attempt in good faith to resolve any dispute or to reach mutual agreement promptly by negotiating between representatives of each party who have authority to settle the dispute or to reach mutual agreement.

[Signature page follows.]

The parties have duly executed this AGREEMENT AND PLAN OF MERGER as of the date first above written.

FIRST DATA CORPORATION

By:_____
Name:_____
Title:_____

INCOMM HOLDINGS, INC.

By:_____
Name:_____
Title:_____

RINGS ACQUISITION CORP.

By:_____
Name:_____
Title:_____

_____
M. Brooks Smith, solely for the purpose of accepting his appointment as the Stockholders' Representative under Section 1.7 hereof

FIRST DATA MERCHANT SERVICES CORPORATION

By:_____
Name:_____
Title:_____

FIRST DATA HOLDINGS, INC.
(solely for purposes of Article I, Article II, Section 6.2, Section 8.17 and Article XI hereof)

By:_____
Name:_____
Title:_____

ANNEX A

CERTAIN DEFINED TERMS

For purposes of this Agreement, the following terms shall have the meanings set forth below. Other terms, defined in context, as listed in the Table of Defined Terms at the beginning of this Agreement.

"Accounting Firm" means a nationally recognized accounting firm mutually acceptable to Purchaser and the Stockholders' Representative, which shall be selected among the four largest accounting firms in the United States in terms of gross revenue; provided that the Accounting Firm shall be independent and shall not be rendering any material services to either the Purchaser, the Stockholders' Representative or their respective Affiliates.

"Affiliate" means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person.

"AFR Rate" means the "applicable federal rate" (determined pursuant to Section 1274(a) of the Code) in effect from time to time.

"Airplane Indebtedness" shall mean the Indebtedness of the Company related to the acquisition of the Company's airplane.

"CEO" means the Chief Executive Officer of the Stored Value Business.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., and the regulations promulgated thereunder.

"Certificate" means a certificate that represents issued and outstanding Common Stock.

"Chase Loan Agreement" means the Amended and Restated Credit Agreement, dated as of May 1, 2006, by and between the Company, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent, as amended.

"Closing Date Tax Accrual" means the Taxes reflected as a liability or reserve for Tax liabilities (rather than any liability or reserve for deferred Taxes established to reflect timing differences between book and tax income) on the face of the calculation of the Final Closing Working Capital.

"Closing Working Capital" shall mean the Working Capital of the Company as of the opening of business on the Closing Date; provided, however, that for purposes of calculating the Closing Working Capital the parties agree that solely for the purposes of the determination described herein:

(i) all cash amounts that the Company receives prior to the Effective Time on account of the [XYZ Payment] and any accounts receivable that are owing to the Company at Closing due to the [XYZ Payment] shall not be included as current assets;

(ii) any Taxes that are reserved for payment by the Company at the Effective Time arising out of the Company's collection or anticipated collection of the [XYZ Payment] shall not be included as current liabilities;

(iii) liability for Taxes shall be computed without giving effect to any deduction for the aggregate amount of Closing Date Bonus Pool Payments;

(iv) any amounts that are reserved for payment at the Effective Time to satisfy any third Person claims to any portion of the [XYZ Payment], to the extent such amounts have been included in the [XYZ Consideration Payment] calculation in accordance with clause (x)(ii) of Section 8.11, shall not be included as current liabilities;

(v) there shall be deemed an accrued current asset in an amount equal to the sum of (x) the aggregate amount of Taxes, if any, that have been paid by the Company prior to the Effective Time arising out of the Company's collection or anticipated collection of the [XYZ Payment], (y) the aggregate amount of the third party expenses that have been paid by the Company prior to the Effective Time related to the Company's collection of the [XYZ Payment], to the extent such out-of-pocket expenses have been included in the [XYZ Consideration Payment] calculation in accordance with clause (x)(i) of Section 8.11, and (z) the aggregate amount of payments made by the Company prior to the Effective Time to satisfy any third Person claims to any portion of the [XYZ Payment], to the extent such amounts have been included in the [XYZ Consideration Payment] calculation in accordance with clause (x)(ii) of Section 8.11;

(vi) the outstanding indebtedness of the Company under the Chase Loan Agreement shall not be included as a current liability;

(vii) there should be no accrued liability for the payment of any amounts under the Company Bonus Pool Plan or the Guaranteed Bonus Plan and there shall be deemed an accrued current asset equal to the aggregate amount of Closing Date Bonus Pool Payments that have been paid (and accounted for as a reduction in cash) by the Company prior to the Effective Time;

(viii) the aggregate amount of capital expenditures that the Company has paid out of available cash, or has committed to pay (to the extent such commitment constitutes a current liability under GAAP), after the date hereof to acquire, purchase or build out its displays in the Staples and Blockbuster locations, will be added as current assets up to an aggregate maximum of $_____; provided that such aggregate maximum amount can be increased with the written consent of the Purchaser; and

(ix) in the event that the Company (x) enters into any definitive agreement prior to the Effective Time relating to the consummation of the [ABC] Acquisition or any Additional Acquisition, as provided for herein, then no portion of the obligations to pay the purchase price or any transaction expenses relating to such acquisition (to the extent unpaid at the Effective Time) shall constitute current liabilities of the Company, and (y) consummates the [ABC] Acquisition or any Additional Acquisition prior to the Effective Time, then the amount of working capital (as defined in a manner consistent with this Agreement) of any

acquired company shall be disregarded for purposes of computing Closing Working Capital under this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, and except where the context otherwise requires, the regulations promulgated thereunder.

"[DEF] Litigation" shall mean _____.

"Company Intellectual Property" means all Intellectual Property of the Company.

"Company Material Adverse Effect" means any effect on the Company and the Company Subsidiaries, collectively (other than as a result of changes in prevailing interest rates, in general economic conditions affecting the general economy of the United States or the industries in which Company and the Company Subsidiaries operate, or in applicable Law or the official interpretations thereof or in GAAP, in each case, which do not disproportionately affect the Company and the Company Subsidiaries in any material manner) that, when considered either individually or in the aggregate together with all other effects, is reasonably likely to have a materially adverse effect on the operations or financial condition of the Company and the Company Subsidiaries, taken as a whole. For the avoidance of doubt, the parties agree that the terms "material," "materially" or "materiality" as used in this Agreement with an initial lower case "m" shall have their respective customary and ordinary meanings, without regard to the meaning set forth in this definition.

"Company Property" means any real or personal property, plant, building, facility, structure, equipment or unit, or other asset owned, leased or operated by the Company or any of the Company Subsidiaries.

"Company Subsidiary" means each of the Subsidiaries of the Company; provided, however, that for the avoidance of doubt the parties hereby agree that ITCFL shall not be deemed to be a Subsidiary of the Company or a "Company Subsidiary" for purposes of this Agreement.

"Company Transaction Costs" means the costs and expenses that have been or will be incurred by the Company (or any Company Subsidiary or ITCFL) in connection with the negotiation, execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder, including: (a) investment banking fees, (b) accounting fees, (c) legal fees, (d) payment made under the Company Bonus Pool pursuant to Section 8.10, (d) filing fees under the HSR Act (less the amount of such filing fees reimbursed by Purchaser hereunder) and (e) the costs and expenses incurred obtaining the governmental approvals required under Section 6.1(b) or the third-party consents under Section 6.3(e) hereof.

"Contaminant" means any waste, pollutant, hazardous or toxic substance or waste, petroleum, petroleum-based substance or waste, special waste, or any constituent of any such substance or waste.

"Copyrights" means United States and foreign copyrights, copyrightable works, and mask work, whether registered or unregistered, and registrations and pending applications to register the same.

"Debt Agreement" means any agreement governing the terms of Indebtedness for borrowed money.

"Domain Names" means any domain names and other computer user identifiers and any rights in and to sites on the World Wide Web including, without limitation, rights in and to any text, graphics, audio and video files and html or other code incorporated in such sites.

"Encumbrance" means any lien (statutory or other), claim, charge, security interest, mortgage, deed of trust, pledge, hypothecation, assignment, conditional sale or other title retention agreement, preference, priority or other security agreement or preferential arrangement of any kind or nature, and any easement, encroachment, covenant, restriction, right of way, defect in title or other encumbrance of any kind.

"Environmental Encumbrance" means an Encumbrance in favor of any Governmental Entity for (i) any liability under any Environmental Law, or (ii) damages arising from, or costs incurred by such Governmental Entity in response to, a Release or threatened Release of a Contaminant into the environment.

"Environmental Law" means all federal, state and local statutes, ordinances, rules and regulations, all court orders and decrees and arbitration awards, and the common law, relating to or addressing pollution, protection of the environment or contamination of the environment. Environmental Laws include, without limitation, CERCLA, OSHA and RCRA and any state equivalent thereof and those otherwise relating to: (i) manufacture, processing, use, distribution, treatment, storage, disposal, generation or transportation of contaminants; (ii) air, surface or ground water or noise pollution; or (iii) protection of wildlife, endangered species, wetlands or natural resources.

"Execution Date" shall mean the date this Agreement is executed by the Parties.

"Expenses" means any and all expenses incurred in connection with investigating, defending or asserting any claim, action, suit or proceeding incident to any matter indemnified against hereunder (including court filing fees, court costs, arbitration fees or costs, witness fees, and reasonable fees and disbursements of legal counsel, investigators, expert witnesses, consultants, accountants and other professionals).

"[XYZ] Offset Amount" means an amount equal to the product of (x) the difference between (i) the Adjusted [XYZ Payment] less (ii) an amount equal to the aggregate amount of Closing Date Bonus Pool Payments, multiplied by (y) _____%.

"First Data Prepaid Material Adverse Effect" means any effect on First Data Prepaid, collectively (other than as a result of changes in prevailing interest rates, in general economic conditions affecting the general economy of the United States or the industries in which First Data Prepaid operates, or in applicable Law or the official interpretations thereof or in GAAP, in each case, which do not disproportionately affect First Data Prepaid in any material matter) that, when considered either individually or in the aggregate together with all other effects, is reasonably likely to have materially adverse effect on the operations or financial condition of First Data Prepaid, taken as a whole. For the avoidance of doubt, the parties agree that the terms "material," "materially" or "materiality" as used in this Agreement with an initial lower case "m"

shall have their respective customary and ordinary meanings, without regard to the meaning set forth in this definition.

"Future Merger Consideration" shall mean, as of any date of determination, the portion of the Merger Consideration that has not yet been earned or that is otherwise payable to the Stockholders pursuant to the terms and conditions of this Agreement; provided that for the avoidance of doubt it is hereby acknowledged and agreed that neither the portion of the Closing Merger Consideration that constitutes the Purchase Price Cash Holdback or the Purchase Price Stock Holdback nor any Recoupment Payment shall constitute Future Merger Consideration for purposes of this Agreement.

"Governmental Entity" means any foreign, federal, state, local or other governmental authority or regulatory body.

"Holdings Material Adverse Effect" means any effect on Holdings and its Subsidiaries, collectively (other than as a result of changes in prevailing interest rates, in general economic conditions affecting the general economy of the United States or the industries in which Holdings and its Subsidiaries operate, or in applicable Law or the official interpretations thereof or in GAAP, in each case, which do not disproportionately affect Holdings and its Subsidiaries in any material manner) that, when considered either individually or in the aggregate together with all other effects, is reasonably likely to have a material adverse effect on the operations or financial condition of Holdings and its Subsidiaries, taken as a whole. For the avoidance of doubt, the parties agree that the terms "material," "materially" or "materiality" as used in this Agreement with an initial lower case "m" shall have their respective customary and ordinary meanings, without regard to the meaning set forth in this definition.

"Indebtedness" means, as of any time, any liability contingent or otherwise and relating to: (a) indebtedness, including interest thereon, outstanding at such time, created, issued or incurred by such person for borrowed money and any prepayment penalties related to payment thereof; (b) obligations outstanding at such time of such person to pay the deferred purchase or acquisition price of property or services, other than trade accounts payable arising, and accrued expenses incurred in the ordinary course of business and consistent with such person's customary trade practices; (c) indebtedness of another person secured by a lien at such time on the property of such person, whether or not the respective indebtedness so secured has been assumed by such person; (d) payment obligations of such person outstanding at such time in respect of letters of credit, bankers' acceptances or similar instruments issued or accepted by banks and other financial institutions for account of such person; (e) indebtedness of others guaranteed by such person; (f) indebtedness outstanding at such time evidenced by any lien that may be listed on the Company Disclosure Schedule; and (g) obligations outstanding at such time of such person with respect to capital leases.

"Intellectual Property" means Copyrights, Patent Rights, Domain Names, Trademarks, Trade Secrets and Technology.

"ITCFL Purchase Price Amount" shall mean $_____, the purchase price for the shares of capital stock under the ITCFL Acquisition Agreement.

"Knowledge" means a party's actual knowledge, without any requirement for inquiry. In the case of the Company, reference to the "Company's Knowledge" shall be deemed to include the actual knowledge of M. Brooks Smith, David Cochenour, Philip Graves, Kenneth Taylor, and Matthew Watson. In the case of FDC, reference to "FDC's Knowledge" shall be deemed to include the actual knowledge of Edward Labry, Mark Herrington and Jeffrey Carter.

"Law" means any and all foreign, federal, state and local laws, statutes, regulations, rules, requirements, codes or ordinances, including any enacted, adopted, issued or promulgated by any Governmental Entity or common law.

"Liability Cap" means _____% of the aggregate Merger Consideration that is paid or that is due and payable to the Stockholders pursuant to the terms of Article I hereof (after giving effect, if applicable, to the repayment to the Purchaser of the Merger Consideration Reduction Amount).

"LIBOR" shall mean a rate of interest equal to (a) the two week rate of interest at which United States dollar deposits for a period equal to the relevant period are offered in the London Interbank Eurodollar market at 11:00 a.m. (London time) two business days prior to the commencement of such period (or three business days prior to the commencement of such period if banks in London, England were not open and dealing in offshore United States dollars on such second preceding Business Day), as displayed in the *Bloomberg Financial Markets* system (or other authoritative source selected by the Purchaser in its sole discretion), divided by (b) a number determined by subtracting from 1.00 the then stated maximum reserve percentage for determining reserves to be maintained by member banks of the Federal Reserve System for Eurocurrency funding or liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D).

"Losses" means any and all losses, costs, obligations, liabilities, settlement payments, awards, judgments, fines, penalties, damages, Expenses, deficiencies, Taxes or other charges.

"Minority Stockholders" means the Stockholders of the Company other than Smith.

"Net Income" means net income as defined by GAAP.

"Option Holder" means any person holding an option to acquire the capital stock of the Company or any of the Company Subsidiaries.

"Oracle Indebtedness" means the Indebtedness of the Company under the Oracle Payment Plan Agreement, dated November 30, 2006.

"Order" means any judgment, order, award or decree of any foreign, federal, state, local or other court or tribunal or any Payment Authority and any award in any arbitration proceeding.

"OSHA" means the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.

"Patent Rights" means United States and foreign patents, patent applications, continuations, continuations-in-part, divisions, reissues, and patent disclosures, whether in process or otherwise.

"Payment Authority" means any foreign or domestic payment network, electronic funds network or association, payment card association, debit card network or similar organization having clearing or oversight responsibilities with respect to card transactions or electronic funds transfers.

"Payment Authority Rules" means the rules, standards and other requirements promulgated by any Payment Authority.

"Permitted Encumbrances" means: (i) liens for Taxes and other governmental charges and assessments arising in the ordinary course of business (a) which are not yet due and payable or (b) that are being contested in good faith; (ii) liens of landlords and liens of carriers, warehousemen, mechanics and materialmen and other like liens arising in the ordinary course of business for sums not yet due and payable; (iii) other liens or imperfections on property which are not material in amount, do not interfere with, and are not violated by, the consummation of the transactions contemplated by this Agreement, and do not materially impair the marketability of, or materially detract from the value of or materially impair the existing use of, the property affected by such lien or imperfection; (iv) restrictions on transfer of securities imposed by federal and state securities laws or the bylaws, operating agreement, stockholders agreement or partnership agreement of the Company or any Company Subsidiary; (v) liens that have been granted by the Company and the Company Subsidiaries under the Chase Loan Agreement and the security documents that were entered into in connection therewith; (vi) liens upon equipment granted in connection with the purchase or financing of such equipment provided that such liens attach only to the equipment purchased or financed with the proceeds secured thereby; and (vii) other liens arising by operation of law in the ordinary course of business (a) which are not yet due and payable or (b) that are being contested in good faith

"Permitted FDC Encumbrances" means: (i) liens for Taxes and other governmental charges and assessments arising in the ordinary course of business (a) which are not yet due and payable or (b) that are being contested in good faith; (ii) liens of landlords and liens of carriers, warehousemen, mechanics and materialmen and other like liens arising in the ordinary course of business for sums not yet due and payable; (iii) other liens or imperfections on property which are not material in amount, do not interfere with, and are not violated by, the consummation of the transactions contemplated by this Agreement, and do not materially impair the marketability of, or materially detract from the value of or materially impair the existing use of, the property affected by such lien or imperfection; (iv) restrictions on transfer of securities imposed by federal and state securities laws or the bylaws, operating agreement, stockholders agreement or partnership agreement of Holdings or any Subsidiary of Holdings; (v) liens that have been granted by Holdings or any Subsidiary of Holdings under its agreements governing Indebtedness for borrowed money; (vi) liens upon equipment granted in connection with the purchase or financing of such equipment provided that such liens attach only to the equipment purchased or financed with the proceeds secured thereby and (vi) other liens arising by operation of law in the ordinary course of business (a) which are not yet due and payable or (b) that are being contested in good faith.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization or Governmental Entity.

"Purchaser Group Member" means Purchaser, the Company (after the Closing) and the Company Subsidiaries (after the Closing) and any Affiliates of Purchaser and their respective successors and assigns.

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., and the regulations promulgated thereunder.

"Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration of a Contaminant into the indoor or outdoor environment or into or out of any Company Property, including the movement of Contaminants through or in the air, soil, surface water, groundwater or Company Property.

"Remedial Action" means actions required to (i) clean up, remove, treat or in any other way address Contaminants in the indoor or outdoor environment, (ii) prevent the Release or threatened Release or minimize the further Release of Contaminants or (iii) investigate and determine if a remedial response is needed and to design such a response and post-remedial investigation, monitoring, operation and maintenance and care.

"Restricted Funds" shall mean all funds in restricted accounts (i.e., accounts which are established to hold funds for the benefit of cardholders) that are collected by the Stored Value Business in connection with a program regulated by a state or federal entity under applicable banking, money transmission, sale of checks, and/or other money service business laws including, without limitation, reloadable and/or non reloadable open loop card programs and bill payment programs. It is acknowledged that restricted accounts may or may not be titled as FBO accounts. For the avoidance of doubt, Restricted Funds shall not include "cash" or "cash equivalents" as each is defined under GAAP.

"Senior Credit Agreement" shall mean that certain Senior Credit Agreement, dated as of September 24, 2007, by and between the Purchaser, as borrower, the several lenders thereto, Credit Suisse, Cayman Islands Branch, as Administrative Agent, Swingline Lender and Letter of Credit Issuer, Citibank, N.A., as Syndication Agent and Credit Suisse Securities (USA) LLC, Citigroup Global Markets Inc., Deutsche Bank Securities, Inc., Goldman Sachs Credit Partners L.P., HSBS Securities (USA) Inc., Lehman Brothers Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as Joint Lead Arrangers and Bookrunners.

"Smith Employment Agreement and Restrictive Covenant Agreement" shall mean the Employment Agreement and Restrictive Covenant Agreement, dated the date hereof, by and between Smith, the Company and the Purchaser.

"Software" means computer software programs and software systems, including all databases, compilations, tool sets, compilers, higher level or "proprietary" languages, related documentation and materials, whether in source code, object code or human readable form.

"Stockholder Approval" means the approval of the Merger and the consummation by the Company of each of the transactions contemplated by this Agreement, including, without limitation, the payment by the Company of the bonus payments under the Company Bonus Pool, by the Stockholders of the Company.

"Stockholder Group Member" means the Stockholders and their respective successors and assigns.

"Straddle Period" shall mean any taxable year or period beginning on or before and ending after the Closing Date.

"Subsidiary" or "Subsidiaries" means, with respect to any person, any corporation or other organization, whether incorporated or unincorporated, of which such person, directly or indirectly, owns securities or other equity interests representing fifty percent (50%) or more of the aggregate voting power or (ii) any other Person in which such Person, directly or indirectly, has the power to direct the policies, management and affairs thereof; provided, that solely for purposes of this Agreement, ITCFL shall not be deemed a Subsidiary of the Company.

"Target Company EBITDA" shall equal $_____.

"Target Working Capital" shall equal $_____.

"Tax" (and, with correlative meaning, "Taxes") means: (i) any federal, state, local or foreign net income, gross income, gross receipts, windfall profit, severance, unclaimed property, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, value added, transfer, stamp, or environmental tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any governmental authority; and (ii) any liability of the Company or any Company Subsidiary for the payment of amounts with respect to payments of a type described in clause (i) as a result of being a member of a Company Group, or as a result of any obligation of the Company or any Company Subsidiary under any Tax Sharing Arrangement or Tax indemnity arrangement entered into prior to the Closing.

"Tax Return" means any return, report or similar statement required to be filed with respect to any Tax (including any attached schedules), including any information return, claim for refund, amended return or declaration of estimated Tax.

"Tax Sharing Arrangement" means any written or unwritten agreement or arrangement for the allocation or payment of Tax liabilities or payment for Tax benefits with respect to a consolidated, combined or unitary Tax Return which Tax Return includes the Company or any Company Subsidiary.

"Technology" means Software, inventions (whether or not patentable or reduced to practice), ideas, know-how, show-how, show-why, concepts, methods, processes, formulae, reports, data, customer lists, customer data, mailing lists, business plans, marketing information or other proprietary information or data and any improvements thereto.

"Trade Secrets" means information or data not generally known that provides a commercial or competitive advantage.

"Trademarks" means United States, state and foreign trademarks, service marks, logos, trade dress and trade names (including all assumed or fictitious names under which the Company

or any Company Subsidiary is conducting business or has within the previous five years conducted business and common law trademarks), whether registered or unregistered, and pending applications to register the foregoing, including goodwill related thereto.

"Working Capital" means "current assets" minus "current liabilities" of the Company, determined in accordance with GAAP.

"2008 Target EBITDA" shall mean $_____.

EXHIBIT E

FCC Public Notice

PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: http://www.fcc.gov
TTY: 1-888-835-5322

DA 08-1229
Released: May 29, 2008

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF U.S. SOUTH COMMUNICATIONS, INC. TO FIRST DATA CORPORATION

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 08-69

Comments Due: June 12, 2008
Reply Comments Due: June 19, 2008

On May 16, 2008, U.S. South Communications, Inc. d/b/a U.S. South d/b/a INCOMM (U.S. South) and First Data Corporation (First Data) (collectively, Applicants) filed an application pursuant to section 63.03 of the Commission's rules to transfer control of U.S. South to First Data.[1] U.S. South, a Georgia corporation, offers interstate services to business and residential customers nationwide. It is a wholly owned subsidiary of InComm Holdings, Inc., a Georgia corporation. First Data, a Delaware corporation, provides electronic commerce and payment services and does not currently provide telecommunications services. Applicants state that all of the outstanding stock of First Data is held by First Data Holdings Inc., and that more than 95 percent of First Data Holdings Inc. is held by New Omaha Holdings L.P. Applicants state that the following entities own at least 10 percent of the equity of New Omaha Holdings L.P.: KKR 2006 Fund, L.P. (36.7 percent) and New Omaha Holdings Co-Invest L.P. (21.9 percent).[2] Pursuant to the terms of the proposed transaction, U.S. South will remain a wholly-owned subsidiary of InComm Holdings, which will become a wholly-owned subsidiary of First Data Merchant Services Corporation. First Data Merchant Services Corporation is an indirect wholly owned subsidiary of First Data, which in turn is a wholly owned subsidiary of First Data Holdings, Inc. All the entities in this application are U.S.-based. Applicants assert that the proposed transaction is entitled to presumptive streamlined treatment under section 63.03(b)(1)(ii) of the Commission's rules and that a grant of the application will serve the public interest, convenience, and necessity.[3]

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[1] 47 C.F.R § 63.03; *see* 47 U.S.C. § 214. Applicants are also filing an application for transfer of control associated with authorization for international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications. Applicants filed a supplement to their domestic section 214 application on May 28, 2008.

[2] Applicants state that KKR 2006 Fund, L.P. is managed by affiliates of Kohlberg Kravis Roberts & Co, L.P. (KKR), a private equity firm, and that none of the owners of KKR 2006 Fund, L.P. or KKR owns a 10 percent or greater interest in New Omaha Holdings L.P. They further state that New Omaha Holdings Co-Invest L.P. is ultimately managed by the same affiliates of KKR and that none of the owners of New Omaha Holdings Co-Invest L.P. owns a 10 percent or greater interest in New Omaha Holdings, L.P.

[3] 47 C.F.R. § 63.03(b)(1)(ii).

Application Filed for the Transfer of Control of U.S. South Communications, Inc. to First Data Corporation, WC Docket No. 08-69 (filed May 16, 2008).

GENERAL INFORMATION

The Wireline Competition Bureau finds, upon initial review, that the transfer of control identified herein is acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 C.F.R. § 63.03(a), interested parties may file comments **on or before June 12, 2008,** and reply comments **on or before June 19, 2008**. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.[4] Comments must be filed electronically using (1) the Commission's Electronic Comment Filing System (ECFS) or (2) the Federal Government's eRulemaking Portal. *See* 47 C.F.R. § 63.03(a) ("All comments on streamlined applications shall be filed electronically . . . ."); *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Comments may be filed electronically using the Internet by accessing the ECFS, http://www.fcc.gov/cgb/ecfs/, or the Federal eRulemaking Portal, http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

In addition, email one copy of each pleading to each of the following:

1) The Commission's duplicating contractor, Best Copy and Printing, Inc., fcc@bcpiweb.com; phone: 202 / 488-5300; fax: 202 / 488-5563;

2) Myrva.Charles, Competition Policy Division, Wireline Competition Bureau, myrva.charles@fcc.gov;

3) Jodie May, Competition Policy Division, Wireline Competition Bureau, jodie.may@fcc.gov;

4) David Krech, International Bureau, Policy Division, International Bureau, david.krech@fcc.gov;

5) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

Filings and comments are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor,

[4] Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.