

FURTHER AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY U.S. REGISTERED MAIL TO SUCH PARTY'S RESPECTIVE ADDRESS SET FORTH ABOVE SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION, SUIT OR PROCEEDING WITH RESPECT TO ANY MATTERS TO WHICH IT HAS SUBMITTED TO JURISDICTION IN THIS SECTION 25. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF THIS AGREEMENT, ANY RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY IN THE UNITED STATES DISTRICT COURT FOR THE EIGHTH CIRCUIT LOCATED IN MINNESOTA, AND HEREBY AND THEREBY FURTHER IRREVOCABLY AND UNCONDITIONALLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

26. *Waiver of Jury Trial.* AS A SPECIFICALLY BARGAINED FOR INDUCEMENT FOR EACH OF THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT (AFTER HAVING THE OPPORTUNITY TO CONSULT WITH COUNSEL), EACH PARTY HERETO EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS AGREEMENT OR THE MATTERS CONTEMPLATED HEREBY.

27. *Corporate Opportunity.* During the Employment Period, Executive shall submit to the Board all business, commercial and investment opportunities or offers presented to Executive that relate to the business of power companies ("Corporate Opportunities"), if Executive wishes to accept or pursue, directly or indirectly, such Corporate Opportunities on Executive's own behalf. This Section 27 shall not apply to purchases of publicly traded stock by Executive.

28. *Legal Costs.* Except as otherwise agreed to by the parties, the Company shall pay the Executive for costs of litigation or other disputes including, without limitation, reasonable attorneys' fees incurred by Executive in asserting any claims or defenses under this Agreement, except that Executive shall bear his own costs of such litigation or disputes (including, without limitation attorneys' fees) if the court (or arbitrator) finds in favor of the Company with respect to any claims or defenses asserted by the Executive.

29. *Executive's Cooperation.* During the Employment Period and thereafter, Executive shall cooperate with the Company and its affiliates, upon the Company's reasonable request, with respect to any internal investigation or administrative, regulatory or judicial proceeding involving matters within the scope of Executive's duties and responsibilities to the Company during the Employment Period (including, without limitation, Executive being available to the Company upon reasonable notice for interviews and factual investigations, appearing at the Company's reasonable request to give testimony without requiring service of a subpoena or other legal process, and turning over to the Company all relevant Company documents which are or may come into Executive's possession during the Employment Period); provided, however, that any such request by the Company shall not be unduly burdensome or

interfere with Executive's personal schedule or ability to engage in gainful employment. In the event the Company requires Executive's cooperation in accordance with this Section 29, the Company shall reimburse Executive for reasonable out-of-pocket expenses (including travel, lodging and meals) incurred by Executive in connection with such cooperation, subject to reasonable documentation. In addition, the Company shall compensate Executive at a rate of \$500 per hour for the time in excess of one business day, per occurrence or event, that Executive reasonably spends complying with his obligations under this Section after the expiration of the Employment Period.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**NRG ENERGY, INC.**

By: /s/ Scott J. Davido

Its: Chairman, Senior Vice President, General Counsel

/s/ David Crane

**David Crane**

## EXHIBIT A

### GENERAL RELEASE

In consideration of the payments and benefits (the "Severance Payment") paid or to be paid to me pursuant to and in accordance with the terms of my Employment Agreement with NRG Energy, Inc. dated , 2003 (the "Agreement"), on behalf of myself, my heirs, executors, administrators, successors, and assigns, I hereby fully and forever RELEASE and DISCHARGE NRG ENERGY, INC., its affiliates and their officers, directors, agents, employees, representatives, successors and assigns (hereinafter, collectively called the "Company"), from any and all claims and causes of action arising out of or relating in any way to my employment with the Company, including, but not limited to, the offer of employment and termination of my employment, and I agree that I will not in any manner institute, prosecute or pursue any complaints, claims, charges, liabilities, claims for relief, demands, suits, actions or causes of action against the Company that are covered by this RELEASE.

Notwithstanding the foregoing, expressly excluded from this RELEASE are any claims or causes of action which I may have (i) seeking enforcement of my rights under the Agreement, including, without limitation, Sections 5, 7, 8, 9 and 28 thereof, or any other plan, policy or arrangement of the Company (ii) seeking to obtain contribution as permitted by applicable law in the event of the entry of judgment against me as a result of any act or failure to act for which both I and the Company are held to be jointly liable, (iii) arising out of or relating in any way to acts or omissions after the date of this RELEASE or otherwise not covered by this RELEASE, and (iv) which cannot be waived by law. I shall also retain the right to seek indemnification from the Company, to the extent permitted under applicable law and Section 8 of the Agreement.

1. I understand and agree that, except as specifically provided above, this RELEASE is a full and complete waiver of all claims relating to my employment with the Company, including, but not limited to, claims of wrongful discharge, breach of contract, breach of the covenant of good faith and fair dealing, violation of public policy, defamation, personal injury and emotional distress, claims under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act of 1990, the Americans With Disabilities Act, the Rehabilitation Act of 1973, as amended, the Equal Pay Act of 1963, Section 1981 of the Civil Rights Act of 1866, any of the Minnesota State employment laws, the Fair Labor Standards Act of 1938, as amended, the Family and Medical Leave Act of 1993, and the Employee Retirement Income Security Act of 1974, as amended, and claims arising from any legal restrictions on the Company's right to terminate employees (including, without limitation, claims arising under various contract, tort, public policy or wrongful discharge theories under any federal, state or local law, or under the federal Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar state or local law).

2. I understand that I have received or will receive, regardless of the execution of this RELEASE, all amounts due to me pursuant to Sections 7(d), 8 and 9 of the Agreement. I further understand and agree that the Company will not provide me with any additional payments or benefits under the Agreement (including, without limitation, payments under Section 5 or Section 7(a) of the Agreement ) unless I execute this RELEASE. In consideration of the execution of this RELEASE, I will receive additional payments and benefits specified in [Section 5/Section 7(a)] of the Agreement.

3. In addition, and in further consideration of the foregoing, I acknowledge and agree that if I hereafter discover facts different from or in addition to those which I now know or believe to be true that this RELEASE shall be and remain effective in all respects notwithstanding such different or additional facts

or the discovery thereof. I understand that this RELEASE does not waive or release any rights or claims that I may have under the Age Discrimination in Employment Act of 1967, as amended, which arise after the date I sign this RELEASE.

4. As part of my existing and continuing obligation to the Company, I have returned or, within seven (7) days of my termination will return to the Company all Confidential Information and Third Party Information (as such terms are defined in the Agreement) in accordance with the terms of the Agreement. I affirm my obligation to keep all Confidential Information confidential and not to disclose it to any third party as required by Section 10 of the Agreement.

5. I agree not to disclose, either directly or indirectly, any information whatsoever regarding (i) any of the terms or the existence of this RELEASE and my benefits under the Agreement or (ii) any other claim I may have against the Company, to any person or organization, including but not limited to members of the press and media, present and former employees of the Company, companies who do business with the Company, or other members of the public. Notwithstanding the preceding sentence, I may reveal such terms of this RELEASE and the Severance Payment to my spouse, accountants or attorneys or as are necessary to comply with a request made by the Internal Revenue Service, as otherwise compelled by a court or agency of competent jurisdiction, as allowed and/or required by law.

6. This RELEASE shall be governed by the laws of the State of Minnesota.

7. This RELEASE contains the entire agreement between the Company and me with respect to any matters referred to in the RELEASE and shall supersede any all other agreements, whether written or with respect to such matters. I understand and agree that this RELEASE shall not be deemed or at any time as an admission of liability or wrongdoing by either myself or the Company. Notwithstanding the foregoing, it is understood and agreed that my termination will be treated for all purposes as a termination [without Cause/for Good Reason/under Section 5] under the Agreement and that I shall be entitled to all payments and benefits under the Agreement consistent with such a termination.

8. If any one or more of the provisions contained in this RELEASE is, for any reason, held to be unenforceable, that holding will not affect any other provision of this RELEASE, but, with respect only to the jurisdiction holding the provision to be unenforceable, this RELEASE shall then be construed as if such unenforceable provision or provisions had never been contained therein.

9. Before executing this RELEASE, I obtained sufficient information to intelligently exercise my own judgment about the terms of the RELEASE. The Company has informed me in writing to consult an attorney before signing this RELEASE, if I wish.

I also understand for a period of fifteen (15) days after I sign this RELEASE, I may revoke this RELEASE and that the RELEASE will not become effective until fifteen (15) days after I sign it, and only then if I do not revoke it. In order to revoke this RELEASE, I must deliver, or cause to be delivered, to [INSERT TITLE] at NRG Energy, Inc., 901 Marquette Avenue, Suite 2300, Minneapolis, Minnesota, 55402, by First Class mail or facsimile [INSERT NUMBER], by no later than fifteen (15) days after I execute this RELEASE, a letter stating that I am revoking it.

10. My severance and other benefits under the Agreement will be paid in accordance with the terms of the Agreement. If I choose to revoke this RELEASE within fifteen (15) days after I sign it, such benefits will not be due and payable, and the RELEASE will have no effect.

11. A failure to comply with the terms of this RELEASE (except as set forth below), including, but not limited to, my agreement not to institute, prosecute or pursue any complaints, claims, charges, liabilities, claims for relief, demands suits or causes of actions against the Company (except as set forth in paragraph 2 above, including, without limitation, any claims or causes of actions I may have as a result of any acts or omissions that occur after the date of this Release) or

a material and willful failure to comply with the terms of Section 4 and 5 of this RELEASE will, result in my forfeiture of the additional payments and benefits due under the Agreement.

EMPLOYEE'S ACCEPTANCE OF RELEASE

BEFORE SIGNING MY NAME TO THIS RELEASE, I STATE THAT: I HAVE READ IT; I UNDERSTAND IT AND KNOW THAT I AM GIVING UP IMPORTANT RIGHTS; I AM AWARE OF MY RIGHT TO CONSULT WITH AN ATTORNEY BEFORE SIGNING IT; AND I HAVE SIGNED IT KNOWINGLY AND VOLUNTARILY. EXCEPT FOR THE MATTERS EXPRESSLY STATED IN THIS RELEASE, THE COMPANY HAS NEITHER MADE ANY REPRESENTATION NOR OFFERED ME ANY INDUCEMENT TO SIGN THIS RELEASE.

By: \_\_\_\_\_  
David Crane

Date: \_\_\_\_\_

Agreed to and accepted:

NRG ENERGY, INC.

By: \_\_\_\_\_

Name:

Title:

NRG ENERGY, INC.  
LONG-TERM INCENTIVE PLAN

1. Purpose.

This plan shall be known as the NRG Energy, Inc. Long-Term Incentive Plan (the "Plan"). The purpose of the Plan shall be to promote the long-term growth and profitability of NRG Energy, Inc., a Delaware corporation (the "Company"), and its Subsidiaries by (i) providing certain directors, officers and employees of, and certain other individuals who perform services for, or to whom an offer of employment has been extended by, the Company and its Subsidiaries with incentives to maximize stockholder value and otherwise contribute to the success of the Company and (ii) enabling the Company to attract, retain and reward the best available persons for positions of responsibility. Grants of Incentive Stock Options or Non-qualified Stock Options, stock appreciation rights ("SARs"), either alone or in tandem with options, restricted stock, performance awards, deferred stock units or any combination of the foregoing (collectively, the "Awards") may be made under the Plan.

2. Definitions.

(a) "Board" means the board of directors of the Company.

(b) "Cause", unless otherwise defined in a Participant's Grant Agreement or in a Participant's written employment arrangements with the Company or any of its Subsidiaries in effect on the date of grant (as amended from time to time thereafter), means the occurrence of one or more of the following events:

(i) Conviction of, or agreement to a plea of nolo contendere to, a felony, or any crime or offense lesser than a felony involving the property of the Company or a Subsidiary; or

(ii) Conduct that has caused demonstrable and serious injury to the Company or a Subsidiary, monetary or otherwise;  
or

(iii) Willful refusal to perform or substantial disregard of duties properly assigned, as determined by the Company; or

(iv) Breach of duty of loyalty to the Company or a Subsidiary or other act of fraud or dishonesty with respect to the Company or a Subsidiary; or

(v) Violation of the Company's code of conduct.

The definition of Cause set forth in a Participant's Grant Agreement shall control if such definition is different from the definition of Cause set forth in a Participant's written employment arrangements with the Company or any of its Subsidiaries.

(c) "Change in Control", unless otherwise defined in a Participant's Grant Agreement, means the occurrence of one of the following events:

(i) Any "person" (as that term is used in Sections 13 and 14(d)(2) of the Exchange Act or any successors thereto) becomes the "beneficial owner" (as that term is used in Section 13(d) of the Exchange Act or any successor thereto), directly or indirectly, of 50% or more of the Company's capital stock entitled to vote in the election of directors; or

(ii) Persons who on the effective date of the plan of reorganization of the Company (the "Commencement Date") constitute the Board (the "Incumbent Directors") cease for any reason, including without limitation, as a result of a tender offer, proxy contest, merger or similar transaction, to constitute at least a majority thereof; provided that, any person becoming a director of the Company subsequent to the Commencement Date shall be considered an Incumbent Director if such person's election or nomination for election was approved by a vote of at least two-thirds (2/3) of the Incumbent Directors; but provided further that, any such person whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of members of the Board or other actual or threatened solicitation of proxies or consents by or on behalf of a "person" (as defined in Sections 13(d) and 14(d) of the Exchange Act) other than the Board, including by reason of agreement intended to avoid or settle any such actual or threatened contest or solicitation, shall not be considered an Incumbent Director; or

(iii) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a "Business Combination"), in each case, unless, following such Business Combination, all or substantially all of the individuals and entities who were the beneficial owners of outstanding voting securities of the Company immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the company resulting from such Business Combination (including, without limitation, a company which, as a result of such transaction, owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination, of the outstanding voting securities of the Company; or

(iv) The stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company.

(d) "Code" means the Internal Revenue Code of 1986, as amended.

(e) "Committee" means the Compensation Committee of the Board or such other committee which shall consist solely of two or more members of the Board, each of whom is an "outside director" within the meaning of Treasury Regulation §1.162-27(e)(3); provided that, if for any reason the Committee shall not have been appointed by the Board to administer the Plan, all authority and duties of the Committee under the Plan shall be vested in and

exercised by the Board, and the term "Committee" shall be deemed to mean the Board for all purposes herein.

(f) "Common Stock" means the Common Stock, par value \$0.01 per share, of the Company, and any other shares into which such stock may be changed by reason of a recapitalization, reorganization, merger, consolidation or any other change in the corporate structure or capital stock of the Company.

(g) "Disability", unless otherwise defined in a Participant's Grant Agreement, means a disability that would entitle an eligible Participant to payment of monthly disability payments under any Company long-term disability plan or as otherwise determined by the Committee.

(h) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(i) "Fair Market Value" of a share of Common Stock of the Company means, as of the date in question, and except as otherwise provided in any Grant Agreement entered into pursuant to agreements in effect as of the Commencement Date, the officially-quoted closing selling price of the stock (or if no selling price is quoted, the bid price) on the principal securities exchange on which the Common Stock is then listed for trading (including for this purpose the Nasdaq National Market) (the "Market") for the applicable trading day or, if the Common Stock is not then listed or quoted in the Market, the Fair Market Value shall be the fair value of the Common Stock determined in good faith by the Board and, in the case of an Incentive Stock Option, in accordance with Section 422 of the Code; provided, however, that when shares received upon exercise of an option are immediately sold in the open market, the net sale price received may be used to determine the Fair Market Value of any shares used to pay the exercise price or applicable withholding taxes and to compute the withholding taxes.

(j) "Family Member" has the meaning given to such term in General Instructions A.1(a)(5) to Form S-8 under the Securities Act of 1933, as amended, and any successor thereto.

(k) "Grant Agreement" means the written agreement that each Participant to whom an Award is made under the Plan is required to enter into with the Company containing the terms and conditions of such grant as are determined by the Committee and consistent with the Plan.

(l) "Incentive Stock Option" means an option conforming to the requirements of Section 422 of the Code and any successor thereto.

(m) "Non-qualified Stock Option" means any stock option other than an Incentive Stock Option.

(n) "Other Company Securities" mean securities of the Company other than Common Stock, which may include, without limitation, unbundled stock units or components thereof, debentures, preferred stock, warrants and securities convertible into or exchangeable for Common Stock or other property.

(o) "Participant" means any director, officer or employee of, or other individual performing services for, or to whom an offer of employment has been extended by, the Company or any Subsidiary who has been selected by the Committee to participate in the Plan (including a Participant located outside the United States).

(p) "Retirement", (i) for any non-director, unless otherwise determined by the Committee, means (A) termination of service as a non-director after at least 10 years of service by such non-director and (B) attaining at least 55 years of age, and (ii) for any director, unless otherwise determined by the Committee, means termination of service as a director after at least five years of Board service by such director.

(q) "Subsidiary" means a corporation or other entity of which outstanding shares or ownership interests representing 50% or more of the combined voting power of such corporation or other entity entitled to elect the management thereof, or such lesser percentage as may be approved by the Committee, are owned directly or indirectly by the Company.

### 3. Administration.

The Plan shall be administered by the Committee. Subject to the provisions of the Plan, the Committee shall be authorized to (i) select persons to participate in the Plan, (ii) determine the form and substance of grants made under the Plan to each Participant, and the conditions and restrictions, if any, subject to which such grants will be made, (iii) determine the form and substance of the Grant Agreements reflecting the terms and conditions of each grant made under the Plan, (iv) certify that the conditions and restrictions applicable to any grant have been met, (v) modify the terms of grants made under the Plan, (vi) interpret the Plan and Grant Agreements entered into under the Plan, (vii) determine the duration and purposes for leaves of absence which may be granted to a Participant on an individual basis without constituting a termination of employment or services for purposes of the Plan, (viii) make any adjustments necessary or desirable in connection with grants made under the Plan to eligible Participants located outside the United States, (ix) adopt, amend, or rescind rules and regulations for the administration of the Plan, including, but not limited to, correcting any defect or supplying any omission, or reconciling any inconsistency in the Plan or in any Grant Agreement, in the manner and to the extent it shall deem necessary or advisable, including so that the Plan and the operation of the Plan complies with Rule 16b-3 under the Exchange Act, the Code to the extent applicable and other applicable law and make such other determinations for carrying out the Plan as it may deem appropriate, and (x) exercise such powers and perform such acts as are deemed necessary or advisable to promote the best interests of the Company with respect to the Plan. Decisions of the Committee on all matters relating to the Plan shall be in the Committee's sole discretion and shall be conclusive and binding on the Company, all Participants and all other parties, unless an arbitration or other provision is expressly provided in a Participant's Grant Agreement. The validity, construction, and effect of the Plan and any rules and regulations relating to the Plan shall be determined in accordance with applicable federal and state laws and rules and regulations promulgated pursuant thereto. No member of the Committee and no officer of the Company shall be liable for any action taken or omitted to be taken by such member, by any other member of the Committee or by any officer of the Company in connection with the

performance of duties under the Plan, except for such person's own willful misconduct or as expressly provided by statute.

The expenses of the Plan shall be borne by the Company. The Plan shall not be required to establish any special or separate fund or make any other segregation of assets to assume the payment of any Award under the Plan, and rights to the payment of such Awards shall be no greater than the rights of the Company's general creditors.

#### 4. Shares Available for the Plan.

Subject to adjustments as provided in Section 17, an aggregate of 4,000,000 shares of Common Stock (the "Shares") may be issued pursuant to the Plan. Such Shares may be in whole or in part authorized and unissued or held by the Company as treasury shares. If any grant under the Plan expires or terminates unexercised, becomes unexercisable or is forfeited as to any Shares, or is tendered or withheld as to any Shares in payment of the exercise price of the grant or the taxes payable with respect to the exercise, then such unpurchased, forfeited, tendered or withheld Shares shall thereafter be available for further grants under the Plan unless, in the case of options granted under the Plan, related SARs are exercised.

Without limiting the generality of the foregoing provisions of this Section 4 or the generality of the provisions of Sections 3, 6 or 19 or any other section of this Plan, the Committee may, at any time or from time to time, and on such terms and conditions (that are consistent with and not in contravention of the other provisions of this Plan) as the Committee may determine, enter into Grant Agreements (or take other actions with respect to the options) for new options containing terms (including exercise prices) more (or less) favorable than the then-outstanding options.

#### 5. Participation.

Participation in the Plan shall be limited to the Participants. Nothing in the Plan or in any Grant Agreement shall confer any right on a Participant to continue in the employ of the Company or any Subsidiary as a director, officer or employee of or in the performance of services for the Company or shall interfere in any way with the right of the Company to terminate the employment or performance of services or to reduce the compensation or responsibilities of a Participant at any time. By accepting any Award under the Plan, each Participant and each person claiming under or through him or her shall be conclusively deemed to have indicated his or her acceptance and ratification of, and consent to, any action taken under the Plan by the Company, the Board or the Committee.

Awards may be granted to such persons and for such number of Shares as the Committee shall determine, subject to the limitations contained herein (such individuals to whom grants are made being sometimes herein called "optionees" or "grantees," as the case may be). Determinations made by the Committee under the Plan need not be uniform and may be made selectively among eligible individuals under the Plan, whether or not such individuals are similarly situated. A grant of any type made hereunder in any one year to an eligible Participant

shall neither guarantee nor preclude a further grant of that or any other type to such Participant in that year or subsequent years.

#### 6. Incentive and Non-qualified Options.

The Committee may from time to time grant to eligible Participants Incentive Stock Options, Non-qualified Stock Options, or any combination thereof; provided that, the Committee may grant Incentive Stock Options only to eligible employees of the Company or its Subsidiaries (as defined for this purpose in Section 424(f) of the Code or any successor thereto). In any one calendar year, the Committee shall not grant to any one Participant options to purchase a number of Shares of Common Stock in excess of 1,000,000 shares of Common Stock. The options granted under the Plan shall be evidenced by a Grant Agreement and shall take such form as the Committee shall determine, subject to the terms and conditions of the Plan.

It is the Company's intent that Non-qualified Stock Options granted under the Plan not be classified as Incentive Stock Options, that Incentive Stock Options be consistent with and contain or be deemed to contain all provisions required under Section 422 of the Code and any successor thereto, and that any ambiguities in construction be interpreted in order to effectuate such intent. If an Incentive Stock Option granted under the Plan does not qualify as such for any reason, then to the extent of such non-qualification, the stock option represented thereby shall be regarded as a Non-qualified Stock Option duly granted under the Plan; provided that, such stock option otherwise meets the Plan's requirements for Non-qualified Stock Options.

(a) Price. The price per Share deliverable upon the exercise of each option (the "exercise price") shall be established by the Committee, except that in the case of the grant of any option, the exercise price may not be less than 100% of the Fair Market Value of a share of Common Stock as of the date of grant of the option, and in the case of the grant of any Incentive Stock Option to an employee who, at the time of the grant, owns more than 10% of the total combined voting power of all classes of stock of the Company or any of its Subsidiaries, the exercise price may not be less than 110% of the Fair Market Value of a share of Common Stock as of the date of grant of the option, in each case unless otherwise permitted by Section 422 of the Code or any successor thereto.

(b) Payment. Options may be exercised, in whole or in part, upon payment of the exercise price of the Shares to be acquired. Unless otherwise determined by the Committee, payment shall be made (i) in cash (including check, bank draft, money order or wire transfer of immediately available funds), (ii) by delivery of outstanding shares of Common Stock with a Fair Market Value on the date of exercise equal to the aggregate exercise price payable with respect to the options' exercise, (iii) by means of any cashless exercise procedures approved by the Committee and as may be in effect on the date of exercise or (iv) by any combination of the foregoing.

In the event a grantee is permitted to, and elects to pay the exercise price payable with respect to an option pursuant to clause (ii) above, (A) only a whole number of share(s) of Common Stock (and not fractional shares of Common Stock) may be tendered in payment, (B) such grantee must present evidence acceptable to the Company that he or she has owned any

such shares of Common Stock tendered in payment of the exercise price (and that such tendered shares of Common Stock have not been subject to any substantial risk of forfeiture) for at least six months prior to the date of exercise or such longer period as determined from time to time by the Committee, and (C) Common Stock must be delivered to the Company. Delivery for this purpose may, at the election of the grantee, be made either by (A) physical delivery of the certificate(s) for all such shares of Common Stock tendered in payment of the exercise price, accompanied by duly executed instruments of transfer in a form acceptable to the Company, (B) direction to the grantee's broker to transfer, by book entry, such shares of Common Stock from a brokerage account of the grantee to a brokerage account specified by the Company, or (C) the attestation of the grantee's shares of Common Stock. When payment of the exercise price is made by delivery of Common Stock, the difference, if any, between the aggregate exercise price payable with respect to the option being exercised and the Fair Market Value of the shares of Common Stock tendered in payment (plus any applicable taxes) shall be paid in cash. No grantee may tender shares of Common Stock having a Fair Market Value exceeding the aggregate exercise price payable with respect to the option being exercised (plus any applicable taxes).

(c) *Terms of Options.* The term during which each option may be exercised shall be determined by the Committee, but if required by the Code, no option shall be exercisable in whole or in part more than ten years from the date it is granted, and no Incentive Stock Option granted to an employee who at the time of the grant owns more than 10% of the total combined voting power of all classes of stock of the Company or any of its Subsidiaries shall be exercisable more than five years from the date it is granted. All rights to purchase Shares pursuant to an option shall, unless sooner terminated, expire on the date designated by the Committee. The Committee shall determine the date on which each option shall become exercisable and may provide that an option shall become exercisable in installments. The Shares constituting each installment may be purchased in whole or in part at any time after such installment becomes exercisable, subject to such minimum exercise requirements as may be designated by the Committee. Prior to the exercise of an option and delivery of the Shares represented thereby, the optionee shall have no rights as a stockholder with respect to any Shares covered by such outstanding option (including any dividend or voting rights).

(d) *Limitations on Grants.* If required by the Code, the aggregate Fair Market Value (determined as of the grant date) of Shares for which an Incentive Stock Option is exercisable for the first time during any calendar year under all equity incentive plans of the Company and its Subsidiaries (as defined in Section 422 of the Code or any successor thereto) may not exceed \$100,000.

(e) *Termination; Forfeiture.*

(i) *Death.* Unless otherwise provided in a Participant's Grant Agreement, if a Participant ceases to be a director, officer or employee of, or to perform other services for, the Company and any Subsidiary due to his or her death, all of the Participant's options shall become fully vested and exercisable and shall remain so for a period of one year from the date of such death, but in no event after the expiration date of the options.

(ii) Disability. Unless otherwise provided in a Participant's Grant Agreement, if a Participant ceases to be a director, officer or employee of, or to perform other services for, the Company and any Subsidiary due to Disability, (A) all of the Participant's options that were exercisable on the date of Disability shall remain exercisable for, and shall otherwise terminate and thereafter be forfeited at the end of, a period of one year after the date of Disability, but in no event after the expiration date of the options, and (B) all of the Participant's options that were not exercisable on the date of Disability shall be forfeited immediately upon such Disability; provided, however, that such options may become fully vested and exercisable in the discretion of the Committee. Notwithstanding the foregoing, if the Disability giving rise to the termination of employment is not within the meaning of Section 22(e)(3) of the Code or any successor thereto, Incentive Stock Options not exercised by such Participant within 90 days after the date of termination of employment will cease to qualify as Incentive Stock Options and will be treated as Non-qualified Stock Options under the Plan if required to be so treated under the Code.

(iii) Retirement. Unless otherwise provided in a Participant's Grant Agreement, if a Participant ceases to be an officer or employee of, or to perform other services for, the Company and any Subsidiary upon the occurrence of his or her Retirement, (A) all of the Participant's options that were exercisable on the date of Retirement shall remain exercisable for, and shall otherwise terminate and thereafter be forfeited at the end of, a period of two years after the date of Retirement, but in no event after the expiration date of the options, and (B) all of the Participant's options that were not exercisable on the date of Retirement shall be forfeited immediately upon such Retirement; provided, however, that such options may become fully vested and exercisable in the discretion of the Committee. Notwithstanding the foregoing, Incentive Stock Options not exercised by such Participant within 90 days after Retirement will cease to qualify as Incentive Stock Options and will be treated as Non-qualified Stock Options under the Plan if required to be so treated under the Code.

Unless otherwise provided in a Participant's Grant Agreement, if a Participant ceases to be a director of the Company and any Subsidiary upon the occurrence of his or her Retirement, all of the Participant's options shall become fully vested and exercisable and shall remain so for a period of two years after the date of Retirement, but in no event after the expiration date of the options.

(iv) Discharge for Cause. Unless otherwise provided in a Participant's Grant Agreement, if a Participant ceases to be a director, officer or employee of, or to perform other services for, the Company or a Subsidiary due to Cause, or if a Participant does not become a director, officer or employee of, or does not begin performing other services for, the Company or a Subsidiary for any reason, all of the Participant's options shall expire and be forfeited immediately upon such cessation or non-commencement, whether or not then exercisable.

(v) Other Termination. Unless otherwise provided in a Participant's Grant Agreement, if a Participant ceases to be a director, officer or employee of, or to otherwise perform services for, the Company or a Subsidiary for any reason other than death, Disability, Retirement or Cause, (A) all of the Participant's options that were exercisable on the date of such cessation shall remain exercisable for, and shall otherwise terminate and thereafter be forfeited at

the end of, a period of 90 days after the date of such cessation, but in no event after the expiration date of the options, and (B) all of the Participant's options that were not exercisable on the date of such cessation shall be forfeited immediately upon such cessation.

(vi) Change in Control. Unless otherwise provided in a Participant's Grant Agreement, if there is a Change in Control of the Company, all of the Participant's options shall become fully vested and exercisable upon such Change in Control and shall remain so until the expiration date of the options. In addition, the Compensation Committee shall have the authority to grant options that become fully vested and exercisable automatically upon a Change in Control, whether or not the grantee is subsequently terminated.

#### 7. Stock Appreciation Rights.

The Committee shall have the authority to grant SARs under this Plan, either alone or to any optionee in tandem with options (either at the time of grant of the related option or thereafter by amendment to an outstanding option). SARs shall be subject to such terms and conditions as the Committee may specify. In any one calendar year, the Committee shall not grant to any one Participant SARs with respect to a number of Shares of Common Stock in excess of 1,000,000 shares of Common Stock.

No SAR may be exercised unless the Fair Market Value of a share of Common Stock of the Company on the date of exercise exceeds the exercise price of the SAR or, in the case of SARs granted in tandem with options, any options to which the SARs correspond. Prior to the exercise of the SAR and delivery of the cash and/or Shares represented thereby, the Participant shall have no rights as a stockholder with respect to Shares covered by such outstanding SAR (including any dividend or voting rights).

SARs granted in tandem with options shall be exercisable only when, to the extent and on the conditions that any related option is exercisable. The exercise of an option shall result in an immediate forfeiture of any related SAR to the extent the option is exercised, and the exercise of an SAR shall cause an immediate forfeiture of any related option to the extent the SAR is exercised.

Upon the exercise of an SAR, the Participant shall be entitled to a distribution from the Company in an amount equal to the difference between the Fair Market Value of a share of Common Stock on the date of exercise and the exercise price of the SAR or, in the case of SARs granted in tandem with options, any option to which the SAR is related, multiplied by the number of Shares as to which the SAR is exercised. The Committee shall decide whether such distribution shall be in cash, in Shares having a Fair Market Value equal to such amount, in Other Company Securities having a Fair Market Value equal to such amount or in a combination thereof.

All SARs will be exercised automatically on the last day prior to the expiration date of the SAR or, in the case of SARs granted in tandem with options, any related option, so long as the Fair Market Value of a share of Common Stock on that date exceeds the exercise price of the SAR or any related option, as applicable. An SAR granted in tandem with options

shall expire at the same time as any related option expires and shall be transferable only when, and under the same conditions as, any related option is transferable. Unless otherwise determined by a Participant's Grant Agreement, each SAR shall be subject to the termination and forfeiture provisions as set forth in Section 6(e).

#### 8. Restricted Stock.

The Committee may at any time and from time to time grant units or Shares of restricted stock under the Plan to such Participants and in such amounts as it determines. Each restricted stock unit shall be equivalent in value to one share of Common Stock and shall entitle the Participant to receive from the Company at the end of the vesting period (the "Vesting Period") applicable to such unit the value at such time of each unit, unless the Participant elects in a timely fashion prior to the end of the Vesting Period to defer the receipt of shares of Common Stock. Each grant of restricted stock units or Shares shall be evidenced by a Grant Agreement which shall specify the applicable restrictions on such units or Shares, the duration of such restrictions (which shall be at least six months except as otherwise determined by the Committee, or provided in the second paragraph of this Section 8), and the time or times at which such restrictions shall lapse with respect to all or a specified number of units or Shares that are part of the grant.

Units of restricted stock may be granted without payment of cash or consideration to the Company. Except as otherwise provided in any Grant Agreement, the Participant will be required to pay the Company the aggregate par value of any Shares of restricted stock (or such larger amount as the Board may determine to constitute capital under Section 154 of the Delaware General Corporation Law, as amended, or any successor thereto) within ten days of the date of grant, unless such Shares of restricted stock are treasury shares. Unless otherwise determined by the Committee, certificates representing Shares of restricted stock granted under the Plan will be held in escrow by the Company on the Participant's behalf during any period of restriction thereon and will bear an appropriate legend specifying the applicable restrictions thereon, and the Participant will be required to execute a blank stock power therefor. Except as otherwise provided by the Committee, during such period of restriction the Participant shall have all of the rights of a holder of Common Stock, including but not limited to the rights to receive dividends and to vote, and any stock or other securities received as a distribution with respect to such Participant's restricted stock shall be subject to the same restrictions as then in effect for the restricted stock. Unless otherwise provided in a Participant's Grant Agreement, each unit or Share of restricted stock shall be subject to the termination and forfeiture provisions as set forth in Section 6(e).

#### 9. Performance Awards.

Performance awards may be granted to Participants at any time and from time to time as determined by the Committee. The Committee shall determine the size and composition of performance awards granted to a Participant and the appropriate period over which performance is to be measured (a "performance cycle"). Performance awards may include (i) specific dollar-value target awards (ii) performance units, the value of each such unit being

determined by the Committee at the time of issuance, and/or (iii) performance Shares, the value of each such Share being equal to the Fair Market Value of a share of Common Stock.

The value of each performance award may be fixed or it may be permitted to fluctuate based on a performance factor (e.g., return on equity) selected by the Committee; provided that, payment of any performance award that is intended to qualify as "qualified performance-based compensation" within the meaning of Treasury Regulation §1.162-27(e) shall be based solely on the satisfaction of pre-established, objective goals determined with reference to one or more of the following performance factors: (i) return on equity, (ii) earnings per share, (iii) return on gross or net assets, (iv) return on gross or net revenue, (v) pre- or after-tax net income, (vi) earnings before interest, taxes, depreciation and amortization, (vii) operating income and (viii) revenue growth.

The Committee shall establish performance goals and objectives for each performance cycle on the basis of such criteria and objectives as the Committee may select from time to time, including, without limitation, the performance of the Participant, the Company, one or more of its Subsidiaries or divisions or any combination of the foregoing. During any performance cycle, the Committee shall have the authority to adjust the performance goals and objectives for such cycle for such reasons as it deems equitable.

The Committee shall determine the portion of each performance award that is earned by a Participant on the basis of the Company's performance over the performance cycle in relation to the performance goals for such cycle. The earned portion of a performance award may be paid out in Shares, cash, Other Company Securities, or any combination thereof, as the Committee may determine.

A Participant must be a director, officer or employee of, or otherwise perform services for, the Company or its Subsidiaries at the end of the performance cycle in order to be entitled to payment of a performance award issued in respect of such cycle; provided, however, unless otherwise provided in a Participant's Grant Agreement, each performance award shall be subject to the termination and forfeiture provisions as set forth in Section 6(e).

#### 10. Deferred Stock Units.

Deferred stock units may be granted to Participants at any time and from time to time as determined by the Committee. Each deferred stock unit shall be equivalent in value to one share of Common Stock and shall entitle the Participant to receive from the Company at the end of the deferral period (the "Deferral Period") applicable to such unit the Fair Market Value of one share of Common Stock. Except as otherwise determined by the Committee, deferred stock units shall be granted without payment of cash or other consideration to the Company but in consideration of services performed for or for the benefit of the Company or any Subsidiary by such Participant. As determined by the Committee, payment of the value of deferred stock units may be made by the Company in shares of Common Stock, cash or both. If paid in Common Stock, the Participant shall receive a number of shares of Common Stock equal to the number of matured or earned deferred stock units, and if paid in cash, the Participant shall receive for each matured deferred stock unit an amount equal to the Fair Market Value of a share of Common

Stock on the last day of the applicable Deferral Period. Upon payment in respect of a deferred stock unit, such unit shall be terminated and thereafter forfeited. Payments in respect of deferred stock units shall be made only at the end of the Deferral Period applicable to such units, the duration of which Deferral Period shall be determined by the Committee at the time of grant of such deferred stock units and set forth in the applicable Grant Agreement (or by the Participant in the case of an election to defer the receipt of Common Stock beyond the Vesting Period). Deferral Periods shall be no less than one year.

Unless otherwise provided in a Participant's Grant Agreement, if a Participant ceases to be a director, officer or employee of, or to otherwise perform services for, the Company and its Subsidiaries upon his or her death prior to the end of the Deferral Period, the Participant shall receive payment in respect of such Participant's deferred stock units which would have matured or been earned at the end of such Deferral Period as if the applicable Deferral Period had ended as of the date of such Participant's death or on such accelerated basis as the Committee may determine.

Unless otherwise provided in a Participant's Grant Agreement, if a Participant ceases to be a director, officer or employee of, or to otherwise perform services for, the Company and its Subsidiaries upon his or her Disability or Retirement prior to the end of the Deferral Period, the Participant shall receive payment in respect of such Participant's deferred stock units at the end of such Deferral Period.

Unless otherwise provided in a Participant's Grant Agreement, at such time as a Participant ceases to be, or in the event a Participant does not become, a director, officer or employee of, or otherwise performing services for, the Company or its Subsidiaries for any other reason, such Participant shall immediately forfeit any unvested deferred stock units which would have matured or been earned at the end of such Deferral Period.

Unless otherwise determined by a Participant's Grant Agreement, in the event of a Change in Control, a Participant shall receive payment in respect of such Participant's deferred stock units which would have matured or been earned at the end of such Deferral Period as if the applicable Deferral Period had ended as of the date of the Change in Control.

#### 11. Grant of Dividend Equivalent Rights.

The Committee may include in a Participant's Grant Agreement a dividend equivalent right entitling the grantee to receive amounts equal to all or any portion of the dividends that would be paid on the shares of Common Stock covered by such Award if such Shares had been delivered pursuant to such Award. In the event such a provision is included in a Grant Agreement, the Committee shall determine whether such payments shall be made in cash, in shares of Common Stock or in another form, whether they shall be conditioned upon the exercise of the Award to which they relate, the time or times at which they shall be made, and such other terms and conditions as the Committee shall deem appropriate.

## 12. Withholding Taxes.

(a) **Participant Election.** Unless otherwise determined by the Committee, a Participant may elect to deliver shares of Common Stock (or have the Company withhold Shares acquired upon exercise of an option or SAR or deliverable upon grant or vesting of restricted stock or the receipt of Common Stock, as the case may be) to satisfy, in whole or in part, the amount the Company is required to withhold for taxes in connection with the exercise of an option or SAR or the delivery of restricted stock upon grant or vesting or the receipt of Common Stock, as the case may be. Such election must be made on or before the date the amount of tax to be withheld is determined. Once made, the election shall be irrevocable. The fair market value of the shares to be withheld or delivered will be the Fair Market Value as of the date the amount of tax to be withheld is determined. In the event a Participant elects to deliver or have the Company withhold shares of Common Stock pursuant to this Section 12(a), such delivery or withholding must be made subject to the conditions and pursuant to the procedures set forth in Section 6(b) with respect to the delivery or withholding of Common Stock in payment of the exercise price of options.

(b) **Company Requirement.** The Company may require, as a condition to any grant or exercise under the Plan or to the delivery of certificates for Shares issued hereunder, that the grantee make provision for the payment to the Company, either pursuant to Section 12(a) or this Section 12(b), of federal, state or local taxes of any kind required by law to be withheld with respect to any grant or delivery of Shares. The Company, to the extent permitted or required by law, shall have the right to deduct from any payment of any kind (including salary or bonus) otherwise due to a grantee, an amount equal to any federal, state or local taxes of any kind required by law to be withheld with respect to any grant or delivery of Shares under the Plan.

## 13. Grant Agreement; Vesting.

Each employee to whom a grant is made under the Plan shall enter into a Grant Agreement with the Company that shall contain such provisions, including without limitation vesting requirements, consistent with the provisions of the Plan, as may be approved by the Committee. Unless the Committee determines otherwise and except as otherwise provided in Sections 6, 7, 8, 9 and 10 in connection with a Change of Control or certain occurrences of termination, no grant under this Plan may be exercised, and no restrictions relating thereto may lapse, within six months of the date such grant is made.

## 14. Transferability.

Unless otherwise provided in any Grant Agreement, no Award granted under the Plan shall be transferable by a Participant other than by will or the laws of descent and distribution or to a Participant's Family Member by gift or a qualified domestic relations order as defined by the Code. Unless otherwise provided in any Grant Agreement, an option, SAR or performance award may be exercised only by the optionee or grantee thereof; by his or her Family Member if such person has acquired the option, SAR or performance award by gift or qualified domestic relations order; by the executor or administrator of the estate of any of the foregoing or any person to whom the Option is transferred by will or the laws of descent and

distribution; or by the guardian or legal representative of any of the foregoing; provided that, Incentive Stock Options may be exercised by any Family Member, guardian or legal representative only if permitted by the Code and any regulations thereunder. All provisions of this Plan shall in any event continue to apply to any Award granted under the Plan and transferred as permitted by this Section 14, and any transferee of any such Award shall be bound by all provisions of this Plan as and to the same extent as the applicable original grantee.

#### 15. Listing, Registration and Qualification.

If the Committee determines that the listing, registration or qualification upon any securities exchange or under any law of Shares subject to any Award is necessary or desirable as a condition of, or in connection with, the granting of same or the issue or purchase of Shares thereunder, no such option or SAR may be exercised in whole or in part, no such performance award may be paid out, and no Shares may be issued, unless such listing, registration or qualification is effected free of any conditions not acceptable to the Committee.

#### 16. Transfer of Employee.

The transfer of an employee from the Company to a Subsidiary, from a Subsidiary to the Company, or from one Subsidiary to another Subsidiary shall not be considered a termination of employment; nor shall it be considered a termination of employment if an employee is placed on military or sick leave or such other leave of absence which is considered by the Committee as continuing intact the employment relationship.

#### 17. Adjustments.

In the event of a reorganization, recapitalization, stock split, reverse stock split, stock dividend, combination of shares, merger, consolidation, distribution of assets, or any other change in the corporate structure or shares of the Company, the Committee shall make such equitable adjustments as it deems appropriate in the number and kind of Shares or other property available for issuance under the Plan (including, without limitation, the total number of Shares available for issuance under the Plan pursuant to Section 4), in the number and kind of options, SARs, Shares or other property covered by grants previously made under the Plan, and in the exercise price of outstanding options and SARs. Any such adjustment shall be final, conclusive and binding for all purposes of the Plan. In the event of any merger, consolidation or other reorganization in which the Company is not the surviving or continuing corporation or in which a Change in Control is to occur, all of the Company's obligations regarding options, SARs, performance awards, restricted stock and deferred stock units that were granted hereunder and that are outstanding on the date of such event shall, on such terms as may be approved by the Committee prior to such event, be assumed by the surviving or continuing corporation or canceled in exchange for property (including cash).

Without limitation of the foregoing, in connection with any transaction of the type specified by clause (iii) of the definition of a Change in Control in Section 2(c), the Committee may (i) cancel any or all outstanding options under the Plan in consideration for payment to the holders thereof of an amount equal to the portion of the consideration, if any, that would have

been payable to such holders pursuant to such transaction if their options had been fully exercised immediately prior to such transaction, less the aggregate exercise price that would have been payable therefor, or (ii) if the amount that would have been payable to the option holders pursuant to such transaction if their options had been fully exercised immediately prior thereto would be equal to or less than the aggregate exercise price that would have been payable therefor, cancel any or all such options for no consideration or payment of any kind. Payment of any amount payable pursuant to the preceding sentence may be made in cash or, in the event that the consideration to be received in such transaction includes securities or other property, in cash and/or securities or other property in the Committee's discretion.

#### 18. Amendment and Termination of the Plan.

The Board or the Committee, without approval of the stockholders, may amend or terminate the Plan at any time, except that no amendment shall become effective without prior approval of the stockholders of the Company if (i) stockholder approval would be required by applicable law or regulations, including if required by any listing requirement of the principal stock exchange on which the Common Stock is then listed, (ii) such amendment would remove from the Plan a provision which, without giving effect to such amendment, is subject to shareholder approval, or (iii) such amendment would directly or indirectly increase the Share limits set forth in Section 4 of the Plan.

#### 19. Amendment or Substitution of Awards under the Plan.

The terms of any outstanding Award under the Plan may be amended from time to time by the Committee in any manner that it deems appropriate (including, but not limited to, acceleration of the date of exercise of any Award and/or payments thereunder or of the date of lapse of restrictions on Shares); provided that, except as otherwise provided in Section 17, no such amendment shall adversely affect in a material manner any right of a Participant under the Award without his or her written consent, and provided further that, the Committee shall not reduce the exercise price of any options or SARs awarded under the Plan without approval of the stockholders of the Company. The Committee may, in its discretion, permit holders of Awards under the Plan to surrender outstanding Awards in order to exercise or realize rights under other awards, or in exchange for the grant of new awards, or require holders of Awards to surrender outstanding Awards as a condition precedent to the grant of new awards under the Plan.

#### 20. Commencement Date; Termination Date

The date of commencement of the Plan shall be the Commencement Date.

Unless previously terminated upon the adoption of a resolution of the Board terminating the Plan, the Plan shall terminate at the close of business ten years after the Commencement Date. No termination of the Plan shall materially and adversely affect any of the rights or obligations of any person, without his or her written consent, under any Award or other incentives theretofore granted under the Plan.

21. Severability. Whenever possible, each provision of the Plan shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of the Plan is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of the Plan.

22. Governing Law. The Plan shall be governed by the corporate laws of the State of Delaware, without giving effect to any choice of law provisions that might otherwise refer construction or interpretation of the Plan to the substantive law of another jurisdiction.

\* \* \* \*

**REGISTRATION RIGHTS AGREEMENT**

**by and among**

**NRG ENERGY, INC.**

**and**

**THE HOLDERS NAMED HEREIN**

Dated as of [\_\_\_\_], 2003

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**SCHEDULES:**

**SCHEDULE A – JOINDER AGREEMENT**

## REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT, dated as of [ ], 2003 (this "Agreement"), by and among NRG Energy, Inc., a Delaware corporation (the "Company"), and the Holders (as hereinafter defined) of Registrable Common Stock (as hereinafter defined) who are signatories to this Agreement or a Joinder Agreement (as hereinafter defined).

This Agreement is being entered into in connection with the receipt of Common Stock (as hereinafter defined) on or after the Effective Date (as hereinafter defined) by certain Holders (the original parties to this Agreement are referred to as the "Original Holders") pursuant to the Plan (as hereinafter defined). Upon the issuance of the Common Stock, each Original Holder will own the number of shares of Common Stock specified with respect to such Original Holder on the signature pages hereto.

In consideration of the premises and the mutual agreements set forth herein, the parties hereto hereby agree as follows:

1. Definitions. Unless otherwise defined herein, capitalized terms used herein and in the recitals above shall have the following meanings:

"10% Holder" means, as of any date of determination, any Holder which owns 10% or more of the Company's Common Stock then outstanding.

"Affiliate" of a Person means any Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such other Person. For purposes of this definition, "control" means the ability of one Person to direct the management and policies of another Person. For purposes of this Agreement, each of MattlinPatterson Global Opportunities Partners, L.P. and MattlinPatterson Global Opportunities Partners (Bermuda), L.P. shall be an Affiliate of the other. In addition, with respect to each of MattlinPatterson Global Opportunities Partners, L.P. and MattlinPatterson Global Opportunities Partners (Bermuda), L.P., the term "Affiliate" shall also include its general partner, investment manager, any entity with the same general partner or investment manager as MattlinPatterson Global Opportunities Partners, L.P. or MattlinPatterson Global Opportunities Partners (Bermuda), L.P. (as the case may be), and any Person under the direct or indirect control of MattlinPatterson Global Partners LLC or MattlinPatterson Global Advisers LLC and the general partner(s) and investment manager(s) of any such Person, if any.

"Bankruptcy Code" means Title 11 of the United States Code.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York City or Minneapolis are authorized or required by law to be closed.

"Commission" means the U.S. Securities and Exchange Commission.

"Common Stock" means the shares of common stock, \$.01 par value per share, of the Company, as adjusted to reflect any merger, consolidation, recapitalization, reclassification,

split-up, stock dividend, rights offering or reverse stock split made, declared or effected with respect to the Common Stock.

“Company Indemnitee” has the meaning set forth in Section 9(a) hereof.

“Confidential Material” means all notices delivered by the Company under this Agreement, including, without limitation, notices delivered by the Company pursuant to Section 2 and/or Section 3 (each, an “Offering Notice”) and any and all other information, in any form or medium, written or oral, concerning or relating to the Company (whether prepared by the Company, its Representatives (as hereinafter defined) or otherwise, and irrespective of the form or means of communication and which prior to the delivery of an Offering Notice is labeled or otherwise identified as confidential) that is furnished to a Holder of Registrable Common Stock or its Representative (or to a Person who was a Holder who has not notified the Company that it is no longer a Holder pursuant to Section 17) by or on behalf of the Company, including without limitation all such oral and written information relating to financial statements, projections, evaluations, plans, programs, customers, suppliers, facilities, equipment and other assets, products, processes, marketing, research and development, trade secrets, know-how, patent applications that have not been published, technology and other confidential information and intellectual property of the Company. During the period beginning on the date of delivery of an Offering Notice and ending on the date that the registration referred to therein either becomes effective or is abandoned, all information provided to the Holders of Registrable Common Stock, who elect to participate in the offering referred to therein, in connection with such offering shall be deemed to be Confidential Material, whether or not labeled or otherwise identified as Confidential Information. “Confidential Material” shall not include information that: (a) is or becomes available to the public generally, other than as a result of disclosure by the relevant Holder or one of the Representatives of such Holder in breach of the terms of this Agreement, or (b) becomes available to the relevant Holder from a source other than the Company or one of the Representatives of such Holder, including without limitation prior to the date hereof, provided that, the Holder reasonably believes that such source is not bound by a confidentiality agreement with or does not have a contractual, legal or fiduciary obligation of confidentiality to the Company or any other person with respect to such information.

“Effective Date” means the effective date of the Plan pursuant to the terms thereof.

“Equity Transfer” has the meaning set forth in Section 6(d) hereof.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, or any similar or successor statute.

“Expenses” means all expenses incident to the Company’s performance of or compliance with its obligations under this Agreement, including, without limitation, all registration, filing, listing, stock exchange and NASD fees (including, without limitation, all fees and expenses of any “qualified independent underwriter” required by the rules of the NASD), all fees and expenses of complying with state securities or blue sky laws (including the reasonable fees, disbursements and other charges of counsel for the underwriters in connection with blue sky filings), all word processing, duplicating and printing expenses, messenger, telephone and

delivery expenses, all rating agency fees, the fees, disbursements and other charges of counsel for the Company and of its independent public accountants, including the expenses incurred in connection with any special audits or comfort letters required by or incident to such performance and compliance, the fees and expenses incurred in connection with the listing of the securities to be registered on each securities exchange or national market system on which similar securities issued by the Company are then listed, the reasonable fees and disbursements of one law firm (per registration statement prepared) representing the Selling Holders (selected by the Selling Holders holding a majority of the shares of Registrable Common Stock covered by such registration), the fees and expenses of any special experts retained by the Company in connection with such registration, and the fees and expenses of other Persons retained by the Company, but excluding underwriting discounts and commissions and applicable transfer taxes, if any, which discounts, commissions and transfer taxes shall be borne by the Selling Holders in all cases; provided that, in any case where Expenses are not to be borne by the Company, such Expenses shall not include salaries of Company personnel or general overhead expenses of the Company, auditing fees, premiums or other expenses relating to liability insurance required by underwriters or other expenses for the preparation of financial statements or other data normally prepared by the Company in the ordinary course of its business or which the Company would have incurred in any event.

“Holdback Period” has the meaning set forth in Section 6(d) hereof.

“Holder” means, as of any date of determination, (a) any Original Holder who owns at least (i) 1% of the Company’s Common Stock outstanding as of the Effective Date (after giving effect to the issuance of shares of Common Stock pursuant to the Plan) and (ii) 1% of the Company’s Common Stock on the date of determination, or (b) any Person who (i) acquired at least 1% of the Company’s Common Stock then outstanding from an Original Holder, (ii) owns at least 10% of the Company’s Common Stock then outstanding and (iii) has delivered to the Company a Joinder Agreement in accordance with Section 15.

“Holder Indemnitee” has the meaning set forth in Section 9(b) hereof.

“Initiating Holder” means at the time of any Initiating Request a 10% Holder.

“Initiating Holder Group” means Holders (not including any 10% Holder) which collectively own 10% or more of the Company’s Common Stock outstanding at the time of delivery of an Initiating Request.

“Initiating Request” has the meaning set forth in Section 2(a) hereof.

“Joinder Agreement” has the meaning set forth in Section 15 hereof.

“Loss” and “Losses” have the meanings set forth in Section 9(a) hereof.

“Material Adverse Change” means (a) any general suspension of trading in securities on any national securities exchange or in the over-the-counter market in the United States of America; (b) the declaration of a banking moratorium or any suspension of payments in respect of banks in the United States of America; (c) the commencement of war, armed hostilities, terrorism or other national or international calamity involving the United States of

America; (d) any other limitation (whether or not voluntary) imposed by any governmental authority of the United States of America, which materially affects the extension of credit by U.S. banks or other financial institutions; (e) any material adverse change in the business, condition (financial or otherwise) or prospects of the Company and its subsidiaries, taken as a whole (provided that, if the registration is with respect to an underwritten offering, in no event shall any such change be deemed to be a Material Adverse Change if the offering price remains within the range originally advised by the underwriter); or (f) a 20% or more decline in the Dow Jones Industrial Average, the Standard and Poor's Index of 500 Industrial Companies or the Dow Jones Utilities Index, in each case from the date of an Initiating Request.

"NASD" means the National Association of Securities Dealers, Inc.

"Non-withdrawing Holders" has the meaning set forth in Section 2(a)(ii)(D) hereof.

"Offering Documents" has the meaning set forth in Section 9(a) hereof.

"Permitted Securities" has the meaning set forth in Section 2(b) hereof.

"Person" means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint stock company, trust, unincorporated organization, governmental or regulatory body or subdivision thereof or other entity.

"Piggyback Registration" has the meaning set forth in Section 3 hereof.

"Piggyback Requesting Holder" has the meaning set forth in Section 3 hereof.

"Plan" means the Plan of Reorganization under Chapter 11 of the Bankruptcy Code for the Company and certain of its domestic subsidiaries, as the same may be amended, modified or supplemented from time to time in accordance with the terms thereof.

"Public Offering" means a public offering and sale of Common Stock pursuant to an effective registration statement (other than a registration statement on Form S-4 or Form S-8 or any successor or similar forms) under the Securities Act.

"Registrable Common Stock" means any of the Common Stock owned by the Holders from time to time; provided, however, that a share of Common Stock will cease to be Registrable Common Stock when (a) a registration statement covering such Registrable Common Stock has been declared effective and such Registrable Common Stock has been sold pursuant to such effective registration statement, or (b) such Registrable Common Stock has been Transferred to a Person who is not (and does not become as a result of such Transfer) a Holder.

"Representative" has the meaning set forth in Section 7(b) hereof.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar or successor statute.

"Selling Holder" means a Holder who is selling Registrable Common Stock requested to be registered pursuant to Section 2(a) or Section 3 hereof.

"Transfer" means any transfer, sale, assignment, pledge, hypothecation or other disposition of any interest. "Transferor" and "Transferee" have correlative meanings.

"Withdrawal Notice" has the meaning set forth in Section 19 hereof.

In this Agreement, all references to "ownership" of Common Stock or Registrable Common Stock shall be deemed to mean the beneficial ownership of Common Stock or Registrable Common Stock, unless otherwise specified.

## 2. Securities Act Registration on Request.

(a) **Initiating Request.** At any time and from time to time after the first anniversary following the Effective Date and if the Company's obligations hereunder have not terminated pursuant to and in accordance with the terms of Section 19 hereof, any Initiating Holder or Initiating Holder Group may make a written request (the "Initiating Request") for the registration with the Commission under the Securities Act of all or part of the Registrable Common Stock owned by such Initiating Holder or Initiating Holder Group; provided, however, such request shall specify the number of shares to be disposed of by such Initiating Holder or Initiating Holder Group and the proposed plan of distribution therefor. Upon the receipt of any Initiating Request for registration pursuant to this Section 2(a), the Company shall promptly (and in any event within 10 Business Days after receipt of the Initiating Request) notify in writing all other Holders of the receipt of such request and will use its reasonable best efforts to effect, at the earliest practicable date, such registration under the Securities Act of:

- (i) the Registrable Common Stock which the Company has been so requested to register by such Initiating Holder or Initiating Holder Group, and
- (ii) all other Registrable Common Stock which the Company has been requested to register by any other Holders by written request (provided that, if such Holder shall specify in such request that it does not wish to receive any Confidential Material, except as set forth in such request, then the Company shall not deliver to such Holder any such Confidential Material) given to the Company within 30 days after the giving of written notice by the Company to such other Holders of the Initiating Request,

all to the extent necessary to permit the disposition (in accordance with Section 2(c) hereof) of the Registrable Common Stock so to be registered; provided that,

- (A) (i) any Initiating Holder shall be permitted to make an Initiating Request on up to two occasions and (ii) any Initiating Holder Group shall be permitted to make an Initiating Request on one occasion only; provided, however, that if at any time there ceases to be a 10% Holder and at least one of the two written requests provided for in clause (i) of this paragraph (A) has not been used, any Initiating Holder Group shall have the right to make an

additional Initiating Request and the number of Initiating Requests referenced in clause (i) of this paragraph (A) shall be permanently reduced to one; provided further that, the Company shall not be required to effect more than a total of three registrations pursuant to this Section 2(a) for all Holders;

- (B) the Company shall not be required to effect such registration pursuant to this Section 2(a) unless the disposition of the Registrable Common Stock shall be conducted through an underwritten offering on a “firm commitment” basis, unless (i) the Initiating Holder is a 10% Holder, or (ii) a member of the Initiating Holder Group, who was but is no longer a 10% Holder, is an “affiliate” of the Company for purposes of Rule 144 under the Securities Act;
- (C) if the Company shall have previously effected a registration pursuant to this Section 2(a) or shall have previously effected a registration of which notice has been given to the Holders pursuant to Section 3 hereof, the Company shall not be required to effect any registration pursuant to this Section 2(a) until a period of 180 days shall have elapsed from the date on which the previous such registration ceased to be effective;
- (D) any Initiating Holder or Initiating Holder Group (at the request of those members of such Initiating Holder Group owning a majority of the shares of Registrable Common Stock owned by all members of such Initiating Holder Group) whose Registrable Common Stock was to be included in any registration pursuant to this Section 2(a), by written notice to the Company, may withdraw its Initiating Request. Upon receipt of such withdrawal notice (except as otherwise provided in sub-clause (x)), the Company shall not effect such registration and such registration shall not count as one of the permitted registrations pursuant to paragraph (A) above; provided that (x) if the members of an Initiating Holder Group that have not requested withdrawal of an Initiating Request collectively own and wish the Company to register the offering of 10% or more of the Company’s Common Stock outstanding at the time of delivery of the Initiating Request (the “Non-withdrawing Holders”), the Company shall effect a registration that includes only such shares of Common Stock owned by the Non-withdrawing Holders and such registration shall count as one of the registrations permitted for an Initiating Holder Group pursuant to paragraph (A) above; (y) any Initiating Holder may withdraw its Initiating Request not more than twice and any Initiating Holder Group may withdraw its Initiating Request not more than twice (provided further for the avoidance of doubt that the aggregate number of withdrawals under this clause (y) by all Initiating

Holder Groups however constituted shall not exceed two), in either case unless such Initiating Request is withdrawn for a reason specified in sub-clause (z)(i); and (z) the Initiating Holder or Initiating Holder Group shall either (i) elect to pay or reimburse the Company for all Expenses incurred in connection with the second registration that is not effected as the result of an Initiating Request that is withdrawn by such Initiating Holder or Initiating Holder Group, as the case may be, pursuant to this paragraph (D), unless such Initiating Request is withdrawn either (I) at the request of the Company, (II) because a breach by the Company of its obligations under this Agreement has materially and adversely affected the offering, or (III) within 5 Business Days following the occurrence of a Material Adverse Change, in which case the Company shall pay all Expenses incurred in connection with such registration, or (ii) have the withdrawn Initiating Request count as one of the permitted registrations pursuant to paragraph (A) above; and

- (E) the Company shall not be required to effect any registration to be effected pursuant to this Section 2(a) unless at least 10% of the shares of Registrable Common Stock outstanding at the time of such request is to be included in such registration.

(b) **Registration of Other Securities.** Whenever the Company shall effect a registration pursuant to Section 2(a) hereof, no securities other than (i) Registrable Common Stock, (ii) subject to Section 2(f), Common Stock to be sold by the Company for its own account, and (iii) Common Stock or other capital stock issued in connection with equity investments in the Company or its subsidiaries or acquisitions (such Common Stock or other capital stock, which shall not include Common Stock outstanding on the Effective Date, is referred to as "Permitted Securities") for which the Company's board of directors has approved of the granting of such registration rights shall be included among the securities covered by such registration, unless otherwise approved by the Holders owning a majority of the shares of Registrable Common Stock covered by such registration, which approval shall not be unreasonably withheld.

(c) **Registration Statement Form.** Registrations under Section 2(a) hereof shall be on such appropriate registration form prescribed by the Commission under the Securities Act as shall be selected by the Company and which form shall be available for the sale of the Registrable Common Stock to be registered thereunder in accordance with the intended method of distribution thereof. The Company agrees to include in any such registration statement filed pursuant to Section 2(a) hereof all information which counsel for the Selling Holders holding a majority of the shares of Registrable Common Stock covered by such registration effected pursuant hereto shall advise is legally required to be included. The Company may, if permitted by law, effect any registration requested under this Section 2 by the filing of a registration statement on Form S-3 (or any successor or similar short form registration statement); provided, however, that in the case of an underwritten offering, if the managing underwriters advise the Company that in their opinion the use of another permitted form is of material importance to the

success of the offering, then the Company shall effect such registration on such other permitted form.

(d) **Effective Registration Statement.** Except as set forth in Section 2(a)(ii)(D), a registration requested pursuant to Section 2(a) hereof shall not be deemed to have been effected:

- (i) unless a registration statement with respect thereto has been declared effective by the Commission and remains effective in compliance with the provisions of the Securities Act and the laws of any state or other jurisdiction applicable to the disposition of Registrable Common Stock covered by such registration statement until the earlier of (x) such time as all of such Registrable Common Stock has been disposed of in accordance with such registration statement, (y) there shall cease to be any Registrable Common Stock or (z) 120 days after a registration statement is declared effective;
- (ii) if, after it has become effective, such registration is interfered with by any stop order, injunction or other order or requirement of the Commission or other governmental or regulatory agency or court for any reason other than a violation of applicable law solely by any Selling Holder and has not thereafter become effective; or
- (iii) if, in the case of an underwritten offering, the conditions to closing specified in an underwriting agreement to which the Company is a party are not satisfied or waived other than solely by reason of any breach or failure by any Selling Holder, or are not otherwise waived.

The Holders to be included in a registration statement may at any time terminate a request for registration made pursuant to Section 2(a) in accordance with Section 2(a)(ii)(D).

(e) **Selection of Underwriters.** The underwriter or underwriters of each underwritten offering, if any, of the Registrable Common Stock to be registered pursuant to Section 2(a) hereof shall be selected by the Company (provided that, the managing underwriter must be a "bulge bracket" investment banking firm), subject to (i) if a 10% Holder or former 10% Holder is not the Initiating Holder or a member of the Initiating Holder Group, the approval of the Selling Holders owning a majority of the shares of Registrable Common Stock to be registered which approval shall not be unreasonably withheld or delayed, or (ii) if a 10% Holder or former 10% Holder is the Initiating Holder or a member of the Initiating Holder Group, the approval of such 10% Holder or such former 10% Holder which approval may be withheld in its sole discretion; provided, however, that in any event the Company shall be satisfied that the terms of such underwriting engagement are commercially reasonable market terms.

(f) **Priority in Requested Registration.** If the managing underwriter of an underwritten offering pursuant to Section 2(a) shall advise the Company (in which case, the Company shall use reasonable efforts to advise the Selling Holders) that, in its judgment, the number and type of securities proposed to be included in such registration would exceed the number and type of securities which could be sold in such offering within a price range

acceptable to the Company and the Selling Holders owning at least a majority of the shares of Registrable Common Stock covered by such registration, then the Company shall include in such registration pursuant to Section 2(a), to the extent of the number and type of securities which the Company is so advised can be sold in such offering, (i) first, Registrable Common Stock requested to be registered by the Selling Holders pursuant to Section 2(a) hereof, pro rata among the Selling Holders on the basis of the number of shares of Registrable Common Stock requested to be registered by all such Selling Holders, (ii) second, Permitted Securities requested to be registered by the holders of Permitted Securities, pro rata among the holders of Permitted Securities on the basis of the number of Permitted Securities requested to be registered by all such holders of Permitted Securities and (iii) third, securities that the Company proposes to issue and sell for its own account.

3. Piggyback Registration. If the Company proposes to file a registration statement under the Securities Act with respect to an equity offering by the Company (or any offering by the Company of securities convertible into or exchangeable for equity securities) for its own account or for the account of any of its respective securityholders of any class of equity security or security convertible into or exchangeable for equity securities (other than a registration statement on Form S-4 or S-8 (or any substitute form that may be adopted by the Commission) or a registration statement to be filed in connection with an exchange offer or offering of securities solely to the Company's existing securityholders), then the Company shall give written notice (which notice shall include a range of expected public offering prices; provided, however, if the underwriter has not advised the Company of such a range as of such date, then the Company shall notify the Holders in writing as promptly as practicable after it receives such advice from such underwriter) of such proposed filing to the Holders as soon as reasonably practicable (and in any event at least 30 days prior to such proposed registration), and such notice shall offer such Holders the opportunity to register such number of shares of Registrable Common Stock as each such Holder may request in writing in accordance with the provisions of this Section 3 (a "Piggyback Registration"). Upon written request, any Holder receiving notice of such proposed registration (a "Piggyback Requesting Holder") made within 30 days after the receipt of any such notice (10 days if the Company states in such written notice or gives telephonic notice to the relevant Holder, with written confirmation to follow promptly thereafter, stating that (a) such registration will be on Form S-3 (or any successor form) and (b) such shorter period of time is required because of a planned filing date), which request shall specify the number of shares of Registrable Common Stock intended to be disposed of by such Piggyback Requesting Holder (provided that, if such Holder shall specify in such request that it does not wish to receive any Confidential Material, except as set forth in such request, then the Company shall not deliver to such Holder any such Confidential Material), the Company shall, subject to Section 6(b) hereof, be obligated to permit the Registrable Common Stock requested to be included in a Piggyback Registration to be included on the same terms and conditions as any similar securities of the Company included therein, unless (i) the managing underwriter of an underwritten offering pursuant to this Section 3 has determined that the inclusion of such Registrable Common Stock would have a material adverse effect on the offering, and (ii) the Holders of a majority of the shares of Registrable Common Stock approve of such exclusion; provided that, if at any time after giving written notice of its intention to register any securities and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register or to delay registration of such securities, the Company shall give written notice of such determination to each Piggyback Requesting Holder and (i) in

the case of a determination not to register, shall be relieved of its obligation to register any Registrable Common Stock in connection with such registration (but not from any obligation of the Company to pay the Expenses in connection therewith), without prejudice, however, to the rights of any Holder to include Registrable Common Stock in any future registration (or registrations) pursuant to this Section 3 or to cause such registration to be effected as a registration under Section 2(a) hereof, as the case may be, and (ii) in the case of a determination to delay registering, shall be permitted to delay in each case registering any Registrable Common Stock, for the same period as the delay in registering such other securities. Notwithstanding the foregoing, prior to the date on which the securities to be sold in such offering are priced, if the managing underwriter (if an underwritten offering) notifies the Company of a change in the price range at which it believes the securities will be sold from the price range the Company previously provided to such Piggyback Requesting Holders, the Company shall so advise the Piggyback Requesting Holders, and such Piggyback Requesting Holders shall then have the right irrevocably to withdraw its request to have its Registrable Common Stock included in such registration by delivery of written notice of such withdrawal to the Company within five Business Days after having received such notice from the Company, without prejudice, however, to the rights of any Holder to include Registrable Common Stock in any future registration (or registrations) pursuant to this Section 3 or to cause such registration to be effected as a registration under Section 2(a) hereof, as the case may be.

No registration effected under this Section 3 shall relieve the Company of its obligation to effect any registration upon request under Section 2(a) hereof and no registration effected pursuant to this Section 3 shall be deemed to have been effected pursuant to Section 2(a) hereof.

4. Expenses. Except as otherwise provided in the final paragraph of Section 5, the Company shall pay all Expenses in connection with any registration initiated pursuant to Sections 2(a) or 3 hereof, whether or not such registration shall become effective and whether or not all or any portion of the shares of Registrable Common Stock originally requested to be included in such registration are ultimately included in such registration.

5. Registration Procedures. If and whenever the Company is required or elects to effect any registration under the Securities Act as provided in Sections 2(a) and 3 hereof, the Company shall, as expeditiously as possible:

- (a) prepare and file with the Commission (promptly and, in the case of any registration pursuant to Section 2(a), in any event on or before the date that is (i) 90 days after the end of the period within which requests may be given to the Company pursuant to Section 2(a)(ii), or (ii) if, as of such 90<sup>th</sup> day, the Company does not have the audited financial statements required to be included in the registration statement, 30 days after the receipt by the Company from its independent public accountants of such audited financial statements, which the Company shall use its reasonable best efforts to obtain as promptly as practicable) the requisite registration statement to effect such registration and thereafter use its reasonable best efforts to cause such registration statement to become and remain effective; provided, however, that the Company may discontinue any registration of its securities that are not shares of Registrable Common Stock (and, under the

circumstances specified in Sections 3 and 8(b) hereof, its securities that are shares of Registrable Common Stock) at any time prior to the effective date of the registration statement relating thereto;

- (b) prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and to comply with the provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Common Stock covered by such registration statement until such time as all of such Registrable Common Stock has been disposed of in accordance with the method of disposition set forth in such registration statement (subject to Section 5(a)); provided that, such period need not extend beyond 120 days after the effective date of the registration statement;
- (c) furnish to each Selling Holder and each underwriter such number of copies of such drafts and final conformed versions of such registration statement and of each such amendment and supplement thereto (in each case including all exhibits and any documents incorporated by reference), such number of copies of such drafts and final versions of the prospectus contained in such registration statement (including each preliminary prospectus and any summary prospectus), if any, and any other prospectus filed under Rule 424 under the Securities Act, in conformity with the requirements of the Securities Act, and such other documents, as the Selling Holders and underwriters may reasonably request in writing;
- (d) use its reasonable best efforts (i) to register or qualify all Registrable Common Stock and other securities, if any, covered by such registration statement under such other securities or blue sky laws of such states or other jurisdictions of the United States of America as the Selling Holders shall reasonably request in writing, (ii) to keep such registration or qualification in effect for so long as such registration statement remains in effect and (iii) to take any other action that may be necessary or reasonably advisable to enable such Selling Holders to consummate the disposition in such jurisdictions of the securities to be sold by such Selling Holders, except that the Company shall not for any such purpose be required to qualify generally to do business as a foreign corporation in any jurisdiction wherein it would not but for the requirements of this Section 5(d) be obligated to be so qualified, to subject itself to taxation in such jurisdiction or to consent to general service of process in any such jurisdiction;
- (e) use its reasonable best efforts to cause all Registrable Common Stock and other securities, if any, covered by such registration statement to be registered with or approved by such other federal or state governmental agencies or authorities as may be necessary in the opinion of counsel to the Company and counsel to the Selling Holder or Selling Holders to enable the Selling Holder or Selling Holders thereof to consummate the disposition of such Registrable Common Stock;

- (f) use its reasonable best efforts to obtain and, if obtained, furnish to each Selling Holder, and each underwriter a signed copy, addressed to each such underwriter, of:
- (i) an opinion or opinions of counsel to the Company dated the effective date of such registration statement (and, if such registration involves an underwritten offering, dated the date of the closing under the underwriting agreement), and
  - (ii) a comfort letter or comfort letters, dated the effective date of such registration statement (and, if such registration involves an underwritten offering, dated the date of the closing under the underwriting agreement), from the independent public accountants who have certified the Company's financial statements included or incorporated by reference in such registration statement,
- each in customary form, covering such matters of the type customarily covered by opinions of counsel or comfort letters, as the case may be, and reasonably satisfactory to the managing underwriter;
- (g) notify each Selling Holder and the managing underwriter or underwriters, if any, promptly, and confirm such advice promptly in writing thereafter (i) when the registration statement, the prospectus or any prospectus supplement related thereto or post-effective amendment to the registration statement has been filed and, with respect to the registration statement and any post-effective amendment, when the same has become effective; (ii) of any request by the Commission for amendments or supplements to the registration statement or prospectus or for additional information; (iii) of the issuance by the Commission of any stop order suspending the effectiveness of the registration statement or the initiation of any proceedings by any Person for that purpose; (iv) if at any time the representations and warranties of the Company made as contemplated by Section 6(a) ceases to be true and correct; and (v) of the receipt by the Company of any notification with respect to the suspension of the qualification of any Registrable Common Stock for sale under the securities or blue sky laws of any jurisdiction or the initiation or threat of any proceeding for such purpose;
- (h) promptly notify each Selling Holder and the managing underwriter or underwriters, if any, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, upon discovery that, or upon the happening of any event as a result of which, the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances under which they were made and, at the written request of any such Selling Holder or underwriter, if any, promptly prepare and furnish to it a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities, such prospectus, as supplemented or amended, shall not include an untrue statement of

a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances under which they were made; provided that, in the event the Company shall give such notice, the Company shall extend the period for which such registration shall remain effective by the number of days during the period of days from and including the date of the giving of such notice to the date when the Company shall make available to the Holders such supplemented and amended prospectus;

- (i) use its reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of a registration statement relating to the Registrable Common Stock at the earliest possible moment;
- (j) otherwise comply with all applicable rules and regulations of the Commission and any other governmental agency or authority having jurisdiction over the offering, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve months, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 promulgated thereunder, furnish to each Selling Holder and to the managing underwriter at least 10 days prior to the filing thereof a copy of any amendment or supplement to such registration statement or prospectus, and not file any amendment or supplement thereof which does not comply in all material respects with the requirements of the Securities Act or the rules and regulations thereunder;
- (k) use its reasonable best efforts to cause all such Registrable Common Stock covered by a registration statement to be listed or quoted on each securities exchange or inter-dealer automated quotation system on which similar securities issued by the Company are then listed or quoted;
- (l) provide and maintain a transfer agent and registrar for the Registrable Common Stock covered by a registration statement from and after a date no later than the effective date thereof;
- (m) enter into such agreements (including, in the case of an underwritten offering, an underwriting agreement in customary form) and take such other actions as the Selling Holders holding a majority of the shares of Registrable Common Stock covered by such registration statement shall reasonably request in order to expedite or facilitate the disposition of such Registrable Common Stock, including customary indemnification;
- (n) if requested by the managing underwriter or the Selling Holders holding a majority of the shares of Registrable Common Stock being sold, promptly incorporate in a prospectus supplement or post-effective amendment such information as the managing underwriter or the Selling Holders of a majority of the Registrable Common Stock being sold, as the case may be, agree should be included therein relating to the plan of distribution with respect to such

Registrable Common Stock, including without limitation, information with respect to the number of shares of Registrable Common Stock being sold to such underwriters, the purchase price being paid therefor by such underwriters and with respect to any other terms of the underwritten offering of the Registrable Common Stock to be sold in such offering; and make all required filings of such prospectus supplement or post-effective amendment as soon as notified of the matters to be incorporated in such prospectus supplement or post-effective amendment;

- (o) if requested by the Selling Holders holding a majority of the shares of Registrable Common Stock being sold, cooperate with the such Selling Holders and the managing underwriter, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Common Stock to be sold and not bearing any restrictive legends, and enable such Registrable Common Stock to be in such share amounts and registered in such names as the managing underwriter or, if none, the Selling Holders holding a majority of the shares of Registrable Common Stock being sold, may request at least three Business Days prior to any sale of Registrable Common Stock to the underwriters; and
- (p) cause representatives of the Company to participate in any "road show" or "road shows" reasonably requested by any lead underwriter of an underwritten offering of Registrable Common Stock.

As a condition to the obligations of the Company to complete any registration pursuant to this Agreement with respect to the Registrable Common Stock of a Selling Holder, such Selling Holder must furnish to the Company in writing such information regarding itself and the Registrable Common Stock held by it as is necessary to effect the registration of such Selling Holder's Registrable Common Stock and is requested in writing by the Company. At least 30 days prior to the first anticipated filing date of a registration statement for any registration under this Agreement, the Company will notify in writing each Holder of the information referred to in the preceding sentence which the Company is requesting from that Holder whether or not such Holder has elected to have any of its Registrable Common Stock included in the registration statement. If, within 10 days prior to the anticipated filing date, the Company has not received the requested information from a Holder, then the Company may file the registration statement without including Registrable Common Stock of that Holder.

Each Selling Holder agrees that as of the date that a final prospectus is made available to it for distribution to prospective purchasers of its Registrable Common Stock it shall cease to distribute copies of any preliminary prospectus prepared in connection with the offer and sale of such Registrable Common Stock. Each Selling Holder further agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 5(h), such Selling Holder shall forthwith discontinue such Selling Holder's disposition of Registrable Common Stock pursuant to the registration statement relating to such Registrable Common Stock until such Selling Holder's receipt of the copies of the supplemented or amended prospectus contemplated by Section 5(h) and, if so directed by the Company, shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies, then in such Selling Holder's possession of the prospectus relating to such Registrable Common Stock current

at the time of receipt of such notice. If any event of the kind described in Section 5(h) occurs and such event is the fault solely of a Selling Holder (or Selling Holders), such Selling Holder (or such Selling Holders) shall pay all Expenses attributable to the preparation, filing and delivery of any supplemented or amended prospectus contemplated by Section 5(h).

6. Underwritten Offerings.

(a) Requested Underwritten Offerings. If requested by the underwriters in connection with a request for a registration under Section 2(a) hereof, the Company shall enter into a firm commitment underwriting agreement with such underwriters for such offering, such agreement to be reasonably satisfactory in substance and form to the Company and the Selling Holders holding a majority of the shares of Registrable Common Stock included in such registration, and the underwriters and to contain such representations and warranties by the Company and such other terms as are customary in agreements of that type, including, without limitation, indemnification and contribution to the effect and to the extent provided in Section 9 hereof.

(b) Piggyback Underwritten Offerings: Priority.

- (i) If the Company proposes to register any of its securities under the Securities Act for its own account as contemplated by Section 3 hereof and such securities are to be distributed by or through one or more underwriters, and if the managing underwriter of such underwritten offering shall advise the Company (in which case, the Company shall use reasonable efforts to advise the Selling Holders in writing) that if all the shares of Common Stock requested to be included in such registration were so included, then in its judgment, the number and type of securities proposed to be included in such registration would exceed the number and type of securities which could be sold in such offering within a price range acceptable to the Company, then the Company shall include in such registration pursuant to Section 3, to the extent of the number and type of securities which the Company is so advised can be sold in such offering, (A) first, securities that the Company proposes to issue and sell for its own account, (B) second, Permitted Securities requested to be registered by the holders of Permitted Securities and Registrable Common Stock requested to be registered by Piggyback Requesting Holders pursuant to Section 3 hereof, pro rata among the holders of Permitted Securities and Piggyback Requesting Holders on the basis of the number of shares of Permitted Securities and Registrable Common Stock requested to be registered by all such holders of Permitted Securities and Piggyback Requesting Holders, and (C) third, other securities (other than Registrable Common Stock or Permitted Securities), if any.
- (ii) If the Company proposes to register any Permitted Securities pursuant to a demand registration right of the holders of Permitted Securities as contemplated by Section 3 involving an underwritten offering, and if the managing underwriter of such underwritten offering shall advise the

Company (in which case, the Company shall use reasonable efforts to advise the Selling Holders in writing) that if all the shares of Common Stock requested to be included in such registration were so included, then in its judgment, the number and type of securities proposed to be included in such registration would exceed the number and type of securities which could be sold in such offering within a price range acceptable to the Company, then the Company shall include in such registration pursuant to Section 3, to the extent of the number and type of securities which the Company is so advised can be sold in such offering, (A) first, Permitted Securities requested to be registered by the holders of Permitted Securities pursuant to Section 3 hereof, pro rata among the holders of Permitted Securities on the basis of the number of shares of Permitted Securities requested to be registered by all such holders of Permitted Securities, (B) second, Registrable Common Stock requested to be registered by Piggyback Requesting Holders pursuant to Section 3 hereof, pro rata among the Piggyback Requesting Holders on the basis of the number of shares of Registrable Common Stock requested to be registered by all such Piggyback Requesting Holders, (C) third, securities that the Company proposes to issue and sell for its own account (unless the Holders of a majority of the shares of Registrable Common Stock consent to the inclusion of the Company's securities on a pro rata basis with the Registrable Common Stock requested to be registered by Piggyback Requesting Holders pursuant to Section 3 hereof), and (D) fourth, other securities (other than Registrable Common Stock or Permitted Securities), if any.

- (iii) If the Company proposes to register any securities other than securities described in (i) and (ii) above, as contemplated by Section 3 involving an underwritten offering, if the managing underwriter of such underwritten offering shall advise the Company (in which case, the Company shall use reasonable efforts to advise the Selling Holders in writing) that if all the shares of Common Stock requested to be included in such registration were so included, then in its judgment, the number and type of securities proposed to be included in such registration would exceed the number and type of securities which could be sold in such offering within a price range acceptable to the Company, then the Company shall include in such registration pursuant to Section 3, to the extent of the number and type of securities which the Company is so advised can be sold in such offering, (A) first, Permitted Securities requested to be registered by the holders of Permitted Securities and Registrable Common Stock requested to be registered by Piggyback Requesting Holders pursuant to Section 3 hereof, pro rata among the holders of Permitted Securities and Piggyback Requesting Holders on the basis of the number of shares of Permitted Securities and Registrable Common Stock requested to be registered by all such holders of Permitted Securities and Piggyback Requesting Holders, (B) second, securities that the Company proposes to issue and sell for its own account (unless the Holders of a majority of the shares of Registrable

Common Stock consent to the inclusion of the Company's securities on a pro rata basis with the Registrable Common Stock requested to be registered by Piggyback Requesting Holders pursuant to Section 3 hereof), and (C) third, other securities (other than Registrable Common Stock and Permitted Securities), if any.

(c) **Participation in Underwritten Registrations.** The Holders of Registrable Common Stock to be distributed by underwriters in an underwritten offering contemplated by subsections (a) or (b) of this Section 6 shall be parties to the underwriting agreement between the Company and such underwriters. No Holder may participate in any underwritten registration hereunder unless such Holder (i) agrees to sell such Holder's Registrable Common Stock on the basis provided in any such underwriting arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting agreements. The Selling Holders may, at their option, require that any or all of the representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of the underwriters shall also be made to and for the benefit of such Selling Holders. No Selling Holder shall be required to make any representation or warranty to or agreement with the Company or the underwriters other than representations and warranties contained in a writing furnished by such Selling Holder expressly for use in such registration statement or agreements regarding such Selling Holder, the Selling Holder's Registrable Common Stock and the Selling Holder's intended method of distribution and any other representations required by law.

(d) **Holdback Agreements.**

- (i) Each Holder agrees, unless otherwise agreed to by the managing underwriter for any underwritten offering pursuant to this Agreement, not to, directly or indirectly, sell, transfer, make any short sale of, loan or effect any distribution or other disposition of any interest in any equity securities of the Company or securities convertible into or exchangeable or exercisable for equity securities of the Company, including any sale under Rule 144 under the Securities Act (each, an "Equity Transfer"), during the period (the "Holdback Period") commencing 10 days prior to the date on which an underwritten registration pursuant to Sections 2 or 3 hereof has become effective and until (A) 180 days after the effective date of the Company's first underwritten registered Public Offering following the Effective Date (or such shorter period as the managing underwriter of such Public Offering may permit in writing), or (B) 90 days after the effective date of any subsequent underwritten registration, except as part of such initial underwritten registered Public Offering or any subsequent underwritten registration or to the extent that such Holder is prohibited by applicable law from agreeing to withhold securities from sale or is acting in its capacity as a fiduciary or an investment adviser. Without limiting the scope of the term "fiduciary," a holder shall be deemed to be acting as a fiduciary or an investment adviser if its actions or the securities proposed to be sold are subject to the Employee Retirement Income Security Act of 1974, as amended, the Investment Company Act of 1940, as amended, or

the Investment Advisers Act of 1940, as amended, or if such securities are held in a separate account under applicable insurance law or regulation.

- (ii) The Company agrees (A) not to sell, make any short sale of, loan, grant any option for the purchase of (other than employee stock options), or effect any Public Offering or distribution of any equity securities of the Company, or securities convertible into or exchangeable or exercisable for equity securities of the Company, during the 10 days prior to the date on which any underwritten registration pursuant to Sections 2 or 3 hereof has become effective and until 90 days after the effective date of such underwritten registration, except as part of such underwritten registration, and (B) to cause each holder of any equity securities, or securities convertible into or exchangeable or exercisable for equity securities, in each case, acquired from the Company at any time on or after the Effective Date (other than in a Public Offering), to agree not to sell, make any short sale of, loan, grant any option for the purchase of, or effect any Public Offering or distribution of such securities, during such period, unless the managing underwriter for any underwritten offering pursuant to this Agreement otherwise agrees.

7. Preparation; Confidentiality.

- (a) Preparation. In connection with the preparation and filing of each registration statement under the Securities Act pursuant to this Agreement, the Company shall (i) give representatives (designated to the Company in writing) of each Holder or group of Holders holding at least 20% of the shares of Registrable Common Stock to be registered under such registration statement, the underwriters, if any, and one firm of counsel retained on behalf of all underwriters and one firm of counsel retained on behalf of Holders holding a majority of the shares of Registrable Common Stock covered by such registration statement, the reasonable opportunity to participate in the preparation of such registration statement, each prospectus included therein or filed with the Commission, and each amendment thereof or supplement thereto, (ii) upon reasonable advance notice to the Company, give each of them such reasonable access to all financial and other records, corporate documents and properties of the Company and its subsidiaries, as shall be necessary, in the reasonable opinion of such Holders' and such underwriters' counsel, to conduct a reasonable due diligence investigation for purposes of the Securities Act, and (iii) upon reasonable advance notice to the Company, provide such reasonable opportunities to discuss the business of the Company with its officers, directors, employees and the independent public accountants who have certified its financial statements as shall be necessary, in the reasonable opinion of such Holders' and such underwriters' counsel, to conduct a reasonable due diligence investigation for purposes of the Securities Act.
- (b) Confidentiality.

- (i) Each Holder of Registrable Common Stock shall and shall cause its directors, officers, partners, managers, members, employees, advisors, agents and other representatives, including without limitation attorneys, accountants, consultants and financial advisors (collectively, "Representatives") to maintain the confidentiality of and not to disclose any Confidential Material; provided, however, that a Holder may disclose Confidential Material (A) to such of its Representatives who need such information in connection with such Holder's investment in securities of the Company, or (B) to the extent required by applicable law, regulation, legal process or court order.
- (ii) Notwithstanding the foregoing, a Holder or its Representative may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated hereunder and all materials of any kind (including opinions or other tax analyses) that are provided to such Holder or such Representative relating to such tax treatment and tax structure, except to the extent necessary to comply with any applicable federal or state securities laws. This authorization is not intended to permit disclosure of any other information, including, without limitation, (A) any portion of any materials to the extent not related to the tax treatment or tax structure of the transactions contemplated hereunder, (B) the identities of participants or potential participants in the transactions contemplated hereunder, (C) the existence or status of any negotiations, (D) any pricing or financial information (except to the extent such pricing or financial information is related to the tax treatment or tax structure of the transactions contemplated hereunder), or (E) any other term or detail not relevant to the tax treatment or the tax structure of the transactions contemplated hereunder. Each Holder agrees not to (directly or indirectly) trade in the Company's securities in violation of the applicable federal and state securities laws and regulations. Each Holder shall not grant access, and the Company shall not be required to grant access, to Confidential Material under this Section 7 to any Representative who will not agree to maintain the confidentiality (to the same extent a Holder is required to maintain confidentiality) of any Confidential Material received from or otherwise made available to it by the Company or the Holders under this Agreement.
- (iii) Each Holder shall be bound by this Section 7(b) and shall remain bound until the earlier of (A) the first anniversary of the date on which such Holder is no longer a party to this Agreement, and (B) the first date on which the Confidential Material received by such Holder ceases to be Confidential Material.

#### 8. Postponements.

- (a) If the Company shall fail to file any registration statement required to be filed pursuant to a request for registration under Section 2(a) hereof, the Initiating

Holder or Initiating Holder Group requesting such registration shall have the right to withdraw the request for registration. Any such withdrawal shall be made by giving written notice to the Company within 20 days after the date on which a registration statement would otherwise have been required to have been filed with the Commission under Section 2(a) hereof (i.e., 20 days after the date that is 90 days after the conclusion of the period within which requests for registration may be given to the Company pursuant to Section 2(a)(ii), or, if, as of such 90<sup>th</sup> day, the Company does not have the financial statements required to be included in the registration statement, 30 days after the receipt by the Company from its independent public accountants of such financial statements). In the event of such withdrawal, the request for registration shall not be counted for purposes of determining the number of registrations to which Holders are entitled pursuant to Section 2(a) hereof. The Company shall pay all Expenses incurred in connection with a request for registration withdrawn pursuant to this Section 8.

- (b) The Company shall not be obligated to file any registration statement, or file any amendment or supplement to any registration statement, and may suspend any Selling Holder's rights to make sales pursuant to any effective registration statement, at any time when the Company, in the good faith and reasonably informed judgment of its Board of Directors, determines that the filing thereof at the time requested, or the offering of securities pursuant thereto, would adversely affect a pending or proposed Public Offering of the Company's securities, a material financing, or a material acquisition, merger, recapitalization, consolidation, reorganization or similar transaction, or negotiations, discussions or pending proposals with respect thereto. The Company shall promptly give the Selling Holders written notice that such determination has been made by the Board of Directors and (if known) an estimate of the anticipated duration of the delay. The filing of a registration statement, or any amendment or supplement thereto, by the Company cannot be deferred, and any Selling Holder's rights to make sales pursuant to an effective registration statement cannot be suspended, pursuant to the provisions of this Section 8(b) for more than 15 days after the abandonment or consummation of any of the foregoing proposals or transactions. The Company may so defer or suspend the use of any registration statement on not more than three occasions in a calendar year and for no more than a total of 90 days in a calendar year; provided that, after deferring or suspending the use of any registration statement, the Company may not again defer or suspend the use of the registration statement until a period of 30 days has elapsed after resumption of the use of the registration statement. The Company shall promptly notify each Selling Holder of the expiration or earlier termination of such deferral or suspension period. If the Company suspends any Selling Holder's rights to make sales pursuant hereto, the applicable registration period shall be extended by the number of days of such suspension.

9. Indemnification..

- (a) Indemnification by the Company. In connection with any registration statement filed by the Company pursuant to Sections 2(a) or 3 hereof, the Company agrees to indemnify

and hold harmless to the fullest extent permitted by law each Selling Holder, each other Person, if any, who controls such Selling Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, and their respective stockholders, directors, officers, employees, partners, agents and Affiliates (each, a "Company Indemnitee" for purposes of this Section 9(a)), against any losses, claims, damages, liabilities, joint or several, actions or proceedings, whether commenced or threatened, in respect thereof and whether or not such Company Indemnitee is a party thereto, and expenses, including, without limitation, the reasonable fees, disbursements and other charges of legal counsel and reasonable costs of investigation and defense, to which such Company Indemnitee may become subject under the Securities Act or otherwise (collectively, a "Loss" or "Losses"), insofar as such Losses arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which such securities were registered or otherwise offered or sold under the Securities Act or otherwise, any preliminary prospectus, final prospectus or summary prospectus related thereto, any amendment or supplement thereto, any exhibits to the registration statement or documents or other information incorporated by reference into such registration statement or prospectus (collectively, the "Offering Documents"), or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein in the light of the circumstances in which they were made not misleading, or any violation by the Company of any federal or state law, rule or regulation applicable to the Company and relating to action required of or inaction by the Company in connection with any such registration; provided, however, the Company shall not be liable to any Company Indemnitee in any such case to the extent that any such Loss arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in such Offering Documents in reliance upon and in conformity with information furnished by such Company Indemnitee to the Company in a writing duly executed by such Company Indemnitee specifically stating that it is expressly for use therein; provided further that, the Company shall not be liable to any Person who participates as an underwriter in the offering or sale of Registrable Common Stock or any other Person, if any, who controls (within the meaning of the Exchange Act) such underwriter, in any such case to the extent that any such Loss arises out of such Person's failure to send or give a copy of the final prospectus (including any documents incorporated by reference therein), as the same may be then supplemented or amended, to the Person asserting an untrue statement or alleged untrue statement or omission or alleged omission at or prior to the written confirmation of the sale of Registrable Common Stock to such Person if such statement or omission was corrected in such final prospectus. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Company Indemnitee and shall survive the transfer of such securities by such Company Indemnitee.

(b) Indemnification by the Offerors and Sellers. In connection with any registration statement filed by the Company pursuant to Sections 2(a) or 3 hereof in which a Selling Holder has registered for sale Registrable Common Stock, each such Selling Holder, severally and not jointly, agrees to indemnify and hold harmless to the fullest extent permitted by law the Company and each of its directors, officers, employees, agents, partners, stockholders, Affiliates and each other Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act and each other seller and such seller's directors, officers, employees, agents, partners, stockholders, Affiliates and each other Person, if any, who controls the seller within the meaning of Section 15 of the Securities Act or Section 20

of the Exchange Act (each, a “Holder Indemnitee” for purposes of this Section 9(b)), against all Losses insofar as such Losses arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any Offering Documents or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein in the light of circumstances in which they were made not misleading, if such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with information furnished by such Selling Holder to the Company in writing duly executed by such Selling Holder specifically stating that it is expressly for use therein; provided, however, that the liability of such indemnifying party under this Section 9 (b) shall be limited to the amount of the net proceeds received by such indemnifying party in the sale of Registrable Common Stock giving rise to such liability. Such indemnity shall remain in full force and effect, regardless of any investigation made by or on behalf of the Holder Indemnitee and shall survive the transfer of such securities by such indemnifying party.

(c) Notices of Losses, etc. Promptly after receipt by an indemnified party of written notice of the commencement of any action or proceeding involving a Loss referred to in Sections 9(a) and (b), such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the latter of the commencement of such action; provided, however, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under Sections 9(a) and (b), except to the extent that the indemnifying party is materially and actually prejudiced by such failure to give notice. In case any such action is brought against an indemnified party, the indemnifying party shall be entitled to participate in and, unless in such indemnified party’s reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist in respect of such Loss, to assume and control the defense thereof, in each case at its own expense, jointly with any other indemnifying party similarly notified, to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and after its assumption of the defense thereof, the indemnifying party shall not be liable to such indemnified party for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof other than reasonable costs of investigation, unless in such indemnified party’s reasonable judgment a conflict of interest between such indemnified and indemnifying parties arises in respect of such claim after the assumption of the defense thereof. No indemnifying party shall be liable for any settlement of any such action or proceeding effected without its written consent, which shall not be unreasonably withheld. No indemnifying party shall, without the consent of the indemnified party (which consent shall not be unreasonably withheld), consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such Loss or which requires action on the part of such indemnified party or otherwise subjects the indemnified party to any obligation or restriction to which it would not otherwise be subject.

(d) Contribution. If the indemnification provided for in this Section 9 shall for any reason be unavailable to an indemnified party under Sections 9(a) or (b) in respect of any Loss, then, in lieu of the amount paid or payable under Sections 9(a) or (b), the indemnified party and the indemnifying party under Sections 9(a) or (b) shall contribute to the aggregate Losses (including legal or other expenses reasonably incurred in connection with investigating the same) (i) in such proportion as is appropriate to reflect the relative fault of the Company and the prospective Selling Holders which resulted in such Loss or action in respect thereof, with respect

to the statements, omissions or actions which resulted in such Loss or action in respect thereof, as well as any other relevant equitable considerations, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as shall be appropriate to reflect the relative benefits received by the Company, on the one hand, and such prospective Selling Holders, on the other hand, from their sale of Registrable Common Stock; provided that, for purposes of this clause (ii), the relative benefits received by the prospective Selling Holders shall be deemed not to exceed the net proceeds received by such Selling Holders. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The obligations, if any, of the Selling Holders to contribute as provided in this Section 9(d) are several in proportion to the relative value of their respective Registrable Common Stock covered by such registration statement and not joint. In addition, no Person shall be obligated to contribute hereunder any amounts in payment for any settlement of any action or Loss effected without such Person's consent (provided that such consent shall not be unreasonably withheld).

(e) Other Indemnification. The Company and each Holder who has registered for sale shares of its Registrable Common Stock shall, with respect to any required registration or other qualification of securities under any Federal or state law or regulation of any governmental authority other than the Securities Act, indemnify Holder Indemnitees and Company Indemnitees, respectively, against Losses, or, to the extent that indemnification shall be unavailable to a Holder Indemnitee or Company Indemnitee, contribute to the aggregate Losses of such Holder Indemnitee or Company Indemnitee in a manner similar to that specified in the preceding subsections of this Section 9 (with appropriate modifications).

(f) Indemnification Payments. The indemnification and contribution required by this Section 9 shall be made by periodic payments of the amount thereof during the course of any investigation or defense, as and when any Loss is incurred and is due and payable.

10. Permitted Securities. The Company's Board of Directors is expressly permitted to enter into agreements which provide to any holder of newly issued shares of the Company's Common Stock rights, which are either *pari passu* or senior to any Holder's rights under this Agreement, with respect to the registration of such Common Stock under the Securities Act; provided that, the performance of the obligations of the Company pursuant to such agreement shall not violate or directly conflict with any of the rights provided to the Holders or the obligations of the Company under this Agreement; provided, however, such Common Stock was issued in connection with an acquisition consummated by the Company or a new equity investment made by such holder in the Company; provided further that, the registration rights shall only relate to the Common Stock issued in connection with such acquisition or investment and not to all of the Company's Common Stock owned from time to time by the holders thereof. Except as expressly authorized in this Section 10, the Company shall not grant any registration rights to any Person which are *pari passu* or senior to the registration rights granted hereby, without the prior consent of the Holders owning a majority of the Registrable Common Stock then outstanding.

11. Adjustments Affecting Registrable Common Stock. In the event of a reorganization, recapitalization, stock split, reverse stock split, stock dividend, combination of shares, merger, consolidation, distribution of assets, or any other change in the corporate structure or securities

of the Company, the Company shall make such equitable adjustments as it deems appropriate in the number and kind of shares of Registrable Common Stock held by the Holders.

12. Rule 144 and Rule 144A. The Company shall take all actions necessary to enable Holders to sell Registrable Common Stock without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 under the Securities Act, as such Rule may be amended from time to time, (ii) Rule 144A under the Securities Act, as such Rule may be amended from time to time, or (iii) any similar rules or regulations hereafter adopted by the Commission, including, without limiting the generality of the foregoing, filing on a timely basis all reports required to be filed under the Exchange Act. Upon the written request of any Holder, the Company shall deliver to such Holder a written statement as to whether the Company has complied with such requirements.

13. Amendments and Waivers. Any provision of this Agreement may be amended, modified or waived if, but only if, the written consent to such amendment, modification or waiver has been obtained from (i) except as provided in clauses (ii) and (iii) below, the Holder or Holders of at least a majority of the shares of Registrable Common Stock then outstanding and held by all Holders, (ii) in the case of any amendment, modification or waiver of any provision of Section 4 or Section 8 hereof or this Section 13 or any provisions as to the number of requests for registration to which holders of Registrable Common Stock are entitled under Section 2 or Section 3 hereof, the written consent of each Holder so affected, or (iii) in the case of any other amendment, modification or waiver which materially and adversely alters any right and/or obligation under this Agreement of any Holder, the Holder or Holders of at least 75% of the shares of Registrable Common Stock then outstanding and held by all Holders.

14. Nominees for Beneficial Owners. In the event that any Registrable Common Stock is held by a nominee for the beneficial owner thereof, the beneficial owner thereof may, at its election in writing delivered to the Company, be treated as the Holder of such Registrable Common Stock for purposes of any request or other action by any Holder or Holders pursuant to this Agreement or any determination of the number or percentage of shares of Registrable Common Stock held by any Holder or Holders contemplated by this Agreement. If the beneficial owner of any Registrable Common Stock so elects, the Company may require assurances reasonably satisfactory to it of such owner's beneficial ownership of such Registrable Common Stock.

15. Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns. Any Holder may assign to any Transferee (as permitted under applicable law) of its Registrable Common Stock its rights and obligations under this Agreement; provided that, each of the following conditions must be satisfied prior to any Transfer: (i) such Transferee shall agree in writing by executing a written joinder agreement in the form attached hereto as Schedule A (the "Joinder Agreement") prior to the Transfer to be bound by this Agreement as if it were an original party hereto; and (ii) after giving effect to the Transfer, the Transferee would be a 10% Holder, whereupon such assignee shall for all purposes be deemed to be a Holder under this Agreement. Except as provided above or otherwise permitted by this Agreement, neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by any Holder without the prior written consent of the other parties hereto.

The Company may not assign this Agreement or any right, remedy, obligation or liability arising hereunder or by reason hereof.

16. Restrictions on Transfer. Each certificate held by a 10% Holder on the Effective Date shall bear the following legend:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED ON [ ], 2003 PURSUANT TO THE JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE OF NRG ENERGY, INC. (THE “COMPANY”) AND CERTAIN OF ITS SUBSIDIARIES, DATED AS OF [ ], 2003 AND CONFIRMED BY THE BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK ON [ ], 2003. THESE SECURITIES WERE ISSUED PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENT OF SECTION 5 OF THE SECURITIES ACT OF 1933, AS AMENDED, (THE “ACT”) PROVIDED BY SECTION 1145 OF THE BANKRUPTCY CODE, 11 U.S.C. § 1145, AND HAVE NOT BEEN REGISTERED UNDER THE ACT, AND TO THE EXTENT THAT THE HOLDER OF THESE SECURITIES IS AN “UNDERWRITER,” AS DEFINED IN SECTION 1145(b)(1) OF THE BANKRUPTCY CODE, THESE SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER.”

Upon the delivery by a 10% Holder to the Company of an opinion of counsel satisfactory to the Company that the securities represented thereby are no longer subject to the restrictions set forth in §1145(b) of the Bankruptcy Code, the Company shall remove such legend on all such certificates held by such 10% Holder.

17. Notice of Transfer. Upon the request of the Company at any time and from time to time, each Original Holder, each Holder of Registrable Common Stock and each party to this Agreement shall promptly (and in any event within 8 Business Days) provide a written certification to the Company of (a) the number of shares of Common Stock owned beneficially or of record by such Person and each of its Affiliates, and (b) for requests sent by the Company within 60 days after the expiration of a Holdback Period and referring to such Holdback Period, its compliance with the Equity Transfer restrictions set forth in Section 6(d), including information regarding each Equity Transfer made by such Person during such Holdback Period (including, without limitation, the dates of each such Equity Transfer).

18. Calculation of Percentage or Number of Shares of Registrable Common Stock. For purposes of this Agreement, all references to a percentage or number of shares of Registrable Common Stock or Common Stock shall be calculated based upon the number of shares of Registrable Common Stock or Common Stock, as the case may be, outstanding at the time such calculation is made and shall exclude any Registrable Common Stock or Common Stock, as the case may be, owned by the Company or any subsidiary of the Company. For the purposes of