

Mergers. Neither party shall take or agree to take any action identified in clause (i) or (ii) of the immediately preceding sentence without the prior written consent of the other party (which shall not be unreasonably withheld or delayed).

(b) Each of Time Warner and America Online shall, in connection with the efforts referenced in Section 6.4(a) to obtain all Required Approvals, use its reasonable best efforts to (i) cooperate in all respects with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party, (ii) promptly inform the other party of any communication received by such party from, or given by such party to, the FCC, Franchising Authorities, PUCs, the Antitrust Division of the Department of Justice (the "DOJ"), the Federal Trade Commission (the "FTC") or any other Governmental Entity and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the transactions contemplated hereby, and (iii) consult with each other in advance to the extent practicable of any meeting or conference with, the FCC, Franchising Authorities, PUCs, the DOJ, the FTC or any such other Governmental Entity or, in connection with any proceeding by a private party, with any other Person, and to the extent permitted by the FCC, PUCs, the DOJ, the FTC or such other applicable Governmental Entity or other Person, give the other party the opportunity to attend and participate in such meetings and conferences.

(c) In furtherance and not in limitation of the covenants of the parties contained in Section 6.4(a) and 6.4(b), if any administrative or judicial action or proceeding, including any proceeding by a private party, is instituted (or threatened to be instituted) challenging any transaction contemplated by this Agreement as violative of any Regulatory Law (as defined below), or if any statute, rule, regulation, executive order, decree, injunction or administrative order is enacted, entered, promulgated or enforced by a Governmental Entity which would make the Mergers or the other transactions contemplated hereby illegal or would otherwise prohibit or materially impair or delay the consummation of the Mergers or the other transactions contemplated hereby, each of Time Warner and America Online shall cooperate in all respects with each other and use its respective reasonable best efforts, including without limitation, subject to the penultimate sentence of Section 6.4(a), selling, holding separate or otherwise disposing of or conducting their business in a specified manner, or agreeing to sell, hold separate or otherwise dispose of or conduct their business in a specified manner or permitting the sale, holding separate or other disposition of, any assets of America Online, Time Warner or their respective Subsidiaries or the conducting of their business in a specified manner, to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the Mergers or the other transactions contemplated by this Agreement and to have such statute, rule, regulation, executive order, decree, injunction or administrative order repealed, rescinded or made inapplicable so as to permit consummation of the transactions contemplated by this Agreement. Notwithstanding the foregoing or any other provision of this Agreement, nothing in this Section 6.4 shall limit a party's right to terminate this Agreement pursuant to Section 8.1(b)

or 8.1(c) so long as such party has up to then complied with its obligations under this Section 6.4. For purposes of this Agreement, "Regulatory Law" means the Sherman Act, as amended, the EC Merger Regulation, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, the Communications Act, the Canadian Investment Regulations, and all other federal, state and foreign, if any, statutes, rules, regulations, orders, decrees, administrative and judicial doctrines and other laws that are designed or intended to prohibit, restrict or regulate (i) mergers, acquisitions or other business combinations, (ii) foreign investment or (iii) actions having the purpose or effect of monopolization or restraint of trade or lessening of competition.

(d) America Online and its Board of Directors shall, if any state takeover statute or similar statute becomes applicable to this Agreement, the Mergers, the Stock Option Agreements or any other transactions contemplated hereby or thereby, take all action reasonably necessary to ensure that the Mergers and the other transactions contemplated by this Agreement and the Stock Option Agreements may be consummated as promptly as practicable on the terms contemplated hereby or thereby and otherwise to minimize the effect of such statute or regulation on this Agreement, the Mergers, the Stock Option Agreements and the other transactions contemplated hereby or thereby.

(e) Time Warner and its Board of Directors shall, if any state takeover statute or similar statute becomes applicable to this Agreement, the Mergers, the Stock Option Agreements or any other transactions contemplated hereby or thereby, take all action reasonably necessary to ensure that the Mergers and the other transactions contemplated by this Agreement and the Stock Option Agreements may be consummated as promptly as practicable on the terms contemplated hereby or thereby and otherwise to minimize the effect of such statute or regulation on this Agreement, the Mergers, the Stock Option Agreements and the other transactions contemplated hereby or thereby.

6.5 Acquisition Proposals.

(a) Without limitation on any of such party's other obligations under this Agreement (including under Article V hereof), each of America Online and Time Warner agrees that neither it nor any of its Subsidiaries nor any of the officers and directors of it or its Subsidiaries shall, and that it shall use its reasonable best efforts to cause its and its Subsidiaries' employees, agents and representatives (including any investment banker, attorney or accountant retained by it or any of its Subsidiaries) not to, directly or indirectly, (i) initiate, solicit, encourage or knowingly facilitate any inquiries or the making of any proposal or offer with respect to, or a transaction to effect, a merger, reorganization, share exchange, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving it or any of its Significant Subsidiaries (as defined in Rule 1-02 of Regulation S-X of the SEC and, with respect to Time Warner, including TWE), or any purchase or sale of 20% or more of the consolidated assets (including without limitation stock of its Subsidiaries) of such party and its Subsidiaries, taken as a whole, or any purchase or sale of, or tender or exchange offer for, the

equity securities of such party that, if consummated, would result in any Person (or the stockholders of such Person) beneficially owning securities representing 20% or more of the total voting power of such party (or of the surviving parent entity in such transaction) or any of its Significant Subsidiaries (any such proposal, offer or transaction (other than a proposal or offer made by the other party or an Affiliate thereof) being hereinafter referred to as an "Acquisition Proposal"), (ii) have any discussion with or provide any confidential information or data to any Person relating to an Acquisition Proposal, or engage in any negotiations concerning an Acquisition Proposal, or knowingly facilitate any effort or attempt to make or implement an Acquisition Proposal, (iii) approve or recommend, or propose publicly to approve or recommend, any Acquisition Proposal or (iv) approve or recommend, or propose to approve or recommend, or execute or enter into, any letter of intent, agreement in principle, merger agreement, acquisition agreement, option agreement or other similar agreement or propose publicly or agree to do any of the foregoing related to any Acquisition Proposal.

(b) Notwithstanding anything in this Agreement to the contrary, each of America Online and Time Warner or its respective Board of Directors shall be permitted to (A) to the extent applicable, comply with Rule 14d-9 and Rule 14e-2 promulgated under the Exchange Act with regard to an Acquisition Proposal, (B) effect a Change in the America Online or Time Warner Recommendation, as the case may be, or (C) engage in any discussions or negotiations with, or provide any information to, any Person in response to an unsolicited bona fide written Acquisition Proposal by any such Person, if and only to the extent that, in any such case referred to in clause (B) or (C), (i) its Stockholders Meeting shall not have occurred, (ii) (x) in the case of clause (B) above, it has received an unsolicited bona fide written Acquisition Proposal from a third party and its Board of Directors concludes in good faith that such Acquisition Proposal constitutes a Superior Proposal (as defined below) and (y) in the case of clause (C) above, its Board of Directors concludes in good faith that there is a reasonable likelihood that such Acquisition Proposal could constitute a Superior Proposal, (iii) in the case of clause (B) or (C) above, its Board of Directors, after consultation with outside counsel, determines in good faith that the failure to take such action would be inconsistent with its fiduciary duties under applicable Law, (iv) prior to providing any information or data to any Person in connection with an Acquisition Proposal by any such Person, its Board of Directors receives from such Person an executed confidentiality agreement having provisions that are customary in such agreements, as advised by counsel, provided that if such confidentiality agreement contains provisions that are less restrictive than the comparable provision, or omits restrictive provisions, contained in the Confidentiality Agreement, then the Confidentiality Agreement will be deemed to be amended to contain only such less restrictive provisions or to omit such restrictive provisions, as the case may be, and (v) prior to providing any information or data to any Person or entering into discussions or negotiations with any Person, such party notifies the other party promptly of such inquiries, proposals or offers received by, any such information requested from, or any such discussions or negotiations sought to be initiated or continued with, any of its representatives indicating, in connection with such notice, the name of such Person and the material terms and conditions of any inquiries, proposals or offers. Each of America Online and Time Warner agrees that it will promptly keep the other party informed of

the status and terms of any such proposals or offers and the status and terms of any such discussions or negotiations. Each of America Online and Time Warner agrees that it will, and will cause its officers, directors and representatives to, immediately cease and cause to be terminated any activities, discussions or negotiations existing as of the date of this Agreement with any parties conducted heretofore with respect to any Acquisition Proposal. Each of America Online and Time Warner agrees that it will use reasonable best efforts to promptly inform its directors, officers, key employees, agents and representatives of the obligations undertaken in this Section 6.5. Nothing in this Section 6.5 shall (x) permit America Online or Time Warner to terminate this Agreement (except as specifically provided in Article VIII hereof) or (y) affect any other obligation of America Online or Time Warner under this Agreement. Neither America Online nor Time Warner shall submit to the vote of its stockholders any Acquisition Proposal other than the America Online Merger or Time Warner Merger, respectively. "Superior Proposal" means with respect to America Online or Time Warner, as the case may be, a bona fide written proposal made by a Person other than either such party which is (I) for a merger, reorganization, consolidation, share exchange, business combination, recapitalization, or similar transaction involving such party as a result of which the other party thereto or its stockholders will own 40% or more of the combined voting power of the entity surviving or resulting from such transaction (or the ultimate parent entity thereof), and (II) is on terms which the Board of Directors of such party in good faith concludes (following receipt of the advice of its financial advisors and outside counsel), taking into account, among other things, all legal, financial, regulatory and other aspects of the proposal and the Person making the proposal, (x) would, if consummated, result in a transaction that is more favorable to its stockholders (in their capacities as stockholders), from a financial point of view, than the transactions contemplated by this Agreement and (y) is reasonably capable of being completed.

6.6 Fees and Expenses. Subject to Section 8.2, whether or not the Mergers are consummated, all Expenses (as defined below) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such Expenses, except (a) if the Mergers are consummated, the surviving corporation of each Merger shall pay, or cause to be paid, any and all property or transfer taxes imposed in connection with such Merger and (b) Expenses incurred in connection with the filing, printing and mailing of the Joint Proxy Statement/Prospectus and Form S-4, which shall be shared equally by America Online and Time Warner. As used in this Agreement, "Expenses" includes all out-of-pocket expenses (including, without limitation, all fees and expenses of counsel, accountants, investment bankers, experts and consultants to a party hereto and its affiliates) incurred by a party or on its behalf in connection with or related to the authorization, preparation, negotiation, execution and performance of this Agreement, the Stock Option Agreements and the Voting Agreement and the transactions contemplated hereby and thereby, including the preparation, printing, filing and mailing of the Joint Proxy Statement/Prospectus and Form S-4 and the solicitation of stockholder approvals and all other matters related to the transactions contemplated hereby and thereby. The parties hereto shall cooperate with each other in preparing, executing and filing any Tax Returns with respect to property or transfer taxes.

6.7 Directors' and Officers' Indemnification and Insurance. (a) Holdco shall (i) indemnify and hold harmless, and provide advancement of expenses to, all past and present directors, officers and employees of Time Warner and its Subsidiaries (in all of their capacities) (a) to the same extent such persons are indemnified or have the right to advancement of expenses as of the date of this Agreement by Time Warner pursuant to Time Warner's certificate of incorporation, bylaws and indemnification agreements, if any, in existence on the date hereof with any directors, officers and employees of Time Warner and its Subsidiaries and (b) without limitation to clause (a), to the fullest extent permitted by law, in each case for acts or omissions occurring at or prior to the Effective Time (including for acts or omissions occurring in connection with the approval of this Agreement and the consummation of the transactions contemplated hereby), (ii) include and cause to be maintained in effect in Holdco's (or any successor's) certificate of incorporation and bylaws after the Effective Time, provisions regarding elimination of liability of directors, indemnification of officers, directors and employees and advancement of expenses which are, in the aggregate, no less advantageous to the intended beneficiaries than the corresponding provisions contained in the current certificate of incorporation and bylaws of Time Warner and (iii) cause to be maintained for a period of six years after the Effective Time the current policies of directors' and officers' liability insurance and fiduciary liability insurance maintained by Time Warner (provided that Holdco (or any successor) may substitute therefor one or more policies of at least the same coverage and amounts containing terms and conditions which are, in the aggregate, no less advantageous to the insured) with respect to claims arising from facts or events that occurred on or before the Effective Time; provided, however, that in no event shall Holdco be required to expend in any one year an amount in excess of 200% of the annual premiums currently paid by Time Warner for such insurance; and, provided further that if the annual premiums of such insurance coverage exceed such amount, Holdco shall be obligated to obtain a policy with the greatest coverage available for a cost not exceeding such amount. The obligations of Holdco under this Section 6.7(a) shall not be terminated or modified in such a manner as to adversely affect any indemnitee to whom this Section 6.7(a) applies without the consent of such affected indemnitee (it being expressly agreed that the indemnitees to whom this Section 6.7(a) applies shall be third party beneficiaries of this Section 6.7(a)).

(b) Holdco shall (i) indemnify and hold harmless, and provide advancement of expenses to, all past and present directors, officers and employees of America Online and its Subsidiaries (in all of their capacities) (a) to the same extent such persons are indemnified or have the right to advancement of expenses as of the date of this Agreement by America Online pursuant to America Online's certificate of incorporation, bylaws and indemnification agreements, if any, in existence on the date hereof with any directors, officers and employees of America Online and its Subsidiaries and (b) without limitation to clause (a), to the fullest extent permitted by law, in each case for acts or omissions occurring at or prior to the Effective Time (including for acts or omissions occurring in connection with the approval of this Agreement and the consummation of the transactions contemplated hereby), (ii) include and cause to be maintained in effect in Holdco's (or any successor's) certificate of incorporation and bylaws after the Effective Time, provisions regarding elimination of liability of directors, indemnification of

officers, directors and employees and advancement of expenses which are, in the aggregate, no less advantageous to the intended beneficiaries than the corresponding provisions contained in the current certificate of incorporation and bylaws of America Online and (iii) cause to be maintained for a period of six years after the Effective Time the current policies of directors' and officers' liability insurance and fiduciary liability insurance maintained by America Online (provided that Holdco (or any successor) may substitute therefor one or more policies of at least the same coverage and amounts containing terms and conditions which are, in the aggregate, no less advantageous to the insured) with respect to claims arising from facts or events that occurred on or before the Effective Time; provided, however, that in no event shall Holdco be required to expend in any one year an amount in excess of 200% of the annual premiums currently paid by America Online for such insurance; and, provided further that if the annual premiums of such insurance coverage exceed such amount, Holdco shall be obligated to obtain a policy with the greatest coverage available for a cost not exceeding such amount. The obligations of Holdco under this Section 6.7(b) shall not be terminated or modified in such a manner as to adversely affect any indemnitee to whom this Section 6.7(b) applies without the consent of such affected indemnitee (it being expressly agreed that the indemnitees to whom this Section 6.7(b) applies shall be third party beneficiaries of this Section 6.7(b)).

6.8 Public Announcements. America Online and Time Warner shall use reasonable best efforts to develop a joint communications plan and each party shall use reasonable best efforts (i) to ensure that all press releases and other public statements with respect to the transactions contemplated hereby shall be consistent with such joint communications plan and (ii) unless otherwise required by applicable law or by obligations pursuant to any listing agreement with or rules of any securities exchange, to consult with each other before issuing any press release or, to the extent practical, otherwise making any public statement with respect to this Agreement or the transactions contemplated hereby. In addition to the foregoing, except to the extent disclosed in or consistent with the Joint Proxy Statement/Prospectus in accordance with the provisions of Section 6.1, neither America Online nor Time Warner shall issue any press release or otherwise make any public statement or disclosure concerning the other party or the other party's business, financial condition or results of operations without the consent of the other party, which consent shall not be unreasonably withheld or delayed.

6.9 Listing of Shares of Holdco Common Stock. Holdco shall use its reasonable best efforts to cause the shares of Holdco Common Stock to be issued in the Merger and the shares of Holdco Common Stock to be reserved for issuance upon exercise of the Time Warner Stock Options and America Online Stock Options to be approved for listing on the NYSE, subject to official notice of issuance, prior to the Closing Date.

6.10 Rights Agreements. (a) The Board of Directors of America Online shall take all action to the extent necessary (including amending the America Online Rights Agreement) in order to render the America Online Rights inapplicable to the America Online Merger and the other transactions contemplated by this Agreement and the Stock Option

Agreements. Except in connection with the foregoing sentence, the Board of Directors of America Online shall not, without the prior written consent of Time Warner, (i) amend the America Online Rights Agreement or (ii) take any action with respect to, or make any determination under, the America Online Rights Agreement, including a redemption of the America Online Rights, in each case in order to facilitate any Acquisition Proposal with respect to America Online.

(b) The Board of Directors of Time Warner shall take all action to the extent necessary (including amending the Time Warner Rights Agreement) in order to render the Time Warner Rights inapplicable to the Time Warner Merger and the other transactions contemplated by this Agreement and the Stock Option Agreements. Except in connection with the foregoing sentence, the Board of Directors of Time Warner shall not, without the prior written consent of America Online, (i) amend the Time Warner Rights Agreement or (ii) take any action with respect to, or make any determination under, the Time Warner Rights Agreement, including a redemption of the Time Warner Rights, in each case in order to facilitate any Acquisition Proposal with respect to Time Warner. Notwithstanding the preceding sentence, Time Warner may, in its sole discretion, either resolve to redeem the Time Warner Rights effective as of, or amend the expiration date of the Time Warner Rights Agreement to provide that it terminates on, the close of business on the date of Time Warner's 2000 annual meeting of stockholders; provided, however, that if prior to, on, or following such date a person has (i) indicated (either publicly or in a manner which becomes known to America Online or Time Warner) its intention to accumulate Time Warner Capital Stock other than for investment purposes, (ii) indicated (either publicly or in a manner which becomes known to America Online or Time Warner) its intention to make an Acquisition Proposal with respect to Time Warner or (iii) made an Acquisition Proposal with respect to Time Warner, then, upon the written request of America Online, Time Warner shall within 10 business days following such request take all action necessary to enter into a new stockholder rights plan no less favorable to Time Warner or America Online than the Time Warner Rights Agreement. Time Warner shall give America Online prompt notice of any information known by Time Warner with respect to the occurrence of an event set forth in clauses (i), (ii) and (iii) of the immediately preceding sentence. Upon the implementation of such new stockholder rights plan, Time Warner shall be subject to this Section 6.10(b) without giving effect to the immediately preceding sentence.

6.11 Affiliates.

(a) Not less than 45 days prior to the date of the Time Warner Stockholders Meeting, Time Warner shall deliver to America Online a letter identifying all persons who, in the judgment of Time Warner, may be deemed at the time this Agreement is submitted for adoption by the stockholders of Time Warner, "affiliates" of Time Warner for purposes of Rule 145 under the Securities Act and applicable SEC rules and regulations, and such list shall be updated as necessary to reflect changes from the date thereof. Time Warner shall use reasonable best efforts to cause each person identified on such list to deliver to Holdco not less than 30 days prior to the

Effective Time, a written agreement substantially in the form attached as Exhibit 6.11 hereto (an "Affiliate Agreement").

(b) Not less than 45 days prior to the date of the America Online Stockholders Meeting, America Online shall deliver to Time Warner a letter identifying all persons who, in the judgment of America Online, may be deemed at the time this Agreement is submitted for adoption by the stockholders of America Online, "affiliates" of America Online for purposes of Rule 145 under the Securities Act and applicable SEC rules and regulations, and such list shall be updated as necessary to reflect changes from the date thereof. America Online shall use reasonable best efforts to cause each person identified on such list to deliver to Holdco not less than 30 days prior to the Effective Time, an Affiliate Agreement.

6.12 Section 16 Matters. Prior to the Effective Time, America Online and Time Warner shall take all such steps as may be required to cause any dispositions of Time Warner Capital Stock or America Online Common Stock (including derivative securities with respect to Time Warner Capital Stock or America Online Common Stock) or acquisitions of Holdco Common Stock (including derivative securities with respect to Holdco Common Stock) resulting from the transactions contemplated by Article I or Article II of this Agreement by each individual who is subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to America Online and Time Warner, to be exempt under Rule 16b-3 promulgated under the Exchange Act.

6.13 America Online Indebtedness and Time Warner Indebtedness. With respect to America Online Indebtedness and Time Warner Indebtedness issued under indentures qualified under the Trust Indenture Act of 1939, and any other America Online Indebtedness or Time Warner Indebtedness the terms of which require Holdco to assume such debt in order to avoid default thereunder (collectively, the "Assumed Indentures"), Holdco shall execute and deliver to the trustees or other representatives in accordance with the terms of the respective Assumed Indentures, supplemental indentures or other instruments, in form satisfactory to the respective trustees or other representatives, expressly assuming the obligations of America Online or Time Warner, as applicable, with respect to the due and punctual payment of the principal of (and premium, if any) and interest, if any, on, and conversion obligations under, all debt securities issued by America Online or Time Warner, as applicable, under the respective Assumed Indentures and the due and punctual performance of all the terms, covenants and conditions of the respective Assumed Indentures to be kept or performed by America Online or Time Warner, respectively, and shall deliver such supplemental indentures or other instruments to the respective trustees or other representatives under the Assumed Indentures.

ARTICLE VII

CONDITIONS PRECEDENT

7.1 Conditions to Each Party's Obligation to Effect its Respective Merger.

The respective obligations of Time Warner and America Online to effect the Time Warner Merger and America Online Merger are subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(a) Stockholder Approval. (i) Time Warner shall have obtained the Required Time Warner Vote in connection with the adoption of this Agreement by the stockholders of Time Warner and (ii) America Online shall have obtained the America Online Stockholder Approval in connection with the adoption of this Agreement by the stockholders of America Online.

(b) No Injunctions or Restraints, Illegality. No Laws shall have been adopted or promulgated, and no temporary restraining order, preliminary or permanent injunction or other order issued by a court or other Governmental Entity of competent jurisdiction shall be in effect, having the effect of making the Mergers illegal or otherwise prohibiting consummation of the Mergers.

(c) HSR Act; EC Merger Regulation; Canadian Investment Regulations. The waiting period (and any extension thereof) applicable to the Mergers under the HSR Act shall have been terminated or shall have expired and any required approval of the Mergers of the European Commission or Canadian Governmental Entities shall have been obtained pursuant to the EC Merger Regulation and the Canadian Investment Regulations, respectively.

(d) FCC Approvals. All material orders and approvals of the FCC required in connection with the consummation of the transactions contemplated hereby shall have been obtained and become final; provided, however, that the provisions of this Section 7.1(d) shall not be available to any party whose failure to fulfill its obligations pursuant to Section 6.4 has been the cause of, or shall have resulted in, the failure to obtain such order or approval.

(e) Cable Franchising Authorities and PUCs Approvals. All consents, approvals and actions of, filings with and notices to any Cable Franchising Authorities or PUCs required of America Online, Time Warner or any of their Subsidiaries to consummate the Mergers and the other transactions contemplated hereby, the failure of which to be obtained or taken, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on Holdco after giving effect to the Mergers, shall have been obtained; provided, however, that the provisions of this Section 7.1(e) shall not be available to any party whose failure to fulfill its obligations pursuant to Section 6.4 has been the cause of, or shall have resulted in, the failure to obtain such consent or approval or action.

(f) NYSE Listing. The shares of Holdco Common Stock to be issued in the Mergers and such other shares of Holdco Common Stock to be reserved for issuance in connection with the Mergers shall have been approved for listing on the NYSE, subject to official notice of issuance.

(g) Effectiveness of the Form S-4. The Form S-4 shall have been declared effective by the SEC under the Securities Act and no stop order suspending the effectiveness of the Form S-4 shall have been issued by the SEC and no proceedings for that purpose shall have been initiated or threatened by the SEC.

7.2 Additional Conditions to Obligations of America Online. The obligations of America Online to effect the America Online Merger are subject to the satisfaction, or waiver by America Online, on or prior to the Closing Date of the following conditions:

(a) Representations and Warranties. Each of the representations and warranties of Time Warner set forth in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, shall be true and correct as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except to the extent that such representations and warranties speak as of another date, in which case such representations and warranties shall be true and correct as of such other date), except where the failure of such representations and warranties to be true and correct would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Time Warner; and America Online shall have received a certificate of a senior executive officer and a senior financial officer of Time Warner to such effect.

(b) Performance of Obligations of Time Warner. Time Warner shall have performed or complied with all agreements and covenants required to be performed by it under this Agreement at or prior to the Closing Date that are qualified as to materiality or Material Adverse Effect and shall have performed or complied in all material respects with all other material agreements and covenants required to be performed by it under this Agreement at or prior to the Closing Date that are not so qualified, and America Online shall have received a certificate of a senior executive officer and a senior financial officer of Time Warner to such effect.

(c) Tax Opinion. America Online shall have received from Simpson Thacher & Bartlett, counsel to America Online, on the Closing Date, a written opinion to the effect that for federal income tax purposes each Merger will constitute an exchange to which Section 351 of the Code applies or a reorganization within the meaning of Section 368(a) of the Code, or both. In rendering such opinion, counsel to America Online shall be entitled to rely upon information, representations and assumptions provided by Holdco, America Online and Time Warner substantially in the form of Exhibits 7.2(c)(1), 7.2(c)(2) and 7.2(c)(3) (allowing for

such amendments to the representations as counsel to America Online deems reasonably necessary).

(d) Time Warner Conditions. The conditions set forth in Section 7.3 (other than Section 7.3(d)) shall have been satisfied or waived by Time Warner.

7.3 Additional Conditions to Obligations of Time Warner. The obligations of Time Warner to effect the Time Warner Merger are subject to the satisfaction, or waiver by Time Warner, on or prior to the Closing Date of the following additional conditions:

(a) Representations and Warranties. Each of the representations and warranties of America Online set forth in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, shall be true and correct as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except to the extent that such representations and warranties speak as of another date, in which case such representations and warranties shall be true and correct as of such other date), except where the failure of such representations and warranties to be true and correct would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on America Online; and Time Warner shall have received a certificate of a senior executive officer and a senior financial officer of America Online to such effect.

(b) Performance of Obligations of America Online. America Online shall have performed or complied with all agreements and covenants required to be performed by it under this Agreement at or prior to the Closing Date that are qualified as to materiality or Material Adverse Effect and shall have performed or complied in all material respects with all other material agreements and covenants required to be performed by it under this Agreement at or prior to the Closing Date that are not so qualified, and Time Warner shall have received a certificate of a senior executive officer and a senior financial officer of America Online to such effect.

(c) Tax Opinion. Time Warner shall have received from Cravath, Swaine & Moore, counsel to Time Warner, on the Closing Date, a written opinion to the effect that for federal income tax purposes each Merger will constitute an exchange to which Section 351 of the Code applies or a reorganization within the meaning of Section 368(a) of the Code, or both. In rendering such opinion, counsel to Time Warner shall be entitled to rely upon information, representations and assumptions provided by Holdco, America Online and Time Warner substantially in the form of Exhibits 7.2(c)(1), 7.2(c)(2) and 7.2(c)(3) (allowing for such amendments to the representations as counsel to Time Warner deems reasonably necessary).

(d) America Online Conditions. The conditions set forth in Section 7.2 (other than 7.2(d)) shall have been satisfied or waived by America Online.

ARTICLE VIII

TERMINATION AND AMENDMENT

8.1 **Termination.** This Agreement may be terminated at any time prior to the Effective Time, by action taken or authorized by the Board of Directors of the terminating party or parties, and except as provided below, whether before or after approval of the matters presented in connection with the Mergers by the stockholders of Time Warner or America Online:

(a) By mutual written consent of America Online and Time Warner;

(b) By either Time Warner or America Online, if the Effective Time shall not have occurred on or before May 31, 2001 (the "**Termination Date**"); **provided, however**, that the right to terminate this Agreement under this Section 8.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement (including without limitation such party's obligations set forth in Section 6.4) has been the cause of, or resulted in, the failure of the Effective Time to occur on or before the Termination Date;

(c) By either Time Warner or America Online, if any Governmental Entity (i) shall have issued an order, decree or ruling or taken any other action (which the parties shall have used their reasonable best efforts to resist, resolve or lift, as applicable, in accordance with Section 6.4) permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement, and such order, decree, ruling or other action shall have become final and nonappealable or (ii) shall have failed to issue an order, decree or ruling or to take any other action, and such denial of a request to issue such order, decree, ruling or take such other action shall have become final and nonappealable (which order, decree, ruling or other action the parties shall have used their reasonable best efforts to obtain, in accordance with Section 6.4), in the case of each of (i) and (ii) which is necessary to fulfill the conditions set forth in Sections 7.1(c), (d) or (e), as applicable; **provided, however**, that the right to terminate this Agreement under this Section 8.1(c) shall not be available to any party whose failure to comply with Section 6.4 has been the cause of such action or inaction;

(d) By either Time Warner or America Online, if the approvals of the stockholders of either America Online or Time Warner contemplated by this Agreement shall not have been obtained by reason of the failure to obtain the required vote at a duly held meeting of stockholders or of any adjournment thereof at which the vote was taken;

(e) By America Online, if Time Warner shall have (i) failed to make the Time Warner Recommendation or effected a Change in the Time Warner Recommendation (or resolved to take any such action), whether or not permitted by the terms hereof, or (ii) materially breached its obligations under this Agreement by reason of a failure to call the Time Warner Stockholders Meeting in accordance with Section 6.1(b) or a failure to prepare and mail to its stockholders the Joint Proxy Statement/Prospectus in accordance with Section 6.1(a);

(f) By Time Warner, if America Online shall have (i) failed to make the America Online Recommendation or effected a Change in the America Online Recommendation (or resolved to take any such action), whether or not permitted by the terms hereof or (ii) materially breached its obligations under this Agreement by reason of a failure to call the America Online Stockholders Meeting in accordance with Section 6.1(c) or a failure to prepare and mail to its stockholders the Joint Proxy Statement/Prospectus in accordance with Section 6.1(a);

(g) By Time Warner, if America Online shall have breached or failed to perform any of its representations, warranties, covenants or other agreements contained in this Agreement, such that the conditions set forth in Section 7.3(a) or (b) are not capable of being satisfied on or before the Termination Date; or

(h) By America Online, if Time Warner shall have breached or failed to perform any of its representations, warranties, covenants or other agreements contained in this Agreement, such that the conditions set forth in Section 7.2(a) or (b) are not capable of being satisfied on or before the Termination Date.

8.2 Effect of Termination.

(a) In the event of termination of this Agreement by either Time Warner or America Online as provided in Section 8.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of America Online or Time Warner or their respective officers or directors except with respect to Section 4.1(k), Section 4.2(k), the second sentence of Section 6.3, Section 6.6, this Section 8.2 and Article IX, which provisions shall survive such termination, and except that, notwithstanding anything to the contrary contained in this Agreement, neither America Online nor Time Warner shall be relieved or released from any liabilities or damages arising out of its wilful and material breach of this Agreement.

(b) If (A) (I) either party shall terminate this Agreement pursuant to Section 8.1(d) (provided that the basis for such termination is the failure of Time Warner's stockholders to adopt this Agreement) or pursuant to Section 8.1(b) without the Time Warner Stockholder Meeting having occurred, (II) at any time after the date of this Agreement and before such termination an Acquisition Proposal with respect to Time Warner shall have been publicly announced or otherwise communicated to the senior management, Board of Directors or stockholders of Time Warner (a "Time Warner Public Proposal") and (III) within twelve months of such termination Time Warner or any of its Subsidiaries enters into any definitive agreement with respect to, or consummates, any Acquisition Proposal (for purposes of this clause (III), the term "Acquisition Proposal" shall have the meaning assigned to such term in Section 6.5(a) except that references to "20%" therein shall be deemed to be references to "40%") or (B) America Online shall terminate this Agreement pursuant to Section 8.1(e); then Time Warner shall promptly, but in no event later than the date of such termination (or in the case of clause (A), if later, the date Time Warner or its Subsidiary enters into such agreement with respect to or consummates such Acquisition Proposal), pay America Online an amount equal to the Time

Warner Termination Fee, by wire transfer of immediately available funds (less any amounts previously paid or payable by Time Warner pursuant to Section 8.2(d)). The "Time Warner Termination Fee" shall be an amount equal to 2.75% of the product of (x) the number of shares of Time Warner Common Stock outstanding as of the date hereof (assuming the exercise of all outstanding options (other than the option granted pursuant to the Time Warner Stock Option Agreement) and the conversion into Time Warner Common Stock of all securities of Time Warner convertible into Time Warner Common Stock) multiplied by (y) the Exchange Ratio multiplied by (z) the last sale price of America Online Common Stock on the NYSE on January 7, 2000 (such product, the "Time Warner Amount").

(c) If (A) (I) either party shall terminate this Agreement pursuant to Section 8.1(d) (provided that the basis for such termination is the failure of America Online's stockholders to adopt this Agreement) or pursuant to Section 8.1(b) without the America Online Stockholders Meeting having occurred, (II) at any time after the date of this Agreement and before such termination an Acquisition Proposal with respect to America Online shall have been publicly announced or otherwise communicated to the senior management, Board of Directors or stockholders of America Online (an "America Online Public Proposal") and (III) within twelve months of such termination America Online or any of its Subsidiaries enters into any definitive agreement with respect to, or consummates, any Acquisition Proposal (for purposes of this clause (III), the term "Acquisition Proposal" shall have the meaning assigned to such term in Section 6.5(a) except that references to "20%" therein shall be deemed to be references to "40%") or (B) Time Warner shall terminate this Agreement pursuant to Section 8.1(f); then America Online shall promptly, but in no event later than the date of such termination (or in the case of clause (A), if later, the date America Online or its Subsidiary enters into such agreement with respect to or consummates such Acquisition Proposal), pay Time Warner an amount equal to the America Online Termination Fee (less any amounts previously paid or payable by America Online pursuant to Section 8.2(d)), by wire transfer of immediately available funds. The "America Online Termination Fee" shall be an amount equal to 2.75% of the product of (x) the number of shares of America Online Common Stock outstanding as of the date hereof (assuming exercise of all outstanding options (other than the option granted pursuant to the America Online Stock Option Agreement) and the conversion into America Online Common Stock of all securities of America Online convertible into America Online Common Stock) multiplied by (y) the last sale price of America Online Common Stock on the NYSE on January 7, 2000 (such product, the "America Online Amount").

(d) If either party shall terminate this Agreement pursuant to Section 8.1(d) and the basis for such termination is the failure of Time Warner's stockholders to adopt this Agreement), then Time Warner shall promptly, but in no event later than the date of such termination, pay America Online an amount equal to one percent of the Time Warner Amount, payable by wire transfer of immediately available funds; provided that no payment shall be made pursuant to this sentence if the Time Warner Termination Fee has been paid pursuant to Section 8.2(b). If either party shall terminate this Agreement pursuant to Section 8.1(d) and the basis for such termination is the failure of America Online's stockholders to adopt this Agreement, then America Online shall promptly, but in no event later than the date of such termination, pay Time

Warner an amount equal to one percent of the America Online Amount, payable by wire transfer of immediately available funds; provided that no payment shall be made pursuant to this sentence if the America Online Termination Fee has been paid pursuant to Section 8.2(c).

(e) The parties acknowledge that the agreements contained in this Section 8.2 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, neither party would enter into this Agreement; accordingly, if either party fails promptly to pay any amount due pursuant to this Section 8.2, and, in order to obtain such payment, the other party commences a suit which results in a judgment against such party for the fee set forth in this Section 8.2, such party shall pay to the other party its costs and expenses (including attorneys' fees and expenses) in connection with such suit, together with interest on the amount of the fee at the prime rate of Citibank, N.A. in effect on the date such payment was required to be made notwithstanding the provisions of Section 6.6. The parties agree that any remedy or amount payable pursuant to this Section 8.2 shall not preclude any other remedy or amount payable hereunder and shall not be an exclusive remedy for any breach of any representation, warranty, covenant or agreement contained in this Agreement.

8.3 Amendment. This Agreement may be amended by the parties hereto, by action taken or authorized by their respective Boards of Directors, at any time before or after approval of the matters presented in connection with the Mergers by the stockholders of Time Warner and America Online, but, after any such approval, no amendment shall be made which by law or in accordance with the rules of any relevant stock exchange requires further approval by such stockholders without such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

8.4 Extension; Waiver. At any time prior to the Effective Time, the parties hereto, by action taken or authorized by their respective Boards of Directors, may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of those rights.

ARTICLE IX

GENERAL PROVISIONS

9.1 Non-Survival of Representations, Warranties and Agreements. None of the representations, warranties, covenants and other agreements in this Agreement or in any instrument delivered pursuant to this Agreement, including any rights arising out of any breach of such representations, warranties, covenants, agreements and other provisions, shall survive the

Effective Time, except for those covenants, agreements and other provisions contained herein (including Section 6.7, Section 6.2 and Schedule 6.2(a)) that by their terms apply or are to be performed in whole or in part after the Effective Time and this Article IX.

9.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or by telecopy or telefacsimile, upon confirmation of receipt, (b) on the first Business Day following the date of dispatch if delivered by a recognized next-day courier service, or (c) on the tenth Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

(a) if to America Online to:

America Online, Inc.
22000 AOL Way
Dulles, Virginia 20166
Fax: (703) 265-1495
Attention: Paul T. Cappuccio, Esq.

with a copy to:

Simpson Thacher & Bartlett
425 Lexington Avenue
New York, New York 10017
Fax: (212) 455-2502
Attention: Richard I. Beattie, Esq.

(b) if to Time Warner to:

Time Warner Inc.
75 Rockefeller Plaza
New York, NY 10019
Fax: (212) 265-2646
Attention: Christopher P. Bogart, Esq.

with a copy to:

Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Fax: (212) 474-3700
Attention: Robert A. Kindler, Esq.

9.3 Interpretation. When a reference is made in this Agreement to Articles, Sections, Exhibits or Schedules, such reference shall be to an Article or Section of or Exhibit or Schedule to this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." In addition, each Section of this Agreement is qualified by the matters set forth with respect to such Section on the America Online Disclosure Schedule, the Time Warner Disclosure Schedule and the Schedules to this Agreement, as applicable, to the extent specified therein and such other Sections of this Agreement to the extent a matter in such Section is disclosed in such a way as to make its relevance called for by such other Section readily apparent.

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

9.5 Entire Agreement; No Third Party Beneficiaries.

(a) This Agreement, the Stock Option Agreements, the Confidentiality Agreement and the exhibits and schedules hereto and the other agreements and instruments of the parties delivered in connection herewith constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

(b) This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, other than Section 6.7 (which is intended to be for the benefit of the Persons covered thereby).

9.6 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware (without giving effect to choice of law principles thereof).

9.7 **Severability.** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

9.8 **Assignment.** Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto, in whole or in part (whether by operation of law or otherwise), without the prior written consent of the other party, and any attempt to make any such assignment without such consent shall be null and void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

9.9 **Submission to Jurisdiction; Waivers.** Each of America Online and Time Warner irrevocably agrees that any legal action or proceeding with respect to this Agreement or for recognition and enforcement of any judgment in respect hereof brought by the other party hereto or its successors or assigns may be brought and determined in the Chancery or other Courts of the State of Delaware, and each of America Online and Time Warner hereby irrevocably submits with regard to any such action or proceeding for itself and in respect to its property, generally and unconditionally, to the nonexclusive jurisdiction of the aforesaid courts. Each of America Online and Time Warner hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement, (a) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure to lawfully serve process (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), (c) to the fullest extent permitted by applicable law, that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper and (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts and (d) any right to a trial by jury.

9.10 **Enforcement.** The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that the parties shall be entitled to specific performance of the terms hereof, this being in addition to any other remedy to which they are entitled at law or in equity.

9.11 Definitions. As used in this Agreement:

(a) “beneficial ownership” or “beneficially own” shall have the meaning under Section 13(d) of the Exchange Act and the rules and regulations thereunder.

(b) “Benefit Plans” means, with respect to any Person, each employee benefit plan, program, arrangement and contract (including, without limitation, any “employee benefit plan,” as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and any bonus, deferred compensation, stock bonus, stock purchase, restricted stock, stock option, employment, termination, stay agreement or bonus, change in control and severance plan, program, arrangement and contract) in effect on the date of this Agreement or disclosed on the Time Warner Disclosure Schedule or the America Online Disclosure Schedule, as the case may be, to which such Person or its Subsidiary is a party, which is maintained or contributed to by such Person, or with respect to which such Person could incur material liability under Sections 4069, 4201 or 4212(c) of ERISA.

(c) “Board of Directors” means the Board of Directors of any specified Person and any committees thereof.

(d) “Business Day” means any day on which banks are not required or authorized to close in the City of New York.

(e) “known” or “knowledge” means, with respect to any party, the knowledge of such party’s executive officers after reasonable inquiry.

(f) “Material Adverse Effect” means, with respect to any entity any event, change, circumstance or effect that is or is reasonably likely to be materially adverse to (i) the business, financial condition or results of operations of such entity and its Subsidiaries taken as a whole, other than any event, change, circumstance or effect relating (x) to the economy or financial markets in general or (y) in general to the industries in which such entity operates and not specifically relating to (or having the effect of specifically relating to or having a materially disproportionate effect (relative to most other industry participants) on) such entity or (ii) the ability of such entity to consummate the transactions contemplated by this Agreement.

(g) “the other party” means, with respect to Time Warner, America Online and means, with respect to America Online, Time Warner.

(h) “Person” means an individual, corporation, limited liability company, partnership, association, trust, unincorporated organization, other entity or group (as defined in the Exchange Act).

(i) “Subsidiary” when used with respect to any party means any corporation or other organization, whether incorporated or unincorporated, at least a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the

Board of Directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such party or by any one or more of its Subsidiaries, or by such party and one or more of its Subsidiaries. For the avoidance of doubt, TWE and TWE-AN Partnership shall be considered a Subsidiary of Time Warner.

IN WITNESS WHEREOF, America Online and Time Warner have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

AMERICA ONLINE, INC.

By: 

Name: Stephen M. Case

Title: Chairman & Chief Executive Officer

TIME WARNER INC.

By: _____

Name:

Title:

IN WITNESS WHEREOF, America Online and Time Warner have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

AMERICA ONLINE, INC.

By: _____
Name:
Title:

TIME WARNER INC.

By: David M. Kevin
Name:
Title:

STOCK OPTION AGREEMENT, dated as of January 10, 2000 (the "Agreement"), between America Online, Inc., a Delaware corporation ("Grantee"), and Time Warner Inc., a Delaware corporation ("Issuer").

WITNESSETH:

WHEREAS, Grantee and Issuer are, concurrently with the execution and delivery of this Agreement, entering into an Agreement and Plan of Merger, dated as of the date hereof (the "Merger Agreement;" capitalized terms used without definition herein having the meanings assigned to them in the Merger Agreement), pursuant to which the parties will engage in a business combination in a merger of equals (the "Merger"); and

WHEREAS, as a condition to their willingness to enter into the Merger Agreement, Grantee has required that Issuer agree, and believing it to be in the best interests of Issuer, Issuer has agreed, among other things, to grant to Grantee the Option (as hereinafter defined) to purchase shares of common stock, par value \$.01 per share, of Issuer ("Issuer Common Stock") at a price per share equal to the Exercise Price (as hereinafter defined).

NOW THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I

OPTION TO PURCHASE SHARES

1.1 Grant of Option.

(a) Issuer hereby grants to Grantee an irrevocable option to purchase, in whole or in part, an aggregate of up to 233,263,204 duly authorized, validly issued, fully paid and nonassessable shares of Issuer Common Stock (representing 19.9% of the outstanding shares of Issuer Common Stock as of November 30, 1999) on the terms and subject to the conditions set forth herein (the "Option"); provided, however, that in no event shall the number of shares of Issuer Common Stock for which this Option is exercisable exceed 19.9% of the issued and outstanding shares of Issuer Common Stock at the time of exercise without giving effect to the issuance of any Option Shares (as hereinafter defined). The number of shares of Issuer Common Stock that may be received upon the exercise of the Option and the Exercise Price are subject to adjustment as herein set forth.

(b) In the event that any additional shares of Issuer Common Stock are issued or otherwise become outstanding after the date of this Agreement (other than pursuant to this Agreement and other than pursuant to an event described in Section 3.1 hereof), the number of shares of Issuer Common Stock subject to the Option shall be increased so that, after such issuance, such number together with any shares of Issuer Common Stock previously issued

pursuant hereto, equals 19.9% of the number of shares of Issuer Common Stock then issued and outstanding without giving effect to any shares subject or issued pursuant to the Option. Nothing contained in this Section 1.1(b) or elsewhere in this Agreement shall be deemed to authorize Issuer to breach or fail to comply with any provision of the Merger Agreement. As used herein, the term "Option Shares" means the shares of Issuer Common Stock issuable pursuant to the Option, as the number of such shares shall be adjusted pursuant to the terms hereof.

1.2 Exercise of Option.

(a) The Option may be exercised by Grantee, in whole or in part, at any time, or from time to time, commencing upon the Exercise Date and prior to the Expiration Date. As used herein, the term "Exercise Date" means the date on which Grantee becomes unconditionally entitled to receive the Time Warner Termination Fee pursuant to Section 8.2(b) of the Merger Agreement. As used herein, the term "Expiration Date" means the first to occur prior to Grantee's exercise of the Option pursuant to Section 1.2(b) of:

- (i) the Effective Time;
- (ii) written notice of termination of this Agreement by Grantee to Issuer;
- (iii) 12 months after the first occurrence of an Exercise Date; or
- (iv) the date of termination of the Merger Agreement, unless, in the case of this clause (iv), Grantee has the right to receive the Time Warner Termination Fee either (x) upon or (y) following such termination upon the occurrence of certain events, in which case the Option will not terminate until the later of (x) 15 business days following the time the Time Warner Termination Fee becomes unconditionally payable and (y) the expiration of the period in which Grantee has such right to receive the Time Warner Termination Fee.

Notwithstanding the termination of the Option, Grantee shall be entitled to purchase those Option Shares with respect to which it may have exercised the Option by delivery of an Option Notice (as defined below) prior to the Expiration Date, and the termination of the Option will not affect any rights hereunder which by their terms do not terminate or expire prior to or at the Expiration Date.

(b) In the event Grantee wishes to exercise the Option, Grantee shall send a written notice to Issuer of its intention to so exercise the Option (an "Option Notice"), specifying the number of Option Shares to be purchased (and the denominations of the certificates, if more than one), whether the aggregate Exercise Price will be paid in cash or by surrendering a portion of the Option in accordance with Section 1.3(b) or a combination thereof, and the place in the United States, time and date of the closing of such purchase (the "Option Closing" and the date of such Closing, the "Option Closing Date"), which date shall not be less than two Business Days nor more than ten Business Days from the date on which an Option

Notice is delivered; provided that the Option Closing shall be held only if (i) such purchase would not otherwise violate or cause the violation of, any applicable material law, statute, ordinance, rule or regulation (collectively, "Laws") (including the HSR Act and the Communications Act), and (ii) no material judgment, order, writ, injunction, ruling or decree of any Governmental Entity (collectively, "Orders") shall have been promulgated, enacted, entered into, or enforced by any Governmental Entity which prohibits delivery of the Option Shares, whether temporary, preliminary or permanent; provided, however, that the parties hereto shall use their reasonable best efforts to (x) promptly make and process all necessary filings and applications and obtain all consents, approvals, Orders, authorizations, registrations and declarations or expiration or termination of any required waiting periods (collectively, "Approvals") and to comply with any such applicable Laws and (y) have any such Order vacated or reversed. In the event the Option Closing is delayed pursuant to clause (i) or (ii) above, the Option Closing shall be within ten Business Days following the cessation of such restriction, violation, Law or Order or the receipt of any necessary Approval, as the case may be (so long as the Option Notice was delivered prior to the Expiration Date); provided further that, notwithstanding any prior Option Notice, Grantee shall be entitled to rescind such Option Notice and shall not be obligated to purchase any Option Shares in connection with such exercise upon written notice to such effect to Issuer.

(c) At any Option Closing, (i) Issuer shall deliver to Grantee all of the Option Shares to be purchased by delivery of a certificate or certificates evidencing such Option Shares in the denominations designated by Grantee in the Option Notice, and (ii) if the Option is exercised in part and/or surrendered in part to pay the aggregate Exercise Price pursuant to Section 1.3(b), Issuer and Grantee shall execute and deliver an amendment to this Agreement reflecting the Option Shares for which the Option has not been exercised and/or surrendered. If at the time of issuance of any Option Shares pursuant to an exercise of all or part of the Option hereunder, Issuer shall have issued any rights or other securities which are attached to or otherwise associated with the Issuer Common Stock, then each Option Share issued pursuant to such exercise shall also represent such rights or other securities with terms substantially the same as and at least as favorable to Grantee as are provided under any shareholder rights agreement or similar agreement of Issuer then in effect. At the Option Closing, Grantee shall pay to Issuer by wire transfer of immediately available funds to an account specified by Issuer to Grantee in writing at least two Business Days prior to the Option Closing an amount equal to the Exercise Price multiplied by the number of Option Shares to be purchased for cash pursuant to this Article I; provided that the failure or refusal of Issuer to specify an account shall not affect Issuer's obligation to issue the Option Shares.

(d) Upon the delivery by Grantee to Issuer of the Option Notice and the tender of the applicable aggregate Exercise Price in immediately available funds or the requisite portion of the Option in accordance with Section 1.3, Grantee shall be deemed to be the holder of record of the Option Shares issuable upon such exercise, notwithstanding that the stock transfer books of Issuer may then be closed, that certificates representing such Option Shares may not then have been actually delivered to Grantee, or Issuer may have failed or refused to take any action required of it hereunder. Issuer shall pay all expenses that may be payable in connection with the preparation, issuance and delivery of stock certificates or an amendment to

this Agreement under this Section 1.2 and any filing fees and other expenses arising from the performance of the transactions contemplated hereby.

1.3 Payments.

(a) The purchase and sale of the Option Shares pursuant to Section 1.2 of this Agreement shall be at a purchase price equal to \$110.63 per Share (as such amount may be adjusted pursuant to the terms hereof, the "Exercise Price"), payable at Grantee's option in cash, by surrender of a portion of the Option in accordance with Section 1.3(b), or a combination thereof.

(b) Grantee may elect to purchase Option Shares issuable, and pay some or all of the aggregate Exercise Price payable, upon an exercise of the Option by surrendering a portion of the Option with respect to such number of Option Shares as is determined by dividing (i) the aggregate Exercise Price payable in respect of the number of Option Shares being purchased in such manner by (ii) the excess of the Fair Market Value (as defined below) per share of Issuer Common Stock as of the last trading day preceding the date Grantee delivers its Option Notice (such date, the "Option Exercise Date") over the per share Exercise Price. The "Fair Market Value" per share of Issuer Common Stock shall be (i) if the Issuer Common Stock is listed on the New York Stock Exchange, Inc. (the "NYSE") or any other nationally recognized exchange or trading system as of the Option Exercise Date, the average of last reported sale prices per share of Issuer Common Stock thereon for the 10 trading days commencing on the 12th trading day immediately preceding the Option Exercise Date, or (ii) if the Issuer Common Stock is not listed on the NYSE or any other nationally recognized exchange or trading system as of the Option Exercise Date, the amount determined by a mutually acceptable independent investment banking firm as the value per share the Issuer Common Stock would have if publicly traded on a nationally recognized exchange or trading system (assuming no discount for minority interest, illiquidity or restrictions on transfer). That portion of the Option so surrendered under this Section 1.3(b) shall be canceled and shall thereafter be of no further force and effect.

(c) Certificates for the Option Shares delivered at an Option Closing will have typed or printed thereon a restrictive legend which will read substantially as follows:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY BE REOFFERED OR SOLD ONLY IF SO REGISTERED OR IF AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE. SUCH SECURITIES ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER AS SET FORTH IN THE STOCK OPTION AGREEMENT DATED AS OF JANUARY 10, 2000, A COPY OF WHICH MAY BE OBTAINED FROM THE SECRETARY OF TIME WARNER INC. AT ITS PRINCIPAL EXECUTIVE OFFICES."

It is understood and agreed that (i) the reference to restrictions arising under the Securities Act in the above legend will be removed by delivery of substitute certificate(s) without such reference if