an oral communication regarding the Antitrust Laws, promptly notify the other party of the substance of such communication, (E) provide each other with a reasonable advance opportunity to review and comment upon and consider in good faith the views of the other in connection with all written communications (including any analyses, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto relating to proceedings under the Antitrust Laws) with a Governmental Entity regarding the Antitrust Laws and (F) promptly provide each other with copies of all written communications to or from any Governmental Entity relating to the Antitrust Laws. The parties may, as they deem advisable and necessary, designate any competitively sensitive materials provided to the other under this Section 5.04 as "outside counsel only." Such materials and the information contained therein shall be given only to outside counsel and previously-agreed outside economic consultants of the recipient and will not be disclosed by such outside counsel or outside economic consultants to employees, officers, or directors of the recipient without the advance written consent of the party providing such materials.

SECTION 5.05. Indemnification and Insurance. (a) Parent and Merger Sub shall cause the surviving corporation to agree that all rights to exculpation and indemnification for acts or omissions occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time (including any matters arising in connection with the transactions contemplated by this Agreement), now existing in favor of the current or former director or officers (the "Indemnified Parties") or employees, as the case may be of the Company or its Subsidiaries as provided in their respective certificates of incorporation or by-laws or in any agreement shall survive the Merger and shall continue in full force and effect. For a period of six (6) years following the Effective Time (the "Post-Closing Indemnification Period"), Parent and the Surviving Corporation or its successor shall cause the Surviving Corporation's or its successor's certificate of incorporation and bylaws to contain provisions with respect to indemnification and exculpation of, and advancement of expenses to, the Indemnified Parties that are at least as favorable as the indemnification, exculpation and advancement of expenses provisions contained in the Certificate of Incorporation and Bylaws for the benefit of officers and directors of the Company as of the date hereof, and during the Post-Closing Indemnification Period, such provisions shall not, unless required by applicable Law, be amended, repealed or otherwise modified in any manner that would adversely affect the rights thereunder of the Indemnified Parties, and maintain any indemnification agreements of the Company and its Subsidiaries with any of their respective directors, officers and employees existing as on the date of this Agreement; provided, that in the event that due to dissolution of the Surviving Corporation or divestiture of its assets, Parent is the successor, the Indemnified Parties shall have the benefit of the provisions with respect to indemnification and exculpation of, and advancement of expenses to the Indemnified Parties in Parent's certificate of incorporation and bylaws through the Post-Closing Indemnification Period.

(b) For a period of six (6) years after the Effective Time, Parent will cause the Surviving Corporation or its successor to maintain in effect the Company's current directors' and officers' liability insurance covering those persons who are currently covered by the Company's

directors' and officers' liability insurance policy (copies of which have been delivered by the Company to Parent and its representatives prior to the date hereof) for acts or omissions occurring prior to the Effective Time on terms comparable to those of such policy in effect on the date hereof; provided, that (i) the Company may, at its election, substitute therefor a single premium tail policy with respect to such directors' and officers' liability insurance with policy limits, terms and conditions at least as favorable to the directors and officers covered under such insurance policy as the limits, terms and conditions in the existing policies of the Company; or (ii) if the Company does not elect to substitute as provided in clause (i) above, then Parent may (A) substitute therefor policies of Parent, from an insurance carrier with the same or better credit rating as the Company's current insurance carrier, containing terms with respect to coverage (including as coverage relates to deductibles and exclusions) and amounts no less favorable to such directors and officers or (B) request that the Company obtain (and, if so requested, the Company shall obtain) such extended reporting period coverage under its existing insurance programs (to be effective as of the Effective Time); provided, further, that in connection with this Section 5.05(b), neither the Company nor Parent shall pay a one-time premium (in connection with a single premium tail policy described above) in excess of the amount set forth in Section 5.05(b) of the Disclosure Letter or be obligated to pay annual premiums (in connection with any other directors and officers insurance policy described above) in excess of the annual premiums set forth in Section 5.05(b) of the Disclosure Letter. It is understood and agreed that in the event such coverage cannot be obtained for such amount or less, then the Company shall obtain the maximum amount of coverage as may be obtained for such amount.

(c) The rights of each Indemnified Party under this Section 5.05 shall survive consummation of the Merger and are intended to benefit, and shall be enforceable by, each Indemnified Party, his or her heirs and his or her personal representatives, successors or assigns and in addition to, and not in substitution for, any other rights to indemnification or contribution that any such person may have by contract or otherwise. Parent shall pay all reasonable expenses, including reasonable attorneys' fees, that may be incurred by any Indemnified Party in enforcing the indemnity and other obligations provided in this Section 5.05.

(d) The rights of the Indemnified Parties and their heirs and legal representatives under this Section 5.05 shall be in addition to any rights such Indemnified Parties may have under the Certificate of Incorporation or Bylaws of the Company or any of its Subsidiaries, any agreements between such persons and the Company or any of its Subsidiaries, or any applicable Laws, or under any insurance policies.

(e) In the event that the Surviving Corporation or any of its successors or assigns (A) consolidates with or merges into any other Persons, or (B) transfers fifty percent (50%) or more of its properties or assets to any Person, then and in each case, subject to the proviso in Section 5.05(a), proper provision shall be made so the applicable successors and assigns or transferees assume the obligations set forth in this Section 5.05.

(f) Notwithstanding anything herein to the contrary, (i) the obligations of Parent and the Surviving Corporation or its successor shall be subject to any limitation imposed by applicable Law (including any limitation on the Company's ability to indemnify its own directors and officers) and (ii) Parent shall have no obligation to maintain the existence of the Surviving Corporation for any specified period following the Effective Time. The provisions of this Section 5.05 shall survive the consummation of the Merger.

SECTION 5.06. Employee Matters. (a) Prior to the Effective Time, except as set forth below, the Company will, and will cause its Subsidiaries to, and, from and after the Effective Time, Parent will, and will cause the Surviving Corporation to, honor, in accordance with their terms, all existing Company Employee Plans and International Employee Plans.

(b) For a one (1) year period following the Effective Time, Parent shall provide, or shall cause to be provided, to each active employee of the Company and its Subsidiaries (the "Company Employees") (i) base compensation and bonus opportunities that, in each case, are no less favorable than were provided to the Company Employee immediately prior to the Effective Time, and (ii) other employee benefits (excluding equity or equity-based awards) that are substantially comparable, in the aggregate, to the employee benefits (excluding equity or equity-based awards) that were provided to the Company Employee immediately prior to the Effective Time; provided, however, that nothing in this Agreement shall prohibit the Parent or the Surviving Corporation from terminating the employment of any Company Employee.

(c) Parent shall use its commercially reasonable efforts to ensure that, as of the Closing Date, each Company Employee receives credit for service with the Company (or predecessor employers to the extent the Company provides such past service credit under the Company Employee Plans and the International Employee Plans) for purposes of eligibility to participate, vesting, vacation entitlement and level of severance benefits under each of the comparable employee benefit plans, programs and policies of Parent, the Surviving Corporation or the relevant Subsidiary, as applicable ("Parent Plans"), in which such Company Employee becomes a participant; provided, that no such service recognition shall result in any duplication of benefits with respect to the same period of service. In addition, and without limiting the generality of the foregoing, to the extent permitted by applicable Law, each Company Employee shall be immediately eligible to participate, without any waiting time, in any and all Parent Plans in which such Company Employee becomes entitled to participate to the extent coverage under such Parent Plan is comparable to a Company Employee Plan or International Employee Plan in which such Company Employee participated immediately before the Effective Time. To the extent permitted by applicable Law, as of the Closing Date, Parent shall, or shall cause the Surviving Corporation or relevant Subsidiary to, credit to Company Employees the amount of vacation time that such employees had accrued under any applicable Company Employee Plan or International Employee Plan as of the Closing Date. With respect to each health or welfare benefit plan maintained by Parent for the benefit of any Company Employees, the Surviving Corporation or the relevant Subsidiary and Parent shall use commercially reasonable efforts (i) to cause all pre-existing condition exclusions and actively-at-work requirements of such Parent Plan to be waived for each Company Employee and his or her covered dependents, unless and to the extent the individual, immediately prior to entry in the Parent Plans, was subject to such conditions under the comparable Company Employee Plan or International Employee Plan, as applicable, and (ii) to cause each Company Employee to be given credit under such plan for all amounts paid by such Company Employee under any similar Company Employee Plan or International Employee Plan for the plan year that includes the Closing Date for purposes of applying deductibles, co-payments and out-of-pocket maximums as though such amounts had been paid in accordance with the terms and conditions of the applicable plan maintained by Parent, the Surviving Corporation or the relevant Subsidiary, as applicable, for the plan year in which the Closing Date occurs.

(d) Parent and the Company agree (i) that prior to the Closing the Company may adopt a retention program for employees of the Company and its Subsidiaries in accordance with the terms and conditions set forth on Section 5.06(d) of the Disclosure Letter and (ii) to the terms and conditions set forth on Section 5.06(d) of the Disclosure Letter relating to payment of 2011 annual bonuses.

(e) As soon as reasonably practicable following the date of this Agreement, but in no event later than seventy-five (75) days following the date of this Agreement, with respect to each Section 16 Officer and each other "disqualified individual" of the Company (as defined in Section 280G(c) of the Code) who is entitled to a gross-up for excise Taxes paid pursuant to Section 4999 of the Code, the Company shall furnish (i) a schedule that sets forth (A) the Company's reasonable, good faith estimate of the maximum amount that could be paid to such disqualified individual as a result of any of the transactions contemplated by this Agreement (alone or in combination with any other event), and (B) the "base amount" (as defined in Section 280G(b)(3) of the Code) for each such individual, and (ii) underlying documentation on which such calculations are based if such information is reasonably requested by Parent. The Company and the Parent agree to use commercially reasonable efforts to cooperate to update the foregoing information prior to Closing as reasonably requested by Parent.

(f) The provisions of this Section 5.06 are for the sole benefit of the Parties to this Agreement and nothing herein, expressed or implied, is intended or shall be construed to confer upon or give to any Person (including, for the avoidance of doubt, any Company Employee), other than the Parties hereto and their respective permitted successors and assigns, any legal or equitable or other rights or remedies under or by reason of any provision of this Agreement. No provision in this Agreement shall modify or amend any Company Employee Plan, International Employee Plan or Parent Plan unless this Agreement explicitly states that the provision "amends" such Company Employee Plan, International Employee Plan or Parent Plan. This shall not prevent the parties entitled to enforce this Agreement from enforcing any provision in this Agreement, but no other party shall be entitled to enforce any provision in this Agreement on the grounds that it is an amendment to such Company Employee Plan, International Employee Plan or Parent Plan. If a party not entitled to enforce this Agreement brings a lawsuit or other action to enforce any provision in this Agreement as an amendment to such Company Employee Plan, International Employee Plan or Parent Plan and that provision is construed to be such an amendment despite not being explicitly designated as one in this Agreement, that provision shall lapse retroactively as of its inception, thereby precluding it from having any amendatory effect.

(g) As soon as reasonably practicable following the date of this Agreement but no later than ten (10) Business Days prior to the anticipated Closing Date, the Company shall use good faith, commercially reasonable efforts to provide or make available to Parent (to the extent such information can be provided in accordance with applicable data privacy Laws): (i) a true, correct and complete list of (A) with respect to each Existing Stock Option, the name of the applicable holder, the grant date of such Existing Stock Option, the number of Shares such holder is entitled to receive upon the exercise of such Existing Stock Option and the

corresponding exercise price, vesting schedule and plan pursuant to which such Existing Stock Option was granted, (B) with respect to each Existing Restricted Stock Award, the name of the applicable holder, the number of Shares subject to such Existing Restricted Stock Award, the grant date of such Existing Restricted Stock Award, the vesting schedule of such Existing Restricted Stock Award and the plan pursuant to which such Existing Restricted Stock Award was granted, (C) with respect to each Existing RSU Award, the name of the applicable holder, the number of Shares subject to such Existing RSU Award, the grant date of such Existing RSU Award, the vesting schedule of such Existing RSU Award and the plan pursuant to which such Existing RSU Award was granted, and (D) with respect to each Existing DSU Award, the name of the applicable holder, the number of Shares subject to such Existing DSU Award, the grant date of such Existing DSU Award, the vesting schedule of such Existing DSU Award and the plan pursuant to which such Existing DSU Award was granted; and (ii) true, correct and complete copies of each material International Employee Plan.

(h) From and after the date of this Agreement, the Company and each of its Subsidiaries shall use commercially reasonable efforts to take all necessary action in order to comply with all applicable notification, consultation, and consent requirements with respect to all unions, works councils, employee committees and similar bodies in respect of the transactions contemplated by this Agreement, and Parent agrees to use commercially reasonable efforts to cooperate with the Company and its Subsidiaries in respect of the foregoing.

SECTION 5.07. Takeover Laws. The Company shall take all reasonable steps to exclude the applicability of, or to assist in any challenge by Parent or Merger Sub to the validity or applicability to the Merger or any other transaction contemplated by this Agreement of, any Takeover Laws.

SECTION 5.08. Proxy Statement; Stockholder Approval. (a) The Company shall prepare and file with the SEC, subject to the prior review of Parent, as promptly as reasonably practicable after the date hereof, a preliminary Proxy Statement (the "Preliminary Proxy Statement") relating to the Merger as required by the Exchange Act. The Company shall obtain and furnish the information required to be included in the Preliminary Proxy Statement, shall provide Parent with, and consult with Parent regarding, any comments that may be received from the SEC or its staff with respect thereto, shall, subject to the prior review of Parent, respond as promptly as reasonably practicable to any such comments made by the SEC or its staff with respect to the Preliminary Proxy Statement, shall cause the Proxy Statement to be mailed to the Company's stockholders as soon as reasonably practicable after the resolution of any such comments and shall use its reasonable best efforts (subject to the right to make a Recommendation Change in accordance with Section 5.02) to obtain the necessary approval of the Merger by its stockholders. If, at any time prior to the Special Meeting, any information relating to the Company, Parent, Merger Sub, any of their respective Affiliates, this Agreement or the transactions contemplated hereby (including the Merger), should be discovered by the Company or Parent which should be set forth in an amendment or supplement to the Proxy Statement, so that the Proxy Statement shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading, the party that discovers such information shall promptly notify the other party, and an appropriate amendment or supplement describing such information shall be prepared by the Company and

subject to review and approval by Parent (which approval shall not be unreasonably withheld) filed with the SEC, and to the extent required by applicable Law, disseminated to the stockholders of the Company. Except as Section 5.02 expressly permits, the Proxy Statement shall include the recommendation of the Board of Directors of the Company that the stockholders adopt the agreement of merger (as such term is used in Section 251 of the Corporation Law) set forth in this Agreement. Parent shall, upon request, furnish to the Company all information concerning itself, its Subsidiaries, directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with the Proxy Statement or any other statement, filing, notice or application made by or on behalf of the Company or any of their respective Subsidiaries to any Governmental Entity in connection with the Merger and the other transactions contemplated by this Agreement.

(b) The Company shall, as promptly as reasonably practicable following the date of this Agreement, in accordance with customary timing in consultation with Parent, take all action necessary to establish a record date for, duly call, give notice of, and, after the mailing of the Proxy Statement, convene and hold a meeting of its stockholders (the "Special Meeting") for the purpose of obtaining the Requisite Stockholder Approval required in connection with this Agreement and the Merger, and shall use its reasonable best efforts to cause such meeting to occur as soon as reasonably practicable. Except as specifically permitted by Section 5.02, the Board of Directors of the Company shall continue to recommend that the Company's stockholders vote in favor of the adoption of the agreement of merger (as such term is used in Section 251 of the Corporation Law) contained in this Agreement and the Company shall use its reasonable best efforts to obtain the Requisite Stockholder Approval in order to consummate the Merger.

SECTION 5.09. Securityholder Litigation. The Company shall give Parent the opportunity to participate, subject to a customary joint defense agreement, in, but not control, the defense or settlement of any litigation against the Company and/or its directors relating to the transactions contemplated by this Agreement, and no settlement shall be agreed to without Parent's prior consent.

SECTION 5.10. Press Releases. Except with respect to any Recommendation Change made in accordance with the terms of this Agreement, the Company and Parent will consult with and provide each other the opportunity to review and comment upon any press release or other public statement or comment prior to the issuance of such press release or other public statement or comment relating to this Agreement or the transactions contemplated in this Agreement and shall not issue any such press release or other public statement or comment prior to such consultation except as may be required by Law or by obligations pursuant to any listing agreement with any national securities exchange. Parent and the Company agree to issue a joint press release announcing this Agreement.

SECTION 5.11. Rule 16b-3. Notwithstanding anything herein to the contrary, prior to the Effective Time, the Company shall be permitted to take such steps as may be reasonably necessary or advisable hereto to cause disposition of Company equity securities (including derivative securities) pursuant to the transactions contemplated by this Agreement to be exempt under Rule 16b-3 promulgated under the Exchange Act in accordance with that certain No-Action Letter dated January 12, 1999 issued by the SEC regarding such matters.

SECTION 5.12. Parent Approval. Immediately following the execution of this Agreement, Parent shall execute and deliver, in accordance with Section 228 of the Corporation Law and in its capacity as the sole stockholder of Merger Sub, a written consent adopting the agreement and plan of merger (as such term is used in Section 251 of the Corporation Law) contained in this Agreement.

SECTION 5.13. Control of Operations. Nothing contained in this Agreement shall give Parent, directly or indirectly, the right to control or direct the Company's operations prior to the Effective Time. Prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its operations.

SECTION 5.14. Certain Transfer Taxes. Parent shall pay the amount of any documentary, sales, use, real property transfer, real property gains, registration, value-added, transfer, stamp, recording and other similar Taxes, fees, and costs together with any interest thereon, penalties, fines, costs, additions to Tax or additional amounts with respect thereto, imposed in connection with this Agreement or the Merger.

SECTION 5.15. Intellectual Property. If either party learns of the existence of any potential Section 3.14(f) Event, including any contract with the potential to cause a Section 3.14(f) Event, the Company shall use its reasonable best efforts to eliminate the occurrence of or, if not possible, reduce the effect of such situation, and in all instances shall cooperate with the reasonable direction of Parent in connection therewith. Without limiting the foregoing, the Company shall not enter into any contract nor make any other commitment or obligation that may give rise to a potential Section 3.14(f) Event without the prior written consent of Parent.

ARTICLE VI

CONDITIONS TO CONSUMMATION OF THE MERGER

SECTION 6.01. Conditions to Each Party's Obligation To Effect the Merger. The respective obligations of the parties to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of the following conditions:

(a) Requisite Stockholder Approval. The Requisite Stockholder Approval shall have been obtained.

(b) No Injunctions or Restraints; Illegality. No Order issued by any court or agency of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger contemplated by this Agreement shall be in effect. No Law shall have been enacted, entered or promulgated by any Governmental Entity that prohibits or makes illegal consummation of the Merger.

(c) Antitrust Laws. Any applicable waiting period (or extension thereof) under the HSR Act and any other applicable Antitrust Law that, within fifteen (15) days following the date of this Agreement, the parties identify and agree is applicable to the Merger shall have expired or been terminated and the European Commission shall have issued a decision under the EC Merger Regulation declaring the Merger compatible with

the common market and all approvals, clearances, filings and notices required under any other applicable Antitrust Law that, within fifteen (15) days following the date of this Agreement, the parties identify and agree is applicable to the Merger shall have been obtained or made.

SECTION 6.02. Conditions to Obligations of Parent and Merger Sub. The obligation of Parent and Merger Sub to effect the Merger is also subject to the satisfaction, or waiver by Parent, at or prior to the Effective Time, of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Company (i) set forth in Section 3.06(a) (Material Adverse Effect) shall be true and correct in all respects as of the date of this Agreement and as of the Bringdown Date (as defined below) as if made on and as of the Bringdown Date, (ii) set forth in Section 3.01 (Organization and Qualification) (other than the last sentence thereof, and solely with respect to the Company and not to its Subsidiaries), Section 3.03 (Authority for this Agreement; Board Action), Section 3.20 (Opinion) and Section 3.22 (State Takeover Statues Inapplicable; Rights Agreement) of this Agreement, without giving effect to any materiality or "Material Adverse Effect" qualifications therein, shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as if made on and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of such date), (iii) set forth in Section 3.02(a) (Capitalization) (other than the last sentence thereof) shall be true and correct in all respects as of the date of this Agreement and as of the Bringdown Date as if made on and as of the Bringdown Date (except to the extent expressly made as of an earlier date, in which case as of such date) except for *de minimis* failures to be true and correct, and (iv) set forth in this Agreement other than those representations and warranties specifically identified in clauses (i), (ii) and (iii) of this Section 6.02(a), without giving effect to any materiality or "Material Adverse Effect" qualifications therein, shall be true and correct as of the date of this Agreement and as of the Bringdown Date as if made on and as of the Bringdown Date (except to the extent expressly made as of an earlier date, in which case as of such date), except, in the case of this clause (iv), where such failures to be true and correct have not had and are not reasonably likely to have, individually or in the aggregate, a Material Adverse Effect of the type described in clause (a) of the definition thereof. Parent shall have received a certificate signed on behalf of the Company by the Chief Executive Officer or the Chief Financial Officer of the Company to the foregoing effect.

(b) Performance of Obligations of the Company. The Company shall have performed or complied in all material respects with all obligations required to be performed or complied with by it under this Agreement at or prior to the Effective Time; and Parent shall have received a certificate signed on behalf of the Company by the Chief Executive Officer or the Chief Financial Officer of the Company to such effect.

(c) Tax Sharing Agreement. The "Unqualified Tax Opinion" as defined in the Tax Sharing Agreement delivered by the Company's tax counsel to Former Parent on or prior to the date hereof with respect to the Merger pursuant to the requirements of Section 7.02(d) of the Tax Sharing Agreement shall not have been withdrawn, unless such withdrawal arises from any failure of any statement or representation contained in any

representation letter from Parent delivered to the Company's tax counsel in connection with such "Unqualified Tax Opinion" to be true, correct and complete when given or at any time at or prior to the Effective Time (a "Rep Failure"); and provided, further, that no other condition to the obligations of Parent and Merger Sub to effect the Merger contained in Section 6.01 or Section 6.02 of this Agreement, shall be deemed not to have been satisfied by any such withdrawal arising from a Rep Failure or the consequences arising from such withdrawal.

SECTION 6.03. Conditions to Obligations of the Company. The obligation of the Company to effect the Merger is also subject to the satisfaction or waiver by the Company at or prior to the Effective Time of the following conditions:

(a) Representations and Warranties. The representations and warranties of Parent and Merger Sub set forth in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing as if made on and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of such date), except where such failures to be true and correct, individually or in the aggregate, have not had and are not reasonably likely to have a Parent Material Adverse Effect. The Company shall have received a certificate signed on behalf of Parent by a duly authorized executive officer of Parent to the foregoing effect.

(b) Performance of Obligations of Parent and Merger Sub. Parent and Merger Sub shall have performed or complied in all material respects with all obligations required to be performed or complied with by them under this Agreement at or prior to the Effective Time, and the Company shall have received a certificate signed on behalf of Parent by a duly authorized executive officer of Parent to such effect.

ARTICLE VII

TERMINATION; AMENDMENT; WAIVER

SECTION 7.01. Termination. This Agreement may be terminated and the Merger may be abandoned at any time (notwithstanding adoption of the agreement of merger (as such term is used in Section 251 of the Corporation Law) contained in this Agreement by the Requisite Stockholder Approval) prior to the Effective Time (with any termination by Parent also being an effective termination by Merger Sub):

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

(b) by either the Company or Parent, if any court of competent jurisdiction or other Governmental Entity shall have issued an Order, or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such Order or other action shall have become final and non-appealable; provided, that the party seeking to terminate this Agreement pursuant to this Section 7.01(b) shall have used its reasonable best efforts to contest, appeal and remove such Order or action and shall not be in violation of Section 5.04 or otherwise in material violation of this Agreement;