# ESPEED INC

## FORM 10-Q
(Quarterly Report)

## Filed 8/14/2000 For Period Ending 6/30/2000

| | |
|---|---|
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| CIK | 0001094831 |
| Industry | Consumer Financial Services |
| Sector | Financial |
| Fiscal Year | 12/31 |

# U.S. SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

# FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2000

OR

( ) TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES

**EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

*Commission file number 0-28191*

# eSpeed, Inc.

(Exact Name of Registrant as Specified in Its Charter)

| Delaware | 13-4063515 |
|---|---|
| (State or Other Jurisdiction of Incorporation or Organization) | (I.R.S. Employer Identification No.) |

**One World Trade Center, 103rd Floor**
(Address of Principal Executive Offices)

New York, New York 10048
(City, State, Zip Code)

(212) 938-3773
(Registrant's Telephone Number, Including Area Code)

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

| Class | Outstanding at July 27, 2000 |
|---|---|
| Class A Common Stock, par value $.01 per share | 16,160,238 |
| Class B Common Stock, par value $.01 per share | 35,685,581 |

Part I-FINANCIAL INFORMATION

## PART I. FINANCIAL INFORMATION

### ITEM 1. Financial Statements

eSpeed, Inc. and Subsidiaries
**CONSOLIDATED STATEMENTS OF FINANCIAL CONDITION**
As of June 30, 2000 and December 31, 1999

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Assets

| | June 30, 2000 (unaudited) | December 31, 1999 |
|---|---|---|
| Cash | $ 564,995 | $ 201,001 |
| Securities purchased under agreements to resell | 147,141,828 | 134,644,521 |
| Fixed assets, at cost | 22,108,664 | 12,556,627 |
| Less accumulated depreciation and amortization | (5,305,775) | (3,086,555) |
| Fixed assets, net | 16,802,889 | 9,470,072 |
| Prepaid expenses, principally computer maintenance agreements | 1,933,053 | 11,495 |
| Other assets | 833,679 | -- |
| Total assets | $ 167,276,444 | $ 144,327,089 |

Liabilities and Stockholders' Equity

| | | |
|---|---|---|
| Liabilities: | | |
| Payable to affiliates, net | $ 8,428,877 | $ 6,743,929 |
| Accounts payable and accrued liabilities | 12,915,537 | 2,071,347 |
| Total liabilities | 21,344,414 | 8,815,276 |
| Stockholders' Equity: | | |
| Preferred stock, par value $.01 per share; 50,000,000 shares authorized, no shares issued or outstanding | -- | -- |
| Class A common stock, par value $.01 per share; 200,000,000 shares authorized; 16,103,490 and 10,350,000 shares issued and outstanding | 161,035 | 103,500 |
| Class B common stock, par value $.01 per share; 100,000,000 shares authorized; 35,685,581 and 40,650,000 shares issued and outstanding | 356,856 | 406,500 |
| Additional paid in capital | 201,954,111 | 147,588,726 |
| Accumulated deficit | (56,539,972) | (12,586,913) |
| Total stockholders' equity | 145,932,030 | 135,511,813 |
| Total liabilities and stockholders' equity | $ 167,276,444 | $ 144,327,089 |

See notes to consolidated financial statements

eSpeed, Inc. and Subsidiaries
**CONSOLIDATED STATEMENTS OF OPERATIONS**
for the three months ended June 30, 2000 and June 25, 1999 (unaudited)

| | For the three months ended June 30, 2000 | For the three months ended June 25, 1999 |
|---|---|---|
| Revenues: | | |
| Transaction revenues | $ 24,471,969 | $ 6,430,778 |
| Interest income | 2,085,751 | -- |
| System services fees from affiliates | 3,100,997 | 4,138,578 |
| Total revenues | 29,658,717 | 10,569,356 |
| Expenses: | | |
| Compensation and employee benefits | 14,440,660 | 6,403,446 |
| Occupancy and equipment | 4,955,490 | 2,854,350 |
| Professional and consulting fees | 3,299,605 | 1,596,097 |
| Communications and client networks | 1,009,638 | 1,103,081 |
| Fulfillment service fees | 7,156,955 | 403,715 |
| Administrative fees paid to affiliates | 1,708,428 | 461,266 |
| Marketing | 3,670,492 | -- |
| Non-cash business partner warrants | 29,805,305 | -- |
| Other | 2,531,786 | 500,034 |
| Total expenses | 68,578,359 | 13,321,989 |
| Loss before provision (benefit) for income taxes | (38,919,642) | (2,752,633) |
| Provision (benefit) for income taxes: | | |
| Federal | -- | -- |
| State and local | 107,500 | (68,849) |
| Total tax provision/(benefit) | 107,500 | (68,849) |
| Net loss | $(39,027,142) | $ (2,683,784) |
| Per share data | | |
| Basic and diluted net loss per share | $ (.76) | $ (.06) |
| Weighted average shares of common stock outstanding | 51,225,449 | 44,000,000 |

See notes to consolidated financial statements

eSpeed, Inc. and Subsidiaries
**CONSOLIDATED STATEMENTS OF OPERATIONS**
for the six months ended June 30, 2000 and the period from March 10, 1999

(date of commencement of operations) to June 25, 1999 (unaudited)

| | For the six months ended June 30, | For the period ended June 25, |
|---|---|---|
| Revenues: | 2000 | 1999 |
| Transaction revenues | $ 43,718,365 | $ 7,551,312 |
| Interest income | 3,928,525 | -- |
| System services fees from affiliates | 6,262,054 | 4,966,294 |
| Total revenues | 53,908,944 | 12,517,606 |
| Expenses: | | |
| Compensation and employee benefits | 25,778,446 | 7,671,284 |
| Occupancy and equipment | 9,655,239 | 3,530,373 |
| Professional and consulting fees | 5,758,693 | 1,782,082 |
| Communications and client networks | 1,849,332 | 1,324,240 |
| Fulfillment service fees | 12,232,756 | 430,532 |
| Administrative fees paid to affiliates | 3,312,579 | 554,967 |
| Marketing | 4,799,565 | -- |
| Non-cash business partner warrants | 29,805,305 | -- |
| Other | 4,470,088 | 515,269 |
| Total expenses | 97,662,003 | 15,808,747 |
| Loss before provision (benefit) for income taxes | (43,753,059) | (3,291,141) |
| Provision (benefit) for income taxes: | | |
| Federal | -- | -- |
| State and local | 200,000 | (82,319) |
| Total tax provision/(benefit) | 200,000 | (82,319) |
| Net loss | $(43,953,059) | $ (3,208,822) |
| Per share data | | |
| Basic and diluted net loss per share | $ (.86) | $ (.07) |
| Weighted average shares of common stock outstanding | 51,112,724 | 44,000,000 |

See notes to consolidated financial statements

eSpeed, Inc. and Subsidiaries
**CONSOLIDATED STATEMENTS OF CASH FLOWS**
for the six months ended June 30, 2000 and the period from March 10, 1999

(date of commencement of operations) to June 25, 1999 (unaudited)

| Cash flows from operating activities: | For the six months ended June 30, 2000 | For the period ended June 25, 1999 |
|---|---|---|
| Net loss | $(43,953,059) | $ (3,208,822) |
| Non-cash items included in net loss: | | |
| Depreciation and amortization | 1,537,736 | 1,046,350 |
| Issuance of non-cash business partner warrants | 29,805,305 | -- |
| Increase in operating assets: | | |
| Prepaid expenses | (1,921,558) | (1,150,582) |
| Other assets | (833,679) | -- |
| Increase (decrease) in operating liabilities: | | |
| Payable to affiliates, net | 1,684,948 | 2,624,593 |
| Accounts payable and accrued liabilities | 10,412,161 | 1,840,302 |
| Cash (used in) provided by operating activities | (3,268,146) | 1,151,841 |
| Cash flows from investing activities: | | |
| Increase in securities purchased under agreements to resell | (12,497,307) | -- |
| Purchases of fixed assets | (8,870,553) | (1,151,841) |
| Cash used in investing activities | (21,367,860) | (1,151,841) |
| Cash flows from financing activities: | | |
| Proceeds from issuance of securities | 25,000,000 | -- |
| Proceeds from capital contributions | -- | 25,000 |
| Cash provided by financing activities | 25,000,000 | 25,000 |
| Net increase in cash | 363,994 | 25,000 |
| Cash balance, beginning of period | 201,001 | -- |
| Cash balance, end of period | $ 564,995 | $ 25,000 |

See notes to consolidated financial statements

(unaudited)

1. Introduction and Basis of Presentation

eSpeed, Inc. ("eSpeed" or, together with its wholly owned subsidiaries, the "Company") is a leading provider of interactive business-to-business electronic marketplace solutions designed to enable market participants to trade financial and non-financial products more efficiently and at a lower cost than traditional trading environments permit. eSpeed commenced operations on March 10, 1999 as a division of Cantor Fitzgerald Securities ("CFS"). eSpeed is a Delaware corporation that was incorporated on June 3, 1999. In December 1999, the Company completed its initial public offering (the "Offering"). eSpeed is a majority owned subsidiary of CFS, which in turn is a 99.5% owned subsidiary of Cantor Fitzgerald, L.P. ("CFLP", or together with its subsidiaries, "Cantor"). The accompanying financial statements include activities of the Company while operating as a division of CFS from March 10, 1999 to the date of the Offering.

The Company's financial statements have been prepared in accordance with the rules and regulations of the Securities Exchange Commission (the "SEC") and reflect all normal recurring adjustments which are, in the opinion of management, necessary for a fair presentation of the results for the interim periods presented. Pursuant to such rules and regulations, certain footnote disclosures, which are normally required under generally accepted accounting principles, have been omitted. It is recommended that these consolidated financial statements be read in conjunction with the audited consolidated financial statements included in the Company's Annual Report on Form 10-K for the period ended December 31, 1999. The Consolidated Statement of Financial Condition at December 31, 1999 was derived from audited financial statements. The results of operations for any interim period are not necessarily indicative of results for the full year.

2. Fixed Assets

| Fixed assets consist of the following: | June 30, 2000 | December 31, 1999 |
|---|---|---|
| Computer and communication equipment | $ 15,449,910 | $ 9,544,265 |
| Software, including software development costs | 6,658,754 | 3,012,362 |
| | 22,108,664 | 12,556,627 |
| Less accumulated depreciation and amortization | (5,305,775) | (3,086,555) |
| Fixed assets, net | $ 16,802,889 | $ 9,470,072 |

3. Income Taxes

Since the date of the Offering, the Company has been subject to income tax as a corporation. The Company has available $3,785,007 of United States net operating losses to offset future United States source income. This net operating loss can be carried forward through 2015. In addition, the Company, through its wholly-owned subsidiary, eSpeed International Limited, has net operating losses of $14,149,798 which will be available on an indefinite carry-forward basis to offset future income in the United Kingdom.

(unaudited)

4. Commitments and Contingencies

Legal Matters: In February 1998, Market Data Corporation contracted with Chicago Board Brokerage (a company controlled by the Chicago Board of Trade and Prebon Yamane) to provide the technology for an electronic trading system to compete with Cantor's United States Treasury brokerage business. Market Data Corporation is controlled by Iris Cantor and Rodney Fisher, her nephew-in-law. Iris Cantor, a company under the control of Iris Cantor referred to herein as Cantor Fitzgerald Incorporated ("CFI") and Rodney Fisher are limited partners of CFLP.

In April 1998, CFLP filed a complaint in the Delaware Court of Chancery against Market Data Corporation, Iris Cantor, CFI, Rodney Fisher and Chicago Board Brokerage seeking an injunction and other remedies. The complaint alleges that Iris Cantor, CFI and Rodney Fisher violated certain duties, including fiduciary duties under Cantor's partnership agreement, due to their competition with CFLP with respect to the electronic trading system mentioned above. The complaint further alleges that Market Data Corporation and Chicago Board Brokerage tortiously interfered with Cantor's partnership agreement and aided and abetted Iris Cantor's, CFI's and Rodney Fisher's breaches of fiduciary duty. Iris Cantor, CFI and Rodney Fisher counterclaimed seeking, among other things, (1) to reform agreements they have with CFLP and (2) a declaration that CFLP breached the implied covenant of good faith and fair dealing. Cantor has agreed to indemnify the Company for any liabilities that are incurred with respect to any current or future litigation involving (1) Market Data Corporation, (2) Iris Cantor, (3) CFI or (4) Rodney Fisher.

CFLP settled its dispute with Chicago Board Brokerage in April 1999, and Chicago Board Brokerage subsequently announced it was disbanding its operations. On March 13, 2000, the Delaware Court of Chancery ruled in favor of CFLP, finding that Iris Cantor, CFI and Rodney Fisher had breached the Partnership Agreement of CFLP, and that Market Data Corporation had aided and abetted that breach. The court awarded CFLP declaratory judgment relief and court costs and attorneys' fees. Counsel for the defendants have expressed their intentions to appeal this result. The defendants moved for reargument with respect to the award of fees and costs. CFLP believes Market Data Corporation's technology for electronic trading systems would be of substantial assistance to competitors in the wholesale market if provided to them. Final judgment is expected to be entered shortly. Counsel for the defendants have expressed their intentions to appeal this result (a previous appeal was dismissed as premature). A hearing on issues relating to CFLP's final relief took place on June 14, 2000. The parties are awaiting the entry by the Court of a final declaratory judgment and/or award of monetary damages.

Two related actions are pending in New York. In a case pending in the Supreme Court of New York, New York County, plaintiff CFLP alleges, among other things, that defendants Market Data Corporation, CFI, Iris Cantor and Rodney Fisher misused confidential information of CFLP in connection with the above-mentioned provision of technology to Chicago Board Brokerage. In a case pending in the United States District Court for the Southern District of New York, CFI and Iris Cantor allege, among other things, that certain senior officers of CFLP breached fiduciary duties they owed to CFI. The allegations in this lawsuit relate to several of the same events underlying the court proceedings in Delaware.

Neither of these two cases had been pursued prior to the March 13, 2000 decision in the court proceedings in Delaware. On May 15, 2000, the senior officers of CFLP who are

defendants in the federal action in New York moved to dismiss the complaint against them on several grounds, including inter alia that the March 13, 2000 decision from the Delaware Court of Chancery collaterally estops Iris Cantor and CFI from relitigating matters that were adjudicated against them in Delaware. Iris Cantor and CFI filed papers opposing the motion to dismiss on June 5, 2000, and the defendants filed a reply on June 15, 2000.

On May 16, 2000, CFI filed an action in Delaware Superior Court, New Castle County, against CFLP and CF Group Management, Inc. ("CFGM") seeking payment of $40 million allegedly due pursuant to a settlement agreement in an earlier litigation between the parties. The complaint alleges that CFI is entitled to a one-time $40 million payment upon "an initial public offering of CFLP or of a successor to a material portion of the assets and business of CFLP..." CFI alleges that the initial public offering of eSpeed on December 10, 1999 triggers the payment obligation under the settlement agreement.

The attorneys for CFI, Iris Cantor and Rod Fisher contended that conditions placed on their clients' acceptance of an Offer to Exchange, dated May 8, 2000, pursuant to which certain partnership units in CFLP could be exchanged for "e-units", which are entitled to receive distributions of eSpeed stock from CFLP on certain future dates, subject to certain conditions (the "Exchange Offer"), constituted a breach of fiduciary duty owed their clients by CFGM. The attorneys for CFI and Iris Cantor (the "CFI Defendants") also contended that the Exchange Offer violated CFGM's and CFLP's duties under a settlement agreement in an earlier litigation between the parties and under CFLP's partnership agreement. On June 12, 2000, CFLP and CFGM filed a lawsuit in the Delaware Court of Chancery against Iris Cantor, in her individual and trustee capacities, CFI and Rodney Fisher, seeking a declaratory judgment that, with respect to both the Exchange Offer and amendments to the partnership agreement effected in connection therewith, CFGM has not breached its fiduciary duty, and CFGM and CFLP have not otherwise violated Delaware law. CFGM and CFLP also requested that the Court declare that the amendments are valid. On July 18, 2000, the CFI Defendants and Mr. Fisher filed their respective answers, affirmative defenses, counterclaims and third-party claims, and named Howard Lutnick as a third-party defendant. In addition, Mr. Fisher has named eSpeed as a third-party defendant and contends that it aided and abetted breaches of fiduciary duty by CFGM and Howard Lutnick. The CFI Defendants and Mr. Fisher seek, among other things, CFGM's removal as Managing General Partner of CFLP and a declaration that the amendments are null and void.

Although the Company does not expect to incur any losses with respect to the pending lawsuits or supplemental allegations surrounding Cantor's partnership agreement, Cantor has agreed to indemnify the Company with respect to any liabilities the Company incurs as a result of such lawsuits or allegations.

On June 21, 1999, Cantor and its affiliate, CFPH, LLC, brought suit against Liberty Brokerage Investment Corporation and Liberty Brokerage Inc. in the United States District Court for the District of Delaware for infringement of the Fraser et al. U.S. patent 5,905,974, entitled "Automated Auction Protocol Processor." Cantor alleged in the complaint that Liberty was infringing the `974 patent by making, using, selling and/or offering for sale systems and methods that embody or use the inventions claimed in the `974 patent. On August 10, 1999, Cantor and CFPH, L.L.C. voluntarily dismissed the suit without prejudice. Subsequently, on August 10, 1999, Liberty filed an action for declaratory judgment in the United States District Court for the District of Delaware against Cantor and two of its affiliates, CFS and CFPH, LLC, claiming that the `974 patent was invalid, unenforceable and not infringed by Liberty. On October 12, 1999, Cantor, CFS and CFPH, LLC moved (1) to dismiss all claims against CFS for failure to state a

claim upon which relief can be granted and (2) to dismiss the action as against Cantor, CFS and CFPH, LLC for lack of an actual case or controversy within the meaning of 28 U.S.C. Section 2201. On November 22, 1999, the Court granted the motion to dismiss the action as against CFS, and denied the motion to dismiss the action as against Cantor and CFPH, LLC. On January 5, 2000, Liberty filed an Amended Complaint naming eSpeed as a defendant. On January 19, 2000, Cantor, CFPH, LLC and eSpeed filed a Second Renewed Motion to Dismiss the action. On March 8, 2000, oral arguments took place on the Second Renewed Motion to Dismiss, which the court denied on June 13, 2000. On July 15, 2000, the parties to the action filed a Joint Stipulated Dismissal with Prejudice for the declaratory judgment action brought by Liberty. It is expected that the Court will enter the order of dismissal by the end of August 2000. Upon entry of the order, the litigation will be terminated.

Although the ultimate outcome of these actions cannot be ascertained at this time and the results of legal proceedings cannot be predicted with certainty, it is the opinion of management that the resolution of these matters will not have a material adverse effect on the financial condition or results of operations of the Company.

5. Related Party Transactions

The Company had overnight securities purchased under agreements to resell ("Resale Agreements", or "Reverse Repurchase Agreements") with CFS totaling $147,141,828 and $134,644,521, including accrued interest, at June 30, 2000 and December 31, 1999, respectively. Under the terms of the agreement, the securities collateralizing the Resale Agreements are held under a custodial arrangement with a third party bank.

Under a Joint Services Agreement between the Company and Cantor, the Company earns transaction revenues equal to a percentage of Cantor's commission revenues on customer transactions for services provided by the Company. The percentage of the transaction revenues ranges from 2.5% to 100%, depending on the type of electronic services provided for the transaction. Revenues from such transactions during the three months ended June 30, 2000 and June 25, 1999 totaled $24,471,969 and $6,430,778, respectively. Revenues from such transactions for the six months ended June 30, 1999 and for the period March 10, 1999 to June 25, 1999 totaled $43,718,365 and $7,551,312, respectively.

On certain transactions (those in which the Company receives 100% of the commission revenue share), Cantor provides the Company with fulfillment services for which Cantor is paid a fee of 20% or 35% of the transaction revenues earned on the transaction. Charges to the Company from Cantor for such fulfillment services during the three months ended June 30, 2000 and June 25, 1999 totaled $7,156,955 and $403,715, respectively. Charges to the Company from Cantor for such fulfillment services during the six months ended June 30, 2000 and for the period March 10, 1999 to June 25, 1999 totaled $12,232,756 and $430,532, respectively.

Under an Administrative Services Agreement between the Company and Cantor, the Company provides network, data center and server administration support and other technology services to Cantor. The Company charges Cantor for these services commensurate with its costs of providing these services. System services fees earned during the three months ended June 30, 2000 and June 25, 1999 totaled $3,100,997 and $4,138,578, respectively. System services fees earned during the six months ended June 30, 2000 and for the period March 31, 1999 to June 25, 1999 totaled $6,262,054 and $4,966,294, respectively.

Under an Administrative Services Agreement, Cantor provides various administrative services to the Company, including accounting, tax, sales and marketing, legal and facilities management. The Company is required to reimburse Cantor for the cost of providing such services. The costs represent the direct and indirect costs of providing such services and are determined based upon the time incurred by the individual performing such services. Management believes that this allocation methodology is reasonable. The Administrative Services Agreement has a three-year term, which will renew automatically for successive one-year terms unless cancelled upon six months' prior notice by either the Company or Cantor. The Company incurred administrative fees for such services during the three months ended June 30, 2000 and June 25, 1999 totaling $1,708,428 and $461,266, respectively. The Company incurred administrative fees for such services during the six months ended June 30, 2000 and during the period March 10, 1999 to June 25, 1999 totaling $3,312,579 and $554,967, respectively.

6. Regulatory Capital Requirements

Through its subsidiary, eSpeed Government Securities, Inc., effective December 2, 1999, the Company is subject to SEC broker-dealer regulation under
Section 15C of the Securities Exchange Act of 1934, which requires the maintenance of minimum liquid capital, as defined. At June 30, 2000, eSpeed Government Securities, Inc.'s liquid capital of $13,913,900 was in excess of minimum requirements by $13,888,900.

Additionally, the Company's subsidiary, eSpeed Securities, Inc., effective December 1, 1999, is subject to SEC broker-dealer regulation under Rule 17a-5 of the Securities Exchange Act of 1934, which requires the maintenance of minimum net capital and requires that the ratio of aggregate indebtedness to net capital, both as defined, shall not exceed 8 to 1. At June 30, 2000, eSpeed Securities, Inc. had net capital of $1,914,868, which was $1,768,381 in excess of its required net capital of $146,487, and eSpeed Securities, Inc.'s net capital ratio was 0.61 to 1.

7. Options and Warrants

During the six months ended June 30, 2000, the Company issued 450,126 options to employees. Of these options, 325,126 vest ratably over the four successive anniversaries of the grant date and 125,000 vest ratably over the five successive anniversaries of the grant date. The options had an estimated fair value of $12,333,153 as of the grant date. No options or warrants were exercised or expired and 99,137 options were forfeited during the six months ended June 30, 2000.

Had the Company accounted for its options granted in its stock-based compensation plan based on the fair value of awards at grant date in a manner consistent with the methodology of SFAS 123, the Company's net loss and loss per common share for the three months ended June 30, 2000 would have increased by $6,047,830 and $0.12, respectively. The Company's net loss and net loss per common share for the six months ended June 30, 2000 would have increased by $11,677,284 and $0.23, respectively. As of June 30, 2000, the weighted average remaining contractual life of options and warrants outstanding was approximately 8 3/4 years; and options for 530,001 shares were currently exercisable.

As discussed in Note 9 below, on June 5, 2000, the Company issued warrants exercisable for the purchase of up to 1,333,332 shares of Class A common stock. The warrants have a per share

exercise price of $35.203125, a ten year term and are exercisable during the last 4 1/2 years of the term, subject to acceleration under certain prescribed circumstances.

8. Segment and Geographic Data

Segment Information: The Company currently operates its business in one segment, that of operating interactive electronic business-to-business vertical marketplaces for the trading of financial and non-financial products. This segment comprised approximately 83% of revenues for the three months ended June 30, 2000 and 61% of revenues for the three months ended June 25, 1999. This segment comprised approximately 81% of revenues for the six months ended June 30, 2000 and 60% of revenues for the period from March 10, 1999 to June 25, 1999. The remainder of the Company's revenues was derived from system services fees from Cantor and interest income.

Geographic Information: The Company operates in the Americas, Europe and Asia. Revenue attribution for purposes of preparing geographic data is principally based upon the marketplace where the financial product is traded, which, as a result of regulatory jurisdiction constraints in most circumstances, is also representative of the location of the client generating the transaction resulting in commissionable revenue. The information that follows, in management's judgment, provides a reasonable representation of the activities of each region as of and for the periods indicated.

| Transaction Revenues: | Three months ended June 30, 2000 | Three months ended June 25, 1999 | Six months ended June 30, 2000 | Period from March 10, 1999 to June 25, 1999 |
|---|---|---|---|---|
| Europe | $ 3,984,135 | $ 1,837,281 | $ 7,126,980 | $ 2,222,728 |
| Asia | 360,585 | 152,343 | 675,785 | 184,522 |
| Total Non-Americas | 4,344,720 | 1,989,624 | 7,802,765 | 2,407,250 |
| Americas | 20,127,250 | 4,441,154 | 35,915,601 | 5,144,062 |
| Total | $ 24,471,970 | $ 6,430,778 | $ 43,718,366 | $ 7,551,312 |

Average long-lived assets

| | June 30, 2000 | Dec. 31, 1999 |
|---|---|---|
| Europe | $ 1,906,464 | $ 2,257,914 |
| Asia | 832,057 | 925,790 |
| Total Non-Americas | 2,738,521 | 3,183,704 |
| Americas | 10,397,982 | 5,236,613 |
| Total | $ 13,136,503 | $ 8,420,317 |

(unaudited)

9. Subscription Agreement

On April 26, 2000, the Company entered into a Subscription Agreement (each a "Subscription Agreement" and together, the "Subscription Agreements") with each of The Williams Companies, Inc. ("Williams") and Dynegy, Inc. ("Dynegy") for the purchase by each of a Unit consisting of (i) 789,071 shares (the "Shares") of the Company's Class A Common Stock, par value $0.01 per share (the "Class A common stock"), and (ii) warrants (the "Warrants") exercisable for the purchase of up to 666,666 shares of Class A common stock, for an aggregate purchase price for each Unit of $25,000,000. The Warrants have a per share exercise price of $35.203125, a ten year term and are exercisable during the last 4 1/2 years of the term, subject to acceleration under certain prescribed circumstances intended to provide incentives to Williams and Dynegy to invest in four Qualified Verticals as described below. The purchase and sale of the Units was consummated (the "Closing") in June 2000. The Shares will not be transferable prior to the first anniversary of the Closing. As required by Generally Accepted Accounting Principles, the Company recorded a one-time, non-cash charge of $29,805,305 at the time of the Closing to reflect the cost of the Warrants.

Each of Williams and Dynegy agreed in its Subscription Agreement that, subject to the satisfaction of certain conditions, it will invest $2,500,000 in at least four entities (the "Qualified Verticals") to be formed by the Company and Cantor within 12 months of the Closing (subject to extension for a period not to exceed six months under certain prescribed circumstances, the "Investment Period"). It is expected that each Qualified Vertical will be jointly owned by industry market participants, the Company and Cantor and will establish a new vertical electronic and telephonic marketplace with the Company in which such Qualified Vertical will broker and possibly clear transactions for the industry market participants and other clients. It is anticipated that the first Qualified Vertical to be so formed will be an electronic and telephonic marketplace for North American wholesale transactions in natural gas, electricity, coal and sulfur dioxide and nitrogen dioxide emissions. Products that may be traded on other Qualified Verticals include natural gas liquids, petrochemicals, crude oil and bandwidth. Each of Williams and Dynegy will not necessarily invest in the same Qualified Verticals as the other. The Subscription Agreements further provide that, in connection with up to four additional Qualified Verticals (the "Additional Investment Right"), Williams and, subject to certain limitations, Dynegy, will be entitled to invest $25,000,000 in shares of Class A common stock at a 10% discount to the average trading price for the 10 trading days preceding the date of such party's investment in such new Qualified Vertical, or, under certain circumstances, the public announcement of the formation of such Qualified Vertical. The Additional Investment Right is subject to stockholder approval if required, and, in such event, the Company has agreed to submit for a vote of its common stockholders, at its next annual meeting of stockholders, the approval of the issuance of any such shares and Cantor has agreed to vote the shares of common stock of the Company beneficially owned by it in favor of such issuance. Any shares of Class A common stock purchased pursuant to the Additional Investment Right will not be transferable prior to the first anniversary of issuance.

Contemporaneously with the execution of the Subscription Agreements, the Company entered into a stock purchase agreement with Cantor providing, as amended, for the purchase by the Company from Cantor (i) at the Closing, of 789,071 shares of Class A common stock of the Company, representing half of the number of shares of the Class A common stock being sold by the Company to Williams and

(unaudited)

Dynegy pursuant to the Subscription Agreements, for a purchase price of $25,000,000 and (ii) of half of the number of shares purchased by Williams and Dynegy, in the aggregate, each time an Additional Investment Right is exercised for the same purchase price per share as is paid by Williams and Dynegy at the time.

10. Subsequent Event

On July 21, 2000, Cantor Fitzgerald Partners, an affiliate of eSpeed, purchased the U.S. municipal bond brokerage business and certain other assets of Municipal Partners, Inc. for approximately $1,500,000 and eSpeed issued to Municipal Partners Inc.'s shareholders 28,374 shares of the Company's Class A common stock with a closing date value of $1,500,000. Although the purchased assets are owned by Cantor Fitzgerald Partners, eSpeed is entitled to 100% of the revenues generated from any fully electronic transaction effected in a marketplace utilizing the eSpeed(sm) system by its affiliates pursuant to a Joint Services Agreement, as amended, among eSpeed and its affiliates, including Cantor Fitzgerald Partners. In addition, in order to provide incentives to promote the use of the eSpeed(sm) trading platform in connection with the purchased business, eSpeed sold 28,374 shares of its Class A common stock to certain employees in exchange for interest-bearing promissory notes that are due July 21, 2010 (the "Pledged Shares"). The Pledged Shares may be redeemed, at the option of eSpeed, by cancellation of the related note(s) if eSpeed does not receive $3,000,000 in electronic transaction revenues generated by Cantor's municipal bond brokerage business for a 12-month period within three years of July 21, 2000.

**ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

The information in this report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements are based upon current expectations that involve risks and uncertainties. Any statements contained herein that are not statements of historical fact may be deemed to be forward-looking statements. For example, words such as "may," "will," "should," "estimates," "predicts," "potential," "continue," "strategy," "believes," "anticipates," "plans," "expects," "intends" and similar expressions are intended to identify forward-looking statements. Our actual results and the timing of certain events may differ significantly from the results discussed in the forward-looking statements. Factors that might cause or contribute to such a discrepancy include, but are not limited to, those discussed under "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 1999. The following discussion is qualified in its entirety by, and should be read in conjunction with, the more detailed information set forth in our financial statements and the notes thereto appearing elsewhere in this filing.

**Overview**

eSpeed, Inc. was incorporated on June 3, 1999 as a Delaware corporation. Our wholly owned subsidiaries are eSpeed Securities, Inc., eSpeed Government Securities, Inc., eSpeed Markets, Inc. and eSpeed International Limited. Prior to our initial public offering, we were a wholly-owned subsidiary of, and we conducted our operations as a division of, Cantor Fitzgerald Securities, which in turn is a 99.5%-owned subsidiary of Cantor Fitzgerald, L.P. (collectively with its affiliates, "Cantor"). We commenced operations as a division of Cantor on March 10, 1999, the date the first fully electronic transaction using our eSpeed(sm) system was executed. Cantor has been developing systems to promote fully electronic marketplaces since the early 1990s. Since January 1996, Cantor has used our eSpeed(sm) system internally to conduct electronic trading.

Concurrent with our initial public offering in December 1999, Cantor contributed to us, and we acquired from Cantor, certain of our assets. These assets primarily consist of proprietary software, network distribution systems, technologies and other related contractual rights that comprise our eSpeed(sm) system.

## Results of Operations

### For the Three Months Ended June 30, 2000 and June 25, 1999

| Revenues | Three months ended | |
|---|---|---|
| | June 30, 2000 | June 25, 1999 |
| Transaction Revenues: | | |
| Fully electronic transactions ..... | $20,413,009 | $ 1,153,471 |
| Voice-assisted brokerage transactions .... | 3,370,116 | 3,900,345 |
| Screen assisted open outcry transactions.. | 688,844 | 1,376,962 |
| Total transaction revenues ..... | 24,471,969 | 6,430,778 |
| Interest income ..... | 2,085,751 | -- |
| System services fees ..... | 3,100,997 | 4,138,578 |
| Total revenues ..... | $29,658,717 | $10,569,356 |

### Transaction Revenues

We operate interactive electronic marketplaces. We have entered into a Joint Services Agreement with Cantor under which we and Cantor have agreed to collaborate to provide brokerage and related services to clients in multiple electronic markets for transactions in securities and other financial products. In addition, we may, in our discretion, collaborate on operating markets for non-financial products. Under the Joint Services Agreement, we own and operate the electronic trading systems and are responsible for providing electronic brokerage services, and Cantor provides voice-assisted brokerage services, fulfillment services, such as clearance and settlement, and related services, such as credit risk management services, oversight of client suitability and regulatory compliance, sales positioning of products and other services customary to marketplace intermediary operations. Under this agreement, Cantor and we have agreed to share revenues derived from transactions effected in the marketplaces in which we collaborate and other specified markets.

Generally, if the transactions:

o are effected in a marketplace in which we collaborate with Cantor, are fully electronic transactions and relate to financial products, such as fixed income securities, futures contracts, derivatives and commodities, that are not traded on the Cantor Exchange(sm), or products that are traded on the Cantor Exchange(sm), then we receive the aggregate transaction revenues and pay to Cantor service fees equal to 35% and 20% of the transaction revenues, respectively.

o are effected in a marketplace in which we collaborate with Cantor, involve voice-assisted brokerage services that Cantor provides and the transactions relate to (1) financial products that are not traded on the Cantor Exchange(sm), or (2) products that are traded on the Cantor Exchange(sm), then, in the

case of a transaction described in (1), Cantor receives the aggregate transaction revenues and pays to us a service fee equal to 7% of the transaction revenues, and, in the case of a transaction described in (2), we receive the aggregate transaction revenues and pay to Cantor a service fee equal to 55% of the transaction revenues.

o are effected in a marketplace in which we do not collaborate with Cantor, but in which we do provide electronic brokerage services, and (1) the transaction relates to a financial product, then we will receive the aggregate transaction revenues and pay to Cantor a fulfillment service fee equal to 20% of the transaction and data revenues paid to or received by us or (2) the transaction relates to a non-financial product, then we will receive all of the transaction revenues.

o are not effected through an electronic marketplace, but are electronically assisted, such as screen-assisted open outcry transactions, then Cantor receives the aggregate transaction revenues and pays to us a service fee equal to 2.5% of the transaction revenues.

We are pursuing an aggressive strategy to convert most of Cantor's financial marketplace products to our eSpeed(sm) system and, with the assistance of Cantor, to continue to create new markets and convert new clients to our eSpeed(sm) system. The process of converting these marketplaces includes modifying existing Cantor trading systems to allow for transactions to be entered directly from a client location, signing an agreement with the client, installing the hardware and software at the client location and establishing lines between us and the client. Other than Cantor, no client of ours accounted for more than 10% of our transaction revenues for the three and six months ended June 30, 2000.

For the three months ended June 30, 2000, we earned transaction revenues of $24,471,969 as compared to $6,430,778 for the three months ended June 25, 1999, an increase of 281%. The growth in revenues for the three-month period was attributable to the continued roll out of electronic marketplaces and an increase in the number of clients electronically trading through our eSpeed(sm) system. As of June 30, 2000, we had converted 32 out of over 40 marketplaces to our eSpeed(sm) system. In addition, revenues for the three months ended June 30, 2000 were positively impacted by the high level of volatility in the fixed income markets.

It is anticipated that as new marketplaces are converted to our eSpeed(sm) system and additional clients utilize the eSpeed(sm) system, we will increase income generated outside of fixed income and other financial service marketplaces. Our revenues are currently highly dependent on transaction volume in the fixed income markets globally. Accordingly, among other things, equity market volatility, economic and political conditions in the United States and elsewhere in the world, concerns over inflation and wavering institutional/consumer confidence levels, the availability of cash for investment by mutual funds and other wholesale and retail investors, rising interest rates, fluctuating exchange rates, legislative and regulatory changes and currency values may have an impact on our volume of transactions.

The financial markets in which we operate are generally affected by seasonality. Traditionally, the financial markets around the world experience lower volume during the summer and at the end of the year due to a general slow down in the business environment, and therefore, transaction volume levels may decrease during those periods.

**Interest Income**

The net proceeds of our initial public offering on December 10, 1999 and the net proceeds received from the sale of Class A common stock to Dynegy and Williams, net of operating expenses paid, have been invested by us in reverse repurchase agreements which are fully collateralized by U.S. Government securities held in a custodial account at The Chase Manhattan Bank. For the three months ended June 30, 2000, these investments generated interest income of $2,085,751, at an average interest rate of 6.1%. We had no interest income for the three months ended June 25, 1999.

**System Services Fees**

We have agreed to provide to Cantor technology support services at cost, including (1) systems administration, (2) internal network support, (3) support and procurement for desktops of end-user equipment, (4) operations and disaster recovery services, (5) voice and data communications, (6) support and development of systems for clearance and settlement services, (7) systems support for Cantor brokers, (8) electronic applications systems and network support for Cantor's unrelated dealer businesses with respect to which we will not collaborate with Cantor and (9) provision and/or implementation of existing electronic applications systems, including improvements and upgrades thereto, and use of the related intellectual property rights, having potential application in a business. System services fees from Cantor for the three months ended June 30, 2000 were $3,100,997, and represented 10% of total revenues for the period. This compares with system services fees for the three months ended June 25, 1999 of $4,138,578, which represented 39% of total revenues for the period. System services fees have decreased 25% for the period primarily as a result of a decrease in Cantor's brokerage personnel. As a percentage of revenues, the fees have decreased as a result of our increased transaction revenues in the three months ended June 30, 2000.

| Expenses | Three months ended | |
|---|---|---|
| | June 30, 2000 | June 25, 1999 |
| Compensation and employee benefits... | $14,440,660 | $ 6,403,446 |
| Occupancy and equipment ..... | 4,955,490 | 2,854,350 |
| Professional and consulting fees .... | 3,299,605 | 1,596,097 |
| Communications and client networks... | 1,009,638 | 1,103,081 |
| Fulfillment services fees ..... | 7,156,955 | 403,715 |
| Administrative fees ..... | 1,708,428 | 461,266 |
| Marketing ..... | 3,670,492 | -- |
| Non-cash business partner warrants... | 29,805,305 | -- |
| Other ..... | 2,531,786 | 500,034 |
| Total expenses ..... | $68,578,359 | $13,321,989 |

Compensation and employee benefits

At June 30, 2000, we had approximately 460 professionals, as compared to approximately 265 employees at June 25, 1999. Substantially all of our employees are full time employees located predominantly in New York and London. Compensation costs include salaries, bonus accruals, payroll taxes and costs of employer-provided medical benefits for our employees. For the quarter ended June 30, 2000, we had compensation costs of $14,440,660 as compared to $6,403,446 for the three months ended June 25, 1999, an increase of 126%. This increase in compensation expense was attributable to the increased number of professionals we employed during the period ended June 30, 2000. During the quarter ended June 30, 2000, we continued to hire additional technical, sales and marketing, product development and administrative personnel, including personnel from Cantor, in order to expand our business. At present, we believe that we have established a core level of personnel to develop new electronic marketplaces and maintain the existing infrastructure we have established. Accordingly, while we will continue to add personnel, we currently envision our compensation costs increasing at more modest rates.

Occupancy and equipment

Occupancy and equipment costs were $4,955,490 for the three months ended June 30, 2000 as compared to $2,854,350 for the three months ended June 25, 1999, an increase of 74%. The increase resulted principally from the continued growth in scope of our business and increased personnel. Occupancy and equipment costs included depreciation on computer and communications equipment and amortization of software owned by us, lease costs of other fixed assets leased by us from Cantor and a charge for premises costs from Cantor. Cantor leases from third parties under operating lease arrangements certain computer-related fixed assets that we have the right to use at rates intended to equal costs incurred by Cantor. Our equipment expenses should increase as we continue to invest in technology and related equipment. Occupancy expenditures are comprised principally of our rent and facilities costs of our New York and London offices and are expected to increase as we acquire more space from Cantor and others to accommodate our growth in headcount and technology.

Professional and consulting fees

Professional and consulting fees were $3,299,605 for the three months ended June 30, 2000 as compared to $1,596,097 for the three months ended June 25, 1999, an increase of 106%. This increase resulted principally from fees related to new business development and strategic initiatives. Professional and consulting fees consisted primarily of legal fees and consultant costs paid to outside computer professionals who performed specialized enhancement activities for us. We currently have approximately 20 contracted consultants and additional outside services providers working under short-term contracts costing approximately $500,000 per month in the aggregate.

Communications and client networks

Communications costs were $1,009,638 for the three months ended June 30, 2000, an 8% decrease from communication costs of $1,103,081 for the three months ended June 25, 1999. Communications costs included the costs of local and wide area network infrastructure, the cost of establishing the client network linking clients to us, data and telephone lines, data and telephone usage and other related costs. The slight reduction in costs was attributable to a general decrease in communication costs partially offset by the costs associated with increase in the breadth of our network. We expect such costs to increase as

we continue to expand into new marketplaces and geographic locations and establish additional communication links with clients.

Fulfillment services fees

Under the Joint Service Agreement, we are required to pay to Cantor a fulfillment services fee of 20%, 35% or 55%, depending on the type of transaction, of commissions paid by clients related to fully electronic transactions. Such costs were $7,156,955 for the three months ended June 30, 2000, an increase of 1666% as compared to $403,715 for the three months ended June 25, 1999, principally as a result of our increased fully electronic revenues. As we continue to sign up new clients, in conjunction with Cantor, and the volume of business processed in the fully electronic brokerage channel increases, this expense will likely increase commensurately with our revenues.

Administrative fees

Under an Administrative Services Agreement with Cantor, Cantor has agreed to provide various administrative services to us, including, but not limited to, accounting, tax, legal and human resources, and we have agreed to provide sales and marketing services at cost to Cantor. We are required to reimburse Cantor for its costs of providing these services plus allocation of overhead. We have provided for the cost of such services in our financial statements under the terms set forth in the Administrative Services Agreement as if it was effective March 10, 1999. Administrative fees were $1,708,428 for the three months ended June 30, 2000 as compared to administrative fees of $461,266 for the three months ended June 25, 1999, an increase of 270%, principally as a result of our increased business activity. As we expand our business, the services provided by Cantor, and accordingly the expense, will likely also increase. As circumstances warrant, we will consider adding employees to take over these services from Cantor.

Marketing expenses

During the three months ended June 30, 2000, we launched a national advertising campaign. We incurred marketing expenses of $3,670,492 during the quarter, as compared to nominal marketing expenses during the three-month period ended June 25, 1999. We do not anticipate that our marketing expenses will significantly change over the foreseeable future.

Other expenses

Other expenses for the three months ended June 30, 2000 were $2,531,786 as compared to other expenses of $500,034 for the three months ended June 25, 1999, an increase of 406%, principally as a result of our increased business activity. These expenses consisted primarily of recruitment fees, travel, promotional and entertainment expenditures. We do not expect that these expenses will significantly change over the foreseeable future.

**Non-cash Business Partner Warrants**

In June 2000, Dynegy and Williams each purchased 789,071 shares of our Class A common stock for a purchase price of $25,000,000, for a total of $50,000,000. Pursuant to a stock purchase agreement with Cantor, we purchased from Cantor 789,071 shares of our Class A common stock for a purchase price of $25,000,000. As a result, our capital increased by a net amount of $25,000,000. Additionally, each of Dynegy and Williams received warrants to purchase an additional 666,666 shares of Class A common stock at an exercise price of $35.203125 per share. As a result of the issuance of the warrants, we recorded a non-cash, non-operating charge against earnings of $29,805,305 to reflect the cost of the warrants.

**Net Loss**

Excluding a non-cash charge for business partner warrants issued to Dynegy and Williams in June 2000, our net loss was $9,221,837 for the three months ended June 30, 2000. Including the non-cash charge, we incurred a net loss of $39,027,142 for the three months ended June 30, 2000. The business partner warrants are discussed in more detail in Note 9 to the Notes to Consolidated Financial Statements (unaudited) contained elsewhere in this report. Other than the non-cash charge, the losses primarily resulted from expenditures on our technology and infrastructure incurred in building our revenue base. We expect that we will continue to incur losses and generate negative cash flow from operations for the foreseeable future as we continue to develop our systems and infrastructure and expand our brand recognition and client base through increased marketing efforts. In light of the rapidly changing nature of our business and our limited operating history, we believe that period-to-period comparisons of our operating results will not necessarily be meaningful and should not be relied upon as an indication of future performance.

For the Six Months Ended June 30, 2000 and the Period March 10, 1999 to June 25, 1999

| Revenues | Six months ended June 30, 2000 | Period March 10, 1999 to June 25, 1999 |
|---|---|---|
| Transaction Revenues: | | |
| Fully electronic transactions | $34,915,297 | $ 1,230,092 |
| Voice-assisted brokerage transactions | 7,231,356 | 4,564,942 |
| Screen assisted open outcry transactions | 1,571,712 | 1,756,278 |
| Total transaction revenues | 43,718,365 | 7,551,312 |
| Interest income | 3,928,525 | -- |
| System services fees | 6,262,054 | 4,966,294 |
| Total revenues | $53,908,944 | $12,517,606 |

**Transaction Revenues**

For the six months ended June 30, 2000, we earned $43,718,365 in transaction revenues as compared to $7,551,312 for the period March 10, 1999 to June 25, 1999, a 479% increase. The growth in these revenues was attributable to the continued roll out of electronic marketplaces and an increase in the number of clients electronically trading through our eSpeed(sm) system. As of June 30, 2000, we had converted 32 out of over 40 marketplaces to our eSpeed(sm) system. In addition, revenues for the six months ended June 30, 2000 were positively impacted by the high level of volatility in the fixed income markets.

**Interest Income**

The net proceeds of our initial public offering on December 10, 1999 and the net proceeds received from the sale of Class A common stock to Dynegy and Williams, net of operating expenses paid, have been invested by us in reverse repurchase agreements which are fully collateralized by U.S. Government securities held in a custodial account at The Chase Manhattan Bank. For the six months ended June 30, 2000, these investments generated interest income of $3,928,525, at an average interest rate of 5.9%. We had no interest income for the period March 10, 1999 to June 25, 1999.

**System Services Fees**

System services fees from Cantor for the six months ended June 30, 2000 were $6,262,054, and represented 12% of total revenues for the period. This compares with system services fees for the period from March 10, 1999 to June 25, 1999 of $4,966,294, which represented 40% of total revenues for the period. This increase of 26% in system services fees principally reflected the fact that the 1999 period was shorter than the current period. As a percent of revenues, the system services fees decreased as a result of our increased transaction revenues for the six months ended June 30, 2000.

| Expenses | Six months ended June 30, 2000 | Period from March 10, 1999 to June 25, 1999 |
|---|---|---|
| Compensation and employee benefits... | $25,778,446 | $ 7,671,284 |
| Occupancy and equipment ..... | 9,655,239 | 3,530,373 |
| Professional and consulting fees .... | 5,758,693 | 1,782,082 |
| Communications and client networks... | 1,849,332 | 1,324,240 |
| Fulfillment services fees ..... | 12,232,756 | 430,532 |
| Administrative fees ..... | 3,312,579 | 554,967 |
| Marketing ..... | 4,799,565 | -- |
| Non-cash business partner warrants... | 29,805,305 | -- |
| Other ..... | 4,470,088 | 515,269 |
| Total expenses ..... | $97,662,003 | $15,808,747 |

Compensation and employee benefits

At June 30, 2000, we had approximately 460 professionals, as compared to approximately 265 employees at June 25, 1999. Substantially all of our employees are full time employees located predominantly in New York and London. Compensation costs include salaries, bonus accruals, payroll taxes and costs of employer-provided medical benefits for our employees. For the six months ended June 30, 2000, our compensation costs were $25,778,446 as compared to compensation costs of $7,671,284 for the period from March 10, 1999 to June 25, 1999, a 236% increase. This increase in compensation expense was attributable to the increased number of professionals we employed during the six-month period ended June 30, 2000. During the six months ended June 30, 2000, we continued to hire additional technical, sales and marketing, product development and administrative personnel, including personnel from Cantor, in order to expand our business.

Occupancy and equipment

Occupancy and equipment costs were $9,655,239 for the six months ended June 30, 2000 as compared to occupancy and equipment of $3,530,373 for the period from March 10, 1999 to June 25, 1999, an increase of 173%. This increase resulted principally from the continued growth in scope of our business and increased personnel. Occupancy and equipment costs included depreciation on computer and communications equipment and amortization of software owned by us, lease costs of other fixed assets leased by us from Cantor and a charge for premises costs from Cantor. Cantor leases from third parties under operating lease arrangements certain computer-related fixed assets that we have the right to use at rates intended to equal costs incurred by Cantor. Our equipment expenses should increase as we continue to invest in technology and related equipment. Occupancy expenditures are comprised principally of our rent and facilities costs of our New York and London offices.

Professional and consulting fees

Professional and consulting fees were $5,758,693 for the six months ended June 30, 2000 as compared to professional and consulting fees of $1,782,082 for the period from March 10, 1999 to June 25, 1999, an increase of 223%. This increase resulted principally from fees related to new business development and strategic initiatives. Professional and consulting fees consisted primarily of legal fees and consultant costs paid to outside computer professionals who performed specialized enhancement activities for us. We currently have approximately 20 contracted consultants and additional outside services providers working under short-term contracts costing approximately $500,000 per month in the aggregate.

Communications and client networks

Communications costs were $1,849,332 for the six months ended June 30, 2000 as compared to $1,324,240 for the period from March 10, 1999 to June 25, 1999, an increase of 40%. Communications costs included the costs of local and wide area network infrastructure, the cost of establishing the client network linking clients to us, data and telephone lines, data and telephone usage and other related costs. The increase in costs was attributable to the associated increase in the breadth of our network.

Fulfillment services fees

Under the Joint Service Agreement, we are required to pay to Cantor a fulfillment services fee of 20%, 35%, or 55%, depending on the type of transaction, of commissions paid by clients related to fully electronic transactions. For the six months ended June 30, 2000, these costs were $12,232,756 as compared to $430,532 for the period from March 10, 1999 to June 25, 1999, an increase of 2741%, principally as a result of our increased fully electronic revenues.

Administrative fees

Under an Administrative Services Agreement with Cantor, Cantor has agreed to provide various administrative services to us, including, but not limited to, accounting, tax, legal and human resources, and we have agreed to provide sales and marketing services at cost to Cantor. We are required to reimburse Cantor for its costs of providing these services plus allocation of overhead. We have provided for the cost of such services in our financial statements under the terms set forth in the Administrative Services Agreement as if it was effective March 10, 1999. Administrative fees amounted to $3,312,579 for the six months ended June 30, 2000 as compared to administrative fees of $554,967 for the period March 10, 1999 to June 25, 1999, an increase of 497%, principally as a result of our increased business activity.

Marketing expenses

We incurred marketing expenses of $4,799,565 during the six months ended June 30, 2000, as compared to nominal marketing expenses during the period from March 10, 1999 to June 25, 1999, principally as a result of a national advertising campaign launched by us during the three months ended June 30, 2000.

Other expenses

Other expenses for the six months ended June 30, 2000, were $4,470,088 as compared to other expenses of $515,269 for the period from March 10, 1999 to June 25, 1999, an increase of 768%, principally as a result of our increased business activity. These expenses consisted primarily of recruitment fees, travel, promotional and entertainment expenditures.

**Non-cash Business Partner Warrants**

In June 2000, Dynegy and Williams each purchased 789,071 shares of our Class A common stock for a purchase price of $25,000,000, for a total of $50,000,000. Pursuant to a stock purchase agreement with Cantor, we purchased from Cantor 789,071 shares of our Class A common stock for a purchase price of $25,000,000. As a result, our capital increased by a net amount of $25,000,000. Additionally, each of Dynegy and Williams received warrants to purchase an additional 666,666 shares of Class A common stock at an exercise price of $35.203125 per share. As a result of the issuance of the warrants, we recorded a non-cash, non-operating charge against earnings of $29,805,305 to reflect the cost of the warrants.

**Net Loss**

Excluding a non-cash charge for business partner warrants issued to Dynegy and Williams in June 2000, our net loss was $14,147,754 for the six months ended June 30, 2000. Including the non-cash

charge, we incurred a net loss of $43,953,059 for the three months ended June 30, 2000. The business partner warrants are discussed in more detail in Note 9 to the Notes to Consolidated Financial Statements (unaudited) contained elsewhere in this report. Other than the non-cash charge, the losses primarily resulted from expenditures on our technology and infrastructure incurred in building our revenue base.

**Liquidity and Capital Resources**

Our cash flows are comprised of transaction revenues and systems services fees from Cantor, various fees paid to Cantor, occupancy costs and other expenses paid by Cantor on our behalf and investment income. In its capacity as a fulfillment service provider, Cantor processes and settles transactions and, as such, collects and pays the funds necessary to clear transactions with the counterparty. In doing so, Cantor receives our portion of the transaction fee and, in accordance with the Joint Services Agreement, remits the gross amount owed to us. Under the Administrative Services Agreement and the Joint Services Agreement, any net receivable or payable is settled monthly, at the discretion of the parties.

Our ability to withdraw capital from our regulated broker-dealer subsidiaries could be restricted, which in turn could limit our ability to pay dividends, repay debt and redeem or purchase shares of our outstanding stock.

Although we have no material commitments for capital expenditures, we anticipate that we will experience an increase in our capital expenditures and lease commitments consistent with our anticipated growth in operations, infrastructure and personnel. We currently anticipate that we will continue to experience significant growth in our operating expenses for the foreseeable future and that our operating expenses will be a material use of our cash resources.

Under the current operating structure, our cash flows from operations, the net proceeds from our initial public offering and the $25,000,000 received from the Dynegy and Williams investments (net of our buy back of shares from Cantor) should be sufficient to fund our current working capital and current capital expenditure requirements for at least the next 12 months. However, we believe that there are a significant number of capital intensive opportunities for us to maximize our growth and strategic position, including, among other things, strategic alliances and joint ventures potentially involving all types and combinations of equity, debt, acquisition, recapitalization and reorganization alternatives. We are continually considering such options and their effect on our liquidity and capital resources.

**ITEM 3. Quantitative and Qualitative Disclosures about Market Risk**

We have invested $147,141,828 of our excess cash in securities purchased under reverse repurchase agreements which are fully collateralized by U.S. Government securities held in a custodial account at The Chase Manhattan Bank. These reverse repurchase agreements have an overnight maturity and, as such, are highly liquid. We do not use derivative financial instruments, derivative commodity instruments or other market risk sensitive instruments, positions or transactions. Accordingly, we believe that we are not subject to any material risks arising from changes in interest rates, foreign currency exchange rates, commodity prices, equity prices or other market changes that affect market risk sensitive instruments. Our policy is to invest our excess cash in a manner that provides us with the appropriate level of liquidity to enable us to meet our current obligations, primarily accounts payable, capital expenditures and payroll, recognizing that we do not currently have outside bank funding.

## PART II. OTHER INFORMATION

### ITEM 1. Legal Proceedings.

The information required by this Item is incorporated by reference to Note 4 of the Notes to Consolidated Financial Statements (unaudited) contained elsewhere in this report.

### ITEM 2. Changes in Securities and Use of Proceeds.

(c) On June 5, 2000, we sold to each of Williams and Dynegy a Unit consisting of (i) 789,071 shares (the "Shares") of our Class A common stock and
(ii) warrants (the "Warrants") exercisable for the purchase of up to 666,666 shares of Class A common stock, for an aggregate purchase price for the Unit of $25,000,000. The Warrants have a per share exercise price of $35.203125, have a ten year term and will be exercisable during the last 4 1/2 years of the term, subject to acceleration under certain prescribed circumstances relating to the formation of, and investment by the warrant holder in, certain electronic marketplaces. The sale of the Shares and Warrants were exempt from registration under the Securities Act of 1933 in reliance on Section 4(2) of such Act, as a transaction by an issuer not involving a public offering. The transactions were privately negotiated and did not include any general solicitation or advertising. Each purchaser represented that it was acquiring the Shares and Warrants without a view to distribution and was afforded an opportunity to review all publicly filed documents and to ask questions and receive answers from our officers.

(d) The effective date of our registration statement (Registration No. 333-87475) filed on Form S-1 relating to our initial public offering of Class A common stock was December 9, 1999. In our initial public offering, we sold 7,000,000 shares of Class A common stock at a price of $22.00 per share and CFS, the selling stockholder, sold 3,350,000 shares of Class A common stock at a price of $22.00 per share. Our initial public offering was managed on behalf of the underwriters by Warburg Dillon Read LLC, Hambrecht & Quist, Thomas Weisel Partners LLC and Cantor Fitzgerald & Co. The offering commenced on December 10, 1999 and closed on December 15, 1999. Proceeds to us from our initial public offering, after deduction of the underwriting discounts and commissions of approximately $10.0 million and offering costs of $4.4 million, totaled approximately $139.6 million. None of the expenses incurred in our initial public offering were direct or indirect payments to our directors, officers, general partners or their associates, to persons owning 10% or more of any class of our equity securities or to our affiliates. Of the $139.6 million raised, approximately $17.5 million has been used for working capital purposes and the balance of $122.1 million has been invested in reverse repurchase agreements which are fully collateralized by U.S. Government Securities held in a custodial account at a third-party bank. Over the foreseeable future, we intend to use the amount invested in the reverse repurchase agreements as follows:

o Approximately $25 million will be invested in hardware and software for entry into new product segments, expansion of our current markets and an increase in communication links to our clients;

o Approximately $25 million will be for hiring of technology and other professionals to develop new markets in both financial and non-financial sectors;

o Approximately $25 million will be for marketing to current and new institutional clients and to promote general awareness and acceptance of the retail trading of fixed income securities and other financial instruments; and

o The balance of the net proceeds will be used for working capital and general corporate purposes, including possible acquisitions and strategic alliances.

Of the amount of proceeds spent through June 30, 2000, approximately $17.5 million has been paid to Cantor under the Administrative Services Agreement between Cantor and us.

The occurrence of unforeseen events, opportunities or changed business conditions, however, could cause us to use the net proceeds of our initial public offering in a manner other than as described above.

**ITEM 6. Exhibits and Reports on Form 8-K.**

(a) Exhibits

| Exhibit Number | | Description |
|---|---|---|
| 10.9 | -- | Registration Rights Agreement, dated as of June 5, 2000 among eSpeed, Inc., Williams Energy Marketing & Trading Company and Dynegy, Inc. |
| 10.10 | -- | Stock Purchase Agreement, dated April 26, 2000, between eSpeed, Inc. and Cantor Fitzgerald Securities |
| 10.11 | -- | Amendment to Stock Purchase Agreement, dated June 2, 2000, among eSpeed, Inc., Cantor Fitzgerald Securities and Cantor Fitzgerald, L.P. |
| 10.12 | -- | Warrant issued to Dynegy, Inc. |
| 10.13 | -- | Warrant issued to Williams Energy Marketing & Trading Company |
| 10.14* | -- | Subscription Agreement, dated April 26, 2000, among Dynegy, Inc., eSpeed, Inc. and Cantor Fitzgerald, L.P. |
| 10.15* | -- | Subscription Agreement, dated April 26, 2000, among The Williams Companies, Inc., eSpeed, Inc. and Cantor Fitzgerald, L.P. |
| 27 | -- | Financial Data Schedule |

(b) Reports on Form 8-K

None.

* The Company has requested confidential treatment as to certain portions of this exhibit, which portions have been omitted and filed separately with the Securities and Exchange Commission.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

eSpeed, Inc.

(Registrant)

*Date: August 14, 2000*

*/s/ Howard W. Lutnick*
*---*
*Howard W. Lutnick*
*Chairman and Chief Executive Officer*

*Date: August 14, 2000*

*/s/ Kevin C. Piccoli*
*---*
*Kevin C. Piccoli*
*Senior Vice President*
*and Chief Financial Officer*
*(Principal Financial and Accounting Officer)*

## EXHIBIT INDEX

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# REGISTRATION RIGHTS AGREEMENT

by and among

eSpeed, Inc.

and

**The Investors Named Herein**

**TABLE OF CONTENTS**

REGISTRATION RIGHTS AGREEMENT (the "Agreement"), dated as of June 5, 2000, by and among eSpeed, Inc., a Delaware corporation (the "Company"), the parties that have executed the signature pages hereto (the "Initial Investors") and such other parties that otherwise execute a joinder agreement and become a party hereto (collectively, the "Investors").

**RECITALS**

WHEREAS, as an inducement to each of the Initial Investors to invest in the Company, the Company desires to grant to each of the Initial Investors registration rights with respect to the shares (the "Shares") of Class A Common Stock (as defined in Section 8.1 below) and warrants to purchase shares of Class A Common Stock (the "Warrants") issued to the Initial Investors on the date hereof as set forth on Schedule A hereto, on the terms and subject to the conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**ARTICLE I**
**DEMAND REGISTRATIONS**

1.1. Requests for Registration . Subject to Sections 1.2 and 1.3 hereof, the Initial Investors may request, in writing, registration under the Securities Act of all or part of their Registrable Securities. Within 15 days after receipt of any such request, the Company will give notice of such request to all other Investors and to other persons holding piggyback registration rights entitling them to have securities of the Company included within such registration ("Other Holders"). Thereafter, the Company will use all reasonable efforts to effect the registration under the Securities Act (i) on Form S1 or any similar long-form registration statement (a "Long-Form Registration") or (ii) on Form S3 or any similar short-form registration statement (a "Short-Form Registration") if the Company qualifies to effect a Short-Form Registration, and will include in such registration all Registrable Securities and securities of the Company held by the Other Holders with respect to which the Company has received written requests for inclusion therein within 20 days after the receipt of the Company's notice, subject to the provisions of Section 1.4. All registrations initiated by an Investor pursuant to this Section 1.1 are referred to herein as "Demand Registrations". The Company shall not be required to effect any underwritten Demand Registration requested by an Initial Investor if either (a) within the 12 months preceding the receipt by the Company of such request, the Company has filed and has had declared effective by the Commission a Registration Statement with respect to an underwritten offering under this Section 1.1 or has filed and has had declared effective by the Commission another Registration Statement with respect to an underwritten offering to which the Piggyback Registration rights set forth in Article II hereof apply and such Initial Investor had an opportunity to include all the shares requested to be included in such Registration Statements; and provided further that the Company shall not be required to effect any Demand Registration requested by an Initial Investor if such Investor may sell all of the

Registrable Securities requested to be included in such Demand Registration without registration under the Securities Act, pursuant to the exemption provided by (i) Rule 144(k) under the Securities Act, as such rule may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the Commission. The rights of an Initial Investor pursuant to this Section 1.1 shall be assignable in accordance with the provisions of Section 9.9.

1.2. Number of Demand Registrations; Expenses . Subject to Sections 1.1 and 1.3 hereof, each of the Initial Investors shall be entitled to (i), from and after the one year anniversary of the date hereof, one Demand Registration and (ii), from and after the date on which such Initial Investor's Warrants become fully exercisable, one additional Demand Registration, with no more than one of such Demand Registrations being a Long-Form Registration; provided, however, that the Company need not effect any requested Demand Registration unless the expected proceeds of such registration exceed $20,000,000. The Company will pay all Registration Expenses in connection with any Demand Registration.

1.3. Effective Registration Statement . A registration requested pursuant to Section 1.1 of this Agreement shall not be deemed to have been effected (i) unless a Registration Statement with respect thereto has been declared effective by the Commission, (ii) if after it has become effective, such registration is interfered with by any stop order, injunction or other order or requirement of the Commission or other governmental agency or court for any reason, and, as a result thereof, the Registrable Securities covered thereby have not been sold or (iii) the Registration Statement does not remain effective for a period of at least 180 days beyond the effective date thereof or, with respect to an underwritten offering of Registrable Securities, until 45 days after the commencement of the distribution by the holders of the Registrable Securities included in such Registration Statement. If a registration requested pursuant to this Article I is deemed not to have been effected as provided in this Section 1.3, then the Company shall continue to be obligated to effect the number of Demand Registrations set forth in Section 1.2 without giving effect to such requested registration. The Initial Investors of the Registrable Securities shall be permitted to withdraw all or any part of the Registrable Securities from a Demand Registration at any time prior to the effective date of such Demand Registration; provided that in the event of, and concurrently with such withdrawal, the Initial Investors responsible for such Demand Registration shall either (x) pay or reimburse the Company for all fees and expenses (including counsel fees and expenses) incurred by them and the Company prior to such withdrawal or (y) agree to forfeit one of its Demand Registration rights hereunder.

1.4. Priority on Demand Registrations . If the Company includes in any underwritten Demand Registration any securities which are not Registrable Securities and the managing underwriters advise the Company in writing that in their opinion the number of Registrable Securities and other shares of Common Stock proposed to be included exceeds the number of Registrable Securities and other securities which can be sold in such offering, the Company will include in such registration (i) first, the number of Registrable Securities requested to be included which, in the opinion of such underwriters, can be sold, by the Investor initiating the Demand Registration, (ii) second, that number of other shares of Common Stock proposed to be included in such registration equally between Cantor Fitzgerald Securities and its Affiliates, and their successors and assigns on the one hand (the "Priority Piggyback Registration Holders"), and any other Investors exercising their Piggyback Registration rights on the one

hand and (iii) third, that number of other shares of Common Stock proposed to be included in such registration, pro rata among any other holders exercising their respective piggyback registration rights thereof based upon the total number of shares which such holders propose to include in such registration.

1.5. Selection of Underwriter. If the Investor exercising its right to a Demand Registration so elects, the offering of such Registrable Securities pursuant to such Demand Registration shall be in the form of an underwritten offering. The Company shall select one or more nationally recognized firms of investment bankers to act as the lead managing Underwriter or Underwriters in connection with such offering and shall select any additional investment bankers and managers to be used in connection with the offering.

1.6. Limitations, Conditions and Qualifications to Obligations for a Demand Registration. The Company shall be entitled to postpone, for a reasonable period of time (but not exceeding 90 days), the filing of any registration statement otherwise required to be prepared and filed by it pursuant to Section 1.1 if the Company determines, in its good faith judgment, that such registration and offering would interfere with any material financing, acquisition, corporate reorganization or other material transaction involving the Company or any of its Affiliates and promptly gives the holders of Registrable Securities requesting registration thereof pursuant to Section 1.1 written notice of such determination, containing an approximation of the anticipated delay. If the Company shall so postpone the filing of a registration statement, holders of Registrable Securities requesting the Demand Registration pursuant to Section 1.1 shall have the right to withdraw the request for registration by giving written notice to the Company within 30 days after receipt of the notice of postponement and, in the event of such withdrawal, such request shall not be counted for purposes of the requests for registration to which holders of Registrable Securities are entitled pursuant to Section 1.1 hereof.

## ARTICLE II
## PIGGYBACK REGISTRATIONS

2.1. Right to Piggyback . From and after the date which is 12 months from the date of this Agreement, whenever the Company proposes to register any of its equity securities under the Securities Act (other than a registration effected in connection with a Company stock option or other employee benefit plan (such as a Registration Statement on Form S8), a registration effected in connection with the conversion of debt securities, a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of Registrable Securities (such as a Registration Statement on Form S4), or a registration effected in connection with an acquisition), and the form of registration statement to be used may be used for the registration of Registrable Securities (a "Piggyback Registration"), the Company will give notice (the "Notice") to all Investors of its intention to effect such a registration and will include in such registration all Registrable Securities with respect to which the Company has received written requests for inclusion therein, subject to the provisions of Section 2.3 and 2.4 hereof. Such requests for inclusion shall be in writing and delivered to the Company within 20 days after the Investor's receipt of the Notice and shall specify the number of Registrable Securities intended to be

disposed of and the intended method of distribution thereof. Any holder shall have the right to withdraw its request for inclusion of its Registrable Securities in any Registration Statement pursuant to this Section 2.1 by giving written notice to the Company of its request to withdraw. The Company may withdraw a Piggyback Registration at any time prior to the time it becomes effective. The Company is not required to include in a registration any Registrable Securities which the holder is not then entitled to offer to sell whether by contractual restriction or by law.

2.2. Piggyback Expenses . The Registration Expenses of the Investors will be paid by the Company in all Piggyback Registrations

2.3. Priority on Primary Registrations . If a Piggyback Registration is an underwritten primary registration on behalf of the Company, and the managing underwriters advise the Company that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering, the Company will include in such registration (i) first, the securities the Company proposes to sell, (ii) second, that number of other shares of Common Stock proposed to be included in such registration by the Priority Piggyback Registration Holders and (iii) third, that number of other shares of Common Stock proposed to be included in such registration, pro rata among any other holders (including the Investors) exercising their respective piggyback registration rights thereof based upon the total number of shares which such holders (including the Investors) propose to include in such registration.

2.4. Priority on Secondary Registrations . If a Piggyback Registration is an underwritten secondary registration on behalf of holders (other than the Investors) of the Company's securities, and the managing underwriters advise the Company that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering, the Company will include in such registration (i) first, the number of shares of Common Stock requested to be included by the holders exercising their demand registration rights, and (ii) second, that number of other shares of Common Stock proposed to be included in such registration, pro rata among any other holders (including the Investors) exercising their respective piggyback registration rights thereof based upon the total number of shares which such holders (including the Investors) propose to include in such registration.

## ARTICLE III
## HOLDBACK AGREEMENTS

In the event the Company or another holder of the Company's stock proposes to enter into an underwritten public offering, each holder of Registrable Securities agrees to enter into an agreement with the managing underwriters not to effect any sale or distribution of equity securities of the Company, or any securities convertible, exchangeable or exercisable for or into such securities, during the period beginning on the date of such offering and extending for up to 90 days; provided that such holders shall not be so obligated unless the Company and each of its Affiliates enter into the same or comparable lockup agreement for the same period and further shall not be so obligated if such holder then owns less than 2% of the outstanding Class A Common Stock.

**ARTICLE IV**
**REGISTRATION PROCEDURES**

Whenever holders of Registrable Securities have requested that any Registrable Securities be registered pursuant to this Agreement (the "Selling Holders"), the Company will use reasonable efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof and, pursuant thereto, the Company will:

(a). use reasonable efforts to prepare and file with the Commission a Registration Statement with respect to such Registrable Securities as soon as practicably thereafter and, in the case of a Demand Registration within 60 days (subject to a postponement pursuant to Section 1.6) of the request for a Demand Registration and use all reasonable efforts to cause such Registration Statement to become and remain effective until the completion of the distribution contemplated thereby; provided, that as promptly as practicable before filing a Registration Statement or Prospectus or any amendments or supplements thereto, the Company will (i) furnish to the Selling Holders copies of all such documents proposed to be filed and (ii) notify each Selling Holder of Registrable Securities covered by such Registration Statement of (x) any request by the Commission to amend such Registration Statement or amend or supplement any Prospectus, or (y) any stop order issued or threatened by the Commission, and take all reasonable actions required to prevent the entry of such stop order or to promptly remove it if entered; and provided further that the Company shall not be required to keep such Registration Statement effective for more than (i) 45 days in the case of a Piggyback Registration or a Demand Registration with respect to an underwritten offering or (ii) 180 days in the case of a Demand Registration (or such shorter period which will terminate when all Registrable Securities covered by such Registration Statement have been sold, but not prior to the expiration of the applicable period referred to in
Section 4(3) of the Securities Act and Rule 174 thereunder, if applicable);

(b). (i) prepare and file with the Commission such amendments and supplements to such Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement effective for as long as such registration is required to remain effective pursuant to the terms hereof and (ii) comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement during such period in accordance with the intended methods of disposition by the sellers thereof set forth in such Registration Statement;

(c). furnish to each Selling Holder, without charge, such number of conformed copies of such Registration Statement, each amendment and supplement thereto, the Prospectus included in such Registration Statement (including each preliminary Prospectus) and such other documents as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Selling Holder;

(d). use all reasonable efforts to register or qualify such Registrable Securities under such other securities or "blue sky" laws of such jurisdictions in the United States in which a registration or qualification is required as any Selling Holder thereof shall reasonably request, to keep such registration or qualification in effect for so long as such Registration Statement remains in effect and do any and all other acts and things which may be reasonably necessary or advisable to enable such Selling Holder to consummate the disposition in such jurisdictions of the Registrable Securities owned by such Selling Holder; provided, however, that the Company will not be required to (i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this clause (d), (ii) subject itself to taxation in any such jurisdiction or (iii) consent to general service of process in any such jurisdiction;

(e). notify each Selling Holder, at a time when a Prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event known to the Company as a result of which the Prospectus included in such Registration Statement, as then in effect, contains an untrue statement of a material fact or omits to state any fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and, at the request of any such Selling Holder, the Company will prepare and furnish such Selling Holder a reasonable number of copies of a supplement to or an amendment of such Prospectus as may be necessary so that, as thereafter delivered to the purchasers of such Registrable Securities, such Prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(f). make available for inspection by any Selling Holder, any underwriter participating in any disposition pursuant to such Registration Statement and any attorney, accountant or other agent retained by any such Selling Holder or underwriter, all applicable, nonconfidential due diligence documents of the Company which are requested, and cause the Company's officers, directors, employees and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such Registration Statement to enable them to conduct a reasonable investigation within the meaning of the Securities Act, including a customary accountant's "comfort" letter and opinion of counsel to the Company;

(g). subject to other provisions hereof, use all reasonable efforts to cause such Registrable Securities covered by such Registration Statement to be registered with or approved by such other governmental agencies or authorities or selfregulatory organizations as may be necessary to enable the Selling Holders thereof to consummate the disposition of such Registrable Securities;

(h). promptly notify the Selling Holders of the issuance of any stop order by the Commission or the issuance by any state securities commission or other regulatory authority of any order suspending the qualification or exemption from qualification of any of the Registrable Securities under state securities or "blue sky" laws, and use every reasonable effort to obtain the lifting at the earliest possible time of any stop order suspending the effectiveness of

any Registration Statement or of any order preventing or suspending the use of any preliminary Prospectus; and

(i). promptly notify the Selling Holders of the occurrence of any pending material merger, acquisition, corporate reorganization or other material transaction involving the Company or any of its Affiliates which makes it imprudent for the Company to be in registration, as determined in the good faith judgment of the Company (a "Black-Out Period"). The Company shall not impose BlackOut Periods that, either individually or in the aggregate, exceed 90 days during any fiscal year of the Company.

The Company may require each Selling Holder to promptly furnish in writing to the Company such information regarding the distribution of the Registrable Securities as the Company may from time to time reasonably request and such other information as may be legally required in connection with such registration including, without limitation, all such information as may be requested by the Commission or any regulatory authority. The Company may exclude from such Registration Statement any holder who fails to provide such information.

Each Selling Holder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in paragraph (a), (e), (h) or (i) above, such Selling Holder will forthwith discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Selling Holder's receipt of the copies of the supplemented or amended prospectus contemplated by paragraph (a) or (e) above, or in the case of a BlackOut Period until the Company notifies the Selling Holders that the period has ended, and, if so directed by the Company, such Selling Holder will deliver to the Company all copies, other than permanent file copies then in such Selling Holder's possession, of the most recent prospectus covering such Registrable Securities at the time of receipt of such notice. The periods referred to in paragraph (a) above for maintaining the effectiveness of the Registration Statement shall be extended for a period equal to the period during which the disposition of the Registrable Securities is discontinued as set forth in the immediately preceding sentence.

## ARTICLE V
## REGISTRATION EXPENSES

5.1. Registration Expenses . All registration and filing fees, fees and expenses of compliance with securities or "blue sky" laws, printing expenses, listing fees for securities to be registered on a national securities exchange or The Nasdaq Stock Market and all independent certified public accountants, underwriters (excluding discounts and commissions), fees and expenses of counsel to the Company and other Persons retained by the Company (all such expenses being herein called "Registration Expenses") will be borne by the Company as provided in Sections 1.2 and 2.2 of this Agreement, but subject to the provisions of Section 1.3 of this Agreement.

5.2. Holders' Expenses . The Company shall have no obligation to pay (i) any underwriting discounts or commissions attributable to the sale, or potential sale, of Registrable

Securities, which expenses will be borne by all Selling Holders of Registrable Securities included in such registration; and (ii) any fees or expenses of counsel or others retained by the Selling Holders in connection with the sale, or potential sale, of Registrable Securities.

## ARTICLE VI
## UNDERWRITTEN AND OTHER OFFERINGS

6.1. Underwriting Agreement . If requested by the underwriters for any underwritten offering involving the Registrable Securities, the Company will enter into an underwriting agreement with such underwriters for such offering, such agreement to be reasonably satisfactory to the Company and to contain such representations and warranties by the Company and such other terms as are generally included in agreements of this type, including, without limitation, indemnities customarily included in such agreements. The holders of the Registrable Securities will cooperate in good faith with the Company in the negotiation of the underwriting agreement.

6.2. Obligations of Participants . No Person may participate in any underwritten registration hereunder unless such Person (i) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Person or Persons entitled hereunder to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements, escrow agreements and other documents required under the terms of such underwriting arrangements and consistent with the provisions of this Agreement. In addition, the Company may require each Selling Holder to promptly furnish in writing to the Company such information regarding the distribution of the Registrable Securities as the Company may from time to time reasonably request and such other information as may be legally required in connection with such registration including, without limitation, all such information as may be requested by the Commission or the NASD. The Company may exclude from such Registration Statement any Holder who fails to provide such information.

## ARTICLE VII
## INDEMNIFICATION

7.1. Company's Indemnification Obligations . The Company agrees to indemnify and hold harmless each of the holders of any Registrable Securities covered by any Registration Statement referred to herein and each other Person, if any, who controls such holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "Holder Indemnitees"), as follows:

(i) against any and all loss, liability, claim, damage or reasonable expense arising out of or based upon an untrue statement or alleged untrue statement of a material fact contained in any Registration Statement (or any amendment or supplement thereto), including all documents incorporated therein by reference, or in any preliminary Prospectus or Prospectus (or any amendment or supplement thereto) or the omission or alleged

omission therefrom of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and reasonable expense to the extent of the aggregate amount paid in settlement of any litigation, investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim based upon any such untrue statement or omission or any such alleged untrue statement or omission, if such settlement is effected with the prior written consent of the Company; and

(iii) against any and all reasonable expense incurred by them in connection with investigating, preparing or defending against any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim based upon any such untrue statement or omission or any such alleged untrue statement or omission, to the extent that any such expense is not paid under clause (i) or (ii) above;

provided, that this indemnity does not apply to any loss, liability, claim, damage or expense to the extent arising out of an untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with information furnished to the Company by or on behalf of any holder expressly for use in the preparation of any Registration Statement (or any amendment or supplement thereto), including all documents incorporated therein by reference, or in any preliminary Prospectus or Prospectus (or any amendment or supplement thereto); provided further, that (other than in connection with an underwritten offering) the Company will not be liable to any holder or any other Holder Indemnitee under the indemnity agreement in this
Section 7.1 with respect to any preliminary Prospectus or the final Prospectus or the final Prospectus as amended or supplemented, as the case may be, to the extent that any such loss, liability, claim, damage or expense of such Holder Indemnitee results from the fact that such holder sold Registrable Securities to a Person to whom there was not sent or given, at or prior to the written confirmation of such sale, a copy of the final Prospectus or of the final Prospectus as then amended or supplemented, whichever is most recent, if the Company has previously and timely furnished copies thereof to such holder; and provided further, that the Company will not be liable to any holder or any other Holder Indemnitee under the indemnity agreement in this Section 7.1 to the extent that any such loss, liability, claim or expense arises out of or is based upon an untrue statement or omission in any Prospectus, even if an amended and corrected Prospectus is not furnished to such holder, but only to the extent that the holder, after being notified by the Company pursuant to paragraph (e) of Article III hereof, continues to use such Prospectus and in such case and to the extent of, and with respect to, damages which arise after the holder receives such notice.

7.2. Holder's Indemnification Obligations . In connection with any Registration Statement in which a holder of Registrable Securities is participating, each such holder agrees to indemnify and hold harmless (in the same manner and to the same extent as set forth in Section 7.1 of this Agreement) the Company and each Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act with respect to any statement or alleged statement in or omission or alleged omission from such Registration Statement, any preliminary, final or summary Prospectus contained therein, or

any amendment or supplement thereto, if such statement or alleged statement or omission or alleged omission was made about such holder in reliance upon and in conformity with information furnished to the Company by or on behalf of such holder expressly for inclusion in such Registration Statement. The obligations of each holder pursuant to this Section 7.2 are to be several and not joint; provided that, with respect to each claim pursuant to this Section 7.2, each such holder's maximum liability under this Section shall be limited to an amount equal to the net proceeds received by such holder (after deducting any underwriting discount) from the sale of Registrable Securities being sold pursuant to such Registration Statement or Prospectus by such holder.

7.3. Notices; Defense; Settlement . Promptly after receipt by an indemnified party hereunder of written notice of the commencement of any action or proceeding involving a claim referred to in Section 7.1 or Section 7.2 of this Agreement, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the latter of the commencement of such action; provided, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under Section 7.1 or Section 7.2 of this Agreement except to the extent that the indemnifying party is actually prejudiced by such failure to give notice. In case any such action is brought against an indemnified party, the indemnifying party will be entitled to participate in and to assume the defense thereof, jointly with any other indemnifying party similarly notified, to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof, unless in the reasonable opinion of counsel to such indemnified party a conflict of interest between such indemnified and indemnifying parties may exist in respect of such claim, in which case the indemnifying party shall not be liable for the fees and expenses of (i) more than one counsel for all the Selling Holders, selected by a majority of the Selling Holders or (ii) more than one counsel for the Company in connection with any one action or separate but similar or related actions, as applicable. An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable opinion of counsel to any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim, in which event the indemnifying party shall be obligated to pay the fees and expenses of such additional counsel or counsels. The indemnifying party will not, without the prior written consent of each indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not such indemnified party or any Person who controls such indemnified party is a party to such claim, action, suit or proceeding), unless such settlement, compromise or consent includes an unconditional release of such indemnified party from all liability arising out of such claim, action, suit or proceeding. Notwithstanding anything to the contrary set forth herein, and without limiting any of the rights set forth above, in any event any party will have the right to retain, at its own expense, counsel with respect to the defense of a claim.

7.4. Indemnity Provision . The Company and each holder of Registrable Securities requesting registration shall provide for the foregoing indemnity (with appropriate modifications) in any underwriting agreement with respect to any required registration or other qualification of securities under any Federal or state law or regulation of any governmental authority.

## ARTICLE VIII
## DEFINITIONS

8.1. Terms . As used in this Agreement, the following defined terms shall have the meanings set forth below:

"Affiliate" means, with respect to any specified party, any other individual, partnership, corporation or other organization, whether incorporated or unincorporated, who, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified party. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a party, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative of the foregoing.

"Business Day" means a day other than Saturday, Sunday or any day on which banks located in the State of New York are authorized or obligated to close.

"Class A Common Stock" means the Class A Common Stock, par value $.01 per share, of the Company and any securities into which the Class A Common Stock shall have been changed or any securities resulting from any reclassification or recapitalization of the Class A Common Stock.

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

"Common Stock" means the shares of Common Stock, regardless of designation, of the Company.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any similar Federal statute then in effect, and any reference to a particular section thereof shall include a reference to the equivalent section, if any, of any such similar Federal statute, and the rules and regulations thereunder.

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

"Person" means any individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Prospectus" means the Prospectus included in any Registration Statement (including without limitation, a Prospectus that disclosed information previously omitted from a Prospectus

filed as part of an effective Registration Statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any Prospectus supplement, with respect to the terms of the offering of any portion of the securities covered by such Registration Statement, and all other amendments and supplements to the Prospectus, including posteffective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"Registrable Securities" means (i) the Shares, (ii) the Class A Common Stock issued or issuable at any time upon the exercise of the Warrants, and
(iii) any securities issued or received in respect of, or in exchange or in substitution for any of the foregoing. Registrable Securities will continue to maintain their status as Registrable Securities in the hands of a transferee from an Investor of a majority of the Registrable Securities held by such Investor provided such transferee executes a joinder agreement described by
Section 9.9. After the transfer (in one or more transactions) of a majority of the Registrable Securities held by an Investor, any remaining Registrable Securities held by such Investor shall cease to be Registrable Securities. As to any particular Registrable Securities, such securities will cease to be Registrable Securities when they (w) have been effectively registered under the Securities Act and disposed of in accordance with the registration statement covering them, (x) may be sold pursuant to Rule 144 under the Securities Act without volume or manner of sale limitation (or any similar provisions then in force), (y) have been otherwise transferred and the Company has delivered a new certificate or other evidence of ownership for such securities not bearing a restrictive legend and not subject to any stop order and such securities may be publicly resold by the Person receiving such certificate without complying with the registration requirements of the Securities Act, or (z) have ceased to be outstanding.

"Registration Statement" means any Registration Statement of the Company which covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such Registration Statement, including posteffective amendments, all exhibits and all material incorporated by reference in such Registration Statement.

"Securities Act" means the Securities Act of 1933, as amended, or any similar Federal statute then in effect, and any reference to a particular section thereof shall include a reference to a comparable section, if any, of any such similar Federal statute, and the rules and regulations thereunder.

8.2. Defined Terms in Corresponding Sections . The following defined terms, when used in this Agreement, shall have the meaning ascribed to them in the corresponding Sections of this Agreement listed below:

"Agreement" -- Preamble "Company" -- Preamble "Demand Registration" -- Section 1.1 "Holder Indemnitees"-- Section 7.1

"Initial Investors" -- Preamble "Investors" -- Preamble "LongForm Registration" -- Section 1.1 "Notice" -- Section 2.1 "Other Holders" -- Section 1.1 "Piggyback Registration" -- Section 2.1 "Priority Piggyback Registration Holders" Section 1.4 "Registration Expenses" -- Section 5.1 "Selling Holder" -- Article IV "Shares" -- Recitals "ShortForm Registration" -- Section 1.1 "Warrants" -- Recitals

## ARTICLE IX
## MISCELLANEOUS

9.1 Amendments and Waivers . Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement will be effective against the Company or any holder of Registrable Securities, unless such modification, amendment or waiver is approved in writing by the Company and the Investors representing a majority of the Registrable Securities then outstanding. The failure of any party to enforce any of the provisions of this Agreement will in no way be construed as a waiver of such provisions and will not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

9.2 Successors and Assigns . All covenants and agreements in this Agreement by or on behalf of any of the parties hereto will bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not.

9.3 Notices . All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally against written receipt or by facsimile transmission or mailed by prepaid registered or certified mail, return receipt requested or mailed by overnight courier prepaid to the parties at the following addresses or facsimile numbers:

**If to the Company, to:**

eSpeed, Inc.
One World Trade Center

103rd Floor
New York, New York 10048 Facsimile No.: (212) 938-5000 Attn.: General Counsel

with a copy to:

Swidler Berlin Shereff Friedman, LLP The Chrysler Building 405 Lexington Avenue New York, New York 10174 Facsimile No.: (212) 938-5000 Attn.: General Counsel

If to any Investor, to the address set forth on the signature page hereto.

All such notices, requests and other communications will (i) if delivered personally to the address as provided in this Section 9.3, be deemed given upon delivery, (ii) if delivered by facsimile transmission to the facsimile number as provided in this Section 9.3, be deemed given upon receipt of confirmation,
(iii) if delivered by mail in the manner described above to the address as provided in this Section 9.3, be deemed given on the earlier of the third full Business Day following the day of mailing or upon receipt, and (iv) if delivered by overnight courier to the address provided in this Section 9.3, be deemed given on the earlier of the first Business Day following the date sent by such overnight courier or upon receipt. Any party from time to time may change its address, facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the other parties hereto.

9.4 Headings . The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

9.5 Gender . Whenever the pronouns "he" or "his" are used herein they shall also be deemed to mean "she" or "hers" or "it" or "its" whenever applicable. Words in the singular shall be read and construed as though in the plural and words in the plural shall be construed as though in the singular in all cases where they would so apply.

9.6 Invalid Provisions . If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof,
(iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

9.7 Governing Law; Forum; Process . This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to principles of conflicts of law. Each of the parties hereto hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any court of the State of Delaware or any federal court sitting in the State of Delaware for purposes of any suit, action or other proceeding arising out of this Agreement (and agrees not to commence any action, suit or proceedings relating hereto except in such courts). Each of the parties hereto agrees that service of any process, summons, notice or document by U.S. registered mail at its address set forth herein shall be effective service of process for any action, suit or proceeding brought against it in any such court. Each of the parties hereto hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement, which is brought by or against it, in the courts of the State of Delaware or any federal court sitting in the State of Delaware and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

9.8 Counterparts . This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

9.9 Additional Investors . Any transferee of a majority of Registrable Securities held by an Investor shall be entitled to the benefits of this Agreement, upon execution by such transferee of a joinder agreement in form reasonably satisfactory to the Company stating that such transferee agrees to be bound by the terms hereof as an "Investor". An Investor shall no longer be entitled to the benefits of this Agreement upon its transfer (in one or more transactions) of a majority of the Registrable Securities held by such Investor.

## ARTICLE X
## RULE 144 REPORTING

The Company hereby agrees as follows:

(a) The Company shall use its reasonable efforts to make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act.

(b) The Company shall use its reasonable efforts to file with the Commission in a timely manner all reports and other documents as the Commission may prescribe under Section 13(a) or 15(d) of the Exchange Act at any time while the Company is subject to such reporting requirements of the Exchange Act.

(c) The Company shall furnish to each holder of Registrable Securities forthwith upon a reasonable request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 and of the Securities Act and the Exchange Act.

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

**COMPANY:**

**eSPEED, INC.**

*By: /s/ Howard W. Lutnick*
*Name: Howard Lutnick*
*Title: Chairman and*
*Chief Executive Officer*

**INITIAL INVESTORS:**

**WILLIAMS ENERGY MARKETING & TRADING COMPANY**

*By: /s/ William C. Lawson*
*Name: William C. Lawson*
*Title: Director, Energy Solutions*
*Address: One Williams Center*
*Tulsa, Oklahoma 74172*

**DYNEGY INC.**

*By: /s/ Kenneth E. Randolph*
*Name: Kenneth E. Randolph*
*Title: Senior Vice President and*
*General Counsel*
*Address: 1000 Louisiana*
*Suite 5800*
*Houston, Texas 77002*

**STOCK PURCHASE AGREEMENT**

This STOCK PURCHASE AGREEMENT (this "Agreement") is made and entered into this 26th day of April, 2000 by and between Cantor Fitzgerald Securities (the "Seller"), and eSpeed, Inc., (the "Purchaser").

WHEREAS, simultaneously herewith, the Seller, the Purchaser and two diversified energy companies, Dynegy, Inc. and The Williams Companies, Inc. (each an "Anchor" and collectively the "Anchors") have entered into a business relationship pursuant to which they will cooperate together to establish a series of new marketplaces for the electronic and telephonic exchange of energy and certain other products (the "Business Relationship");

WHEREAS, each Anchor has agreed, pursuant to a Subscription Agreement dated of even date hereof with the Purchaser, to which Seller is also a party (the "Subscription Agreement"), to make an equity investment in the Purchaser consisting, in pertinent part, of the purchase of 789,071 shares (or an aggregate of 1,578,142 shares for the 2 Anchors) of Class A Common Stock, par value $.01 per share, of the Purchaser (the "Class A Common Stock");

WHEREAS, subject to the satisfaction of certain conditions relating to investments in Qualified Verticals (as defined in the Subscription Agreement), each Anchor has the right to make up to 4 additional investments of $25.0 million each in restricted shares of Class A Common Stock of the Company, at a 10% discount to the 10 Trading Day Average (as defined in the Subscription Agreement) preceding the Purchaser's investment in the Qualified Vertical (the "Additional Investment Right");

WHEREAS, in furtherance of the Business Relationship and the transactions contemplated thereby, the Seller is willing to sell, and the Purchaser is willing to purchase, shares of Class B Common Stock of Purchaser, par value $.01 per share, ("Class B Common Stock") representing (x) an aggregate of 789,071 shares, representing half of the number of shares being sold to the Anchors by Purchaser (the "Initial Shares"), and (y) each time an Additional Investment Right is exercised, half of the number of shares purchased by the Anchors, in the aggregate (the "Additional Shares"), in connection with each such exercise, all subject to the terms and conditions set forth herein;

WHEREAS, the purchase of the Initial Shares hereunder shall be contingent upon, and consummated simultaneously with the Closing (as defined in the Subscription Agreement), which is hereafter referred to as the "Subscription Agreement Closing"; and

WHEREAS, the purchase of the Additional Shares hereunder shall be contingent upon, and consummated simultaneously with, the closing of each Additional Investment Right.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements and covenants hereinafter set forth, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller and the Purchaser, intending to be legally bound, hereby agree as follows:

1. Terms of Purchase.

1.1 Sale and Purchase of the Initial Shares. The Seller agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Seller, the Initial Shares for an aggregate cash purchase price of $25.0 million (the "Purchase Price"). The Purchase Price shall be payable by wire transfer to an account designated by Seller.

1.2 Sale and Purchase of the Additional Shares. The Seller agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Seller, such number of Additional Shares (including shares purchased from the Company upon exercise of a put or call as defined in Section 3(h) of the Subscription Agreement), as shall equal half of the Additional Shares purchased from the Anchors in the aggregate, upon each exercise of an Additional Investment Right, provided that the Additional Shares shall be Class B Common Stock of Purchaser (unless the Seller shall determine to substitute Class A Common Stock). The purchase price per share of the Additional Shares (each referred to herein as the "Additional Share Purchase Price") shall be the same purchase price per share as is paid by the Anchors for the Class A Common Stock purchased by them pursuant to the applicable exercise of an Additional Investment Right. The Additional Share Purchase Price shall be payable by wire transfer to an account designated by Seller. In the event that as a result of a recapitalization or other similar transaction involving Purchaser, whether effected as a merger, consolidation or otherwise, the Purchaser agrees with the Anchors that the shares available for purchase upon exercise of an Additional Investment Right shall consist of one or more securities which are issued or received in exchange for the Class A Common Stock or Class B Common Stock of the Company, then the provisions of this Section 1.2 and other Sections of this Agreement related thereto, shall be deemed to include the security or securities so substituted.

1.3 Initial Closing. The closing (the "Share Purchase Closing") of the sale of the Initial Shares by the Seller to the Purchaser shall take place at the offices of Purchaser, on the date of the Subscription Agreement Closing or at such other time and place as the Seller and the Purchaser shall mutually agree upon. At the Share Purchase Closing, the Seller shall deliver to the Purchaser the Initial Shares against payment of the Purchase Price.

1.4 Closings of Additional Investment Rights. The closing for each Additional Share Purchase (each an "Additional Share Closing") shall take place at the offices of Purchaser on the date of closing of each Additional Investment Right (each an "Additional Investment Right Closing") or at such other time and place as the Seller and Purchase shall mutually agree upon. At each Additional Share Closing, the Seller shall deliver the Additional Shares to the Purchaser against payment of the Additional Share Purchase Price.

2. Representations and Warranties of the Seller

The Seller hereby makes the following representations and warranties to the Purchaser:

2.1 Organization of the Seller. The Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite corporate power and authority to carry on its business as now being conducted.

2.2 Authority. The Seller has all requisite corporate power and authority to enter into this Agreement and to perform all of its obligations hereunder. The execution, delivery and performance of this Agreement and the other documents and instruments to be executed by Seller pursuant hereto and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Seller. This Agreement has been duly executed and delivered by the Seller and, assuming due authorization, execution and delivery by the Purchaser, this Agreement constitutes the valid and binding agreement of the Seller, enforceable against it in accordance with its terms, except as may be limited by bankruptcy, moratorium and insolvency laws and other laws affecting the rights of creditors' generally and except as may be limited by the availability of equitable remedies.

2.3 No Conflict. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not, (i) conflict with, or result in any violation or breach of, any provision of the Certificate of Incorporation or Bylaws or other operative organizational documents of the Seller, (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require a consent or waiver under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or other agreement, instrument or obligation to which the Seller or any of its Subsidiaries is a party, or (iii) conflict with or violate any permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Seller or any of its Subsidiaries or any its or their properties or assets, except in the case of clauses (ii) and (iii) for any such conflicts, violations, breaches, defaults, terminations, cancellations or accelerations which are not, individually or in the aggregate, reasonably likely to have a material adverse effect on Seller and its subsidiaries taken as a whole or on Seller's ability to consummate the transactions contemplated hereby.

2.4 Ownership of the Shares. The Seller owns and has good and marketable title to the Initial Shares and the Additional Shares, free from all liens, claims and encumbrances. At the Share Purchase Closing or Additional Share Closing, as the case may be, the Purchaser will receive good and marketable title to the Initial Shares or Additional Shares, as the case may be, free from all liens, claims and encumbrances.

3. Representations and Warranties of the Purchaser.

The Purchaser hereby makes the following representations and warranties to the Seller:

3.1 Organization of the Purchaser and its Subsidiaries. The Purchaser is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite corporate power and authority to carry on its business as now being conducted.

3.2 Authority. The Purchaser has all requisite corporate power and authority to enter into this Agreement and to perform all of its obligations hereunder. The execution, delivery and performance of this Agreement and the other documents and instruments to be executed by Purchaser pursuant hereto and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement has been duly executed and delivered by the Purchaser and, assuming due authorization, execution and delivery by the Seller, this Agreement constitutes the valid and binding agreement of the Purchaser, enforceable against it in accordance with its terms, except as may be limited by bankruptcy, moratorium and insolvency laws and other laws affecting the rights of creditors' generally and except as may be limited by the availability of equitable remedies.

3.3 No Conflict. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not, (i) conflict with, or result in any violation or breach of, any provision of the Certificate of Incorporation or Bylaws or other operative organizational documents of the Purchaser, (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require a consent or waiver under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or other agreement, instrument or obligation to which the Purchaser or any of its Subsidiaries is a party, or (iii) conflict with or violate any permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Purchaser or any of its Subsidiaries or any its or their properties or assets, except in the case of clauses (ii) and (iii) for any such conflicts, violations, breaches, defaults, terminations, cancellations or accelerations which are not, individually or in the aggregate, reasonably likely to have a material adverse effect on Purchaser and its subsidiaries, taken as a whole, or on Purchaser's ability to consummate the transactions contemplated hereby.

4. Conditions to the Obligations of the Purchaser.

The Purchaser's obligation to purchase and pay for the Initial Shares or the Additional Shares, as the case may be, shall be subject to the satisfaction, at or before the Share Purchase Closing, or the applicable Additional Share Closing, as the case may be, of the following conditions (any of which may be waived, in whole or in part, by the Purchaser):

4.1 Representations and Warranties. All of the representations and warranties of the Seller made in this Agreement shall have been true and accurate in all material respects as of the date hereof and as of the Share Purchase Closing or the applicable Additional Share Closing, as the case may be.

4.2 Delivery of Shares. Concurrently with the Share Purchase Closing, or the applicable Additional Share Closing, as the case may be, the Seller shall deliver to the Purchaser good and marketable title to the Initial Shares or Additional Shares as the case may be, free from all liens, claims and encumbrances.

4.3 Subscription Agreement Closing or Additional Investment Right Closing. The Subscription Agreement Closing or the applicable Additional Investment Right Closing, as the case may be, shall have occurred.

5. Conditions to the Obligation of the Seller.

The Seller's obligation to sell, convey, transfer and assign the Initial Shares or the Additional Shares, as the case may be, shall be subject to the satisfaction, at or before the Share Purchase Closing, or the applicable Additional Share Closing, as the case may be, of the following conditions (any of which may be waived, in whole or in part, by the Seller):

5.1 Representations and Warranties. All of the representations and warranties of the Purchaser in this Agreement shall have been true and accurate in all material respects as of the date hereof and as of the Share Purchase Closing or the applicable Additional Share Closing, as the case may be.

5.2 Closing of the Transaction Documents. The Subscription Agreement Closing or the applicable Additional Investment Right Closing, as the case may be shall have occurred.

5.3 Purchase Price. The Seller shall have received from the Purchaser, by wire transfer of immediately available funds, an amount in cash equal to the Purchase Price or the Additional Share Purchase Price, as the case may be.

6. Further Assurances. Subject to the terms and conditions hereof, each party agrees that after the Share Purchase Closing or Additional Share Closing, as the case may be, it will execute and deliver such documents as the other party may reasonably request in order to consummate the transactions contemplated hereby.

7. Termination and Waiver.

7.1 Termination. This Agreement may be terminated at any time by either party if the Subscription Agreement with each Anchor shall be terminated or otherwise by mutual agreement of the parties.

7.2 Waiver. Each of the parties hereto may (i) extend the time for the performance of any of the obligations or other acts of any other party hereto,
(ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto, or (iii) waive compliance with any of the covenants, 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 by the party granting such waiver. Such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or future failure.

8. Miscellaneous.

8.1 Headings. Section headings contained in this Agreement are included for convenience only and shall not affect the interpretation of any provisions of this Agreement.

8.2 Notices. Any notice, demand, request, waiver, or other communication under this Agreement shall be in writing (including facsimile or similar writing) and shall be deemed to have been duly given (i) on the date of service if personally served, (ii) on the third day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered, return receipt requested, postage prepaid or (iii) on the date sent if sent by facsimile, to the parties at the following addresses or facsimile numbers with a copy sent by mail as aforesaid on the same date (or at such other address or facsimile number for a party as shall be specified by like notice):

| | |
|---|---|
| If to the Purchaser, to: | eSpeed, Inc.<br>One World Trade Center<br>103rd Floor<br>New York, NY 10048<br>Fax: (212) 938-3620<br>Attention: General Counsel |
| If to the Seller, to: | Cantor Fitzgerald Securities<br>One World Trade Center<br>105th Floor<br>New York, NY 10048<br>Fax: (212) 938-5000<br>Attention: General Counsel |

8.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Neither of the parties hereto shall assign any rights or delegate any duties hereunder without the prior written consent of the other parties hereto, and any assignment made without such consent shall be void and constitute a default hereunder; provided that Seller may assign its obligation to sell Shares or Additional Shares hereunder, in whole or in part, to a subsidiary or affiliate of Seller that owns a sufficient number of shares of Class B Common Stock to satisfy the assigned obligation.

8.4 Governing Law. This Agreement shall be construed in accordance with, and governed by, the internal laws of the State of New York, without giving effect to the principles of conflict of laws thereof.

8.5 Entire Agreement. This Agreement sets forth the entire understanding and agreement of the parties with respect to its subject matter and supersedes any and all prior

understandings, negotiations or agreements among the parties hereto, both written and oral, with respect to such subject matter.

8.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same agreement.

8.7 Severability. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, in whole or in part, the validity of the remaining provisions shall not be affected and the remaining portion of any provision held to be invalid, illegal or unenforceable shall in no way be affected, prejudiced or disturbed thereby.

8.8 No Prejudice. This Agreement has been jointly prepared and negotiated by the parties hereto and the terms hereof shall not be construed in favor of or against any party on account of its participation in such preparation.

8.9 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any party other than the parties hereto and their respective successors and permitted assigns.

8.10 Amendment and Modification. This Agreement may be amended or modified only by written agreement executed by all parties hereto.

IN WITNESS WHEREOF, the Seller and the Purchaser have caused this Agreement to be executed as of the date first written above.

eSpeed, Inc.

*By:* */s/ Howard W. Lutnick*
---
*Name: Howard W. Lutnick*
*Title: Chairman and Chief Executive Officer*

**Cantor Fitzgerald Securities**

*By:* */s/ Howard W. Lutnick*
---
*Name: Howard W. Lutnick*

*Title: President*

**EXHIBIT 10.11**

Cantor Fitzgerald, L.P.
Cantor Fitzgerald Securities
One World Trade Center
New York, New York 10048

June 2, 2000

eSpeed, Inc.
One World Trade Center
New York, New York 10048

Dear Sirs:

Reference is made to (i) the Subscription Agreement, dated April 26, 2000, by and among eSpeed, Inc. (the "Company"), Cantor Fitzgerald, L.P. ("Cantor") and Dynegy, Inc., (ii) the Subscription Agreement, dated April 26, 2000, by and among the Company, Cantor and The Williams Companies, Inc., and
(iii) the Stock Purchase Agreement, dated April 26, 2000 (the "Stock Purchase Agreement"), by and between the Company and Cantor Fitzgerald Securities.

In connection with Cantor's obligations under Section 12 of each of these Subscription Agreements, the undersigned hereby request that you instruct your transfer agent to convert an aggregate of 3,375,348 shares of Class B Common Stock held by Cantor Fitzgerald Securities into the same number of shares of Class A Common Stock. In addition, in connection with the transactions contemplated by the Stock Purchase Agreement, the undersigned hereby agree that the Initial Shares (as defined in the Stock Purchase Agreement) shall consist of 789,071 shares of Class A Common Stock and request that you instruct your transfer agent to convert, prior to the Share Purchase Closing (as defined in the Stock Purchase Agreement), 789,071 shares of Class B Common Stock held by Cantor Fitzgerald Securities into the same number of shares of Class A Common Stock (which shares shall then be sold at the Share Purchase Closing by Cantor Fitzgerald Securities to you as contemplated by the Stock Purchase Agreement).

By execution of this letter agreement, Cantor Fitzgerald Securities and the Company are also agreeing that the Stock Purchase Agreement is hereby amended to provide that the Initial Shares shall be shares of Class A Common Stock rather than Class B Common Stock. Except as so amended, the Stock Purchase Agreement shall remain in full force and effect.

If you are in agreement with the foregoing, please so indicate in the space below provided for such purpose.

**CANTOR FITZGERALD, L.P.**

*By: /s/ Howard W. Lutnick*
*---------- Name: Howard W. Lutnick*
*Title: Chairman*

**CANTOR FITZGERALD SECURITIES**

*By: /s/ Howard W. Lutnick*
*---------- Name: Howard W. Lutnick*
*Title: President*

**AGREED:**

**ESPEED, INC.**

*By: /s/ Howard W. Lutnick*
*---------- Name: Howard W. Lutnick*
*Title: Chairman and Chief Executive Officer*

NEITHER THIS WARRANT NOR THE SHARES OF CLASS A COMMON STOCK ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND NEITHER THIS WARRANT NOR SUCH SHARES MAY BE SOLD, ENCUMBERED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENT, AND, IF AN EXEMPTION SHALL BE APPLICABLE, THE HOLDER SHALL HAVE DELIVERED AN OPINION OF COUNSEL ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

Void after 5:00 p.m. Eastern Standard Time, on June 5, 2010.

**WARRANT TO PURCHASE CLASS A COMMON STOCK**

**OF**

**eSPEED, INC.**

FOR VALUE RECEIVED, eSPEED, INC. (the "Company"), a Delaware corporation, hereby certifies that Dynegy Inc. (the "Initial Holder"), or its permitted assigns (together with the Initial Holder, the "Holder"), is entitled to purchase from the Company, at any time or from time to time commencing on the Exercise Date set forth in Section 4 hereof (as the same may be accelerated pursuant to Section 4(c) hereof) and prior to 5:00 P.M., Eastern Standard Time, on June 5, 2010 a total of 666,666 fully paid and non-assessable shares of Class A Common Stock, par value $.01 per share, of the Company for a purchase price of $35.203125 per share. (Hereinafter, (i) said Class A Common Stock, together with any other equity securities which may be issued by the Company with respect thereto or in substitution therefor, is referred to as the "Class A Stock," (ii) the shares of the Class A Stock purchasable hereunder are referred to as the "Warrant Shares," (iii) the aggregate purchase price payable hereunder for the Warrant Shares is referred to as the "Aggregate Warrant Price," (iv) the price payable hereunder for each of the Warrant Shares is referred to as the "Per Share Warrant Price," (v) this Warrant, and all warrants hereafter issued in exchange or substitution for this Warrant are referred to as the "Warrant" and
(vi) the holder of this Warrant is referred to as the "Holder.") The number of Warrant Shares and the securities (if applicable) for which this Warrant is exercisable and the Per Share Warrant Price are subject to adjustment as hereinafter provided under Section 3.

1. Exercise of Warrant. This Warrant may be exercised, in whole at any time or in part from time to time, commencing on the Exercise Date set forth in
Section 4 hereof (as the same may be accelerated pursuant to Section 4(c) hereof) and prior to 5:00 P.M., Eastern Standard Time, on June 5, 2010 by the Holder of this Warrant by the surrender of this Warrant (with the subscription form at the end hereof duly executed) at the address set forth in Section 9(a) hereof, together with proper payment of the Aggregate Warrant Price, or the proportionate part thereof if this Warrant is exercised in part. The Aggregate Warrant Price or Per Share Warrant Price shall be paid in cash, via wire transfer to an account designated by the Company, or by certified or official bank check payable to the order of the Company.

If this Warrant is exercised in part, the Holder shall be entitled to receive a new Warrant covering the number of Warrant Shares in respect of which this Warrant has not been exercised and setting forth the proportionate part of the Aggregate Warrant Price applicable to such Warrant Shares. Upon such surrender of this Warrant, the Company will (a) issue a certificate or certificates in the name of the Holder for the shares of the Class A Stock to which the Holder shall be entitled, and (b) deliver the proportionate part thereof if this Warrant is exercised in part, pursuant to the provisions of the Warrant.

No fractional shares shall be issued upon the exercise of this Warrant. With respect to any fraction of a share called for upon any exercise hereof, the Company shall pay to the Holder an amount in cash equal to such fraction multiplied by the fair value of a share.

2. Reservation of Warrant Shares. The Company agrees that, prior to the expiration of this Warrant, the Company from and as of the date hereof, will have authorized and in reserve, and will keep available, solely for issuance or delivery upon the exercise of this Warrant, the shares of the Class A Stock as from time to time shall be receivable upon the exercise of this Warrant.

3. Adjustments for Corporate Events. The number and kind of securities issuable upon the exercise of this Warrant, the Per Share Warrant Price and the number of Warrant Shares for which this Warrant may be exercised shall be subject to adjustment from time to time in accordance with the following provisions:

(a) Reorganization, Reclassification. In the event of a reorganization, share exchange, or reclassification, other than a change in par value, or from par value to no par value, or from no par value to par value or a transaction described in subsection (b) or (c) below, this Warrant shall, after such reorganization, share exchange or reclassification, be exercisable into the kind and number of shares of stock or other securities or other property of the Company which the holder of this Warrant would have been entitled to receive if the holder had held the Warrant Shares issuable upon exercise of this Warrant immediately prior to such reorganization, share exchange, or reclassification.

(b) Merger, Consolidation or Sale of All or Substantially All Assets. In the event of a merger or consolidation to which the Company is a party or the sale of all or substantially all of the assets of the Company, this Warrant shall, after such merger, consolidation or sale, be exercisable for the kind and number of shares of stock and/or other securities, cash or other property which the holder of this Warrant would have been entitled to receive if the holder had held the Warrant Shares issuable upon exercise of this Warrant immediately prior to such merger, consolidation or sale. Any such merger, consolidation or sale shall require, as a condition thereto, that such other party to such merger, consolidation or sale agree in writing to assume this Warrant.

(c) Subdivision or Combination of Shares. In case outstanding shares of Class A Stock shall be subdivided, the Per Share Warrant Price shall be proportionately reduced as of the effective date of such subdivision, or as of the date a record is taken of the holders of

Class A Stock for the purpose of so subdividing, whichever is earlier. In case outstanding shares of Class A Stock shall be combined, the Per Share Warrant Price shall be proportionately increased as of the effective date of such combination, or as of the date a record is taken of the holders of Class A Stock for the purpose of so combining, whichever is earlier.

(d) Stock Dividends. In case shares of Class A Stock are issued as a dividend or other distribution on the Class A Stock (or such dividend is declared), then the Per Share Warrant Price shall be adjusted, as of the date a record is taken of the holders of Class A Stock for the purpose of receiving such dividend or other distribution (or if no such record is taken, as at the earliest of the date of such declaration, payment or other distribution), to that price determined by multiplying the Per Share Warrant Price in effect immediately prior to such declaration, payment or other distribution by a fraction (i) the numerator of which shall be the number of shares of Class A Stock outstanding immediately prior to the declaration or payment of such dividend or other distribution, and (ii) the denominator of which shall be the total number of shares of Class A Stock outstanding immediately after the declaration or payment of such dividend or other distribution. In the event that the Company shall declare or pay any dividend on the Class A Stock payable in any right to acquire Class A Stock for no consideration, then, for purposes of calculating such adjustment, the Company shall be deemed to have made a dividend payable in Class A Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Class A Stock.

(e) Adjustment of Aggregate Number of Warrant Shares Issuable. Upon each adjustment of the Per Share Warrant Price under the provisions of this
Section 3, the aggregate number of Warrant Shares issuable upon exercise of this Warrant shall be adjusted to an amount determined by multiplying the Warrant Shares issuable prior to such adjustment by a fraction determined by dividing
(x) the Per Share Warrant Price in effect immediately prior to the event causing such adjustment by (y) such adjusted Per Share Warrant Price.

(f) Minimum Adjustment. No adjustment of the Per Share Warrant Price shall be made if the amount of any such adjustment would be an amount less than 1% of the Per Share Warrant Price then in effect, but any such amount shall be carried forward and an adjustment in respect thereof shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate an increase or decrease of 1% or more.

(g) Treasury Shares. The number of shares of Class A Stock at any time outstanding shall not include any shares thereof then directly or indirectly owned or held by or for the account of the Company.

(h) Notices. If at any time, (x) the Company shall declare a stock dividend (or any other distribution except for cash dividends) on its Class A Stock; (y) there shall be any capital reorganization or reclassification of the Class A Stock, or any consolidation or merger to which the Company is a party, or any sale or transfer of all of substantially all of the assets of the Company; or (z) there shall be a voluntary or involuntary dissolution, liquidation or winding-up of the Company; then, in any one or more of such cases, the Company shall give written notice

to the Holder, not less than 10 days before any record date or other date set for definitive action, or of the date on which such reorganization, reclassification, sale, consolidation, merger, dissolution, liquidation or winding up shall take place, as the case may be. Such notice shall also set forth such facts as shall indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the current Per Share Warrant Price and the kind and amount of Class A Stock and other securities and property deliverable upon exercise of this Warrant. Such notice shall also specify the date (to the extent known) as of which the holders of the Class A Stock of record shall be entitled to exchange their Class A Stock for securities or other property deliverable upon such reorganization, reclassification, sale, consolidation, merger, dissolution, liquidation or winding up, as the case may be. In addition, whenever the aggregate number of Warrant Shares issuable upon exercise of this Warrant and Per Share Warrant Price is adjusted as herein provided, the Chief Financial Officer of the Company shall compute the adjusted number of Warrant Shares and Per Share Warrant Price in accordance with the foregoing provisions and shall prepare a written certificate setting forth such adjusted number of Warrant Shares and Per Share Warrant Price, and such written instrument shall promptly be delivered to the recordholder of this Warrant.

4. Exercisability.

(a) Exercise Date. This Warrant shall be vested immediately and shall be exercisable as to all Warrant Shares commencing December 5, 2005 (the "Exercise Date"), subject to acceleration as set forth in subsection (c) below.

(b) Commitment to Invest in Four Qualified Verticals. The Initial Holder has agreed to invest $2.5 million in each of four Qualified Verticals (as defined below) pursuant to the terms of that certain Subscription Agreement, dated as of April 26, 2000, by and between the Company and the Initial Holder (the "Subscription Agreement"). Such investment is required to be made during the 12-month period following the date hereof (the "12-Month Period"; which period may be increased by not more than six months (the "Black-Out Period") if a public offering by the Company is commenced during such 12-Month Period and disclosure constraints resulting from such public offering dictate a delay as determined by the Company). Upon any such determination by the Company, the Company shall so notify the Initial Holder in writing prior to the commencement of any Black-Out Period, which notice shall specify the time period by which the 12-Month Period shall be increased and the new last day of the 12-Month Period. Such notice shall be binding on the parties. For purposes of this agreement, a "Qualified Vertical" shall have the meaning ascribed to it in Section 3(b) of the Subscription Agreement.

(c) Acceleration of Exercisability.

(i) Satisfaction of Acceleration Condition. Upon each satisfaction of an Acceleration Condition (as defined below), this Warrant shall become exercisable as to 25% of the aggregate Warrant Shares (i.e., 166,666 shares of Class A Stock). An "Acceleration Condition" shall be deemed satisfied after the occurrence of each of the following: (1) the formation of a Qualified Vertical, (2) the consummation and funding of a $2.5 million investment in a Qualified Vertical by the Subscriber and each of the three additional industry market participants (two in the case of the Newco Qualified Vertical, as defined in Section 3 of the Subscription Agreement), and (3) the consummation of any market participant's first transaction on the exchange of said Qualified Vertical; provided that in any event the Acceleration Condition shall be deemed satisfied on the eight-week anniversary of the satisfaction of the conditions set forth in clauses
(1) and (2) above.

(ii) Not Exercisable Prior to First Anniversary of Date of Issuance. Notwithstanding the provisions of subsection (c)(i) above, in no event will this Warrant, or any portion thereof, become exercisable prior to October 1, 2001. In the event that an Acceleration Condition is satisfied prior to such date, then the exercisability of this Warrant in connection with such satisfaction shall be deferred until October 1, 2001.

5. Fully Paid Stock; Taxes. The Company agrees that the shares of the Class A Stock represented by each and every certificate for Warrant Shares delivered on the proper exercise of this Warrant shall, at the time of such delivery, be validly issued and outstanding, fully paid and non-assessable, and not subject to preemptive rights, and the Company will take all such actions as may be necessary to assure that the par value or stated value, if any, per share of the Class A Stock is at all times equal to or less than the then Per Share Warrant Price. Subject to Section 6(c) hereof, the Company further covenants and agrees that it will pay, when due and payable, any and all federal and state stamp, original issue or similar taxes that may be payable in respect of the issuance of any Warrant Shares or certificates therefor. The Holder covenants and agrees that it shall pay, when due and payable, all of its federal, state and local income or similar taxes that may be payable in respect of the issuance of any Warrant Shares or certificates therefor, if any.

6. Transfer

(a) Securities Laws. Neither this Warrant nor the Warrant Shares issuable upon the exercise hereof have been registered under the Securities Act of 1933, as amended (the "Securities Act"), or under any state securities laws and unless so registered may not be transferred, sold, pledged, hypothecated or otherwise disposed of unless an exemption from such registration is available. In the event the Holder desires to transfer this Warrant or any of the Warrant Shares issued in accordance with the terms hereof, the Holder must give the Company prior written notice of such proposed transfer including the name and address of the proposed transferee, unless such transfer is a transfer of the Warrant Shares pursuant to an effective Registration Statement. Such transfer may be made only either (i) upon publication by the Securities and Exchange Commission (the "Commission") of a ruling, interpretation, opinion or "no action letter" based upon facts presented to said Commission, or (ii) upon receipt by the

Company of an opinion of counsel acceptable to the Company to the effect that the proposed transfer will not violate the provisions of the Securities Act, the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or the rules and regulations promulgated under either such act, or to the effect that the Warrant or Warrant Shares to be sold or transferred have been registered under the Securities Act of 1933, as amended, and that there is in effect a current prospectus meeting the requirements of Subsection 10(a) of the Securities Act, which is being or will be delivered to the purchaser or transferee at or prior to the time of delivery of the certificates evidencing the Warrant or Warrant Shares to be sold or transferred.

(b) Registration Rights. The Warrant Shares are the subject of the Registration Rights Agreement attached to the Subscription Agreement as Exhibit D.

(c) Swap or Hedging Transactions. Subject to Section 3(c) of the Subscription Agreement, without the prior written consent of the Company, the Holder may not enter into any swap or other hedging transaction relating to the Warrants or the Warrant Shares.

(d) Transfer. Subject to Section 4(c), without the prior written consent of the Company, neither this Warrant, nor any interest herein, may be sold, assigned, transferred, pledged, encumbered or otherwise disposed of. Any sale, assignment, transfer, pledge, encumbrance or other disposition of this Warrant attempted contrary to the provisions of this Warrant, or any levy of execution, attachment or other process attempted upon the Warrant, shall be null and void and without effect. The provision of this Section 6(d) shall not be applicable to the Warrant Shares. Without limitation of the foregoing, Subscriber agrees that if it transfers its rights hereunder to a Subsidiary pursuant to Section 16(k) of the Subscription Agreement, it shall not sell, assign or transfer the stock of such Subsidiary during the 12-month lock-up.

(e) Legend and Stop Transfer Orders. Unless the Warrant Shares have been registered under the Securities Act or eligible for resale pursuant to Rule 144(k) under the Securities Act, upon exercise of any part of the Warrant and the issuance of any of the Warrant Shares, the Company shall instruct its transfer agent to enter stop transfer orders with respect to such shares, and all certificates representing Warrant Shares shall bear on the face thereof substantially the following legend, insofar as is consistent with Delaware law:

"The shares of Class A Common Stock represented by this certificate have not been registered under the Securities Act of 1933, as amended, and may not be sold, offered for sale, assigned, transferred or otherwise disposed of unless registered pursuant to the provisions of that Act or an opinion of counsel to the Company is obtained stating that such disposition is in compliance with an available exemption from such registration."

7. Loss, etc. of Warrant. Upon receipt of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and of indemnity reasonably satisfactory to the Company, if lost, stolen or destroyed, and upon surrender and cancellation of this Warrant if mutilated, the Company shall execute and deliver to the Holder a new Warrant of like date, tenor and denomination.

8. Warrant Holder Not Shareholder. Except as otherwise provided herein, this Warrant does not confer upon the Holder any right to vote or to consent to or receive notice as a shareholder of the Company, as such, in respect of any matters whatsoever, or any other rights or liabilities as a shareholder, prior to the exercise hereof.

9. Communication. No notice or other communication under this Warrant shall be effective unless the same is in writing and is mailed by first-class mail, postage prepaid, addressed to:

(a) the Company at One World Trade Center, 103rd Floor, New York, New York 10048, Attention: General Counsel, or such other address as the Company has designated in writing to the Holder, or

(b) the Holder at 1000 Louisiana, Suite 5800, Houston, Texas 77002, Attention: General Counsel, or such other address as the Holder has designated in writing to the Company.

10. Headings. The headings of this Warrant have been inserted as a matter of convenience and shall not affect the construction hereof.

11. Applicable Law. This Warrant shall be governed by and construed in accordance with the law of the State of New York without giving effect to the principles of conflict of laws thereof.

IN WITNESS WHEREOF, the Company has caused this Warrant to be signed by a duly authorized officer as of this 5th day of June, 2000.

**eSPEED, INC.**

*By: /s/ Howard W. Lutnick*
*---------------------------*
*Name: Howard W. Lutnick*
*Title: Chairman and*
*Chief Executive Officer*

**SUBSCRIPTION**

The undersigned, _____, pursuant to the provisions of the foregoing Warrant, hereby agrees to subscribe for the purchase of _____ shares of the Class A Common Stock of eSPEED, INC. covered by said Warrant, and makes payment therefor in full at the price per share provided by said Warrant.

Dated _____ Signature _____

Address _____

**ASSIGNMENT**

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto _____ the foregoing Warrant and all rights evidenced thereby, and does irrevocably constitute and appoint _____, attorney, to transfer said Warrant on the books of
**eSPEED, INC.**

Dated _____ Signature _____

Address _____

**PARTIAL ASSIGNMENT**

FOR VALUE RECEIVED _____ hereby assigns and transfers unto _____ the right to purchase _____ shares of the Class A Common Stock of eSPEED, INC. by the foregoing Warrant, and a proportionate part of said Warrant and the rights evidenced hereby, and does irrevocably constitute and appoint _____, attorney, to transfer that part of said Warrant on the books of eSPEED, INC.

Dated _____ Signature _____

Address _____

NEITHER THIS WARRANT NOR THE SHARES OF CLASS A COMMON STOCK ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND NEITHER THIS WARRANT NOR SUCH SHARES MAY BE SOLD, ENCUMBERED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENT, AND, IF AN EXEMPTION SHALL BE APPLICABLE, THE HOLDER SHALL HAVE DELIVERED AN OPINION OF COUNSEL ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

Void after 5:00 p.m. Eastern Standard Time, on June 5, 2010.

**WARRANT TO PURCHASE CLASS A COMMON STOCK**

**OF**

**eSPEED, INC.**

FOR VALUE RECEIVED, eSPEED, INC. (the "Company"), a Delaware corporation, hereby certifies that Williams Energy Marketing & Trading Company (the "Initial Holder"), or its permitted assigns (together with the Initial Holder, the "Holder"), is entitled to purchase from the Company, at any time or from time to time commencing on the Exercise Date set forth in Section 4 hereof (as the same may be accelerated pursuant to Section 4(c) hereof) and prior to 5:00 P.M., Eastern Standard Time, on June 5, 2010 a total of 666,666 fully paid and non-assessable shares of Class A Common Stock, par value $.01 per share, of the Company for a purchase price of $35.203125 per share. (Hereinafter, (i) said Class A Common Stock, together with any other equity securities which may be issued by the Company with respect thereto or in substitution therefor, is referred to as the "Class A Stock," (ii) the shares of the Class A Stock purchasable hereunder are referred to as the "Warrant Shares," (iii) the aggregate purchase price payable hereunder for the Warrant Shares is referred to as the "Aggregate Warrant Price," (iv) the price payable hereunder for each of the Warrant Shares is referred to as the "Per Share Warrant Price," (v) this Warrant, and all warrants hereafter issued in exchange or substitution for this Warrant are referred to as the "Warrant" and (vi) the holder of this Warrant is referred to as the "Holder.") The number of Warrant Shares and the securities (if applicable) for which this Warrant is exercisable and the Per Share Warrant Price are subject to adjustment as hereinafter provided under Section 3.

1. Exercise of Warrant. This Warrant may be exercised, in whole at any time or in part from time to time, commencing on the Exercise Date set forth in
Section 4 hereof (as the same may be accelerated pursuant to Section 4(c) hereof) and prior to 5:00 P.M., Eastern Standard Time, on June 5, 2010 by the Holder of this Warrant by the surrender of this Warrant (with the subscription form at the end hereof duly executed) at the address set forth in Section 9(a) hereof, together with proper payment of the Aggregate Warrant Price, or the proportionate part thereof if this Warrant is exercised in part. The Aggregate Warrant Price or Per Share

Warrant Price shall be paid in cash, via wire transfer to an account designated by the Company, or by certified or official bank check payable to the order of the Company.

If this Warrant is exercised in part, the Holder shall be entitled to receive a new Warrant covering the number of Warrant Shares in respect of which this Warrant has not been exercised and setting forth the proportionate part of the Aggregate Warrant Price applicable to such Warrant Shares. Upon such surrender of this Warrant, the Company will (a) issue a certificate or certificates in the name of the Holder for the shares of the Class A Stock to which the Holder shall be entitled, and (b) deliver the proportionate part thereof if this Warrant is exercised in part, pursuant to the provisions of the Warrant.

No fractional shares shall be issued upon the exercise of this Warrant. With respect to any fraction of a share called for upon any exercise hereof, the Company shall pay to the Holder an amount in cash equal to such fraction multiplied by the fair value of a share.

2. Reservation of Warrant Shares. The Company agrees that, prior to the expiration of this Warrant, the Company from and as of the date hereof, will have authorized and in reserve, and will keep available, solely for issuance or delivery upon the exercise of this Warrant, the shares of the Class A Stock as from time to time shall be receivable upon the exercise of this Warrant.

3. Adjustments for Corporate Events. The number and kind of securities issuable upon the exercise of this Warrant, the Per Share Warrant Price and the number of Warrant Shares for which this Warrant may be exercised shall be subject to adjustment from time to time in accordance with the following provisions:

(a) Reorganization, Reclassification. In the event of a reorganization, share exchange, or reclassification, other than a change in par value, or from par value to no par value, or from no par value to par value or a transaction described in subsection (b) or (c) below, this Warrant shall, after such reorganization, share exchange or reclassification, be exercisable into the kind and number of shares of stock or other securities or other property of the Company which the holder of this Warrant would have been entitled to receive if the holder had held the Warrant Shares issuable upon exercise of this Warrant immediately prior to such reorganization, share exchange, or reclassification.

(b) Merger, Consolidation or Sale of All or Substantially All Assets. In the event of a merger or consolidation to which the Company is a party or the sale of all or substantially all of the assets of the Company, this Warrant shall, after such merger, consolidation or sale, be exercisable for the kind and number of shares of stock and/or other securities, cash or other property which the holder of this Warrant would have been entitled to receive if the holder had held the Warrant Shares issuable upon exercise of this Warrant immediately prior to such merger, consolidation or sale. Any such merger, consolidation or sale shall require, as a condition thereto, that such other party to such merger, consolidation or sale agree in writing to assume this Warrant.

(c) Subdivision or Combination of Shares. In case outstanding shares of Class A Stock shall be subdivided, the Per Share Warrant Price shall be proportionately reduced as of the effective date of such subdivision, or as of the date a record is taken of the holders of Class A Stock for the purpose of so subdividing, whichever is earlier. In case outstanding shares of Class A Stock shall be combined, the Per Share Warrant Price shall be proportionately increased as of the effective date of such combination, or as of the date a record is taken of the holders of Class A Stock for the purpose of so combining, whichever is earlier.

(d) Stock Dividends. In case shares of Class A Stock are issued as a dividend or other distribution on the Class A Stock (or such dividend is declared), then the Per Share Warrant Price shall be adjusted, as of the date a record is taken of the holders of Class A Stock for the purpose of receiving such dividend or other distribution (or if no such record is taken, as at the earliest of the date of such declaration, payment or other distribution), to that price determined by multiplying the Per Share Warrant Price in effect immediately prior to such declaration, payment or other distribution by a fraction (i) the numerator of which shall be the number of shares of Class A Stock outstanding immediately prior to the declaration or payment of such dividend or other distribution, and (ii) the denominator of which shall be the total number of shares of Class A Stock outstanding immediately after the declaration or payment of such dividend or other distribution. In the event that the Company shall declare or pay any dividend on the Class A Stock payable in any right to acquire Class A Stock for no consideration, then, for purposes of calculating such adjustment, the Company shall be deemed to have made a dividend payable in Class A Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Class A Stock.

(e) Adjustment of Aggregate Number of Warrant Shares Issuable. Upon each adjustment of the Per Share Warrant Price under the provisions of this
Section 3, the aggregate number of Warrant Shares issuable upon exercise of this Warrant shall be adjusted to an amount determined by multiplying the Warrant Shares issuable prior to such adjustment by a fraction determined by dividing
(x) the Per Share Warrant Price in effect immediately prior to the event causing such adjustment by (y) such adjusted Per Share Warrant Price.

(f) Minimum Adjustment. No adjustment of the Per Share Warrant Price shall be made if the amount of any such adjustment would be an amount less than 1% of the Per Share Warrant Price then in effect, but any such amount shall be carried forward and an adjustment in respect thereof shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate an increase or decrease of 1% or more.

(g) Treasury Shares. The number of shares of Class A Stock at any time outstanding shall not include any shares thereof then directly or indirectly owned or held by or for the account of the Company.

(h) Notices. If at any time, (x) the Company shall declare a stock dividend (or any other distribution except for cash dividends) on its Class A Stock; (y) there shall be any capital reorganization or reclassification of the Class A Stock, or any consolidation or merger to

which the Company is a party, or any sale or transfer of all of substantially all of the assets of the Company; or (z) there shall be a voluntary or involuntary dissolution, liquidation or winding-up of the Company; then, in any one or more of such cases, the Company shall give written notice to the Holder, not less than 10 days before any record date or other date set for definitive action, or of the date on which such reorganization, reclassification, sale, consolidation, merger, dissolution, liquidation or winding up shall take place, as the case may be. Such notice shall also set forth such facts as shall indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the current Per Share Warrant Price and the kind and amount of Class A Stock and other securities and property deliverable upon exercise of this Warrant. Such notice shall also specify the date (to the extent known) as of which the holders of the Class A Stock of record shall be entitled to exchange their Class A Stock for securities or other property deliverable upon such reorganization, reclassification, sale, consolidation, merger, dissolution, liquidation or winding up, as the case may be. In addition, whenever the aggregate number of Warrant Shares issuable upon exercise of this Warrant and Per Share Warrant Price is adjusted as herein provided, the Chief Financial Officer of the Company shall compute the adjusted number of Warrant Shares and Per Share Warrant Price in accordance with the foregoing provisions and shall prepare a written certificate setting forth such adjusted number of Warrant Shares and Per Share Warrant Price, and such written instrument shall promptly be delivered to the recordholder of this Warrant.

4. Exercisability.

(a) Exercise Date. This Warrant shall be vested immediately and shall be exercisable as to all Warrant Shares commencing December 5, 2005 (the "Exercise Date"), subject to acceleration as set forth in subsection (c) below.

(b) Commitment to Invest in Four Qualified Verticals. The Initial Holder has agreed to invest $2.5 million in each of four Qualified Verticals (as defined below) pursuant to the terms of that certain Subscription Agreement, dated as of April 26, 2000, by and between the Company and the Initial Holder (the "Subscription Agreement"). Such investment is required to be made during the 12-month period following the date hereof (the "12-Month Period"; which period may be increased by not more than six months (the "Black-Out Period") if a public offering by the Company is commenced during such 12-Month Period and disclosure constraints resulting from such public offering dictate a delay as determined by the Company). Upon any such determination by the Company, the Company shall so notify the Initial Holder in writing prior to the commencement of any Black-Out Period, which notice shall specify the time period by which the 12-Month Period shall be increased and the new last day of the 12-Month Period. Such notice shall be binding on the parties. For purposes of this agreement, a "Qualified Vertical" shall have the meaning ascribed to it in Section 3(b) of the Subscription Agreement.

(c) Acceleration of Exercisability.

(i) Satisfaction of Acceleration Condition. Upon each satisfaction of an Acceleration Condition (as defined below), this Warrant shall become exercisable as to 25% of the aggregate Warrant Shares (i.e., 166,666 shares of Class A Stock). An "Acceleration Condition" shall be deemed satisfied after the occurrence of each of the following: (1) the formation of a Qualified Vertical, (2) the consummation and funding of a $2.5 million investment in a Qualified Vertical by the Subscriber and each of the three additional industry market participants (two in the case of the Newco Qualified Vertical, as defined in Section 3 of the Subscription Agreement), and (3) the consummation of the Initial Holder's first transaction on the exchange of said Qualified Vertical; provided that in any event the Acceleration Condition shall be deemed satisfied on the eight-week anniversary of the satisfaction of the conditions set forth in clauses (1) and (2) above.

(ii) Not Exercisable Prior to First Anniversary of Date of Issuance. Notwithstanding the provisions of subsection (c)(i) above, in no event will this Warrant, or any portion thereof, become exercisable prior to June 5, 2001. In the event that an Acceleration Condition is satisfied prior to such date, then the exercisability of this Warrant in connection with such satisfaction shall be deferred until June 5, 2001.

5. Fully Paid Stock; Taxes. The Company agrees that the shares of the Class A Stock represented by each and every certificate for Warrant Shares delivered on the proper exercise of this Warrant shall, at the time of such delivery, be validly issued and outstanding, fully paid and non-assessable, and not subject to preemptive rights, and the Company will take all such actions as may be necessary to assure that the par value or stated value, if any, per share of the Class A Stock is at all times equal to or less than the then Per Share Warrant Price. Subject to Section 6(c) hereof, the Company further covenants and agrees that it will pay, when due and payable, any and all federal and state stamp, original issue or similar taxes that may be payable in respect of the issuance of any Warrant Shares or certificates therefor. The Holder covenants and agrees that it shall pay, when due and payable, all of its federal, state and local income or similar taxes that may be payable in respect of the issuance of any Warrant Shares or certificates therefor, if any.

6. Transfer

(a) Securities Laws. Neither this Warrant nor the Warrant Shares issuable upon the exercise hereof have been registered under the Securities Act of 1933, as amended (the "Securities Act"), or under any state securities laws and unless so registered may not be transferred, sold, pledged, hypothecated or otherwise disposed of unless an exemption from such registration is available. In the event the Holder desires to transfer this Warrant or any of the Warrant Shares issued in accordance with the terms hereof, the Holder must give the Company prior written notice of such proposed transfer including the name and address of the proposed transferee, unless such transfer is a transfer of the Warrant Shares pursuant to an effective Registration Statement. Such transfer may be made only either (i) upon publication by the Securities and Exchange Commission (the "Commission") of a ruling, interpretation, opinion or "no action letter" based upon facts presented to said Commission, or (ii) upon receipt by the

Company of an opinion of counsel acceptable to the Company to the effect that the proposed transfer will not violate the provisions of the Securities Act, the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or the rules and regulations promulgated under either such act, or to the effect that the Warrant or Warrant Shares to be sold or transferred have been registered under the Securities Act of 1933, as amended, and that there is in effect a current prospectus meeting the requirements of Subsection 10(a) of the Securities Act, which is being or will be delivered to the purchaser or transferee at or prior to the time of delivery of the certificates evidencing the Warrant or Warrant Shares to be sold or transferred.

(b) Registration Rights. The Warrant Shares are the subject of the Registration Rights Agreement attached to the Subscription Agreement as Exhibit D.

(c) Swap or Hedging Transactions. Subject to Section 3(c) of the Subscription Agreement, without the prior written consent of the Company, the Holder may not enter into any swap or other hedging transaction relating to the Warrants or the Warrant Shares.

(d) Transfer. Subject to Section 4(c), without the prior written consent of the Company, neither this Warrant, nor any interest herein, may be sold, assigned, transferred, pledged, encumbered or otherwise disposed of. Any sale, assignment, transfer, pledge, encumbrance or other disposition of this Warrant attempted contrary to the provisions of this Warrant, or any levy of execution, attachment or other process attempted upon the Warrant, shall be null and void and without effect. The provision of this Section 6(d) shall not be applicable to the Warrant Shares. Without limitation of the foregoing, Subscriber agrees that if it transfers its rights hereunder to a Subsidiary pursuant to Section 16(k) of the Subscription Agreement, it shall not sell, assign or transfer the stock of such Subsidiary during the 12-month lock-up.

(e) Legend and Stop Transfer Orders. Unless the Warrant Shares have been registered under the Securities Act or eligible for resale pursuant to Rule 144(k) under the Securities Act, upon exercise of any part of the Warrant and the issuance of any of the Warrant Shares, the Company shall instruct its transfer agent to enter stop transfer orders with respect to such shares, and all certificates representing Warrant Shares shall bear on the face thereof substantially the following legend, insofar as is consistent with Delaware law:

"The shares of Class A Common Stock represented by this certificate have not been registered under the Securities Act of 1933, as amended, and may not be sold, offered for sale, assigned, transferred or otherwise disposed of unless registered pursuant to the provisions of that Act or an opinion of counsel to the Company is obtained stating that such disposition is in compliance with an available exemption from such registration."

7. Loss, etc. of Warrant. Upon receipt of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and of indemnity reasonably satisfactory to the Company, if lost, stolen or destroyed, and upon surrender and cancellation of this Warrant if mutilated, the Company shall execute and deliver to the Holder a new Warrant of like date, tenor and denomination.

8. Warrant Holder Not Shareholder. Except as otherwise provided herein, this Warrant does not confer upon the Holder any right to vote or to consent to or receive notice as a shareholder of the Company, as such, in respect of any matters whatsoever, or any other rights or liabilities as a shareholder, prior to the exercise hereof.

9. Communication. No notice or other communication under this Warrant shall be effective unless the same is in writing and is mailed by first-class mail, postage prepaid, addressed to:

(a) the Company at One World Trade Center, 103rd Floor, New York, New York 10048, Attention: General Counsel, or such other address as the Company has designated in writing to the Holder, or

(b) the Holder at One Williams Center, Tulsa, Oklahoma 74172, Attention: General Counsel, or such other address as the Holder has designated in writing to the Company.

10. Headings. The headings of this Warrant have been inserted as a matter of convenience and shall not affect the construction hereof.

11. Applicable Law. This Warrant shall be governed by and construed in accordance with the law of the State of New York without giving effect to the principles of conflict of laws thereof.

IN WITNESS WHEREOF, the Company has caused this Warrant to be signed by a duly authorized officer as of this 5th day of June, 2000.

**eSPEED, INC.**

*By: /s/ Howard W. Lutnick*
*---------------------*
*Name: Howard W. Lutnick*
*Title: Chairman and*
*Chief Executive Officer*

**SUBSCRIPTION**

The undersigned, _____, pursuant to the provisions of the foregoing Warrant, hereby agrees to subscribe for the purchase of _____ shares of the Class A Common Stock of eSPEED, INC. covered by said Warrant, and makes payment therefor in full at the price per share provided by said Warrant.

Dated _____

Signature_____
Address_____
_____

**ASSIGNMENT**

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto _____ the foregoing Warrant and all rights evidenced thereby, and does irrevocably constitute and appoint _____, attorney, to transfer said Warrant on the books of

eSPEED, INC.

Dated _____

Signature_____
Address_____
_____

**PARTIAL ASSIGNMENT**

FOR VALUE RECEIVED _____ hereby assigns and transfers unto _____ the right to purchase _____ shares of the Class A Common Stock of eSPEED, INC. by the foregoing Warrant, and a proportionate part of said Warrant and the rights evidenced hereby, and does irrevocably constitute and appoint _____, attorney, to transfer that part of said Warrant on

the books of eSPEED, INC.

Dated _____

Signature_____
Address_____
_____

CONFIDENTIAL TREATMENT REQUESTED FOR PORTIONS OF THIS DOCUMENT. PORTIONS FOR WHICH CONFIDENTIAL TREATMENT IS REQUESTED ARE DENOTED BY [ * ECONOMIC TERMS OMITTED]. MATERIAL OMITTED HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

**SUBSCRIPTION AGREEMENT**

eSpeed, Inc.
One World Trade Center
103rd Floor
New York, New York 10048

Attn: General Counsel

Ladies and Gentlemen:

1. Subscription for Unit. The undersigned (the "Subscriber") hereby agrees to purchase from eSpeed, Inc., a Delaware corporation (the "Company"), and the Company hereby agrees to issue and sell to the Subscriber, a Unit (the "Unit") consisting of (i) 789,071 shares (the "Shares") of Class A Common Stock, par value $.01 per share (the "Class A Stock"), of the Company and (ii) warrants exercisable to purchase up to an aggregate of 666,666 shares of Class A Stock with an exercise price of $35.203125 per share (the "Underlying Warrant Shares"), in the form attached hereto as Exhibit A (the "Warrants"), for an aggregate purchase price for the Unit (the "Purchase Price") of $25.0 million.

2. Closing. The closing of the purchase and sale of the Unit under this Subscription Agreement shall be held at the office of Swidler Berlin Shereff Friedman, LLP, The Chrysler Building, 405 Lexington Avenue, 12th Floor, New York, New York 10174, as soon as practicable (but in any event within two business days) after the conditions in Section 8 have been satisfied or waived, or at such other location or on such other date as the Subscriber and the Company shall agree (the "Closing"). At the Closing, the Company shall deliver to the Subscriber (i) the certificate or certificates representing the Shares and the Warrants, free and clear of all liens and encumbrances (except (x) under the provisions of applicable federal and foreign and state securities law and
(y) as a result of acts of the Subscriber), (ii) a copy of the Registration Rights Agreement in the form attached hereto as Exhibit D (the "Registration Rights Agreement"), duly executed by the Company, (iii) a certificate of an officer of the Company certifying that the representations and warranties of the Company set forth in this Subscription Agreement were true and correct in all material respects as of the date when made and are true and correct in all material respects as of the Closing as though made at that time (except for any such representations and warranties that speak as of a specific date in which case they shall be true as of such specific date), and (iv) a certificate of an officer of Cantor Fitzgerald, L.P. ("CF") certifying that the representations and warranties of CF set forth in this Subscription Agreement were true and correct in all material respects as of the date when made and are true and correct in all material respects as of the Closing as though made at that time

(except for any such representations and warranties that speak as of a specific date in which case they shall be true as of such specific date). At the Closing, the Subscriber shall deliver to the Company (i) the Purchase Price, in accordance with the wire transfer instructions attached hereto as Exhibit B,
(ii) a copy of the Registration Rights Agreement duly executed by the Subscriber, and (iii) a certificate of an officer of the Subscriber certifying that the representations and warranties of the Subscriber set forth in this Subscription Agreement were true and correct in all material respects as of the date when made and are true and correct in all material respects as of the Closing as though made at that time (except for any such representations and warranties that speak as of a specific date in which case they shall be true as of such specific date).

3. Investment in Verticals.

a. Commitment to Invest in Four Qualified Verticals. Subject to the express terms and conditions of this Section 3, the Subscriber hereby agrees to subscribe for an aggregate of $10.0 million in equity securities in a total of four entities to be formed by the Company and CF within 12 months of the Closing (i.e., $2.5 million in each entity) (the "12-Month Period"). Such 12-Month Period may be increased by a period not to exceed six months if a public offering by the Company is commenced during the 12-Month Period and disclosure constraints resulting from such public offering dictate a delay (a "Black-Out Period") as determined by the Company. Upon any such determination by the Company, the Company shall so notify the Subscriber in writing prior to the commencement of any Black-Out Period, which notice shall specify the time period by which the 12-Month Period shall be increased and the new last day of the 12-Month Period. Such notice shall be binding on the parties. It is anticipated that each such entity shall establish a new "vertical" electronic and telephonic marketplace with the Company in which it will "broker" and possibly "clear" transactions for its industry market participants and other clients. In brokerage transactions, it is anticipated that the entity will operate an anonymous electronic and telephonic marketplace (and also act as an agent for disclosed principals in such marketplace) where participants can trade based on a credit-risk matrix and other "rules" established by the participants. The entity may maintain the anonymity of the counterparties by clearing the financial aspects of the transaction. No such entity will intentionally expose itself to any unmatched market risk on its marketplace products.

b. Commitment to Present Seven Qualified Verticals. During the 12-Month Period, as the same may be extended by a Black-Out Period, the Company and CF agree to present at least seven vertical opportunities to the Subscriber, whether or not the Subscriber has previously satisfied its funding obligations hereinafter discussed. During such period, the Company and CF will present the seven vertical opportunities set forth on Annex A and may also present additional vertical opportunities in their discretion. Any additional vertical opportunity so presented shall encompass one or more products in which the Subscriber or an Affiliate (as defined below) of the Subscriber is engaged in trading at the time such vertical opportunity is presented to the Subscriber. (The seven vertical opportunities set forth on Annex A and any additional vertical opportunity meeting such trading criteria that the Company and CF determine to present to the Subscriber are each referred to herein as a "Qualified Vertical"). Each Qualified Vertical shall contain economic terms (measured by a

blended valuation of revenue sharing and equity ownership) intended to reflect a [ * ECONOMIC TERMS OMITTED] value split as between the industry market participants (inclusive of the anchor participants) on the one hand and the Company and CF on the other hand. It is agreed that a Qualified Vertical which provides for an allocation of transaction revenues described in paragraphs (a) and (b) of Schedule 4 to the Newco Term Sheet (as hereafter defined) of [ *ECONOMIC TERMS OMITTED] to the industry market participants in the aggregate and [ *ECONOMIC TERMS OMITTED] to the Company, an allocation of the transaction revenues described in paragraphs (c) and (d) of Schedule 4 to the Newco Term Sheet of [ *ECONOMIC TERMS OMITTED] to the industry market participants in the aggregate and [ *ECONOMIC TERMS OMITTED] to the Company, and an allocation of equity participation in a Qualified Vertical of [ *ECONOMIC TERMS OMITTED] to the industry market participants and [ *ECONOMIC TERMS OMITTED] to the Company and CF taken together, shall be deemed to satisfy the [ *ECONOMIC TERMS OMITTED] economic model (the "Agreed Upon Model"). The Agreed Upon Model shall be used if the parties hereto cannot agree on a substitute model, which substitute model may include warrants to purchase stock of the Company as the parties may agree. As used in this Subscription Agreement, the word "Affiliate" means, with respect to any specified party, any other individual, partnership, corporation or other organization, whether incorporated or unincorporated, who, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified party. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a party, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative of the foregoing.

c. Subscriber's Obligation to Fund the $10.0 Million. Upon the expiration of the 12-Month Period, as the same may be extended by a Black-Out Period, if the Subscriber has not funded or committed to fund, subject to the conditions described in this Section 3, at least four Qualified Verticals, the Subscriber shall be obligated to pay to the Company an amount equal to the difference between (i) $10.0 million and (ii) the aggregate investments in Qualified Verticals made by the Subscriber during the 12-Month Period, as the same may be extended by a Black-Out Period (the "Investment Shortfall"); provided, however, that in the event that the Company and CF fail to present the seven Qualified Verticals set forth on Annex A based upon the economic terms described in Section 3(b) above to the Subscriber within the 12-Month Period, as the same may be extended by a Black-Out Period, the Subscriber shall be relieved of its obligation in respect of the Investment Shortfall and the restrictions set forth in Section 6(c) of the Warrants. The relief from such obligation, together with the lapsing of the contractual restrictions against swap and hedging transactions with respect to the Warrants and the Underlying Warrant Shares set forth in Section 6(c) of the Warrants, shall be the Subscriber's sole remedy in the event that the Company and CF fail to

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*This information has intentionally been omitted and has been filed separately with the Securities and Exchange Commission. It is subject to a confidential treatment request.

present the seven Qualified Verticals set forth on Annex A to the Subscriber within the 12-Month Period, as the same may be extended by a Black-Out Period, and such failure shall have no other effect on the transactions contemplated by this Subscription Agreement, including the purchase of the Unit, or give rise to any other right on the part of the Subscriber, including any right of rescission hereunder or any right to receive any Additional Investment Right (as defined below) or the equity contemplated thereby.

d. Terms of Newco Vertical. Set forth on the term sheet attached hereto as Exhibit C (the "Newco Term Sheet") are the terms and conditions of the first Qualified Vertical ("Newco") to be formed by the Company and CF. The Subscriber shall notify the Company within 15 days of its receipt of notice from the Company that the Company intends to proceed with the Newco Qualified Vertical as to whether the Subscriber intends to invest in Newco (either directly or indirectly through the formation of a limited liability company or other entity as contemplated by the Newco Term Sheet). If the Subscriber intends to make such investment, it and the Company and CF will negotiate in good faith and use commercially reasonable efforts to negotiate and execute definitive agreements embodying the terms of the Newco Term Sheet within 30 days of the Subscriber's receipt of a draft of such documents from the Company. Funding of the Subscriber's $2.5 million subscription commitment for its interest in Newco shall not be due and the launch of Newco shall not occur until such definitive agreements have been mutually agreed to and there are at least two additional industry market participants who have each committed to invest $2.5 million in Newco on substantially the same terms and conditions. Funding of the Subscriber's $2.5 million subscription shall be made within two business days after such commitment from the two other participants is obtained. Failure of the parties to negotiate and execute definitive agreements in respect of Newco within such time period or otherwise shall have no effect on the transactions contemplated by this Subscription Agreement except as expressly provided in
Section 3(g), including the purchase of the Unit, or give rise to any other right on the part of the Subscriber, including any right of rescission hereunder or any right to receive any Additional Investment Right (as defined below) or the equity contemplated thereby.

e. Deferred Rights of Subscriber to Invest in the LLC. Subscriber will have the right for a 30 day period commencing October 1, 2001 to invest as an industry market participant in Newco by becoming a member in the limited liability company (the "LLC") to be formed to hold the interests of the energy industry market participants in Newco (as more fully set forth in the Newco Term Sheet) for a $2.5 million capital contribution to the LLC. Subscriber's right to make any investment in the LLC shall terminate on November 1, 2001. If an initial public offering of Newco shall occur prior to October 1, 2001, Subscriber will have the right to accelerate its investment, in whole or in part, in Newco so long as Subscriber's ownership does not exceed 4.9% of Newco's outstanding stock. In such event, Subscriber shall have no board designee rights prior to August 2001 and any board designee rights that it would have but for this limitation may be exercised by the other LLC members acting collectively.

f. Terms of Other Qualified Verticals. The other Qualified Verticals offered to the Subscriber will be on terms and conditions consistent with Section 3(b) and otherwise substantially the same in all material respects as the vertical described on the Newco

Term Sheet (provided that the number of industry market participants may vary in each vertical and other changes which are attributable to differences among products and regions may also be made so long as such changes are consistent with the economic terms described in Section 3(b) and do not otherwise materially alter the terms and conditions reflected in the Newco Term Sheet) and shall be presented by the Company and CF to the Subscriber accompanied by definitive agreements embodying such terms and conditions. Subject to Section 3(h), the terms of the other Qualified Verticals shall include the right of the Subscriber, for up to four Qualified Verticals (the "Additional Investment Right") to invest $25.0 million in restricted shares of Class A Stock at a 10% discount to the arithmetic average of the daily closing sale price on The Nasdaq Stock Market of the Class A Stock for the 10 trading days (the "10 Trading Day Average") preceding the date of the Subscriber's investment in such new vertical opportunity. The obligation of the Subscriber to invest in a Qualified Vertical and the right of the Subscriber to exercise the Additional Investment Right shall be subject to the satisfaction of each of the following conditions (the "Additional Investment Conditions"): (i) the consummation and funding of a $2.5 million investment in said vertical by the Subscriber and each of three additional industry market participants (which may include another anchor participant) on substantially the same terms and conditions as the Subscriber,
(ii) the Subscriber making representations and warranties to the Company substantially as provided in Section 7 hereof, and (iii) the Company and CF making representations and warranties to the Subscriber substantially as provided in Sections 5 and 6 hereof (subject to exceptions and schedules as are required to make such representations and warranties accurate). Except as provided in the next sentence, the Additional Investment Right shall be exercisable only on the date of the consummation and funding of the $2.5 million investment in said vertical by the Subscriber and three additional industry market participants (the "Additional Investment Right Exercise Date"). In addition, in the event that during the Twelve-Month Period, as the same may be extended by a Black-Out Period, the Company makes a public announcement with respect to a definitive agreement with three or more industry market participants disclosing their investment in a Qualified Vertical and Subscriber does not or has not previously invested in such Qualified Vertical, then the Subscriber will be given the opportunity (exercisable upon notice to the Company within one business day following such public announcement) to invest $25.0 million in restricted shares of Class A Stock at a 10% discount to the 10 Trading Day Average for the 10 trading days immediately preceding such public announcement. If the Subscriber later invests in any such Qualified Vertical, it will not be entitled to an Additional Investment Right in connection with the same Qualified Vertical. The Subscriber's purchase of any additional equity of the Company, whether pursuant to the Additional Investment Right or otherwise provided herein, shall be subject to Company stockholder approval, if required. The Company agrees to submit for a vote of its common stockholders, at its next annual meeting of stockholders, the approval of the issuance of any such shares, if such approval is determined to be required. CF agrees to vote the shares of common stock of the Company beneficially owned by it in favor of such issuance. Any shares of Class A Stock purchased upon exercise of the Additional Investment Right or otherwise in accordance with the terms hereof will be subject to a 12-month lock-up on transferability.

g. Time Frames For Other Qualified Verticals. Within 30 days of the Subscriber's receipt of notice of a new Qualified Vertical, the Subscriber shall notify the

Company as to whether it intends to invest in such Qualified Vertical. If the Subscriber notifies the Company within the requisite time period that it intends to invest in such Qualified Vertical, the Subscriber, the Company and CF will negotiate with each other in good faith and use commercially reasonable efforts to negotiate and execute definitive documentation required for such vertical within 30 days of delivery to Subscriber of a draft of such documents (which documents shall be delivered following identification of the other industry market participants and such participants' indication of their intention to invest in such vertical). Funding of such subscription shall be made within two business days after such commitment from the three other industry market participants is obtained. If the Subscriber does not provide any such notice, then it shall be deemed that the Subscriber declined to participate in such Qualified Vertical. If (i) at least three additional industry market participants are not willing to invest in the Qualified Vertical (two in the case of Newco) on the same terms and conditions, or (ii) the parties are unable to reach agreement on the definitive agreements relating to the Qualified Vertical after good faith negotiations thereon, then (a) the Subscriber nevertheless shall be deemed to have satisfied its obligation to invest in one Qualified Vertical for purposes of calculation of the Investment Shortfall pursuant to Section 3(c), (b) the Subscriber will not be entitled to exercise the Additional Investment Right in respect of such Qualified Vertical, and (c) the Subscriber's Warrants will not accelerate in vesting pursuant to Section 4 of the Warrant in respect of such Qualified Vertical. Except as expressly provided herein, the inability of the parties to reach agreement on definitive documents or the failure of the Additional Investment Conditions to be satisfied shall have no effect on the transactions contemplated by this Subscription Agreement, including the purchase of the Unit, or give rise to any other right on the part of the Subscriber, including any right of rescission hereunder or any right to receive the Additional Investment Right or the equity contemplated thereby.

h. Put/Call Arrangement. In the event an Additional Investment Right is available to Lion 1 under Section 3(f) prior to October 1, 2001, Subscriber's Additional Investment Right shall be exercisable only as follows, Subscriber shall have the right, if it elects to do so, on the Additional Investment Right Exercise Date, to (x) purchase such portion of the shares of Class A Common Stock of the Company as are purchasable upon exercise of such Additional Investment Right and will result in its ownership not exceeding 4.9% of the then outstanding Class A Common Stock of the Company and (y) to enter into a put/call arrangement with the Company. The call would provide to Subscriber the right to a call option (the "Call") enabling Subscriber to purchase from the Company any remaining shares of Class A Common Stock of the Company which would have been available for purchase upon exercise of such Additional Investment Right, but for the 4.9% limitation above. The call will be exercisable for a 5 business day period commencing October 1, 2001, at a price per share equal to the 10 Trading Day Average for the 10 trading days immediately preceding the Additional Investment Right Exercise Date, plus interest at the LIBOR rate most closely applicable based upon the length of the interest period, from the Additional Investment Right Exercise Date through the date of exercise of the Call. The Company shall have a put right (the "Put") to require Subscriber to purchase from the Company the same number of shares of Class A Common Stock and at the same price per share and interest thereon as is applicable to the corresponding Call. The Put shall be exercisable during the same five business day period as is applicable to the corresponding Call. The shares available for purchase upon exercise of a Put

or Call and the purchase price per share shall be subject to adjustment for stock splits, stock dividends and similar recapitalization events. In the event of a merger or consolidation to which the Company is a party or the sale of all or substantially all of the assets of the Company, the Put and Call shall, after such merger, consolidation or sale, be exercisable for the kind and number of shares of stock and/or other securities, cash or other property which the holder of the Put/Call would have been entitled to sell/purchase if the Put/Call had been exercised immediately prior to such merger, consolidation or sale. Any such merger, consolidation or sale shall require, as a condition thereto, that such other party to such merger, consolidation or sale agree in writing to assume the Put/Call obligation.

4. Transfer Restrictions.

a. Restricted Shares. The Subscriber understands and agrees that the Shares, the Warrants and the Underlying Warrant Shares have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or any foreign or state securities laws and that, accordingly, they will not be transferable except as permitted under various exemptions contained in the Securities Act, foreign or state securities laws, or upon satisfaction of the registration and prospectus delivery requirements of the Securities Act. The Subscriber acknowledges and agrees that it must bear the economic risk of the Shares, the Warrants and the Underlying Warrant Shares for an indefinite period of time since they have not been registered under the Securities Act and therefore cannot be transferred unless they are subsequently registered or an exemption from registration is available.

b. Legend. The Subscriber agrees with the Company that the certificates evidencing the Shares, the Warrants and the Underlying Warrant Shares shall be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAW. THESE SECURITIES MAY NOT BE PLEDGED, HYPOTHECATED, SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR ANY EXEMPTION THEREFROM UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY APPLICABLE STATE SECURITIES LAW."

c. Removal of Legend. The legend endorsed on the certificates pursuant to
Section 4(b) hereof shall be removed and the Company shall issue a certificate without such legend to the holder thereof at such time as the securities evidenced thereby cease to be restricted securities upon the earliest to occur of (i) a registration statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in accordance with such registration statement, (ii) the securities shall have been sold to the public pursuant to Rule 144 (or any successor provision) under the

Securities Act, or (iii) such securities may be sold by the holder without restriction or registration under Rule 144(k) under the Securities Act (or any successor provision).

d. Lock-Up. The Subscriber further understands and agrees that it may not, without the Company's prior written consent, directly or indirectly, make any offer, sale, short sale, assignment, transfer, pledge, encumbrance, contract to sell, grant of an option to purchase or other disposition of, or enter into any swap or other hedging transaction relating to, the Shares, or any interest therein, for a period of 12 months following the Closing, and the certificates evidencing the Shares shall be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFERS, ASSIGNMENTS AND OTHER DISPOSITIONS, AS PROVIDED IN THE SUBSCRIPTION AGREEMENT, DATED APRIL 26, 2000, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY."

The foregoing legend shall be removed upon the expiration of said 12-month period. Without limitation of the foregoing, the Subscriber agrees that if it transfers its rights hereunder to a Subsidiary pursuant to Section 16(k) hereof, the Subscriber shall not sell, assign or transfer the stock of such Subsidiary during the 12-month lock-up period other than to another Affiliate of the Subscriber, which Affiliate shall assume all of the obligations of such Subsidiary hereunder without relieving the assigning party of its obligations hereunder. Following such an assumption by the Affiliate, the restriction on sale, assignment or transfer of the stock of such Subsidiary shall be lifted.

e. Stop Transfer Notations. The Company and any transfer agent acting on its behalf may maintain on the Company's register for the Class A Stock appropriate "stop transfer" notations with respect to the Shares and the Underlying Warrant Shares unless such Subsidiary has become a reassignee.

5. Representations and Warranties of the Company. The Company represents and warrants to the Subscriber that:

a. Organization of the Company and its Subsidiaries. Each of the Company and its Subsidiaries (as defined below) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite corporate, partnership or limited liability company power and authority to carry on its business as now being conducted. Each of the Company and its Subsidiaries is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except where the failure to be so qualified, licensed or in good standing would not have a material adverse effect on (i) the business, properties, condition (financial or otherwise), or results of operations of the Company and its Subsidiaries,

taken as a whole, or (ii) the ability of the Company to consummate the transactions contemplated hereby (a "Material Adverse Effect"). As used in this Subscription Agreement, the word "Subsidiary" means, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) such party or any other Subsidiary of such party is a general partner or (ii) at least 50% of the securities or other interests 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.

b. Valid Offering of Shares.

(1) Upon issuance of the Unit pursuant to this Subscription Agreement, the Shares and the Warrants will be duly and validly issued, fully paid and non-assessable, and the Subscriber will receive good title thereto, free and clear of all pledges, claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever and free of any other restriction (including any restriction on the right to use, vote, sell or otherwise dispose of such capital stock or other ownership interests) (collectively, "Liens"), except (i) under the provisions of applicable federal and foreign and state securities law and (ii) as a result of acts of the Subscriber. Upon the issuance of the Warrants pursuant to this Subscription Agreement, the Underlying Warrant Shares will be duly and validly authorized and reserved for issuance, and, upon issuance of the Underlying Warrant Shares upon exercise of the Warrants in accordance with the terms thereof, the Underlying Warrant Shares will be duly and validly issued, fully paid and non-assessable; and the holder of the Warrants will receive good title to the Underlying Warrant Shares, free and clear of all Liens, except (i) under the provisions of applicable federal and foreign and state securities law and (ii) as a result of acts of the holder of the Warrants.

(2) Neither the Company nor its Subsidiaries has taken any action that would result in the offering and sale of the Shares, the Warrants and the Underlying Warrant Shares pursuant to this Subscription Agreement being treated as a public offering and not a valid private offering under the law.

c. Authority; No Conflict; Required Filings and Consents.

(1) The Company has (or, as applicable, prior to the Closing will have) all requisite corporate power and authority to enter into this Subscription Agreement, the Warrants and the Registration Rights Agreement and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Subscription Agreement, the Warrants and the Registration Rights Agreement and the consummation of the transactions contemplated hereby and thereby have been (or, as applicable, prior to the Closing will be) duly authorized by all necessary and appropriate corporate action on the part of the Company. No stockholder action is necessary to authorize the issuance and sale of the Unit. This Subscription Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in

accordance with its terms, except as such enforceability may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity. The Warrants and the Registration Rights Agreement, when executed and delivered by the Company, will constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity.

(2) The execution and delivery of this Subscription Agreement, the Warrants and the Registration Rights Agreement by the Company do not, and the consummation of the transactions contemplated hereby and thereby will not, (i) conflict with, or result in any violation or breach of, any provision of the Certificate of Incorporation or Bylaws of the Company, (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require a consent or waiver under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or other agreement, instrument or obligation to which the Company or any of its Subsidiaries is a party or by which any of them or any of their properties or assets may be bound, or (iii) conflict with or violate any permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Company or any of its Subsidiaries or any of its or their properties or assets, except in the case of clauses (ii) and (iii) for any such conflicts, violations, breaches, defaults, terminations, cancellations or accelerations which are not, individually or in the aggregate, reasonably likely to have a Material Adverse Effect.

(3) No consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency, commission or other governmental authority or instrumentality ("Governmental Entity") is required by or with respect to the Company or any of its Subsidiaries in connection with the execution and delivery of this Subscription Agreement, the Warrants or the Registration Rights Agreement, or the consummation of the transactions contemplated hereby or thereby, except (i) the filings and approvals required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (ii) regulatory filings, applications or approvals required in connection with the formation or operation of a Qualified Vertical, if any, (iii) applications to list the Shares, the Underlying Warrant Shares and the shares issuable pursuant to the Additional Investment Right on The NASDAQ Stock Market and (iv) any such consents, approvals, orders, authorizations, registrations, declarations and filings, the absence of which is not, individually or in the aggregate, reasonably likely to have a Material Adverse Effect.

d. Public Filings; Financial Statements.

(1) Since December 3, 1999, the Company has filed with the Securities and Exchange Commission (the "SEC") all reports, schedules, forms, registration statements and other documents required to be filed by it as a registrant under the Securities

Act and the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Except for matters otherwise corrected by the subsequent filing with the SEC of an appropriate amendment prior to the date of this Subscription Agreement, such reports, forms, and documents filed by the Company with the SEC prior to the date of this Subscription Agreement and since December 3, 1999 (the "Company SEC Reports") (including any financial statements filed as a part thereof or incorporated by reference therein) did not, at the time they were filed (or if amended or superseded by a filing prior to the date of this Subscription Agreement, then on the date of such filing), contain any untrue statement of a material fact or omit to state a material fact required to be stated in such Company SEC Reports or necessary in order to make the statements in such Company SEC Reports, in the light of the circumstances under which they were made, not misleading.

(2) Each of the consolidated financial statements (including, in each case, any related notes) of the Company contained in the Company SEC Reports was prepared in accordance with the books of account and other financial records of the Company and in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved (except as may be indicated in the notes to such financial statements or, in the case of unaudited statements, as permitted by Form 10-Q under the Exchange Act), and fairly presented the consolidated financial position of the Company and its Subsidiaries as of the dates, and the consolidated results of its operations and cash flows for the periods, indicated, except that the unaudited interim financial statements were subject to normal and recurring year-end adjustments which were not material in amount.

(3) As of the date hereof, there are no liabilities, contingencies, changes, facts or circumstances that have not been publicly disclosed by the Company and that could reasonably be expected to have a Material Adverse Effect.

e. Intellectual Property. Except as set forth in the Company SEC Reports, the operations of the Company and its Subsidiaries do not infringe upon any intellectual property rights owned, possessed or used by any third party, and to the knowledge of the Company there is no valid basis for any claim of such infringement against it or its Subsidiaries in respect of the use of the Intellectual Property now used, except, in any such case, as is not reasonably likely to have a Material Adverse Effect. As used in this Subscription Agreement, "Intellectual Property" shall mean all material patents, patent applications, trademarks, trademark registrations, applications for trademark registrations, trade secrets, service marks, service mark registrations, applications for service mark registrations, trade names, labels, slogans, claims of copyright, copyright registrations, applications for copyright registrations, copyrights, drawings, designs, software, code and proprietary know-how owned or licensed by the Company and used in the operation of its business, other than widely-available "shrink-wrap" software.

f. Brokers. None of the Company or any of its officers, directors or employees have employed any broker or finder, or incurred any liability for any brokerage fees, commissions, finder's or other similar fees or expenses in connection with the transactions contemplated by this Subscription Agreement.

6. Representations and Warranties of CF. CF represents and warrants to the Subscriber that:

a. Organization of CF and its Subsidiaries. CF is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite partnership power and authority to carry on its business as now being conducted. CF is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except where the failure to be so qualified, licensed or in good standing would not have a material adverse effect on (i) the business, properties, condition (financial or otherwise), or results of operations of CF or (ii) the ability of CF to consummate the transactions contemplated hereby (a "CF Material Adverse Effect").

b. Authority; No Conflict; Required Filings and Consents.

(1) CF has (or, as applicable, prior to the Closing will have) all requisite partnership power and authority to enter into this Subscription Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Subscription Agreement and the consummation of the transactions contemplated hereby have been (or, as applicable, prior to the Closing will be) duly authorized by all necessary and appropriate partnership action on the part of CF. This Subscription Agreement has been duly executed and delivered by CF and constitutes the legal, valid and binding obligation of CF, enforceable against CF in accordance with its terms, except as such enforceability may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity.

(2) The execution and delivery of this Subscription Agreement by CF do not, and the consummation of the transactions contemplated hereby will not, (i) conflict with, or result in any violation or breach of, any provision of the limited partnership agreement of CF, (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require a consent or waiver under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or other agreement, instrument or obligation to which CF is a party or by which it or its properties or assets may be bound, or (iii) conflict with or violate any permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to CF or any of its properties or assets, except in the case of clauses (ii) and (iii) for any such conflicts, violations, breaches, defaults, terminations, cancellations or accelerations which are not, individually or in the aggregate, reasonably likely to have a CF Material Adverse Effect.

(3) No consent, approval, order or authorization of, or registration, declaration or filing with, a Governmental Entity is required by or with respect to CF in connection with the execution and delivery of this Subscription Agreement or the consummation of the transactions contemplated hereby or thereby, except (i) the filings and

approvals required under the HSR Act, (ii) regulatory filings, applications or approvals required in connection with the formation or operation of a Qualified Vertical, if any, and (iii) any such consents, approvals, orders, authorizations, registrations, declarations and filings, the absence of which is not, individually or in the aggregate, reasonably likely to have a CF Material Adverse Effect.

c. Intellectual Property. The operations of CF do not infringe upon any intellectual property rights owned, possessed or used by any third party, and to the knowledge of CF there is no valid basis for any claim of such infringement against it or its Subsidiaries in respect of the use of the CF Intellectual Property now used, except, in any such case, as is not reasonably likely to have a CF Material Adverse Effect. As used in this Subscription Agreement, "CF Intellectual Property" shall mean all material patents, patent applications, trademarks, trademark registrations, applications for trademark registrations, trade secrets, service marks, service mark registrations, applications for service mark registrations, trade names, labels, slogans, claims of copyright, copyright registrations, applications for copyright registrations, copyrights, drawings, designs, software, code and proprietary know-how owned or licensed by CF and used in the operation of its business, other than widely-available "shrink wrap" software.

7. Representations and Warranties of the Subscriber. The Subscriber represents and warrants to the Company that:

a. Organization of the Subscriber. The Subscriber is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite corporate or partnership power and authority to carry on its business as now being conducted. The Subscriber is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such licensing necessary, except where the failure to be so qualified, licensed or in good standing would not have a material adverse effect on (i) the business, properties, condition (financial or otherwise) or results of operation of the Subscriber and its Subsidiaries, taken as a whole, or (ii) the ability of the Subscriber to consummate the transactions contemplated hereby (a "Subscriber Material Adverse Effect").

b. Authority; No Conflict; Required Filings and Consents.

(1) The Subscriber has all requisite power and authority to enter into this Subscription Agreement and the Registration Rights Agreement and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Subscription Agreement and the Registration Rights Agreement and the consummation of the transactions contemplated hereby and thereby by the Subscriber have been duly authorized by all necessary action on the part of the Subscriber. This Subscription Agreement has been duly executed and delivered by the Subscriber and constitutes the legal, valid and binding obligation of the Subscriber, enforceable against the Subscriber in accordance with its terms, except as such enforceability may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and subject

to general principles of equity. The Registration Rights Agreement, when executed and delivered by the Subscriber, will constitute the legal, valid and binding obligation of the Subscriber, enforceable against the Subscriber in accordance with its terms, except as such enforceability may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity.

(2) The execution and delivery of this Subscription Agreement and the Registration Rights Agreement by the Subscriber does not, and the consummation of the transactions contemplated hereby and thereby will not, (i) conflict with, or result in any violation or breach of, any provision of the Certificate of Incorporation or Bylaws or other operative organizational documents of the Subscriber, (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require a consent or waiver under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or other agreement, instrument or obligation to which the Subscriber or any of its Subsidiaries or Affiliates is a party, or (iii) conflict with or violate any permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Subscriber or any of its Subsidiaries or Affiliates or any its or their properties or assets, except in the case of clauses (ii) and (iii) for any such conflicts, violations, breaches, defaults, terminations, cancellations or accelerations which are not, individually or in the aggregate, reasonably likely to have a Subscriber Material Adverse Effect.

(3) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required by or with respect to the Subscriber (or any of its Subsidiaries or Affiliates) in connection with the execution and delivery of this Subscription Agreement or the Registration Rights Agreement or the consummation of the transactions contemplated hereby and thereby, except (i) the filings and approvals required under the HSR Act, (ii) regulatory filings, applications or approvals required in connection with the formation or operation of a Qualified Vertical, if any, and (iii) any such consents, approvals, orders, authorizations, registrations, declarations and filings the absence of which is not, individually or in the aggregate, reasonably likely to have a Subscriber Material Adverse Effect.

c. Knowledge and Experience. The Subscriber has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of an unregistered, non-liquid investment such as an investment in the Company and has evaluated the merits and risks of such an investment. The Subscriber is not relying on the Company with respect to the corporate tax, legal and economic considerations involved in this investment or to its investment in the LLC. The Subscriber understands that the offer and sale of the Shares, the Warrants and Underlying Warrant Shares have not been approved or disapproved by the SEC or any other Governmental Entity.

d. No other Representations or Warranties. No representations or warranties have been made to the Subscriber by the Company or any director, officer, employee, agent or Affiliate of the Company, other than the representations of the Company set forth herein, and the decision of the Subscriber to purchase the Unit is based on the information contained in this Subscription Agreement, the Company SEC Reports and the Subscriber's own independent investigation of the Company. The Subscriber acknowledges and agrees that the Company may now, or in the future, be in negotiations with respect to, or enter into, arrangements, agreements or understandings relating to other business opportunities (which may include vertical opportunities) and that the Company does not have now, nor will it have at any time after execution of this Agreement, any obligation to provide the Subscriber with any information, other than that which is contained in this Subscription Agreement and that which is disclosed in the Company SEC Reports.

e. Ability to Withstand Loss of Investment. The overall commitment of the Subscriber to investments which are not readily marketable is not disproportionate to the net worth of the Subscriber, and the Subscriber's acquisition of the Unit will not cause such overall commitment to become excessive. The Subscriber understands that a total loss of capital is possible. The Subscriber acknowledges that it is capable of bearing a complete loss of its investment in the Company.

f. No Public Solicitation. The Subscriber acknowledges that neither the Company nor any person or entity acting on its behalf has offered to sell any of the Shares, the Warrants or the Underlying Warrant Shares to the Subscriber by means of any form of general solicitation or advertising, including without limitation (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar media, or broadcast over television or radio, and (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

g. Accredited Investor Status. The Subscriber is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated under the Securities Act.

h. Acquiring for Investment Purposes. The Subscriber is acquiring the Shares and the Warrants solely for its own account, for investment purposes only, and not with a view towards their resale or distribution.

i. No Brokers, Finders, etc. The Subscriber has not employed any broker, financial advisor or finder, or incurred any liability for any brokerage fees, commissions, finder's or other similar fees or expenses in connection with the transactions contemplated by this Subscription Agreement.

j. No Action Taken to Invalidate Private Placement. The Subscriber has not taken any action that would result in the offering of the Shares, the Warrants and the Underlying Warrant Shares pursuant to this Subscription Agreement being treated as a public offering and not a valid private offering under the law.

8. Conditions to Closing.

a. Conditions applicable to Each Party. The respective obligations of each party to this Subscription Agreement set forth herein to purchase and sell the Unit shall be subject to the satisfaction (or waiver by each party) of each of the following conditions on and as of the Closing:

(1) No litigation, investigation, inquiry, proceeding, statute, rule, regulation, order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by or in any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby which has the effect of making the transactions contemplated by this Subscription Agreement illegal or otherwise prohibiting the consummation of any of the transactions contemplated by this Subscription Agreement.

(2) All approvals required under the HSR Act shall have been received (or all applicable waiting periods, and any extensions thereof, under the HSR Act shall have expired or otherwise been terminated).

(3) The Subscriber and the Company shall have entered into the Registration Rights Agreement.

b. Conditions to Obligations of the Company. The obligations of the Company set forth herein to issue and sell the Unit also shall be subject to the satisfaction (or waiver by the Company) of each of the following conditions on and as of the Closing:

(1) The representations and warranties of the Subscriber made herein shall have been true and correct in all material respects as of the date when made and as of the Closing as though made at that time (except for any such representations and warranties that speak as of a specific date).

(2) The Subscriber shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required thereby to be performed, satisfied or complied with by the Subscriber at or prior to the Closing, including payment of the Purchase Price.

c. Conditions to Obligations of the Subscriber. The obligations of the Subscriber set forth herein to purchase the Unit also shall be subject to the satisfaction (or waiver by the Subscriber) of each of the following conditions on and as of the Closing:

(1) The representations and warranties of the Company and CF set forth in this Subscription Agreement shall be true and correct in all material respects as of the date when made and as of the Closing as though made at that time (except for any such representations and warranties that speak as of a specific date).

(2) The Company and CF shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required thereby to be performed, satisfied and complied with by them at or prior to the Closing, including delivery of the executed certificates for the Shares and the Warrants.

9. Indemnification.

a. Agreement to Indemnify.

(1) Subject to the express provisions of Section 3 as to the Subscriber'ssole remedy for the failure of the Company and CF to present the seven Qualified Verticals set forth on Annex A to the Subscriber within the 12-Month Period, as the same may be extended by a Black-Out Period, the Company agrees to indemnify, defend and hold harmless the Subscriber (and its officers, directors, Affiliates and permitted assigns) from and against any and all losses, claims, liabilities, damages, deficiencies, costs or expenses (including interest, penalties and reasonable attorneys' fees, disbursements and related charges) (collectively, "Losses") based upon, arising out of or otherwise in respect of (x) any inaccuracy in or breach of any representations or warranties made by the Company contained in this Subscription Agreement or any action taken by the Subscriber or its Affiliates in reliance upon the accuracy of such representations or warranties or (y) failure of the Company to perform any of the agreements or covenants contained herein, except to the extent such Losses are based upon, arise out of or are otherwise in respect of any inaccuracy in or breach of any representations or warranties made by the Subscriber contained in this Subscription Agreement or the failure of the Subscriber to perform any of the agreements or covenants contained herein.

(2) The Subscriber agrees to indemnify, defend and hold harmless the Company (and its officers, directors, Affiliates and permitted assigns) from and against any and all Losses based upon, arising out of or otherwise in respect of
(x) any inaccuracy in or breach of any representations or warranties made by the Subscriber contained in this Subscription Agreement or any action taken by the Company or its Affiliates in reliance upon the accuracy of such representations or warranties or (y) the failure of the Subscriber to perform any of the agreements or covenants contained herein, except to the extent such Losses

are based upon, arise out of or are otherwise in respect of any inaccuracy in or breach of any representations or warranties made by the Company contained in this Subscription Agreement or the failure of the Company to perform any of the agreements or covenants contained herein.

b. Indemnification Procedure.

(1) A party entitled to indemnification pursuant to this Section 9 (an "Indemnified Party") shall provide written notice to the indemnifying party (the "Indemnifying Party") of any claim of such Indemnified Party for indemnification under this Subscription Agreement promptly after the date on which such Indemnified Party has actual knowledge of the existence of such claim. Such notice shall specify the nature of such claim in reasonable detail and the Indemnifying Party shall be given reasonable access to any documents or properties within the control of the Indemnified Party as may be useful or necessary in the investigation of the basis for such claim. The failure to so notify the Indemnifying Party shall not constitute a waiver of such claim except to the extent that the Indemnifying Party is materially prejudiced by such failure.

(2) If any Indemnified Party seeks indemnification hereunder based upon a claim asserted by a third party, then the Indemnifying Party shall have the right (without prejudice to the right of any Indemnified Party to participate at its expense through counsel of its own choosing) to defend such claim at its expense and through counsel of its own choosing (and reasonably acceptable to the Indemnified Party) if it gives written notice of its intention to do so no later than 20 days following notice thereof by an Indemnified Party; provided, however, that, if, in the reasonable opinion of counsel to the Indemnified Party, separate counsel is required because a conflict of interest would otherwise exist, the Indemnified Party shall have the right to select separate counsel to participate in the defense of such action on its behalf, at the expense of the Indemnifying Party; provided further, however, that the Indemnified Party shall always have the right to select separate counsel to participate in the defense of such action on its behalf, at its own expense. If the Indemnifying Party does not so choose to defend any such claim asserted by a third party for which any Indemnified Party would be entitled to indemnification hereunder, then the Indemnified Party shall be entitled to recover from the Indemnifying Party all of the reasonable attorney's fees and other costs and expenses of litigation incurred in the defense of such claim. It is understood that the Indemnifying Party shall not, in connection with any proceeding or related proceedings in the same jurisdiction, in any case be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Parties. Notwithstanding the assumption of the defense of any claim by an Indemnifying Party, the Indemnified Party shall have the right to approve the terms of any settlement of a claim (which approval shall not be unreasonably withheld or delayed) if such settlement (i) does not include as an unconditional term the giving by the claimant or the plaintiff to the Indemnified Party a release from all liability in respect to such claim or (ii) requires anything from the Indemnified Party other than the payment of money damages which the Indemnifying Party has agreed to pay in full. The Indemnifying Party shall not be liable for any settlement of any proceeding effected without its prior written consent (not to be unreasonably withheld or delayed).

10. Termination. Notwithstanding anything to the contrary set forth in this Subscription Agreement, this Subscription Agreement may be terminated and the transactions contemplated herein abandoned at any time prior to the Closing:

(1) by mutual written consent of the Company and the Subscriber;

(2) by the Company or the Subscriber if the Closing shall not have occurred by July 31, 2000 (which date will be extended (x) up to 90 days as necessary to obtain any regulatory approval or the lifting of any order which is necessary for the Closing and (y) to that date which is 60 days following the date of the parties' full compliance with a second request for information by the Federal Trade Commission or the Department of Justice in respect of the Company's or the Subscriber's filing under the HSR Act); provided, however, that the right to terminate this Subscription Agreement under this Section 10 shall not be available to any party whose failure to fulfill any obligation under this Subscription Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date;

(3) by the Company or the Subscriber if a court of competent jurisdiction shall have issued an order, decree or ruling permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Subscription Agreement, and such order, decree, ruling or other action shall have become final and non-appealable;

(4) by the Company if (i) the representations or warranties made by the Subscriber are not true and correct, in all material respects, when made or at the Closing (except for any such representations or warranties that speak as of a specific date, which must be true and correct in all material respects as of such specific date), or (ii) the Subscriber fails to comply in any material respect with any of its covenants or agreements contained herein; or

(5) by the Subscriber if (i) the representations and warranties made by the Company are not true and correct, in all material respects, when made or at the Closing (except for any such representations or warranties that speak as of a specific date, which must be true and correct in all material respects as of such specific date), or (ii) the Company fails to comply in any material respect with any of its covenants or agreements contained herein.

The termination of this Subscription Agreement pursuant to clauses (2), (3), (4) and (5) above shall be without prejudice to the right of the non-breaching party to pursue any and all remedies available to it (including the commencement of any action or other proceeding or the assertion of any equitable right) as a result of such breach.

11. Covenants of CF and the Company.

a. CF hereby covenants and agrees that at such time as when the Subscriber and The Williams Companies, Inc., and their respective assignees under Section 16(k) have made an aggregate equity investment in the Company of an amount equal to at least $100.0 million valued on a cost basis and for so long as such parties maintain ownership of equity securities having such cost basis, CF shall use its best efforts to cause one designee jointly

selected by such parties to be nominated to the Board of Directors of the Company, subject to such parties' collective agreement as to the one designee, and CF shall vote its shares of common stock of the Company in favor of such designee.

b. The Company and CF hereby covenant and agree that each will use its best efforts to maintain a sufficient level of authorized shares of Class A Stock as is required to meet its obligations to the anchor participants pursuant to the transactions contemplated hereby, including with respect to the Shares issuable upon the exercise of the Warrants and the Additional Investment Rights. The Company agrees to use its best efforts to satisfy any NASDAQ (or other applicable exchange) requirements for the listing of any shares of Class A Common Stock to be issued at the Closing or upon exercise of the Warrants or the Additional Investment Rights.

12. Additional Covenants of CF. CF hereby covenants and agrees that it will, or (if applicable) cause its Affiliate to, enter into assignment agreements for each Qualified Vertical on terms and conditions substantially the same in all material respects as (but subject to changes attributable to differences among the products and regions) that which is contemplated by Schedule 1 and 2 of the Newco Term Sheet. CF further covenants and agrees that prior to the Closing, it will convert a sufficient number, if any, of the shares of Class B Common Stock of the Common Stock of the Company owned by it into Class A Common Stock such that, after giving effect to such conversion, the Shares to be purchased by Subscriber at the Closing represent not more than 4.9% of the outstanding shares of Class A Common Stock of the Company on the date of the Closing.

13. Right of the Company and CF to Issue Securities to Other Industry Market Participants. Nothing contained herein shall limit the rights of the Company or CF (or any Subsidiary or Affiliate thereof) to issue or transfer securities of the Company not referred to or contemplated herein or in the Newco Term Sheet to any third party in order to induce such party to become an anchor participant or industry market participant in any Qualified Vertical set forth on Annex A or for any other purpose, whether relating to a Qualified Vertical or otherwise. Notwithstanding the foregoing, the Company shall not offer, during the six month period commencing with the date hereof, any of its equity securities or other material benefits in order to induce the Specified Party (as defined in a separate letter agreement) to become an anchor participant in any Qualified Vertical set forth on Annex A on terms more favorable than the terms offered pursuant to this Subscription Agreement with respect to its investment in the Company without also offering (as promptly as practicable after a definitive agreement is reached with the Specified Party) the same more favorable terms to the Subscriber. A term which is more beneficial in any material respect shall be deemed to include, but not be limited to, a material commitment by a Specified Party (i) not to compete with the Qualified Vertical;
(ii) to support the business of the Qualified Vertical; or (iii) to participate with the Company in a vertical marketplace that is not a Qualified Vertical. The offer to a Subscriber under this Section 13 shall be exercisable for 10 business days after delivery by the Company to Subscriber of the definitive documentation embodying the more favorable terms. No such offer to a Subscriber shall be required to be made prior to the Closing or if this agreement is terminated under Section 10 hereof for any reason. In the event an offer

is made to the Specified Party prior to the Closing which would otherwise require an offer to Subscriber hereunder, the same offer shall be made to Subscriber as promptly as practicable after the Closing. The Company's obligation to offer the Subscriber the more favorable terms offered to the Specified Party shall be extended (x) for an additional six months (for a total term of 12 months from the date hereof) if the Subscriber and/or The Williams Companies, Inc., and their respective assignees under Section 16(k) invest in at least two Qualified Verticals during the initial six month period from the date hereof or (y) for an additional 12 months (for a total term of 18 months from the date hereof) if the Subscriber and/or The Williams Companies, Inc., and their respective assignees under Section 16(k) invest in at least four Qualified Verticals during the initial 12 month period from the Closing.

14. Non-Exclusive Agreement. Nothing contained herein shall limit the rights of the Company, CF or the Subscriber (or any Subsidiary or Affiliate thereof) to form or participate in, whether as equity holder, consultant, joint venturer, manager or otherwise, any business opportunity relating to a "vertical" marketplace and there shall be no obligation, express or implied, to first offer the right to participate in any such marketplace to any other party; provided, however, that the Company and CF will agree to certain non-compete restrictions which relate to sales of products traded by Newco to retail customers as further described under "Scope of Newco" in the Newco Term Sheet.

15. Covenant of the Subscriber. The Subscriber agrees that neither it nor any of its Subsidiaries or Affiliates will make, and the Subscriber will use its reasonable best efforts to prevent any of its or their respective directors, officers or agents or any person otherwise acting on behalf of any of the foregoing from making, any purchase, offer, sale, short sale, assignment, transfer, pledge, encumbrance, contract to sell, grant of an option to purchase or other disposition of, or enter into any swap relating to, any securities of the Company, or any interest therein, during any period which governs the calculation of the purchase price of any securities of the Company which the Subscriber may have a right to purchase in the future under the terms of this Agreement.

16. General.

a. The Subscriber acknowledges and agrees that any information or data it has acquired from or about the Company, not otherwise properly in the public domain, was received in confidence. The Subscriber agrees not to divulge, communicate or disclose, except as may be required by law or for the performance of this Subscription Agreement, including in connection with the solicitation of industry market participants, or use to the detriment of the Company or for the benefit of any other person or persons, or misuse in any way, any confidential information of the Company, including any scientific, technical, trade or business secrets of the Company and any scientific, technical, trade or business materials that are treated by the Company as confidential or proprietary, including, but not limited to, ideas, discoveries, inventions, developments and improvements belonging to the Company and confidential information obtained by or given to the Company about or belonging to third parties.

b. The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to consummate the transactions contemplated by this Subscription Agreement. Each party will use reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate the transactions contemplated by this Subscription Agreement as promptly as practicable after the date hereof, including (i) preparing and filing as promptly as practicable all documentation to effect all necessary applications, notices, petitions, filings and other documents and to obtain as promptly as practicable all consents, waivers, licenses, orders, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any third party and/or any Governmental Entity in order to consummate the transactions contemplated by this Subscription Agreement and (ii) taking all reasonable steps as may be necessary to obtain all such material consents, waivers, licenses, registrations, permits, authorizations, tax rulings, orders and approvals. In furtherance and not in limitation of the foregoing, each party hereto agrees to make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby as promptly as practicable after the date hereof and to supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act and to take all other actions necessary to cause the expiration or termination of the applicable waiting periods under the HSR Act as soon as practicable. Nothing in this Subscription Agreement shall require any party (or any of its Subsidiaries or Affiliates) to sell, hold separate or otherwise dispose of or conduct their business in a specified manner, or agree to sell, hold separate or otherwise dispose of or conduct their business in a specified manner, whether as a condition to obtaining any approval from a Governmental Entity or for any other reason.

c. All notices and other communications hereunder shall be in writing and shall be deemed to have been given if delivered personally or sent by facsimile transmission, overnight courier, or certified, registered or express mail, postage prepaid. Any such notice shall be deemed given when so delivered personally or sent by facsimile transmission (provided that a confirmation copy is sent by overnight courier), one day after deposit with an overnight courier, or if mailed, three days after the date of deposit in the United States mails, as follows:

**If to the Company to:**

eSpeed, Inc.
One World Trade Center
103rd Floor
New York, New York 10048
Fax: (212) 938-5000
Attn.: General Counsel

with a copy to:

Swidler Berlin Shereff Friedman, LLP The Chrysler Building 405 Lexington Avenue New York, New York 10174 Fax: (212) 891-9598 Attn: Richard A. Goldberg, Esq.

If to CF to:

Cantor Fitzgerald, L.P.

One World Trade Center
105th Floor
New York, New York 10048
Fax: (212) 938-5000
Attn.: General Counsel

If to the Subscriber to the address set forth below its signature:

d. This Subscription Agreement and exhibits hereto contain the entire agreement between the parties hereto with respect to the matters contemplated herein and supersedes all prior agreements or understandings among the parties related to such matters.

e. This Subscription Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

f. This Subscription Agreement may be amended, modified, superseded, canceled, renewed or extended, and the terms or covenants hereof may be waived, only by a written instrument executed by all of the parties hereto or, in the case of a waiver, by the party waiving compliance. Except as otherwise specifically provided in this Subscription Agreement, no waiver by either party hereto of any breach by the other party hereto of any condition or provision of this Subscription Agreement to be performed by such other party shall be deemed a waiver of a similar or dissimilar provision or condition at the same or at any prior or subsequent time.

g. This Subscription Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of New York, without giving effect to the principles of conflicts of laws thereof. Each party hereto (i) hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any court of the State of Delaware or any federal court sitting in the State of Delaware for purposes of any suit, action or other proceeding arising out of this Subscription Agreement or the subject matter hereof brought by any party hereto, (ii) hereby waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is

not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Subscription Agreement or the subject matter hereof may not be enforced in or by such court, and (iii) hereby waives in any such action, suit, or proceeding any offsets or counterclaims. Each party hereto hereby consents to service of process by certified mail at the address set forth in Section 16(c) hereof and agrees that its submission to jurisdiction and its consent to service of process by mail is made for the express benefit of the other party hereto. Final judgment against any party, in any action, suit or proceeding shall be conclusive, and may be enforced in other jurisdictions (1) by suit, action or proceeding on the conclusive evidence of the fact and of the amount of any indebtedness or liability of the party therein described or (2) in any other manner provided by or pursuant to the laws of such other jurisdiction.

h. Headings to the Sections in this Subscription Agreement are intended solely for convenience and no provision of this Subscription Agreement is to be construed by reference to the heading, of any Section.

i. This Subscription Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Delivery of a telecopied version of one or more signatures to this Subscription Agreement shall be deemed adequate delivery for purposes of this Subscription Agreement.

j. Any term or provision of this Subscription Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Subscription Agreement or affecting the validity or enforceability of any of the terms and provisions of this Subscription Agreement in any other jurisdiction.

k. This Subscription Agreement is not transferable or assignable by the Company, the Subscriber or CF; provided, however, that any party may assign its rights and obligations under this Subscription Agreement to a wholly-owned Subsidiary of such party; provided, further, however, that such assignment shall not relieve the assigning party from its obligations hereunder.

IN WITNESS WHEREOF, the Subscriber has executed this Subscription Agreement this 26th day of April, 2000.

**SUBSCRIBER:**

**Dynegy, Inc.**

*By: /s/ Charles L. Watson*
*---*
*Name: Charles L. Watson*
*Title: Chief Executive Officer*
*Address: 1000 Louisiana*
*Suite 5800*
*Houston, Texas 77002*
*Attn: General Counsel*
*Fax No.:*

**Taxpayer ID #**

**AGREED AND ACCEPTED this 26th day of April, 2000.**

**eSPEED, INC.**

*By: /s/ Howard W. Lutnick*
*---*
*Name: Howard W. Lutnick*
*Title: Chief Executive Officer*

**CANTOR FITZGERALD, L.P.**

*By: /s/ Howard W. Lutnick*
*---*
*Name: Howard W. Lutnick*
*Title: Chairman*

**EXHIBITS**

Exhibit A - Form of Warrant

Exhibit B - Wire Transfer Instructions
Exhibit C - Newco Term Sheet
Exhibit D - Form of Registration Rights Agreement

Annex A -- Qualified Verticals

**EXHIBIT A**

NEITHER THIS WARRANT NOR THE SHARES OF CLASS A COMMON STOCK ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND NEITHER THIS WARRANT NOR SUCH SHARES MAY BE SOLD, ENCUMBERED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENT, AND, IF AN EXEMPTION SHALL BE APPLICABLE, THE HOLDER SHALL HAVE DELIVERED AN OPINION OF COUNSEL ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

Void after 5:00 p.m. Eastern Standard Time, on _____, 2010 [representing 10th anniversary of issuance].

**WARRANT TO PURCHASE CLASS A COMMON STOCK**

**OF**

**eSPEED, INC.**

FOR VALUE RECEIVED, eSPEED, INC. (the "Company"), a Delaware corporation, hereby certifies that Dynegy, Inc. (the "Initial Holder"), or its permitted assigns (together with the Initial Holder, the "Holder"), is entitled to purchase from the Company, at any time or from time to time commencing on the Exercise Date set forth in Section 4 hereof (as the same may be accelerated pursuant to Section 4(c) hereof) and prior to 5:00 P.M., Eastern Standard Time, on _____, 2010 [representing 10th anniversary of issuance] a total of 666,666 fully paid and non-assessable shares of Class A Common Stock, par value $.01 per share, of the Company for a purchase price of $35.203125 per share. (Hereinafter, (i) said Class A Common Stock, together with any other equity securities which may be issued by the Company with respect thereto or in substitution therefor, is referred to as the "Class A Stock," (ii) the shares of the Class A Stock purchasable hereunder are referred to as the "Warrant Shares,"
(iii) the aggregate purchase price payable hereunder for the Warrant Shares is referred to as the "Aggregate Warrant Price," (iv) the price payable hereunder for each of the Warrant Shares is referred to as the "Per Share Warrant Price,"
(v) this Warrant, and all warrants hereafter issued in exchange or substitution for this Warrant are referred to as the "Warrant" and (vi) the holder of this Warrant is referred to as the "Holder.") The number of Warrant Shares and the securities (if applicable) for which this Warrant is exercisable and the Per Share Warrant Price are subject to adjustment as hereinafter provided under
Section 3.

1. Exercise of Warrant. This Warrant may be exercised, in whole at any time or in part from time to time, commencing on the Exercise Date set forth in
Section 4 hereof (as the same may be accelerated pursuant to Section 4(c) hereof) and prior to 5:00 P.M., Eastern

Standard Time, on _____, 2010 [representing 10th anniversary of issuance] by the Holder of this Warrant by the surrender of this Warrant (with the subscription form at the end hereof duly executed) at the address set forth in Section 9(a) hereof, together with proper payment of the Aggregate Warrant Price, or the proportionate part thereof if this Warrant is exercised in part. The Aggregate Warrant Price or Per Share Warrant Price shall be paid in cash, via wire transfer to an account designated by the Company, or by certified or official bank check payable to the order of the Company.

If this Warrant is exercised in part, the Holder shall be entitled to receive a new Warrant covering the number of Warrant Shares in respect of which this Warrant has not been exercised and setting forth the proportionate part of the Aggregate Warrant Price applicable to such Warrant Shares. Upon such surrender of this Warrant, the Company will (a) issue a certificate or certificates in the name of the Holder for the shares of the Class A Stock to which the Holder shall be entitled, and (b) deliver the proportionate part thereof if this Warrant is exercised in part, pursuant to the provisions of the Warrant.

No fractional shares shall be issued upon the exercise of this Warrant. With respect to any fraction of a share called for upon any exercise hereof, the Company shall pay to the Holder an amount in cash equal to such fraction multiplied by the fair value of a share.

2. Reservation of Warrant Shares. The Company agrees that, prior to the expiration of this Warrant, the Company from and as of the date hereof, will have authorized and in reserve, and will keep available, solely for issuance or delivery upon the exercise of this Warrant, the shares of the Class A Stock as from time to time shall be receivable upon the exercise of this Warrant.

3. Adjustments for Corporate Events. The number and kind of securities issuable upon the exercise of this Warrant, the Per Share Warrant Price and the number of Warrant Shares for which this Warrant may be exercised shall be subject to adjustment from time to time in accordance with the following provisions:

a. Reorganization, Reclassification. In the event of a reorganization, share exchange, or reclassification, other than a change in par value, or from par value to no par value, or from no par value to par value or a transaction described in subsection (b) or (c) below, this Warrant shall, after such reorganization, share exchange or reclassification, be exercisable into the kind and number of shares of stock or other securities or other property of the Company which the holder of this Warrant would have been entitled to receive if the holder had held the Warrant Shares issuable upon exercise of this Warrant immediately prior to such reorganization, share exchange, or reclassification.

b. Merger, Consolidation or Sale of All or Substantially All Assets. In the event of a merger or consolidation to which the Company is a party or the sale of all or substantially all of the assets of the Company, this Warrant shall, after such merger, consolidation or sale, be exercisable for the kind and number of shares of stock and/or other securities, cash or other property which the holder of this Warrant would have been entitled to

receive if the holder had held the Warrant Shares issuable upon exercise of this Warrant immediately prior to such merger, consolidation or sale. Any such merger, consolidation or sale shall require, as a condition thereto, that such other party to such merger, consolidation or sale agree in writing to assume this Warrant.

c. Subdivision or Combination of Shares. In case outstanding shares of Class A Stock shall be subdivided, the Per Share Warrant Price shall be proportionately reduced as of the effective date of such subdivision, or as of the date a record is taken of the holders of Class A Stock for the purpose of so subdividing, whichever is earlier. In case outstanding shares of Class A Stock shall be combined, the Per Share Warrant Price shall be proportionately increased as of the effective date of such combination, or as of the date a record is taken of the holders of Class A Stock for the purpose of so combining, whichever is earlier.

d. Stock Dividends. In case shares of Class A Stock are issued as a dividend or other distribution on the Class A Stock (or such dividend is declared), then the Per Share Warrant Price shall be adjusted, as of the date a record is taken of the holders of Class A Stock for the purpose of receiving such dividend or other distribution (or if no such record is taken, as at the earliest of the date of such declaration, payment or other distribution), to that price determined by multiplying the Per Share Warrant Price in effect immediately prior to such declaration, payment or other distribution by a fraction (i) the numerator of which shall be the number of shares of Class A Stock outstanding immediately prior to the declaration or payment of such dividend or other distribution, and (ii) the denominator of which shall be the total number of shares of Class A Stock outstanding immediately after the declaration or payment of such dividend or other distribution. In the event that the Company shall declare or pay any dividend on the Class A Stock payable in any right to acquire Class A Stock for no consideration, then, for purposes of calculating such adjustment, the Company shall be deemed to have made a dividend payable in Class A Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Class A Stock.

e. Adjustment of Aggregate Number of Warrant Shares Issuable. Upon each adjustment of the Per Share Warrant Price under the provisions of this Section 3, the aggregate number of Warrant Shares issuable upon exercise of this Warrant shall be adjusted to an amount determined by multiplying the Warrant Shares issuable prior to such adjustment by a fraction determined by dividing (x) the Per Share Warrant Price in effect immediately prior to the event causing such adjustment by (y) such adjusted Per Share Warrant Price.

f. Minimum Adjustment. No adjustment of the Per Share Warrant Price shall be made if the amount of any such adjustment would be an amount less than 1% of the Per Share Warrant Price then in effect, but any such amount shall be carried forward and an adjustment in respect thereof shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate an increase or decrease of 1% or more.

g. Treasury Shares. The number of shares of Class A Stock at any time outstanding shall not include any shares thereof then directly or indirectly owned or held by or for the account of the Company.

h. Notices. If at any time, (x) the Company shall declare a stock dividend (or any other distribution except for cash dividends) on its Class A Stock; (y) there shall be any capital reorganization or reclassification of the Class A Stock, or any consolidation or merger to which the Company is a party, or any sale or transfer of all of substantially all of the assets of the Company; or (z) there shall be a voluntary or involuntary dissolution, liquidation or winding-up of the Company; then, in any one or more of such cases, the Company shall give written notice to the Holder, not less than 10 days before any record date or other date set for definitive action, or of the date on which such reorganization, reclassification, sale, consolidation, merger, dissolution, liquidation or winding up shall take place, as the case may be. Such notice shall also set forth such facts as shall indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the current Per Share Warrant Price and the kind and amount of Class A Stock and other securities and property deliverable upon exercise of this Warrant. Such notice shall also specify the date (to the extent known) as of which the holders of the Class A Stock of record shall be entitled to exchange their Class A Stock for securities or other property deliverable upon such reorganization, reclassification, sale, consolidation, merger, dissolution, liquidation or winding up, as the case may be. In addition, whenever the aggregate number of Warrant Shares issuable upon exercise of this Warrant and Per Share Warrant Price is adjusted as herein provided, the Chief Financial Officer of the Company shall compute the adjusted number of Warrant Shares and Per Share Warrant Price in accordance with the foregoing provisions and shall prepare a written certificate setting forth such adjusted number of Warrant Shares and Per Share Warrant Price, and such written instrument shall promptly be delivered to the recordholder of this Warrant.

4. Exercisability.

a. Exercise Date. This Warrant shall be vested immediately and shall be exercisable as to all Warrant Shares commencing _____ [the date which is 5 1/2 years after the date of issuance] (the "Exercise Date"), subject to acceleration as set forth in subsection (c) below.

b. Commitment to Invest in Four Qualified Verticals. The Initial Holder has agreed to invest $2.5 million in each of four Qualified Verticals (as defined below) pursuant to the terms of that certain Subscription Agreement, dated as of April 26, 2000, by and between the Company and the Initial Holder (the "Subscription Agreement"). Such investment is required to be made during the 12-month period following the date hereof (the "12-Month Period"; which period may be increased by not more than six months (the "Black-Out Period") if a public offering by the Company is commenced during such 12-Month Period and disclosure constraints resulting from such public offering dictate a delay as determined by the Company). Upon any such determination by the Company, the Company shall so notify the Initial Holder in writing prior to the commencement of any Black-Out Period, which notice shall specify the time period by which the 12-Month Period shall be increased and the new last

day of the 12-Month Period. Such notice shall be binding on the parties. For purposes of this agreement, a "Qualified Vertical" shall have the meaning ascribed to it in Section 3(b) of the Subscription Agreement.

c. Acceleration of Exercisability.

(i) Satisfaction of Acceleration Condition. Upon each satisfaction of an Acceleration Condition (as defined below), this Warrant shall become exercisable as to 25% of the aggregate Warrant Shares (i.e., [166,666] shares of Class A Stock). An "Acceleration Condition" shall be deemed satisfied after the occurrence of each of the following: (1) the formation of a Qualified Vertical,
(2) the consummation and funding of a $2.5 million investment in a Qualified Vertical by the Subscriber and each of the three additional industry market participants (two in the case of the Newco Qualified Vertical, as defined in
Section 3 of the Subscription Agreement), and (3) the consummation of the Initial Holder's first transaction on the exchange of said Qualified Vertical
[any market participant's first transaction on the exchange in the case of Dynegy, Inc.]; provided that in any event the Acceleration Condition shall be deemed satisfied on the eight-week anniversary of the satisfaction of the conditions set forth in clauses (1) and (2) above.

(ii) Not Exercisable Prior to First Anniversary of Date of Issuance. Notwithstanding the provisions of subsection (c)(i) above, in no event will this Warrant, or any portion thereof, become exercisable prior to [____] October 2001. In the event that an Acceleration Condition is satisfied prior to such date, then the exercisability of this Warrant in connection with such satisfaction shall be deferred until [___].

5. Fully Paid Stock; Taxes. The Company agrees that the shares of the Class A Stock represented by each and every certificate for Warrant Shares delivered on the proper exercise of this Warrant shall, at the time of such delivery, be validly issued and outstanding, fully paid and non-assessable, and not subject to preemptive rights, and the Company will take all such actions as may be necessary to assure that the par value or stated value, if any, per share of the Class A Stock is at all times equal to or less than the then Per Share Warrant Price. Subject to Section 6(c) hereof, the Company further covenants and agrees that it will pay, when due and payable, any and all federal and state stamp, original issue or similar taxes that may be payable in respect of the issuance of any Warrant Shares or certificates therefor. The Holder covenants and agrees that it shall pay, when due and payable, all of its federal, state and local income or similar taxes that may be payable in respect of the issuance of any Warrant Shares or certificates therefor, if any.

6. Transfer

a. Securities Laws. Neither this Warrant nor the Warrant Shares issuable upon the exercise hereof have been registered under the Securities Act of 1933, as amended (the "Securities Act"), or under any state securities laws and unless so registered may not be transferred, sold, pledged, hypothecated or otherwise disposed of unless an exemption from such registration is available. In the event the Holder desires to transfer this Warrant or any of

the Warrant Shares issued in accordance with the terms hereof, the Holder must give the Company prior written notice of such proposed transfer including the name and address of the proposed transferee, unless such transfer is a transfer of the Warrant Shares pursuant to an effective Registration Statement. Such transfer may be made only either (i) upon publication by the Securities and Exchange Commission (the "Commission") of a ruling, interpretation, opinion or "no action letter" based upon facts presented to said Commission, or (ii) upon receipt by the Company of an opinion of counsel acceptable to the Company to the effect that the proposed transfer will not violate the provisions of the Securities Act, the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or the rules and regulations promulgated under either such act, or to the effect that the Warrant or Warrant Shares to be sold or transferred have been registered under the Securities Act of 1933, as amended, and that there is in effect a current prospectus meeting the requirements of Subsection 10(a) of the Securities Act, which is being or will be delivered to the purchaser or transferee at or prior to the time of delivery of the certificates evidencing the Warrant or Warrant Shares to be sold or transferred.

b. Registration Rights. The Warrant Shares are the subject of the Registration Rights Agreement attached to the Subscription Agreement as Exhibit D.

c. Swap or Hedging Transactions. Subject to Section 3(c) of the Subscription Agreement, without the prior written consent of the Company, the Holder may not enter into any swap or other hedging transaction relating to the Warrants or the Warrant Shares.

d. Transfer. Subject to Section 4(c), without the prior written consent of the Company, neither this Warrant, nor any interest herein, may be sold, assigned, transferred, pledged, encumbered or otherwise disposed of. Any sale, assignment, transfer, pledge, encumbrance or other disposition of this Warrant attempted contrary to the provisions of this Warrant, or any levy of execution, attachment or other process attempted upon the Warrant, shall be null and void and without effect. The provision of this Section 6(d) shall not be applicable to the Warrant Shares. Without limitation of the foregoing, Subscriber agrees that if it transfers its rights hereunder to a Subsidiary pursuant to Section 16(k) of the Subscription Agreement, it shall not sell, assign or transfer the stock of such Subsidiary during the 12-month lock-up.

e. Legend and Stop Transfer Orders. Unless the Warrant Shares have been registered under the Securities Act or eligible for resale pursuant to Rule 144(k) under the Securities Act, upon exercise of any part of the Warrant and the issuance of any of the Warrant Shares, the Company shall instruct its transfer agent to enter stop transfer orders with respect to such shares, and all certificates representing Warrant Shares shall bear on the face thereof substantially the following legend, insofar as is consistent with Delaware law:

"The shares of Class A Common Stock represented by this certificate have not been registered under the Securities Act of 1933, as amended, and may not be sold, offered for sale, assigned, transferred or

otherwise disposed of unless registered pursuant to the provisions of that Act or an opinion of counsel to the Company is obtained stating that such disposition is in compliance with an available exemption from such registration."

7. Loss, etc. of Warrant. Upon receipt of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and of indemnity reasonably satisfactory to the Company, if lost, stolen or destroyed, and upon surrender and cancellation of this Warrant if mutilated, the Company shall execute and deliver to the Holder a new Warrant of like date, tenor and denomination.

8. Warrant Holder Not Shareholder. Except as otherwise provided herein, this Warrant does not confer upon the Holder any right to vote or to consent to or receive notice as a shareholder of the Company, as such, in respect of any matters whatsoever, or any other rights or liabilities as a shareholder, prior to the exercise hereof.

9. Communication. No notice or other communication under this Warrant shall be effective unless the same is in writing and is mailed by first-class mail, postage prepaid, addressed to:

a. the Company at One World Trade Center, 103rd Floor, New York, New York 10048, Attention: General Counsel, or such other address as the Company has designated in writing to the Holder, or

b. the Holder at 1000 Louisiana, Suite 5800, Houston, Texas 77002, Attention: General Counsel, or such other address as the Holder has designated in writing to the Company.

10. Headings. The headings of this Warrant have been inserted as a matter of convenience and shall not affect the construction hereof.

11. Applicable Law. This Warrant shall be governed by and construed in accordance with the law of the State of New York without giving effect to the principles of conflict of laws thereof.

IN WITNESS WHEREOF, the Company has caused this Warrant to be signed by a duly authorized officer as of this _____ day of April, 2000.

**eSPEED, INC.**

By:_____
Name:
Title:

**SUBSCRIPTION**

The undersigned, _____, pursuant to the provisions of the foregoing Warrant, hereby agrees to subscribe for the purchase of _____ shares of the Class A Common Stock of eSPEED, INC. covered by said Warrant, and makes payment therefor in full at the price per share provided by said Warrant.

Dated _____ Signature_____
Address_____

_____

**ASSIGNMENT**

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto _____ the foregoing Warrant and all rights evidenced thereby, and does irrevocably constitute and appoint _____, attorney, to transfer said Warrant on the books of

eSPEED, INC.

Dated _____ Signature_____
Address_____

_____

**PARTIAL ASSIGNMENT**

FOR VALUE RECEIVED _____ hereby assigns and transfers unto _____ the right to purchase _____ shares of the Class A Common Stock of eSPEED, INC. by the foregoing Warrant, and a proportionate part of said Warrant and the rights evidenced hereby, and does irrevocably constitute and appoint _____, attorney, to transfer that part of said Warrant on

the books of eSPEED, INC.

Dated _____ Signature_____
Address_____

_____

**EXHIBIT B**

Wire transfer instructions to be provided by eSpeed prior to Closing.

**EXHIBIT C**

**THE NEWCO TERM SHEET**

**Scope of Newco**

Newco is intended to be an electronic and telephonic marketplace for North American wholesale transactions in natural gas, electricity, coal and sulfur dioxide and nitrogen dioxide emissions (the "Newco Products").

Newco's activities will be limited to the wholesale market. Newco will not intentionally expose itself to any unmatched market risk on the Newco Products and, prior to July 31, 2001, will not take physical title to the Newco Products. Newco will not buy or sell Newco Products from or to residential or commercial end-user customers for their end use ("Retail Customers"). eSpeed, Inc. ("eSpeed"), Cantor Fitzgerald, L.P. ("CF") and their respective subsidiaries will agree not to hold an equity interest, invest, manage or otherwise participate in any entity that buys or sells Newco Products to Retail Customers; provided, however, that nothing contained herein shall prohibit eSpeed or CF or any of their respective subsidiaries from (x) acting solely as a technology provider in any such marketplace, (y) from acquiring less than 25% of the voting securities of an entity that buys or sells Newco Products to Retail Customers so long as the acquired entity is not primarily engaged in the business of buying or selling Newco Products to Retail Customers, or (z) trading in the ordinary course of business in securities of entities that are themselves engaged in the business of buying or selling Newco Products to Retail Customers. For purposes of the preceding sentence, "primarily engaged" shall mean that the acquired entity derives more than 17.5% of its revenues from the business of buying or selling Newco Products to Retail Customers.

**Equity Participation in Newco**

It is anticipated that Newco will have a total of three stockholders consisting of a limited liability company (the "LLC") formed by the participating Anchors for the benefit of up to 10 energy industry participants, inclusive of the participating Anchors (the "EIPs"), eSpeed and CF. The initial EIPs will be comprised of the participating Anchors, and the additional EIPs will be selected from an agreed upon list of 10 - 15 acceptable industry market participants (the "List"). The initial participating Anchor will be The Williams Companies, Inc. ("Williams"). Any of the participating Anchors, eSpeed and CF may invite an additional industry market participant to invest in Newco from said List until the 9th month anniversary of the closing date with respect to the initial LLC investment in Newco as described below (the "Initial Newco Closing Date"). Invitations to additional industry market participants shall be accepted on a first come first served basis. If invitees can not be distinguished on the basis of the time of their willingness to commit, the Board of Newco shall resolve any oversubscription issues in its sole discretion. In the event that there are fewer than seven EIPs after the 9th month

anniversary of the Initial Newco Closing Date, eSpeed and CF shall have the right to invite additional industry market participants from the List for an additional 9-month period as set forth under the caption "LLC Investment" below. The LLC, EIPs, eSpeed and CF will enter into a Stockholders' Agreement to provide for (i) voting of Newco Board members as set forth below in this Newco Term Sheet under the Section captioned "Management of Newco", (ii) rights of first refusal and co-sale rights (including tag-along and drag-along rights), (iii) non-solicitation and confidentiality obligations and (iv) the agreement of each such stockholder to cause actions that require the consent of eSpeed or CF designees on the Board of Newco not to be taken without requisite consent. The Stockholders' Agreement shall terminate following the initial public offering of Newco, except for the matters addressed in (i) and (iii) above and the matters in (iv) above but only as they relate to transaction commissions (including any reductions) and data pricing.

All share information set forth below is on a fully-diluted basis as of the Initial Newco Closing Date.

| | |
|---|---|
| LLC Investment: | In exchange for a cash investment of $2.5 million from the participating Anchor, the LLC will initially receive 7.5% of the outstanding common stock of Newco and warrants to purchase an additional 67.5% of the outstanding common stock of Newco. These Newco warrants will be exercisable in increments of $2.5 million for 7.5% of the outstanding common stock of Newco if and only if an additional EIP becomes a member of the LLC and invests $2.5 million in the LLC. Each time an EIP is added, the warrants shall become exercisable by the LLC in exchange for an additional $2.5 million investment by the LLC in Newco. Upon the 9th month anniversary of the Initial Newco Closing Date if there are fewer than seven EIPs, eSpeed and CF shall have the right to invite additional industry market participants from the List for a period of an additional 9 months. If after such 18 month period there are (i) at least eight EIPs, then any unexercised Newco warrants will be allocated pro rata among the EIPs and (ii) less than eight EIPs, then a portion of the unexercised Newco warrants will be forfeited as set forth in Annex A and any unforfeited unexercised Newco warrants will be allocated pro rata among the EIPs. If any warrants are so forfeited, the exercise price per share of common stock of Newco issuable upon exercise of the remaining warrants held by Newco shall be reduced by multiplying the exercise price by a fraction, the numerator of which shall be the number of shares of outstanding common stock of Newco then |

owned by eSpeed and CF and the denominator shall be the number of shares of outstanding common stock of Newco held by the LLC, including for such purpose, the shares underlying unforfeited Newco warrants held by the LLC. Such exercise price may also be reduced in another economically appropriate manner to address such forfeiture as equitably determined by the parties. The Newco warrants shall be exercisable for a 30 day period from any such allocation. Each EIP shall make an additional capital contribution to the LLC in the amount required to exercise any unexercised Newco warrants so allocated to it. If an EIP fails to make such contribution, the unexercised Newco warrants so allocated to it will be allocated pro rata among the other EIPs who desire to make such non-contributing EIP's contribution.

Dynegy, Inc. ("Dynegy") will have the right for a 30 day period commencing October 1, 2001 to acquire an EIP interest in Newco through an investment in the LLC for $2.5 million. Dynegy's right to make any investment in the LLC shall terminate on November 1, 2001. If an initial public offering of Newco shall occur prior to October 1, 2000, Dynegy will have the right to accelerate its investment, in whole or in part, in Newco so long as Dynegy's ownership does not exceed 4.9% of Newco's outstanding stock; provided that, in such event, Dynegy shall have no Board designee rights prior to August 2001 and any Board designee rights that it would have but for this limitation may be exercised by the other LLC members acting collectively.

The LLC operating agreement will provide that [ * ECONOMIC TERMS OMITTED ]of the Newco common stock (inclusive of shares acquired by the LLC upon exercise of the Newco warrants) will be allocated equally among the EIPs and the remaining [ ***ECONOMIC TERMS OMITTED] of the**

Newco common stock (inclusive of shares acquired by the LLC upon exercise of the Newco warrants) (the "Jumpball Shares") will be allocated among the EIPs based upon the



*This information has intentionally been omitted and has been filed separately with the Securities and Exchange Commission. It is subject to a confidential treatment request.

Cumulative Transaction Revenue paid by each EIP and received by Newco and eSpeed in the aggregate in the Newco/eSpeed trading system (i.e., 100% of electronic and non-electronic (as set forth on paragraphs (a) through (c) of Schedule 4 to this Newco Term Sheet) transaction service revenues ("Transaction Revenues") in the Newco Products measured over the five year period from the Initial Newco Closing Date (the "Cumulative Transaction Revenue").

Non-transaction revenue, such as data, ancillary service and advertising revenue, shall not be included as transaction revenue. No EIP shall be entitled to receive more than two times its pro rata share of the Jumpball Shares with pro ration to be based solely upon the number of EIPs (the "Jumpball Cap"). In the event that an EIP would otherwise be entitled to receive more than the Jumpball Cap, then any such excess shares shall be allocated among the other EIP's in proportion to their Cumulative Transaction Revenue to the extent that, together with such additional allocation, they would not be entitled to receive more than the Jumpball Cap.

As soon as reasonably practicable, but in no event later than 30 days following each full quarterly period after the Initial Newco Closing Date, CF shall prepare and circulate to each EIP a quarterly report reasonably detailing the total volume and transaction revenue generated and paid by (i) such EIP and (ii) all the EIPs in the aggregate to Newco and eSpeed for such quarter. As soon as reasonably practicable, but in no event later than 90 days following each anniversary of the Initial Newco Closing Date, CF shall prepare and circulate to each EIP a statement (the "Statement") reasonably detailing the total volume and transaction revenue and percentage of transaction revenue generated and paid by (i) such EIP and (ii) all the EIPs in the aggregate to Newco and eSpeed for the preceding 12-month period. The annual Statement shall be certified at Newco's expense by a firm of certified public accountants selected by Newco (the "Selected Accounting Firm"), which firm may differ from year to year. The EIPs shall have a period of 60 days after receipt of the Statement to present in writing to CF and the other EIPs any objections thereto, setting forth the specific item or items to which each such objection relates and the specific basis for each such objection. A

| | |
|---|---|
| | Statement shall be deemed to be acceptable to an EIP unless it shall have made a written objection thereto within such 60 day period. If an EIP shall raise any such objection within such 60 day period and such EIP and CF shall fail to reach an agreement with respect to any such objection, then such disputed objection shall, not later than 30 days after one of the parties affirmatively terminates discussions in writing with respect to such objection, be submitted for resolution to the Selected Accounting Firm. The EIP and CF shall use reasonable efforts to cause said accounting firm, within 30 days of its appointment, to resolve the disputes submitted to it. The fees and expenses of this accounting firm shall be paid (i) by the disputing EIP, if the discrepancy between the calculations in the Statement and the calculations of such accounting firm is less than 2% of the Statement's calculations, and (ii) by Newco, if the discrepancy between the calculations of such accounting firm is 2% or greater. Any such resolution by this accounting firm concerning any item in dispute shall be final and binding on the parties without further right of appeal. In no event shall an EIP be entitled to review or object to the transaction revenues of any other EIP or the combined Cumulative Transaction Revenue for all EIPs.<br><br>Once the Statement reflecting the Cumulative Transaction Revenue of each EIP which is delivered following the fifth anniversary of the closing of the Initial Newco Closing Date becomes final and binding, the shares of Newco common stock shall be allocated among the EIPs in proportion to their Cumulative Transaction Revenue as described above.<br><br>The LLC operating agreement will provide that it may not be amended in any manner which would modify the allocation provisions set forth therein without eSpeed's consent. |
| eSpeed's Investment: | In exchange for an aggregate cash investment of $2.0 million, eSpeed will receive 5% of the outstanding equity of Newco on the Initial Newco Closing Date. |
| CF's Investment: | In exchange for (i) an aggregate cash investment of $4.25 million, (ii) the assignment of certain rights under the |

services agreement between eSpeed and CF described on Schedule 1, and
(iii) the transfer of certain business assets described on Schedule 2, CF will receive 20% of the outstanding equity of Newco on the Initial Newco Closing Date.

**Management of Newco**

Newco shall be formed as soon as there are a total of three EIPs (including the participating Anchors) and rights to designate Newco Board members shall be as follows:

| Total Number of EIPs (including Participating Anchors) | Total Number to be Designated by all the EIPs (One Per EIP) | Total Number to be Designated By eSpeed | Total Number to be Designated by CF |
|---|---|---|---|
| 3 | 3 | 1 | 1 |
| 4 | 4 | 1 | 1 |
| 5 | 5 | 1 | 1 |
| 6 | 6 | 1 | 1 |
| 7 | 7 | 2 | 1 |

As additional EIPs are added, each EIP shall have the right to designate one Board member and eSpeed and CF shall have the right to designate directors in proportion to their collective equity participation in Newco (e.g., if eSpeed and CF own 25% of the equity securities of Newco they shall have the right to collectively designate 25% of the Board); provided that in no event shall eSpeed and CF have less than one Board designee each and if the number of designees is an odd number, eSpeed shall designate the extra director. The director designee of an EIP, eSpeed or CF shall be a full-time employee of such party or its wholly-owned subsidiary, its ultimate parent entity or a wholly-owned subsidiary of its ultimate parent entity. The majority of the designees of the non-competing EIPs shall have the right to remove the designee of any EIP if such EIP or its designee participates in the management (whether by contract, equity ownership, representation on the Board of Directors or otherwise) of an entity which is competitive with Newco; provided that, any such participation in the management of a competitive entity in existence at the time a party becomes an EIP and disclosed by the EIP at the time of its investment in Newco shall not be grounds for removal. An EIP shall lose its director designee rights if its economic interest in Newco common stock held by the LLC falls below 2.5% of the outstanding shares held by the parties to the Stockholders' Agreement. In the event that an EIP loses its director designee rights pursuant to the preceding two sentences, the other EIPs, voting together, shall have the right to fill the seats that become vacant as a result of such loss of designee rights. All action of the Newco Board shall be taken by majority

vote of the Newco Board, except for those matters set forth on Schedule 3 which shall require the approval of a majority of the Newco Board as well as a majority of the director designees of either eSpeed or CF.

**Newco Services Agreement**

Upon formation, Newco will enter into a services agreement with eSpeed pursuant to which eSpeed will provide the global technology infrastructure for the transactional and technology related elements of the marketplace as well as access to its futures exchange to be hosted by eSpeed in exchange for a percentage of transactional and other revenues. The terms of such service agreement are set forth on Schedule 4.

**Newco Administrative Services Agreement**

Upon formation, Newco will enter into an administrative services agreement with CF pursuant to which CF will act as market operator and will manage the day-to-day administrative operations of Newco. The terms of such administrative services agreement are set forth on Schedule 5.

Registration Rights of eSpeed, CF, the Anchors and the other EIPs

eSpeed, CF and the EIPs will be entitled to those registration rights with respect to their Newco common stock set forth on Schedule 6.

**EXHIBIT D**

**REGISTRATION RIGHTS AGREEMENT**

by and among

eSpeed, Inc.

and

**The Investors Named Herein**

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REGISTRATION RIGHTS AGREEMENT (the "Agreement"), dated as of April __, 2000, by and among eSpeed, Inc., a Delaware corporation (the "Company"), the parties that have executed the signature pages hereto (the "Initial Investors") and such other parties that otherwise execute a joinder agreement and become a party hereto (collectively, the "Investors").

**RECITALS**

WHEREAS, as an inducement to each of the Initial Investors to invest in the Company, the Company desires to grant to each of the Initial Investors registration rights with respect to the shares (the "Shares") of Class A Common Stock (as defined in Section 8.1 below) and warrants to purchase shares of Class A Common Stock (the "Warrants") issued to the Initial Investors on the date hereof as set forth on Schedule A hereto, on the terms and subject to the conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**ARTICLE I**
**DEMAND REGISTRATIONS**

1.1 Requests for Registration . Subject to Sections 1.2 and 1.3 hereof, the Initial Investors may request, in writing, registration under the Securities Act of all or part of their Registrable Securities. Within 15 days after receipt of any such request, the Company will give notice of such request to all other Investors and to other persons holding piggyback registration rights entitling them to have securities of the Company included within such registration ("Other Holders"). Thereafter, the Company will use all reasonable efforts to effect the registration under the Securities Act (i) on Form S-1 or any similar long-form registration statement (a "Long-Form Registration") or (ii) on Form S-3 or any similar short-form registration statement (a "Short-Form Registration") if the Company qualifies to effect a Short- Form Registration, and will include in such registration all Registrable Securities and securities of the Company held by the Other Holders with respect to which the Company has received written requests for inclusion therein within 20 days after the receipt of the Company's notice, subject to the provisions of Section 1.4. All registrations initiated by an Investor pursuant to this Section 1.1 are referred to herein as "Demand Registrations". The Company shall not be required to effect any underwritten Demand Registration requested by an Initial Investor if either (a) within the 12 months preceding the receipt by the Company of such request, the Company has filed and has had declared effective by the Commission a Registration Statement with respect to an underwritten offering under this Section 1.1 or has filed and has had declared effective by the Commission another Registration Statement with respect to an underwritten offering to which the Piggyback Registration rights set forth in Article II hereof apply and such Initial Investor had an opportunity to include all the

shares requested to be included in such Registration Statements; and provided further that the Company shall not be required to effect any Demand Registration requested by an Initial Investor if such Investor may sell all of the Registrable Securities requested to be included in such Demand Registration without registration under the Securities Act, pursuant to the exemption provided by (i) Rule 144(k) under the Securities Act, as such rule may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the Commission.] The rights of an Initial Investor pursuant to this
Section 1.1 shall be assignable in accordance with the provisions of Section 9.9.

1.2 Number of Demand Registrations; Expenses . Subject to Sections 1.1 and 1.3 hereof, each of the Initial Investors shall be entitled to (i), from and after the one year anniversary of the date hereof, one Demand Registration and (ii), from and after the date on which such Initial Investor's Warrants become fully exercisable, one additional Demand Registration, with no more than one of such Demand Registrations being a Long-Form Registration; provided, however, that the Company need not effect any requested Demand Registration unless the expected proceeds of such registration exceed $20,000,000. The Company will pay all Registration Expenses in connection with any Demand Registration.

1.3 Effective Registration Statement . A registration requested pursuant to Section 1.1 of this Agreement shall not be deemed to have been effected (i) unless a Registration Statement with respect thereto has been declared effective by the Commission, (ii) if after it has become effective, such registration is interfered with by any stop order, injunction or other order or requirement of the Commission or other governmental agency or court for any reason, and, as a result thereof, the Registrable Securities covered thereby have not been sold or (iii) the Registration Statement does not remain effective for a period of at least 180 days beyond the effective date thereof or, with respect to an underwritten offering of Registrable Securities, until 45 days after the commencement of the distribution by the holders of the Registrable Securities included in such Registration Statement. If a registration requested pursuant to this Article I is deemed not to have been effected as provided in this Section 1.3, then the Company shall continue to be obligated to effect the number of Demand Registrations set forth in Section 1.2 without giving effect to such requested registration. The Initial Investors of the Registrable Securities shall be permitted to withdraw all or any part of the Registrable Securities from a Demand Registration at any time prior to the effective date of such Demand Registration; provided that in the event of, and concurrently with such withdrawal, the Initial Investors responsible for such Demand Registration shall either (x) pay or reimburse the Company for all fees and expenses (including counsel fees and expenses) incurred by them and the Company prior to such withdrawal or (y) agree to forfeit one of its Demand Registration rights hereunder.

1.4 Priority on Demand Registrations . If the Company includes in any underwritten Demand Registration any securities which are not Registrable Securities and the managing underwriters advise the Company in writing that in their opinion the number of Registrable Securities and other shares of Common Stock proposed to be included exceeds the number of Registrable Securities and other securities which can be

sold in such offering, the Company will include in such registration (i) first, the number of Registrable Securities requested to be included which, in the opinion of such underwriters, can be sold, by the Investor initiating the Demand Registration, (ii) second, that number of other shares of Common Stock proposed to be included in such registration equally between Cantor Fitzgerald Securities and its Affiliates, and their successors and assigns on the one hand (the "Priority Piggyback Registration Holders"), and any other Investors exercising their Piggyback Registration rights on the one hand and (iii) third, that number of other shares of Common Stock proposed to be included in such registration, pro rata among any other holders exercising their respective piggyback registration rights thereof based upon the total number of shares which such holders propose to include in such registration.

1.5 Selection of Underwriter. If the Investor exercising its right to a Demand Registration so elects, the offering of such Registrable Securities pursuant to such Demand Registration shall be in the form of an underwritten offering. The Company shall select one or more nationally recognized firms of investment bankers to act as the lead managing Underwriter or Underwriters in connection with such offering and shall select any additional investment bankers and managers to be used in connection with the offering.

1.6 Limitations, Conditions and Qualifications to Obligations for a Demand Registration. The Company shall be entitled to postpone, for a reasonable period of time (but not exceeding 90 days), the filing of any registration statement otherwise required to be prepared and filed by it pursuant to Section 1.1 if the Company determines, in its good faith judgment, that such registration and offering would interfere with any material financing, acquisition, corporate reorganization or other material transaction involving the Company or any of its Affiliates and promptly gives the holders of Registrable Securities requesting registration thereof pursuant to Section 1.1 written notice of such determination, containing an approximation of the anticipated delay. If the Company shall so postpone the filing of a registration statement, holders of Registrable Securities requesting the Demand Registration pursuant to Section 1.1 shall have the right to withdraw the request for registration by giving written notice to the Company within 30 days after receipt of the notice of postponement and, in the event of such withdrawal, such request shall not be counted for purposes of the requests for registration to which holders of Registrable Securities are entitled pursuant to Section 1.1 hereof.

## ARTICLE II
## PIGGYBACK REGISTRATIONS

2.1 Right to Piggyback. From and after the date which is 12 months from the date of this Agreement, whenever the Company proposes to register any of its equity securities under the Securities Act (other than a registration effected in connection with a Company stock option or other employee benefit plan (such as a Registration Statement on Form S-8), a registration effected in connection with the conversion of debt securities, a registration on any form that does not include substantially the same

information as would be required to be included in a registration statement covering the sale of Registrable Securities (such as a Registration Statement on Form S-4), or a registration effected in connection with an acquisition), and the form of registration statement to be used may be used for the registration of Registrable Securities (a "Piggyback Registration"), the Company will give notice (the "Notice") to all Investors of its intention to effect such a registration and will include in such registration all Registrable Securities with respect to which the Company has received written requests for inclusion therein, subject to the provisions of Section 2.3 and 2.4 hereof. Such requests for inclusion shall be in writing and delivered to the Company within 20 days after the Investor's receipt of the Notice and shall specify the number of Registrable Securities intended to be disposed of and the intended method of distribution thereof. Any holder shall have the right to withdraw its request for inclusion of its Registrable Securities in any Registration Statement pursuant to this Section 2.1 by giving written notice to the Company of its request to withdraw. The Company may withdraw a Piggyback Registration at any time prior to the time it becomes effective. The Company is not required to include in a registration any Registrable Securities which the holder is not then entitled to offer to sell whether by contractual restriction or by law.

2.2 Piggyback Expenses. The Registration Expenses of the Investors will be paid by the Company in all Piggyback Registrations

2.3 Priority on Primary Registrations. If a Piggyback Registration is an underwritten primary registration on behalf of the Company, and the managing underwriters advise the Company that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering, the Company will include in such registration (i) first, the securities the Company proposes to sell, (ii) second, that number of other shares of Common Stock proposed to be included in such registration by the Priority Piggyback Registration Holders and (iii) third, that number of other shares of Common Stock proposed to be included in such registration, pro rata among any other holders (including the Investors) exercising their respective piggyback registration rights thereof based upon the total number of shares which such holders (including the Investors) propose to include in such registration.

2.4 Priority on Secondary Registrations. If a Piggyback Registration is an underwritten secondary registration on behalf of holders (other than the Investors) of the Company's securities, and the managing underwriters advise the Company that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering, the Company will include in such registration (i) first, the number of shares of Common Stock requested to be included by the holders exercising their demand registration rights, and (ii) second, that number of other shares of Common Stock proposed to be included in such registration, pro rata among any other holders (including the Investors) exercising their respective piggyback registration rights thereof based upon the total number of shares which such holders (including the Investors) propose to include in such registration.

## ARTICLE III
## HOLDBACK AGREEMENTS

In the event the Company or another holder of the Company's stock proposes to enter into an underwritten public offering, each holder of Registrable Securities agrees to enter into an agreement with the managing underwriters not to effect any sale or distribution of equity securities of the Company, or any securities convertible, exchangeable or exercisable for or into such securities, during the period beginning on the date of such offering and extending for up to 90 days; provided that such holders shall not be so obligated unless the Company and each of its Affiliates enter into the same or comparable lock-up agreement for the same period and further shall not be so obligated if such holder then owns less than 2% of the outstanding Class A Common Stock.

## ARTICLE IV
## REGISTRATION PROCEDURES

Whenever holders of Registrable Securities have requested that any Registrable Securities be registered pursuant to this Agreement (the "Selling Holders"), the Company will use reasonable efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof and, pursuant thereto, the Company will:

(a) use reasonable efforts to prepare and file with the Commission a Registration Statement with respect to such Registrable Securities as soon as practicably thereafter and, in the case of a Demand Registration within 60 days (subject to a postponement pursuant to Section 1.6) of the request for a Demand Registration and use all reasonable efforts to cause such Registration Statement to become and remain effective until the completion of the distribution contemplated thereby; provided, that as promptly as practicable before filing a Registration Statement or Prospectus or any amendments or supplements thereto, the Company will (i) furnish to the Selling Holders copies of all such documents proposed to be filed and (ii) notify each Selling Holder of Registrable Securities covered by such Registration Statement of (x) any request by the Commission to amend such Registration Statement or amend or supplement any Prospectus, or (y) any stop order issued or threatened by the Commission, and take all reasonable actions required to prevent the entry of such stop order or to promptly remove it if entered; and provided further that the Company shall not be required to keep such Registration Statement effective for more than (i) 45 days in the case of a Piggyback Registration or a Demand Registration with respect to an underwritten offering or (ii) 180 days in the case of a Demand Registration (or such shorter period which will terminate when all Registrable Securities covered by such Registration Statement have been sold, but not prior to the expiration of the applicable period referred to in
Section 4(3) of the Securities Act and Rule 174 thereunder, if applicable);

(b) (i) prepare and file with the Commission such amendments and supplements to such Registration Statement and the Prospectus used in connection

therewith as may be necessary to keep such Registration Statement effective for as long as such registration is required to remain effective pursuant to the terms hereof and (ii) comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement during such period in accordance with the intended methods of disposition by the sellers thereof set forth in such Registration Statement;

(c) furnish to each Selling Holder, without charge, such number of conformed copies of such Registration Statement, each amendment and supplement thereto, the Prospectus included in such Registration Statement (including each preliminary Prospectus) and such other documents as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Selling Holder;

(d) use all reasonable efforts to register or qualify such Registrable Securities under such other securities or "blue sky" laws of such jurisdictions in the United States in which a registration or qualification is required as any Selling Holder thereof shall reasonably request, to keep such registration or qualification in effect for so long as such Registration Statement remains in effect and do any and all other acts and things which may be reasonably necessary or advisable to enable such Selling Holder to consummate the disposition in such jurisdictions of the Registrable Securities owned by such Selling Holder; provided, however, that the Company will not be required to (i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this clause (d), (ii) subject itself to taxation in any such jurisdiction or (iii) consent to general service of process in any such jurisdiction;

(e) notify each Selling Holder, at a time when a Prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event known to the Company as a result of which the Prospectus included in such Registration Statement, as then in effect, contains an untrue statement of a material fact or omits to state any fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and, at the request of any such Selling Holder, the Company will prepare and furnish such Selling Holder a reasonable number of copies of a supplement to or an amendment of such Prospectus as may be necessary so that, as thereafter delivered to the purchasers of such Registrable Securities, such Prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(f) make available for inspection by any Selling Holder, any underwriter participating in any disposition pursuant to such Registration Statement and any attorney, accountant or other agent retained by any such Selling Holder or underwriter, all applicable, non-confidential due diligence documents of the Company which are requested, and cause the Company's officers, directors, employees and independent accountants to supply all information reasonably requested by any such

seller, underwriter, attorney, accountant or agent in connection with such Registration Statement to enable them to conduct a reasonable investigation within the meaning of the Securities Act, including a customary accountant's "comfort" letter and opinion of counsel to the Company;

(g) subject to other provisions hereof, use all reasonable efforts to cause such Registrable Securities covered by such Registration Statement to be registered with or approved by such other governmental agencies or authorities or self-regulatory organizations as may be necessary to enable the Selling Holders thereof to consummate the disposition of such Registrable Securities;

(h) promptly notify the Selling Holders of the issuance of any stop order by the Commission or the issuance by any state securities commission or other regulatory authority of any order suspending the qualification or exemption from qualification of any of the Registrable Securities under state securities or "blue sky" laws, and use every reasonable effort to obtain the lifting at the earliest possible time of any stop order suspending the effectiveness of any Registration Statement or of any order preventing or suspending the use of any preliminary Prospectus; and

(i) promptly notify the Selling Holders of the occurrence of any pending material merger, acquisition, corporate reorganization or other material transaction involving the Company or any of its Affiliates which makes it imprudent for the Company to be in registration, as determined in the good faith judgment of the Company (a "Black-Out Period"). The Company shall not impose Black-Out Periods that, either individually or in the aggregate, exceed 90 days during any fiscal year of the Company.

The Company may require each Selling Holder to promptly furnish in writing to the Company such information regarding the distribution of the Registrable Securities as the Company may from time to time reasonably request and such other information as may be legally required in connection with such registration including, without limitation, all such information as may be requested by the Commission or any regulatory authority. The Company may exclude from such Registration Statement any holder who fails to provide such information.

Each Selling Holder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in paragraph (a), (e), (h) or (i) above, such Selling Holder will forthwith discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Selling Holder's receipt of the copies of the supplemented or amended prospectus contemplated by paragraph (a) or (e) above, or in the case of a Black-Out Period until the Company notifies the Selling Holders that the period has ended, and, if so directed by the Company, such Selling Holder will deliver to the Company all copies, other than permanent file copies then in such Selling Holder's possession, of the most recent prospectus covering such Registrable Securities at the time of receipt of such notice. The periods referred to in paragraph (a) above for maintaining the effectiveness

of the Registration Statement shall be extended for a period equal to the period during which the disposition of the Registrable Securities is discontinued as set forth in the immediately preceding sentence.

## ARTICLE V
## REGISTRATION EXPENSES

5.1 Registration Expenses. All registration and filing fees, fees and expenses of compliance with securities or "blue sky" laws, printing expenses, listing fees for securities to be registered on a national securities exchange or The Nasdaq Stock Market and all independent certified public accountants, underwriters (excluding discounts and commissions), fees and expenses of counsel to the Company and other Persons retained by the Company (all such expenses being herein called "Registration Expenses") will be borne by the Company as provided in Sections 1.2 and 2.2 of this Agreement, but subject to the provisions of Section 1.3 of this Agreement.

5.2 Holders' Expenses. The Company shall have no obligation to pay (i) any underwriting discounts or commissions attributable to the sale, or potential sale, of Registrable Securities, which expenses will be borne by all Selling Holders of Registrable Securities included in such registration; and (ii) any fees or expenses of counsel or others retained by the Selling Holders in connection with the sale, or potential sale, of Registrable Securities.

## ARTICLE VI
## UNDERWRITTEN AND OTHER OFFERINGS

6.1 Underwriting Agreement. If requested by the underwriters for any underwritten offering involving the Registrable Securities, the Company will enter into an underwriting agreement with such underwriters for such offering, such agreement to be reasonably satisfactory to the Company and to contain such representations and warranties by the Company and such other terms as are generally included in agreements of this type, including, without limitation, indemnities customarily included in such agreements. The holders of the Registrable Securities will cooperate in good faith with the Company in the negotiation of the underwriting agreement.

6.2 Obligations of Participants. No Person may participate in any underwritten registration hereunder unless such Person (i) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Person or Persons entitled hereunder to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements, escrow agreements and other documents required under the terms of such underwriting arrangements and consistent with the provisions of this Agreement. In addition, the Company may require each Selling Holder to promptly furnish in writing to the Company such information regarding the distribution of the Registrable Securities as the Company

may from time to time reasonably request and such other information as may be legally required in connection with such registration including, without limitation, all such information as may be requested by the Commission or the NASD. The Company may exclude from such Registration Statement any Holder who fails to provide such information.

## ARTICLE VII
## INDEMNIFICATION

7.1 Company's Indemnification Obligations. The Company agrees to indemnify and hold harmless each of the holders of any Registrable Securities covered by any Registration Statement referred to herein and each other Person, if any, who controls such holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "Holder Indemnitees"), as follows:

(i) against any and all loss, liability, claim, damage or reasonable expense arising out of or based upon an untrue statement or alleged untrue statement of a material fact contained in any Registration Statement (or any amendment or supplement thereto), including all documents incorporated therein by reference, or in any preliminary Prospectus or Prospectus (or any amendment or supplement thereto) or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and reasonable expense to the extent of the aggregate amount paid in settlement of any litigation, investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim based upon any such untrue statement or omission or any such alleged untrue statement or omission, if such settlement is effected with the prior written consent of the Company; and

(iii) against any and all reasonable expense incurred by them in connection with investigating, preparing or defending against any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim based upon any such untrue statement or omission or any such alleged untrue statement or omission, to the extent that any such expense is not paid under clause (i) or (ii) above;

provided, that this indemnity does not apply to any loss, liability, claim, damage or expense to the extent arising out of an untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with information furnished to the Company by or on behalf of any holder expressly for use in the preparation of any Registration Statement (or any amendment or supplement thereto), including all documents incorporated therein by reference, or in any preliminary Prospectus or Prospectus (or any amendment or supplement thereto); provided further,

that (other than in connection with an underwritten offering) the Company will not be liable to any holder or any other Holder Indemnitee under the indemnity agreement in this Section 7.1 with respect to any preliminary Prospectus or the final Prospectus or the final Prospectus as amended or supplemented, as the case may be, to the extent that any such loss, liability, claim, damage or expense of such Holder Indemnitee results from the fact that such holder sold Registrable Securities to a Person to whom there was not sent or given, at or prior to the written confirmation of such sale, a copy of the final Prospectus or of the final Prospectus as then amended or supplemented, whichever is most recent, if the Company has previously and timely furnished copies thereof to such holder; and provided further, that the Company will not be liable to any holder or any other Holder Indemnitee under the indemnity agreement in this Section 7.1 to the extent that any such loss, liability, claim or expense arises out of or is based upon an untrue statement or omission in any Prospectus, even if an amended and corrected Prospectus is not furnished to such holder, but only to the extent that the holder, after being notified by the Company pursuant to paragraph (e) of Article III hereof, continues to use such Prospectus and in such case and to the extent of, and with respect to, damages which arise after the holder receives such notice.

7.2 Holder's Indemnification Obligations. In connection with any Registration Statement in which a holder of Registrable Securities is participating, each such holder agrees to indemnify and hold harmless (in the same manner and to the same extent as set forth in Section 7.1 of this Agreement) the Company and each Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act with respect to any statement or alleged statement in or omission or alleged omission from such Registration Statement, any preliminary, final or summary Prospectus contained therein, or any amendment or supplement thereto, if such statement or alleged statement or omission or alleged omission was made about such holder in reliance upon and in conformity with information furnished to the Company by or on behalf of such holder expressly for inclusion in such Registration Statement. The obligations of each holder pursuant to this Section 7.2 are to be several and not joint; provided that, with respect to each claim pursuant to this Section 7.2, each such holder's maximum liability under this
Section shall be limited to an amount equal to the net proceeds received by such holder (after deducting any underwriting discount) from the sale of Registrable Securities being sold pursuant to such Registration Statement or Prospectus by such holder.

7.3 Notices; Defense; Settlement. Promptly after receipt by an indemnified party hereunder of written notice of the commencement of any action or proceeding involving a claim referred to in Section 7.1 or Section 7.2 of this Agreement, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the latter of the commencement of such action; provided, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under Section 7.1 or Section 7.2 of this Agreement except to the extent that the indemnifying party is actually prejudiced by such failure to give notice. In case any such action is brought against an indemnified party, the indemnifying party will be entitled to participate in and to assume the defense

thereof, jointly with any other indemnifying party similarly notified, to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof, unless in the reasonable opinion of counsel to such indemnified party a conflict of interest between such indemnified and indemnifying parties may exist in respect of such claim, in which case the indemnifying party shall not be liable for the fees and expenses of (i) more than one counsel for all the Selling Holders, selected by a majority of the Selling Holders or (ii) more than one counsel for the Company in connection with any one action or separate but similar or related actions, as applicable. An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable opinion of counsel to any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim, in which event the indemnifying party shall be obligated to pay the fees and expenses of such additional counsel or counsels. The indemnifying party will not, without the prior written consent of each indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not such indemnified party or any Person who controls such indemnified party is a party to such claim, action, suit or proceeding), unless such settlement, compromise or consent includes an unconditional release of such indemnified party from all liability arising out of such claim, action, suit or proceeding. Notwithstanding anything to the contrary set forth herein, and without limiting any of the rights set forth above, in any event any party will have the right to retain, at its own expense, counsel with respect to the defense of a claim.

7.4 Indemnity Provision. The Company and each holder of Registrable Securities requesting registration shall provide for the foregoing indemnity (with appropriate modifications) in any underwriting agreement with respect to any required registration or other qualification of securities under any Federal or state law or regulation of any governmental authority.

## ARTICLE VIIIDEFINITIONS

8.1 Terms. As used in this Agreement, the following defined terms shall have the meanings set forth below:

"Affiliate" means, with respect to any specified party, any other individual, partnership, corporation or other organization, whether incorporated or unincorporated, who, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified party. The term "control" means the

possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a party, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative of the foregoing.

"Business Day" means a day other than Saturday, Sunday or any day on which banks located in the State of New York are authorized or obligated to close.

"Class A Common Stock" means the Class A Common Stock, par value $.01 per share, of the Company and any securities into which the Class A Common Stock shall have been changed or any securities resulting from any reclassification or recapitalization of the Class A Common Stock.

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

"Common Stock" means the shares of Common Stock, regardless of designation, of the Company.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any similar Federal statute then in effect, and any reference to a particular section thereof shall include a reference to the equivalent section, if any, of any such similar Federal statute, and the rules and regulations thereunder.

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

"Person" means any individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Prospectus" means the Prospectus included in any Registration Statement (including without limitation, a Prospectus that disclosed information previously omitted from a Prospectus filed as part of an effective Registration Statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any Prospectus supplement, with respect to the terms of the offering of any portion of the securities covered by such Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"Registrable Securities" means (i) the Shares, (ii) the Class A Common Stock issued or issuable at any time upon the exercise of the Warrants, and
(iii) any securities issued or received in respect of, or in exchange or in substitution for any of the foregoing. Registrable Securities will continue to maintain their status as Registrable Securities in the hands of a transferee from an Investor of a majority of the Registrable Securities held by such Investor provided such transferee executes a joinder agreement described by
Section 9.9. After the transfer (in one or more transactions) of a majority of the Registrable Securities held by an Investor, any remaining Registrable Securities held by

such Investor shall cease to be Registrable Securities. As to any particular Registrable Securities, such securities will cease to be Registrable Securities when they (w) have been effectively registered under the Securities Act and disposed of in accordance with the registration statement covering them, (x) may be sold pursuant to Rule 144 under the Securities Act without volume or manner of sale limitation (or any similar provisions then in force), (y) have been otherwise transferred and the Company has delivered a new certificate or other evidence of ownership for such securities not bearing a restrictive legend and not subject to any stop order and such securities may be publicly resold by the Person receiving such certificate without complying with the registration requirements of the Securities Act, or (z) have ceased to be outstanding

"Registration Statement" means any Registration Statement of the Company which covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all material incorporated by reference in such Registration Statement.

"Securities Act" means the Securities Act of 1933, as amended, or any similar Federal statute then in effect, and any reference to a particular section thereof shall include a reference to a comparable section, if any, of any such similar Federal statute, and the rules and regulations thereunder.

8.2 Defined Terms in Corresponding Sections . The following defined terms, when used in this Agreement, shall have the meaning ascribed to them in the corresponding Sections of this Agreement listed below:

| | | |
|---|---|---|
| "Agreement" | -- | Preamble |
| "Company" | -- | Preamble |
| "Demand Registration" | -- | Section 1.1 |
| "Holder Indemnitees" | -- | Section 7.1 |
| "Initial Investors" | -- | Preamble |
| "Investors" | -- | Preamble |
| "Long-Form Registration" | -- | Section 1.1 |

"Notice" -- Section 2.1

"Other Holders" -- Section 1.1

"Piggyback Registration" -- Section 2.1

"Priority Piggyback Registration Holders" -- Section 1.4

"Registration Expenses" -- Section 5.1

"Selling Holder" -- Article IV

"Shares" -- Recitals

"Short-Form Registration" -- Section 1.1

"Warrants" -- Recitals

## ARTICLE IX
## MISCELLANEOUS

9.1 Amendments and Waivers. Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement will be effective against the Company or any holder of Registrable Securities, unless such modification, amendment or waiver is approved in writing by the Company and the Investors representing a majority of the Registrable Securities then outstanding. The failure of any party to enforce any of the provisions of this Agreement will in no way be construed as a waiver of such provisions and will not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

9.2 Successors and Assigns. All covenants and agreements in this Agreement by or on behalf of any of the parties hereto will bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not.

9.3 Notices. All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally against written receipt or by facsimile transmission or mailed by pre-paid registered or certified mail, return receipt requested or mailed by overnight courier prepaid to the parties at the following addresses or facsimile numbers:

**If to the Company, to:**

eSpeed, Inc.
One World Trade Center
103rd Floor
New York, New York 10048
Facsimile No.: (212) 938-5000
Attn.: General Counsel

with a copy to:

Swidler Berlin Shereff Friedman, LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
Facsimile No.: (212) 938-5000
Attn.: General Counsel

If to any Investor, to the address set forth on the signature page hereto.

All such notices, requests and other communications will (i) if delivered personally to the address as provided in this Section 9.3, be deemed given upon delivery, (ii) if delivered by facsimile transmission to the facsimile number as provided in this Section 9.3, be deemed given upon receipt of confirmation,
(iii) if delivered by mail in the manner described above to the address as provided in this Section 9.3, be deemed given on the earlier of the third full Business Day following the day of mailing or upon receipt, and (iv) if delivered by overnight courier to the address provided in this Section 9.3, be deemed given on the earlier of the first Business Day following the date sent by such overnight courier or upon receipt. Any party from time to time may change its address, facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the other parties hereto.

9.4 Headings. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

9.5 Gender. Whenever the pronouns "he" or "his" are used herein they shall also be deemed to mean "she" or "hers" or "it" or "its" whenever applicable. Words in the singular shall be read and construed as though in the plural and words in the plural shall be construed as though in the singular in all cases where they would so apply.

9.6 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof,
(iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

9.7 Governing Law; Forum; Process. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to principles of conflicts of law. Each of the parties hereto hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any court of the State of Delaware or any federal court sitting in the State of Delaware for purposes of any suit, action or other proceeding arising out of this Agreement (and agrees not to commence any action, suit or proceedings relating hereto except in such courts). Each of the parties hereto agrees that service of any process, summons, notice or document by U.S. registered mail at its address set forth herein shall be effective service of process for any action, suit or proceeding brought against it in any such court. Each of the parties

hereto hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement, which is brought by or against it, in the courts of the State of Delaware or any federal court sitting in the State of Delaware and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

9.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

9.9 Additional Investors. Any transferee of a majority of Registrable Securities held by an Investor shall be entitled to the benefits of this Agreement, upon execution by such transferee of a joinder agreement in form reasonably satisfactory to the Company stating that such transferee agrees to be bound by the terms hereof as an "Investor". An Investor shall no longer be entitled to the benefits of this Agreement upon its transfer (in one or more transactions) of a majority of the Registrable Securities held by such Investor.

## ARTICLE X
## RULE 144 REPORTING

The Company hereby agrees as follows:

(a) The Company shall use its reasonable efforts to make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act.

(b) The Company shall use its reasonable efforts to file with the Commission in a timely manner all reports and other documents as the Commission may prescribe under Section 13(a) or 15(d) of the Exchange Act at any time while the Company is subject to such reporting requirements of the Exchange Act.

(c) The Company shall furnish to each holder of Registrable Securities forthwith upon a reasonable request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 and of the Securities Act and the Exchange Act.

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

**COMPANY:**

**eSPEED, INC.**

By:_____
Name:
Title:

**INITIAL INVESTORS:**

**THE WILLIAMS COMPANIES, INC.**

By:_____
Name:
Title:
Address: One Williams Center
Tulsa, Oklahoma 74172

**DYNEGY, INC.**

By:_____
Name:
Title:
Address: 1000 Louisiana, Suite 5800
Houston, Texas 77002

**Schedule A**

CONFIDENTIAL TREATMENT REQUESTED FOR PORTIONS OF THIS DOCUMENT. PORTIONS FOR WHICH CONFIDENTIAL TREATMENT IS REQUESTED ARE DENOTED BY [ *ECONOMIC TERMS OMITTED]. MATERIAL OMITTED HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

**SUBSCRIPTION AGREEMENT**

eSpeed, Inc.
One World Trade Center
103rd Floor
New York, New York 10048

Attn: General Counsel

Ladies and Gentlemen:

1. Subscription for Unit. The undersigned (the "Subscriber") hereby agrees to purchase from eSpeed, Inc., a Delaware corporation (the "Company"), and the Company hereby agrees to issue and sell to the Subscriber, a Unit (the "Unit") consisting of (i) 789,071 shares (the "Shares") of Class A Common Stock, par value $.01 per share (the "Class A Stock"), of the Company and (ii) warrants exercisable to purchase up to an aggregate of 666,666 shares of Class A Stock with an exercise price of $35.203125 per share (the "Underlying Warrant Shares"), in the form attached hereto as Exhibit A (the "Warrants"), for an aggregate purchase price for the Unit (the "Purchase Price") of $25.0 million.

2. Closing. The closing of the purchase and sale of the Unit under this Subscription Agreement shall be held at the office of Swidler Berlin Shereff Friedman, LLP, The Chrysler Building, 405 Lexington Avenue, 12th Floor, New York, New York 10174, as soon as practicable (but in any event within two business days) after the conditions in Section 8 have been satisfied or waived, or at such other location or on such other date as the Subscriber and the Company shall agree (the "Closing"). At the Closing, the Company shall deliver to the Subscriber (i) the certificate or certificates representing the Shares and the Warrants, free and clear of all liens and encumbrances (except (x) under the provisions of applicable federal and foreign and state securities law and
(y) as a result of acts of the Subscriber), (ii) a copy of the Registration Rights Agreement in the form attached hereto as Exhibit D (the "Registration Rights Agreement"), duly executed by the Company, (iii) a certificate of an officer of the Company certifying that the representations and warranties of the Company set forth in this Subscription Agreement were true and correct in all material respects as of the date when made and are true and correct in all material respects as of the Closing as though made at that time (except for any such representations and warranties that speak as of a specific date in which case they shall be true as of such specific date), and (iv) a certificate of an officer of Cantor Fitzgerald, L.P. ("CF") certifying that the representations and warranties of CF set forth in this Subscription Agreement were true and correct in all material respects as of the date when made and are true and correct in all material respects as of the Closing as though made at that time (except for any such representations and warranties that speak as of a specific date in which case they shall be true as

of such specific date). At the Closing, the Subscriber shall deliver to the Company (i) the Purchase Price, in accordance with the wire transfer instructions attached hereto as Exhibit B, (ii) a copy of the Registration Rights Agreement duly executed by the Subscriber, and (iii) a certificate of an officer of the Subscriber certifying that the representations and warranties of the Subscriber set forth in this Subscription Agreement were true and correct in all material respects as of the date when made and are true and correct in all material respects as of the Closing as though made at that time (except for any such representations and warranties that speak as of a specific date in which case they shall be true as of such specific date).

3. Investment in Verticals.

a. Commitment to Invest in Four Qualified Verticals. Subject to the express terms and conditions of this Section 3, the Subscriber hereby agrees to subscribe for an aggregate of $10.0 million in equity securities in a total of four entities to be formed by the Company and CF within 12 months of the Closing (i.e., $2.5 million in each entity) (the "12-Month Period"). Such 12-Month Period may be increased by a period not to exceed six months if a public offering by the Company is commenced during the 12-Month Period and disclosure constraints resulting from such public offering dictate a delay (a "Black-Out Period") as determined by the Company. Upon any such determination by the Company, the Company shall so notify the Subscriber in writing prior to the commencement of any Black-Out Period, which notice shall specify the time period by which the 12-Month Period shall be increased and the new last day of the 12-Month Period. Such notice shall be binding on the parties. It is anticipated that each such entity shall establish a new "vertical" electronic and telephonic marketplace with the Company in which it will "broker" and possibly "clear" transactions for its industry market participants and other clients. In brokerage transactions, it is anticipated that the entity will operate an anonymous electronic and telephonic marketplace (and also act as an agent for disclosed principals in such marketplace) where participants can trade based on a credit-risk matrix and other "rules" established by the participants. The entity may maintain the anonymity of the counterparties by clearing the financial aspects of the transaction. No such entity will intentionally expose itself to any unmatched market risk on its marketplace products.

b. Commitment to Present Seven Qualified Verticals. During the 12-Month Period, as the same may be extended by a Black-Out Period, the Company and CF agree to present at least seven vertical opportunities to the Subscriber, whether or not the Subscriber has previously satisfied its funding obligations hereinafter discussed. During such period, the Company and CF will present the seven vertical opportunities set forth on Annex A and may also present additional vertical opportunities in their discretion. Any additional vertical opportunity so presented shall encompass one or more products in which the Subscriber or an Affiliate (as defined below) of the Subscriber is engaged in trading at the time such vertical opportunity is presented to the Subscriber. (The seven vertical opportunities set forth on Annex A and any additional vertical opportunity meeting such trading criteria that the Company and CF determine to present to the Subscriber are each referred to herein as a "Qualified Vertical"). Each Qualified Vertical shall contain economic terms (measured by a blended valuation of

revenue sharing and equity ownership) intended to reflect a [ * ECONOMIC TERMS OMITTED] value split as between the industry market participants (inclusive of the anchor participants) on the one hand and the Company and CF on the other hand. It is agreed that a Qualified Vertical which provides for an allocation of transaction revenues described in paragraphs (a) and (b) of Schedule 4 to the Newco Term Sheet (as hereafter defined) of [ *ECONOMIC TERMS OMITTED] to the industry market participants in the aggregate and [ *ECONOMIC TERMS OMITTED] to the Company, an allocation of the transaction revenues described in paragraphs (c) and (d) of Schedule 4 to the Newco Term Sheet of [ *ECONOMIC TERMS OMITTED] to the industry market participants in the aggregate and [ *ECONOMIC TERMS OMITTED] to the Company, and an allocation of equity participation in a Qualified Vertical of [ *ECONOMIC TERMS OMITTED] to the industry market participants and [ *ECONOMIC TERMS OMITTED] to the Company and CF taken together, shall be deemed to satisfy the [ *ECONOMIC TERMS OMITTED] economic model (the "Agreed Upon Model"). The Agreed Upon Model shall be used if the parties hereto cannot agree on a substitute model, which substitute model may include warrants to purchase stock of the Company as the parties may agree. As used in this Subscription Agreement, the word "Affiliate" means, with respect to any specified party, any other individual, partnership, corporation or other organization, whether incorporated or unincorporated, who, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified party. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a party, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative of the foregoing.

c. Subscriber's Obligation to Fund the $10.0 Million. Upon the expiration of the 12-Month Period, as the same may be extended by a Black-Out Period, if the Subscriber has not funded or committed to fund, subject to the conditions described in this Section 3, at least four Qualified Verticals, the Subscriber shall be obligated to pay to the Company an amount equal to the difference between (i) $10.0 million and (ii) the aggregate investments in Qualified Verticals made by the Subscriber during the 12-Month Period, as the same may be extended by a Black-Out Period (the "Investment Shortfall"); provided, however, that in the event that the Company and CF fail to present the seven Qualified Verticals set forth on Annex A based upon the economic terms described in Section 3(b) above to the Subscriber within the 12-Month Period, as the same may be extended by a Black-Out Period, the Subscriber shall be relieved of its obligation in respect of the Investment Shortfall and the restrictions set forth in Section 6(c) of the Warrants. The relief from such obligation, together with the lapsing of the contractual restrictions against swap and hedging transactions with respect to the Warrants and the Underlying Warrant Shares set forth in Section 6(c) of the Warrants, shall be the Subscriber's sole remedy in the event that the Company and CF fail to present the seven Qualified Verticals set forth on Annex A to the Subscriber within the 12-Month Period, as the same may be extended by a Black-Out Period, and such failure shall have no other effect on the transactions contemplated by this Subscription Agreement, including the purchase of the Unit, or give rise to

*This information has intentionally been omitted and has been filed separately with the Securities and Exchange Commission. It is subject to a confidential treatment request.

any other right on the part of the Subscriber, including any right of rescission hereunder or any right to receive any Additional Investment Right (as defined below) or the equity contemplated thereby.

d. Terms of Newco Vertical. Set forth on the term sheet attached hereto as Exhibit C (the "Newco Term Sheet") are the terms and conditions of the first Qualified Vertical ("Newco") to be formed by the Company and CF. The Subscriber shall notify the Company within 15 days of its receipt of notice from the Company that the Company intends to proceed with the Newco Qualified Vertical as to whether the Subscriber intends to invest in Newco (either directly or indirectly through the formation of a limited liability company or other entity as contemplated by the Newco Term Sheet). If the Subscriber intends to make such investment, it and the Company and CF will negotiate in good faith and use commercially reasonable efforts to negotiate and execute definitive agreements embodying the terms of the Newco Term Sheet within 30 days of the Subscriber's receipt of a draft of such documents from the Company. Funding of the Subscriber's $2.5 million subscription commitment for its interest in Newco shall not be due and the launch of Newco shall not occur until such definitive agreements have been mutually agreed to and there are at least two additional industry market participants who have each committed to invest $2.5 million in Newco on substantially the same terms and conditions. Funding of the Subscriber's $2.5 million subscription shall be made within two business days after such commitment from the two other participants is obtained. Failure of the parties to negotiate and execute definitive agreements in respect of Newco within such time period or otherwise shall have no effect on the transactions contemplated by this Subscription Agreement except as expressly provided in Section 3(g), including the purchase of the Unit, or give rise to any other right on the part of the Subscriber, including any right of rescission hereunder or any right to receive any Additional Investment Right (as defined below) or the equity contemplated thereby.

e. [Intentionally Left Blank]

f. Terms of Other Qualified Verticals. The other Qualified Verticals offered to the Subscriber will be on terms and conditions consistent with Section 3(b) and otherwise substantially the same in all material respects as the vertical described on the Newco Term Sheet (provided that the number of industry market participants may vary in each vertical and other changes which are attributable to differences among products and regions may also be made so long as such changes are consistent with the economic terms described in Section 3(b) and do not otherwise materially alter the terms and conditions reflected in the Newco Term Sheet) and shall be presented by the Company and CF to the Subscriber accompanied by definitive agreements embodying such terms and conditions. The terms of the other Qualified Verticals shall include the right of the Subscriber, for up to four Qualified Verticals (the "Additional Investment Right") to invest $25.0 million in restricted shares of Class A Stock at a 10% discount to the arithmetic average of the daily closing sale price on The Nasdaq Stock Market of the Class A Stock for the 10 trading days (the "10 Trading Day Average") preceding the date of the Subscriber's investment in such new vertical opportunity. The obligation of the Subscriber to invest in a Qualified Vertical and the right of the Subscriber to exercise the Additional Investment Right shall be subject to the satisfaction of each of the following conditions (the "Additional Investment Conditions"): (i) the consummation and funding of a $2.5

million investment in said vertical by the Subscriber and each of three additional industry market participants (which may include another anchor participant) on substantially the same terms and conditions as the Subscriber,
(ii) the Subscriber making representations and warranties to the Company substantially as provided in Section 7 hereof, and (iii) the Company and CF making representations and warranties to the Subscriber substantially as provided in Sections 5 and 6 hereof (subject to exceptions and schedules as are required to make such representations and warranties accurate). Except as provided in the next sentence, the Additional Investment Right shall be exercisable only on the date of the consummation and funding of the $2.5 million investment in said vertical by the Subscriber and three additional industry market participants (the "Additional Investment Right Exercise Date"). In addition, in the event that during the Twelve-Month Period, as the same may be extended by a Black-Out Period, the Company makes a public announcement with respect to a definitive agreement with three or more industry market participants disclosing their investment in a Qualified Vertical and Subscriber does not or has not previously invested in such Qualified Vertical, then the Subscriber will be given the opportunity (exercisable upon notice to the Company within one business day following such public announcement) to invest $25.0 million in restricted shares of Class A Stock at a 10% discount to the 10 Trading Day Average for the 10 trading days immediately preceding such public announcement. If the Subscriber later invests in any such Qualified Vertical, it will not be entitled to an Additional Investment Right in connection with the same Qualified Vertical. The Subscriber's purchase of any additional equity of the Company, whether pursuant to the Additional Investment Right or otherwise provided herein, shall be subject to Company stockholder approval, if required. The Company agrees to submit for a vote of its common stockholders, at its next annual meeting of stockholders, the approval of the issuance of any such shares, if such approval is determined to be required. CF agrees to vote the shares of common stock of the Company beneficially owned by it in favor of such issuance. Any shares of Class A Stock purchased upon exercise of the Additional Investment Right or otherwise in accordance with the terms hereof will be subject to a 12-month lock-up on transferability.

g. Time Frames For Other Qualified Verticals. Within 30 days of the Subscriber's receipt of notice of a new Qualified Vertical, the Subscriber shall notify the Company as to whether it intends to invest in such Qualified Vertical. If the Subscriber notifies the Company within the requisite time period that it intends to invest in such Qualified Vertical, the Subscriber, the Company and CF will negotiate with each other in good faith and use commercially reasonable efforts to negotiate and execute definitive documentation required for such vertical within 30 days of delivery to Subscriber of a draft of such documents (which documents shall be delivered following identification of the other industry market participants and such participants' indication of their intention to invest in such vertical). Funding of such subscription shall be made within two business days after such commitment from the three other industry market participants is obtained. If the Subscriber does not provide any such notice, then it shall be deemed that the Subscriber declined to participate in such Qualified Vertical. If (i) at least three additional industry market participants are not willing to invest in the Qualified Vertical (two in the case of Newco) on the same terms and conditions, or (ii) the parties are unable to reach agreement on the definitive agreements relating to the Qualified Vertical after good faith negotiations thereon, then
(a) the Subscriber nevertheless shall be deemed to have satisfied its obligation to invest in one Qualified Vertical for purposes of calculation of the Investment Shortfall pursuant to Section 3(c), (b) the Subscriber will not be entitled to exercise

the Additional Investment Right in respect of such Qualified Vertical, and (c) the Subscriber's Warrants will not accelerate in vesting pursuant to Section 4 of the Warrant in respect of such Qualified Vertical. Except as expressly provided herein, the inability of the parties to reach agreement on definitive documents or the failure of the Additional Investment Conditions to be satisfied shall have no effect on the transactions contemplated by this Subscription Agreement, including the purchase of the Unit, or give rise to any other right on the part of the Subscriber, including any right of rescission hereunder or any right to receive the Additional Investment Right or the equity contemplated thereby.

4. Transfer Restrictions.

a. Restricted Shares. The Subscriber understands and agrees that the Shares, the Warrants and the Underlying Warrant Shares have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or any foreign or state securities laws and that, accordingly, they will not be transferable except as permitted under various exemptions contained in the Securities Act, foreign or state securities laws, or upon satisfaction of the registration and prospectus delivery requirements of the Securities Act. The Subscriber acknowledges and agrees that it must bear the economic risk of the Shares, the Warrants and the Underlying Warrant Shares for an indefinite period of time since they have not been registered under the Securities Act and therefore cannot be transferred unless they are subsequently registered or an exemption from registration is available.

b. Legend. The Subscriber agrees with the Company that the certificates evidencing the Shares, the Warrants and the Underlying Warrant Shares shall be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAW. THESE SECURITIES MAY NOT BE PLEDGED, HYPOTHECATED, SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR ANY EXEMPTION THEREFROM UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY APPLICABLE STATE SECURITIES
LAW."

c. Removal of Legend. The legend endorsed on the certificates pursuant to Section 4(b) hereof shall be removed and the Company shall issue a certificate without such legend to the holder thereof at such time as the securities evidenced thereby cease to be restricted securities upon the earliest to occur of (i) a registration statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in accordance with such registration statement, (ii) the securities shall have been sold to the public pursuant to Rule 144 (or any successor provision) under the Securities Act, or (iii) such securities may be sold by the holder without restriction or registration under Rule 144(k) under the Securities Act (or any successor provision).

d. Lock-Up. The Subscriber further understands and agrees that it may not, without the Company's prior written consent, directly or indirectly, make any offer, sale, short sale, assignment, transfer, pledge, encumbrance, contract to sell, grant of an option to purchase or other disposition of, or enter into any swap or other hedging transaction relating to, the Shares, or any interest therein, for a period of 12 months following the Closing, and the certificates evidencing the Shares shall be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFERS, ASSIGNMENTS AND OTHER DISPOSITIONS, AS PROVIDED IN THE SUBSCRIPTION AGREEMENT, DATED APRIL 26, 2000, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY."

The foregoing legend shall be removed upon the expiration of said 12-month period. Without limitation of the foregoing, the Subscriber agrees that if it transfers its rights hereunder to a Subsidiary pursuant to
Section 16(k) hereof, the Subscriber shall not sell, assign or transfer the stock of such Subsidiary during the 12-month lock-up period other than to another Affiliate of the Subscriber, which Affiliate shall assume all of the obligations of such Subsidiary hereunder without relieving the assigning party of its obligations hereunder. Following such an assumption by the Affiliate, the restriction on sale, assignment or transfer of the stock of such Subsidiary shall be lifted unless such Subsidiary has become a reassignee.

e. Stop Transfer Notations. The Company and any transfer agent acting on its behalf may maintain on the Company's register for the Class A Stock appropriate "stop transfer" notations with respect to the Shares and the Underlying Warrant Shares.

5. Representations and Warranties of the Company. The Company represents and warrants to the Subscriber that:

a. Organization of the Company and its Subsidiaries. Each of the Company and its Subsidiaries (as defined below) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite corporate, partnership or limited liability company power and authority to carry on its business as now being conducted. Each of the Company and its Subsidiaries is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except where the failure to be so qualified, licensed or in good standing would not have a material adverse effect on (i) the business, properties, condition (financial or otherwise), or results of operations of the Company and its Subsidiaries, taken as a whole, or
(ii) the ability of the Company to consummate the transactions contemplated hereby (a "Material Adverse Effect"). As used in this Subscription Agreement, the word "Subsidiary" means, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) such party or any other Subsidiary of such party is a general partner or (ii) at least 50% of the securities or other interests 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.

b. Valid Offering of Shares.

(1) Upon issuance of the Unit pursuant to this Subscription Agreement, the Shares and the Warrants will be duly and validly issued, fully paid and non-assessable, and the Subscriber will receive good title thereto, free and clear of all pledges, claims, liens, charges, encumbrances and security interests of any kind or nature whatsoever and free of any other restriction (including any restriction on the right to use, vote, sell or otherwise dispose of such capital stock or other ownership interests) (collectively, "Liens"), except (i) under the provisions of applicable federal and foreign and state securities law and (ii) as a result of acts of the Subscriber. Upon the issuance of the Warrants pursuant to this Subscription Agreement, the Underlying Warrant Shares will be duly and validly authorized and reserved for issuance, and, upon issuance of the Underlying Warrant Shares upon exercise of the Warrants in accordance with the terms thereof, the Underlying Warrant Shares will be duly and validly issued, fully paid and non-assessable; and the holder of the Warrants will receive good title to the Underlying Warrant Shares, free and clear of all Liens, except (i) under the provisions of applicable federal and foreign and state securities law and (ii) as a result of acts of the holder of the Warrants.

(2) Neither the Company nor its Subsidiaries has taken any action that would result in the offering and sale of the Shares, the Warrants and the Underlying Warrant Shares pursuant to this Subscription Agreement being treated as a public offering and not a valid private offering under the law.

c. Authority; No Conflict; Required Filings and Consents.

(1) The Company has (or, as applicable, prior to the Closing will have) all requisite corporate power and authority to enter into this Subscription Agreement, the Warrants and the Registration Rights Agreement and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Subscription Agreement, the Warrants and the Registration Rights Agreement and the consummation of the transactions contemplated hereby and thereby have been (or, as applicable, prior to the Closing will be) duly authorized by all necessary and appropriate corporate action on the part of the Company. No stockholder action is necessary to authorize the issuance and sale of the Unit. This Subscription Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity. The Warrants and the Registration Rights Agreement, when executed and delivered by the Company, will constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity.

(2) The execution and delivery of this Subscription Agreement, the Warrants and the Registration Rights Agreement by the Company do not, and the consummation of the transactions contemplated hereby and thereby will not, (i) conflict with, or result in any violation or breach of, any provision of the Certificate of Incorporation or Bylaws of the Company,
(ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require a consent or waiver under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or other agreement, instrument or obligation to which the Company or any of its Subsidiaries is a party or by which any of them or any of their properties or assets may be bound, or (iii) conflict with or violate any permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Company or any of its Subsidiaries or any of its or their properties or assets, except in the case of clauses (ii) and (iii) for any such conflicts, violations, breaches, defaults, terminations, cancellations or accelerations which are not, individually or in the aggregate, reasonably likely to have a Material Adverse Effect.

(3) No consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency, commission or other governmental authority or instrumentality ("Governmental Entity") is required by or with respect to the Company or any of its Subsidiaries in connection with the execution and delivery of this Subscription Agreement, the Warrants or the Registration Rights Agreement, or the consummation of the transactions contemplated hereby or thereby, except (i) the filings and approvals required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (ii) regulatory filings, applications or approvals required in connection with the formation or operation of a Qualified Vertical, if any, (iii) applications to list the Shares, the Underlying Warrant Shares and the shares issuable pursuant to the Additional Investment Right on The NASDAQ Stock Market and (iv) any such consents, approvals, orders, authorizations, registrations, declarations and filings, the absence of which is not, individually or in the aggregate, reasonably likely to have a Material Adverse Effect.

d. Public Filings; Financial Statements.

(1) Since December 3, 1999, the Company has filed with the Securities and Exchange Commission (the "SEC") all reports, schedules, forms, registration statements and other documents required to be filed by it as a registrant under the Securities Act and the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Except for matters otherwise corrected by the subsequent filing with the SEC of an appropriate amendment prior to the date of this Subscription Agreement, such reports, forms, and documents filed by the Company with the SEC prior to the date of this Subscription Agreement and since December 3, 1999 (the "Company SEC Reports") (including any financial statements filed as a part thereof or incorporated by reference therein) did not, at the time they were filed (or if amended or superseded by a filing prior to the date of this Subscription Agreement, then on the date of such filing), contain any untrue statement of a material fact or omit to state a material fact required to be stated in such Company SEC Reports or necessary in order to make the statements in such Company SEC Reports, in the light of the circumstances under which they were made, not misleading.

(2) Each of the consolidated financial statements (including, in each case, any related notes) of the Company contained in the Company SEC Reports was prepared in accordance with the books of account and other financial records of the Company and in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved (except as may be indicated in the notes to such financial statements or, in the case of unaudited statements, as permitted by Form 10-Q under the Exchange Act), and fairly presented the consolidated financial position of the Company and its Subsidiaries as of the dates, and the consolidated results of its operations and cash flows for the periods, indicated, except that the unaudited interim financial statements were subject to normal and recurring year-end adjustments which were not material in amount.

(3) As of the date hereof, there are no liabilities, contingencies, changes, facts or circumstances that have not been publicly disclosed by the Company and that could reasonably be expected to have a Material Adverse Effect.

e. Intellectual Property. Except as set forth in the Company SEC Reports, the operations of the Company and its Subsidiaries do not infringe upon any intellectual property rights owned, possessed or used by any third party, and to the knowledge of the Company there is no valid basis for any claim of such infringement against it or its Subsidiaries in respect of the use of the Intellectual Property now used, except, in any such case, as is not reasonably likely to have a Material Adverse Effect. As used in this Subscription Agreement, "Intellectual Property" shall mean all material patents, patent applications, trademarks, trademark registrations, applications for trademark registrations, trade secrets, service marks, service mark registrations, applications for service mark registrations, trade names, labels, slogans, claims of copyright, copyright registrations, applications for copyright registrations, copyrights, drawings, designs, software, code and proprietary know-how owned or licensed by the Company and used in the operation of its business, other than widely-available "shrink-wrap" software.

f. Brokers. None of the Company or any of its officers, directors or employees have employed any broker or finder, or incurred any liability for any brokerage fees, commissions, finder's or other similar fees or expenses in connection with the transactions contemplated by this Subscription Agreement.

6. Representations and Warranties of CF. CF represents and warrants to the Subscriber that:

a. Organization of CF and its Subsidiaries. CF is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite partnership power and authority to carry on its business as now being conducted. CF is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except where the failure to be so qualified, licensed or in good standing would not have a material adverse effect on (i) the business, properties, condition (financial or otherwise), or results of operations of CF or (ii) the ability of CF to consummate the transactions contemplated hereby (a "CF Material Adverse Effect").

b. Authority; No Conflict; Required Filings and Consents.

(1) CF has (or, as applicable, prior to the Closing will have) all requisite partnership power and authority to enter into this Subscription Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Subscription Agreement and the consummation of the transactions contemplated hereby have been (or, as applicable, prior to the Closing will be) duly authorized by all necessary and appropriate partnership action on the part of CF. This Subscription Agreement has been duly executed and delivered by CF and constitutes the legal, valid and binding obligation of CF, enforceable against CF in accordance with its terms, except as such enforceability may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity.

(2) The execution and delivery of this Subscription Agreement by CF do not, and the consummation of the transactions contemplated hereby will not, (i) conflict with, or result in any violation or breach of, any provision of the limited partnership agreement of CF, (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require a consent or waiver under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or other agreement, instrument or obligation to which CF is a party or by which it or its properties or assets may be bound, or (iii) conflict with or violate any permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to CF or any of its properties or assets, except in the case of clauses (ii) and (iii) for any such conflicts, violations, breaches, defaults, terminations, cancellations or accelerations which are not, individually or in the aggregate, reasonably likely to have a CF Material Adverse Effect.

(3) No consent, approval, order or authorization of, or registration, declaration or filing with, a Governmental Entity is required by or with respect to CF in connection with the execution and delivery of this Subscription Agreement or the consummation of the transactions contemplated hereby or thereby, except (i) the filings and approvals required under the HSR Act, (ii) regulatory filings, applications or approvals required in connection with the formation or operation of a Qualified Vertical, if any, and (iii) any such consents, approvals, orders, authorizations, registrations, declarations and filings, the absence of which is not, individually or in the aggregate, reasonably likely to have a CF Material Adverse Effect.

c. Intellectual Property. The operations of CF do not infringe upon any intellectual property rights owned, possessed or used by any third party, and to the knowledge of CF there is no valid basis for any claim of such infringement against it or its Subsidiaries in respect of the use of the CF Intellectual Property now used, except, in any such case, as is not reasonably likely to have a CF Material Adverse Effect. As used in this Subscription Agreement, "CF Intellectual Property" shall mean all material patents, patent applications, trademarks, trademark registrations, applications for trademark registrations, trade secrets, service marks, service mark registrations, applications for service mark registrations, trade names, labels, slogans, claims of copyright, copyright registrations, applications for copyright registrations, copyrights, drawings, designs, software, code and proprietary know-how owned or licensed by CF and used in the operation of its business, other than widely-available "shrink wrap" software.

7. Representations and Warranties of the Subscriber. The Subscriber represents and warrants to the Company that:

a. Organization of the Subscriber. The Subscriber is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite corporate or partnership power and authority to carry on its business as now being conducted. The Subscriber is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such licensing necessary, except where the failure to be so qualified, licensed or in good standing would not have a material adverse effect on (i) the business, properties, condition (financial or otherwise) or results of operation of the Subscriber and its Subsidiaries, taken as a whole, or (ii) the ability of the Subscriber to consummate the transactions contemplated hereby (a "Subscriber Material Adverse Effect").

b. Authority; No Conflict; Required Filings and Consents.

(1) The Subscriber has all requisite power and authority to enter into this Subscription Agreement and the Registration Rights Agreement and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Subscription Agreement and the Registration Rights Agreement and the consummation of the transactions contemplated hereby and thereby by the Subscriber have been duly authorized by all necessary action on the part of the Subscriber. This Subscription Agreement has been duly executed and delivered by the Subscriber and constitutes the legal, valid and binding obligation of the Subscriber, enforceable against the Subscriber in accordance with its terms, except as such enforceability may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity. The Registration Rights Agreement, when executed and delivered by the Subscriber, will constitute the legal, valid and binding obligation of the Subscriber, enforceable against the Subscriber in accordance with its terms, except as such enforceability may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity.

(2) The execution and delivery of this Subscription Agreement and the Registration Rights Agreement by the Subscriber does not, and the consummation of the transactions contemplated hereby and thereby will not, (i) conflict with, or result in any violation or breach of, any provision of the Certificate of Incorporation or Bylaws or other operative organizational documents of the Subscriber, (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require a consent or waiver under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or other agreement, instrument or obligation to which the Subscriber or any of its Subsidiaries or Affiliates is a party, or (iii) conflict with or violate any permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Subscriber or any of its Subsidiaries or Affiliates or any its or their properties or assets, except in the case of clauses (ii) and (iii) for any such conflicts, violations, breaches,

defaults, terminations, cancellations or accelerations which are not, individually or in the aggregate, reasonably likely to have a Subscriber Material Adverse Effect.

(3) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required by or with respect to the Subscriber (or any of its Subsidiaries or Affiliates) in connection with the execution and delivery of this Subscription Agreement or the Registration Rights Agreement or the consummation of the transactions contemplated hereby and thereby, except (i) the filings and approvals required under the HSR Act, (ii) regulatory filings, applications or approvals required in connection with the formation or operation of a Qualified Vertical, if any, and (iii) any such consents, approvals, orders, authorizations, registrations, declarations and filings the absence of which is not, individually or in the aggregate, reasonably likely to have a Subscriber Material Adverse Effect.

c. Knowledge and Experience. The Subscriber has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of an unregistered, non-liquid investment such as an investment in the Company and has evaluated the merits and risks of such an investment. The Subscriber is not relying on the Company with respect to the corporate tax, legal and economic considerations involved in this investment or to its investment in the LLC. The Subscriber understands that the offer and sale of the Shares, the Warrants and Underlying Warrant Shares have not been approved or disapproved by the SEC or any other Governmental Entity.

d. No other Representations or Warranties. No representations or warranties have been made to the Subscriber by the Company or any director, officer, employee, agent or Affiliate of the Company, other than the representations of the Company set forth herein, and the decision of the Subscriber to purchase the Unit is based on the information contained in this Subscription Agreement, the Company SEC Reports and the Subscriber's own independent investigation of the Company. The Subscriber acknowledges and agrees that the Company may now, or in the future, be in negotiations with respect to, or enter into, arrangements, agreements or understandings relating to other business opportunities (which may include vertical opportunities) and that the Company does not have now, nor will it have at any time after execution of this Agreement, any obligation to provide the Subscriber with any information, other than that which is contained in this Subscription Agreement and that which is disclosed in the Company SEC Reports.

e. Ability to Withstand Loss of Investment. The overall commitment of the Subscriber to investments which are not readily marketable is not disproportionate to the net worth of the Subscriber, and the Subscriber's acquisition of the Unit will not cause such overall commitment to become excessive. The Subscriber understands that a total loss of capital is possible. The Subscriber acknowledges that it is capable of bearing a complete loss of its investment in the Company.

f. No Public Solicitation. The Subscriber acknowledges that neither the Company nor any person or entity acting on its behalf has offered to sell any of the Shares, the Warrants or the Underlying Warrant Shares to the Subscriber by means of any form of general solicitation or advertising, including without limitation (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar media, or broadcast over

television or radio, and (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

g. Accredited Investor Status. The Subscriber is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated under the Securities Act.

h. Acquiring for Investment Purposes. The Subscriber is acquiring the Shares and the Warrants solely for its own account, for investment purposes only, and not with a view towards their resale or distribution.

i. No Brokers, Finders, etc. The Subscriber has not employed any broker, financial advisor or finder, or incurred any liability for any brokerage fees, commissions, finder's or other similar fees or expenses in connection with the transactions contemplated by this Subscription Agreement.

j. No Action Taken to Invalidate Private Placement. The Subscriber has not taken any action that would result in the offering of the Shares, the Warrants and the Underlying Warrant Shares pursuant to this Subscription Agreement being treated as a public offering and not a valid private offering under the law.

8. Conditions to Closing.

a. Conditions applicable to Each Party. The respective obligations of each party to this Subscription Agreement set forth herein to purchase and sell the Unit shall be subject to the satisfaction (or waiver by each party) of each of the following conditions on and as of the Closing:

(1) No litigation, investigation, inquiry, proceeding, statute, rule, regulation, order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by or in any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby which has the effect of making the transactions contemplated by this Subscription Agreement illegal or otherwise prohibiting the consummation of any of the transactions contemplated by this Subscription Agreement.

(2) All approvals required under the HSR Act shall have been received (or all applicable waiting periods, and any extensions thereof, under the HSR Act shall have expired or otherwise been terminated).

(3) The Subscriber and the Company shall have entered into the Registration Rights Agreement.

b. Conditions to Obligations of the Company. The obligations of the Company set forth herein to issue and sell the Unit also shall be subject to the satisfaction (or waiver by the Company) of each of the following conditions on and as of the Closing:

(1) The representations and warranties of the Subscriber made herein shall have been true and correct in all material respects as of the date when made and as of the Closing as though made at that time (except for any such representations and warranties that speak as of a specific date).

(2) The Subscriber shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required thereby to be performed, satisfied or complied with by the Subscriber at or prior to the Closing, including payment of the Purchase Price.

c. Conditions to Obligations of the Subscriber. The obligations of the Subscriber set forth herein to purchase the Unit also shall be subject to the satisfaction (or waiver by the Subscriber) of each of the following conditions on and as of the Closing:

(1) The representations and warranties of the Company and CF set forth in this Subscription Agreement shall be true and correct in all material respects as of the date when made and as of the Closing as though made at that time (except for any such representations and warranties that speak as of a specific date).

(2) The Company and CF shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required thereby to be performed, satisfied and complied with by them at or prior to the Closing, including delivery of the executed certificates for the Shares and the Warrants.

9. Indemnification.

a. Agreement to Indemnify.

(1) Subject to the express provisions of Section 3 as to the Subscriber's sole remedy for the failure of the Company and CF to present the seven Qualified Verticals set forth on Annex A to the Subscriber within the 12-Month Period, as the same may be extended by a Black-Out Period, the Company agrees to indemnify, defend and hold harmless the Subscriber (and its officers, directors, Affiliates and permitted assigns) from and against any and all losses, claims, liabilities, damages, deficiencies, costs or expenses (including interest, penalties and reasonable attorneys' fees, disbursements and related charges) (collectively, "Losses") based upon, arising out of or otherwise in respect of (x) any inaccuracy in or breach of any representations or warranties made by the Company contained in this Subscription Agreement or any action taken by the Subscriber or its Affiliates in reliance upon the accuracy of such representations or warranties or (y) failure of the Company to perform any of the agreements or

covenants contained herein, except to the extent such Losses are based upon, arise out of or are otherwise in respect of any inaccuracy in or breach of any representations or warranties made by the Subscriber contained in this Subscription Agreement or the failure of the Subscriber to perform any of the agreements or covenants contained herein.

(2) The Subscriber agrees to indemnify, defend and hold harmless the Company (and its officers, directors, Affiliates and permitted assigns) from and against any and all Losses based upon, arising out of or otherwise in respect of (x) any inaccuracy in or breach of any representations or warranties made by the Subscriber contained in this Subscription Agreement or any action taken by the Company or its Affiliates in reliance upon the accuracy of such representations or warranties or (y) the failure of the Subscriber to perform any of the agreements or covenants contained herein, except to the extent such Losses are based upon, arise out of or are otherwise in respect of any inaccuracy in or breach of any representations or warranties made by the Company contained in this Subscription Agreement or the failure of the Company to perform any of the agreements or covenants contained herein.

b. Indemnification Procedure.

(1) A party entitled to indemnification pursuant to this Section 9 (an "Indemnified Party") shall provide written notice to the indemnifying party (the "Indemnifying Party") of any claim of such Indemnified Party for indemnification under this Subscription Agreement promptly after the date on which such Indemnified Party has actual knowledge of the existence of such claim. Such notice shall specify the nature of such claim in reasonable detail and the Indemnifying Party shall be given reasonable access to any documents or properties within the control of the Indemnified Party as may be useful or necessary in the investigation of the basis for such claim. The failure to so notify the Indemnifying Party shall not constitute a waiver of such claim except to the extent that the Indemnifying Party is materially prejudiced by such failure.

(2) If any Indemnified Party seeks indemnification hereunder based upon a claim asserted by a third party, then the Indemnifying Party shall have the right (without prejudice to the right of any Indemnified Party to participate at its expense through counsel of its own choosing) to defend such claim at its expense and through counsel of its own choosing (and reasonably acceptable to the Indemnified Party) if it gives written notice of its intention to do so no later than 20 days following notice thereof by an Indemnified Party; provided, however, that, if, in the reasonable opinion of counsel to the Indemnified Party, separate counsel is required because a conflict of interest would otherwise exist, the Indemnified Party shall have the right to select separate counsel to participate in the defense of such action on its behalf, at the expense of the Indemnifying Party; provided further, however, that the Indemnified Party shall always have the right to select separate counsel to participate in the defense of such action on its behalf, at its own expense. If the Indemnifying Party does not so choose to defend any such claim asserted by a third party for which any Indemnified Party would be entitled to indemnification hereunder, then the Indemnified Party shall be entitled to recover from the Indemnifying Party all of the reasonable attorney's fees and other costs and expenses of litigation incurred in the defense of such claim. It is understood that the Indemnifying Party shall not, in connection with any proceeding or related proceedings in the same jurisdiction, in any case be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified

Parties. Notwithstanding the assumption of the defense of any claim by an Indemnifying Party, the Indemnified Party shall have the right to approve the terms of any settlement of a claim (which approval shall not be unreasonably withheld or delayed) if such settlement (i) does not include as an unconditional term the giving by the claimant or the plaintiff to the Indemnified Party a release from all liability in respect to such claim or (ii) requires anything from the Indemnified Party other than the payment of money damages which the Indemnifying Party has agreed to pay in full. The Indemnifying Party shall not be liable for any settlement of any proceeding effected without its prior written consent (not to be unreasonably withheld or delayed).

10. Termination. Notwithstanding anything to the contrary set forth in this Subscription Agreement, this Subscription Agreement may be terminated and the transactions contemplated herein abandoned at any time prior to the Closing:

(1) by mutual written consent of the Company and the Subscriber;

(2) by the Company or the Subscriber if the Closing shall not have occurred by July 31, 2000 (which date will be extended (x) up to 90 days as necessary to obtain any regulatory approval or the lifting of any order which is necessary for the Closing and (y) to that date which is 60 days following the date of the parties' full compliance with a second request for information by the Federal Trade Commission or the Department of Justice in respect of the Company's or the Subscriber's filing under the HSR Act); provided, however, that the right to terminate this Subscription Agreement under this Section 10 shall not be available to any party whose failure to fulfill any obligation under this Subscription Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date;

(3) by the Company or the Subscriber if a court of competent jurisdiction shall have issued an order, decree or ruling permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Subscription Agreement, and such order, decree, ruling or other action shall have become final and non-appealable;

(4) by the Company if (i) the representations or warranties made by the Subscriber are not true and correct, in all material respects, when made or at the Closing (except for any such representations or warranties that speak as of a specific date, which must be true and correct in all material respects as of such specific date), or (ii) the Subscriber fails to comply in any material respect with any of its covenants or agreements contained herein; or

(5) by the Subscriber if (i) the representations and warranties made by the Company are not true and correct, in all material respects, when made or at the Closing (except for any such representations or warranties that speak as of a specific date, which must be true and correct in all material respects as of such specific date), or (ii) the Company fails to comply in any material respect with any of its covenants or agreements contained herein.

The termination of this Subscription Agreement pursuant to clauses (2), (3), (4) and (5) above shall be without prejudice to the right of the non-breaching party to pursue any and all remedies available to it (including the commencement of any action or other proceeding or the assertion of any equitable right) as a result of such breach.

11. Covenants of CF and the Company.

a. CF hereby covenants and agrees that at such time as when the Subscriber and Dynegy, Inc., and their respective assignees under Section 16 (k) have made an aggregate equity investment in the Company of an amount equal to at least $100.0 million valued on a cost basis and for so long as such parties maintain ownership of equity securities having such cost basis, CF shall use its best efforts to cause one designee jointly selected by such parties to be nominated to the Board of Directors of the Company, subject to such parties' collective agreement as to the one designee, and CF shall vote its shares of common stock of the Company in favor of such designee.

b. The Company and CF hereby covenant and agree that each will use its best efforts to maintain a sufficient level of authorized shares of Class A Stock as is required to meet its obligations to the anchor participants pursuant to the transactions contemplated hereby, including with respect to the Shares issuable upon the exercise of the Warrants and the Additional Investment Rights. The Company agrees to use its best efforts to satisfy any NASDAQ (or other applicable exchange) requirements for the listing of any shares of Class A Common Stock to be issued at the Closing or upon exercise of the Warrants or the Additional Investment Rights.

12. Additional Covenants of CF. CF hereby covenants and agrees that it will, or (if applicable) cause its Affiliate to, enter into assignment agreements for each Qualified Vertical on terms and conditions substantially the same in all material respects as (but subject to changes attributable to differences among the products and regions) that which is contemplated by Schedule 1 and 2 of the Newco Term Sheet. CF further covenants and agrees that prior to the Closing, it will convert a sufficient number, if any, of the shares of Class B Common Stock of the Common Stock of the Company owned by it into Class A Common Stock such that, after giving effect to such conversion, the Shares to be purchased by Subscriber at the Closing represent not more than 4.9% of the outstanding shares of Class A Common Stock of the Company on the date of the Closing.

13. Right of the Company and CF to Issue Securities to Other Industry Market Participants. Nothing contained herein shall limit the rights of the Company or CF (or any Subsidiary or Affiliate thereof) to issue or transfer securities of the Company not referred to or contemplated herein or in the Newco Term Sheet to any third party in order to induce such party to become an anchor participant or industry market participant in any Qualified Vertical set forth on Annex A or for any other purpose, whether relating to a Qualified Vertical or otherwise. Notwithstanding the foregoing, the Company shall not offer, during the six month period commencing with the date hereof, any of its equity securities or other material benefits in order to induce the Specified Party (as defined in a separate letter agreement) to become an anchor participant in any Qualified Vertical set forth on Annex A on terms more favorable than the terms offered pursuant to this Subscription Agreement with respect to its investment in the Company without also offering (as promptly as practicable after a definitive agreement is reached with the Specified Party) the same more favorable terms to the Subscriber. A term which is more beneficial in any material respect shall be deemed to include, but not be limited to, a material commitment by a Specified Party (i) not to compete with the Qualified Vertical; (ii) to

support the business of the Qualified Vertical; or (iii) to participate with the Company in a vertical marketplace that is not a Qualified Vertical. The offer to a Subscriber under this Section 13 shall be exercisable for 10 business days after delivery by the Company to Subscriber of the definitive documentation embodying the more favorable terms. No such offer to a Subscriber shall be required to be made prior to the Closing or if this agreement is terminated under Section 10 hereof for any reason. In the event an offer is made to the Specified Party prior to the Closing which would otherwise require an offer to Subscriber hereunder, the same offer shall be made to Subscriber as promptly as practicable after the Closing. The Company's obligation to offer the Subscriber the more favorable terms offered to the Specified Party shall be extended (x) for an additional six months (for a total term of 12 months from the date hereof) if the Subscriber and/or Dynegy, Inc., and their respective assignees under Section 16(k) invest in at least two Qualified Verticals during the initial six month period from the date hereof or (y) for an additional 12 months (for a total term of 18 months from the date hereof) if the Subscriber and/or Dynegy, Inc., and their respective assignees under Section 16(k) invest in at least four Qualified Verticals during the initial 12 month period from the Closing.

14. Non-Exclusive Agreement. Nothing contained herein shall limit the rights of the Company, CF or the Subscriber (or any Subsidiary or Affiliate thereof) to form or participate in, whether as equity holder, consultant, joint venturer, manager or otherwise, any business opportunity relating to a "vertical" marketplace and there shall be no obligation, express or implied, to first offer the right to participate in any such marketplace to any other party; provided, however, that the Company and CF will agree to certain non-compete restrictions which relate to sales of products traded by Newco to retail customers as further described under "Scope of Newco" in the Newco Term Sheet.

15. Covenant of the Subscriber. The Subscriber agrees that neither it nor any of its Subsidiaries or Affiliates will make, and the Subscriber will use its reasonable best efforts to prevent any of its or their respective directors, officers or agents or any person otherwise acting on behalf of any of the foregoing from making, any purchase, offer, sale, short sale, assignment, transfer, pledge, encumbrance, contract to sell, grant of an option to purchase or other disposition of, or enter into any swap relating to, any securities of the Company, or any interest therein, during any period which governs the calculation of the purchase price of any securities of the Company which the Subscriber may have a right to purchase in the future under the terms of this Agreement.

16. General.

a. The Subscriber acknowledges and agrees that any information or data it has acquired from or about the Company, not otherwise properly in the public domain, was received in confidence. The Subscriber agrees not to divulge, communicate or disclose, except as may be required by law or for the performance of this Subscription Agreement, including in connection with the solicitation of industry market participants, or use to the detriment of the Company or for the benefit of any other person or persons, or misuse in any way, any confidential information of the Company, including any scientific, technical, trade or business secrets of the Company and any scientific, technical, trade or business materials that are treated by the Company as confidential or proprietary, including, but not limited to, ideas, discoveries, inventions, developments and improvements belonging to the Company and confidential information obtained by or given to the Company about or belonging to third parties.

b. The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to consummate the transactions contemplated by this Subscription Agreement. Each party will use reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate the transactions contemplated by this Subscription Agreement as promptly as practicable after the date hereof, including (i) preparing and filing as promptly as practicable all documentation to effect all necessary applications, notices, petitions, filings and other documents and to obtain as promptly as practicable all consents, waivers, licenses, orders, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any third party and/or any Governmental Entity in order to consummate the transactions contemplated by this Subscription Agreement and (ii) taking all reasonable steps as may be necessary to obtain all such material consents, waivers, licenses, registrations, permits, authorizations, tax rulings, orders and approvals. In furtherance and not in limitation of the foregoing, each party hereto agrees to make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby as promptly as practicable after the date hereof and to supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act and to take all other actions necessary to cause the expiration or termination of the applicable waiting periods under the HSR Act as soon as practicable. Nothing in this Subscription Agreement shall require any party (or any of its Subsidiaries or Affiliates) to sell, hold separate or otherwise dispose of or conduct their business in a specified manner, or agree to sell, hold separate or otherwise dispose of or conduct their business in a specified manner, whether as a condition to obtaining any approval from a Governmental Entity or for any other reason.

c. All notices and other communications hereunder shall be in writing and shall be deemed to have been given if delivered personally or sent by facsimile transmission, overnight courier, or certified, registered or express mail, postage prepaid. Any such notice shall be deemed given when so delivered personally or sent by facsimile transmission (provided that a confirmation copy is sent by overnight courier), one day after deposit with an overnight courier, or if mailed, three days after the date of deposit in the United States mails, as follows:

**If to the Company to:**

eSpeed, Inc.
One World Trade Center
103rd Floor
New York, New York 10048
Fax: (212) 938-5000
Attn.: General Counsel

with a copy to:

Swidler Berlin Shereff Friedman, LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
Fax: (212) 891-9598
Attn: Richard A. Goldberg, Esq.

If to CF to:

Cantor Fitzgerald, L.P.
One World Trade Center
105th Floor
New York, New York 10048
Fax: (212) 938-5000
Attn.: General Counsel

If to the Subscriber to the address set forth below its signature:

d. This Subscription Agreement and exhibits hereto contain the entire agreement between the parties hereto with respect to the matters contemplated herein and supersedes all prior agreements or understandings among the parties related to such matters.

e. This Subscription Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

f. This Subscription Agreement may be amended, modified, superseded, canceled, renewed or extended, and the terms or covenants hereof may be waived, only by a written instrument executed by all of the parties hereto or, in the case of a waiver, by the party waiving compliance. Except as otherwise specifically provided in this Subscription Agreement, no waiver by either party hereto of any breach by the other party hereto of any condition or provision of this Subscription Agreement to be performed by such other party shall be deemed a waiver of a similar or dissimilar provision or condition at the same or at any prior or subsequent time.

g. This Subscription Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of New York, without giving effect to the principles of conflicts of laws thereof. Each party hereto (i) hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any court of the State of Delaware or any federal court sitting in the State of Delaware for purposes of any suit, action or other proceeding arising out of this Subscription Agreement or the subject matter hereof brought by any party hereto, (ii) hereby waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Subscription Agreement or the subject matter hereof may not be enforced in or by such court, and (iii) hereby waives in any such action, suit, or proceeding any offsets or counterclaims. Each party hereto hereby consents to service of process by certified mail at the address set forth in
Section 16(c) hereof and agrees that its submission to jurisdiction and its consent to service of process by mail is made for the express benefit of the other party hereto. Final judgment against any party, in any action, suit or proceeding shall be conclusive, and may be enforced in other jurisdictions (1) by suit, action or proceeding on the conclusive evidence of the fact and of the amount of any indebtedness or liability of the party therein described or (2) in any other manner provided by or pursuant to the laws of such other jurisdiction.

h. Headings to the Sections in this Subscription Agreement are intended solely for convenience and no provision of this Subscription Agreement is to be construed by reference to the heading, of any Section.

i. This Subscription Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Delivery of a telecopied version of one or more signatures to this Subscription Agreement shall be deemed adequate delivery for purposes of this Subscription Agreement.

j. Any term or provision of this Subscription Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Subscription Agreement or affecting the validity or enforceability of any of the terms and provisions of this Subscription Agreement in any other jurisdiction.

k. This Subscription Agreement is not transferable or assignable by the Company, the Subscriber or CF; provided, however, that any party may assign its rights and obligations under this Subscription Agreement to a wholly-owned Subsidiary of such party; provided, further, however, that such assignment shall not relieve the assigning party from its obligations hereunder.

IN WITNESS WHEREOF, the Subscriber has executed this Subscription Agreement this 26th day of April, 2000.

**SUBSCRIBER:**

**The Williams Companies, Inc.**

*By: /s/ William C. Lawson*
*---------------------*
*Name: William C. Lawson*
*Title: Director, Energy Solutions*
*Williams Energy Marketing & Trading Company*
*Address: One Williams Center*
*Tulsa, Oklahoma 74172*
*Attn: General Counsel*
*Fax No.:*

**Taxpayer ID #**

**AGREED AND ACCEPTED this 26th day of April, 2000.**

**eSPEED, INC.**

*By:/s/ Howard W. Lutnick*
*---------------------*
*Name: Howard W. Lutnick*
*Title: Chief Executive Officer*

**CANTOR FITZGERALD, L.P.**

*By:/s/ Howard W. Lutnick*
*---------------------*
*Name: Howard W. Lutnick*
*Title: Chairman*

## EXHIBITS

| | | |
|---|---|---|
| Exhibit A | - | Form of Warrant |
| Exhibit B | - | Wire Transfer Instructions |
| Exhibit C | - | Newco Term Sheet |
| Exhibit D | - | Form of Registration Rights Agreement |

**Annex A -- Qualified Verticals**

**EXHIBIT A**

NEITHER THIS WARRANT NOR THE SHARES OF CLASS A COMMON STOCK ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND NEITHER THIS WARRANT NOR SUCH SHARES MAY BE SOLD, ENCUMBERED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENT, AND, IF AN EXEMPTION SHALL BE APPLICABLE, THE HOLDER SHALL HAVE DELIVERED AN OPINION OF COUNSEL ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

Void after 5:00 p.m. Eastern Standard Time, on _____, 2010 [representing 10th anniversary of issuance].

**WARRANT TO PURCHASE CLASS A COMMON STOCK**

**OF**

**eSPEED, INC.**

FOR VALUE RECEIVED, eSPEED, INC. (the "Company"), a Delaware corporation, hereby certifies that The Williams Companies, Inc. (the "Initial Holder"), or its permitted assigns (together with the Initial Holder, the "Holder"), is entitled to purchase from the Company, at any time or from time to time commencing on the Exercise Date set forth in Section 4 hereof (as the same may be accelerated pursuant to Section 4(c) hereof) and prior to 5:00 P.M., Eastern Standard Time, on _____, 2010 [representing 10th anniversary of issuance] a total of 666,666 fully paid and non-assessable shares of Class A Common Stock, par value $.01 per share, of the Company for a purchase price of $35.203125 per share. (Hereinafter, (i) said Class A Common Stock, together with any other equity securities which may be issued by the Company with respect thereto or in substitution therefor, is referred to as the "Class A Stock," (ii) the shares of the Class A Stock purchasable hereunder are referred to as the "Warrant Shares," (iii) the aggregate purchase price payable hereunder for the Warrant Shares is referred to as the "Aggregate Warrant Price," (iv) the price payable hereunder for each of the Warrant Shares is referred to as the "Per Share Warrant Price," (v) this Warrant, and all warrants hereafter issued in exchange or substitution for this Warrant are referred to as the "Warrant" and (vi) the holder of this Warrant is referred to as the "Holder.") The number of Warrant Shares and the securities (if applicable) for which this Warrant is exercisable and the Per Share Warrant Price are subject to adjustment as hereinafter provided under Section 3.

1. Exercise of Warrant. This Warrant may be exercised, in whole at any time or in part from time to time, commencing on the Exercise Date set forth in Section 4 hereof (as the same may be accelerated pursuant to Section 4(c) hereof) and prior to 5:00 P.M., Eastern Standard Time, on _____, 2010 [representing 10th anniversary of issuance] by the Holder of this Warrant by the surrender of this Warrant (with the subscription form at the end hereof duly

executed) at the address set forth in Section 9(a) hereof, together with proper payment of the Aggregate Warrant Price, or the proportionate part thereof if this Warrant is exercised in part. The Aggregate Warrant Price or Per Share Warrant Price shall be paid in cash, via wire transfer to an account designated by the Company, or by certified or official bank check payable to the order of the Company.

If this Warrant is exercised in part, the Holder shall be entitled to receive a new Warrant covering the number of Warrant Shares in respect of which this Warrant has not been exercised and setting forth the proportionate part of the Aggregate Warrant Price applicable to such Warrant Shares. Upon such surrender of this Warrant, the Company will (a) issue a certificate or certificates in the name of the Holder for the shares of the Class A Stock to which the Holder shall be entitled, and (b) deliver the proportionate part thereof if this Warrant is exercised in part, pursuant to the provisions of the Warrant.

No fractional shares shall be issued upon the exercise of this Warrant. With respect to any fraction of a share called for upon any exercise hereof, the Company shall pay to the Holder an amount in cash equal to such fraction multiplied by the fair value of a share.

2. Reservation of Warrant Shares. The Company agrees that, prior to the expiration of this Warrant, the Company from and as of the date hereof, will have authorized and in reserve, and will keep available, solely for issuance or delivery upon the exercise of this Warrant, the shares of the Class A Stock as from time to time shall be receivable upon the exercise of this Warrant.

3. Adjustments for Corporate Events. The number and kind of securities issuable upon the exercise of this Warrant, the Per Share Warrant Price and the number of Warrant Shares for which this Warrant may be exercised shall be subject to adjustment from time to time in accordance with the following provisions:

a. Reorganization, Reclassification. In the event of a reorganization, share exchange, or reclassification, other than a change in par value, or from par value to no par value, or from no par value to par value or a transaction described in subsection (b) or (c) below, this Warrant shall, after such reorganization, share exchange or reclassification, be exercisable into the kind and number of shares of stock or other securities or other property of the Company which the holder of this Warrant would have been entitled to receive if the holder had held the Warrant Shares issuable upon exercise of this Warrant immediately prior to such reorganization, share exchange, or reclassification.

b. Merger, Consolidation or Sale of All or Substantially All Assets. In the event of a merger or consolidation to which the Company is a party or the sale of all or substantially all of the assets of the Company, this Warrant shall, after such merger, consolidation or sale, be exercisable for the kind and number of shares of stock and/or other securities, cash or other property which the holder of this Warrant would have been entitled to receive if the holder had held the Warrant Shares issuable upon exercise of this Warrant immediately prior to such merger, consolidation or sale. Any such merger, consolidation or sale shall require, as a condition thereto, that such other party to such merger, consolidation or sale agree in writing to assume this Warrant.

c. Subdivision or Combination of Shares. In case outstanding shares of Class A Stock shall be subdivided, the Per Share Warrant Price shall be proportionately reduced as of the effective date of such subdivision, or as of the date a record is taken of the holders of Class A Stock for the purpose of so subdividing, whichever is earlier. In case outstanding shares of Class A Stock shall be combined, the Per Share Warrant Price shall be proportionately increased as of the effective date of such combination, or as of the date a record is taken of the holders of Class A Stock for the purpose of so combining, whichever is earlier.

d. Stock Dividends. In case shares of Class A Stock are issued as a dividend or other distribution on the Class A Stock (or such dividend is declared), then the Per Share Warrant Price shall be adjusted, as of the date a record is taken of the holders of Class A Stock for the purpose of receiving such dividend or other distribution (or if no such record is taken, as at the earliest of the date of such declaration, payment or other distribution), to that price determined by multiplying the Per Share Warrant Price in effect immediately prior to such declaration, payment or other distribution by a fraction (i) the numerator of which shall be the number of shares of Class A Stock outstanding immediately prior to the declaration or payment of such dividend or other distribution, and (ii) the denominator of which shall be the total number of shares of Class A Stock outstanding immediately after the declaration or payment of such dividend or other distribution. In the event that the Company shall declare or pay any dividend on the Class A Stock payable in any right to acquire Class A Stock for no consideration, then, for purposes of calculating such adjustment, the Company shall be deemed to have made a dividend payable in Class A Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Class A Stock.

e. Adjustment of Aggregate Number of Warrant Shares Issuable. Upon each adjustment of the Per Share Warrant Price under the provisions of this
Section 3, the aggregate number of Warrant Shares issuable upon exercise of this Warrant shall be adjusted to an amount determined by multiplying the Warrant Shares issuable prior to such adjustment by a fraction determined by dividing
(x) the Per Share Warrant Price in effect immediately prior to the event causing such adjustment by (y) such adjusted Per Share Warrant Price.

f. Minimum Adjustment. No adjustment of the Per Share Warrant Price shall be made if the amount of any such adjustment would be an amount less than 1% of the Per Share Warrant Price then in effect, but any such amount shall be carried forward and an adjustment in respect thereof shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate an increase or decrease of 1% or more.

g. Treasury Shares. The number of shares of Class A Stock at any time outstanding shall not include any shares thereof then directly or indirectly owned or held by or for the account of the Company.

h. Notices. If at any time, (x) the Company shall declare a stock dividend (or any other distribution except for cash dividends) on its Class A Stock; (y) there shall be any capital reorganization or reclassification of the Class A Stock, or any consolidation or merger to which the Company is a party, or any sale or transfer of all of substantially all of the assets of the Company; or (z) there shall be a voluntary or involuntary dissolution, liquidation or winding-up

of the Company; then, in any one or more of such cases, the Company shall give written notice to the Holder, not less than 10 days before any record date or other date set for definitive action, or of the date on which such reorganization, reclassification, sale, consolidation, merger, dissolution, liquidation or winding up shall take place, as the case may be. Such notice shall also set forth such facts as shall indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the current Per Share Warrant Price and the kind and amount of Class A Stock and other securities and property deliverable upon exercise of this Warrant. Such notice shall also specify the date (to the extent known) as of which the holders of the Class A Stock of record shall be entitled to exchange their Class A Stock for securities or other property deliverable upon such reorganization, reclassification, sale, consolidation, merger, dissolution, liquidation or winding up, as the case may be. In addition, whenever the aggregate number of Warrant Shares issuable upon exercise of this Warrant and Per Share Warrant Price is adjusted as herein provided, the Chief Financial Officer of the Company shall compute the adjusted number of Warrant Shares and Per Share Warrant Price in accordance with the foregoing provisions and shall prepare a written certificate setting forth such adjusted number of Warrant Shares and Per Share Warrant Price, and such written instrument shall promptly be delivered to the recordholder of this Warrant.

4. Exercisability.

a. Exercise Date. This Warrant shall be vested immediately and shall be exercisable as to all Warrant Shares commencing _____ [the date which is 5 1/2 years after the date of issuance] (the "Exercise Date"), subject to acceleration as set forth in subsection (c) below.

b. Commitment to Invest in Four Qualified Verticals. The Initial Holder has agreed to invest $2.5 million in each of four Qualified Verticals (as defined below) pursuant to the terms of that certain Subscription Agreement, dated as of April 26, 2000, by and between the Company and the Initial Holder (the "Subscription Agreement"). Such investment is required to be made during the 12-month period following the date hereof (the "12-Month Period"; which period may be increased by not more than six months (the "Black-Out Period") if a public offering by the Company is commenced during such 12-Month Period and disclosure constraints resulting from such public offering dictate a delay as determined by the Company). Upon any such determination by the Company, the Company shall so notify the Initial Holder in writing prior to the commencement of any Black-Out Period, which notice shall specify the time period by which the 12-Month Period shall be increased and the new last day of the 12-Month Period. Such notice shall be binding on the parties. For purposes of this agreement, a "Qualified Vertical" shall have the meaning ascribed to it in Section 3(b) of the Subscription Agreement.

c. Acceleration of Exercisability.

(i) Satisfaction of Acceleration Condition. Upon each satisfaction of an Acceleration Condition (as defined below), this Warrant shall become exercisable as to 25% of the aggregate Warrant Shares (i.e.,
[166,666] shares of Class A Stock). An "Acceleration Condition" shall be deemed satisfied after the occurrence of each of the following: (1) the formation of a Qualified Vertical, (2) the consummation and funding of a $2.5 million investment in a Qualified Vertical by the Subscriber and each of the three additional industry

market participants (two in the case of the Newco Qualified Vertical, as defined in Section 3 of the Subscription Agreement), and (3) the consummation of the Initial Holder's first transaction on the exchange of said Qualified Vertical
[any market participant's first transaction on the exchange in the case of Dynegy, Inc.]; provided that in any event the Acceleration Condition shall be deemed satisfied on the eight-week anniversary of the satisfaction of the conditions set forth in clauses (1) and (2) above.

(ii) Not Exercisable Prior to First Anniversary of Date of Issuance. Notwithstanding the provisions of subsection (c)(i) above, in no event will this Warrant, or any portion thereof, become exercisable prior to
[____] [the first anniversary of the date of issuance]. In the event that an Acceleration Condition is satisfied prior to such date, then the exercisability of this Warrant in connection with such satisfaction shall be deferred until
[___].

5. Fully Paid Stock; Taxes. The Company agrees that the shares of the Class A Stock represented by each and every certificate for Warrant Shares delivered on the proper exercise of this Warrant shall, at the time of such delivery, be validly issued and outstanding, fully paid and non-assessable, and not subject to preemptive rights, and the Company will take all such actions as may be necessary to assure that the par value or stated value, if any, per share of the Class A Stock is at all times equal to or less than the then Per Share Warrant Price. Subject to Section 6(c) hereof, the Company further covenants and agrees that it will pay, when due and payable, any and all federal and state stamp, original issue or similar taxes that may be payable in respect of the issuance of any Warrant Shares or certificates therefor. The Holder covenants and agrees that it shall pay, when due and payable, all of its federal, state and local income or similar taxes that may be payable in respect of the issuance of any Warrant Shares or certificates therefor, if any.

6. Transfer

a. Securities Laws. Neither this Warrant nor the Warrant Shares issuable upon the exercise hereof have been registered under the Securities Act of 1933, as amended (the "Securities Act"), or under any state securities laws and unless so registered may not be transferred, sold, pledged, hypothecated or otherwise disposed of unless an exemption from such registration is available. In the event the Holder desires to transfer this Warrant or any of the Warrant Shares issued in accordance with the terms hereof, the Holder must give the Company prior written notice of such proposed transfer including the name and address of the proposed transferee, unless such transfer is a transfer of the Warrant Shares pursuant to an effective Registration Statement. Such transfer may be made only either (i) upon publication by the Securities and Exchange Commission (the "Commission") of a ruling, interpretation, opinion or "no action letter" based upon facts presented to said Commission, or (ii) upon receipt by the Company of an opinion of counsel acceptable to the Company to the effect that the proposed transfer will not violate the provisions of the Securities Act, the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or the rules and regulations promulgated under either such act, or to the effect that the Warrant or Warrant Shares to be sold or transferred have been registered under the Securities Act of 1933, as amended, and that there is in effect a current prospectus meeting the requirements of Subsection 10(a) of the Securities Act, which is being or will be delivered to the purchaser or transferee at or prior to the time of delivery of the certificates evidencing the Warrant or Warrant Shares to be sold or transferred.

b. Registration Rights. The Warrant Shares are the subject of the Registration Rights Agreement attached to the Subscription Agreement as Exhibit D.

c. Swap or Hedging Transactions. Subject to Section 3(c) of the Subscription Agreement, without the prior written consent of the Company, the Holder may not enter into any swap or other hedging transaction relating to the Warrants or the Warrant Shares.

d. Transfer. Subject to Section 4(c), without the prior written consent of the Company, neither this Warrant, nor any interest herein, may be sold, assigned, transferred, pledged, encumbered or otherwise disposed of. Any sale, assignment, transfer, pledge, encumbrance or other disposition of this Warrant attempted contrary to the provisions of this Warrant, or any levy of execution, attachment or other process attempted upon the Warrant, shall be null and void and without effect. The provision of this Section 6(d) shall not be applicable to the Warrant Shares. Without limitation of the foregoing, Subscriber agrees that if it transfers its rights hereunder to a Subsidiary pursuant to Section 16(k) of the Subscription Agreement, it shall not sell, assign or transfer the stock of such Subsidiary during the 12-month lock-up.

e. Legend and Stop Transfer Orders. Unless the Warrant Shares have been registered under the Securities Act or eligible for resale pursuant to Rule 144(k) under the Securities Act, upon exercise of any part of the Warrant and the issuance of any of the Warrant Shares, the Company shall instruct its transfer agent to enter stop transfer orders with respect to such shares, and all certificates representing Warrant Shares shall bear on the face thereof substantially the following legend, insofar as is consistent with Delaware law:

"The shares of Class A Common Stock represented by this certificate have not been registered under the Securities Act of 1933, as amended, and may not be sold, offered for sale, assigned, transferred or otherwise disposed of unless registered pursuant to the provisions of that Act or an opinion of counsel to the Company is obtained stating that such disposition is in compliance with an available exemption from such registration."

7. Loss, etc. of Warrant. Upon receipt of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and of indemnity reasonably satisfactory to the Company, if lost, stolen or destroyed, and upon surrender and cancellation of this Warrant if mutilated, the Company shall execute and deliver to the Holder a new Warrant of like date, tenor and denomination.

8. Warrant Holder Not Shareholder. Except as otherwise provided herein, this Warrant does not confer upon the Holder any right to vote or to consent to or receive notice as a shareholder of the Company, as such, in respect of any matters whatsoever, or any other rights or liabilities as a shareholder, prior to the exercise hereof.

9. Communication. No notice or other communication under this Warrant shall be effective unless the same is in writing and is mailed by first-class mail, postage prepaid, addressed to:

a. the Company at One World Trade Center, 103rd Floor, New York, New York 10048, Attention: General Counsel, or such other address as the Company has designated in writing to the Holder, or

b. the Holder at One Williams Center, Tulsa, Oklahoma 74172, Attention: General Counsel, or such other address as the Holder has designated in writing to the Company.

10. Headings. The headings of this Warrant have been inserted as a matter of convenience and shall not affect the construction hereof.

11. Applicable Law. This Warrant shall be governed by and construed in accordance with the law of the State of New York without giving effect to the principles of conflict of laws thereof.

IN WITNESS WHEREOF, the Company has caused this Warrant to be signed by a duly authorized officer as of this _____ day of April, 2000.

**eSPEED, INC.**

By:_____
Name:
Title:

**SUBSCRIPTION**

The undersigned, _____, pursuant to the provisions of the foregoing Warrant, hereby agrees to subscribe for the purchase of _____ shares of the Class A Common Stock of eSPEED, INC. covered by said Warrant, and makes payment therefor in full at the price per share provided by said Warrant.

Dated _____ Signature_____

Address_____

_____

**ASSIGNMENT**

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto _____ the foregoing Warrant and all rights evidenced thereby, and does irrevocably constitute and appoint _____, attorney, to transfer said Warrant on the books of

eSPEED, INC.

Dated _____ Signature_____

Address_____

_____

**PARTIAL ASSIGNMENT**

FOR VALUE RECEIVED _____ hereby assigns and transfers unto _____ the right to purchase _____ shares of the Class A Common Stock of eSPEED, INC. by the foregoing Warrant, and a proportionate part of said Warrant and the rights evidenced hereby, and does irrevocably constitute and appoint _____, attorney, to transfer that part of said Warrant on

the books of eSPEED, INC.

Dated _____ Signature_____

Address_____

_____

**EXHIBIT B**

Wire transfer instructions to be provided by eSpeed prior to Closing.

**EXHIBIT C**

**THE NEWCO TERM SHEET**

**Scope of Newco**

Newco is intended to be an electronic and telephonic marketplace for North American wholesale transactions in natural gas, electricity, coal and sulfur dioxide and nitrogen dioxide emissions (the "Newco Products").

Newco's activities will be limited to the wholesale market. Newco will not intentionally expose itself to any unmatched market risk on the Newco Products and, prior to July 31, 2001, will not take physical title to the Newco Products. Newco will not buy or sell Newco Products from or to residential or commercial end-user customers for their end use ("Retail Customers"). eSpeed, Inc. ("eSpeed"), Cantor Fitzgerald, L.P. ("CF") and their respective subsidiaries will agree not to hold an equity interest, invest, manage or otherwise participate in any entity that buys or sells Newco Products to Retail Customers; provided, however, that nothing contained herein shall prohibit eSpeed or CF or any of their respective subsidiaries from (x) acting solely as a technology provider in any such marketplace, (y) from acquiring less than 25% of the voting securities of an entity that buys or sells Newco Products to Retail Customers so long as the acquired entity is not primarily engaged in the business of buying or selling Newco Products to Retail Customers, or (z) trading in the ordinary course of business in securities of entities that are themselves engaged in the business of buying or selling Newco Products to Retail Customers. For purposes of the preceding sentence, "primarily engaged" shall mean that the acquired entity derives more than 17.5% of its revenues from the business of buying or selling Newco Products to Retail Customers.

**Equity Participation in Newco**

It is anticipated that Newco will have a total of three stockholders consisting of a limited liability company (the "LLC") formed by the participating Anchors for the benefit of up to 10 energy industry participants, inclusive of the participating Anchors (the "EIPs"), eSpeed and CF. The initial EIPs will be comprised of the participating Anchors, and the additional EIPs will be selected from an agreed upon list of 10 - 15 acceptable industry market participants (the "List"). The initial participating Anchor will be The Williams Companies, Inc. ("Williams"). Any of the participating Anchors, eSpeed and CF may invite an additional industry market participant to invest in Newco from said List until the 9th month anniversary of the closing date with respect to the initial LLC investment in Newco as described below (the "Initial Newco Closing Date"). Invitations to additional industry market participants shall be accepted on a first come first served basis. If invitees can not be distinguished on the basis of the time of their willingness to commit, the Board of Newco shall resolve any oversubscription issues in its sole discretion. In the event that there are fewer than seven EIPs after the 9th month anniversary of the Initial Newco Closing Date, eSpeed and CF shall have the right to invite additional industry market participants from the List for an additional 9-month period as set forth under the caption "LLC

Investment" below. The LLC, EIPs, eSpeed and CF will enter into a Stockholders' Agreement to provide for (i) voting of Newco Board members as set forth below in this Newco Term Sheet under the Section captioned "Management of Newco", (ii) rights of first refusal and co-sale rights (including tag-along and drag-along rights), (iii) non-solicitation and confidentiality obligations and (iv) the agreement of each such stockholder to cause actions that require the consent of eSpeed or CF designees on the Board of Newco not to be taken without requisite consent. The Stockholders' Agreement shall terminate following the initial public offering of Newco, except for the matters addressed in (i) and (iii) above and the matters in (iv) above but only as they relate to transaction commissions (including any reductions) and data pricing.

All share information set forth below is on a fully-diluted basis as of the Initial Newco Closing Date.

| | |
|---|---|
| LLC Investment: | In exchange for a cash investment of $2.5 million from the participating Anchor, the LLC will initially receive 7.5% of the outstanding common stock of Newco and warrants to purchase an additional 67.5% of the outstanding common stock of Newco. These Newco warrants will be exercisable in increments of $2.5 million for 7.5% of the outstanding common stock of Newco if and only if an additional EIP becomes a member of the LLC and invests $2.5 million in the LLC. Each time an EIP is added, the warrants shall become exercisable by the LLC in exchange for an additional $2.5 million investment by the LLC in Newco. Upon the 9th month anniversary of the Initial Newco Closing Date if there are fewer than seven EIPs, eSpeed and CF shall have the right to invite additional industry market participants from the List for a period of an additional 9 months. If after such 18 month period there are (i) at least eight EIPs, then any unexercised Newco warrants will be allocated pro rata among the EIPs and (ii) less than eight EIPs, then a portion of the unexercised Newco warrants will be forfeited as set forth in Annex A and any unforfeited unexercised Newco warrants will be allocated pro rata among the EIPs. If any warrants are so forfeited, the exercise price per share of common stock of Newco issuable upon exercise of the remaining warrants held by Newco shall be reduced by multiplying the exercise price by a fraction, the numerator of which shall be the number of shares of outstanding common stock of Newco then owned by eSpeed and CF and the denominator shall be the number of shares of outstanding common stock of Newco held by the LLC, including for such purpose, the shares underlying unforfeited Newco warrants held by the LLC. Such exercise price may also be reduced in another economically appropriate manner to address such forfeiture |

as equitably determined by the parties. The Newco warrants shall be exercisable for a 30 day period from any such allocation. Each EIP shall make an additional capital contribution to the LLC in the amount required to exercise any unexercised Newco warrants so allocated to it. If an EIP fails to make such contribution, the unexercised Newco warrants so allocated to it will be allocated pro rata among the other EIPs who desire to make such non-contributing EIP's contribution.

Dynegy, Inc. ("Dynegy") will have the right for a 30 day period commencing October 1, 2001 to acquire an EIP interest in Newco through an investment in the LLC for $2.5 million. Dynegy's right to make any investment in the LLC shall terminate on November 1, 2001. If an initial public offering of Newco shall occur prior to October 1, 2000, Dynegy will have the right to accelerate its investment, in whole or in part, in Newco so long as Dynegy's ownership does not exceed 4.9% of Newco's outstanding stock; provided that, in such event, Dynegy shall have no Board designee rights prior to August 2001 and any Board designee rights that it would have but for this limitation may be exercised by the other LLC members acting collectively.

The LLC operating agreement will provide that [ * ECONOMIC TERMS OMITTED]of the Newco common stock (inclusive of shares acquired by the LLC upon exercise of the Newco warrants) will be allocated equally among the EIPs and the remaining [ * **ECONOMIC TERMS OMITTED] of the Newco**

common stock (inclusive of shares acquired by the LLC upon exercise of the Newco warrants) (the "Jumpball Shares") will be allocated among the EIPs based upon the Cumulative Transaction Revenue paid by each EIP and received by Newco and eSpeed in the aggregate in the Newco/eSpeed trading system (i.e., 100% of electronic and non-electronic (as set forth on paragraphs (a) through

(c) of Schedule 4 to this Newco Term Sheet) transaction service revenues ("Transaction Revenues") in the Newco Products measured over the five year period from the Initial Newco Closing Date (the "Cumulative Transaction Revenue"). Non-transaction revenue, such as data, ancillary service and

*This information has intentionally been omitted and has been filed separately with the Securities and Exchange Commission. It is subject to a confidential treatment request.

advertising revenue, shall not be included as transaction revenue. No EIP shall be entitled to receive more than two times its pro rata share of the Jumpball Shares with pro ration to be based solely upon the number of EIPs (the "Jumpball Cap"). In the event that an EIP would otherwise be entitled to receive more than the Jumpball Cap, then any such excess shares shall be allocated among the other EIP's in proportion to their Cumulative Transaction Revenue to the extent that, together with such additional allocation, they would not be entitled to receive more than the Jumpball Cap.

As soon as reasonably practicable, but in no event later than 30 days following each full quarterly period after the Initial Newco Closing Date, CF shall prepare and circulate to each EIP a quarterly report reasonably detailing the total volume and transaction revenue generated and paid by (i) such EIP and (ii) all the EIPs in the aggregate to Newco and eSpeed for such quarter. As soon as reasonably practicable, but in no event later than 90 days following each anniversary of the Initial Newco Closing Date, CF shall prepare and circulate to each EIP a statement (the "Statement") reasonably detailing the total volume and transaction revenue and percentage of transaction revenue generated and paid by (i) such EIP and (ii) all the EIPs in the aggregate to Newco and eSpeed for the preceding 12-month period. The annual Statement shall be certified at Newco's expense by a firm of certified public accountants selected by Newco (the "Selected Accounting Firm"), which firm may differ from year to year. The EIPs shall have a period of 60 days after receipt of the Statement to present in writing to CF and the other EIPs any objections thereto, setting forth the specific item or items to which each such objection relates and the specific basis for each such objection. A Statement shall be deemed to be acceptable to an EIP unless it shall have made a written objection thereto within such 60 day period. If an EIP shall raise any such objection within such 60 day period and such EIP and CF shall fail to reach an agreement with respect to any such objection, then such disputed objection shall, not later than 30 days after one of the parties affirmatively terminates discussions in writing with respect to such objection, be submitted for resolution to the Selected Accounting Firm. The EIP and CF shall use reasonable efforts to cause said accounting firm, within 30 days of its appointment, to resolve the disputes submitted to

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| | it. The fees and expenses of this accounting firm shall be paid (i) by the disputing EIP, if the discrepancy between the calculations in the Statement and the calculations of such accounting firm is less than 2% of the Statement's calculations, and (ii) by Newco, if the discrepancy between the calculations of such accounting firm is 2% or greater. Any such resolution by this accounting firm concerning any item in dispute shall be final and binding on the parties without further right of appeal. In no event shall an EIP be entitled to review or object to the transaction revenues of any other EIP or the combined Cumulative Transaction Revenue for all EIPs.<br><br>Once the Statement reflecting the Cumulative Transaction Revenue of each EIP which is delivered following the fifth anniversary of the closing of the Initial Newco Closing Date becomes final and binding, the shares of Newco common stock shall be allocated among the EIPs in proportion to their Cumulative Transaction Revenue as described above.<br><br>The LLC operating agreement will provide that it may not be amended in any manner which would modify the allocation provisions set forth therein without eSpeed's consent. |
| eSpeed's | Investment: In exchange for an aggregate cash investment of $2.0 million, eSpeed will receive 5% of the outstanding equity of Newco on the Initial Newco Closing Date. |
| CF's Investment: | In exchange for (i) an aggregate cash investment of $4.25 million, (ii) the assignment of certain rights under the services agreement between eSpeed and CF described on Schedule 1, and (iii) the transfer of certain business assets described on Schedule 2, CF will receive 20% of the outstanding equity of Newco on the Initial Newco Closing Date. |

**Management of Newco**

Newco shall be formed as soon as there are a total of three EIPs (including the participating Anchors) and rights to designate Newco Board members shall be as follows:

| Total Number of EIPs (including Participating Anchors) | Total Number to be Designated by all the EIPs (One Per EIP) | Total Number to be Designated By eSpeed | Total Number to be Designated by CF |
|---|---|---|---|
| 3 | 3 | 1 | 1 |
| 4 | 4 | 1 | 1 |
| 5 | 5 | 1 | 1 |
| 6 | 6 | 1 | 1 |
| 7 | 7 | 2 | 1 |

As additional EIPs are added, each EIP shall have the right to designate one Board member and eSpeed and CF shall have the right to designate directors in proportion to their collective equity participation in Newco (e.g., if eSpeed and CF own 25% of the equity securities of Newco they shall have the right to collectively designate 25% of the Board); provided that in no event shall eSpeed and CF have less than one Board designee each and if the number of designees is an odd number, eSpeed shall designate the extra director. The director designee of an EIP, eSpeed or CF shall be a full-time employee of such party or its wholly-owned subsidiary, its ultimate parent entity or a wholly-owned subsidiary of its ultimate parent entity. The majority of the designees of the non-competing EIPs shall have the right to remove the designee of any EIP if such EIP or its designee participates in the management (whether by contract, equity ownership, representation on the Board of Directors or otherwise) of an entity which is competitive with Newco; provided that, any such participation in the management of a competitive entity in existence at the time a party becomes an EIP and disclosed by the EIP at the time of its investment in Newco shall not be grounds for removal. An EIP shall lose its director designee rights if its economic interest in Newco common stock held by the LLC falls below 2.5% of the outstanding shares held by the parties to the Stockholders' Agreement. In the event that an EIP loses its director designee rights pursuant to the preceding two sentences, the other EIPs, voting together, shall have the right to fill the seats that become vacant as a result of such loss of designee rights. All action of the Newco Board shall be taken by majority vote of the Newco Board, except for those matters set forth on Schedule 3 which shall require the approval of a majority of the Newco Board as well as a majority of the director designees of either eSpeed or CF.

**Newco Services Agreement**

Upon formation, Newco will enter into a services agreement with eSpeed pursuant to which eSpeed will provide the global technology infrastructure for the transactional and technology related elements of the marketplace as well as access to its futures exchange to be hosted by eSpeed in exchange for a percentage of transactional and other revenues. The terms of such service agreement are set forth on Schedule 4.

**Newco Administrative Services Agreement**

Upon formation, Newco will enter into an administrative services agreement with CF pursuant to which CF will act as market operator and will manage the day-to-day administrative operations of Newco. The terms of such administrative services agreement are set forth on Schedule 5.

Registration Rights of eSpeed, CF, the Anchors and the other EIPs

eSpeed, CF and the EIPs will be entitled to those registration rights with respect to their Newco common stock set forth on Schedule 6.

**EXHIBIT D**

**REGISTRATION RIGHTS AGREEMENT**

by and among

eSpeed, Inc.

and

**The Investors Named Herein**

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REGISTRATION RIGHTS AGREEMENT (the "Agreement"), dated as of April __, 2000, by and among eSpeed, Inc., a Delaware corporation (the "Company"), the parties that have executed the signature pages hereto (the "Initial Investors") and such other parties that otherwise execute a joinder agreement and become a party hereto (collectively, the "Investors").

**RECITALS**

WHEREAS, as an inducement to each of the Initial Investors to invest in the Company, the Company desires to grant to each of the Initial Investors registration rights with respect to the shares (the "Shares") of Class A Common Stock (as defined in Section 8.1 below) and warrants to purchase shares of Class A Common Stock (the "Warrants") issued to the Initial Investors on the date hereof as set forth on Schedule A hereto, on the terms and subject to the conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**ARTICLE I**
**DEMAND REGISTRATIONS**

1.1 Requests for Registration. Subject to Sections 1.2 and 1.3 hereof, the Initial Investors may request, in writing, registration under the Securities Act of all or part of their Registrable Securities. Within 15 days after receipt of any such request, the Company will give notice of such request to all other Investors and to other persons holding piggyback registration rights entitling them to have securities of the Company included within such registration ("Other Holders"). Thereafter, the Company will use all reasonable efforts to effect the registration under the Securities Act (i) on Form S-1 or any similar long-form registration statement (a "Long-Form Registration") or (ii) on Form S-3 or any similar short-form registration statement (a "Short-Form Registration") if the Company qualifies to effect a Short- Form Registration, and will include in such registration all Registrable Securities and securities of the Company held by the Other Holders with respect to which the Company has received written requests for inclusion therein within 20 days after the receipt of the Company's notice, subject to the provisions of Section 1.4. All registrations initiated by an Investor pursuant to this Section 1.1 are referred to herein as "Demand Registrations". The Company shall not be required to effect any underwritten Demand Registration requested by an Initial Investor if either (a) within the 12 months preceding the receipt by the Company of such request, the Company has filed and has had declared effective by the Commission a Registration Statement with respect to an underwritten offering under this Section 1.1 or has filed and has had declared effective by the Commission another Registration Statement with respect to an underwritten offering to which the Piggyback Registration rights set forth in Article II hereof apply and such Initial Investor had an opportunity to include all the shares requested to be included in such Registration Statements; and provided further that the Company shall not be required to effect any Demand Registration requested by an Initial Investor if such Investor may sell all of the

Registrable Securities requested to be included in such Demand Registration without registration under the Securities Act, pursuant to the exemption provided by (i) Rule 144(k) under the Securities Act, as such rule may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the Commission.] The rights of an Initial Investor pursuant to this Section 1.1 shall be assignable in accordance with the provisions of Section 9.9.

1.2 Number of Demand Registrations; Expenses . Subject to Sections 1.1 and 1.3 hereof, each of the Initial Investors shall be entitled to (i), from and after the one year anniversary of the date hereof, one Demand Registration and (ii), from and after the date on which such Initial Investor's Warrants become fully exercisable, one additional Demand Registration, with no more than one of such Demand Registrations being a Long-Form Registration; provided, however, that the Company need not effect any requested Demand Registration unless the expected proceeds of such registration exceed $20,000,000. The Company will pay all Registration Expenses in connection with any Demand Registration.

1.3 Effective Registration Statement . A registration requested pursuant to Section 1.1 of this Agreement shall not be deemed to have been effected (i) unless a Registration Statement with respect thereto has been declared effective by the Commission, (ii) if after it has become effective, such registration is interfered with by any stop order, injunction or other order or requirement of the Commission or other governmental agency or court for any reason, and, as a result thereof, the Registrable Securities covered thereby have not been sold or (iii) the Registration Statement does not remain effective for a period of at least 180 days beyond the effective date thereof or, with respect to an underwritten offering of Registrable Securities, until 45 days after the commencement of the distribution by the holders of the Registrable Securities included in such Registration Statement. If a registration requested pursuant to this Article I is deemed not to have been effected as provided in this Section 1.3, then the Company shall continue to be obligated to effect the number of Demand Registrations set forth in Section 1.2 without giving effect to such requested registration. The Initial Investors of the Registrable Securities shall be permitted to withdraw all or any part of the Registrable Securities from a Demand Registration at any time prior to the effective date of such Demand Registration; provided that in the event of, and concurrently with such withdrawal, the Initial Investors responsible for such Demand Registration shall either (x) pay or reimburse the Company for all fees and expenses (including counsel fees and expenses) incurred by them and the Company prior to such withdrawal or (y) agree to forfeit one of its Demand Registration rights hereunder.

1.4 Priority on Demand Registrations . If the Company includes in any underwritten Demand Registration any securities which are not Registrable Securities and the managing underwriters advise the Company in writing that in their opinion the number of Registrable Securities and other shares of Common Stock proposed to be included exceeds the number of Registrable Securities and other securities which can be sold in such offering, the Company will include in such registration (i) first, the number of Registrable Securities requested to be included which, in the opinion of such underwriters, can be sold, by the Investor initiating the Demand Registration, (ii) second, that number of other shares of Common Stock proposed to be included in such registration equally between Cantor Fitzgerald Securities and its Affiliates, and their successors and assigns on the one hand (the "Priority Piggyback Registration Holders"), and any other Investors exercising their Piggyback Registration rights on the one

hand and (iii) third, that number of other shares of Common Stock proposed to be included in such registration, pro rata among any other holders exercising their respective piggyback registration rights thereof based upon the total number of shares which such holders propose to include in such registration.

1.5 Selection of Underwriter. If the Investor exercising its right to a Demand Registration so elects, the offering of such Registrable Securities pursuant to such Demand Registration shall be in the form of an underwritten offering. The Company shall select one or more nationally recognized firms of investment bankers to act as the lead managing Underwriter or Underwriters in connection with such offering and shall select any additional investment bankers and managers to be used in connection with the offering.

1.6 Limitations, Conditions and Qualifications to Obligations for a Demand Registration. The Company shall be entitled to postpone, for a reasonable period of time (but not exceeding 90 days), the filing of any registration statement otherwise required to be prepared and filed by it pursuant to Section 1.1 if the Company determines, in its good faith judgment, that such registration and offering would interfere with any material financing, acquisition, corporate reorganization or other material transaction involving the Company or any of its Affiliates and promptly gives the holders of Registrable Securities requesting registration thereof pursuant to Section 1.1 written notice of such determination, containing an approximation of the anticipated delay. If the Company shall so postpone the filing of a registration statement, holders of Registrable Securities requesting the Demand Registration pursuant to Section 1.1 shall have the right to withdraw the request for registration by giving written notice to the Company within 30 days after receipt of the notice of postponement and, in the event of such withdrawal, such request shall not be counted for purposes of the requests for registration to which holders of Registrable Securities are entitled pursuant to Section 1.1 hereof.

## ARTICLE II
## PIGGYBACK REGISTRATIONS

2.1 Right to Piggyback . From and after the date which is 12 months from the date of this Agreement, whenever the Company proposes to register any of its equity securities under the Securities Act (other than a registration effected in connection with a Company stock option or other employee benefit plan (such as a Registration Statement on Form S-8), a registration effected in connection with the conversion of debt securities, a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of Registrable Securities (such as a Registration Statement on Form S-4), or a registration effected in connection with an acquisition), and the form of registration statement to be used may be used for the registration of Registrable Securities (a "Piggyback Registration"), the Company will give notice (the "Notice") to all Investors of its intention to effect such a registration and will include in such registration all Registrable Securities with respect to which the Company has received written requests for inclusion therein, subject to the provisions of Section 2.3 and 2.4 hereof. Such requests for inclusion shall be in writing and delivered to the Company within 20 days after the Investor's receipt of the Notice and shall specify the number of Registrable Securities intended to be

disposed of and the intended method of distribution thereof. Any holder shall have the right to withdraw its request for inclusion of its Registrable Securities in any Registration Statement pursuant to this Section 2.1 by giving written notice to the Company of its request to withdraw. The Company may withdraw a Piggyback Registration at any time prior to the time it becomes effective. The Company is not required to include in a registration any Registrable Securities which the holder is not then entitled to offer to sell whether by contractual restriction or by law.

2.2 PiggybackExpenses. The Registration Expenses of the Investors will be paid by the Company in all Piggyback Registrations

2.3 Priority on Primary Registrations . If a Piggyback Registration is an underwritten primary registration on behalf of the Company, and the managing underwriters advise the Company that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering, the Company will include in such registration (i) first, the securities the Company proposes to sell, (ii) second, that number of other shares of Common Stock proposed to be included in such registration by the Priority Piggyback Registration Holders and (iii) third, that number of other shares of Common Stock proposed to be included in such registration, pro rata among any other holders (including the Investors) exercising their respective piggyback registration rights thereof based upon the total number of shares which such holders (including the Investors) propose to include in such registration.

2.4 Priority on Secondary Registrations . If a Piggyback Registration is an underwritten secondary registration on behalf of holders (other than the Investors) of the Company's securities, and the managing underwriters advise the Company that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering, the Company will include in such registration (i) first, the number of shares of Common Stock requested to be included by the holders exercising their demand registration rights, and (ii) second, that number of other shares of Common Stock proposed to be included in such registration, pro rata among any other holders (including the Investors) exercising their respective piggyback registration rights thereof based upon the total number of shares which such holders (including the Investors) propose to include in such registration.

## ARTICLE III
## HOLDBACK AGREEMENTS

In the event the Company or another holder of the Company's stock proposes to enter into an underwritten public offering, each holder of Registrable Securities agrees to enter into an agreement with the managing underwriters not to effect any sale or distribution of equity securities of the Company, or any securities convertible, exchangeable or exercisable for or into such securities, during the period beginning on the date of such offering and extending for up to 90 days; provided that such holders shall not be so obligated unless the Company and each of its Affiliates enter into the same or comparable lock-up agreement for the same period and further shall not be so obligated if such holder then owns less than 2% of the outstanding Class A Common Stock.

**ARTICLE IV**
**REGISTRATION PROCEDURES**

Whenever holders of Registrable Securities have requested that any Registrable Securities be registered pursuant to this Agreement (the "Selling Holders"), the Company will use reasonable efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof and, pursuant thereto, the Company will:

(a) use reasonable efforts to prepare and file with the Commission a Registration Statement with respect to such Registrable Securities as soon as practicably thereafter and, in the case of a Demand Registration within 60 days (subject to a postponement pursuant to Section 1.6) of the request for a Demand Registration and use all reasonable efforts to cause such Registration Statement to become and remain effective until the completion of the distribution contemplated thereby; provided, that as promptly as practicable before filing a Registration Statement or Prospectus or any amendments or supplements thereto, the Company will (i) furnish to the Selling Holders copies of all such documents proposed to be filed and (ii) notify each Selling Holder of Registrable Securities covered by such Registration Statement of (x) any request by the Commission to amend such Registration Statement or amend or supplement any Prospectus, or (y) any stop order issued or threatened by the Commission, and take all reasonable actions required to prevent the entry of such stop order or to promptly remove it if entered; and provided further that the Company shall not be required to keep such Registration Statement effective for more than (i) 45 days in the case of a Piggyback Registration or a Demand Registration with respect to an underwritten offering or (ii) 180 days in the case of a Demand Registration (or such shorter period which will terminate when all Registrable Securities covered by such Registration Statement have been sold, but not prior to the expiration of the applicable period referred to in
Section 4(3) of the Securities Act and Rule 174 thereunder, if applicable);

(b) (i) prepare and file with the Commission such amendments and supplements to such Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement effective for as long as such registration is required to remain effective pursuant to the terms hereof and (ii) comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement during such period in accordance with the intended methods of disposition by the sellers thereof set forth in such Registration Statement;

(c) furnish to each Selling Holder, without charge, such number of conformed copies of such Registration Statement, each amendment and supplement thereto, the Prospectus included in such Registration Statement (including each preliminary Prospectus) and such other documents as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Selling Holder;

(d) use all reasonable efforts to register or qualify such Registrable Securities under such other securities or "blue sky" laws of such jurisdictions in the United States in which

a registration or qualification is required as any Selling Holder thereof shall reasonably request, to keep such registration or qualification in effect for so long as such Registration Statement remains in effect and do any and all other acts and things which may be reasonably necessary or advisable to enable such Selling Holder to consummate the disposition in such jurisdictions of the Registrable Securities owned by such Selling Holder; provided, however, that the Company will not be required to (i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this clause (d), (ii) subject itself to taxation in any such jurisdiction or (iii) consent to general service of process in any such jurisdiction;

(e) notify each Selling Holder, at a time when a Prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event known to the Company as a result of which the Prospectus included in such Registration Statement, as then in effect, contains an untrue statement of a material fact or omits to state any fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and, at the request of any such Selling Holder, the Company will prepare and furnish such Selling Holder a reasonable number of copies of a supplement to or an amendment of such Prospectus as may be necessary so that, as thereafter delivered to the purchasers of such Registrable Securities, such Prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(f) make available for inspection by any Selling Holder, any underwriter participating in any disposition pursuant to such Registration Statement and any attorney, accountant or other agent retained by any such Selling Holder or underwriter, all applicable, non-confidential due diligence documents of the Company which are requested, and cause the Company's officers, directors, employees and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such Registration Statement to enable them to conduct a reasonable investigation within the meaning of the Securities Act, including a customary accountant's "comfort" letter and opinion of counsel to the Company;

(g) subject to other provisions hereof, use all reasonable efforts to cause such Registrable Securities covered by such Registration Statement to be registered with or approved by such other governmental agencies or authorities or self-regulatory organizations as may be necessary to enable the Selling Holders thereof to consummate the disposition of such Registrable Securities;

(h) promptly notify the Selling Holders of the issuance of any stop order by the Commission or the issuance by any state securities commission or other regulatory authority of any order suspending the qualification or exemption from qualification of any of the Registrable Securities under state securities or "blue sky" laws, and use every reasonable effort to obtain the lifting at the earliest possible time of any stop order suspending the effectiveness of any Registration Statement or of any order preventing or suspending the use of any preliminary Prospectus; and

(i) promptly notify the Selling Holders of the occurrence of any pending material merger, acquisition, corporate reorganization or other material transaction involving the Company or any of its Affiliates which makes it imprudent for the Company to be in registration, as determined in the good faith judgment of the Company (a "Black-Out Period"). The Company shall not impose Black-Out Periods that, either individually or in the aggregate, exceed 90 days during any fiscal year of the Company.

The Company may require each Selling Holder to promptly furnish in writing to the Company such information regarding the distribution of the Registrable Securities as the Company may from time to time reasonably request and such other information as may be legally required in connection with such registration including, without limitation, all such information as may be requested by the Commission or any regulatory authority. The Company may exclude from such Registration Statement any holder who fails to provide such information.

Each Selling Holder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in paragraph (a), (e), (h) or (i) above, such Selling Holder will forthwith discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Selling Holder's receipt of the copies of the supplemented or amended prospectus contemplated by paragraph (a) or (e) above, or in the case of a Black-Out Period until the Company notifies the Selling Holders that the period has ended, and, if so directed by the Company, such Selling Holder will deliver to the Company all copies, other than permanent file copies then in such Selling Holder's possession, of the most recent prospectus covering such Registrable Securities at the time of receipt of such notice. The periods referred to in paragraph (a) above for maintaining the effectiveness of the Registration Statement shall be extended for a period equal to the period during which the disposition of the Registrable Securities is discontinued as set forth in the immediately preceding sentence.

## ARTICLE V
## REGISTRATION EXPENSES

5.1 Registration Expenses . All registration and filing fees, fees and expenses of compliance with securities or "blue sky" laws, printing expenses, listing fees for securities to be registered on a national securities exchange or The Nasdaq Stock Market and all independent certified public accountants, underwriters (excluding discounts and commissions), fees and expenses of counsel to the Company and other Persons retained by the Company (all such expenses being herein called "Registration Expenses") will be borne by the Company as provided in Sections 1.2 and 2.2 of this Agreement, but subject to the provisions of Section 1.3 of this Agreement.

5.2 Holders' Expenses . The Company shall have no obligation to pay (i) any underwriting discounts or commissions attributable to the sale, or potential sale, of Registrable Securities, which expenses will be borne by all Selling Holders of Registrable Securities included in such registration; and (ii) any fees or expenses of counsel or others retained by the Selling Holders in connection with the sale, or potential sale, of Registrable Securities.

## ARTICLE VI
## UNDERWRITTEN AND OTHER OFFERINGS

6.1 Underwriting Agreement . If requested by the underwriters for any underwritten offering involving the Registrable Securities, the Company will enter into an underwriting agreement with such underwriters for such offering, such agreement to be reasonably satisfactory to the Company and to contain such representations and warranties by the Company and such other terms as are generally included in agreements of this type, including, without limitation, indemnities customarily included in such agreements. The holders of the Registrable Securities will cooperate in good faith with the Company in the negotiation of the underwriting agreement.

6.2 Obligations of Participants . No Person may participate in any underwritten registration hereunder unless such Person (i) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Person or Persons entitled hereunder to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements, escrow agreements and other documents required under the terms of such underwriting arrangements and consistent with the provisions of this Agreement. In addition, the Company may require each Selling Holder to promptly furnish in writing to the Company such information regarding the distribution of the Registrable Securities as the Company may from time to time reasonably request and such other information as may be legally required in connection with such registration including, without limitation, all such information as may be requested by the Commission or the NASD. The Company may exclude from such Registration Statement any Holder who fails to provide such information.

## ARTICLE VII
## INDEMNIFICATION

7.1 Company's Indemnification Obligations . The Company agrees to indemnify and hold harmless each of the holders of any Registrable Securities covered by any Registration Statement referred to herein and each other Person, if any, who controls such holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "Holder Indemnitees"), as follows:

(i) against any and all loss, liability, claim, damage or reasonable expense arising out of or based upon an untrue statement or alleged untrue statement of a material fact contained in any Registration Statement (or any amendment or supplement thereto), including all documents incorporated therein by reference, or in any preliminary Prospectus or Prospectus (or any amendment or supplement thereto) or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and reasonable expense to the extent of the aggregate amount paid in settlement of any litigation, investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim based upon any such untrue statement or omission or any such alleged untrue statement or omission, if such settlement is effected with the prior written consent of the Company; and

(iii) against any and all reasonable expense incurred by them in connection with investigating, preparing or defending against any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim based upon any such untrue statement or omission or any such alleged untrue statement or omission, to the extent that any such expense is not paid under clause (i) or (ii) above;

provided, that this indemnity does not apply to any loss, liability, claim, damage or expense to the extent arising out of an untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with information furnished to the Company by or on behalf of any holder expressly for use in the preparation of any Registration Statement (or any amendment or supplement thereto), including all documents incorporated therein by reference, or in any preliminary Prospectus or Prospectus (or any amendment or supplement thereto); provided further, that (other than in connection with an underwritten offering) the Company will not be liable to any holder or any other Holder Indemnitee under the indemnity agreement in this
Section 7.1 with respect to any preliminary Prospectus or the final Prospectus or the final Prospectus as amended or supplemented, as the case may be, to the extent that any such loss, liability, claim, damage or expense of such Holder Indemnitee results from the fact that such holder sold Registrable Securities to a Person to whom there was not sent or given, at or prior to the written confirmation of such sale, a copy of the final Prospectus or of the final Prospectus as then amended or supplemented, whichever is most recent, if the Company has previously and timely furnished copies thereof to such holder; and provided further, that the Company will not be liable to any holder or any other Holder Indemnitee under the indemnity agreement in this Section 7.1 to the extent that any such loss, liability, claim or expense arises out of or is based upon an untrue statement or omission in any Prospectus, even if an amended and corrected Prospectus is not furnished to such holder, but only to the extent that the holder, after being notified by the Company pursuant to paragraph (e) of Article III hereof, continues to use such Prospectus and in such case and to the extent of, and with respect to, damages which arise after the holder receives such notice.

7.2 Holder's Indemnification Obligations . In connection with any Registration Statement in which a holder of Registrable Securities is participating, each such holder agrees to indemnify and hold harmless (in the same manner and to the same extent as set forth in Section 7.1 of this Agreement) the Company and each Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act with respect to any statement or alleged statement in or omission or alleged omission from such Registration Statement, any preliminary, final or summary Prospectus contained therein, or any amendment or supplement thereto, if such statement or alleged statement or omission or alleged omission was made about such holder in reliance upon and in conformity with information furnished to the Company by or on behalf of such holder expressly for inclusion in

such Registration Statement. The obligations of each holder pursuant to this
Section 7.2 are to be several and not joint; provided that, with respect to each claim pursuant to this Section 7.2, each such holder's maximum liability under this Section shall be limited to an amount equal to the net proceeds received by such holder (after deducting any underwriting discount) from the sale of Registrable Securities being sold pursuant to such Registration Statement or Prospectus by such holder.

7.3 Notices; Defense; Settlement . Promptly after receipt by an indemnified party hereunder of written notice of the commencement of any action or proceeding involving a claim referred to in Section 7.1 or Section 7.2 of this Agreement, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the latter of the commencement of such action; provided, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under Section 7.1 or Section 7.2 of this Agreement except to the extent that the indemnifying party is actually prejudiced by such failure to give notice. In case any such action is brought against an indemnified party, the indemnifying party will be entitled to participate in and to assume the defense thereof, jointly with any other indemnifying party similarly notified, to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof, unless in the reasonable opinion of counsel to such indemnified party a conflict of interest between such indemnified and indemnifying parties may exist in respect of such claim, in which case the indemnifying party shall not be liable for the fees and expenses of (i) more than one counsel for all the Selling Holders, selected by a majority of the Selling Holders or (ii) more than one counsel for the Company in connection with any one action or separate but similar or related actions, as applicable. An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable opinion of counsel to any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim, in which event the indemnifying party shall be obligated to pay the fees and expenses of such additional counsel or counsels. The indemnifying party will not, without the prior written consent of each indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not such indemnified party or any Person who controls such indemnified party is a party to such claim, action, suit or proceeding), unless such settlement, compromise or consent includes an unconditional release of such indemnified party from all liability arising out of such claim, action, suit or proceeding. Notwithstanding anything to the contrary set forth herein, and without limiting any of the rights set forth above, in any event any party will have the right to retain, at its own expense, counsel with respect to the defense of a claim.

7.4 Indemnity Provision . The Company and each holder of Registrable Securities requesting registration shall provide for the foregoing indemnity (with appropriate modifications) in any underwriting agreement with respect to any required registration or other

qualification of securities under any Federal or state law or regulation of any governmental authority.

## ARTICLE VIII
## DEFINITIONS

8.1 Terms . As used in this Agreement, the following defined terms shall have the meanings set forth below:

"Affiliate" means, with respect to any specified party, any other individual, partnership, corporation or other organization, whether incorporated or unincorporated, who, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified party. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a party, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative of the foregoing.

"Business Day" means a day other than Saturday, Sunday or any day on which banks located in the State of New York are authorized or obligated to close.

"Class A Common Stock" means the Class A Common Stock, par value $.01 per share, of the Company and any securities into which the Class A Common Stock shall have been changed or any securities resulting from any reclassification or recapitalization of the Class A Common Stock.

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

"Common Stock" means the shares of Common Stock, regardless of designation, of the Company.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any similar Federal statute then in effect, and any reference to a particular section thereof shall include a reference to the equivalent section, if any, of any such similar Federal statute, and the rules and regulations thereunder.

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

"Person" means any individual, corporation, partnership, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Prospectus" means the Prospectus included in any Registration Statement (including without limitation, a Prospectus that disclosed information previously omitted from a Prospectus filed as part of an effective Registration Statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any Prospectus supplement, with

respect to the terms of the offering of any portion of the securities covered by such Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"Registrable Securities" means (i) the Shares, (ii) the Class A Common Stock issued or issuable at any time upon the exercise of the Warrants, and
(iii) any securities issued or received in respect of, or in exchange or in substitution for any of the foregoing. Registrable Securities will continue to maintain their status as Registrable Securities in the hands of a transferee from an Investor of a majority of the Registrable Securities held by such Investor provided such transferee executes a joinder agreement described by
Section 9.9. After the transfer (in one or more transactions) of a majority of the Registrable Securities held by an Investor, any remaining Registrable Securities held by such Investor shall cease to be Registrable Securities. As to any particular Registrable Securities, such securities will cease to be Registrable Securities when they (w) have been effectively registered under the Securities Act and disposed of in accordance with the registration statement covering them, (x) may be sold pursuant to Rule 144 under the Securities Act without volume or manner of sale limitation (or any similar provisions then in force), (y) have been otherwise transferred and the Company has delivered a new certificate or other evidence of ownership for such securities not bearing a restrictive legend and not subject to any stop order and such securities may be publicly resold by the Person receiving such certificate without complying with the registration requirements of the Securities Act, or (z) have ceased to be outstanding

"Registration Statement" means any Registration Statement of the Company which covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all material incorporated by reference in such Registration Statement.

"Securities Act" means the Securities Act of 1933, as amended, or any similar Federal statute then in effect, and any reference to a particular section thereof shall include a reference to a comparable section, if any, of any such similar Federal statute, and the rules and regulations thereunder.

8.2 Defined Terms in Corresponding Sections . The following defined terms, when used in this Agreement, shall have the meaning ascribed to them in the corresponding Sections of this Agreement listed below:

| | | |
|---|---|---|
| "Agreement" | -- | Preamble |
| "Company" | -- | Preamble |
| "Demand Registration" | -- | Section 1.1 |
| "Holder Indemnitees" | - | Section 7.1 |
| "Initial Investors" | -- | Preamble |

"Investors" -- Preamble

"Long-Form Registration" -- Section 1.1

"Notice" -- Section 2.1

"Other Holders" -- Section 1.1

"Piggyback Registration" -- Section 2.1

"Priority Piggyback Registration Holders" -- Section 1.4

"Registration Expenses" -- Section 5.1

"Selling Holder" -- Article IV

"Shares" -- Recitals

"Short-Form Registration" -- Section 1.1

"Warrants" -- Recitals

**ARTICLE IX**
**MISCELLANEOUS**

9.1 Amendments and Waivers . Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement will be effective against the Company or any holder of Registrable Securities, unless such modification, amendment or waiver is approved in writing by the Company and the Investors representing a majority of the Registrable Securities then outstanding. The failure of any party to enforce any of the provisions of this Agreement will in no way be construed as a waiver of such provisions and will not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

9.2 Successors and Assigns . All covenants and agreements in this Agreement by or on behalf of any of the parties hereto will bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not.

9.3 Notices . All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally against written receipt or by facsimile transmission or mailed by pre-paid registered or certified mail, return receipt requested or mailed by overnight courier prepaid to the parties at the following addresses or facsimile numbers:

**If to the Company, to:**

eSpeed, Inc.
One World Trade Center
103rd Floor

New York, New York 10048 Facsimile No.: (212) 938-5000 Attn.: General Counsel

with a copy to:

Swidler Berlin Shereff Friedman, LLP The Chrysler Building 405 Lexington Avenue New York, New York 10174 Facsimile No.: (212) 938-5000 Attn.: General Counsel

If to any Investor, to the address set forth on the signature page hereto.

All such notices, requests and other communications will (i) if delivered personally to the address as provided in this Section 9.3, be deemed given upon delivery, (ii) if delivered by facsimile transmission to the facsimile number as provided in this Section 9.3, be deemed given upon receipt of confirmation,
(iii) if delivered by mail in the manner described above to the address as provided in this Section 9.3, be deemed given on the earlier of the third full Business Day following the day of mailing or upon receipt, and (iv) if delivered by overnight courier to the address provided in this Section 9.3, be deemed given on the earlier of the first Business Day following the date sent by such overnight courier or upon receipt. Any party from time to time may change its address, facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the other parties hereto.

9.4 Headings . The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

9.5 Gender . Whenever the pronouns "he" or "his" are used herein they shall also be deemed to mean "she" or "hers" or "it" or "its" whenever applicable. Words in the singular shall be read and construed as though in the plural and words in the plural shall be construed as though in the singular in all cases where they would so apply.

9.6 Invalid Provisions . If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

9.7 Governing Law; Forum; Process . This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to principles of conflicts of law. Each of the parties hereto hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any court of the State of Delaware or any federal court sitting in the State of Delaware for purposes of any suit, action or other proceeding arising out of this Agreement (and agrees not to commence any action, suit or proceedings relating hereto except in such courts). Each of the parties hereto agrees that service of any process, summons, notice or document by U.S. registered mail at its address set forth herein shall be effective service of process for any action, suit or proceeding brought against it in any such court. Each of the parties hereto hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement, which is brought by or against it, in the courts of the State of Delaware or any federal court sitting in the State of Delaware and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

9.8 Counterparts . This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

9.9 Additional Investors . Any transferee of a majority of Registrable Securities held by an Investor shall be entitled to the benefits of this Agreement, upon execution by such transferee of a joinder agreement in form reasonably satisfactory to the Company stating that such transferee agrees to be bound by the terms hereof as an "Investor". An Investor shall no longer be entitled to the benefits of this Agreement upon its transfer (in one or more transactions) of a majority of the Registrable Securities held by such Investor.

## ARTICLE X
## RULE 144 REPORTING

The Company hereby agrees as follows:

(a) The Company shall use its reasonable efforts to make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act.

(b) The Company shall use its reasonable efforts to file with the Commission in a timely manner all reports and other documents as the Commission may prescribe under Section 13(a) or 15(d) of the Exchange Act at any time while the Company is subject to such reporting requirements of the Exchange Act.

(c) The Company shall furnish to each holder of Registrable Securities forthwith upon a reasonable request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 and of the Securities Act and the Exchange Act.

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

**COMPANY:**

**eSPEED, INC.**

By:_____
Name:
Title:

**INITIAL INVESTORS:**

**THE WILLIAMS COMPANIES, INC.**

By:_____
Name:
Title:
Address: One Williams Center
Tulsa, Oklahoma 74172

**DYNEGY, INC.**

By:_____
Name:
Title:
Address: 1000 Louisiana, Suite 5800
Houston, Texas 77002

**ARTICLE 5**

| | |
|---|---|
| PERIOD TYPE | 6 MOS |
| FISCAL YEAR END | DEC 31 2000 |
| PERIOD START | JAN 01 2000 |
| PERIOD END | JUN 30 2000 |
| CASH | 564,995 |
| SECURITIES | 147,141,828 |
| RECEIVABLES | 0 |
| ALLOWANCES | 0 |
| INVENTORY | 0 |
| CURRENT ASSETS | 2,766,732 |
| PP&E | 22,108,664 |
| DEPRECIATION | 5,305,775 |
| TOTAL ASSETS | 167,276,444 |
| CURRENT LIABILITIES | 21,344,414 |
| BONDS | 0 |
| PREFERRED MANDATORY | 0 |
| PREFERRED | 0 |
| COMMON | 517,891 |
| OTHER SE | 145,414,139 |
| TOTAL LIABILITY AND EQUITY | 167,276,444 |
| SALES | 43,718,365 |
| TOTAL REVENUES | 53,908,944 |
| CGS | 0 |
| TOTAL COSTS | 0 |
| OTHER EXPENSES | 97,662,003 |
| LOSS PROVISION | 0 |
| INTEREST EXPENSE | 0 |
| INCOME PRETAX | (43,753,059) |
| INCOME TAX | 200,000 |
| INCOME CONTINUING | (43,953,059) |
| DISCONTINUED | 0 |
| EXTRAORDINARY | 0 |
| CHANGES | 0 |
| NET INCOME | (43,953,059) |
| EPS BASIC | (.86) |
| EPS DILUTED | (.86) |