SmartPros Ltd.
Form DEF 14A
April 27, 2009

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

SCHEDULE 14A

(Rule 14a-101)
INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14a INFORMATION
Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant þ
Filed by a Party other than the Registrant o

Check the appropriate box:
o Preliminary Proxy Statement
o Confidential, for use of the Commission Only (as permitted by Rule 14a-6(e) (2)
þ Definitive Proxy Statement
o Definitive Additional Materials
o Soliciting Material Pursuant to §240.14a-12

SMARTPROS LTD.

(Name of Registrant as Specified in its Charter)

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):
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(1) Title of each class of securities to which transaction applies:

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(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

SMARTPROS LTD.

Notice of Annual Meeting of Stockholders
To Be Held on June 16, 2009 at 10:00 A.M.

TO THE STOCKHOLDERS OF SMARTPROS LTD.:

NOTICE IS HEREBY GIVEN that the Annual Meeting of Stockholders of SmartPros Ltd. (SmartPros) will be held at the Comfort Inn, 20 Saw Mill River Road, Hawthorne, New York 10532, on Tuesday, June 16, 2009 at 10:00 A.M. Eastern Time for the following purposes:

1. To elect one (1) Class II director to serve for a term of three years.

2. To approve SmartPros 2009 Incentive Compensation Plan.

3. To obtain advisory approval of the appointment of Holtz Rubenstein Reminick LLP as independent auditors for the year ending December 31, 2009.

4. To transact such other business as may properly be brought before the meeting or any adjournment or postponements thereof.

The Board of Directors has fixed the close of business on April 17, 2009, as the record date for the determination of the stockholders entitled to notice of and to vote at this meeting and at any adjournment or postponements thereof.

BY ORDER OF THE BOARD OF DIRECTORS

Karen S. Stolzar, Secretary

Dated: Hawthorne, New York
April 27, 2009

IMPORTANT: Whether or not you expect to attend in person, please complete, sign, date and return the enclosed Proxy at your earliest convenience. This will ensure the presence of a quorum at the meeting. **Promptly signing, dating and returning the Proxy will save SmartPros the expense and extra work of additional solicitation.** An addressed envelope for which no postage is required has been enclosed for that purpose. Sending in your Proxy will not prevent you from voting your stock at the meeting if you desire to do so, as your Proxy is revocable at your option. If your stock is held through a broker, bank or a nominee and you wish to vote at the meeting you will need to obtain a proxy form from your broker, bank or a nominee and present it at the meeting.

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Important Notice Regarding Internet Availability of Proxy Materials for the Annual Meeting to Be Held on June 16, 2009.

The proxy materials for the Annual Meeting, including the Annual Report and the Proxy Statement are available at http://ir.smartpros.com.

SMARTPROS LTD.

PROXY STATEMENT

FOR ANNUAL MEETING OF STOCKHOLDERS
To Be Held on June 16, 2009

We are furnishing this Proxy Statement to our stockholders in connection with the solicitation by our Board of Directors (the Board) of proxies (Proxy or Proxies) to be used at the 2009 Annual Meeting of Stockholders of SmartPros to be held at the Comfort Inn, 20 Saw Mill River Road, Hawthorne, New York 10532, on Tuesday, June 16, 2009, at 10:00 A.M. Eastern Time, and at any adjournments thereof (the Annual Meeting). The approximate date on which this Proxy Statement and the accompanying Proxy will be mailed to stockholders is May 1, 2009.

THE VOTING & VOTE REQUIRED

Record Date and Quorum

Only stockholders of record at the close of business on April 17, 2009 (the Record Date), are entitled to notice of and vote at the Annual Meeting. On the Record Date, there were 4,995,826 outstanding shares of our common stock, par value $.0001 per share, (Common Shares). Each Common Share is entitled to one vote. Common Shares represented by each properly executed, unrevoked Proxy received in time for the meeting will be voted as specified. Common Shares were our only voting securities outstanding on the Record Date. A quorum will be present at the Annual Meeting if stockholders owning a majority of the Common Shares outstanding on the Record Date are present at the meeting in person or by Proxy.

Voting of Proxies

The persons acting as proxies (the Proxyholders) pursuant to the enclosed Proxy will vote the shares represented as directed in the signed Proxy. Unless otherwise directed in the Proxy, the Proxyholders will vote the shares represented by the Proxy: (i) for the election of the Class II director nominee named in this Proxy Statement; (ii) for the approval of the 2009 Incentive Compensation Plan (the 2009 Plan); (iii) for the appointment of the independent auditors for the year ending December 31, 2009, on an advisory basis; and (iv) in their discretion, on any other business that may come before the meeting and any adjournments of the meeting.

All votes will be tabulated by the inspector of election appointed for the Annual Meeting, who will separately tabulate affirmative and negative votes, abstentions and broker non-votes. Under our bylaws and Delaware law: (1) shares represented by Proxies that reflect abstentions or broker non-votes (*i.e.*, shares held by a broker or nominee that are represented at the meeting, but with respect to which such broker or nominee is not empowered to vote on a particular proposal) will be counted as shares that are present and entitled to vote for purposes of determining the presence of a quorum; (2) there is no cumulative voting, and the director nominees receiving the highest number of votes, up to the number of directors to be elected, are elected and, accordingly, abstentions, broker non-votes and withholding of authority to vote will not affect the election of directors; and (3) Proxies that reflect abstentions or non-votes will be treated as unvoted for purposes of determining approval of that proposal and will not be counted as votes for or against that proposal.

Voting Requirements

Election of Director. The election of the Class II director nominee will require a plurality of the votes cast for his election at the Annual Meeting. In the election of the Class II director, votes may be cast in favor of or withheld with respect to the nominee. Votes that are withheld will be excluded entirely from the vote and will have no effect on the outcome of the vote.

Approval of the 2009 Plan and Advisory Approval of the Appointment of Independent Auditors. The affirmative vote of a majority of the votes cast on the matter by stockholders entitled to vote at the Annual Meeting is required to approve (i) the 2009 Plan; and (ii) the appointment of our independent auditors for the fiscal year ending December 31, 2009 on an advisory basis. An abstention from voting on this matter will be treated as present for quorum purposes. However, since an abstention is not treated as a vote for or against the matter, it will have no effect on the outcome of the vote.

PROPOSAL 1
ELECTION OF DIRECTORS AND MANAGEMENT INFORMATION

The Board currently consists of five members and is divided into three classes, with two Class I directors, one Class II director and two Class III directors. Directors serve for three-year terms with one class of directors elected by our stockholders at each annual meeting.

At the Annual Meeting, a Class II director will be elected to serve until the annual meeting of stockholders in 2012 and until such director s successor is elected and qualified. The Board has nominated Jack Fingerhut for re-election as a Class II director. Mr. Fingerhut is currently a Class II director. The accompanying form of Proxy will be voted for the re-election of Mr. Fingerhut as a Class II director, unless the Proxy contains contrary instructions. We have no reason to believe that Mr. Fingerhut will not be a candidate or will be unable to serve. However, in the event that he is unable or unwilling to serve as a director, the Proxy will be voted for the election of such person or persons as shall be designated by the Board.

The Board Unanimously Recommends a Vote FOR the Election of Jack Fingerhut
and Proxies that are Signed and Returned Will Be So Voted
Unless Otherwise Instructed.

* * * * *

Set forth below is a brief biography of the nominee for election as a Class II director and all other members of the Board who will continue in office.

Nominee for Election as Class II Director
Term Expiring 2012

Jack Fingerhut, age 58. Mr. Fingerhut is one of our founders and has been a director since 1981. He has served as our president since March 1, 2006. From April 2004 until March 2006 he was senior executive vice president and from April 2004 through October 18, 2004, he also served as our treasurer. From 1998 through April 2004 he was president of the accounting division and from July 2002 through October 19, 2004, he was also our chief financial officer. He served as both our chief operating officer and chief financial officer from 1981 through 1998. In 1973, Mr. Fingerhut received a BA degree in History from the University of Maryland, and in 1974 he earned his MBA in Accounting from Rutgers University. He is a certified public accountant in New Jersey. Mr. Fingerhut is a member of the American Institute of Certified Public Accountants and the New Jersey Society of Certified Public Accountants.

Incumbent Class I Directors
Term Expiring 2011

Martin H. Lager, age 57. Mr. Lager was appointed to the Board as a Class I director in March 2006. From April 2004 through March 2006 he served on the Board as a Class III director. Since his initial appointment to the Board in October 2004, he has served as the chairman of our Audit Committee. Since January 1, 2004, Mr. Lager has been operating his own accounting practice, Martin H. Lager, CPA. From January 1, 1996 through December 31, 2003 Mr. Lager was a partner in the accounting firm of Rubin & Katz LLP where he was the manager of the tax department. Mr. Lager received a BS in Accounting from Babson College in 1974, and an MBA in Taxation in 1980 from St. John s University. He is a licensed certified public accountant in the State of New York.

John J. Gorman, age 54. Mr. Gorman was appointed to the Board in January 2006 and has been serving as the chairman of our Compensation and Nominating Committee since November 2007. Mr. Gorman has been a partner at Luse, Gorman, Pomerenk & Schick, P.C., a Washington, DC law firm, since 1994. He specializes in providing both transactional and general corporate and securities law advice to public and private companies. Mr. Gorman is a faculty member of the National Association of Corporate Directors (NACD), and served as a Commissioner on the 2004 NACD Blue Ribbon Commission on Board Leadership. Mr. Gorman earned a BS degree from Brown University in 1976, and a JD from Vanderbilt University School of Law in 1979.

Incumbent Class III Directors
Term Expiring 2010

Allen S. Greene, age 62. Mr. Greene has been the chairman of the Board since January 1, 2006 and our chief executive officer since April 2001. Prior to his appointment as chairman, he served as vice chairman of the Board. He is also chairman and chief executive officer of our SmartPros Legal and Ethics, Ltd. (formerly known as Working Values, Ltd.), Skye Multimedia, Ltd. and Loscalzo Associates, Ltd. subsidiaries, and chairman of iReflect, LLC., a joint venture of our Skye Multimedia subsidiary (iReflect) which provides an inter-active, web-based tool used for the development of marketing and presentation skills. From August 1997 until December 1999 he was the senior executive vice president, chief operating officer, and chief lending officer of Medallion Financial Corporation, a Nasdaq-listed financial holding company lending to small business. Since 1997, Mr. Greene has been president of Veral & Co. LLC, a private consulting firm that provided general business, financial and M&A advisory services. Veral is currently inactive. Mr. Greene holds a BBA from The Baruch School of the City University of New York in Finance and Investments, and an MBA from Baruch College of the City University of New York.

Leonard J. Stanley, age 54. Mr. Stanley was appointed to the Board in August 2007 and is currently the chief financial officer of Utendahl Capital Partners, L.P., a regional broker-dealer. From February 2007 to May 2008, he was a consultant to Stifel, Nicolaus & Company, Incorporated, also a regional broker-dealer. From November 1994 through February 2007, Mr. Stanley was employed by Ryan Beck & Co., a middle market investment bank, where he was executive vice president director of administration. His prior positions at Ryan Beck included chief administrative officer, chief financial officer and controller. Since May 1998, he has served as a member of the board of directors of Cenlar Capital Corporation and Cenlar Federal Savings Bank. Mr. Stanley received a BS in Accounting in 1976 from the State University of New York, Fredonia. He is a certified public accountant in the State of New Jersey.

All directors attended at least 75% of the aggregate number of Board meetings and of all committees of the Board on which that director served during the last full fiscal year.

EXECUTIVE OFFICERS

The following table sets forth the names, ages and principal positions of our executive officers as of the Record Date:

Name	Age	Position
Executive Officers		
Allen S. Greene	62	Chief Executive Officer, Chairman of the Board, Chairman and Chief Executive Officer of SmartPros Legal and Ethics, Ltd., Skye Multimedia Ltd. and Loscalzo Associates, Ltd., and Chairman of iReflect, LLC
Jack Fingerhut	58	President, President of Accounting Division and Director
Stanley P. Wirtheim	59	Chief Accounting and Financial Officer, Treasurer and Chief Financial Officer of iReflect, LLC
Joseph R. Fish	43	Chief Technology Officer
Karen S. Stolzar	60	Vice-President and Secretary
Significant Employees		
Seth Oberman	45	President of Skye Multimedia, Inc. and iReflect, LLC
Stephen K.Henn	45	President of SmartPros Legal and Ethics, Ltd.
Margaret A. Loscalzo	59	President of Loscalzo Associates, Ltd.
Michael Fowler	45	Senior Vice President of Business Development

The principal occupation and business experience for at least the last five years for each executive officer is set forth below (except for Messrs. Greene and Fingerhut, each of whose business experience is discussed above).

Executive Officers

Stanley P. Wirtheim. Mr. Wirtheim has been our chief accounting and financial officer and treasurer since October 19, 2004, the day our initial public offering was effective. In 2008, he was also appointed the chief financial officer of iReflect. Mr. Wirtheim is a certified public accountant in New York State. He works for us four full days per week so that he can maintain his independent accounting practice, Stanley P. Wirtheim, CPA, which he founded in 1997. Prior to his becoming our chief accounting and financial officer and since 1981, he has performed accounting services for us. Mr. Wirtheim received a BBA in accounting from Baruch College of the City University of New York.

Joseph R. Fish. Mr. Fish has been our chief technology officer since January 1, 2000. He joined us in November 1998 and, through December 31, 1999, served as our vice president of new media. Mr. Fish attended Embry-Riddle Aeronautical University in Katterbach, Germany.

Karen S. Stolzar. Ms. Stolzar has been a vice president of our accounting division since joining us in March 1990. She was appointed Secretary in March 2006. She oversees course compliancy and continuing education for our accounting division. Ms. Stolzar received a BA degree from Barnard College, Columbia University.

Significant Employees

Seth Oberman. Mr. Oberman is the co-founder and president of our Skye Multimedia, Inc. subsidiary, which we purchased in February 2006. He founded Skye in April 1995 and began working for us as of March 1, 2006. In 2008, he was also appointed the president of iReflect. Mr. Oberman received a BS in Business from Lehigh University in 1985.

Stephen Henn. Mr. Henn joined SmartPros in November 2006 and was appointed president of our SmartPros Legal and Ethics, Ltd. (formerly known as Working Values, Ltd.) subsidiary effective April 1, 2008. Mr. Henn was the founder and, from September 2005 to November 2006, president of Cognistar Interactive Corporation. From September 2004 to August 2005, Mr. Henn served as senior vice president of business development for Cognistar Holdings LLC. From February 1999 to August 2004, Mr. Henn was president of Cognistar Corporation. Mr. Henn received a BA in Economics from the University of Chicago in 1985 and his JD from University of Connecticut School of Law in 1994.

Margaret Loscalzo. Ms. Loscalzo is the founder and president of our Loscalzo Associates, Ltd. subsidiary, which we purchased in July 2008. She founded Loscalzo Associates in 1981 and began working for us as of July 2008. Ms. Loscalzo received a BS in Accounting in 1971 from the St. John s University and a MBA in Finance from Fordham University. She is a certified public accountant in the States of New York and New Jersey.

Michael Fowler. Mr. Fowler has been our senior vice president of business development since September 2007. From November 2003 to September 2007, he was the senior director of business development for Thomson NETg, a provider of e-learning solutions for global enterprises, government, education and small- to medium-size businesses. From January 2001 to November 2003, he worked for Kaplan Financial, a provider of education and compliance solutions for the insurance and financial services industries, where he held the positions of vice president of strategy, from January 2001 to January 2003, and vice president of business partnerships, from January 2003 to November 2003. Mr. Fowler received a BBA in Marketing in 1985 from the Grand Valley State University of Michigan.

Audit Committee Financial Expert

The Board has determined that the Chairman of the Audit Committee, Mr. Lager, is an audit committee financial expert, as that term is defined in Item 407(d)(5) of Regulation S-K, and independent for purposes of the listing standards of the NASDAQ Capital Market (NASDAQ), and Section 10A(m)(3) of the Securities Exchange Act of 1934, as amended (the Exchange Act).

Committees of the Board of Directors

The Board established an Audit Committee and a Compensation and Nominating Committee. The members of both committees are independent for purposes of the NASDAQ listing standards.

The Chairman of our Audit Committee is Mr. Lager and the other members of the committee are Messrs. Stanley and Gorman. All of the members qualify as independent in accordance with the applicable rules under the U.S. Securities and Exchange Commission (SEC) and NASDAQ. The Audit Committee meets with management and our independent public accountants to determine the adequacy of internal controls and other financial reporting matters and review related party transactions for potential conflict-of-interest situations. The Audit Committee met four times in 2008.

Audit Committee Report

The Audit Committee was established to meet with management and our independent accountants to determine the adequacy of internal controls and other financial reporting matters. The Board has adopted a written charter for the Audit Committee. The Audit Committee reviewed our audited financial statements for the year ended December 31, 2008, and met with management to discuss such audited financial statements. The Audit Committee has discussed with our independent accountants, Holtz Rubenstein Reminick LLP, the matters required to be discussed pursuant to Statement on Accounting Standards No. 61, as may be modified or supplemented. The Audit Committee has received the written disclosures and the letter from Holtz Rubenstein Reminick LLP required by the Independence Standards Board Standard No. 1, as may be modified or supplemented. The Audit Committee has discussed with Holtz Rubenstein Reminick LLP its independence from SmartPros and its management. Holtz Rubenstein Reminick LLP had full and free access to the Audit Committee. Based on its review and discussions, the Audit Committee recommended to the Board that the audited financial statements be included in the SmartPros Annual Report on Form 10-K.

AUDIT COMMITTEE:

Martin H. Lager, Chairman
Leonard J. Stanley
John J. Gorman

The Chairman of the Compensation and Nominating Committee is Mr. Gorman and the other members of the committee are Messrs. Stanley and Lager. The committee reviews and recommends the compensation and benefits payable to our officers, reviews general policy matters relating to employee compensation and benefits, and administers our various stock option plans and other incentive compensation arrangements. The committee also identifies individuals qualified to become members of the Board and makes recommendations to the Board of new nominees to be elected by stockholders or to be appointed to fill vacancies on the Board. The Compensation and Nominating Committee met one time in 2008. A copy of the Compensation and Nominating Committee Charter has been posted on our Web site at www.smartpros.com.

In identifying and recommending nominees for positions on the Board, the Compensation and Nominating Committee places primary emphasis on the following: (i) a candidate s judgment, character, expertise, skills and knowledge useful to the oversight of our business; (ii) a candidate s business or other relevant experience; and (iii) the extent to which the interplay of the candidate s expertise, skills, knowledge and experience with that of other members of the Board will build a board of directors that is effective, collegial and responsive to our needs.

The Compensation and Nominating Committee will consider director candidates recommended by stockholders. In considering candidates submitted by stockholders, the committee will take into consideration the needs of the Board and the qualifications of the candidate. Under our bylaws, to have a candidate considered by the committee, a stockholder must timely notify our Secretary, Karen Stolzar, by written notice delivered to, or mailed to and received at, our principal executive offices not less than thirty (30) days and not more than sixty (60) days prior to the scheduled annual meeting date, regardless of any postponements, deferrals or adjournments of that meeting to a later date; PROVIDED, HOWEVER, that if less than forty (40) days notice or prior public disclosure of the date of the scheduled annual meeting is given or made, notice by the stockholder, to be timely, must be so delivered or received not later than the close of business on the tenth (10th) day following the earlier of the day on which such notice of the date of the scheduled annual meeting was mailed or the day on which such public disclosure was made. A stockholder s notice to the Secretary shall set forth the following information: (i) as to each person whom the stockholder proposes to nominate for election to the Board, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to the Exchange Act, including, without limitation, such

person s written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (ii) the name and address of the stockholder making the nomination and any other stockholders known by such stockholder to be supporting such nomination; (iii) the class and number of shares of stock owned by the stockholder on the date of such stockholder s notice and by any other stockholders known by such stockholder to be supporting such nomination on the date of such stockholder s notice; and (iv) any financial interest of the stockholder in such nomination.

The Compensation and Nominating Committee believes that the minimum qualifications for service as a director are that a nominee possess an ability, as demonstrated by recognized success in his or her field, to make meaningful contributions to the Board s oversight of our business and affairs and an impeccable reputation of integrity and competence in his or her personal or professional activities. The committee s evaluation of potential candidates shall be consistent with the Board s criteria for selecting new directors. Such criteria include an understanding of our business environment and the possession of such knowledge, skills, expertise and diversity of experience so as to enhance the Board s ability to manage and direct our affairs and business, including when applicable, to enhance the ability of committees of the Board to fulfill their duties and/or satisfy any independence requirements imposed by law, regulation or listing requirements. The committee may also receive suggestions from current members of the Board, executive officers or other sources, which may be either unsolicited or in response to requests from the committee for such candidates. In addition, the committee may also, from time to time, engage firms that specialize in identifying director candidates.

Once a person has been identified by the committee as a potential candidate, the committee may collect and review publicly available information regarding the person to assess whether the person should be considered further. If the committee determines that the candidate warrants further consideration, the chairman or another member of the committee may contact the person. Generally, if the person expresses a willingness to be considered and to serve on the Board, the committee may request information from the candidate, review the person s accomplishments and qualifications and may conduct one or more interviews with the candidate. The committee will consider all such information in light of information regarding any other candidates that the committee might be evaluating for membership on the Board. In certain instances, the committee members may contact one or more references provided by the candidate or may contact other members of the business community or other persons that may have greater first-hand knowledge of the candidate s accomplishments. The committee s evaluation process does not vary based on whether or not a candidate is recommended by a stockholder.

It is our policy to invite and encourage all of the directors to attend the Annual Meeting. All of the directors attended our 2008 Annual Meeting.

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Principal Accountant Fees and Services

The aggregate fees billed by our principal accounting firm, Holtz Rubenstein Reminick LLP, for the fiscal years ended December 31, 2008 and 2007, are as follows:

	2008	2007
Audit fees (1)	$ 86,200	$ 76,171
Audit-related fees		
Total audit and audit-related fees	86,200	76,171
Tax fees		
All other fees (2)	56,600	4,450
Total fees	$ 142,800	$ 80,621

(1) Includes $10,200 and $11,361 of fees billed for services rendered in connection with their review of our quarterly reports on Forms 10-Q and 10-QSB for the fiscal years ended December 31, 2008 and 2007, respectively.

(2) Fees for audit, research and consulting in connection with acquisitions made in the fiscal years ended December 31, 2008 and 2007.

Audit Committee Pre-Approval Policies and Procedures

The Audit Committee charter provides that the Audit Committee will pre-approve audit services and non-audit services to be provided by our independent auditors before they are engaged to render these services. The Audit Committee may consult with management in the decision-making process but may not delegate this authority to management. The Audit Committee may delegate its authority to pre-approve services to one or more committee members, provided that the designees present the pre-approvals to the full committee at the next committee meeting.

Communications with Directors

The Board has established a process to receive communications from stockholders. Stockholders and other interested parties may contact any member (or all members) of the Board, or the non-management directors as a group, any Board committee or any chair of any such committee by mail or electronically. To communicate with the Board, any individual director or any group or committee of directors, correspondence should be addressed to the Board or any such individual directors or group or committee of directors by either name or title, care of the Secretary. All such correspondence should be sent to our principal executive offices or by e-mail to the Secretary at *secretary@smartpros.com*. All communications received as set forth in the preceding paragraph will be opened by the Secretary for the sole purpose of determining whether the contents represent a message to our directors. Any contents that are not in the nature of advertising, promotions of a product or service, patently offensive material or matters deemed inappropriate for the Board will be forwarded promptly to the addressee. In the case of communications to the Board or any group or committee of directors, the Secretary will make sufficient copies of the contents to send to each director who is a member of the group or committee to which the envelope or e-mail is addressed.

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PROPOSAL 2
APPROVAL OF THE 2009 INCENTIVE COMPENSATION PLAN

Introduction

On March 10, 2009, the Board unanimously approved and adopted the 2009 Plan to replace our 1999 Stock Option Plan (1999 Plan), which is expiring this year, and directed that the 2009 Plan be submitted to stockholders for approval. The 2009 Plan will become effective on the date our stockholders approve it (the Effective Date) and, at such time, the 1999 Plan will terminate and no longer be in effect.

The 2009 Plan will replace the 1999 Plan and, like the 1999 Plan, will serve to align the interests of the participants with those of our stockholders through equity-based compensation alternatives, thereby promoting our long-term financial interests and enhancing long-term stockholder return. The 2009 Plan is intended to enhance our ability to effectively recruit, motivate and retain the caliber of employees and directors essential for our success and provide them with incentive compensation opportunities that are competitive with those of similar companies.

Approval of the 2009 Plan, which allows awards to be granted under it for ten years, is intended to give us needed certainty and flexibility in designing and managing equity-based compensation to meet the needs of our business over an extended period of time.

The maximum number of Common Shares that may be issued under the 2009 Plan is 800,000, less the sum of the following: (i) the number of Common Shares issued on or after January 1, 2009 and immediately prior to the Effective Date pursuant to the exercise of outstanding stock options granted under the 1999 Plan; (ii) the number of Common Shares issuable upon exercise of stock options outstanding on the Effective Date that were granted under the 1999 Plan; (iii) the number of restricted Common Shares granted under the 1999 Plan (whether vested or unvested). The maximum number of Common Shares available for issuance under the 1999 Plan as of December 31, 2008 was 748,970.

The number of Common Shares covered by outstanding stock options granted under the 1999 Plan was 418,479 and the total number of Common Shares issued pursuant to restricted stock awards granted under the 1999 Plan was 183,388. Thus, assuming none of the outstanding stock options are exercised and no further grants of stock options or restricted stock are made under the 1999 Plan between the date of this Proxy Statement and the Effective Date, the total number of Common Shares available for new awards under the 2009 Plan initially will be 198,133. Any outstanding stock options granted under the 1999 Plan or the 2009 Plan that are cancelled or expire unexercised and any restricted Common Shares granted under the 1999 Plan or the 2009 Plan that are forfeited will return to the 2009 Plan and be available for future awards.

Summary Description of the 2009 Plan

The following is a brief summary of the material features of the 2009 Plan. This summary is qualified in its entirety by reference to the text of the 2009 Plan, a copy of which is attached as Appendix A.

Administration and Operation

The 2009 Plan will be administered by a committee of directors (each of whom will be a non-employee director for purposes of Rule 16b-3 promulgated by the SEC and an outside director for purposes of Section 162(m) of the Code) designated from time to time by the Board. Currently the Compensation and Nominating Committee has been charged with the responsibility of administering our stock-based compensation programs, and it will serve as the administration committee for the 2009 Plan.

Subject to certain restrictions that are set forth in the 2009 Plan, the committee will have complete and absolute authority to make any and all decisions regarding the administration of the 2009 Plan, including the authority to construe and interpret the plan and awards under the plan, establish administrative rules and procedures, select award recipients, determine the type of awards, establish the terms, conditions and other provisions of awards and amend awards. Subject to certain restrictions that are set forth in the 2009 Plan, the committee may delegate any of its authority and responsibility to management, except for determinations and decisions regarding awards to be made, which must be made by the committee itself.

Eligibility

The persons eligible to receive awards under the 2009 Plan include all of our employees, directors, officers, agents and other service providers.

Shares Available for Issuance

The number of Common Shares that are authorized and available for issuance under the 2009 Plan when it becomes effective will be 800,000. No more than 200,000 Common Shares, however, can be issued pursuant to awards in the form of restricted stock and restricted stock units, as described below; *provided, however*, the number of Common Shares available for new awards under the 2009 Plan are reduced by the number of shares issued on or after January 1, 2009 upon the exercise of outstanding stock options, covered by outstanding stock options and restricted stock awards granted under the 1999 Plan. Any outstanding stock options granted under the 1999 Plan that are cancelled or expire unexercised and any restricted stock awards granted under the 1999 Plan that are forfeited will increase the number of Common Shares available for new awards under the 2009 Plan up to a maximum of 800,000 Common Shares. The number of Common Shares authorized and available for issuance under the 2009 Plan is subject to adjustment in the event of a stock split, stock dividend, recapitalization, spin-off or similar action.

Types and Terms of Awards

Awards under the 2009 Plan may take the form of stock options (either incentive stock options or non-qualified options), restricted stock, or restricted stock units. Subject to restrictions that are set forth in the 2009 Plan, the committee will have complete and absolute authority to set the terms, conditions and provisions of each award, including the size of the award, the exercise or base price, the vesting and exercisability schedule (including provisions regarding acceleration of vesting and exercisability) and termination and forfeiture provisions.

The committee shall be subject to the following specific restrictions regarding the types and terms of awards:

The exercise price for a stock option may not be less than 100% of the fair market value of the stock on the date of grant.

No award may be granted after the expiration, more than ten years after the effective date, of the 2009 Plan.

No participant may receive in any calendar year awards of (i) stock options that cover more than 175,000 Common Shares and (ii) restricted stock or restricted stock units (or any combination thereof) that cover more than 75,000 Common Shares.

No stock option can be repriced without the consent of the stockholders and of the option holder if the effect would be to reduce or increase the exercise price per share. For this purpose, repricing includes a tandem cancellation and regrant or any other amendment or action that would have substantially the same effect as decreasing or increasing the exercise price.

Change in Control

If the applicable award agreement so provides, upon certain events constituting a change in control of the company, as specified in the 2009 Plan, immediately prior to the occurrence of the change in control all options subject to the award will become immediately exercisable, the expiration of the restrictions applicable to any restricted stock or restricted stock unit grant made under the award shall immediately be accelerated, and such other results shall take place with respect to other awards as may be set forth in the relevant award agreement.

Amendments and Termination

To the extent permitted by law, the Board, without the consent or approval of any 2009 Plan participant, may amend, suspend or terminate the 2009 Plan, so long as that action does not adversely affect the rights of any holder under any award then outstanding. Without the approval of the stockholders, however, in general the Board may not amend the 2009 Plan to increase the number of shares available for issuance or to modify the requirements regarding eligibility in the 2009 Plan. No Awards will be granted under the 2009 Plan after the tenth anniversary of its effective date.

Federal Income Tax Consequences

The following is a brief description of the material U.S. federal income tax consequences associated with awards under the 2009 Plan. It is based on existing U.S. laws and regulations, and there can be no assurance that those laws and regulations will not change in the future. Tax consequences in other countries may vary.

Stock Options. There will generally be no federal income tax consequences to either us or the participant upon the grant of a stock option. If the option is a non-qualified stock option, the participant will realize ordinary income at exercise equal to the excess of the fair market value of the stock acquired over the exercise price and we will, in general, receive a corresponding deduction. Any gain or loss realized upon a subsequent disposition of the stock will generally constitute capital gain or loss, as may be applicable.

If the option is an incentive stock option, the participant generally will not realize taxable income on exercise, but the excess of the fair market value of the stock acquired over the exercise price will be taken into account in determining the optionees alternative minimum taxable income for purposes of calculating the alternative minimum tax. When the stock is subsequently sold, the participant will recognize income equal to the difference between the sales price and the exercise price of the option. If that sale occurs after the expiration of two years from the date of the grant and one year from the date of exercise, the income will constitute, in general, long-term capital gain. If the holding period requirements set forth in the previous sentence are not met, the participant will recognize ordinary income to the extent of, in general, the lesser of the gain realized upon the sale or the difference between the fair market value of the acquired stock at the time of exercise and the exercise price; any additional gain will constitute capital gain. In general, we will be entitled to a deduction in an amount equal to the ordinary income, if any, that the participant recognizes.

Restricted Stock. Generally, restricted stock is not taxable to a participant at the time of grant, but instead is included in ordinary income (at its then fair market value) when the restrictions lapse. A participant may elect to recognize income at the time of grant, in which case the fair market value of the stock at the time of grant is included in ordinary income and there is no further income recognition when the restrictions lapse. We will be entitled, in general, to a tax deduction in an amount equal to the ordinary income recognized by the participant, except to the extent that such participant s total compensation for the taxable year exceeds one million dollars, in which case such deduction may be limited by section 162(m) of the Code unless any such grant of restricted stock is made pursuant to a performance-based benchmark established by the committee.

Restricted Stock Units. In the case of awards of restricted stock units, the participant generally will recognize ordinary income in an amount equal to the fair market value of any shares received on the date of payment or the date of delivery of the underlying shares and we generally will be entitled to a corresponding tax deduction.

If an award under the 2009 Plan constitutes a deferral of compensation subject to the requirements of section 409A of the Internal Revenue Code, and if the award fails to meet those requirements or to be operated in accordance with those requirements, the recipient of the award will realize taxable income, generally, at the time of the deferral (or, if later, at the time the award ceases to be subject to a substantial risk of forfeiture), and an interest charge and additional 20% tax will also apply. It is anticipated, however, that any awards under the 2009 Plan that are subject to the requirements of section 409A will be made and administered in accordance with those requirements.

The Board Unanimously Recommends A Vote FOR The Approval of the 2009 Plan and Proxies that are Signed and Returned Will Be So Voted Unless Otherwise Instructed.

* * * * *

PROPOSAL 3
ADVISORY APPROVAL OF THE APPOINTMENT OF INDEPENDENT AUDITORS

Holtz Rubenstein Reminick LLP has been our independent auditor since November 2004. Their audit report appears in our annual report for the fiscal year ended December 31, 2008. A representative of Holtz Rubenstein Reminick LLP will be at the Annual Meeting and will have an opportunity to make a statement if he or she desires to do so and will be available to respond to appropriate questions.

Selection of the independent accountants is not required to be submitted to a vote of our stockholders for ratification. In addition, the Sarbanes-Oxley Act of 2002 requires the Audit Committee to be directly responsible for the appointment, compensation and oversight of the audit work of the independent auditors. The Audit Committee expects to appoint Holtz Rubenstein Reminick LLP to serve as independent auditors to conduct an audit of SmartPros accounts for the 2009 fiscal year. However, the Board is submitting this matter to SmartPros stockholders as a matter of good corporate practice. If the stockholders fail to vote on an advisory basis in favor of the selection, the Audit Committee will take that into consideration when deciding whether to retain Holtz Rubenstein Reminick LLP, and may retain that firm or another without re-submitting the matter to the stockholders. Even if stockholders vote on an advisory basis in favor of the appointment, the Audit Committee may, in its discretion, direct the appointment of different independent auditors at any time during the year if it determines that such a change would be in the best interests of SmartPros and the stockholders.

The Board Unanimously Recommends a Vote FOR this Proposal and Proxies that are Signed and Returned Will Be So Voted Unless Otherwise Instructed

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EXECUTIVE COMPENSATION AND TRANSACTIONS WITH DIRECTORS, OFFICERS AND PRINCIPAL HOLDERS

The following table sets forth information regarding compensation awarded to, earned by, or paid to our principal executive officer and our two most highly compensated executive officers, other than our principal executive officer whose total compensation exceeded $100,000 in 2008 (collectively, the Named Executive Officers), for all services rendered to us in all capacities during the last two completed fiscal years.

Summary Compensation Table

Name and Principal Position (a)	Year (b)	Salary (c)	Bonus (d)(1)	Stock Awards (e)(2)	Option Awards (f)(2)	All Other Comp (i)(3)	Total (j)
Allen S. Greene,	2008	$ 300,000	$ 26,667	$ 73,203	$ 6,462	$ 34,567	$ 440,899
Chief Executive Officer	2007	$ 281,250	$ 25,000	$ 22,783	$ 1,616	$ 36,644	$ 367,293
Jack Fingerhut,	2008	$ 212,500	$ 20,000	$ 28,663	$ 6,997	$ 20,448	$ 288,608
President	2007	$ 203,125	$ 20,000	$ 11,118	$ 808	$ 25,825	$ 260,876
Joseph Fish	2008	$ 185,000	$ 13,333	$ 21,967	$ 6,788	$ 14,402	$ 241,490
Chief Technology Officer	2007	$ 171,125	$ 16,000	$ 20,452	$ 4,463	$ 9,689	$ 221,729

(1) Cash bonuses and stock awards in 2007 were paid in 2008. Cash bonuses and stock awards in 2008 were paid in 2009.

(2) Calculated using the provisions of Statement of Financial Accounting Standards (SFAS) No. 123R, Share-based Payments, and reflects the amounts charged to income as reported on our financial statements.

(3) Car allowance (net of taxable portion) or payment, medical and long-term disability insurance and/or 401(k) matching.

Employment Agreements

We have employment agreements with each of the Named Executive Officers.

The employment agreement with Allen S. Greene, dated as of February 1, 2007, is for a term of three years but renews automatically for a new three-year term at the end of the first year of each three-year term unless either party gives notice before the end of the first year of each three year term of its intention not to renew the agreement. The contract called for an initial annual base salary of $275,000 subject to increases and bonuses awarded by the compensation committee. Mr. Greene is also entitled to either a company car or a car allowance and is also entitled to participate in all of our employee benefit programs, including health and long-term disability insurance. In the event we terminate the agreement without cause (as defined) or by Mr. Greene terminates the agreement for good reason (as defined), Mr. Greene is entitled to the remainder of his base salary and all fringe benefits and an average of the last two years annual bonuses.

The employment agreement with Jack Fingerhut, as amended as of October 1, 2008, is for a term of three years. Mr. Fingerhut s annual base salary is $212,500 subject to increases and bonuses awarded by the compensation committee. He is also entitled to participate in all of our employee benefit programs, including health and long-term disability insurance. In addition, he receives an annual car allowance. In the event his contract is terminated by us without cause (as defined), he will be entitled to his base salary and all fringe benefits for the remainder of the term of the contract, and a payment equal to the average of the then last two years bonuses multiplied by the number of years, or fraction thereof, remaining on the term of the contract.

The employment agreement with Joseph Fish, as amended on August 20, 2008, is for a term through February 2010. Mr. Fish s annual base salary is $185,000 subject to increases and bonuses awarded by the compensation committee. He is also entitled to participate in all of our employee benefit programs, including health and long-term disability insurance. In addition, he receives an annual car allowance. In the event his contract is terminated by us without cause (as defined), he will be entitled to his base salary for the remainder of the term of the contract.

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Outstanding Equity Awards At December 31, 2008 (Fiscal Year-End)

	Options Awards				Stock Awards	
Name (a)	Number of Securities Underlying Unexercised Options(#) Exercisable (b)	Number of Securities Underlying Unexercised Options(#) Unexercisable (c)	Option Exercise Price (e)	Option Expiration Date (f)	Number of Shares of Stock That Have Not Vested (g)	Market Value of Shares That Have Not Vested (h)(1)
Allen S. Greene	103,399(2)		$ 5.32	04/09/2011	1,750(3)	$ 4,130
	25,850(4)		$ 2.42	01/29/2012	3,268(5)	$ 7,712
		10,000(6)	$ 5.78	09/24/2017	5,250(7)	$ 12,390
		50,000(8)	$ 2.54	02/19/2019		
Jack Fingerhut	6,666(9)	3,334(9)	$ 2.75	10/12/2016	1,042(3)	$ 2,459
		5,000(6)	$ 5.78	09/24/2017	10,000(6)	$ 23,600
					2,614(10)	$ 6,169
					3,938(11)	$ 9,294
Joseph Fish	15,000(12)		$ 3.44	10/03/2015	1,125(3)	$ 2,655
	34,897(13)		$ 5.32	07/22/2011	10,000(6)	$ 23,600
					1,046(14)	$ 2,469
					2,625(15)	$ 6,195

(1) Market value as of December 31, 2008 at closing price of $2.36.

(2) Awarded on July 24, 2001.

(3) Awarded on January 29, 2007.

(4) Awarded on January 26, 2002.

(5) Awarded on February 14, 2008. On February 14, 2009, 1,634 of these shares vested and the remaining 1,634 shares will vest on February 14, 2010.

(6) Awarded on September 24, 2007.

(7) Stock awarded on February 19, 2009 as a bonus for performance in 2008 and was recorded as a 2008 expense. The 5,250 shares vest in three equal installments beginning on February 19, 2009, and on February 1, 2010 and 2011.

(8) Awarded on February 19, 2009. Begins vesting in three equal installments on February 1, 2010, 2011 and 2012.

(9) Awarded on October 12, 2006. An aggregate of 6,666 have vested and the remaining 3,334 shares will vest on October 12, 2009.

(10) Awarded on February 14, 2008. On February 14, 2009, 1,307 of these shares vested and the remaining 1,308 shares will vest on February 14, 2010.

(11) Stock awarded on February 19, 2009 as a bonus for performance in 2008 and was recorded as a 2008 expense. The 3,938 shares vest in three equal installments beginning on February 19, 2009, and on February 1, 2010 and 2011.

(12) Awarded on October 3, 2005.

(13) Awarded in July 2001.

(14) Awarded on February 14, 2008. On February 14, 2009, 523 of these shares vested and the remaining 523 shares will vest on February 14, 2010.

(15) Stock awarded on February 19, 2009 as a bonus for performance in 2008 and was recorded as a 2008 expense. The 2,625 shares vest in three equal installments beginning on February 19, 2009, and on February 1, 2010 and 2011.

We maintain a 401(k) plan for our employees to which we made matching contributions totaling approximately $24,000 in 2007 and $0 in 2008. We do not provide for any other retirement benefit for any of our employees, including executive officers.

In recognition of our performance in 2008, on February 19, 2009 the Compensation and Nominating Committee granted certain key employees an aggregate of 116,616 restricted Common Shares and options covering 55,750 Common Shares as bonuses under the 1999 Plan. The option awards were related to services performed in 2008 and vest over three years beginning on February 1, 2010 through 2012. Of the restricted Common Shares, (i) 18,116 shares were also related to services performed in 2008 and, as such, the value of these shares was recorded as a 2008 expense, and vest in equal installments over three years beginning on February 19, 2009, and on February 1, 2010 and 2011; and (ii) 98,500 shares were awarded to certain of our key employees to provide incentive and help us retain their services of which, 48,500 shares will vest on February 1, 2012 and 50,000 shares will vest in equal annual installments over the next four years beginning on February 1, 2010 through 2013.

Each grantee of restricted Common Shares is deemed to be the legal and beneficial owner of all the Common Shares included in his or her grant and has the right to vote those shares and receive the dividends on those shares. Any unvested shares will be forfeited if the grantee s employment is terminated, voluntarily or involuntarily before they vest.

Compensation of Directors

Each non-employee director receives an annual fee of $8,000, payable in equal quarterly installments, and $500 plus reimbursement for actual out-of-pocket expenses in connection with each Board meeting attended in person and $200 for each board meeting attended telephonically. The head of the Audit Committee receives an annual fee of $1,000, payable in equal quarterly installments. Each member of the audit, compensation and nominating committees receives $500 for each committee meeting he attends in person and $200 for each audit committee meeting attended telephonically unless the meeting immediately precedes or follows a meeting of the Board, in which case he will receive $200 for attending in person or $100 if he attends by telephone. At the discretion of the Board, newly elected independent directors may be granted stock options pursuant to the terms of our Stock Option Plan. John Gorman and Marty Lager were granted options covering 9,000 and 10,000 shares, respectively, upon their election to the Board. Mr. Gorman s options have an exercise price of $3.05 and Mr. Lager s options have an exercise price of $4.00. Leonard Stanley was granted options covering 9,000 shares upon his election to the Board. Mr. Stanley s options have an exercise price of $5.94.

To align the interests of our non-employee directors with those of our stockholders, non-employee directors are each awarded stock options exercisable for 9,000 Common Shares upon joining the Board or 10,000 Common Shares, if at such time the director is also appointed a chairman of a committee of the Board. After three-years of service on the Board, non-employee directors are entitled to an annual award of stock options exercisable for 1,000 Common Shares. All such awards are subject to adjustment at the sole discretion of the Board.

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Director Compensation

The following table provides compensation information for the year ended December 31, 2008 for each of the independent members of the Board.

Name	Fees Earned In Cash	Option Awards ($)(1)	Total ($)
Marin H. Lager	$ 11,750	$ 1,750	$ 13,500
John Gorman	$ 9,150	$ 2,723	$ 11,873
Leonard J. Stanley	$ 9,950	$ 6,668	$ 16,618

(1) Reflects the value of the stock option that was charged to income as reported on our financial statements and are calculated using the provisions of Statement of Financial Accounting Standards (SFAS) No. 123R, Share-based Payments.

Limitation of Directors Liability and Indemnification

Our certificate of incorporation limits the liability of individual directors for specified breaches of their fiduciary duty. The effect of this provision is to eliminate the liability of directors for monetary damages arising out of their failure, through negligent or grossly negligent conduct, to satisfy their duty of care, which requires them to exercise informed business judgment. The liability of directors under the federal securities laws is not affected. A director may be liable for monetary damages only if a claimant can show receipt of financial benefit to which the director is not entitled, intentional infliction of harm on us or on our stockholders, a violation of Section 174 of the Delaware General Corporation Law (dealing with unlawful distributions to stockholders effected by vote of directors), and any amended or successor provision thereto, or an intentional violation of criminal law.

Our certificate of incorporation also provides that we will indemnify each of our directors or officers, and their heirs, administrators, successors and assigns against any and all expenses, including amounts paid upon judgments, counsel fees, and amounts paid or to be paid in settlement before or after suit is commenced, actually and necessarily incurred by such persons in connection with the defense or settlement of any claim, action, suit or proceeding, in which they, or any of them are made parties, or which may be asserted against them or any of them by reason of being, or having been, directors or officers of the corporation, except in relation to such matters in which such director or officer shall be adjudged to be liable for his own negligence or misconduct in the performance of his duty.

There is no pending litigation or proceeding involving any of our directors, officers, employees or agents in which we are required or permitted to provide indemnification, except as set forth under Certain Relationships and Related Party Transactions. We are also not aware of any threatened litigation or proceedings that may result in a claim for indemnification.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended (Securities Act), may be permitted to directors, officers or controlling persons under our certificate of incorporation, we have been informed that, in the opinion of the SEC, indemnification is against public policy as expressed in the Securities Act and is unenforceable.

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Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The following table sets forth information regarding the beneficial ownership of our Common Shares as of the Record Date:

each person, or group of affiliated persons, known by us to be the beneficial owner of more than 5% of our outstanding Common Shares;

each director;

each Named Executive Officer; and

all of our directors and executive officers as a group.

Except as otherwise indicated, the persons listed below have sole voting and investment power with respect to all of the Common Shares owned by them. The individual stockholders have furnished all information concerning their respective beneficial ownership to us.

Name and address of beneficial owner (1)	Common Shares Beneficially Owned (2)	Percent of Common Shares Beneficially Owned (3)
Directors and Named Executive Officers		
Allen S. Greene	403,630(4)	7.9%
Jack Fingerhut	191,344(5)	3.8%
Joseph Fish	72,716(6)	1.4%
Martin H. Lager	24,666(7)	*
John J. Gorman	50,000(8)	1.0%
Leonard J. Stanley	7,000(9)	*
All directors and executive officers as a group(8 persons)	546,939(10)	14.8%
5% Owners		
John H. Lewis		
388 Market Street, Suite 920		
San Francisco, California 94111	487,205(11)	9.8%
Zohar Ben-Dov		
2125 Hatchers Mill Road		
Marshall, Virginia 20115	520,098	10.4%

*Less than 1%

(1) Unless otherwise indicated all addresses are c/o SmartPros Ltd., 12 Skyline Drive, Hawthorne, New York 10532.

(2) According to the rules and regulations of the SEC, Common Shares that a person has a right to acquire within 60 days of the date of this Proxy Statement are deemed to be beneficially owned by that person and outstanding for the purpose of computing the percentage ownership of that person, but are not deemed outstanding for the purpose of computing the percentage ownership of any other person.

(3) Based on 4,995,826 Common Shares outstanding as of the Record Date.

(4) Includes 129,249 Common Shares underlying outstanding options and 58,634 Common Shares that are subject to vesting.

(5) Includes 6,666 Common Shares underlying options and 23,787 Common Shares are subject to vesting.

(6) Includes 49,897 Common Shares underlying options and 21,773 Common Shares are subject to vesting.

(7) Includes 10,000 Common Shares underlying options and 14,666 Common Shares beneficially owned by Mr. Lager as trustee of the Lager Family Realty Trust and the trust U/W/O Irwin Lager.

(8) Includes 9,000 Common Shares underlying options.

(9) Includes 4,500 Common Shares underlying options.

(10) Includes 219,312 Common Shares underlying outstanding options and 104,194 Common Shares are subject to vesting.

(11) 486,605 of these Common Shares are deemed beneficially owned by Mr. Lewis as the controlling member of Osmium Partners, LLC, a Delaware limited liability company, which serves as the general partner of Osmium Capital, LP, Osmium Capital II, LP and Osmium Spartan, LP, Delaware limited partnerships and the registered holders of the Common Shares.

Securities Authorized for Issuance Under Equity Compensation Plans

To attract and retain the personnel necessary for our success, we adopted our 1999 Plan which will expire this year and would be replaced by the 2009 Plan. The 1999 Plan is administered by the compensation committee of the Board and provides for equity awards to our employees and others who perform services for us, which would include directors and consultants. Stock options granted under this plan must be exercised within a maximum of 10 years from the date of grant at an exercise price that is not less than the fair market value of the Common Shares on the date of the grant. Options granted to stockholders owning more than 10% of our outstanding Common Shares must be exercised within five years from the date of grant and the exercise price must be at least 110% of the fair market value of the Common Shares on the date of the grant.

The following table sets forth the information about our 1999 Plan as of December 31, 2008:

Equity Compensation Plan Information

	Number of securities to be issued upon exercise of outstanding options and warrants	Weighted average exercise price of outstanding options and warrants	Number of securities remaining available for future issuance under equity compensation plans
Equity compensation plans approved by stockholders	365,144 (1)	$4.71	383,826

(1) Does not include 66,772 restricted Common Shares issued under the 1999 Plan.

Certain Relationships and Related Transactions

None.

Legal Proceedings

None.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires SmartPros officers and directors, and persons who own more than 10% of a registered class of our equity securities to file reports of ownership and changes in ownership with the SEC. Officers, directors and greater than 10% stockholders are required by SEC

regulations to furnish us with copies of all Section 16(a) forms they file.

To the best of our knowledge, based solely on review of the copies of such forms furnished to us, or written representations that no other forms were required, we believe that all Section 16(a) filing requirements applicable to our officers, directors and greater than 10% stockholders were complied with during 2008. With respect to any former directors, officers, and 10% stockholders, we do not have any knowledge of any known failures to comply with the filing requirements of Section 16(a).

MISCELLANEOUS

Other Matters

We know of no business that will be presented for consideration at the Annual Meeting other than that stated in the notice of meeting.

Stockholder Proposals

Stockholders interested in presenting a proposal for consideration at the annual meeting of stockholders in 2010 must follow the procedures found in Rule 14a-8 under the Exchange Act and our bylaws. To be eligible for inclusion in our 2010 proxy materials, all qualified proposals must be received by our Secretary no later than December 28, 2009. Stockholder proposals submitted thirty (30) or more, but less than sixty (60), days before the scheduled date for the 2010 annual meeting may be presented at the annual meeting if such proposal complies with our bylaws, but will not be included in our proxy materials; PROVIDED, HOWEVER, that if less than forty (40) days notice or prior public disclosure of the date of the scheduled annual meeting is given or made, notice by the stockholder, to be timely, must be so delivered or received not later than the close of business on the tenth (10th) day following the earlier of the day on which such notice of the date of the scheduled annual meeting was mailed or the day on which such public disclosure was made. A stockholder s notice to the Secretary shall set forth the following: (i) as to each person whom the stockholder proposes to nominate for election to the Board, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to the Exchange Act including, without limitation, such person s written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (ii) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting and, if such business includes a proposal or nomination to amend our bylaws, the language of the proposed amendment; (iii) the name and address of the stockholder making the proposal or nomination and any other stockholders known by such stockholder to be supporting such proposal; (iv) the class and number of shares of stock owned by the stockholder on the date of such stockholder s notice and by any other stockholders known by such stockholder to be supporting such proposal or nomination on the date of such stockholder s notice; and (v) any financial interest of the stockholder in such proposal or nomination.

Solicitation of Proxies

We will bear the cost of this Proxy solicitation and any additional material relating to the meeting which may be furnished to the stockholders. In addition, solicitation by telephone, telegraph or other means may be made personally, without additional compensation, by our officers, directors and regular employees. We also will request brokers, dealers, banks and voting trustees and their nominees holding shares of record but not beneficially to forward Proxy soliciting material to beneficial owners of such shares, and upon request, will reimburse them for their expenses in so doing.

Householding

The SEC s rules permit companies and intermediaries such as brokers to satisfy delivery requirements for proxy statements and annual reports with respect to two or more stockholders sharing the same address by delivering a single proxy statement and annual report addressed to those stockholders. This process, which is commonly referred to as householding, potentially provides extra convenience for stockholders and cost savings for companies. Some brokers household proxy materials and annual reports, delivering a single proxy statement and annual report to multiple stockholders sharing an address, although each stockholder will receive a separate proxy card. Once you have received notice from your broker that they will be householding materials to your address, householding will continue until you are notified otherwise or until you revoke your consent. If at any time you no longer wish to participate in householding and would prefer to receive a separate proxy statement and annual report, please notify your broker. If you would like to receive a separate copy of this year s Proxy Statement or Annual Report from us directly, please contact us by writing to our Secretary, Karen Stolzar, at, our principal executive offices or calling her at 914-345-2620.

Availability of Proxy Materials

We will provide without charge to each person being solicited by this Proxy Statement, on the written request of any such person, a copy of our Annual Report on Form 10-K for the year ended December 31, 2008 (the Annual Report), including the financial statements and financial statement schedules included therein. All such requests should be directed to our Secretary, Karen Stolzar, at our principal executive offices.

Important Notice Regarding Internet Availability of Proxy Materials for the Annual Meeting to Be Held on June 16, 2009.

The proxy materials for the Annual Meeting, including the Annual Report and the Proxy Statement are available at http://ir.smartpros.com.

EVERY STOCKHOLDER, WHETHER OR NOT HE OR SHE EXPECTS TO ATTEND THE ANNUAL MEETING IN PERSON, IS URGED TO EXECUTE THE PROXY AND RETURN IT PROMPTLY IN THE ENCLOSED BUSINESS REPLY ENVELOPE.

BY ORDER OF THE BOARD OF DIRECTORS

/s/ Karen S. Stolzar

Karen S. Stolzar, Secretary

Dated: Hawthorne, New York
April 27, 2009

APPENDIX A

SMARTPROS LTD.

2009 INCENTIVE COMPENSATION PLAN

I.

PURPOSES

1.1 Purposes. The purposes of this 2009 STOCK AND INCENTIVE PLAN (as the same may be amended from time to time, the Plan) are (i) to advance the interests of SMARTPROS LTD., a Delaware corporation (the Company), and its Subsidiaries (as defined below) and stockholders by strengthening the ability of the Company and its Subsidiaries to attract and retain employees, officers and directors of experience and ability and (ii) to furnish an additional incentive to such persons to expend their best efforts on behalf of the Company or any such Subsidiary.

1.2 Types of Awards. The Plan provides for the granting of the following types of Awards:

(a) Incentive Options (as defined below);

(b) Nonstatutory Options (as defined below);

(c) Restricted Stock Awards (as defined below); and

(d) Restricted Stock Units (as defined below).

1.3 Effectiveness. The Plan shall be effective on the date it is adopted by the stockholders (the "Effective Date"). Upon the Effective Date, the Company's 1999 Stock Option Plan, as amended (the "1999 Plan"), shall terminate and no longer be in effect; provided, however, any outstanding Awards under the 1999 Plan shall continue in full force and effect under the terms of any agreement covering such Award.

II.

CERTAIN DEFINITIONS

In addition to any terms defined elsewhere in the Plan, the following capitalized terms shall have the following respective meanings as used in the Plan:

2.0 "1999 Plan" has the meaning given to that term in Section 1.3.

2.1 "Arbitration Notice" has the meaning given to that term in Section 9.19.

2.2 "Available Shares" has the meaning given to that term in Section 3.2.

2.3 "Award" means the grant of any form of Option, Restricted Stock Award, or Restricted Stock Unit, whether granted singly, in combination, or in tandem, to a Holder pursuant to such terms, conditions and limitations as the Committee may establish from time to time under the Plan or the 1999 Plan.

2.4 "Award Agreement" means the written document or agreement evidencing the grant of an Award by the Company to a Holder and any additional terms, conditions or limitations with respect to such grant.

2.5 "Board of Directors" means the board of directors of the Company.

2.6 "Business Day" means any day other than a Saturday, a Sunday, or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

2.7 "Change in Control" means:

(a) Any "person" (solely for purposes of this Section 2.7, defined as such term is used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act) or more than one person acting as a group (as defined in paragraph (c) below) is or becomes the beneficial owner, directly or indirectly, of securities of the Company representing more than twenty-five percent (25%) of the combined voting power of the Company's outstanding stock;

(b) There is a change in the composition of the Board of Directors over a period of twelve (12) consecutive months or less such that a majority of the members of the Board of Directors (rounded up to the nearest whole number) cease to be individuals who either (x) have been members of the Board of Directors continuously since the beginning of such period or (y) have been elected or nominated for election as members of the Board of Directors during such period by a majority of the members of the Board of Directors described in clause (x) who were still in office at the time such election or nomination was approved by the Board of Directors; or

(c) The sale of all or substantially all of the assets of the Company.

It is intended that the Change in Control events described in this definition meet the requirements for a "Change in Control Event" as described in Section 1.409A -3(i)(5) of the Treasury Regulations promulgated under Section 409A, and the term "Change in Control" shall be interpreted and applied for all purposes of this Plan in a manner consistent with such intent.

2.8 "Code" means the Internal Revenue Code of 1986, as amended.

2.9 "Committee" means the Compensation Committee of the Board of Directors or such other committee appointed by the Board of Directors pursuant to Article IV to administer the Plan.

2.10 "Company" has the meaning given to that term in Section 1.1.

2.11 "Covered Event" means (a) the commission by a Holder of a criminal or other act that causes or probably will cause substantial economic damage to the Company or a Subsidiary or substantial injury to the business reputation of the Company or a Subsidiary; (b) the commission by a Holder of an act of fraud in the performance of such Holder's duties on behalf of the Company or a Subsidiary; (c) the continuing failure of a Holder to perform the duties of such Holder to the Company or a Subsidiary (other than such failure resulting from the Holder's incapacity due to physical or mental illness) after written notice thereof (specifying the particulars thereof in reasonable detail) and a reasonable opportunity to cure such failure are given to the Holder by the Company; or (d) the order of a court of competent jurisdiction requiring the termination of the Holder's employment.

2.12 "Date of Grant" has the meaning given to that term in Section 5.4.

2.13 "Designated Beneficiary" has the meaning given to that term in Section 9.6.

2.14 "Disability" has the meaning given it in the employment agreement between the Company or a Subsidiary and the Holder; provided, however, that if the Holder has no such employment agreement or such term is not defined in the employment agreement, "Disability" shall mean that (1) the Committee has determined that the Holder has a permanent physical or mental impairment of sufficient severity as to prevent the Holder from performing duties for the Company or Subsidiary, as applicable, and (2) the Committee or the Company or the relevant Subsidiary has provided written notice to the Holder that the Holder's employment is terminated due to a permanent "Disability" pursuant to this Section. Notwithstanding the preceding sentence, with respect to any Award constituting a deferral of compensation subject to the requirements of Section 409A, "Disability"

shall mean that a Holder is "disabled" within the meaning of Section 409A(a)(2)(C). The Committee may establish any process or procedure it deems appropriate for determining whether a Holder has a "Disability."

2.15 "Dispute" has the meaning given to that term in Section 9.19.

2.16 "Effective Date" has the meaning given to that term in Section 1.3.

2.17 "Eligible Individuals" means directors, officers, employees and agents of, and other providers of services to, the Company or any of its Subsidiaries.

2.18 "Exchange Act" means the Securities Exchange Act of 1934, as amended.

2.19 "Exercise Notice" has the meaning given to that term in Section 6.5 (with respect to Options).

2.20 "Exercise Price" has the meaning given to that term in Section 6.4.

2.21 "Fair Market Value" means a per share value defined as follows, for a particular day:

(a) Subject to Section 2.21(d), if shares of Stock of the same class are listed on any national securities exchange at the date of determination of Fair Market Value, then the closing price of one share on that exchange (or, if more than one exchange, the exchange determined by the Committee to be used for such purpose) on the date in question or, if such day is not a Business Day or no such closing price is reported for that day, on the last Business Day for which such a closing price is reported before the date in question, in any case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to unlisted trading privileges on that exchange; or

(b) Subject to Section 2.21(d), if shares of Stock of the same class are not listed as provided in Section 2.21(a) and if bid and asked prices for shares of Stock of the same class in the over-the-counter market are reported by the OTC Bulletin Board of the National Association of Securities Dealers, Inc. at the date of determination of Fair Market Value, then the mean between the high bid and low asked prices on the date in question or, if such day is not a Business Day or no such prices are reported that day, on the last Business Day for which such prices are reported before the date in question; or

(c) If shares of Stock of the same class are not listed as provided in Section 2.21(a) and bid and asked prices therefor are not reported by the OTC Bulletin Board as provided in Section 2.21(b) at the date of determination of Fair Market Value, then the value determined by the Committee; or

(d) If shares of Stock of the same class are listed as provided in Section 2.21(a) or bid and asked prices therefor are reported by the OTC Bulletin Board as provided in Section 2.21(b) at the date of determination of Fair Market Value, but the volume of trading is so low that the Committee determines that such prices are not indicative of the fair value of the Stock, then the value determined by the Committee.

2.22 "Holder" means an Eligible Individual to whom an Award has been granted.

2.23 "Incentive Option" means an incentive stock option as defined under Section 422 of the Code.

2.24 "Maximum Shares" has the meaning given to that term in Section 3.1.

2.25 "NASDAQ" means the Nasdaq Stock Market, Inc.

2.26 "Non-Employee Director" means a person who is a "Non-Employee Director" as that term is used in Rule 16b-3.

2.27 "Nonstatutory Option" means a stock option that (i) does not satisfy the requirements for an incentive stock option under Section 422 of the Code; (ii) that is designated at the Date of Grant or in the applicable Option Agreement to be an option other than an Incentive Option; or (iii) is modified in accordance with Section 9.2(b) to be an option other than an Incentive Option.

2.28 "Normal Retirement" means the termination of the Holder's employment with the Company and its Subsidiaries on account of retirement at any time on or after the date on which the Holder attains age seventy

(70) or such other date the Committee or the Board of Directors shall designate (but for purposes of clarification excludes any termination of employment as a result of a Covered Event).

2.29 "Option" means either an Incentive Option or a Nonstatutory Option, or both.

2.30 "Option Agreement" means an Award Agreement for an Option.

2.31 "Outside Director" means an "outside director" as that term is used in Section 162(m).

2.32 "Person" means any individual, partnership, joint venture, corporation, trust, unincorporated organization, association, limited liability company, joint stock company, government or any department or agency thereof, or any other form of association or entity.

2.33 "Plan" has the meaning given to that term in Section 1.1.

2.34 "Restricted Stock Award" means the grant or purchase, on the terms, conditions and limitations that the Committee determines or on the terms, conditions and limitations of Article VII, of Stock that is nontransferable and subject to substantial risk of forfeiture until specific conditions are met; provided, however, that this term shall not apply to shares of Stock issued or transferred in connection with the exercise or settlement of an Option or a Restricted Stock Unit whether or not such shares of Stock are nontransferable or subject to substantial risk of forfeiture when issued or transferred.

2.35 "Restricted Stock Unit" means the grant of a unit representing a contingent right to receive a specified number of shares of Stock issued and delivered at the end of a specified period, subject to the terms, conditions and limitations that the Committee determines or on the terms, conditions and limitations of Article VIII.

2.36 "Rule 16b-3" means Rule 16b-3 under Section 16(b) of the Exchange Act.

2.37 "Section 162(m)" means Section 162(m) of the Code.

2.38 "Section 409A" means Section 409A of the Code.

2.39 "Securities Act" means the Securities Act of 1933, as amended.

2.40 "Stock" means the Company's authorized common stock, par value $0.0001 per share, or any other securities, property or assets that are substituted for the Stock as provided in Section 9.1.

2.41 "Subsidiary" means an entity, as may from time to time be designated by the Committee, that is (i) a subsidiary corporation, or is treated as, or as part of, a subsidiary corporation of the Company (within the meaning of Section 424 of the Code), or (ii) any other entity that the Company controls, directly or indirectly. For purposes of this definition, "control" means the power to direct the management and policies of such entity, whether through the ownership of Voting Securities, by contract or otherwise.

2.42 "Ten Percent Stockholder" shall have the meaning given to that term in Section 5.2.

2.43 "Voting Securities" means any securities that at the applicable time are entitled to vote generally in the election of directors, in the admission of general partners, or in the selection of any other similar governing body.

III.

SHARES OF STOCK SUBJECT TO THE PLAN

3.1 Maximum Shares. Subject to the provisions of Sections 3.2, 3.3, 3.6 and Section 9.1, the aggregate number of shares of Stock that may be issued or transferred pursuant to Awards under the Plan (the "Maximum Shares") shall be equal to eight hundred thousand (800,000) Shares of Stock of which up to two hundred thousand (200,000) shares can be issued or transferred pursuant to Restricted Stock Awards and Restricted

Stock Units.

3.2 Available Shares. Except as otherwise provided in Section 3.3, at any time, the number of shares of Stock that may then be made subject to issuance or transfer pursuant to new Awards under the Plan (the Available Shares) shall be equal to (a) the number of Maximum Shares minus (b) the sum of (1) the number of shares of Stock subject to issuance or transfer upon exercise or settlement of the then outstanding Awards granted under this

Plan and awards granted under the 1999 Plan; and (2) the number of shares of Stock issued or transferred upon exercise or settlement of Awards granted under this Plan and awards granted under the 1999 Plan; provided, however, in the case of Options granted under the 1999 Plan, any shares of Stock issued upon the exercise of Options prior to January 1, 2009 shall not be taken into account under this clause (2).

3.3 Restoration of Unused Shares. If Stock subject to any Award under this Plan or the 1999 Plan is not issued or transferred, or ceases to be issuable or transferable, for any reason, including the termination, forfeiture, unexercised expiration, exchange for other Awards under this Plan or settlement in cash in lieu of Stock, of an Award under this Plan or the 1999 Plan, the shares of Stock that were subject to that Award shall no longer be charged against the number of Maximum Shares in calculating the number of Available Shares under Section 3.2 and shall again be included in Available Shares.

3.4 Description of Shares. The shares of Stock to be delivered under the Plan shall be made available from (a) authorized but unissued shares of Stock, (b) Stock held in the treasury of the Company, or (c) previously issued shares of Stock reacquired by the Company, including shares purchased on the open market, in each situation as the Board of Directors or the Committee may determine from time to time. All shares of Stock issued or transferred as provided in the Plan shall be fully paid and non-assessable to the extent permitted by law.

3.5 Listing, Registration, etc. of Shares. If at any time the Board of Directors shall determine in its discretion that the listing, registration or qualification of the shares of Stock covered by the Plan upon any national securities exchange or other trading system or under any state or federal law, or the consent or approval of any governmental or regulatory body, is necessary or desirable as a condition of, or in connection with, the issuance or transfer of shares of Stock under the Plan, no shares of Stock shall be issued or transferred under the Plan unless and until such listing, registration, qualification, consent or approval shall have been effected or obtained, or otherwise provided for, free of any conditions not acceptable to the Board of Directors. Nothing in the Plan shall require the Company to list, register or qualify any securities, to obtain any such consent or approval, or to maintain any such listing, registration, qualification, consent or approval.

3.6 Reduction in Outstanding Shares of Stock. Nothing in this Article III shall impair the right of the Company to reduce the number of outstanding shares of Stock pursuant to repurchases, redemptions, or otherwise; provided, however, that no reduction in the number of outstanding shares of Stock shall (a) impair the validity of any outstanding Award, whether or not that Award is fully exercisable or fully vested, or (b) impair the status of any shares of Stock previously issued or transferred pursuant to an Award or thereafter issued or transferred pursuant to a then-outstanding Award as duly authorized, validly issued, fully paid, and nonassessable shares.

IV.

ADMINISTRATION OF THE PLAN

4.1 Committee. The Board of Directors shall designate the Committee to administer the Plan, each member of which shall at all times be (a) a Non-Employee Director and (b) an Outside Director. The number of individuals that shall constitute the Committee shall be determined from time to time by the Board of Directors, but shall be no fewer than two (2) individuals.

4.2 Duration, Removal, Etc. The members of the Committee shall serve at the pleasure of the Board of Directors, which shall have the power, at any time and from time to time, to remove members from or add members to the Committee. Removal from the Committee may be with or without cause. Any individual serving as a member of the Committee shall have the right to resign from membership on the Committee by written notice to the Board of Directors. The Board of Directors, and not the remaining members of the Committee, shall have the power and authority to fill vacancies on the Committee, however caused. The Board of Directors shall promptly fill any vacancy that causes the number of members of the Committee to be below two (2) or any other number that Rule 16b-3 or Section 162(m) may require from time to time.

4.3 Meetings and Actions of Committee. The Board of Directors shall designate the chairman of the Committee. If the Board of Directors fails to designate a Committee chairman, the members of the Committee shall elect one of the Committee members as chairman, who shall act as chairman until the director ceases to be a member of the Committee or until the Board of Directors designates a new chairman. The Committee shall hold its meetings

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at such times and places as the chairman of the Committee may determine. At all meetings of the Committee, a quorum for the transaction of business shall be required, and a quorum shall be deemed present if at least a majority of the members of the Committee are present. At any meeting of the Committee, each member shall have one vote. All decisions and determinations of the Committee shall be made by the majority vote or majority decision of all of its members present at a meeting at which a quorum is present; provided, however, that any decision or determination reduced to writing and signed by all of the members of the Committee shall be as fully effective as if it had been made at a meeting that was duly called and held. The Committee may make any rules and regulations for the conduct of its business that are not inconsistent with the provisions of the Plan and the Company's Certificate of Incorporation and Bylaws (in each case as amended from time to time), Rule 16b-3 and Section 162(m), to the extent applicable, as the Committee may deem advisable.

4.4 Committee's Powers. Subject to the express provisions of the Plan, any applicable Award Agreement, Rule 16b-3 and Section 162(m), to the extent applicable, the Committee shall have the authority (a) to adopt, amend, and rescind administrative, interpretive and other rules and regulations relating to the Plan; (b) to determine the Eligible Individuals to whom, and the time or times at which, Awards shall be granted; (c) to determine the number of shares of Stock that shall be the subject of each Award; (d) to determine the terms and provisions of each Award Agreement and any amendments thereto, including provisions defining or otherwise relating to (i) the term and the period or periods and extent of exercisability of the Options, Restricted Stock Awards and Restricted Stock Units, (ii) the extent to which the transferability of shares of Stock issued or transferred pursuant to any Award is restricted, (iii) the effect of termination of employment on the Award, and (iv) except as provided in Section 9.5, the effect of leaves of absence and the effect of transfers of an Eligible Individual's employment from the Company to a Subsidiary or from a Subsidiary to the Company (consistent with any applicable regulations of the Internal Revenue Service and any other requirements of applicable law with respect to the same); (e) to construe the respective Award Agreements, the Plan, and any rules or regulations with respect thereto; (f) to make determinations of the Fair Market Value of the Stock pursuant to the Plan; (g) to reduce, eliminate or accelerate any restriction or vesting requirement applicable to an Award at any time after the grant of an Award or to extend the time for exercising any Option (but not beyond the original ten year term), Restricted Stock Awards and Restricted Stock Units; (h) to amend any Award Agreement or waive any provision, condition or limitation thereof; (i) to delegate its duties under the Plan to such agents as it may appoint from time to time, provided that the Committee may not delegate its duties with respect to making Awards to Eligible Individuals; (j) to take or refrain from taking such other actions as are described in the Plan as within the purview of the Committee; and (k) to make all other determinations, perform all other acts, and exercise all other powers and authority necessary or advisable for administering the Plan, including the delegation of those ministerial acts and responsibilities as the Committee deems appropriate. Subject to Rule 16b-3 and Section 162(m), to the extent applicable, the Committee may correct any defect, supply any omission or reconcile any inconsistency in the Plan, in any Award, or in any Award Agreement in the manner and to the extent it deems necessary or desirable to carry the Plan into effect. Any determinations and other actions of the Committee with respect to any of the matters referred to in this Section 4.4 or elsewhere in the Plan or in any Award Agreement need not be consistent, even among Eligible Individuals who are similarly situated and/or who have previously received similar or other Awards, except as may be specifically provided to the contrary in the Plan or in the applicable Award Agreement. The determinations and other actions of the Committee with respect to any of the matters referred to in this Section 4.4 or elsewhere in the Plan or in any Award Agreement shall, except as may be specifically provided to the contrary in the Plan or in the applicable Award Agreement, be made in the sole discretion of the Committee (subject to modification or rescission by the Board of Directors, if consistent with Rule 16b-3 and Section 162(m), to the extent applicable) and shall be final, binding and conclusive.

4.5 Counsel, Consultants and Agents. The Committee may employ such legal counsel, consultants and agents as it may deem desirable for the administration of the Plan and may rely upon any opinion received from any such counsel or consultants and any computation received from any such consultants or agents. Expenses incurred by the Committee in the engagement of any such counsel, consultants or agents shall be paid by the Company.

V.

ELIGIBILITY AND PARTICIPATION; CERTAIN AWARD TERMS

5.1 Eligible Individuals. Awards may be granted pursuant to the Plan only to persons who are Eligible Individuals at the time of the grant thereof (and, with respect to Incentive Options, satisfy the requirements of Section 5.2) . Notwithstanding the preceding sentence, except as indicated by Section 1.409A -1(b)(5)(iii)(E) of the

Code and except as may otherwise be provided in guidance issued by the Internal Revenue Service under Section 409A of the Code, a person shall not be awarded an Option pursuant to the Plan if the Subsidiary by which such person is employed (or to which such person provides services) would not be considered part of the same "single employer" as the Company under Sections 414(b) and 414(c) of the Code.

5.2 Limitation for Incentive Options. Notwithstanding any provision contained in the Plan to the contrary, (a) a person shall not be eligible to receive an Incentive Option unless the person is an Eligible Individual employed by the Company or any Subsidiary of the Company that is a subsidiary corporation, or is treated as, or as part of, a subsidiary corporation of the Company (within the meaning of Section 424 of the Code) at the time of the grant thereof, and (b) a person shall not be eligible to receive an Incentive Option if, immediately before the time the Option is granted, that person owns (within the meaning of Sections 422 and 424 of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or a Subsidiary of the Company that is a subsidiary corporation, or is treated as, or as part of, a subsidiary corporation of the Company (within the meaning of Section 424 of the Code) (a "Ten Percent Stockholder"). Nevertheless, clause (b) of the foregoing sentence of this Section 5.2 shall not apply if, at the time the Incentive Option is granted, the Exercise Price of the Incentive Option is at least one hundred and ten percent (110%) of the Fair Market Value per share of Stock and the Incentive Option is not, by its terms, exercisable after the expiration of five (5) years from the Date of Grant.

5.3 Grant of Awards. Subject to the express provisions of the Plan, the Committee shall determine which Eligible Individuals shall be granted Awards from time to time. The Committee shall also determine the number (or the method of determining the number) of shares of Stock, or amounts (or method of determining the amounts) of cash or other property or assets, subject to each of the Awards.

5.4 Date of Grant. The date on which the Award covered by an Award Agreement is granted (the "Date of Grant") shall be the date specified by the Committee as the effective date or date of grant of an Award. Except as otherwise determined by the Committee, in no event shall a Holder gain any rights with respect to an Award in addition to those specified by the Committee in its grant, regardless of the time that may pass between the grant of the Award and the actual execution or delivery of the Award Agreement by the Company and (if required in the Award Agreement) the Holder. The Committee may invalidate an Award at any time before the Award Agreement is executed by the Holder (if such execution is required) or is delivered to the Holder (if such execution is not required), and any such invalidated Award shall be treated as never having been granted.

5.5 Award Agreements. Each Award granted under the Plan shall be evidenced by an Award Agreement that is executed by the Company and, if required in the Award Agreement, by the Eligible Individual to whom the Award is granted, and that includes such terms, conditions and limitations that the Committee shall deem necessary or desirable. More than one Award may be granted under the Plan to the same Eligible Individual and be outstanding concurrently.

5.6 No Right to Award. The adoption of the Plan shall not be deemed to give any person a right to be granted an Award.

5.7 Limitation on Individual Awards. No Eligible Individual shall, in one calendar year, be granted of (i) Options covering more than one hundred and seventy five thousand (175,000) shares of Stock and (ii) Restricted Stock Awards or Restricted Stock Units (or any combination thereof) exceeding seventy five thousand (75,000) shares of Stock, without regard to any vesting limitations with respect to any such grant.

5.8 Payment of Taxes. The Committee may require a Holder to pay to the Company (or, if the Holder is an employee of a Subsidiary of the Company, to such Subsidiary), with respect to an Option, at the time of the exercise of such Option, and with respect to a Restricted Stock Award or Restricted Stock Unit, at such time or times as may be designated by the Committee, the amount that the Committee deems necessary to satisfy the Company's or such Subsidiary's current or future obligation to withhold federal, state or local income or other taxes associated with the exercise, grant or payment with respect to the relevant Award. Upon the exercise of an Option requiring tax withholding (or, with respect to a Restricted Stock Award or Restricted Stock Unit, prior to such time or times as such payment is due from the Holder to the Company or such Subsidiary), the Holder may (a) request that the Company withhold from the shares of Stock to be issued or transferred to the Holder the number of shares (based upon the shares' Fair Market Value per share as of the day before the date of withholding) necessary to satisfy the Company's or such Subsidiary's obligation to withhold taxes, the determination as to such obligation to be based on the shares' Fair Market Value per share as of the day before

the date of exercise (with respect to an Option) or as of the date on which tax withholding is to be made (with respect to Restricted Stock Awards or Restricted Stock Units); (b) request that the Holder be allowed to deliver to the Company sufficient shares of Stock (based upon the shares Fair Market Value per share as of the day before the date of such delivery)

to satisfy the Company's or such Subsidiary's tax withholding obligations; or (c) deliver sufficient cash to the Company to satisfy the Company's or such Subsidiary's tax withholding obligations. Holders who wish to proceed under clause (a) or (b) above must make their request to do so at such time and in such manner that the Committee prescribes from time to time, and such transaction shall be effected in accordance with such procedures as the Committee may establish from time to time. Notwithstanding the foregoing, however, the Committee may, at its sole option, deny any Holder's request to proceed under clause (a) or (b) above or may impose any conditions it deems appropriate on such action, including the escrow of shares of Stock or cash. In the event the Committee subsequently determines that the cash amount or the aggregate Fair Market Value (as determined above) of any shares of Stock withheld or tendered as payment of any tax withholding obligation is insufficient to discharge that tax withholding obligation, then the Holder shall pay to the Company, immediately upon the Committee's request, the amount of that deficiency. The Company may also, if the Committee so elects, retain any cash and any certificates evidencing shares of Stock to which such Holder is entitled upon the exercise of the Option or in connection with a Restricted Stock Award or in settlement of a Restricted Stock Unit as security for the payment of any tax withholding obligation until satisfied, and the Company shall have all rights of a secured creditor under the New York State Uniform Commercial Code with respect to the same.

5.9 Forfeiture and Restrictions on Transfer; Other Conditions. Without limitation of any other provisions of the Plan or any power of the Board of Directors or the Committee hereunder, any Award Agreement may contain or otherwise provide for, in addition to any terms, conditions or limitations required or permitted by other provisions of the Plan, such other terms, conditions or limitations as the Committee may deem advisable or proper from time to time provided any such additional term, condition or limitation is not inconsistent with the terms of the Plan, including (i) restrictions on the transferability of the Award; (ii) restrictions or the removal of restrictions upon the exercise of an Award; (iii) restrictions or the removal of restrictions on the retention or transfer of any shares of Stock acquired pursuant to an Award or otherwise; (iv) options and rights of first refusal in favor of the Company and one or more stockholders of the Company; (v) requirements that the Holder render substantial services to the Company or one or more of its Subsidiaries for a specified period of time; (vi) restrictions on disclosure and use of certain information regarding the Company or other Persons; (vii) restrictions on solicitation of employees and other Persons; (viii) restrictions on competition; and (ix) other terms, conditions or limitations; all of which as the Committee may deem proper or advisable from time to time.

VI.

TERMS AND CONDITIONS OF OPTIONS

6.0 Compliance with Option Agreement. All Options granted under the Plan shall comply with, and the related Option Agreements shall be subject to, the terms, conditions and limitations set forth in this Article VI (to the extent each such term, condition or limitation applies to the form of Option and provided that, if any such term, condition or limitation is left to the discretion of the Committee, the Committee determines to apply it to such Option) and also to the terms, conditions and limitations set forth in Article IX (to the extent each such term, condition or limitation applies to the form of Option and provided that, if any such term, condition or limitation is left to the discretion of the Committee, the Committee determines to apply it to such Option); provided, however, that the Committee may authorize an Option Agreement that expressly contains or is subject to terms, conditions and limitations that differ from any of the terms, conditions and limitations of Article IX. The Committee may also authorize an Option Agreement that contains or is subject to any or all of the terms, conditions and limitations of Article X (to the extent each such term, condition or limitation applies to the form of Option and provided that, if any such term, condition or limitation is left to the discretion of the Committee, the Committee determines to apply it to such Option) or similar terms, conditions and limitations; nevertheless, no term, condition or limitation of Article X (or any similar term, condition or limitation) shall apply to an Option Agreement unless the Option Agreement expressly states that such term, condition or limitation applies.

6.1 Number of Shares; Type of Award. Each Option Agreement shall state the total number of shares of Stock to which it relates. Each Option Agreement shall identify the Option evidenced thereby as an Incentive Option or Nonstatutory Option, as the case may be, and no Option Agreement shall cover both an Incentive Option and a Nonstatutory Option.

6.2 Vesting. The Option Agreement shall state (i) any time, periods or other conditions in or pursuant to which the right to exercise the Option or a portion thereof shall vest and (ii) the number (or method of determining the

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number) of shares of Stock with respect to each such vesting. Any or all of the foregoing shall be determined by the Committee or the Board of Directors in their sole and absolute discretion.

6.3 Expiration. Nonstatutory Options and Incentive Options may be exercised during the term determined by the Committee and set forth in the Option Agreement; provided that no Incentive Option shall be exercised after the expiration of a period of ten (10) years (or, with respect to a Ten Percent Stockholder, five (5) years) commencing on the Date of Grant of the Incentive Option.

6.4 Exercise Price. Each Option Agreement shall state the exercise price per share of Stock (the "Exercise Price"), which shall not be less than the greatest of (a) the par value per share of the Stock, (b) one hundred percent (100%) of the Fair Market Value per share of the Stock on the Date of Grant of the Option, or (c) in the case of an Incentive Option granted to a Ten Percent Stockholder, one hundred ten percent (110%) of the Fair Market Value per share of the Stock on the Date of Grant of the Option.

6.5 Method of Exercise. Each Option shall be exercisable only by notice of exercise (the "Exercise Notice") in the manner (including the time period) specified by the Committee from time to time (which need not comply with Section 12.14 if expressly so provided by the Committee) to the Secretary of the Company at the chief executive office of the Company (or to such other person and location as may be designated from time to time by the Committee) during the term of the Option, which notice shall (a) state the number of shares of Stock with respect to which the Option is being exercised, (b) be signed or otherwise given by the Holder of the Option or by another Person authorized to exercise the Option pursuant to Section 9.6 or 9.7 (to the extent that each is applicable to the Option) or pursuant to the relevant Option Agreement, (c) be accompanied by the aggregate Exercise Price for all shares of Stock for which the Option is exercised in accordance with Section 6.7, and (d) include such other information, instruments, and documents as may be required to satisfy any other condition under the Plan or the relevant Option Agreement or as may be reasonably imposed by the Committee. The Option shall not be deemed to have been exercised unless all of the requirements of the preceding provisions of this Section 6.5 have been satisfied.

6.6 Incentive Option Exercises and Disqualifying Dispositions. Except as provided in Section 9.6(b) or Section 9.7 (to the extent that each is applicable to the Option), during the Holder's lifetime, only the Holder may exercise an Incentive Option. The Holder of an Incentive Option shall immediately notify the Company in writing of any disposition of any Stock acquired pursuant to the Incentive Option that would disqualify the Incentive Option from being treated as an incentive stock option under Section 422 of the Code (including any disposition of Stock upon exercise of an Award requiring exercise, or in connection with the payment of taxes with respect to an Award, if the same would constitute such a disqualifying disposition). The notice shall state the number of shares disposed of, the dates of acquisition and disposition of the shares, and the consideration received in connection with each disposition.

6.7 Medium and Time of Payment. The Exercise Price of an Option shall be payable in full upon the exercise of the Option (a) in cash, by cashier's check, by wire transfer or by other means as may be acceptable to the Committee from time to time, (b) with the Committee's prior consent (which consent, with respect to an Incentive Option, must be evidenced in the relevant Option Agreement as of the Date of Grant), and to the extent permitted by applicable law, with shares of Stock that would otherwise be issued or transferred to the Holder upon the exercise of the Option or with shares of Stock already owned by the Holder (but in all events excluding any shares that are to be or were issued or transferred pursuant to a Restricted Stock Award with respect to which the restrictions have not yet expired or been removed or that otherwise are or will be subject to restrictions on transferability or a substantial risk of forfeiture) and having an aggregate Fair Market Value at least equal to the aggregate Exercise Price payable in connection with such exercise, and pursuant to such procedures (including constructive delivery of such shares of Stock) as the Committee may establish from time to time for such purpose, (c) with the Committee's prior consent (which consent, with respect to an Incentive Option, must be evidenced in the relevant Option Agreement as of the Date of Grant), and to the extent permitted by applicable law, in such other forms, under such other terms, and by such other means (including those specified in Section 6.8) as may be acceptable to the Committee from time to time, and pursuant to such procedures as the Committee may establish from time to time for such purpose, or (d) with the Committee's prior consent (which consent, with respect to an Incentive Option, must be evidenced in the relevant Option Agreement as of the Date of Grant), by any combination of clauses (a), (b) and (c). Unless otherwise provided in the relevant Option Agreement, any portion of the Exercise Price that is paid with shares of Stock that the Holder acquired from the Company, directly or indirectly, shall be paid only with shares of Stock that the Holder

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has owned for more than six (6) months (or such longer or shorter period of time, if any, as may be required to avoid payment with such shares resulting in a charge to earnings for financial accounting purposes). If the Committee elects to accept shares of Stock in payment of all or any portion of the aggregate Exercise Price, then (for purposes of payment of the aggregate Exercise Price) unless otherwise provided in the relevant Option Agreement those shares of Stock shall be deemed to have a cash value equal to their aggregate Fair Market Value determined as of the day before the date of the delivery of the Exercise Notice.

6.8 Payment with Sale Proceeds. The Committee may (but shall not be required to) approve from time to time (which approval, with respect to an Incentive Option, must be evidenced in the relevant Option Agreement as of the Date of Grant) arrangements with a brokerage firm (provided that such arrangements comply with applicable law, including Regulation T of the Board of Governors of the Federal Reserve System), under which that brokerage firm, on behalf of the Holder, shall pay to the Company the aggregate Exercise Price of the Option being exercised (either as a loan to the Holder or from the proceeds of the sale of Stock issued or transferred pursuant to that exercise of the Option), and the Company shall cause the shares with respect to which the Option was so exercised to be delivered to the brokerage firm. Such transactions shall be effected in accordance with such procedures (which may include payment of the exercise price by, or delivery of Stock to, such brokerage firm) as the Committee may establish from time to time.

6.9 Limitation on Aggregate Value of Shares That May Become First Exercisable During Any Calendar Year Under an Incentive Option. With respect to any Incentive Option granted under the Plan, the aggregate Fair Market Value of shares of Stock subject to an incentive stock option that first becomes exercisable by a Holder in any calendar year (under all plans of the Company, its Subsidiaries that are subsidiary corporations, or are treated as, or as part of, a subsidiary corporation of the Company (within the meaning of Section 424 of the Code) or any predecessor corporation) may not (with respect to that Holder) exceed $100,000, or such other amount as may be prescribed under Section 422 of the Code. As used in the previous sentence, Fair Market Value shall be determined as of the date the Incentive Option is granted, and the limitation shall be applied by taking into account Incentive Options in the order in which they were granted. For purposes of this Section 6.9, "predecessor corporation" means (a) a corporation that was a party to a transaction described in Section 424(a) of the Code (or which would be so described if a substitution or assumption under that section had been effected) with the Company, (b) a corporation which, at the time the new incentive stock option (within the meaning of Section 422 of the Code) is granted, is a related corporation of the Company, or (c) a predecessor corporation of any such corporations. Failure to comply with this Section 6.9 (including any such failure resulting from accelerated vesting of an Incentive Option) shall not impair the enforceability or exercisability of any Incentive Option, but shall cause the Incentive Option to be treated as a Nonstatutory Option for federal tax purposes to the extent that it exceeds the $100,000 limitation described in this Section 6.9.

6.10 No Fractional Shares. The Company shall not in any case be required to sell, issue, transfer or deliver any fractional shares with respect to any Option. In lieu of the issuance or transfer of any fractional share of Stock, the Company shall pay to the Holder an amount in cash equal to the same fraction (as the fractional share) of the Fair Market Value of a share of Stock determined as of the date of the applicable Exercise Notice.

6.11 Other Provisions Regarding Incentive Options. With respect to any Option that is designated in the governing Option Agreement as an Incentive Option, (i) if any of the terms, conditions or limitations of the Plan or the relevant Option Agreement conflict with the requirements of Sections 421, 422 and 424 of the Code, as applicable, then those conflicting terms, conditions and limitations shall be deemed inoperative to the extent they so conflict with such requirements, and (ii) if the Plan or such Option Agreement does not contain any provision required to be included herein or therein under Sections 421, 422 and 424 of the Code, as applicable, that provision shall be deemed to be incorporated herein or therein with the same force and effect as if that provision had been set out at length herein or therein, in each case unless the Committee determines to treat such Option (in whole or in part) as a Nonstatutory Option. Notwithstanding the foregoing, however, (i) to the extent that any Option that was intended to qualify as an Incentive Option nevertheless cannot so qualify, that Option (to that extent) shall be deemed a Nonstatutory Option for all purposes of the Plan, and (ii) in no event shall this Section 6.11 operate to overcome the terms under which such Option vests (including any accelerated vesting, to the extent applicable).

VII.

RESTRICTED STOCK AWARDS

7.0 Compliance with Award Agreement. All Restricted Stock Awards granted under the Plan shall comply with, and the related Award Agreements shall be subject to, the terms, conditions and limitations set forth in this Article VII (to the extent each such term, condition or limitation applies to the form of Restricted Stock Award and provided that, if any such term, condition or limitation is left to the discretion of the Committee, the Committee determines to apply it to such Restricted Stock Award) and also to the terms, conditions and limitations set forth in Article VII (to the extent applicable to the form of Restricted Stock Award and provided that, if any such term, condition or limitation is left to the discretion of the Committee, the Committee determines to apply it to such Restricted Stock Award); provided, however, that the Committee may authorize an Award Agreement governing a Restricted Stock Award that expressly contains or is subject to terms, conditions and limitations that differ from the terms, conditions and limitations set forth in Article IX. The Committee may also authorize an Award Agreement governing a Restricted Stock Award that contains or is subject to any or all of the terms, conditions and limitations of Article X (to the extent applicable to the form of Restricted Stock Award and provided that, if any such term, condition or limitation is left to the discretion of the Committee, the Committee determines to apply it to such Restricted Stock Award) or similar terms, conditions and limitations; nevertheless, no term, condition or limitation of Article X (or any similar term, condition or limitation) shall apply to an Award Agreement governing a Restricted Stock Award unless the Award Agreement expressly states that such term, condition or limitation applies.

7.1 Number of Shares; Type of Award. Each Award Agreement governing a Restricted Stock Award shall state the total number of shares of Stock to which it relates.

7.2 Restrictions Applicable to Restricted Stock Awards. Unless otherwise provided in the relevant Award Agreement, all shares of Stock granted or sold pursuant to Restricted Stock Awards made under the Plan shall be subject to the following terms, conditions and limitations:

(a) Transferability. The shares may not be sold, transferred or otherwise alienated or hypothecated until the restrictions are removed or expire.

(b) Legend. Each certificate representing such shares shall bear a legend making appropriate reference to the restrictions imposed as set forth in Sections 9.11 and 9.12. The text of any such legend shall be determined by the Company.

(c) Possession. The Committee may (i) authorize issuance of a certificate for shares associated with a Restricted Stock Award only upon removal or expiration of the applicable restrictions, (ii) require the Company to retain physical custody of certificates representing shares issued or transferred pursuant to Restricted Stock Awards during the restriction period and require the Holder of the Award to execute stock powers in blank for those certificates and deliver those stock powers to the Company, (iii) require the Holder to enter into an escrow agreement providing that the certificates representing shares issued or transferred pursuant to Restricted Stock Awards shall remain in the physical custody of an escrow holder until all restrictions are removed or expire, or (iv) take such other steps as the Committee may determine in order to enforce such restrictions.

(d) Expiration or Removal of Restrictions. The restrictions imposed pursuant to this Section 7.2 on Restricted Stock Awards shall expire as determined by the Committee and set forth in the applicable Award Agreement. Expiration of the restrictions may be based on or conditioned on the passage of time, continuing employment or service as an employee or officer, achievement of performance objectives, or other events, occurrences or conditions determined by the Committee. Each Restricted Stock Award may have different restrictions, including a different restriction period, as determined by the Committee. The Committee may remove any restriction or reduce any restriction period applicable to a particular Restricted Stock Award. Upon the expiration or removal of all restrictions, the Company shall deliver to the Holder of the Restricted Stock Award, as soon as practicable following the request of such Holder, a certificate representing the number of shares for which such restrictions have expired or been removed, free of any restrictive legend relating to the expired or removed restrictions.

(e) Rights as Stockholder. Subject to the provisions of this Section 7.2, the Holder shall be entitled to share in the receipt of dividends or distributions to the same extent as a stockholder of the Company holding an equal amount of unrestricted Stock; provided, however, the Committee or the Board of Directors may determine what rights, if any, the Holder shall have with respect to the Restricted Stock Awards granted or sold, including any right to vote the related shares or to receive dividends and other distributions paid or made with respect thereto.

(f) Other Conditions. The Committee or the Board of Directors may impose such other terms, conditions or limitations on any shares granted or sold pursuant to Restricted Stock Awards made under the Plan as it may deem advisable, including (i) restrictions under the Securities Act or Exchange Act, (ii) restrictions relating to the requirements of any securities exchange or quotation system upon which the shares or shares of the same class are listed or traded, and (iii) restrictions relating to any state or foreign securities law applicable to the shares.

7.3 Purchase and Payment. If any shares of Stock are to be sold rather than granted pursuant to Restricted Stock Awards made under the Plan, then the relevant Award Agreement shall set forth the price to be paid for such shares and the method of payment.

7.4 Compliance with Section 409A. Each Restricted Stock Award shall comply with the requirements of subsection (a) of Section 409A, if applicable, and be operated in accordance with such requirements.

VIII.

RESTRICTED STOCK UNITS

8.0 Compliance with Award Agreement. All Restricted Stock Units granted under the Plan shall comply with, and the related Award Agreements shall be subject to, the terms, conditions and limitations set forth in this Article VIII (to the extent each such term, condition or limitation applies to the form of Restricted Stock Units granted and provided that, if any such term, condition or limitation is left to the discretion of the Committee, the Committee determines to apply it to such Restricted Stock Units) and also to the terms, conditions and limitations set forth in Article X (to the extent applicable to the form of Restricted Stock Units granted and provided that, if any such term, condition or limitation is left to the discretion of the Committee, the Committee determines to apply it to such Restricted Stock Units); provided, however, that the Committee may authorize an Award Agreement governing a grant of Restricted Stock Units that expressly contains or is subject to terms, conditions and limitations that differ from the terms, conditions and limitations set forth in Article IX. The Committee may also authorize an Award Agreement governing Restricted Stock Units that contains or is subject to any or all of the terms, conditions and limitations of Article X (to the extent applicable to the form of Restricted Stock Units granted and provided that, if any such term, condition or limitation is left to the discretion of the Committee, the Committee determines to apply it to such Restricted Stock Units) or similar terms, conditions and limitations; nevertheless, no term, condition or limitation of Article X (or any similar term, condition or limitation) shall apply to an Award Agreement governing a Restricted Stock Units unless the Award Agreement expressly states that such term, condition or limitation applies.

8.1 Number of Shares Underlying Restricted Stock Units; Type of Award. Each Award Agreement governing Restricted Stock Units shall state the total number of shares of Stock that may be deliverable in settlement of the Award.

8.2 Terms Applicable to Restricted Stock Units. Unless otherwise provided in the relevant Award Agreement, Restricted Stock Units (including the shares deliverable in settlement) shall be subject to the following terms, conditions and limitations:

(a) Number of Units. Each Award Agreement governing a Restricted Stock Unit shall state the total number of Restricted Stock Units awarded under that Award Agreement.

(b) Vesting and Settlement. Each Award Agreement governing a Restricted Stock Unit shall state (i) the grant date of the Award, (ii) any time, periods or other conditions in or pursuant to which the Restricted Stock Units or a portion thereof shall vest, including any vesting in connection with a Change in Control or specified termination of employment events, (iii) the number of Restricted Stock Units (or portions thereof) with respect to each such vesting, and (iv) the settlement date applicable to each Restricted Stock Unit. Vesting may be based on

or conditioned on the passage of time, continuing employment or service as an employee or officer, achievement of

performance objectives, or other events, occurrences or conditions determined by the Committee. Each grant of Restricted Stock Units may have different restrictions, including a different vesting period, as determined by the Committee. Subject to compliance with Code Section 409A, the Committee may remove any vesting condition or other restriction or reduce any restriction period applicable to a particular grant of Restricted Stock Units. Upon settlement, the Company shall deliver to the Participant one share of Stock for each Restricted Stock Unit then being settled, at the settlement date, such delivery to be made in any commercially reasonable manner the Company shall determine.

(c) Dividend Equivalents. Subject to the provisions of this Section 8.2, the Holders of Restricted Stock Units shall be entitled to dividend equivalents, being amounts equal to the cash value of the dividends or distributions payable on the underlying Stock. Each Award Agreement shall specify if dividend equivalents are to be paid or credited on Restricted Stock Units, in cash or by deemed reinvestment in additional Restricted Stock Units, and all other terms of such dividend equivalents.

(d) Transferability. The Restricted Stock Units may not be sold, transferred or otherwise alienated or hypothecated, until the Award has been settled, at which time the shares delivered in settlement shall be freely transferable except for any specific restrictions imposed by the Committee.

(e) Other Conditions. The Committee or the Board of Directors may impose such other terms, conditions or limitations on any grant of Restricted Stock Units or shares of Stock issued and delivered in settlement thereof as it may deem advisable, including (i) restrictions under the Securities Act or Exchange Act, (ii) restrictions relating to the requirements of any securities exchange or quotation system upon which the shares or shares of the same class are listed or traded, and (iii) restrictions relating to any state or foreign securities law applicable to the shares.

8.3 Compliance with Section 409A. Each Restricted Stock Unit shall comply with the requirements of subsection (a) of Section 409A (to constitute either a short-term deferral or otherwise be excluded from Section 409A, or to meet the requirements of Section 409A applicable to a deferral of compensation) and be implemented in accordance with such requirements.

IX.

ADDITIONAL PROVISIONS

9.0 The terms, conditions and limitations of this Article IX shall apply to each Award (unless, pursuant to the relevant Award Agreement, such term, condition or limitation is inapplicable or is altered); provided, however, that the Committee may authorize an Award Agreement that expressly contains terms, conditions and limitations that differ from the terms, conditions and limitations set forth in this Article IX.

9.1 Adjustment of Awards and Authorized Stock. The terms of an Award and the Stock authorized for issuance or transfer under the Plan shall be subject to adjustment from time to time in accordance with the following provisions:

(a) In the event that the Committee shall determine that any dividend or other distribution (whether in the form of cash, Stock, other securities, or other property or assets), reclassification, consolidation, Stock split, reverse Stock split, recapitalization, reorganization, merger, plan of exchange, split-up, spin off, combination, repurchase, issuance or transfer of securities or other similar transaction or event affects the shares of Stock such that an adjustment is determined by the Committee to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits made or intended to be made available under the Plan, then the Committee shall, in such manner as it may deem equitable: (i) adjust any or all of (w) the number and type of shares of Stock (or other securities, property or assets) which thereafter may be made the subject of Awards, (x) the number and type of

shares of Stock (or other securities, property or assets) subject to outstanding Awards, (y) the number and type of shares of Stock (or other securities, property or assets) specified as the Maximum Shares, Available Shares any limitation per Eligible Individual (pursuant to Section 5.7 or otherwise) or other restriction, and (z) the grant, purchase or exercise price of, or amount payable with respect to, any Award; or (ii) if deemed appropriate by the Committee, provide for a cash payment to the Holder of an outstanding Award. Notwithstanding the foregoing, however, with respect to any Awards of Incentive Options, no such adjustment shall be authorized except to the extent that such adjustment complies with the rules of Section 424(a) of the Code, and in no event shall any such adjustment be made that would render any Incentive Option granted hereunder other than an "incentive stock option" for purposes of Section 422 of the Code (unless the Committee determines to treat such Option as a Nonstatutory Option). In addition, notwithstanding the foregoing, with respect to any Option or Stock Appreciation Right, no adjustment shall be made that would cause such Option or Stock Appreciation Right to constitute a deferral of compensation subject to the requirements of Section 409A.

(b) Whenever outstanding Awards are required to be adjusted as provided in this Section 9.1, the Committee shall promptly prepare and provide to each Holder a notice setting forth, in reasonable detail, the event requiring adjustment, the amount of the adjustment, the method by which such adjustment was calculated, and the change in price and the number of shares of Stock, other securities, cash, property or assets purchasable subject to each Award after giving effect to the adjustments.

(c) Adjustments under Section 9.1(a) shall be made by the Committee. No fractional interests shall be issued or transferred under the Plan on account of any such adjustments.

(d) The existence of the Plan and any Awards granted hereunder shall not affect in any way the right or power of the Company or its stockholders to make or authorize any and all adjustments, recapitalizations, reorganizations or other changes in the Company's capital structure or business, or any merger or consolidation of the Company, or any issue of bonds, debentures, preferred or prior preference stock or other securities ahead of or affecting the Company's common stock or the rights thereof, or the dissolution or liquidation of the Company or any sale, exchange or transfer of all or any part of its assets or business, or any other corporate act or proceedings, whether of a character similar to that described in Section 9.1(a) or this Section 9.1(d) or otherwise. Except as may be expressly provided in this Section 9.1, the Company's issuance or transfer of securities of any class, for money, services, other property or assets, or otherwise, upon direct sales, upon the exercise of rights or warrants to subscribe therefor, upon conversion of shares or obligations of the Company convertible into shares, or otherwise, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number, price or other attributes of Stock subject to the Plan or to Awards granted hereunder.

9.2 Termination of Employment Other than for Death, Disability or Normal Retirement. Subject to Section 9.20, if a Holder's employment is terminated for any reason other than that Holder's death, Disability or Normal Retirement, then the following provisions shall apply to all Awards held by that Holder:

(a) If such termination was by the Company or a Subsidiary, as applicable, as a result of a Covered Event, then the following provisions shall apply to all Awards held by that Holder:

(1) That portion, if any, of all Options held by that Holder that have not been exercised as of the time of the termination of employment shall be null and void as of the time of the termination of employment; and

(2) That portion, if any, of any Restricted Stock Awards or Restricted Stock Units held by that Holder with respect to which the restrictions have not expired or been removed (by acceleration or otherwise) as of the time of the termination of employment shall be forfeited as of the time of the termination of employment; and

(b) If such termination was (i) by the Company or a Subsidiary, as applicable, but not as a result of a Covered Event or (ii) by the Holder, then the following provisions shall apply to all Awards held by that Holder:

(1) That portion, if any, of all Options held by that Holder that are not yet exercisable (by acceleration or otherwise) as of the time of the termination of employment shall be null and void as of the time of the termination of employment;

(2) That portion, if any, of all Options held by that Holder that are exercisable (by acceleration or otherwise) but have not been exercised as of the time of the termination of employment shall be exercisable by that Holder until the earlier of:

(A) the termination of the Option; or

(B) (i) three (3) months after the date of the termination of employment in the case of termination by the Company or a Subsidiary but not as a result of a Covered Event; and (ii) thirty (30) days after the date of the termination of employment in the case of termination by the Holder; provided, however, that if the termination was by the Company but not as a result of a Covered Event and the Holder dies within the three (3) month period described in

clause (i) of this subparagraph or if the termination was by the Holder and the Holder dies with the thirty (30) day period described in clause (ii) of this subparagraph, then such three (3) month period or such thirty (30) day period, as applicable, shall automatically be extended to one (1) year after the date of the termination of employment;

and any portion of any Option not exercised prior to the expiration of the relevant period shall be null and void; and

(3) That portion, if any, of any Restricted Stock Awards or Restricted Stock Units held by that Holder with respect to which the restrictions have not expired or been removed (by acceleration or otherwise) as of the time of the termination of employment shall be forfeited as of the time of the termination of employment.

9.3 Termination of Employment for Death or Disability. Subject to Section 9.20, if a Holder's employment is terminated by reason of the death or Disability of such Holder, then the following provisions shall apply to all Awards held by that Holder:

(a) That portion, if any, of all Options held by that Holder that are (i) not yet exercisable (by acceleration or otherwise) as of the time of the termination of employment, or (ii) exercisable (by acceleration or otherwise) but have not been exercised as of the time of the termination of employment shall be exercisable by that Holder or that Holder's Designated Beneficiary, guardian, legal representatives, legatees or distributees until the earlier of:

(1) the termination of the Option; or

(2) one (1) year after the date of the termination of employment;

and any portion of any Option not exercised prior to expiration of the relevant period shall be null and void;

(b) All restrictions, other than restrictions required by the Securities Act, Exchange Act or applicable law, on that portion, if any, of any Restricted Stock Awards or Restricted Stock Units held by that Holder with respect to which the restrictions have not expired or been removed (by acceleration or otherwise) as of the time of the termination of employment shall immediately be removed and deemed to have expired.

(c) If a Holder's employment is terminated due to a physical or mental impairment or condition of any degree of severity or permanence, but the Committee or the Board of Directors does not inform the Holder in writing that the Holder's employment is terminated due to "Disability" for the purposes of this Section, such Holder's employment is not terminated due to "Disability" for the purposes of this Section.

9.4 Termination of Employment for Normal Retirement. Subject to Section 9.20, if a Holder's employment is terminated by reason of the Holder's Normal Retirement, then the following provisions shall apply to all Awards held by that Holder:

(a) That portion, if any, of all Options held by that Holder that are (i) not yet exercisable (by acceleration or otherwise) as of the time of the termination of employment, or (ii) exercisable (by acceleration or otherwise) but have not been exercised as of the time of the termination of employment shall be exercisable by that Holder until the earlier of:

(1) the termination of the term of the Option; or

(2) three (3) months after the date of the termination of employment; provided, however, that if that Holder dies within such three (3) month period, then such three (3) month period shall automatically be extended to one (1) year after the date of the termination of employment;

and any portion of any Option not exercised prior to the expiration of the relevant period shall be null and void; and

(c) That portion, if any, of any Restricted Stock Awards or Restricted Stock Unit held by that Holder with respect to which the restrictions have not expired or been removed (by acceleration or otherwise) as of the time of the termination of employment shall continue until they expire or are removed; provided, however, that any restrictions that require forfeiture of the Restricted Stock Award or Restricted Stock Unit solely based on termination of employment shall be deemed removed as of the time of the termination of employment.

9.5 Cause of Termination; Employment Relationship. For purposes of this Article IX, the Committee shall have the authority to determine whether any Eligible Individual's employment with the Company or any Subsidiary, as applicable, terminated as a result of death, Disability, Normal Retirement, a Covered Event, or any other cause or reason. For purposes of Incentive Options, an employment relationship shall be deemed to exist between a Holder and the Company or a Subsidiary that is a subsidiary corporation, or is treated as, or as part of, a subsidiary corporation of the Company (within the meaning of Section 424 of the Code) while the Holder is on military leave, sick leave or other bona fide leave of absence (such as temporary employment by the government) if the period of such leave does not exceed ninety (90) days, or, if longer, so long as the Holder's right to re-employment with the Company or Subsidiary that is a subsidiary corporation, or is treated as, or as part of, a subsidiary corporation of the Company (within the meaning of Section 424 of the Code) is guaranteed either by statute or by contract. Where the period of leave exceeds ninety (90) days and where the Holder's right to re-employment is not guaranteed by statute or by contract, termination of employment shall be deemed to have occurred on the ninety-first (91st) day of such leave.

9.6 Exercise of Options Following Death or Disability.

(a) All Options that remain subject to exercise following the death of the Holder may be exercised by the Holder's beneficiary as designated by the Holder on such forms and in accordance with such procedures as may be required or authorized by the Committee from time to time (a "Designated Beneficiary") or, in the absence of an authorized designation, by the legatee or legatees of such Options under the Holder's last will, or by such Holder's legal representatives, heirs or distributees. If an Option shall be exercised by any Person referenced above (other

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than a Designated Beneficiary), notice of exercise shall be accompanied by a certified copy of letters testamentary or equivalent proof of the right of such Person to exercise such Option.

(b) All Options that remain subject to exercise following the Disability of the Holder may be exercised by the Holder or by the Holder's guardian or legal representative that meets the requirements of Section 9.7 on such forms and in accordance with such procedures as may be required or authorized by the Committee from time to time (which may include proof of the status of such guardian or legal representative).

9.7 Transferability of Awards. No Option, Restricted Stock Award or Restricted Stock Unit shall be transferable or subject to pledge, encumbrance or any other disposition in any manner, whether by operation of law or otherwise, other than (to the extent such a transfer is not prohibited by Section 7.2(a) or other provisions of this Plan or the relevant Award Agreement) by (i) will or the laws of descent and distribution or (ii) with respect to all Awards other than Incentive Options (and with the approval of the Committee), by a domestic relations order. Any Award requiring exercise shall be exercisable during a Holder's lifetime only by that Holder or by that Holder's guardian or legal representative; provided, however, that, under applicable state law, the guardian or legal representative is a mere custodian of the Holder's property or assets, standing in a fiduciary relationship to the Holder and subject to court supervision. Notwithstanding anything in this Section 9.7 to the contrary, however, the Committee may determine to grant a Nonstatutory Option that is transferable by a Holder (but not by a Holder's transferee) to any member of the Holder's immediate family, to a trust established for the exclusive benefit of one or members of the Holder's immediate family, to a partnership or other entity of which the only partners or interest holders are members of the Holder's immediate family, and to a charitable organization, or to any of the foregoing; provided, however, that (i) the Holder receives no consideration for the transfer, (ii) the Holder gives the Committee at least fifteen (15) days prior written notice of any proposed transfer, and (iii) the Holder and transferee shall comply with such other requirements as the Committee may require from time to time to assure compliance with applicable laws, including federal, state and foreign securities laws. Following any transfer permitted by the preceding sentence, a transferred Nonstatutory Option shall continue to be subject to the same terms, conditions and limitations that were applicable immediately prior to its transfer and shall be exercisable by the transferee only to the extent and for the periods that it would have been exercisable by the Holder. The Committee may amend an outstanding Nonstatutory Option to provide that the Nonstatutory Option shall be transferable in the manner described in the two immediately preceding sentences. As used in this Section 9.7, the term "immediate family" shall mean any child, step-child, grandchild, parent, step-parent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and shall include relationships arising from legal adoption. A beneficiary designation authorized pursuant to any provision of the Plan or relevant Award Agreement shall not be deemed a transfer or encumbrance for purposes of this Section 9.7.

9.8 Delivery of Certificates of Stock. Subject to Section 9.9 and upon receipt by the Company of any tax withholding as may be required, the Company shall promptly deliver one or more certificates representing the number of shares of Stock as to which vested Awards payable in Stock have been properly exercised or are otherwise payable (and, with respect to Restricted Stock Awards or Restricted Stock Units, with respect to which restrictions have expired or been removed). If a Holder is entitled to receive certificates representing Stock received for more than one form of Award under the Plan, separate Stock certificates may be delivered with respect to each such Award; further, separate Stock certificates may be delivered with respect to shares of Stock issued or transferred upon exercise of Incentive Options and Nonstatutory Options respectively.

9.9 Certain Conditions. Nothing herein or in any Award Agreement shall require the Company to permit any exercise of, or issue or transfer any shares with respect to, any Award if (i) the Holder has failed to satisfy any term, condition or limitation of the Plan or the relevant Award Agreement or (ii) that issuance or transfer would, in the opinion of counsel for the Company, constitute a violation of the Securities Act, any other applicable law or regulation (including state and foreign securities laws and regulations), or any rule of any applicable securities exchange or securities association. At the time of any grant or exercise of an Option, at the time of any grant or vesting of a Restricted Stock Award, and at the time of any grant or settlement of a Restricted Stock Unit, the Company may, as a condition precedent to such grant or exercise of that Option, or grant or vesting of the Restricted Stock Award, or grant or settlement of a Restricted Stock Unit, require from the Holder of the Award (or in the event of the Holder's death or Disability, the Holder's Designated Beneficiary, guardian, legal representatives, heirs, legatees, or distributees) such written representations, if any, concerning the Holder's or such Persons' intentions with regard to the retention or disposition of the shares of Stock being acquired pursuant to the Award and such

written covenants and agreements, if any, as to the manner of disposal of such shares as, in the opinion of counsel to the Company, may be necessary or appropriate to ensure that any disposition by that Holder or such other Person will not involve a violation of the Securities Act, any other applicable law or regulation (including state and foreign securities laws and regulations), or any rule of any applicable securities exchange or securities association. The Company may also endorse such legend or legends upon certificates for any shares of Stock issued or transferred pursuant to the Plan, and may issue such "stop transfer" instructions to its transfer agent in respect of such shares, as the Committee determines from time to time to be necessary or appropriate to (i) prevent a violation of, or perfect an exemption from, the registration requirements of the Securities Act or any other applicable state or foreign securities law, (ii) implement the provisions of the Plan and any relevant Award Agreement, or (iii) permit the Company to determine the occurrence of any disposition of shares of Stock issued or transferred upon exercise of an Incentive Option that would disqualify the Incentive Option from the incentive option tax treatment afforded by Section 422 of the Code.

9.10 Certain Directors and Officers. If any of the terms, conditions or limitations of the Plan or any Award Agreement would preclude any award to an Eligible Individual who is subject to Section 16(b) of the Exchange Act from qualifying for the exemptions from Section 16(b) of the Exchange Act provided by Rule 16b-3, then those conflicting terms, conditions or limitations shall be deemed inoperative to the extent necessary to allow such qualification (unless the Board of Directors has expressly determined that the Plan, or the Committee has expressly determined that the Award, should not comply with Rule 16b-3). In addition, all Award Agreements for Eligible Individuals who are subject to Section 16(b) of the Exchange Act shall be deemed to include such additional terms, conditions and limitations as may be required in order for the related Award to qualify for the exemptions from Section 16(b) of the Exchange Act provided by Rule 16b-3 (unless the Committee has expressly determined that any such Award should not comply with the requirements of Rule 16b-3).

9.11 Securities Act Legend. The Committee may require that certificates for some or all shares of Stock issued or transferred pursuant to the Plan have a legend similar to the following, or statements of other applicable restrictions, endorsed thereon:

> THE SHARES OF STOCK REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. THE SHARES MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, TRANSFERRED, OR OTHERWISE DISPOSED OF UNTIL THE HOLDER HEREOF PROVIDES EVIDENCE SATISFACTORY TO THE ISSUER (WHICH, IN THE DISCRETION OF THE ISSUER, MAY INCLUDE AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER) THAT SUCH OFFER, SALE, PLEDGE, TRANSFER, OR OTHER DISPOSITION WILL NOT VIOLATE APPLICABLE FEDERAL OR STATE LAWS.

This legend shall not be required for shares of Stock issued or transferred pursuant to an effective registration statement under the Securities Act.

9.12 Legend for Restrictions on Transfer. Each certificate representing shares of Stock issued or transferred to a Holder pursuant to an Award granted under the Plan shall, if such shares are subject to any transfer restriction, including a right of first refusal, provided for under the Plan or the relevant Award Agreement, bear a legend that complies with applicable law with respect to such transfer restriction, such as:

> THE SHARES OF STOCK REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY IMPOSED BY THE SMARTPROS LTD. 2009 STOCK AND INCENTIVE PLAN AS ADOPTED BY SMARTPROS LTD. (THE "COMPANY") ON _____, ___ AND AN AWARD AGREEMENT THEREUNDER BETWEEN THE COMPANY AND _____ DATED _____, ____, AND MAY NOT BE TRANSFERRED, SOLD, OR OTHERWISE DISPOSED OF EXCEPT AS THEREIN PROVIDED. THE COMPANY WILL FURNISH A COPY OF SUCH INSTRUMENT AND AGREEMENT TO THE RECORD HOLDER OF THIS CERTIFICATE WITHOUT CHARGE ON REQUEST TO THE COMPANY AT ITS PRINCIPAL PLACE OF BUSINESS OR REGISTERED OFFICE.

9.13 Rights as a Stockholder; Dividends. Except as may be specifically provided to the contrary by the Committee pursuant to Section 7.2(e) with respect to a particular Restricted Stock Award or Restricted Stock Unit, a Holder shall have no right as a stockholder with respect to any shares of Stock covered by the Holder's Award until a certificate representing those shares is issued in the Holder's name and subject to any further restrictions imposed in accordance with the Plan. Except as may be expressly determined by the Committee from time to time with respect to one or more Awards, and subject to such terms, conditions and limitations as the Committee may establish with respect to the same, no adjustment shall be made for dividends (whether ordinary or extraordinary, whether in cash or other property or assets) or distributions or other rights for which the record date is before the date that the certificate is issued and any such restrictions have expired or been removed.

9.14 No Interest. Neither the value of any shares of Stock, nor any cash or other property or assets, issued, transferred or delivered with respect to any Award under the Plan shall bear any interest, even if not issued, transferred or delivered when required by the Plan, except as may be otherwise provided in the applicable Award Agreement or as may be required pursuant to rules and procedures established by the Committee from time to time for the crediting of such interest.

9.15 Furnishing of Information. Each Holder shall furnish to the Company all information requested by the Company that the Committee deems necessary or appropriate in order to allow the Company to administer the Plan and any Awards or to enable it to comply with any reporting or other requirement imposed upon the Company by or under any applicable law or regulation.

9.16 No Obligation to Exercise. No grant of any Award shall impose any obligation upon the Holder or any other Person to exercise the same or any part thereof.

9.17 Remedies. The Company shall be entitled to recover from a Holder the Company's damages, costs and expenses, including reasonable attorneys' fees, incurred in connection with the enforcement of any of the terms, conditions or limitations of the Plan or any Award Agreement, whether by an action to enforce specific performance, for damages for breach, or otherwise.

9.18 Certain Information Confidential. As partial consideration for the granting of each Award hereunder, each Holder agrees with the Company that such Holder shall keep confidential all information and knowledge that such Holder may have relating to the manner, extent and amount of the Holder's (or any other Holder's) participation in the Plan; provided, however, that the Holder may disclose such information or knowledge to the Holder's spouse or to the Holder's tax or financial advisors, provided such disclosure is made pursuant to similar terms and conditions (but without any further rights of distribution). The foregoing obligations of confidentiality shall not apply to the extent that the Company specifically consents in writing to further disclosure or to the extent that the information or knowledge becomes generally and readily available to the public without breach by the Holder or any other Person of any contractual, fiduciary or other duty owed to the Company or any of its affiliates. In addition, the foregoing obligations of confidentiality shall not prohibit a Holder from disclosing such information or knowledge to the extent such Holder is required to do so by government or judicial order, provided that such Holder gives the Company prompt written notice of such order and a reasonable opportunity to limit such disclosure and reasonable assistance in contesting or limiting any such disclosure.

9.19 Dispute Resolution. Any claim, demand, cause of action, dispute or controversy arising out of or relating to the Plan, any Award Agreement, any Award, the parties' performance with respect to any thereof, or any alleged breach of any thereof (each a "Dispute"), shall be settled by the sole determination of the Committee or the Board of Directors which determination shall be final and binding.

9.20 Compliance with Section 409A. No provision of this Article IX shall be interpreted to require a payment or other transfer with respect to an Award at a time or in a manner that would violate any requirement of subsection (a) of Section 409A; and the Committee may defer or otherwise change the terms of payment with respect to any Award, as otherwise set forth in this Article IX or any related Award Agreement, if and to the extent necessary to comply with the requirements of Section 409A (if applicable). With respect to any Award constituting a deferral of compensation to which Section 409A applies and that is made to a "specified employee" of the Company or its Subsidiaries as defined in Section 409A(a)(2)(B)(i) of the Code, no payment resulting from a separation from service of such employee shall be made with respect to the Award before the date which is six (6) months after the date of separation from service (or, if earlier, the date of death of the employee).

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X.

CHANGE IN CONTROL PROVISIONS

The Committee may authorize an Award that contains or is subject to any or all of the terms, conditions and limitations of this Article X or similar terms, conditions and limitations; nevertheless, no term, condition or limitation of this Article X (or any similar term, condition or limitation) shall apply to an Award unless the related Award Agreement expressly states that such term, condition or limitation applies.

10.1 Changes in Control. Immediately prior to the occurrence of a Change in Control (or at such other time prior to a Change in Control or proposed Change in Control as may be determined by the Committee), (a) all outstanding Options shall immediately become fully vested and exercisable in full, including that portion of any Options that pursuant to the terms and provisions of the applicable Award Agreement had not yet become exercisable; and (b) the expiration of the restrictions applicable to all outstanding Restricted Stock Awards and Restricted Stock Units, shall immediately become fully vested and be accelerated so that the Stock subject to those Awards shall be owned by the Holders thereof without transfer restrictions or risks of forfeiture. Nothing in this Section 10.1 shall impose on any Holder any obligation to exercise any Award immediately before or upon any Change in Control, nor shall any Holder forfeit the right to exercise any Award during the remainder of the original term of the Award because of a Change in Control, except as provided under Article IX (if applicable), under other provisions governing termination or expiration of the applicable Award, or as provided in the following sentence. Notwithstanding the foregoing, the Committee may, by notice to any or all Holders, provide that all or any portion of any outstanding Option (whether vested prior to the Change in Control or subject to accelerated vesting due to the Change in Control) that is not exercised within a specified time period (as determined by the Committee) ending on or before the Change in Control shall terminate upon the Change in Control (or at such later time as may be determined by the Committee) and in such event such unexercised Options shall terminate upon the Change in Control, notwithstanding any provisions of this Plan that would allow for a later exercise, including Article IX if applicable.

XI.

DURATION AND AMENDMENT OF PLAN AND AWARD AGREEMENTS

11.1 Duration. No Awards may be granted hereunder after the date that is ten (10) years after the Effective Date; provided, however, that Awards granted prior to the expiration of such period may extend beyond the expiration of such period, in accordance with the terms of the Plan (including all rights of the Company and the Committee hereunder) and the relevant Award.

11.2 Amendment, etc.

(a) The Board of Directors may, at any time and from time to time, insofar as is permitted by law, suspend or terminate the Plan, in whole or in part, but without the consent of such Holder no such action shall adversely affect in any significant respect the rights, or increase any obligations, of any Holder with respect to any Award previously granted to such Holder hereunder. The Board of Directors may also, at any time and from time to time, insofar as is permitted by law, amend or modify the Plan in any respect whatsoever including (i) for purposes of making the Plan comply with Section 16(b) of the Exchange Act and the exemptions from that Section, the Code (including Section 409A and Section 422 of the Code), or the Employee Retirement Income Security Act of 1974, as amended, (ii) for purposes of meeting or addressing any changes in any legal requirements applicable to the Company or the Plan or (iii) for any other purpose permitted by law. Notwithstanding the foregoing, (i) any amendment or modification of the Plan is subject to any other applicable restrictions on such amendment or modification set forth in the Plan, (ii) without the consent of such Holder no such amendment or modification shall adversely affect any rights, or increase any obligations, of any Holder under any Award previously granted to such Holder hereunder and (iii) without the consent of the holders of a majority of the shares of Stock represented and voting on such amendment or modification at a stockholders meeting duly called and held, no amendment or modification to the Plan may be made that would materially (a) increase the aggregate number of shares of Stock that may be issued or transferred under the Plan or increase the aggregate number of shares of Stock subject to Awards that may be granted to any Eligible Individual in one calendar year pursuant to Section 5.7 (except for acceleration of vesting or other adjustments pursuant to Sections 9.1 or 10.1 of the Plan, to the extent each is applicable), or (b) modify the requirements regarding eligibility for participation in the Plan; provided, however, that such amendments or modifications may be made

without the

consent of stockholders of the Company if (x) necessary to permit Incentive Options granted under the Plan to qualify as incentive stock options within the meaning of Section 422 of the Code, or (y) necessary to comply with changes that occur in law or in other legal requirements (including Rule 16b-3, Section 162(m), Section 409A, and the Employee Retirement Income Security Act of 1974, as amended).

(b) Subject to the terms, conditions and limitations of the Plan, Rule 16b-3, to the extent it is applicable, and any consent required by the last three sentences of this Section 11.2(b),the Committee may (a) modify, amend, extend or renew outstanding Awards granted under the Plan, and (b) accept the surrender of Awards requiring exercise that may be outstanding under the Plan (to the extent not previously exercised) and authorize the granting of new Awards in substitution for such outstanding Awards (or portion thereof) so surrendered. Without the consent of the Holder, the Committee may not modify or amend the terms of an Incentive Option at any time to include provisions that have the effect of changing the Incentive Option to a Nonstatutory Option; provided, however, that the consent of the Holder is not required to the extent that the acceleration of the vesting of an Incentive Option (whether under Section 6.1 or otherwise) causes the Incentive Option to be treated as a Nonstatutory Option, for federal tax purposes, to the extent that it exceeds the $100,000 limitation described in Section 6.9. Without the consent of the Holder and of the holders of a majority of the shares of Stock represented and voting on such modification or amendment at a stockholders meeting duly called and held, the Committee may not modify or amend any outstanding Option so as to specify a higher or lower exercise price or accept the surrender of outstanding Incentive Options and authorize the granting of new Options in substitution therefor specifying a higher or lower exercise price, or take any other action to reprice any option if the effect of such repricing would be to increase or decrease the exercise price applicable to such Option. In addition, no modification or amendment of an Award shall, without the consent of the Holder, adversely affect any rights of the Holder or increase the obligations of the Holder under such Award except, with respect to Incentive Options, as may be necessary to satisfy the requirements of Section 422 of the Code.

XII.

GENERAL

12.1 Application of Funds. The proceeds received by the Company from the sale of shares of Stock pursuant to Awards shall be used for general corporate purposes or any other purpose permitted by law.

12.2 Right of the Company and Subsidiaries to Terminate Employment. Nothing contained in the Plan, or in any Award Agreement, shall confer upon any Holder any right to continue in the employ of the Company or any Subsidiary, or interfere in any way with the rights of the Company or any Subsidiary to terminate any such employment relationship at any time.

12.3 No Liability for Good Faith Determinations. Neither the Board of Directors nor the Committee nor any member of either shall be liable for any act, omission, or determination taken or made in good faith with respect to the Plan or any Award granted under the Plan, and members of the Board of Directors and the Committee shall be entitled to indemnification and reimbursement by the Company in respect of any claim, loss, damage, or expense (including attorneys fees, the costs of settling any suit, provided such settlement is approved by independent legal counsel selected by the Company, and amounts paid in satisfaction of a judgment, except a judgment based on a finding of bad faith) arising therefrom to the full extent permitted by law and under any directors and officers liability or similar insurance coverage that may from time to time be in effect. This right to indemnification shall be in addition to, and not a limitation on, any other indemnification rights any member of the Board of Directors or the Committee may have.

12.4 Other Benefits. Participation in the Plan shall not preclude any Holder from eligibility in (or entitle any Holder to participate in) any other stock or stock option plan of the Company or any Subsidiary or any old age benefit, insurance, pension, profit sharing, retirement, bonus, or other extra compensation plan that the Company or any Subsidiary has adopted or may, at any time, adopt for the benefit of its employees or other Persons. Neither the adoption of the Plan by the Board of Directors nor the submission of the Plan to the stockholders of the Company for approval shall be construed as creating any limitations on the power of the Board of Directors to adopt such other incentive arrangements as it may deem desirable, including, without limitation, the granting of stock options and the awarding of securities and cash otherwise than under the Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

12.5 Exclusion From Pension and Profit-Sharing Compensation. By acceptance of an Award (whether in Stock or cash), as applicable, each Holder shall be deemed to have agreed that the Award is special incentive compensation that will not be taken into account in any manner as salary, compensation or bonus in determining the amount of any payment under any pension, retirement or other employee benefit plan of the Company or any Subsidiary except as may otherwise be specifically provided in such plan. In addition, each beneficiary of a deceased Holder shall be deemed to have agreed that no Award to such Holder shall affect the amount of any life insurance coverage, if any, provided by the Company or a Subsidiary on the life of the Holder that is payable to the beneficiary under any life insurance plan covering employees of the Company or any Subsidiary.

12.6 Execution of Receipts and Releases. Any issuance or transfer of shares of Stock to the Holder, or to the Holder's Designated Beneficiary, guardian, legal representatives, heirs, legatees, distributees or permitted assigns, in accordance with the provisions hereof, shall, to the extent thereof, be in full satisfaction of all claims of such Persons hereunder. The Committee may require any Holder, Designated Beneficiary, guardian, legal representative, heir, legatee, distributee or assignee, as a condition precedent to such payment, to execute a release and receipt therefor in such form as the Committee shall determine.

12.7 Unfunded Plan. Insofar as it provides for Awards of cash, Stock or other property or assets, the Plan shall be unfunded. Although bookkeeping accounts may be established with respect to Holders who are entitled to cash, Stock, other property or assets or rights thereto under the Plan, any such accounts shall be used merely as a bookkeeping convenience. The Company shall not be required to segregate any assets that may at any time be represented by cash, Stock, other property or assets or rights thereto, nor shall the Plan be construed as providing for such segregation, nor shall the Company nor the Board of Directors nor the Committee be deemed to be a trustee of any cash, Stock, other property or assets or rights thereto to be granted under the Plan. Any liability of the Company to any Holder with respect to a grant of cash, Stock, other property or assets or rights thereto under the Plan shall be based solely upon any contractual obligations that may be created by the Plan and any Award Agreement; no such obligation of the Company shall be deemed to be secured by any pledge or other encumbrance on any property or assets of the Company. Neither the Company nor the Board of Directors nor the Committee shall be required to give any security or bond for the performance of any obligation that may be created by the Plan.

12.8 No Guarantee of Interests. None of the Company, the Board of Directors, or the Committee guarantees the Stock of the Company from loss or depreciation.

12.9 Payment of Expenses. Subject to Section 9.17, all expenses incident to the administration, termination or protection of the Plan, including legal and accounting fees and any issue taxes with respect to the issuance of shares of Stock pursuant to the Plan, shall be paid by the Company or its Subsidiaries.

12.10 Company Records. The records of the Company or its Subsidiaries regarding any Holder's period of employment, termination of employment and the reason therefor, leaves of absence, re-employment, and other matters shall be conclusive for all purposes hereunder, unless determined by the Committee to be incorrect.

12.11 No Liability of Company. The Company assumes no obligation or responsibility to the Holder or the Holder's Designated Beneficiary, guardian, legal representatives, heirs, legatees, distributees or assignees for any act of, or failure to act on the part of, the Committee.

12.12 Company Action. Any action required of the Company shall be by resolution of its Board of Directors or by a duly authorized officer of the Company or by another Person authorized to act by resolution of the Board of Directors.

12.13 Severability. Whenever possible, each provision of the Plan and each Award Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the Plan or any Award Agreement, or the application thereof to any Person or under any circumstances, is invalid or unenforceable to any extent under applicable law, then such provision shall be deemed severed from the Plan or such Award Agreement with respect to such Person or circumstance, without invalidating the remainder of the Plan or such Award Agreement or the application of such provision to other Persons or circumstances, and a new provision shall be deemed substituted in lieu of the provision so severed which new provision shall, to the extent possible, accomplish the intent of the parties as evidenced by the provision so severed.

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12.14 Notices. Except as may be expressly provided in the Plan or the relevant Award Agreement, whenever any notice is required or permitted to be given under the Plan or such Award Agreement, such notice must be in writing and delivered (including delivery by private courier or facsimile transmittal) or sent by mail (which if to the Company must be certified or registered, return receipt requested) postage and other charges prepaid, addressed to the Person for whom the communication is intended (which for the Company shall be the address of the Company's chief executive office from time to time, or such other address as may be established from time to time by the Committee, and which for any Holder shall be the address for such Holder set forth in the relevant Award Agreement or such other address as shall have been furnished by notice by such Holder to the Company). Any such notice shall be deemed to be given on the date received or (if mailed in the manner set forth herein) three (3) Business Days after the date of mailing. Any person entitled to notice hereunder may waive such notice.

12.15 No Waiver. No waiver of any provision of the Plan or any Award Agreement shall be effective unless made in writing and signed by the party to be charged with the waiver. Failure of any party at any time to require any other party's performance of any obligation under the Plan or Award Agreement shall not affect the right to require performance of that obligation. Any waiver by any party of any breach of any provision of the Plan or any Award Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, or as a waiver or modification of the provision itself.

12.16 Successors. Subject to the restrictions contained herein, the Plan shall be binding upon the Holder, the Holder's Designated Beneficiaries, guardian, legal representatives, heirs, legatees, distributees and permitted assigns, and upon the Company, its successors and assigns.

12.17 Further Assurances. Each Holder shall execute and deliver such documents, and take or cause to be taken such other actions, as may be reasonably requested by the Committee in order to implement the terms of the Plan and any Award Agreement with respect to that Holder.

12.18 Governing Law. EXCEPT AS MAY BE OTHERWISE PROVIDED IN A PARTICULAR AWARD AGREEMENT, TO THE EXTENT NOT GOVERNED BY FEDERAL LAW, THIS PLAN AND EACH AWARD AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE; PROVIDED, HOWEVER, THAT ISSUES REGARDING THE INTERNAL AFFAIRS OF THE COMPANY SHALL BE GOVERNED BY THE LAW OF THE COMPANY'S JURISDICTION OF ORGANIZATION.

12.19 Jurisdiction and Venue. EXCEPT AS MAY BE OTHERWISE PROVIDED IN A PARTICULAR AWARD AGREEMENT, EACH HOLDER HEREBY SUBMITS TO THE JURISDICTION OF ALL FEDERAL AND STATE COURTS OF NEW YORK AND HEREBY AGREES THAT ANY SUCH COURT SHALL BE A PROPER FORUM FOR THE DETERMINATION OF ANY DISPUTE ARISING UNDER THE PLAN OR ANY AWARD AGREEMENT WITH RESPECT TO SUCH HOLDER.

12.20 Interpretation. When a reference is made in the Plan or any Award Agreement to Schedules, Exhibits or Addenda, such reference shall be to a schedule, exhibit or addendum to this Plan or the relevant Award Agreement unless otherwise indicated. Each instance in the Plan or any Award Agreement of the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation." As used in the Plan or any Award Agreement, the term "days" means calendar days, not business days, unless otherwise specified. Unless otherwise specified, the words "herein," "hereof," and "hereunder" and other words of similar import refer to the Plan or relevant Award Agreement as a whole and not to any particular article, section, paragraph, subparagraph, schedule, exhibit, addendum or other subdivision. Similarly, unless otherwise specified, the words "therein," "thereof" and "thereunder" and other words of similar import refer to a particular agreement or other instrument as a whole and not to any particular article, section, paragraph, subparagraph, schedule, exhibit, addendum or other subdivision. Unless otherwise specified, any reference to a statute includes and refers to the statute itself, as well as to any rules and regulations made and duly promulgated pursuant thereto, and all amendments made thereto and in force currently from time to time and any statutes, rules or regulations thereafter duly made, enacted and/or promulgated, as may be appropriate, and/or any other governmental actions thereafter duly taken from time to time having the effect of supplementing or superseding such statute, rules, and/or regulations. The language in all parts of the Plan and each Award Agreement shall be in all cases construed simply, fairly, equitably, and reasonably, according to its plain meaning and not strictly for or against one or more of the parties. Any table of contents or headings contained

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in the Plan or any Award Agreement are for reference purposes only and shall not be construed to affect the meaning or interpretation of the Plan or any Award Agreement. When required by the context, (i) whenever the singular number is used in the Plan or any Award Agreement, the same shall include the plural, and the plural shall include the singular; and (ii) the masculine gender shall include the feminine and neuter genders and vice versa.

12.21 No Representations. NEITHER THE COMPANY, ANY OF ITS SUBSIDIARIES OR OTHER AFFILIATES, THE BOARD OF DIRECTORS OR THE COMMITTEE, OR ANY MEMBER OF EITHER THEREOF MAKES ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER REGARDING THE LEGAL, TAX OR ACCOUNTING CONSEQUENCES OF ANY ASPECT OF THE PLAN OR ANY AWARDS, INCLUDING ANY REPRESENTATION OR WARRANTY THAT ANY OPTION SHALL BE TREATED AS AN INCENTIVE STOCK OPTION UNDER THE CODE. BY ACCEPTING ANY AWARD, EACH HOLDER ACKNOWLEDGES THAT SUCH HOLDER HAS CONSULTED WITH SUCH ADVISORS AS THE HOLDER HAS DEEMED APPROPRIATE WITH RESPECT TO ANY OF SUCH MATTERS.

APPENDIX B

SMARTPROS LTD.
P R O X Y
FOR ANNUAL MEETING OF THE STOCKHOLDERS
To Be Held on June 16, 2009
THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS

The undersigned hereby appoints Allen S. Greene and Jack Fingerhut, and each of them, with full power of substitution, as proxies to vote the shares which the undersigned is entitled to vote at the Annual Meeting of the Stockholders of SmartPros Ltd. (SmartPros) to be held at the Comfort Inn, 20 Saw Mill River Road, Hawthorne, New York 10532, on Tuesday, June 16, 2009 at 10:00 A.M. Eastern Time and at any adjournments thereof, hereby revoking any proxies heretofore given, to vote all shares of common stock of SmartPros held or owned by the undersigned as indicated on the proposals as more fully set forth in the Proxy Statement, and in their discretion upon such other matters as may come before the meeting.

Important Notice Regarding Internet Availability of Proxy Materials for the Annual Meeting to Be Held on June 16, 2009.
The proxy materials for the Annual Meeting, including the Annual Report and the Proxy Statement are available at http://ir.smartpros.com.

Please mark X your votes as indicated:

1. Election of Class II Director: Jack Fingerhut.

o **FOR** o **WITHHOLD**

2. Approval of SmartPros 2009 Incentive Compensation Plan.

o **FOR** o **AGAINST** o **ABSTAIN**

3. Advisory approval of the appointment of Holtz Rubenstein Reminick LLP as independent auditors for SmartPros for the year ending December 31, 2009.

o **FOR** o **AGAINST** o **ABSTAIN**

(*Continued, and to be signed, on the Reverse Side*)
FOLD HERE

THIS PROXY WHEN PROPERLY SIGNED WILL BE VOTED IN THE MANNER DIRECTED HEREIN BY THE UNDERSIGNED STOCKHOLDER. IF NO DIRECTION IS MADE, THIS PROXY WILL BE VOTED FOR PROPOSALS 1, 2 AND 3.

The undersigned hereby acknowledges receipt of the Notice of, and Proxy Statement for, the aforesaid Annual Meeting.

Dated: , 2009

Signature of Stockholder

Signature of Stockholder

NOTE: When shares are held by joint tenants, both should sign. When signing as attorney, executor, administrator, trustee, or guardian, please give full title as such. If a corporation, please sign in full corporate name by President or other authorized officer. If a partnership, please sign in partnership name by an authorized person.

IMPORTANT - PLEASE FILL IN, SIGN AND RETURN PROMPTLY USING THE ENCLOSED ENVELOPE.

#160;Indebtedness of NRG or any Restricted Subsidiary consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business; and

(19) the incurrence by NRG and/or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate principal amount (or accreted value, as applicable) at any time outstanding, including all Permitted Refinancing Indebtedness incurred to refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (19), not to exceed $500.0 million.

For purposes of determining compliance with this Incurrence of Indebtedness and Issuance of Preferred Stock covenant, in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (19) above, or is entitled to be incurred pursuant to the first paragraph of this covenant, NRG will be permitted to classify such item of Indebtedness on the date of its incurrence, or later reclassify all or a portion of such item of Indebtedness, in any manner that complies with this covenant. Indebtedness under the Credit Agreement outstanding on the date of the supplemental indenture will initially be deemed to have been incurred on such date in reliance on the exception provided by clause (1) of the definition of Permitted Debt. The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on Disqualified Stock in the form of additional shares of the same class of Disqualified Stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock for purposes of this covenant; *provided*, in each such case, that the amount thereof is included in Fixed Charges of NRG as accrued.

For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred; *provided* that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-dominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-dominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of the Indebtedness being refinanced.

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The amount of any Indebtedness outstanding as of any date will be:

(1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

(2) the principal amount of the Indebtedness, in the case of any other Indebtedness; and

(3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:

(a) the fair market value of such asset at the date of determination, and

(b) the amount of the Indebtedness of the other Person;

provided that any changes in any of the above shall not give rise to a default under this covenant.

Antilayering

NRG will not incur, and will not permit any Guarantor to incur, any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of NRG or such Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the notes and the applicable Guarantee on substantially identical terms; *provided*, *however*, that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of NRG solely by virtue of being unsecured or by virtue of being secured on a first or junior Lien basis.

Liens

NRG will not and will not permit any of its Restricted Subsidiaries to, create, incur, assume or otherwise cause or suffer to exist or become effective any Lien of any kind (other than Permitted Liens) securing Indebtedness or Attributable Debt upon any of their property or assets, now owned or hereafter acquired, unless all payments due under the indenture and the notes are secured on an equal and ratable basis with the obligations so secured until such time as such obligations are no longer secured by a Lien.

Sale and Leaseback Transactions

NRG will not, and will not permit any of its Restricted Subsidiaries to, enter into any sale and leaseback transaction; *provided* that NRG or any Guarantor may enter into a sale and leaseback transaction if:

(1) NRG or that Guarantor, as applicable, could have (a) incurred Indebtedness in an amount equal to the Attributable Debt relating to such sale and leaseback transaction under the covenant described above under the caption Incurrence of Indebtedness and Issuance of Preferred Stock and (b) incurred a Lien to secure such Indebtedness pursuant to the covenant described above under the caption Liens ;

(2) the gross proceeds of that sale and leaseback transaction are at least equal to the fair market value of the property that is subject of that sale and leaseback transaction, as determined in good faith by a senior financial officer of NRG; and

(3) if such sale and leaseback transaction constitutes an Asset Sale, the transfer of assets in that sale and leaseback transaction is permitted by, and NRG applies the proceeds of such transaction in compliance with, the covenant described above under the caption Repurchase at the Option of Holders Asset Sales.

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Dividend and Other Payment Restrictions Affecting Subsidiaries

NRG will not, and will not permit any of its Restricted Subsidiaries (other than Excluded Subsidiaries) to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiaries (other than Excluded Subsidiaries) to:

(1) pay dividends or make any other distributions on its Capital Stock to NRG or any of its Restricted Subsidiaries (other than Excluded Subsidiaries), or with respect to any other interest or participation in, or measured by, its profits, or pay any indebtedness owed to NRG or any of its Restricted Subsidiaries (other than Excluded Subsidiaries);

(2) make loans or advances to NRG or any of its Restricted Subsidiaries (other than Excluded Subsidiaries); or

(3) transfer any of its properties or assets to NRG or any of its Restricted Subsidiaries (other than Excluded Subsidiaries).

However, the preceding restrictions will not apply to encumbrances or restrictions existing under or by reason of:

(1) agreements governing Existing Indebtedness and the Credit Agreement, on the date of the supplemental indenture;

(2) the indenture, the notes and the Subsidiary Guarantees (including the exchange notes and related Subsidiary Guarantees);

(3) applicable law, rule, regulation or order;

(4) customary non-assignment provisions in contracts, agreements, leases, permits and licenses;

(5) purchase money obligations for property acquired and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in clause (3) of the preceding paragraph;

(6) any agreement for the sale or other disposition of the stock or assets of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending the sale or other disposition;

(7) Permitted Refinancing Indebtedness; *provided* that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;

(8) Liens permitted to be incurred under the provisions of the covenant described above under the caption Liens and associated agreements that limit the right of the debtor to dispose of the assets subject to such Liens;

(9) provisions limiting the disposition or distribution of assets or property in joint venture, partnership, membership, stockholder and limited liability company agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, including owners , participation or similar agreements governing projects owned through an undivided interest, which limitation is applicable only to the assets that are the subject of such agreements;

(10) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in connection with a Permitted Business;

(11) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or similar agreement to which NRG or any Restricted Subsidiary of NRG is a party entered into in connection with a Permitted Business; *provided* that such agreement prohibits the encumbrance of solely the property or assets of NRG or such Restricted Subsidiary that

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are the subject of that agreement, the payment rights arising thereunder and/or the proceeds thereof and not to any other asset or property of NRG or such Restricted Subsidiary or the assets or property of any other Restricted Subsidiary;

(12) any instrument governing Indebtedness or Capital Stock of a Person acquired by NRG or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Indebtedness or Capital Stock was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; *provided* that, in the case of Indebtedness, such Indebtedness was permitted by the terms of the indenture to be incurred;

(13) Indebtedness of a Restricted Subsidiary of NRG existing at the time it became a Restricted Subsidiary if such restriction was not created in connection with or in anticipation of the transaction or series of transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was acquired by NRG;

(14) with respect to clause (3) of the first paragraph of this covenant only, restrictions encumbering property at the time such property was acquired by NRG or any of its Restricted Subsidiaries, so long as such restriction relates solely to the property so acquired and was not created in connection with or in anticipation of such acquisition;

(15) provisions limiting the disposition or distribution of assets or property in agreements governing Non-Recourse Debt, which limitation is applicable only to the assets that are the subject of such agreements; and

(16) any encumbrance or restrictions of the type referred to in clauses (1), (2) and (3) of the first paragraph of this covenant imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (15) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of a senior financial officer of NRG, no more restrictive with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewals, increase, supplement, refunding, replacement or refinancing.

Merger, Consolidation or Sale of Assets

NRG may not, directly or indirectly: (1) consolidate or merge with or into another Person (whether or not NRG is the surviving corporation); or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of NRG and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person; unless:

(1) either: (a) NRG is the surviving corporation; or (b) the Person formed by or surviving any such consolidation or merger (if other than NRG) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state of the United States or the District of Columbia; *provided* that if the Person is a partnership or limited liability company, then a corporation wholly-owned by such Person organized or existing under the laws of the United States, any state of the United States or the District of Columbia that does not and will not have any material assets or operations shall become a co-issuer of the notes pursuant to supplemental indentures duly executed by the applicable trustee;

(2) the Person formed by or surviving any such consolidation or merger (if other than NRG) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of NRG

under the notes and the indenture pursuant to supplemental indentures or other documents and agreements reasonably satisfactory to the trustee;

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(3) immediately after such transaction, no Default or Event of Default exists; and

(4) (i) NRG or the Person formed by or surviving any such consolidation or merger (if other than NRG), or to which such sale, assignment, transfer, conveyance or other disposition has been made will, on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of the covenant described above under the caption Incurrence of Indebtedness and Issuance of Preferred Stock or (ii) NRG s Fixed Charge Coverage Ratio is greater after giving pro forma effect to such consolidation or merger and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period than NRG s actual Fixed Charge Coverage Ratio for the period.

In addition, NRG may not, directly or indirectly, lease all or substantially all of its properties or assets, in one or more related transactions, to any other Person.

This Merger, Consolidation or Sale of Assets covenant will not apply to:

(1) a merger of NRG with an Affiliate solely for the purpose of reincorporating NRG in another jurisdiction or forming a direct holding company of NRG; and

(2) any sale, transfer, assignment, conveyance, lease or other disposition of assets between or among NRG and its Restricted Subsidiaries, including by way of merger or consolidation.

Transactions with Affiliates

NRG will not, and will not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of NRG (each, an *Affiliate Transaction*) involving aggregate payments in excess of $10.0 million, unless:

(1) the Affiliate Transaction is on terms that are no less favorable to NRG (as reasonably determined by NRG) or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by NRG or such Restricted Subsidiary with an unrelated Person; and

(2) NRG delivers to the trustee:

(a) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $50.0 million, a resolution of the Board of Directors set forth in an officers certificate certifying that such Affiliate Transaction complies with this covenant and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors; and

(b) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $100.0 million, an opinion as to the fairness to NRG or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of national standing.

The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of the prior paragraph:

(1) any employment agreement or director s engagement agreement, employee benefit plan, officer and director indemnification agreement or any similar arrangement entered into by NRG or any of its Restricted Subsidiaries or approved by the Board of Directors of NRG in good faith;

(2) transactions between or among NRG and/or its Restricted Subsidiaries;

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(3) transactions with a Person (other than an Unrestricted Subsidiary of NRG) that is an Affiliate of NRG solely because NRG owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such Person;

(4) payment of directors fees;

(5) any issuance of Equity Interests (other than Disqualified Stock) of NRG or its Restricted Subsidiaries;

(6) Restricted Payments that do not violate the provisions of the indenture described above under the caption Restricted Payments ;

(7) any agreement in effect as of February 2, 2006 or any amendment thereto or replacement thereof and any transaction contemplated thereby or permitted thereunder, so long as any such amendment or replacement agreement taken as a whole is not more disadvantageous to the Holders than the original agreement as in effect on February 2, 2006;

(8) payments or advances to employees or consultants that are incurred in the ordinary course of business or that are approved by the Board of Directors of NRG in good faith;

(9) the existence of, or the performance by NRG or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of February 2, 2006 and any similar agreements which it may enter into thereafter; *provided*, *however*, that the existence of, or the performance by NRG or any of its Restricted Subsidiaries of obligations under, any future amendment to any such existing agreement or under any similar agreement entered into after February 2, 2006 shall only be permitted by this clause (9) to the extent that the terms of any such amendment or new agreement are not otherwise more disadvantageous to the holders of the notes in any material respect;

(10) transactions permitted by, and complying with, the provisions of the covenant described under Merger, Consolidation or Sale of Assets ;

(11) transactions with customers, clients, suppliers, joint venture partners or purchasers or sellers of goods or services (including pursuant to joint venture agreements) otherwise in compliance with the terms of the indenture that are fair to NRG and its Restricted Subsidiaries, in the reasonable determination of a senior financial officer of NRG, or are on terms not materially less favorable taken as a whole as might reasonably have been obtained at such time from an unaffiliated party;

(12) any repurchase, redemption or other retirement of Capital Stock of NRG held by employees of NRG or any of its Subsidiaries;

(13) loans or advances to employees or consultants;

(14) any Permitted Investment in another Person involved in a Permitted Business;

(15) transactions in which NRG or any Restricted Subsidiary of NRG, as the case may be, delivers to the trustee a letter from an Independent Financial Advisor stating that such transaction is fair to NRG or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (1) of the preceding paragraph;

(16) the guarantee of Permitted Itiquira Indebtedness; and

(17) any agreement to do any of the foregoing.

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Additional Subsidiary Guarantees

If,

> NRG or any of its Restricted Subsidiaries acquires or creates another Domestic Subsidiary (other than an Excluded Subsidiary or a Domestic Subsidiary that does not Guarantee any other Indebtedness of NRG) after the date of the supplemental indenture,
>
> any Excluded Subsidiary that is a Domestic Subsidiary ceases to be an Excluded Subsidiary after the date of the supplemental indenture, or
>
> any Domestic Subsidiary that does not Guarantee any other Indebtedness of NRG subsequently Guarantees other Indebtedness of NRG,

then such newly acquired or created Subsidiary, former Excluded Subsidiary, or Domestic Subsidiary, as the case may be, will become a Guarantor and execute a supplemental indenture and deliver an opinion of counsel satisfactory to the trustee within 30 business days of the date on which it was acquired or created or ceased to be an Excluded Subsidiary or Guaranteed other Indebtedness of NRG, as the case may be.

Designation of Restricted, Unrestricted and Excluded Project Subsidiaries

The Board of Directors may designate any Restricted Subsidiary to be an Unrestricted Subsidiary if that designation would not cause a Default. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate fair market value of all outstanding Investments owned by NRG and its Restricted Subsidiaries in the Subsidiary designated as Unrestricted will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments under the covenant described above under the caption Restricted Payments or under one or more clauses of the definition of Permitted Investments, as determined by NRG. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. The Board of Directors may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary if that redesignation would not cause a Default.

The Board of Directors may designate any Restricted Subsidiary to be an Excluded Project Subsidiary if that designation would not cause a Default. If a Restricted Subsidiary that is not an Excluded Project Subsidiary is designated as an Excluded Project Subsidiary, the aggregate fair market value of all outstanding Investments owned by NRG and its Restricted Subsidiaries in the Subsidiary designated as an Excluded Project Subsidiary will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments under the covenant described above under the caption Restricted Payments or under one or more clauses of the definition of Permitted Investments, as determined by NRG. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Excluded Project Subsidiary. The Board of Directors may redesignate any Excluded Project Subsidiary to be a Restricted Subsidiary that is not an Excluded Project Subsidiary if that redesignation would not cause a Default.

Payments for Consent

NRG will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any holder of notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the indenture or the notes unless such consideration is offered to be paid and is paid to all holders of notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

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Reports

Whether or not required by the Commission s rules and regulations, so long as any notes are outstanding, NRG will furnish to the holders of notes or cause the trustee to furnish to the holders of notes, within the time periods (including any extensions thereof) specified in the Commission s rules and regulations:

(1) all quarterly and annual reports that would be required to be filed with the Commission on Forms 10-Q and 10-K if NRG were required to file such reports; and

(2) all current reports that would be required to be filed with the Commission on Form 8-K if NRG were required to file such reports.

All such reports will be prepared in all material respects in accordance with all of the rules and regulations applicable to such reports. Each annual report on Form 10-K will include a report on NRG s consolidated financial statements by NRG s independent registered public accounting firm. In addition, NRG will file a copy of each of the reports referred to in clauses (1) and (2) above with the Commission for public availability within the time periods specified in the rules and regulations applicable to such reports (unless the Commission will not accept such a filing). To the extent such filings are made, the reports will be deemed to be furnished to the trustee and holders of notes.

If NRG is no longer subject to the periodic reporting requirements of the Exchange Act for any reason, NRG will nevertheless continue filing the reports specified in the preceding paragraph with the Commission within the time periods specified above unless the Commission will not accept such a filing. NRG agrees that it will not take any action for the purpose of causing the Commission not to accept any such filings. If, notwithstanding the foregoing, the Commission will not accept NRG s filings for any reason, NRG will post the reports referred to in the preceding paragraph on its website within the time periods that would apply if NRG were required to file those reports with the Commission.

In addition, NRG and the Guarantors agree that, for so long as any notes remain outstanding, at any time they are not required to file the reports required by the preceding paragraphs with the Commission, they will furnish to the holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

Events of Default and Remedies

Each of the following is an Event of Default with respect to the notes:

(1) default for 30 days in the payment when due of interest on the notes;

(2) default in payment when due of the principal of, or premium, if any, on the notes;

(3) failure by NRG or any of its Restricted Subsidiaries for 30 days after written notice given by the trustees or holders, to comply with any of the other agreements in the indenture;

(4) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by NRG or any of its Restricted Subsidiaries (or the payment of which is guaranteed by NRG or any of its Restricted Subsidiaries) whether such Indebtedness or guarantee now exists, or is created after the date of the supplemental indenture, if that default:

(a) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness on the date of such default (a *Payment Default*); or

(b) results in the acceleration of such Indebtedness prior to its express maturity,

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates $100.0 million or more; *provided* that this clause (4) shall not apply to (i) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the

property or assets securing such Indebtedness to a Person that is not an Affiliate of NRG; (ii) Non-Recourse Debt of NRG Peaker Finance Company LLC; and (iii) Non-Recourse Debt of NRG or any of its Subsidiaries (except to the extent that NRG or any of its Restricted Subsidiaries that are not parties to such Non-Recourse Debt becomes directly or indirectly liable, including pursuant to any contingent obligation, for any Indebtedness thereunder and such liability, individually or in the aggregate, exceeds $100.0 million);

(5) one or more judgments for the payment of money in an aggregate amount in excess of $100.0 million (excluding therefrom any amount reasonably expected to be covered by insurance) shall be rendered against NRG any Restricted Subsidiary or any combination thereof and the same shall not have been paid, discharged or stayed for a period of 60 days after such judgment became final and non-appealable;

(6) except as permitted by the indenture, any Subsidiary Guarantee shall be held in any final and non-appealable judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect or any Guarantor (or any group of Guarantors) that constitutes a Significant Subsidiary, or any Person acting on behalf of any Guarantor (or any group of Guarantors) that constitutes a Significant Subsidiary, shall deny or disaffirm its or their obligations under its or their Subsidiary Guarantee(s); and

(7) certain events of bankruptcy or insolvency described in the indenture with respect to NRG or any of its Restricted Subsidiaries (other than the Exempt Subsidiaries) that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary.

In the case of an Event of Default with respect to the notes arising from certain events of bankruptcy or insolvency with respect to NRG, any Restricted Subsidiary (other than the Exempt Subsidiaries) that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, all notes that are outstanding will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the trustee or the holders of at least 25% in principal amount of the notes that are outstanding may declare all the notes to be due and payable immediately.

Subject to certain limitations, holders of a majority in principal amount of the notes that are then outstanding may direct the trustee in its exercise of any trust or power. The trustee may withhold from holders of notes notice of any continuing Default or Event of Default if it determines that withholding notice is in their interest, except a Default or Event of Default relating to the payment of principal or interest.

Subject to the provisions of the indenture relating to the duties of the applicable trustee, in case an Event of Default occurs and is continuing under the indenture, the trustee will be under no obligation to exercise any of the rights or powers under the indenture at the request or direction of any holders of the notes unless such holders have offered to the trustee reasonable indemnity or security against any loss, liability or expense. Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no holder of a note may pursue any remedy with respect to the indenture unless:

(1) such holder has previously given the trustee notice that an Event of Default is continuing;

(2) holders of at least 25% in aggregate principal amount of the notes that are then outstanding have requested the trustee to pursue the remedy;

(3) such holders have offered the trustee reasonable security or indemnity against any loss, liability or expense;

(4) the trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

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(5) holders of a majority in aggregate principal amount of notes that are then outstanding have not given the trustee a direction inconsistent with such request within such 60-day period.

The holders of a majority in aggregate principal amount of the notes then outstanding by notice to the trustee may, on behalf of the holders of notes, rescind an acceleration or waive any existing Default or Event of Default and its consequences under the indenture except a continuing Default or Event of Default in the payment of interest on, or the principal of, such notes.

NRG is required to deliver to the trustee annually a statement regarding compliance with the indenture. Upon becoming aware of any Default or Event of Default, NRG is required to deliver to the trustee a statement specifying such Default or Event of Default.

No Personal Liability of Directors, Officers, Employees and Stockholders

No director, officer, employee, incorporator or stockholder of NRG or any Guarantor, as such, will have any liability for any obligations of NRG or the Guarantors under the notes, the indenture or the Subsidiary Guarantees, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder of notes by accepting a note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the notes. The waiver may not be effective to waive liabilities under the federal securities laws.

Legal Defeasance and Covenant Defeasance

NRG may, at its option and at any time, elect to have all of its obligations discharged with respect to the notes that are outstanding and all obligations of the Guarantors of such notes discharged with respect to their Subsidiary Guarantees (*Legal Defeasance*) except for:

(1) the rights of holders of notes that are then outstanding to receive payments in respect of the principal of, or interest or premium on the notes when such payments are due from the trust referred to below;

(2) NRG s obligations with respect to the notes concerning issuing temporary notes, registration of notes, mutilated, destroyed, lost or stolen notes and the maintenance of an office or agency for payment and money for security payments held in trust;

(3) the rights, powers, trusts, duties and immunities of the trustee for the notes, and NRG s and the Guarantors obligations in connection therewith; and

(4) the Legal Defeasance provisions of the indenture for the notes.

In addition, NRG may, at its option and at any time, elect to have the obligations of NRG and the Guarantors released with respect to certain covenants (including its obligation to make Change of Control Offers and Asset Sale Offers) that are described in the indenture (*Covenant Defeasance*) and thereafter any omission to comply with those covenants will not constitute a Default or Event of Default with respect to the notes. In the event Covenant Defeasance occurs, certain events (not including non-payment, bankruptcy, receivership, rehabilitation and insolvency events) described under Events of Default and Remedies will no longer constitute an Event of Default with respect to the notes.

In order to exercise either Legal Defeasance or Covenant Defeasance:

(1) NRG must irrevocably deposit with the trustee, in trust, for the benefit of the holders of the notes subject to Legal Defeasance or Covenant Defeasance, cash in U.S. dollars, non-callable Government Securities, or a combination of

cash in U.S. dollars and non-callable Government Securities, in amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants to pay the principal of, or interest and premium on such notes that are then outstanding on the Stated Maturity or on the applicable redemption date, as the case may be, and NRG must specify whether such notes are being defeased to maturity or to a particular redemption date;

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(2) in the case of Legal Defeasance, NRG has delivered to the trustee an opinion of counsel reasonably acceptable to the trustee confirming that (a) NRG has received from, or there has been published by, the Internal Revenue Service a ruling or (b) since the date of the supplemental indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such opinion of counsel will confirm that, the holders of the notes that are then outstanding will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of Covenant Defeasance, NRG has delivered to the trustee an opinion of counsel reasonably acceptable to the trustee confirming that the holders of notes that are then outstanding will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Default or Event of Default with respect to the notes has occurred and is continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit);

(5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under any material agreement or instrument (other than the indenture) to which NRG or any of its Subsidiaries is a party or by which NRG or any of its Subsidiaries is bound;

(6) NRG must deliver to the trustee an officers certificate stating that the deposit was not made by NRG with the intent of preferring the holders of notes over the other creditors of NRG with the intent of defeating, hindering, delaying or defrauding creditors of NRG or others; and

(7) NRG must deliver to the trustee an officers certificate and an opinion of counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

Amendment, Supplement and Waiver

Except as provided in the next two succeeding paragraphs, the indenture or the notes outstanding thereunder may be amended or supplemented with the consent of the holders of at least a majority in principal amount of notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the notes), and any existing default or compliance with any provision of the indenture or the notes outstanding thereunder may be waived with the consent of the holders of a majority in principal amount of the notes that are then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the notes).

Without the consent of each holder of notes affected, an amendment or waiver may not (with respect to any such notes held by a non-consenting holder):

(1) reduce the principal amount of such notes whose holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed maturity of any such note or alter the provisions with respect to the redemption of such notes (other than provisions relating to the covenants described above under the caption Repurchase at the Option of Holders);

(3) reduce the rate of or change the time for payment of interest on any such note;

(4) waive a Default or Event of Default in the payment of principal of, or interest or premium on such notes (except a rescission of acceleration of such notes by the holders of at least a

majority in aggregate principal amount of such notes and a waiver of the payment default that resulted from such acceleration);

(5) make any such note payable in currency other than that stated in such notes;

(6) make any change in the provisions of the indenture relating to waivers of past Defaults or the rights of holders of such notes to receive payments of principal of, or interest or premium on such notes;

(7) waive a redemption payment with respect to any such note (other than a payment required by one of the covenants described above under the caption Repurchase at the Option of Holders); or

(8) make any change in the preceding amendment and waiver provisions.

Notwithstanding the preceding, without the consent of any holder of notes, NRG, the Guarantors and the trustee may amend or supplement the indenture or the notes:

(1) to cure any ambiguity, defect or inconsistency;

(2) to provide for uncertificated notes in addition to or in place of certificated notes;

(3) to provide for the assumption of NRG s obligations to holders of notes in the case of a merger or consolidation or sale of all or substantially all of NRG s assets;

(4) to make any change that would provide any additional rights or benefits to the holders of notes or that does not adversely affect the legal rights under any indenture of any such holder;

(5) to comply with requirements of the Commission in order to effect or maintain the qualification of any indenture under the Trust Indenture Act;

(6) to conform the text of the indenture or the notes to any provision of this Description of the Notes to the extent that such provision in this Description of the Notes was intended to be a verbatim recitation of a provision of the indenture or the notes outstanding thereunder;

(7) to evidence and provide for the acceptance and appointment under the indenture of a successor trustee pursuant to the requirements thereof;

(8) to provide for the issuance of additional notes in accordance with the limitations set forth in the indenture as of the date hereof; or

(9) to allow any Guarantor to execute a supplemental indenture and/or a Subsidiary Guarantee with respect to the notes.

Satisfaction and Discharge

The indenture will be discharged and will cease to be of further effect as to all notes issued thereunder, when:

(1) either:

(a) all such notes that have been authenticated, except lost, stolen or destroyed notes that have been replaced or paid and notes for whose payment money has been deposited in trust and thereafter repaid to NRG, have been delivered to the trustee for such notes for cancellation; or

(b) all such notes that have not been delivered to the trustee for cancellation have become due and payable by reason of the mailing of a notice of redemption or otherwise or will become due and payable within one year and NRG or any Guarantor has irrevocably deposited or caused to be deposited with the trustee as trust funds in trust solely for the benefit of the holders of notes, cash in U.S. dollars, non-callable Government Securities, or a combination of cash in U.S. dollars and non-callable Government Securities, in amounts as

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will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on the notes not delivered to the trustee for cancellation for principal, premium and accrued interest to the date of maturity or redemption;

(2) no Default or Event of Default under the indenture has occurred and is continuing on the date of the deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which NRG or any Guarantor is a party or by which NRG or any Guarantor is bound;

(3) NRG or any Guarantor has paid or caused to be paid all sums payable by it under the indenture; and

(4) NRG has delivered irrevocable instructions to the trustee under the indenture to apply the deposited money toward the payment of the notes at maturity or the redemption date, as the case may be.

In addition, NRG must deliver an officers certificate and an opinion of counsel to the trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Concerning the Trustee

If the trustee becomes a creditor of NRG or any Guarantor, the indenture limits its right to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim as security or otherwise. The trustee will be permitted to engage in other transactions; *however*, if it acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the Commission for permission to continue (if such indenture has been qualified under the Trust Indenture Act) or resign.

The holders of a majority in principal amount of the notes that are outstanding will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the trustee, subject to certain exceptions. The indenture provides that in case an Event of Default occurs and is continuing, the trustee will be required, in the exercise of its power, to use the degree of care of a prudent man in the conduct of his own affairs. Subject to such provisions, the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request of any holder of notes, unless such holder has offered to the trustee security and indemnity satisfactory to it against any loss, liability or expense.

Certain Definitions

Set forth below are certain defined terms used in the indenture. Reference is made to the indenture for a full disclosure of all such terms, as well as any other capitalized terms used herein for which no definition is provided.

Acquired Debt means, with respect to any specified Person:

(1) Indebtedness of any other Person or asset existing at the time such other Person or asset is merged with or into, is acquired by, or became a Subsidiary of such specified Person, as the case may be, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of, such specified Person; and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

Acquisition means the acquisition of all of the outstanding Equity Interests of Texas Genco LLC by NRG pursuant to the Acquisition Agreement, among Texas Genco LLC, NRG, and the direct and indirect owners of Texas Genco LLC

party thereto, dated as of September 30, 2005.

Affiliate of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, control, as used with respect to any Person, means the possession, directly or indirectly, of the

power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; *provided* that beneficial ownership of 10% or more of the Voting Stock of a Person will be deemed to be control. For purposes of this definition, the terms controlling, controlled by and under common control with have correlative meanings.

Applicable Law shall mean, as to any Person, any ordinance, law, treaty, rule or regulation or determination by an arbitrator or a court or other Governmental Authority, including ERCOT, in each case, applicable to or binding on such Person or any of its property or assets or to which such Person or any of its property is subject.

Applicable Premium means, with respect to any note on any redemption date, the greater of:

(1) 1.0% of the principal amount of such note; or

(2) the excess of:

(A) the present value at such redemption date of (i) the redemption price of such note at January 15, 2012 (such redemption price being set forth in the table appearing above under the caption Optional Redemption) *plus* (ii) all required interest payments due on the note through January 15, 2012 (excluding accrued but unpaid interest to the redemption date), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points; over

(B) the principal amount of the note, if greater.

Asset Sale means:

(1) the sale, lease, conveyance or other disposition of any assets or rights; *provided* that the sale, conveyance or other disposition of all or substantially all of the assets of NRG and its Restricted Subsidiaries taken as a whole will be governed by the provisions of the indenture described above under the caption Repurchase at the Option of Holders Change of Control and/or the provisions described above under the caption Certain Covenants Merger, Consolidation or Sale of Assets and not by the provisions of the Asset Sale covenant; and

(2) the issuance of Equity Interests in any of NRG s Restricted Subsidiaries or the sale of Equity Interests in any of its Subsidiaries.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) any single transaction or series of related transactions for which NRG or its Restricted Subsidiaries receive aggregate consideration of less than $50.0 million;

(2) a transfer of assets or Equity Interests between or among NRG and its Restricted Subsidiaries;

(3) an issuance of Equity Interests by a Restricted Subsidiary of NRG to NRG or to a Restricted Subsidiary of NRG;

(4) the sale or lease of products or services and any sale or other disposition of damaged, worn-out or obsolete assets;

(5) the sale or discount, in each case without recourse, of accounts receivable, but only in connection with the compromise or collection thereof;

(6) the licensing of intellectual property;

(7) the sale, lease, conveyance or other disposition for value of energy, fuel or emission credits or contracts for any of the foregoing;

(8) the sale or other disposition of cash or Cash Equivalents;

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(9) a Restricted Payment that does not violate the covenant described above under the caption Certain Covenants Restricted Payments or a Permitted Investment;

(10) to the extent allowable under Section 1031 of the Internal Revenue Code of 1986, any exchange of like property (excluding any boot thereon) for use in a Permitted Business; and

(11) a disposition of assets in connection with a foreclosure, transfer or deed in lieu of foreclosure or other exercise of remedial action.

Asset Sale Offer has the meaning assigned to that term in the indenture governing the notes.

Attributable Debt in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; *provided*, *however*, that if such sale and leaseback transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of Capital Lease Obligation.

Beneficial Owner has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act. The terms Beneficially Owns and Beneficially Owned have a corresponding meaning.

Board of Directors means:

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the Board of Directors of the general partner of the partnership;

(3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and

(4) with respect to any other Person, the board or committee of such Person serving a similar function.

Capital Lease Obligation means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

Capital Stock means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

Cash Equivalents means:

(1) United States dollars, Euros or, in the case of any Foreign Subsidiary, any local currencies held by it from time to time;

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(2) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (*provided* that the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than twelve months from the date of acquisition;

(3) certificates of deposit and eurodollar time deposits with maturities of twelve months or less from the date of acquisition, bankers acceptances with maturities not exceeding 12 months and overnight bank deposits, in each case, with any domestic commercial bank having capital and surplus in excess of $500.0 million and a Thomson Bank Watch Rating of B or better;

(4) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;

(5) commercial paper having one of the two highest ratings obtainable from Moody s or S&P and in each case maturing within 12 months after the date of acquisition;

(6) readily marketable direct obligations issued by any state of the United States or any political subdivision thereof, in either case having one of the two highest rating categories obtainable from either Moody s or S&P; and

(7) money market funds that invest primarily in securities described in clauses (1) through (6) of this definition.

Change of Control means the occurrence of any of the following:

(1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of NRG and its Subsidiaries taken as a whole to any person (as that term is used in Section 13(d) of the Exchange Act, but excluding any employee benefit plan of NRG or any of its Restricted Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of such plan);

(2) the adoption of a plan relating to the liquidation or dissolution of NRG;

(3) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any person (as defined above) becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of NRG, measured by voting power rather than number of shares; or

(4) the first day on which a majority of the members of the Board of Directors of NRG are not Continuing Directors.

Change of Control Offer has the meaning assigned to it in the indenture governing the notes.

Concurrent Cash Distributions has the meaning assigned to it in the definition of Investments.

Consolidated Cash Flow means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period plus, without duplication:

(1) an amount equal to any extraordinary loss (including any loss on the extinguishment or conversion of Indebtedness) plus any net loss realized by such Person or any of its Restricted Subsidiaries in connection with an Asset Sale (without giving effect of the threshold provided in the definition thereof), to the extent such losses were deducted in computing such Consolidated Net Income; *plus*

(2) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; *plus*

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(3) the Fixed Charges of such Person and its Restricted Subsidiaries for such period, to the extent that such Fixed Charges were deducted in computing such Consolidated Net Income; *plus*

(4) any expenses or charges related to any equity offering, Permitted Investment, acquisition, disposition, recapitalization or Indebtedness permitted to be incurred by the indenture including a refinancing thereof (whether or not successful), including such fees, expenses or charges related to the offering of the notes and the Credit Agreement, and deducted in computing Consolidated Net Income; *plus*

(5) any professional and underwriting fees related to any equity offering, Permitted Investment, acquisition, recapitalization or Indebtedness permitted to be incurred under the indenture and, in each case, deducted in such period in computing Consolidated Net Income; *plus*

(6) the amount of any minority interest expense deducted in calculating Consolidated Net Income (less the amount of any cash dividends paid to the holders of such minority interests); *plus*

(7) any non cash gain or loss attributable to Mark to Market Adjustments in connection with Hedging Obligations; *plus*

(8) without duplication, any writeoffs, writedowns or other non-cash charges reducing Consolidated Net Income for such period, excluding any such charge that represents an accrual or reserve for a cash expenditure for a future period; *plus*

(9) all items classified as extraordinary, unusual or nonrecurring non-cash losses or charges (including, without limitation, severance, relocation and other restructuring costs), and related tax effects according to GAAP to the extent such non-cash charges or losses were deducted in computing such Consolidated Net Income; *plus*

(10) depreciation, depletion, amortization (including amortization of intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) and other non-cash charges and expenses (excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, depletion, amortization and other non-cash expenses were deducted in computing such Consolidated Net Income; *minus*

(11) non-cash items increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business; in each case, on a consolidated basis and determined in accordance with GAAP (including, without limitation, any increase in amortization or depreciation or other non-cash charges resulting from the application of purchase accounting in relation to the Acquisition or any acquisition that is consummated after February 2, 2006; *minus*

(12) interest income for such period;

provided, *however*, that Consolidated Cash Flow of NRG will exclude the Consolidated Cash Flow attributable to Excluded Subsidiaries to the extent that the declaration or payment of dividends or similar distributions by the Excluded Subsidiary of that Consolidated Cash Flow is not, as a result of an Excluded Subsidiary Debt Default, then permitted by operation of the terms of the relevant Excluded Subsidiary Debt Agreement; *provided* that the Consolidated Cash Flow of the Excluded Subsidiary will only be so excluded for that portion of the period during which the condition described in the preceding proviso has occurred and is continuing.

Consolidated Net Income means, with respect to any specified Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; *provided* that:

(1) the Net Income of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be included only to the extent of the amount of dividends or similar distributions (including pursuant to other intercompany payments but excluding Concurrent Cash Distributions) paid in cash to the specified Person or a Restricted Subsidiary of the Person;

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(2) for purposes of the covenant described above under the caption Restricted Payments only, the Net Income of any Restricted Subsidiary will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders;

(3) the cumulative effect of a change in accounting principles will be excluded;

(4) any net after-tax non-recurring or unusual gains, losses (less all fees and expenses relating thereto) or other charges or revenue or expenses (including, without limitation, relating to severance, relocation, one-time compensation charges and the Acquisition) shall be excluded;

(5) any non-cash compensation expense recorded from grants of stock appreciation or similar rights, stock options, restricted stock or other rights to officers, directors or employees shall be excluded, whether under FASB 123R or otherwise;

(6) any net after-tax income (loss) from disposed or discontinued operations and any net after-tax gains or losses on disposal of disposed or discontinued operations shall be excluded;

(7) any gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions shall be excluded;

(8) any impairment charge or asset write-off pursuant to Financial Accounting Statement No. 142 and No. 144 or any successor pronouncement shall be excluded; and

(9) any accruals or reserves or other charges related to the Acquisition and the Related Financing Transactions incurred on or before January 1, 2007, shall be excluded.

Continuing Director means, as of any date of determination, any member of the Board of Directors of NRG who:

(1) was a member of such Board of Directors on the date of the supplemental indenture; or

(2) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board at the time of such nomination or election.

Credit Agreement means the Credit and Guaranty Agreement, dated February 2, 2006, among NRG, the lenders party thereto, Morgan Stanley Senior Funding, Inc., as administrative agent, Morgan Stanley Senior Funding, Inc. and Citigroup Global Markets Inc., as joint lead Book Runners, Joint Lead Arrangers and Co-Documentation Agents, Morgan Stanley & Co. Incorporated, as Collateral Agent, and Citigroup Global Markets Inc., as Syndication Agent, as amended pursuant to the Amendment to the Credit Agreement, dated on or about November 21, 2006, described in this prospectus supplement under the heading Description of Certain Other Indebtedness and Preferred Stock .

Credit Facilities means (i) one or more debt facilities (including, without limitation, the Credit Agreement) or commercial paper facilities, in each case with banks or other institutional lenders providing for revolving credit loans, term loans, credit-linked deposits (or similar deposits) receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables) or letters of credit and (ii) debt securities sold to institutional investors, in each case, as amended, restated, modified, renewed, refunded, replaced or refinanced (including by means of sales of debt securities to institutional investors) in whole or in part from time to time.

Default means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

Designated Noncash Consideration means the fair market value of non-cash consideration received by NRG or a Guarantor in connection with an Asset Sale that is so designated as Designated Noncash

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Consideration pursuant to an officers certificate, setting forth the basis of such valuation, executed by a senior financial officer of NRG, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Noncash Consideration.

Disqualified Stock means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the notes mature. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require NRG to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that NRG may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with the covenant described above under the caption Certain Covenants Restricted Payments. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of the indenture will be the maximum amount that NRG and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock, exclusive of accrued dividends.

Domestic Subsidiary means any Restricted Subsidiary of NRG that was formed under the laws of the United States or any state of the United States or the District of Columbia or that guarantees or otherwise provides direct credit support for any Indebtedness of NRG.

Environmental CapEx Debt shall mean Indebtedness of NRG or its Restricted Subsidiaries incurred for the purpose of financing Environmental Capital Expenditures.

Environmental Capital Expenditures shall mean capital expenditures deemed necessary by NRG or its Restricted Subsidiaries to comply with Environmental Laws.

Environmental Law shall mean any applicable Federal, state, foreign or local statute, law, rule, regulation, ordinance, code and rule of common law now or hereafter in effect and in each case as amended, and any binding judicial or administrative interpretation thereof, including any binding judicial or administrative order, consent decree or judgment, relating to the environment, human health or safety or Hazardous Materials.

Equity Interests means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

Equity Offering means a sale of Capital Stock (other than Disqualified Stock) of NRG pursuant to (1) a public offering or (2) a private placement to Persons who are not Affiliates of NRG.

ERCOT means the Electric Reliability Council of Texas.

Excluded Foreign Subsidiary means, at any time, any Foreign Subsidiary that is (or is treated as) for United States federal income tax purposes either (1) a corporation or (2) a pass-through entity owned directly or indirectly by another Foreign Subsidiary that is (or is treated as) a corporation; *provided* that notwithstanding the foregoing, the following entities will be deemed to be Excluded Foreign Subsidiaries : Sterling Luxembourg (No. 4) S.a.r.l., Tosli Acquisition BV, NRG Pacific Corporate Services Pty Ltd., NRGenerating Holdings (No. 21) B.V. and any subsidiary of Tosli Acquisition BV incorporated or formed in connection with the Itiquira Refinancing.

Excluded Proceeds means any Net Proceeds of an Asset Sale involving the sale of up to $300,000,000 in the aggregate received since February 2, 2006 from one or more Asset Sales of Equity Interests in, or property or assets of, any Foreign Subsidiaries or any Foreign Subsidiary Holding Company.

Excluded Project Subsidiary shall mean, at any time,

(a) each Subsidiary of NRG that is an obligor or otherwise bound with respect to Non-Recourse Debt on the date of the supplemental indenture,

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(b) any Person that becomes a Subsidiary of NRG after the date of the supplemental indenture that is an obligor or otherwise bound solely with respect to Non-Recourse Debt, and

(c) any Subsidiary of NRG that is designated by NRG s Board of Directors as an Excluded Project Subsidiary pursuant to a Board Resolution,

in each case, in accordance with the other provisions of the indenture and if and for so long as the provision of a full and unconditional guarantee by such subsidiary of the notes will constitute or result in a breach, termination or default under the agreement or instrument governing the applicable Non-Recourse Debt of such subsidiary; *provided* that such subsidiary shall be an Excluded Project Subsidiary only to the extent that and for so long as the requirements and consequences above shall exist.

Excluded Subsidiaries means the Excluded Project Subsidiaries, the Excluded Foreign Subsidiaries and the Immaterial Subsidiaries.

Excluded Subsidiary Debt Agreement means the agreement or documents governing the relevant Indebtedness referred to in the definition of Excluded Subsidiary Debt Default.

Excluded Subsidiary Debt Default means, with respect to any Excluded Subsidiary, the failure of such Excluded Subsidiary to pay any principal or interest or other amounts due in respect of any Indebtedness, when and as the same shall become due and payable, or the occurrence of any other event or condition that results in any Indebtedness of such Excluded Subsidiary becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, lapse of time or both) the holder or holders of such Indebtedness or any trustee or agent on its or their behalf to cause such Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity.

Exempt Subsidiaries means, collectively, NRG Ilion LP LLC, NRG Ilion Limited Partnership, Meriden Gas Turbine LLC, LSP-Pike Energy LLC, LSP-Nelson Energy LLC, NRG Nelson Turbines LLC, NRG Jackson Valley Energy I, Inc., NRG McClain LLC, NRG Audrain Holding LLC, NRG Audrain Generating LLC, NRG Peaker Finance Company LLC, Bayou Cove Peaking Power, LLC, Big Cajun I Peaking Power LLC, NRG Rockford LLC, NRG Rockford II LLC, NRG Rockford Equipment II LLC, NRG Sterlington Power LLC and NRG Rockford Acquisition LLC.

Existing Indebtedness means Indebtedness of NRG and its Subsidiaries (other than the Indebtedness under the Credit Agreement) in existence on the date of the supplemental indenture, until such amounts are repaid.

Existing Senior Notes means all notes issued pursuant to the indentures governing NRG s outstanding 7.250% Senior Notes due 2014 and 7.375% Senior Notes due 2016.

Facility means a power or energy related facility.

Facility Instruments has the meaning set forth in the (i) Affirmation Agreement, dated as of August 9, 1993, by and among Northern States Power Company, NRG and Ramsey and Washington Counties and (ii) the Agreement and Consent for Transfer to NRG, dated as of August 20, 2001, between Northern States Power Company, NRG, Anoka County, Hennepin County, Sherburne County and Tri-County Solid Waste Management Commission, as in effect on the date of the supplemental indenture.

fair market value means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the Board of Directors of

NRG (unless otherwise provided in the indenture).

First Supplemental Indenture means the First Supplemental Indenture, dated February 2, 2006, governing NRG s 7.25% Senior Notes due 2014.

Fixed Charge Coverage Ratio means with respect to any specified Person for any period, the ratio of the Consolidated Cash Flow of such Person for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, Guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary working

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capital borrowings) or issues, repurchases or redeems preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the *Calculation Date*), then the Fixed Charge Coverage Ratio will be calculated giving pro forma effect to such incurrence, assumption, Guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of preferred stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four-quarter reference period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(1) Investments and acquisitions that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations, or any Person or any of its Restricted Subsidiaries acquired by the specified Person or any of its Restricted Subsidiaries, and including any related financing transactions and including increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date will be given pro forma effect (in accordance with Regulation S-X under the Securities Act, but including all Pro Forma Cost Savings) as if they had occurred on the first day of the four-quarter reference period and Consolidated Cash Flow for such reference period will be calculated on the same pro forma basis;

(2) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(3) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;

(4) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such four-quarter period;

(5) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter period; and

(6) if any Indebtedness that is being incurred on the Calculation Date bears a floating rate of interest, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness).

If since the beginning of such period any Person (that subsequently became a Restricted Subsidiary or was merged with or into NRG or any Restricted Subsidiary since the beginning of such period) shall have made any Investment, acquisition, disposition, merger, consolidation or disposed operation that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect thereto (including any Pro Forma Cost Savings) for such period as if such Investment, acquisition or disposition, or classification of such operation as discontinued had occurred at the beginning of the applicable four-quarter period.

Fixed Charges means, with respect to any specified Person for any period, the sum, without duplication, of:

(1) the consolidated interest expense of such Person and its Restricted Subsidiaries (other than interest expense of any Excluded Subsidiary the Consolidated Cash Flow of which is excluded from the Consolidated Cash Flow of such Person pursuant to the definition of Consolidated Cash Flow) for such period, whether paid or accrued, including,

without limitation, amortization of debt issuance costs and original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease

Obligations, imputed interest with respect to Attributable Debt, and net of the effect of all payments made or received pursuant to Hedging Obligations in respect of interest rates; *plus*

(2) the consolidated interest of such Person and its Restricted Subsidiaries that was capitalized during such period; *plus*

(3) any interest accruing on Indebtedness of another Person that is Guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, whether or not such Guarantee or Lien is called upon; *plus*

(4) the product of (a) all dividends, whether paid or accrued and whether or not in cash, on any series of preferred stock of such Person or any of its Restricted Subsidiaries, other than dividends on Equity Interests payable in Equity Interests of NRG (other than Disqualified Stock) or to NRG or a Restricted Subsidiary of NRG, times (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state and local statutory tax rate of such Person, expressed as a decimal, in each case, on a consolidated basis and in accordance with GAAP; *minus*

(5) interest income for such period.

Foreign Subsidiary means any Restricted Subsidiary that is not a Domestic Subsidiary.

Foreign Subsidiary Holding Company means any Domestic Subsidiary that is a direct parent of one or more Foreign Subsidiaries and holds, directly or indirectly, no other assets other than Equity Interests of Foreign Subsidiaries and other de minimis assets related thereto.

GAAP means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to time.

Guarantee means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

Goldman Sachs Hedge Agreement means the Master Power Purchase and Sale Agreement dated as of July 21, 2004, between an affiliate of Goldman, Sachs & Co. and Texas Genco, LP, as amended to the date of the supplemental indenture, and any agreements related thereto.

Government Securities means direct obligations of, or obligations guaranteed by, the United States of America (including any agency or instrumentality thereof) for the payment of which obligations or guarantees the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer s option.

Governmental Authority shall mean any nation or government, any state, province, territory or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, or any non-governmental authority regulating the generation and/or transmission of energy.

Guarantors means each of:

(1) NRG s Restricted Subsidiaries other than the Excluded Foreign Subsidiaries, the Excluded Project Subsidiaries, and the Immaterial Subsidiaries; and

(2) any other Restricted Subsidiary that executes a Subsidiary Guarantee in accordance with the provisions of the indenture;

and their respective successors and assigns.

Hazardous Materials shall mean (a) any petroleum or petroleum products, radioactive materials, friable asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing regulated levels of polychlorinated biphenyls and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of hazardous substances, hazardous waste, hazardous materials, extremely hazardous waste, restrict hazardous waste, toxic substances, toxic pollutants, contaminants, or pollutants or words of similar import, under applicable Environmental Law; and (c) any other chemical, material or substance, which is prohibited, limited or regulated by any Environmental Law.

Hedging Obligations means, with respect to any specified Person, the obligations of such Person under:

(1) currency exchange, interest rate or commodity swap agreements, currency exchange, interest rate or commodity cap agreements and currency exchange, interest rate or commodity collar agreements, and

(2) (i) agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates, commodity prices or commodity transportation or transmission pricing or availability, including but not limited to the Merrill Lynch Hedge Agreement and the Goldman Sachs Hedge Agreement; (ii) any netting arrangements, power purchase and sale agreements, fuel purchase and sale agreements, swaps, options and other agreements, in each case, that fluctuate in value with fluctuations in energy, power or gas prices; and (iii) agreements or arrangements for commercial or trading activities with respect to the purchase, transmission, distribution, sale, lease or hedge of any energy related commodity or service.

Immaterial Subsidiary shall mean, at any time, any Restricted Subsidiary of NRG that is designated by NRG as an Immaterial Subsidiary if and for so long as such Restricted Subsidiary, together with all other Immaterial Subsidiaries, has (i) total assets at such time not exceeding 5% of NRG s consolidated assets as of the most recent fiscal quarter for which balance sheet information is available and (ii) total revenues and operating income for the most recent 12-month period for which income statement information is available not exceeding 5% of NRG s consolidated revenues and operating income, respectively; *provided* that such Restricted Subsidiary shall be an Immaterial Subsidiary only to the extent that and for so long as all of the above requirements are satisfied.

Indebtedness means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables, except as provided in clause (5) below), whether or not contingent:

(1) in respect of borrowed money;

(2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);

(3) in respect of banker s acceptances;

(4) representing Capital Lease Obligations or Attributable Debt in respect of sale and leaseback transactions;

(5) representing the balance deferred and unpaid of the purchase price of any property (including trade payables) or services due more than six months after such property is acquired or such services are completed; or

(6) representing the net amount owing under any Hedging Obligations,

if and to the extent any of the preceding items (other than letters of credit, Attributable Debt and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person prepared in accordance

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with GAAP. In addition, the term Indebtedness includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person; *provided*, that the amount of such Indebtedness shall be deemed not to exceed the lesser of the amount secured by such Lien and the value of the Person s property securing such Lien.

Independent Financial Advisor means an accounting, appraisal, investment banking firm or consultant to Persons engaged in a Permitted Business of nationally recognized standing that is, in the good faith judgment of NRG, qualified to perform the task for which it has been engaged.

Investment Grade Rating means a rating equal to or higher than BBB- (or the equivalent) by S&P and equal to or higher than Baa3 (or the equivalent) by Moody s.

Investments means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or other obligations), advances or capital contributions (excluding commission, travel and similar advances to officers and employees), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. If NRG or any Subsidiary of NRG sells or otherwise disposes of any Equity Interests of any direct or indirect Subsidiary of NRG such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary of NRG, NRG will be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value of NRG s Investments in such Subsidiary that were not sold or disposed of in an amount determined as provided in the final paragraph of the covenant described above under the caption Certain Covenants Restricted Payments. The acquisition by NRG or any Subsidiary of NRG of a Person that holds an Investment in a third Person will be deemed to be an Investment by NRG or such Subsidiary in such third Person in an amount equal to the fair market value of the Investments held by the acquired Person in such third Person in an amount determined as provided in the final paragraph of the covenant described above under the caption Certain Covenants Restricted Payments. Except as otherwise provided in the indenture, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value.

Notwithstanding anything to the contrary herein, in the case of any Investment made by NRG or a Restricted Subsidiary of NRG in a Person substantially concurrently with a cash distribution by such Person to NRG or a Guarantor (a *Concurrent Cash Distribution*), then:

(a) the Concurrent Cash Distribution shall be deemed to be Net Proceeds received in connection with an Asset Sale and applied as set forth above under the caption Asset Sales ; and

(b) the amount of such Investment shall be deemed to be the fair market value of the Investment, less the amount of the Concurrent Cash Distribution.

Itiquira shall mean Itiquira Energetica S.A.

Itiquira Acquisition Sub shall have the meaning assigned to such term in the definition of Itiquira Refinancing.

Itiquira Refinancing means the transaction or series of related transactions pursuant to which (a) any or all of the outstanding preferred stock of Itiquira directly or indirectly held by Eletrobrás is acquired by Itiquira or a subsidiary of Tosli Acquisition BV (*Itiquira Acquisition Sub*) for an aggregate consideration not to exceed to $70,000,000, and, following such acquisition, such preferred stock is redeemed, repaid or otherwise retired or held as treasury stock or otherwise treated in accordance with the requirements of Brazilian law, and (b) pursuant to which Itiquira or the

Itiquira Acquisition Sub may incur up to $70,000,000 in aggregate principal amount of Indebtedness secured by Liens on the assets of Itiquira and the Itiquira Acquisition Sub (*Permitted Itiquira Indebtedness*), in each case on terms and conditions (which may include terms and conditions other than those set forth in this definition) reasonably satisfactory to the Administrative Agent under the Credit Agreement.

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Lenders means, at any time, the parties to the Credit Agreement then holding (or committed to provide) loans, letters of credit, Credit-Linked Deposits or other extensions of credit that constitute (or when provided will constitute) Indebtedness outstanding under the Credit Agreement.

Lien means, with respect to any asset:

(1) any mortgage, deed of trust, deed to secure debt, lien (statutory or otherwise), pledge, hypothecation, encumbrance, restriction, collateral assignment, charge or security interest in, on or of such asset;

(2) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset; and

(3) in the case of Equity Interests or debt securities, any purchase option, call or similar right of a third party with respect to such Equity Interests or debt securities.

Mark-to-Market Adjustments means:

(1) any non-cash loss attributable to the mark-to-market movement in the valuation of Hedging Obligations (to the extent the cash impact resulting from such loss has not been realized) or other derivative instruments pursuant to Financial Accounting Standards Board Statement No. 133, Accounting for Derivative Instruments and Hedging Activities; *plus*

(a) any loss relating to amounts paid in cash prior to the stated settlement date of any Hedging Obligation that has been reflected in Consolidated Net Income in the current period; *plus*

(b) any gain relating to Hedging Obligations associated with transactions recorded in the current period that has been reflected in Consolidated Net Income in prior periods and excluded from Consolidated Cash Flow pursuant to clauses (2)(a) and (2)(b) below; *less*,

(2) any non-cash gain attributable to the mark-to-market movement in the valuation of Hedging Obligations (to the extent the cash impact resulting from such gain has not been realized) or other derivative instruments pursuant to Financial Accounting Standards Board Statement No. 133, Accounting for Derivative Instruments and Hedging Activities ; *less*

(a) any gain relating to amounts received in cash prior to the stated settlement date of any Hedging Obligation that has been reflected in Consolidated Net Income in the current period; *less*

(b) any loss relating to Hedging Obligations associated with transactions recorded in the current period that has been reflected in Consolidated Net Income in prior periods and excluded from Consolidated Cash Flow pursuant to clauses (1)(a) and (1)(b) above.

Material Adverse Effect shall mean a material adverse change in or material adverse effect on the condition (financial or otherwise), results of operations, assets, liabilities or prospects of NRG and its Subsidiaries, taken as a whole.

Merrill Lynch Hedge Agreement means the ISDA Master Agreement dated as of October 15, 2006 between an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated and NRG, as amended to the date of the supplemental indenture, and any agreements related thereto.

Moody s means Moody s Investors Service, Inc. or any successor entity.

Necessary CapEx Debt shall mean Indebtedness of NRG or its Restricted Subsidiaries incurred for the purpose of financing Necessary Capital Expenditures.

Necessary Capital Expenditures shall mean capital expenditures that are required by Applicable Law (other than Environmental Laws) or undertaken for health and safety reasons. The term Necessary

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Capital Expenditures does not include any capital expenditure undertaken primarily to increase the efficiency of, expand or re-power any power generation facility.

Net Income means, with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends or accretion, excluding, however:

(1) any gain or loss, together with any related provision for taxes on such gain or loss, realized in connection with: (a) any Asset Sale (without giving effect to the threshold provided for in the definition thereof); or (b) the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries; and

(2) any extraordinary gain or loss, together with any related provision for taxes on such extraordinary gain or loss.

Net Proceeds means the aggregate cash proceeds received by NRG or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of the direct costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees, and sales commissions, and any relocation expenses incurred as a result of the Asset Sale, taxes paid or payable as a result of the Asset Sale, in each case, after taking into account any available tax deductions and any tax sharing arrangements, and amounts required to be applied to the repayment of Indebtedness, other than Indebtedness under a Credit Facility, secured by a Lien on the asset or assets that were the subject of such Asset Sale and any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP.

Non-Recourse Debt means Indebtedness:

(1) as to which neither NRG nor any of its Restricted Subsidiaries (other than an Excluded Project Subsidiary) (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) other than pursuant to a Non-Recourse Guarantee or any arrangement to provide or guarantee to provide goods and services on an arm s length basis, (b) is directly or indirectly liable as a guarantor or otherwise, other than pursuant to a Non-Recourse Guarantee, or (c) constitutes the lender;

(2) no default with respect to which (including any rights that the holders of the Indebtedness may have to take enforcement action against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both any holder of any other Indebtedness of NRG (other than the notes and the Credit Agreement) or any of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment of such other Indebtedness to be accelerated or payable prior to its Stated Maturity; and

(3) in the case of Non-Recourse Debt incurred after the date of the supplemental indenture, as to which the lenders have been notified in writing that they will not have any recourse to the stock or assets of NRG or any of its Restricted Subsidiaries except as otherwise permitted by clauses (1) or (2) above;

provided, *however*, that the following shall be deemed to be Non-Recourse Debt: (i) Guarantees with respect to debt service reserves established with respect to a Subsidiary to the extent that such Guarantee shall result in the immediate payment of funds, pursuant to dividends or otherwise, in the amount of such Guarantee; (ii) contingent obligations of NRG or any other Subsidiary to make capital contributions to a Subsidiary; (iii) any credit support or liability consisting of reimbursement obligations in respect of Letters of Credit issued under and subject to the terms of, the Credit Agreement to support obligations of a Subsidiary; and (iv) any Investments in a Subsidiary, to the extent in the case of (i) through (iv) otherwise permitted by the indenture.

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Non-Recourse Guarantee means any Guarantee by NRG or a Guarantor of Non-Recourse Debt incurred by an Excluded Project Subsidiary as to which the lenders of such Non-Recourse Debt have acknowledged that they will not have any recourse to the stock or assets of NRG or any Guarantor, except to the limited extent set forth in such guarantee.

Obligations means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

Permitted Business means the business of acquiring, constructing, managing, developing, improving, maintaining, leasing, owning and operating Facilities, together with any related assets or facilities, as well as any other activities reasonably related to, ancillary to, or incidental to, any of the foregoing activities (including acquiring and holding reserves), including investing in Facilities.

Permitted Investments means:

(1) any Investment in NRG or in a Restricted Subsidiary of NRG that is a Guarantor;

(2) any Investment in an Immaterial Subsidiary;

(3) any Investment in an Excluded Foreign Subsidiary for so long as the Excluded Foreign Subsidiaries do not collectively own more than 20% of the consolidated assets of NRG as of the most recent fiscal quarter end for which financial statements are publicly available;

(4) any issuance of letters of credit in an aggregate amount not to exceed $250.0 million solely for working capital requirements and general corporate purposes of any of the Excluded Subsidiaries;

(5) any Investment in Cash Equivalents (and, in the case of Excluded Subsidiaries only, Cash Equivalents or other liquid investments permitted under any Credit Facility to which it is a party);

(6) any Investment by NRG or any Restricted Subsidiary of NRG in a Person, if as a result of such Investment:

(a) such Person becomes a Restricted Subsidiary of NRG and a Guarantor or an Immaterial Subsidiary; or

(b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, NRG or a Restricted Subsidiary of NRG that is a Guarantor;

(7) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with the covenant described above under the caption Repurchase at the Option of Holders Asset Sales ;

(8) Investments made as a result of the sale of Equity Interests of any Person that is a Subsidiary of NRG such that, after giving effect to any such sale, such Person is no longer a Subsidiary of NRG, if the sale of such Equity Interests constitutes an Asset Sale and the Net Proceeds received from such Asset Sale are applied as set forth above under the caption Repurchase at the Option of Holders Asset Sales ;

(9) Investments to the extent made in exchange for the issuance of Equity Interests (other than Disqualified Stock) of NRG;

(10) any Investments received in compromise or resolution of (a) obligations of trade creditors or customers of NRG or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (b) litigation, arbitration or other disputes with Persons who are not Affiliates;

(11) Investments represented by Hedging Obligations;

(12) loans or advances to employees;

(13) repurchases of the notes or *pari passu* Indebtedness;

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(14) any Investment in securities of trade creditors, trade counter-parties or customers received in compromise of obligations of those Persons, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;

(15) negotiable instruments held for deposit or collection;

(16) receivables owing to NRG or any Restricted Subsidiary of NRG and payable or dischargeable in accordance with customary trade terms; *provided*, *however*, that such trade terms may include such concessionary trade terms as NRG of any such Restricted Subsidiary of NRG deems reasonable under the circumstances;

(17) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes;

(18) Investments resulting from the acquisition of a Person that at the time of such acquisition held instruments constituting Investments that were not acquired in contemplation of the acquisition of such Person;

(19) any Investment in any Person engaged primarily in one or more Permitted Businesses (including, without limitation, Excluded Subsidiaries, Unrestricted Subsidiaries, and Persons that are not Subsidiaries of NRG) made for cash since February 2, 2006;

(20) the contribution of any one or more of the Specified Facilities to a Restricted Subsidiary that is not a Guarantor;

(21) Investments made pursuant to a commitment that, when entered into, would have complied with the provisions of the indenture; and

(22) other Investments made since February 2, 2006 in any Person having an aggregate fair market value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (22) that are at the time outstanding not to exceed the greater of (a) $500.0 million and (b) 2.5% of Total Assets; *provided*, *however*, that if any Investment pursuant to this clause (22) is made in any Person that is not a Restricted Subsidiary of NRG and a Guarantor at the date of the making of the Investment and such Person becomes a Restricted Subsidiary and a Guarantor after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above, and shall cease to have been made pursuant to this clause (22).

Permitted Itiquira Indebtedness shall have the meaning assigned to such term in the definition of Itiquira Refinancing.

Permitted Liens means:

(1) Liens on assets of NRG or any Guarantor securing Indebtedness and other Obligations under Credit Facilities, in an aggregate principal amount not exceeding, on the date of the creation of such Liens, the greater of (a) 30.0% of Total Assets or (b) $6.0 billion less the aggregate amount of all repayments, optional or mandatory, of the principal of any term Indebtedness under a Credit Facility that have been made by NRG or any of its Restricted Subsidiaries since February 2, 2006 with the Net Proceeds of Asset Sales (other than Excluded Proceeds) and less, without duplication, the aggregate amount of all repayments or commitment reductions with respect to any revolving credit borrowings under a Credit Facility that have been made by NRG or any of its Restricted Subsidiaries since February 2, 2006 as a result of the application of the Net Proceeds of Asset Sales (other than Excluded Proceeds) in accordance with the covenant described above under the caption Repurchase at the Option of Holders Asset Sales (excluding temporary reductions in revolving credit borrowings as contemplated by that covenant);

(2) Liens to secure obligations with respect to (i) contracts (other than for Indebtedness) for commercial and trading activities for the purchase, transmission, distribution, sale, lease or hedge of any energy related commodity or service, and (ii) Hedging Obligations;

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(3) Liens on assets of Excluded Subsidiaries securing Indebtedness of Excluded Subsidiaries that was permitted by the terms of the indenture to be incurred;

(4) Liens (a) in favor of NRG or any of the Guarantors; (b) incurred by Excluded Project Subsidiaries in favor of any other Excluded Project Subsidiary; or (c) incurred by Excluded Foreign Subsidiaries in favor of any other Excluded Foreign Subsidiary;

(5) Liens to secure the performance of statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature;

(6) Liens to secure Indebtedness (including Capital Lease Obligations) permitted by clause (4) and (13) of the second paragraph of the covenant entitled Certain Covenants Incurrence of Indebtedness and Issuance of Preferred Stock covering only the assets acquired with or financed by such Indebtedness;

(7) Liens existing on February 2, 2006;

(8) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded; *provided* that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;

(9) Liens imposed by law, such as carriers , warehousemen s, landlord s and mechanics Liens;

(10) survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines, oil, gas and other mineral interests and leases, and other similar purposes, or zoning or other restrictions as to the use of real property that were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(11) Liens created for the benefit of (or to secure) the notes (or the Subsidiary Guarantees);

(12) Liens to secure any Permitted Refinancing Indebtedness permitted to be incurred under the indenture; *provided*, *however*, that:

(a) the new Lien shall be limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof); and

(b) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (x) the outstanding principal amount or, if greater, committed amount, of the Permitted Referencing Indebtedness and (y) an amount necessary to pay any fees and expenses, including premiums, related to such refinancings, refunding, extension, renewal or replacement;

(13) Liens incurred or deposits made in connection with workers compensation, unemployment insurance and other types of social security;

(14) Liens encumbering deposits made to secure obligations arising from statutory, regulatory, contractual or warranty requirements of NRG or any of its Restricted Subsidiaries, including rights of offset and set-off;

(15) leases or subleases granted to others that do not materially interfere with the business of NRG and its Restricted Subsidiaries;

(16) statutory Liens arising under ERISA;

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(17) Liens on property (including Capital Stock) existing at the time of acquisition of the property by NRG or any Subsidiary of NRG; *provided* that such Liens were in existence prior to, such acquisition, and not incurred in contemplation of, such acquisition;

(18) Liens arising from Uniform Commercial Code financing statements filed on a precautionary basis in respect of operating leases intended by the parties to be true leases (other than any such leases entered into in violation of the indenture);

(19) Liens on assets and Equity Interests of a Subsidiary that is an Excluded Subsidiary;

(20) Liens granted in favor of Xcel Energy, Inc. pursuant to the Xcel Indemnification Agreements as in effect on the date of the supplemental indenture on NRG s interest in all revenues received by NRG pursuant to the Facility Instruments;

(21) Liens to secure Indebtedness incurred to finance Necessary Capital Expenditures that encumber only the assets purchased, installed or otherwise acquired with the proceeds of such Indebtedness;

(22) Liens to secure Environmental CapEx Debt that encumber only the assets purchased, installed or otherwise acquired with the proceeds of such Environmental CapEx Debt;

(23) Liens on assets or securities deemed to arise in connection with the execution, delivery or performance of contracts to sell such assets or stock otherwise permitted under the indenture;

(24) Liens on assets of Itiquira incurred pursuant to the Itiquira Refinancing;

(25) any restrictions on any Equity Interest or undivided interests, as the case may be, of a Person providing for a breach, termination or default under any joint venture, stockholder, membership, limited liability company, partnership, owners , participation or other similar agreement between such Person and one or more other holders of Equity Interests or undivided interests of such Person, as the case may be, if a security interest or Lien is created on such Equity Interest or undivided interest, as the case may be, as a result thereof;

(26) any customary provisions limiting the disposition or distribution of assets or property (including without limitation Equity Interests) or any related restrictions thereon in joint venture, partnership, membership, stockholder and limited liability company agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, including owners , participation or similar agreements governing projects owned through an undivided interest; *provided*, *however*, that any such limitation is applicable only to the assets that are the subjects of such agreements;

(27) those Liens or other exceptions to title, in either case on or in respect of any facility of NRG or any Subsidiary, arising as a result of any shared facility agreement entered into after the closing date with respect to such facility, except to the extent that any such Liens or exceptions, individually or in the aggregate, materially adversely affect the value of the relevant property or materially impair the use of the relevant property in the operation of the business of NRG or such Subsidiary;

(28) Liens on cash deposits and other funds maintained with a depositary institution, in each case arising in the ordinary course of business by virtue of any statutory or common law provision relating to banker s liens, including Section 4-210 of the UCC;

(29) Liens on property and assets (other than certain properties or assets defined as core collateral) designated as Excluded Assets from time to time by NRG in accordance with clause (xiii) of the related definition under the Credit Agreement, which shall not have, when taken together with all other property and assets that constitute Excluded Assets at the relevant time of determination, a fair market value in excess of $250.0 million in the aggregate (and, to the extent that such fair market value of such property and assets exceeds $250.0 million in the aggregate, such property or assets shall cease to be an Excluded Asset to the extent of such excess fair market value); and

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(30) Liens incurred by NRG or any Subsidiary of NRG with respect to obligations that do not exceed $100.0 million at any one time outstanding.

Permitted Refinancing Indebtedness means any Indebtedness of NRG or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to refund, refinance, replace, defease or discharge other Indebtedness of NRG or any of its Restricted Subsidiaries (other than intercompany Indebtedness); *provided* that:

(1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued interest on the Indebtedness and the amount of all expenses and premiums incurred in connection therewith);

(2) such Permitted Refinancing Indebtedness has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded;

(3) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the notes, such Permitted Refinancing Indebtedness is subordinated in right of payment to, the notes on terms at least as favorable to the holders of notes as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded;

(4) such Indebtedness is incurred either by NRG (and may be guaranteed by any Guarantor) or by the Restricted Subsidiary who is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; and

(5) (a) if the Stated Maturity of the Indebtedness being refinanced is earlier than the Stated Maturity of the notes, the Permitted Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being refinanced or (b) if the Stated Maturity of the Indebtedness being refinanced is later than the Stated Maturity of the notes, the Permitted Refinancing Indebtedness has a Stated Maturity at least 91 days later than the Stated Maturity of the notes.

Person means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

PMI means NRG Power Marketing Inc., a Delaware corporation.

Pro Forma Cost Savings means, without duplication, with respect to any period, reductions in costs and related adjustments that have been actually realized or are projected by NRG s Chief Financial Officer in good faith to result from reasonably identifiable and factually supportable actions or events, but only if such reductions in costs and related adjustments are so projected by NRG to be realized during the consecutive four-quarter period commencing after the transaction giving rise to such calculation.

Related Financing Transactions means the incurrence of Indebtedness and issuance of Capital Stock of NRG described in the prospectus supplement, dated January 26, 2006, under the heading The Acquisition The Financing Transactions.

Restricted Investment means an Investment other than a Permitted Investment.

Restricted Payments has the meaning assigned to such term under the caption Certain Covenants Restricted Payments. For purposes of determining compliance with the covenant described above under the caption Certain Covenants Restricted Payments, no Hedging Obligation shall be deemed to be contractually subordinated to the notes or any Subsidiary Guarantee.

Restricted Subsidiary of a Person means any Subsidiary of the referent Person that is not an Unrestricted Subsidiary.

Revolving Loans means the revolving loans and commitments made by the Lenders under the Credit Agreement.

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S&P means Standard & Poor s Ratings Group or any successor entity.

Significant Subsidiary means any Subsidiary that would be a significant subsidiary as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such Regulation is in effect on the date of the supplemental indenture.

Specified Facility means each of the following Facilities: (a) the Facilities held on the date of the indenture by Vienna Power LLC, Meriden Gas Turbine LLC, Norwalk Power LLC, Connecticut Jet Power LLC (excluding the Cos Cob assets), Devon Power LLC, Montville Power LLC (including the Capital Stock of the entities owning such Facilities *provided* that such entities do not hold material assets other than the Facilities held on the date of the supplemental indenture); (b) the following Facilities: P.H. Robinson, H.O. Clarke, Webster, Unit 3 at Cedar Bayou, Unit 2 at T.H. Wharton; and (c) the Capital Stock of the following Subsidiaries of NRG if such Subsidiary holds no assets other than the Capital Stock of a Foreign Subsidiary of NRG: NRG Latin America, Inc., NRG International LLC, NRG Insurance Ltd. (Cayman Islands), NRG Asia Pacific, Ltd., NRG International II Inc. and NRG International III Inc.

Stated Maturity means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the documentation governing such Indebtedness as of the date of the supplemental indenture, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

Subsidiary means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

Subsidiary Guarantee means the Guarantee by each Guarantor of NRG s obligations under the indenture and on the notes, executed pursuant to the provisions of the indenture.

Total Assets means the total consolidated assets of NRG and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the most recent balance sheet of NRG.

Treasury Rate means, as of any redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two business days prior to the redemption date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to January 15, 2012; *provided*, *however*, that if the period from the redemption date to January 15, 2012 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

UCC means the Uniform Commercial Code as in effect in the State of New York or any other applicable jurisdiction.

Unrestricted Subsidiary means any Subsidiary of NRG that is designated by the Board of Directors as an Unrestricted Subsidiary pursuant to a Board Resolution, but only to the extent that such Subsidiary:

(1) has no Indebtedness other than Non-Recourse Debt;

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(2) except as permitted by the covenant described above under the caption Certain Covenants Affiliate Transactions, is not party to any agreement, contract, arrangement or understanding with NRG or any Restricted Subsidiary of NRG unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to NRG or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of NRG;

(3) is a Person with respect to which neither NRG nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person s financial condition or to cause such Person to achieve any specified levels of operating results except as otherwise permitted by the Credit Agreement as in effect on the date of the supplemental indenture; and

(4) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of NRG or any of its Restricted Subsidiaries except as otherwise permitted by the Credit Agreement as in effect on the date of the supplemental indenture.

Any designation of a Subsidiary of NRG as an Unrestricted Subsidiary will be evidenced to the trustee by filing with the trustee a certified copy of the Board Resolution giving effect to such designation and an officers certificate certifying that such designation complied with the conditions described above under the caption Certain Covenants Designation of Restricted, Unrestricted and Excluded Project Subsidiaries and was permitted by the covenant described above under the caption Certain Covenants Restricted Payments. If, at any time, any Unrestricted Subsidiary fails to meet the requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of the indenture and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of NRG as of such date and, if such Indebtedness is not permitted to be incurred as of such date under the covenant described under the caption Certain Covenants Incurrence of Indebtedness and Issuance of Preferred Stock, NRG will be in default of such covenant. The Board of Directors of NRG may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of NRG of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation will only be permitted if (1) such Indebtedness is permitted under the covenant described under the caption Certain Covenants Incurrence of Indebtedness and Issuance of Preferred Stock, calculated on a pro forma basis as if such designation had occurred at the beginning of the four-quarter reference period; and (2) no Default or Event of Default would be in existence following such designation.

Voting Stock of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

Weighted Average Life to Maturity means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(2) the then outstanding principal amount of such Indebtedness.

Xcel means Xcel Energy Inc., a Minnesota corporation.

Xcel Indemnification Agreements means: (i) the Indemnification Agreement, dated as of December 5, 2003, between Xcel Energy Inc., Northern States Power Company and NRG; and (ii) the Indemnification Agreement, dated as of December 5, 2003, between Xcel Energy Inc., Northern States Power Company and NRG.

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DESCRIPTION OF CERTAIN OTHER INDEBTEDNESS AND PREFERRED STOCK

Senior Secured Credit Facility

On February 2, 2006, NRG entered into a senior secured credit facility, or the Senior Credit Facility, with a syndicate of financial institutions, including Morgan Stanley Senior Funding, Inc., as administrative agent, Morgan Stanley & Co., Incorporated, as collateral agent, and Morgan Stanley Senior Funding, Inc. and Citigroup Global Markets Inc., as joint lead book-runners, joint lead arrangers and co-documentation agents providing for up to an aggregate amount of $5.575 billion. The Senior Credit Facility consisted of a $3.575 billion senior first priority secured term loan facility or the Term Loan Facility, a $1.0 billion senior first priority secured revolving credit facility, or the Revolving Credit Facility, and a $1.0 billion senior first priority secured synthetic letter of credit facility, or the Synthetic Letter of Credit Facility. The Senior Credit Facility replaced NRG s then outstanding senior secured credit facility. The Term Loan Facility will mature on February 1, 2013 and amortizes over 27 consecutive equal quarterly installments of 0.25% of the original principal amount of the Term Loan Facility, beginning June 30, 2006, with the balance payable upon maturity. The full amount of the Revolving Credit Facility will mature on February 2, 2011. The Letter of Credit Facility will mature on February 1, 2013 and no amortization will be required in respect thereof. As of September 30, 2006, NRG had $3.557 billion outstanding under the Company s Term Loan Facility. As of September 30, 2006, NRG had issued $858 million under the Company s Letter of Credit Facility and $157 million in letters of credit under the Company s Revolving Credit Facility.

In connection with the Transactions, NRG intends to amend the Senior Credit Facility. See The Transactions. NRG plans to amend the Senior Credit Facility to accomplish, among other things, the following objectives:

- to permit the incurrence of the new debt represented by the new high yield notes;
- to increase the amount of the synthetic letter of credit facility by $500 million, from $1.0 billion to $1.5 billion;
- to increase the Available Amount, and effect a corresponding increase in our restricted payments basket, by $250 million; and
- to provide additional flexibility to NRG with respect to certain covenants governing or restricting the use of excess cash flow, new investments, new indebtedness and permitted liens.

We expect the Transactions to be closed by November 21, 2006. Pursuant to the terms and conditions of the Senior Credit Facility, the amendments described above require the consent of the lenders under the Senior Credit Facility holding at least a majority of the sum of all loans outstanding thereunder.

The following is a summary description of the principal terms and conditions of the Senior Credit Facility. This description is not intended to be exhaustive and is qualified in its entirety by reference to the provisions in the Senior Credit Facility.

Guarantees and Collateral

The Senior Credit Facility is guaranteed by substantially all of NRG s existing and future direct and indirect subsidiaries, with certain customary or agreed-upon exceptions for unrestricted foreign subsidiaries, project subsidiaries and certain other subsidiaries. The capital stock of substantially all of NRG s subsidiaries, with certain

exceptions for unrestricted subsidiaries, foreign subsidiaries and project subsidiaries, has been pledged for the benefit of the Senior Credit Facility lenders.

The Senior Credit Facility is also secured by first-priority perfected security interests in substantially all of the property and assets owned or acquired by NRG and its subsidiaries, other than certain exceptions. These exceptions include assets such as the assets of certain unrestricted subsidiaries, certain baskets of assets determined by NRG (not to exceed agreed upon amounts) equity interests in certain of the Company s project affiliates that have non-recourse debt financing, and voting equity interests in excess of 66% of the total outstanding voting equity interest of certain of NRG s foreign subsidiaries.

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Interest

At NRG s option, loans under the Senior Credit Facility are available as Alternate Base Rate loans or Eurodollar loans, as follows:

Alternate Base Rate loans. Interest is at a spread (the Applicable Margin) over the Alternate Base Rate for term loans and for revolving loans and swing-line loans, calculated on a 365-day or 366-day basis, as the case may be, when the Alternate Base Rate is determined by reference to the prime rate, and on a 360-day basis at all other times. The Alternate Base Rate means, for any day, a rate per annum equal to the greater of (a) the prime rate publicly announced from time to time by The Wall Street Journal as the base rate on corporate loans posted by at least 75% of the nation s 30 largest banks and (b) the federal funds effective rate in effect on such day plus 1/2 of 1%.

Eurodollar loans. Interest is determined for periods to be selected by NRG, or interest periods, of seven days, one, two, three or six months and, to the extent available to all of the lenders, nine or twelve months, and is expected be at a spread (the Applicable Margin) over the Adjusted LIBO Rate for term loans and for revolving loans and swing-line loans, calculated on a 360-day basis. The Adjusted LIBO Rate means, with respect to any Eurodollar loan for any interest period and as determined from time to time, an interest rate per annum equal to the product of (a) the rate per annum determined by the Administrative Agent at approximately 11:00 a.m., London time, on the date that is two business days prior to the commencement of the relevant interest period by reference to the British Bankers Association Interest Settlement Rates for deposits in dollars (as set forth by the Bloomberg Information Service or any successor thereto or any other service selected by the Administrative Agent which has been nominated by the British Bankers Association as an authorized information vendor for the purpose of displaying such rates) for a period equal to the relevant interest period and (b) certain statutory reserves as agreed upon in the senior secured credit facility.

The Applicable Margin means, for any day, for each type of loan, the rate per annum set forth under the relevant column heading below based upon the consolidated senior leverage ratio of NRG as of the relevant date of determination:

Consolidated Senior Leverage Ratio	Eurodollar Term Loans	ABR Term Loans	Eurodollar Revolving Loans	ABR Revolving Loans and Swingline Loans
Category 1 Greater than 3.50 to 1.00	2.00%	1.00%	2.00%	1.00%
Category 2 Greater than 3.00 to 1.00 but less than or equal to 3.50 to 1.00	1.75%	0.75%	1.75%	0.75%
Category 3 Less than or equal to 3.00 to 1.00	1.75%	0.75%	1.50%	0.50%

Interest on the loans is payable (a) with respect to any Alternate Base Rate Loan (other than a Swingline Loan), on the last business day of each March, June, September and December (beginning with March 31, 2006), (b) with respect to

any Eurodollar Loan, the last day of the interest period applicable to such loan and, in the case of a Eurodollar Loan with an interest period of more than three months duration, each day that would have been an interest payment date had successive interest periods of three months duration been applicable to such loan, and (c) with respect to any swingline loan, the day that such loan is required to be repaid.

The synthetic letter of credit issuing bank invests amounts in a synthetic L/ C account in certain agreed upon permitted investments. On the last business day of March, June, September and December of each year: (i) the synthetic letter of credit issuing bank will distribute to each lender under the synthetic letter

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of credit facility its pro rata share of any interest accrued on funds held in the synthetic L/ C Account and (ii) NRG will pay to the synthetic letter of credit issuing bank for pro rata remittance to each lender under the Synthetic Letter of Credit Facility a fee based on such lender s pro rata interest in the credit-linked deposits related to the Synthetic Letter of Credit Facility (without regard to actual amount of letters of credit outstanding) times the interest rate applicable to the loans under the term facility (assuming LIBOR) as specified in above (net of the amounts received by such lender pursuant to clause (i) above). In addition, NRG pays the synthetic letter of credit issuing bank a fronting fee and customary issuance and administrative fees.

Default Interest and Fees

If NRG defaults on the payment of the principal of or interest on any loan or any other amount becoming due and payable hereunder or under any other loan document related to the Senior Credit Facility, then NRG must on demand from time to time pay interest, to the extent permitted by law, on such defaulted amount (a) in the case of overdue principal, at the rate otherwise applicable to such loan plus 2.00% per annum and (b) in all other cases, at a rate per annum equal to the rate that would be applicable to an Alternate Base Rate term loan plus 2.00%.

Commitment and Letter of Credit Fees

Commitment fees equal to 0.5% per annum times the daily average undrawn portion of the revolving facility are payable quarterly in arrears.

A fee equal to (i) the Applicable Margin then in effect for loans bearing interest at the Adjusted LIBO Rate made under the revolving facility, times (ii) the average daily maximum aggregate amount available to be drawn under all letters of credit (with certain exclusions regarding unreimbursed disbursements otherwise accruing interest), is be payable quarterly in arrears to the lenders under the revolving facility.

Covenants

The Senior Credit Facility contains customary covenants, which among other things require NRG to meet certain financial tests, including minimum interest coverage ratio and a maximum leverage ratio on a consolidated basis, and limit NRG s ability to:

incur indebtedness and liens and enter into sale and lease-back transactions;

make investments, loans and advances;

engage in mergers, acquisitions, consolidations and asset sales;

pay dividends and other restricted payments;

enter into transactions with affiliates;

engage in business activities and hedging transactions;

make capital expenditures;

make debt payments; and

make certain changes to the terms of material indebtedness.

NRG however has the option to prepay the Senior Credit Facility in whole or in part at any time.

Events of Default

Events of default under the senior secured credit facility include, but are not limited to:

breaches of representations and warranties;

payment defaults;

noncompliance with covenants;

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bankruptcy;

judgments in excess of a specified amount;

any confirmation order that is reversed, amended or modified in any material respects, vacated or stayed;

any event that could result in our liability under the Employee Retirement Income Security Act of 1974 in excess of a specified amount;

failure of any guarantee or pledge agreement supporting the senior secured credit facility to be in full force and effect;

failure of any lien created in favor of the loan parties to be a valid, perfected and first priority lien on any material collateral securing the senior secured credit facility; and

a change of control, as such term is defined in the senior secured credit facility.

Interest Rate Swaps

In anticipation of the Senior Credit Facility, in January 2006, NRG entered into a series of interest rate swaps. These interest rate swaps became effective on February 15, 2006 and are intended to hedge the risks associated with floating interest rates. For each of the interest rate swaps, the Company pays its counterparty the equivalent of a fixed interest payment on a predetermined notional value, and NRG receives quarterly the equivalent of a floating interest payment based on 3-month LIBOR calculated on the same notional value. All interest rate swap payments by NRG and its counterparties are made quarterly, and LIBOR is determined in advance of each interest period. While the notional value of each of the swaps does not vary over time, the swaps are designed to mature sequentially. The total notional amount of these swaps is $2.15 billion.

The notional amounts and maturities of each tranche of these swaps are as follows:

Period of swap	Notional Value	Maturity
1-year	$ 120 million	March 31, 2007
2-year	$ 140 million	March 31, 2008
3-year	$ 150 million	March 31, 2009
4-year	$ 190 million	March 31, 2010
5-year	$ 1.55 billion	March 31, 2011

Senior Notes

On February 2, 2006, NRG completed the sale of (i) $1.2 billion aggregate principal amount of 7.25% senior notes due 2014, or 7.25% Senior Notes, and (ii) $2.4 billion aggregate principal amount of 7.375% senior notes due 2016, or 7.375% Senior Notes. The 7.25% Senior Notes and 7.375% Senior Notes are general unsecured obligations of NRG guaranteed jointly and severally by each of NRG s current and future restricted subsidiaries, excluding certain foreign, project and immaterial subsidiaries.

The 7.25% Senior Notes and 7.375% Senior Notes rank pari passu in right of payment with all existing and future unsecured senior indebtedness of NRG, including the notes offered hereby, and are senior in right of payment to any future subordinated indebtedness of NRG. Because the 7.25% Senior Notes and 7.375% Senior Notes are guaranteed by only certain of NRG s subsidiaries, they are structurally subordinated to all indebtedness and other liabilities, including trade payables, of those subsidiaries that do not guarantee the Senior Notes.

Interest on the 7.25% Senior Notes and 7.375% Senior Notes is payable semi-annually in arrears. NRG may redeem some or all of the 7.25% Senior Notes at any time prior to February 1, 2010 at a price equal to 100% of the principal amount of the notes redeemed plus a make-whole premium and accrued and unpaid interest. NRG may redeem some or all of the 7.375% Senior Notes at any time prior to February 1,

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2011 at a price equal to 100% of the principal amount of the notes redeemed plus a make-whole premium and accrued and unpaid interest. Prior to February 1, 2009, NRG may redeem up to 35% of the 7.25% Senior Notes issued under the applicable indenture with the net cash proceeds of certain equity offerings, provided at least 65% of the aggregate principal amount of the 7.25% Senior Notes remain outstanding after the redemption. Prior to February 1, 2009, NRG may redeem up to 35% of the 7.375% Senior Notes issued under the applicable indenture with the net cash proceeds of certain equity offerings, provided at least 65% of the aggregate principal amount of the 7.375% Senior Notes remain outstanding after the redemption. On or after February 1, 2010, NRG can redeem some or all of the 7.25% Senior Notes at specified redemption prices plus accrued interest. On or after February 1, 2011, NRG can redeem some or all of the 7.375% Senior Notes at specified redemption prices plus accrued interest. Upon the occurrence of a change of control, holders of the 7.25% Senior Notes and 7.375% Senior Notes will have the right, subject to certain conditions, to require NRG to repurchase their notes at a price equal to 101% of their principal amount plus accrued and unpaid interest to the date of repurchase.

The indentures governing the 7.25% Senior Notes and 7.375% Senior Notes contain covenants, which, among other things, limit NRG s ability and the ability of NRG s restricted subsidiaries to: (i) incur additional debt; (ii) declare or pay dividends, redeem stock or make other distributions to stockholders; (iii) create liens; (iv) make certain restricted investments; (v) enter into transactions with affiliates; (vi) sell or transfer assets; and (vii) consolidate or merge.

Events of default under the indentures governing the 7.25% Senior Notes and 7.375% Senior Notes include, among other things, non-payment of interest of principal, bankruptcy, non-compliance with covenants, failure by NRG to comply with any material term of the escrow agreement or security agreement, failure of a subsidiary guarantee, escrow agreement, security agreement or lien to be held enforceable in a court of law or denial of obligations under a guarantee by a significant subsidiary, cross defaults on other indebtedness in the aggregate of $100 million or more and judgments for the payment of money in the aggregate of more than $100 million rendered against NRG, any restricted subsidiary or a combination thereof.

Capital Allocation Program

During the third quarter 2006, NRG initiated a plan to repurchase approximately $750 million of its common stock in two phases. Phase I was a $500 million common stock repurchase program, which was completed on October 13, 2006.

To implement Phase I, NRG formed two wholly-owned subsidiaries to repurchase NRG s common stock in the public markets or in privately negotiated transactions. These subsidiaries were funded with a combination of approximately $166 million in cash from NRG, together with the proceeds from the issuance of approximately $250 million of notes and approximately $84 million of preferred stock to affiliates of Credit Suisse, for a total of approximately $500 million. The notes and the preferred interests will mature in two tranches: $137.5 million in notes and $53 million in preferred interests will mature in October 2008, and $112.5 million in notes and $31 million in preferred interests will mature in October 2009.

On October 13, NRG completed Phase I with the repurchase of 10,587,700 common shares at an average price of $47.22 for approximately $500 million.

Phase II, as originally announced, was to be an additional $250 million common stock buyback anticipated to commence during the first quarter 2007. In conjunction with the hedge reset and the amendments to the senior secured credit facility described herein, NRG has upsized Phase II to $500 million and has accelerated the start to the fourth quarter 2006 and intends to complete it by the end of the second quarter 2007.

4% Convertible Perpetual Preferred Stock

On December 27, 2004, NRG completed the sale of 420,000 shares of Convertible Perpetual Preferred Stock with a dividend coupon rate of 4%. The 4% Preferred Stock has a liquidation preference of $1,000 per share. Holders of 4% Preferred Stock are entitled to receive, when declared by NRG s board of directors, cash

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dividends at the rate of 4% per annum, payable quarterly in arrears on March 15, June 15, September 15 and December 15 of each year, commencing on March 15, 2005. The 4% Preferred Stock is convertible, at the option of the holder, at any time into shares of NRG common stock. On or after December 20, 2009, NRG may redeem, subject to certain limitations, some or all of the 4% Preferred Stock with cash at a redemption price equal to 100% of the liquidation preference, plus accumulated but unpaid dividends, including liquidated damages, if any, to the redemption date.

If NRG is subject to a fundamental change, as defined in the Certificate of Designation of the 4% Preferred Stock, each holder of shares of 4% Preferred Stock has the right, subject to certain limitations, to require NRG to purchase any or all of its shares of 4% Preferred Stock at a purchase price equal to 100% of the liquidation preference, plus accumulated and unpaid dividends, including liquidated damages, if any, to the date of purchase. Final determination of a fundamental change must be approved by NRG s board of directors or the board of directors must decide to take a neutral position with respect to such fundamental change.

Each holder of 4% Preferred Stock has one vote for each share of 4% Preferred Stock held by the holder on all matters voted upon by the holders of NRG s common stock, as well as voting rights specifically provided for in NRG s amended and restated certificate of incorporation or as otherwise from time to time required by law. In addition, whenever (1) dividends on the 4% Preferred Stock or any other class or series of stock ranking on a parity with the 4% Preferred Stock with respect to the payment of dividends are in arrears for dividend periods, whether or not consecutive, containing in the aggregate a number of days equivalent to six calendar quarters, or (2) NRG fails to pay the redemption price on the date shares of 4% Preferred Stock are called for redemption or the purchase price on the purchase date for shares of 4% Preferred Stock following a fundamental change, then, in each case, the holders of 4% Preferred Stock (voting separately as a class with all other series of preferred stock upon which like voting rights have been conferred and are exercisable) are entitled to vote for the election of two of the authorized number of NRG s directors at the next annual meeting of stockholders and at each subsequent meeting until all dividends accumulated or the redemption price on the 4% Preferred Stock have been fully paid or set apart for payment. The term of office of all directors elected by holders of the 4% Preferred Stock will terminate immediately upon the termination of the rights of the holders of the 4% Preferred Stock to vote for directors. Upon election of any additional directors, the number of directors that comprise NRG s board of directors will be increased by the number of such additional directors.

The 4% Preferred Stock is senior to all classes of common stock, on a parity with the 3.625% Preferred Stock and the Mandatory Convertible Preferred Stock (described below) and junior to all of NRG s existing and future debt obligations and all of NRG s subsidiaries existing and future liabilities and capital stock held by persons other than NRG or its subsidiaries. The proceeds of $406.4 million, net of issuance costs of approximately $13.6 million, were used to redeem $375.0 million of Second Priority Notes on February 4, 2005.

3.625% Convertible Perpetual Preferred Stock

On August 11, 2005, NRG issued 250,000 shares of its 3.625% Convertible Perpetual Preferred Stock, or 3.625% Preferred Stock, to Credit Suisse First Boston Capital LLC, or CSFB, in a private placement. The 3.625% Preferred Stock has a liquidation preference of $1,000 per share. Holders of the 3.625% Preferred Stock are entitled to receive, out of funds legally available, cash dividends at the rate of 3.625% per annum, payable in cash quarterly in arrears commencing on December 15, 2005. Each share of 3.625% Preferred Stock is convertible during the 90-day period beginning August 11, 2015 at the option of NRG or the holder. Holders tendering the 3.625% Preferred Stock for conversion shall be entitled to receive cash and common stock. NRG may elect to make cash payment in lieu of delivering shares of common stock in connection with such conversion, and NRG may elect to receive cash in lieu of shares of common stock, if any, from the holder in connection with such conversion.

If NRG is subject to a fundamental change, as defined in the Certificate of Designation of the 3.625% Preferred Stock, each holder of shares of 3.625% Preferred Stock has the right, subject to certain limitations, to require NRG to purchase any or all of its shares of 3.625% Preferred Stock at a purchase price equal to

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100% of the liquidation preference, plus accumulated and unpaid dividends, including liquidated damages, if any, to the date of purchase.

The 3.625% Preferred Stock is senior to all classes of common stock, on a parity with the 4% Preferred Stock and the Mandatory Convertible Preferred Stock and junior to all of NRG s existing and future debt obligations and all of NRG s subsidiaries existing and future liabilities and capital stock held by persons other than NRG or its subsidiaries. Title to the 3.625% Preferred Stock, may not be transferred to an entity that is not an affiliate of CSFB without the consent of NRG, such consent not to be unreasonably withheld. The proceeds were used to redeem $228.8 million of Second Priority Notes on September 12, 2005.

Mandatory Convertible Preferred Stock

On February 2, 2006, NRG completed the issuance of 2,000,000 shares of 5.75% mandatory convertible preferred stock, or the 5.75% Preferred Stock, at an offering price of $250 per share for total net proceeds after deducting offering expenses and underwriting discounts of approximately $486 million. Dividends on the 5.75% Preferred Stock are $14.375 per share per year, and are due and payable on a quarterly basis beginning on March 15, 2006. The 5.75% Preferred Stock will automatically convert into common stock on March 16, 2009, or the Conversion Date, at a rate that is dependent upon the applicable market value of NRG s common stock. If the applicable market value of NRG common stock is $60.45 a share or higher at the Conversion Date, then the 5.75% Preferred Stock is convertible at a rate of 4.1356 shares of NRG common stock for every share of 5.75% Preferred Stock outstanding. If the applicable market value of NRG common stock is less than or equal to $48.75 per share at the Conversion Date, then the 5.75% Preferred Stock is convertible at a rate of 5.1282 shares of NRG common stock for every share of 5.75% Preferred Stock outstanding. If the applicable market value of NRG common stock is between $48.75 per share and $60.45 per share at the Conversion Date, then the 5.75% Preferred Stock is convertible into common stock at a rate that is prorated between 4.1356 and 5.1282 shares of common stock for every share of 5.75% Preferred Stock.

Credit Support and Collateral Arrangement

In connection with our power generation business, we manage the commodity price risk associated with our supply activities and our electric generation facilities. This includes forward power sales, fuel and energy purchases and emission credits. In order to manage these risks, we enter into financial instruments to hedge the variability in future cash flows from forecasted sales of electricity and purchases of fuel and energy. We utilize a variety of instruments including forward contracts, futures contracts, swaps and options. Certain of these contracts allow counterparties to require us to provide credit support. This credit support consists of letters of credit, cash, guarantees and second liens on our assets. As of September, 30, 2006, balances of the credit support provided in support of these contracts were $858 million for letters of credit, $132 million for cash margin, $589 million for parental guarantees and second liens supporting net discounted exposure of counterparties aggregating approximately $897 million.

The following table shows the breakdown of balances of the credit support provided in support of the hedging contracts described above:

	September 30, 2006 ($ in millions)	December 31, 2005 ($ in millions)
Letters of Credit(1)	$ 858	$ 831
Cash Margin	132	438
Parental Guarantees(2)	589	167

Second Liens(3)	897	2,221

(1) Letters of Credit outstanding as of December 31, 2005, includes a balance related to Texas Genco LLC of $604 million.

(2) Parental guarantees were provided by either NRG Energy, Inc. or NRG Texas LLC on behalf of their subsidiaries.

(3) As of December 31, 2005, the second liens were limited to the ERCOT assets of Texas Genco LLC. As of September 30, 2006, substantially all of NRG s assets were subject to the second liens.

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CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of certain U.S. federal income tax considerations relating to the purchase, ownership and disposition of the notes but does not purport to be a complete analysis of all the potential tax considerations. This summary is based on the provisions of the Internal Revenue Code (the Code), the Treasury regulations promulgated or proposed thereunder, judicial authority, published administrative positions of the IRS and other applicable authorities, all as in effect on the date of this document, and all of which are subject to change, possibly on a retroactive basis. We have not sought any ruling from the IRS with respect to the statements made and the conclusions reached in the following summary, and there can be no assurance that the IRS will agree with our statements and conclusions. This summary deals only with holders that purchase notes at their original issuance at their issue price (the first price at which a substantial amount of the notes is sold for money to the public, not including bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers) and that will hold the notes as capital assets within the meaning of Section 1221 of the Code (generally, property held for investment). This summary does not purport to deal with all aspects of U.S. federal income taxation that might be relevant to particular holders in light of their personal investment circumstances or status, nor does it address tax considerations applicable to investors that may be subject to special tax rules, such as certain financial institutions, tax-exempt organizations, S corporations, partnerships or other pass-through entities, insurance companies, broker-dealers, dealers or traders in securities or currencies, certain former citizens or residents of the U.S., and taxpayers subject to the alternative minimum tax. This summary also does not discuss notes held as part of a hedge, straddle, synthetic security or conversion transaction, constructive sale, or other integrated transaction, or situations in which the functional currency of a U.S. holder (as defined below) is not the U.S. dollar. Moreover, the effect of any applicable estate, state, local or non-U.S. tax laws is not discussed.

THE FOLLOWING DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE. INVESTORS CONSIDERING THE PURCHASE OF NOTES SHOULD CONSULT THEIR OWN TAX ADVISORS WITH RESPECT TO THE APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AS WELL AS ANY TAX CONSEQUENCES ARISING UNDER THE ESTATE TAX LAWS OR THE LAWS OF ANY STATE, LOCAL OR NON-U.S. TAXING JURISDICTION OR UNDER ANY APPLICABLE TAX TREATY.

The term U.S. holder means a beneficial owner of a note that is, for U.S. federal income tax purposes:

(1) an individual citizen or resident of the U.S., including an alien individual who is a lawful permanent resident of the U.S. or meets the substantial presence test under Section 7701(b) of the Code;

(2) a corporation, or other entity taxable as a corporation for U.S. federal income tax purposes, created or organized under the laws of the U.S. or any state thereof (including the District of Columbia);

(3) an estate, the income of which is subject to U.S. federal income taxation regardless of its source; or

(4) a trust, if (i) a court within the U.S. is able to exercise primary jurisdiction over its administration and one or more U.S. persons within the meaning of the Code has the authority to control all of its substantial decisions, or (ii) in the case of a trust that was treated as a domestic trust under the law in effect before 1997, a valid election is in place under applicable Treasury regulations to treat such trust as a domestic trust.

The term non-U.S. holder means a beneficial owner of a note that is not a U.S. holder.

If an entity treated as a partnership for U.S. federal income tax purposes holds the notes, the tax treatment of a partner generally will depend upon the status of the partner and the activities of the partnership.

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A holder that is a partner of a partnership purchasing the notes should consult with its own tax advisor about the U.S. federal income tax consequences of purchasing, holding and disposing of the notes.

U.S. Holders

Interest. The stated interest on a note will be included in the gross income of a U.S. holder as ordinary income at the time such interest is accrued or received in accordance with the holder s regular method of accounting for U.S. federal income tax purposes. The notes will not be issued with original issue discount within the meaning of Section 1273 of the Code.

Additional Interest. In certain circumstances (see Description of the Notes Repurchase at the Option of Holders Change of Control and Description of the Notes Optional Redemption), we may be obligated to pay amounts in excess of stated interest or principal on the notes. It is possible that the IRS could assert that the additional amounts which we would be obliged to pay is a contingent payment. In that case, the notes may be treated as contingent payment debt instruments for U.S. federal income tax purposes, with the result that the timing, amount of income included and the character of income recognized may be different from the consequences discussed herein. However, the Treasury regulations regarding debt instruments that provide for one or more contingent payments state that, for purposes of determining whether a debt instrument is a contingent payment debt instrument, contingencies which are remote or incidental as of the issue date are ignored. We believe that as of the issue date the likelihood of our paying additional amounts is remote and, accordingly, we do not intend to treat the notes as contingent payment debt instruments. In addition, we have the option to redeem all or a portion of the notes at certain times prior to the maturity date at a premium. Under applicable Treasury regulations, we will be deemed to exercise any option to redeem the notes if the exercise of such option would lower the yield of the debt instrument. We believe, and intend to take the position for purposes of determining yield and maturity (for purposes of the original issue discount provisions of the Code), that we will not be treated as having exercised any option to redeem the notes under these rules. Such determination by us is binding on all U.S. holders unless a U.S. holder discloses its differing position in a statement attached to its timely filed U.S. federal income tax return for the taxable year during which a note was acquired. Our determination is not, however, binding on the IRS, and if the IRS were to challenge this determination, a U.S. holder might be required to accrue income on its notes in excess of stated interest and to treat as ordinary income rather than capital gain any income realized on the taxable disposition of a note before the resolution of the contingencies. Alternatively, the notes may be treated as being subject to the original issue discount rules. In the event a contingency occurs, it would affect the amount, the character and timing of the income recognized by a U.S. holder. This discussion assumes that the notes will not be treated as contingent payment debt instruments or as instruments subject to original issue discount rules for U.S. federal income tax purposes.

Sale, Exchange, Redemption, Retirement or Other Taxable Disposition of the Notes. Upon the sale, exchange, redemption, retirement or other taxable disposition of a note, a U.S. holder generally will recognize capital gain or loss equal to the difference between (i) the amount realized on the sale, exchange, redemption, retirement or other taxable disposition (not including the amount allocable to accrued and unpaid interest) and (ii) that holder s adjusted tax basis in the note. The amount realized will be equal to the sum of the amount of cash and the fair market value of any property received in exchange for the note. A U.S. holder s adjusted tax basis in a note generally will equal that holder s cost reduced by any principal payments received. The capital gain or loss will be long-term capital gain or loss if the U.S. holder s holding period in the note is more than one year at the time of sale, exchange, redemption or other taxable disposition. Subject to limited exceptions, capital losses cannot be used to offset ordinary income. The deductibility of capital losses is subject to limitation.

A U.S. holder that sells a note between interest payment dates will be required to treat as ordinary interest income an amount equal to interest that has accrued through the date of sale and has not been previously included in income.

Information Reporting and Backup Withholding Tax. In general, we must report certain information to the IRS with respect to payments of principal, premium, if any, and interest on a note (including the

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payment of liquidated damages) and payments of the proceeds of the sale or other disposition of a note to certain non-corporate U.S. holders. The payor (which may be us or an intermediate payor) will be required to withhold backup withholding tax at the applicable statutory rate if (i) the payee fails to furnish a taxpayer identification number (TIN) to the payor or establish an exemption from backup withholding, (ii) the IRS notifies the payor that the TIN furnished by the payee is incorrect, (iii) there has been a notified payee underreporting with respect to interest or dividends described in Section 3406(c) of the Code or (iv) the payee has not certified under penalties of perjury that it has furnished a correct TIN and such U.S. holder is not subject to backup withholding under the Code. Certain holders (including among others, corporations and certain tax-exempt organizations) are generally not subject to backup withholding. U.S. holders should consult their personal tax advisor regarding their qualification for an exemption from backup withholding and the procedures for obtaining such exemption, if applicable. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a U.S. holder will be allowed as a credit against that holder s U.S. federal income tax liability and may entitle the holder to a refund, provided that the required information is furnished in a timely manner to the IRS.

Non-U.S. Holders

Interest. Interest paid to a non-U.S. holder will not be subject to U.S. federal income or withholding tax of 30% (or, if applicable, a lower rate under an applicable income tax treaty) under the portfolio interest exception of the Code provided that:

such holder does not directly or indirectly, actually or constructively, own 10% or more of the total combined voting power of all of our classes of stock;

such holder is not a controlled foreign corporation that is related to us through sufficient stock ownership and is not a bank that received such interest on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business;

either (1) the non-U.S. holder certifies in a statement provided to us or our paying agent, under penalties of perjury, that it is not a U.S. person within the meaning of the Code and provides its name and address (generally by completing IRS Form W-8BEN), (2) a securities clearing organization, bank or other financial institution that holds customers securities in the ordinary course of its trade or business and holds the notes on behalf of the non-U.S. holder certifies to us or our paying agent under penalties of perjury that it, or the financial institution between it and the non-U.S. holder, has received from the non-U.S. holder a statement, under penalties of perjury, that such holder is not a U.S. person and provides us or our paying agent with a copy of such statement or (3) the non-U.S. holder holds its notes directly through a qualified intermediary and certain conditions are satisfied; and

the interest is not effectively connected with such holder s conduct of a trade or business within the U.S.

Even if the above conditions are not met, a non-U.S. holder may be entitled to an exemption from U.S. federal withholding tax if the interest is effectively connected to a U.S. trade or business as described below or to a reduction in or an exemption from U.S. federal income and withholding tax on interest under an income tax treaty between the U.S. and the non-U.S. holder s country of residence. To claim a reduction or exemption under an income tax treaty, a non-U.S. holder must generally complete an IRS Form W-8BEN and claim the reduction or exemption on the form. In some cases, a non-U.S. holder may instead be permitted to provide documentary evidence of its claim to the intermediary, or a qualified intermediary may already have some or all of the necessary evidence in its files.

The certification requirements described above may in some circumstances require a non-U.S. holder that claims the benefit of an income tax treaty to also provide its U.S. taxpayer identification number on IRS Form W-8BEN.

Additional Interest. We believe that the possibility of additional interest is remote and, accordingly, we do not intend to treat the notes as contingent payment debt instruments for U.S. federal income tax

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purposes. This discussion assumes that the notes will not be treated as contingent payment debt instruments for U.S. federal income tax purposes. See U.S. Holders Additional Interest.

Sale, Exchange, Redemption or other Taxable Disposition of Notes. A non-U.S. holder of a note generally will not be subject to U.S. federal income tax or withholding tax on any gain realized on a sale, exchange, redemption or other taxable disposition of the note (other than any amount representing accrued but unpaid interest on the note, which is subject to the rules discussed above under Non-U.S. Holders Interest) unless (i) the gain is effectively connected with a U.S. trade or business of the non-U.S. holder or (ii) in the case of a non-U.S. holder who is an individual, such holder is present in the U.S. for a period or periods aggregating 183 days or more during the taxable year of the disposition and certain other requirements are met.

U.S. Trade or Business. If interest or gain from a disposition of the notes is effectively connected with a non-U.S. holder s conduct of a U.S. trade or business and, if an income tax treaty applies and the non-U.S. holder maintains a U.S. permanent establishment to which the interest or gain is attributable, the non-U.S. holder may be subject to U.S. federal income tax on the interest or gain on a net basis in the same manner as if it were a U.S. holder. If interest income received with respect to the notes is taxable on a net basis, the 30% withholding tax described above will not apply (assuming an appropriate certification is provided, generally IRS Form W-8ECI). A foreign corporation that is a holder of a note may also be subject to a branch profits tax equal to 30% of its effectively connected earnings and profits for the taxable year, subject to certain adjustments, unless it qualifies for a lower rate under an applicable income tax treaty. For this purpose, interest on a note or gain realized on the disposition of a note will be included in earnings and profits if the interest or gain is effectively connected with the conduct by the foreign corporation of a trade or business in the U.S.

Information Reporting and Backup Withholding Tax. U.S. backup withholding tax generally will not apply to payments on a note to a non-U.S. holder if the non-U.S. holder is exempt from withholding tax on interest as described above in Non-U.S. Holders Interest. However, information reporting may still apply with respect to interest payments.

Payment of proceeds made to a non-U.S. holder outside the U.S. from a disposition of notes effected through a non-U.S. office of a non-U.S. broker generally will not be subject to backup withholding and information reporting. However, payment of proceeds from a disposition of notes by a non-U.S. holder effected through a non-U.S. office of a broker may be subject to information reporting (but generally not backup withholding) if the broker is (i) a U.S. person (within the meaning of the Code); (ii) a controlled foreign corporation for Untied States federal income tax purposes; (iii) a foreign person 50% or more of whose gross income is effectively connected with a U.S. trade or business for a specified three-year period; or (iv) a foreign partnership, if at any time during its tax year, one or more of its partners are U.S. persons, as defined in Treasury regulations, who in the aggregate hold more than 50% of the income or capital interest in the partnership or if, at any time during its tax year, the foreign partnership is engaged in a U.S. trade or business.

Payment of the proceeds from a disposition by a non-U.S. holder of a note made to or through the U.S. office of a broker is generally subject to information reporting and backup withholding unless the holder or beneficial owner certifies as to its taxpayer identification number or otherwise establishes an exemption from information reporting and backup withholding.

Non-U.S. holders should consult their own tax advisors regarding application of withholding and backup withholding in their particular circumstance and the availability of and procedure for obtaining an exemption from withholding and backup withholding under current Treasury regulations. In this regard, the current Treasury regulations provide that a certification may not be relied on if we or our agent (or other payor) knows or has reason to know that the certification may be false. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules

from a payment to a non-U.S. holder will be allowed as a credit against the holder s U.S. federal income tax liability or may be refunded, provided the required information is furnished in a timely manner to the IRS.

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UNDERWRITING

We intend to offer the notes through the underwriters. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Morgan Stanley & Co. Incorporated are acting as representatives of the underwriters named below. Subject to the terms and conditions contained in an underwriting agreement between us and the underwriters, we have agreed to sell to the underwriters and the underwriters severally have agreed to purchase from us, the principal amount of the notes listed opposite their names below:

Underwriter	Principal Amount
Merrill Lynch, Pierce, Fenner & Smith Incorporated	$ 770,000,000
Morgan Stanley & Co. Incorporated	330,000,000
Total	$ 1,100,000,000

The underwriters have agreed to purchase all of the notes sold pursuant to the underwriting agreement if any of the notes are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the underwriting agreement may be terminated.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as amended, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the notes, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the notes, and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officers certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

Commissions and Discounts

The underwriters have advised us that they propose initially to offer the notes to the public at the public offering price specified on the cover page of this prospectus supplement, and to dealers at that price less a concession not in excess of 0.50% of the principal amount of the notes. The underwriters may allow, and the dealers may reallow, a discount not in excess of 0.25% of the principal amount of the notes to other dealers. After the initial public offering, the public offering price, concession and discount may be changed.

The expenses of the offering, not including the underwriting discount, are estimated to be approximately $300,000 and are payable by us.

New Issue of Notes

The notes are a new issue of securities with no established trading market. We do not intend to apply for listing of the notes on any national securities exchange or for quotation of the notes on any automated dealer quotation system. We have been advised by the underwriters that they presently intend to make a market in the notes after completion of the offering. However, the underwriters are under no obligation to do so and may discontinue any market-making activities at any time without notice. We cannot assure that an active public market for the notes will develop or that any trading market that does develop for the notes will be liquid. If an active public trading market for any series of the notes does not develop, the market price and liquidity of the notes may be adversely affected.

Price Stabilization and Short Positions

In connection with the offering, the underwriters are permitted to engage in transactions that stabilize the market price of the notes. Such transactions consist of bids or purchases to peg, fix or maintain the price of the notes. If the underwriters create a short position in connection with the offering, i.e., if they sell more

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notes than are specified on the cover page of this prospectus supplement, the underwriters may reduce that short position by purchasing notes in the open market. Purchases of a security to stabilize the price or to reduce a short position could cause the price of the security to be higher than it might be in the absence of such purchases.

Neither we nor the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the notes. In addition, neither we nor the underwriters make any representation that the underwriters will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

Other Relationships

Merrill Lynch, Pierce, Fenner & Smith Incorporated and Morgan Stanley & Co. Incorporated and certain of their affiliates are lenders under, and receive customary fees and expenses in connection with, certain of our credit facilities, including our senior secured credit facility, which is being amended in connection with the Transactions, and our bridge loan facility. See Description of Certain Other Indebtedness and Preferred Stock. An affiliate of Morgan Stanley & Co. Incorporated is a hedging counterparty of ours, and such affiliate will receive a share of the amounts that are paid to hedging counterparties in connection with the resetting of certain of our hedges. See The Transactions in this prospectus supplement. As a result, this affiliate may receive more than 10% of the net proceeds of this offering. Therefore, this offering will be made pursuant to the requirements of Rule 2710(h) of the Conduct Rules of the National Association of Securities Dealers, Inc. This rule requires that the yield of a debt security be no lower than the yield recommended by a qualified independent underwriter which has participated in the preparation of the registration statement and performed its usual standard of due diligence with respect to that registration statement. Merrill Lynch, Pierce, Fenner & Smith Incorporated has agreed to act as qualified independent underwriter with respect to this offering. The yield on the notes will be no lower than that recommended by Merrill Lynch, Pierce, Fenner & Smith Incorporated. Neither Merrill Lynch, Pierce, Fenner & Smith Incorporated nor its affiliates is a hedging counterparty of ours that will receive any net proceeds from this offering.

The underwriters and their affiliates have engaged in, and may in the future engage in, investment banking and other commercial dealings (including hedging transactions) in the ordinary course of business with us. They have received customary fees and commissions for these transactions.

We have entered into bridge agreements with Merrill Lynch & Co. and Morgan Stanley & Co. Incorporated and certain of their affiliates to assure that we have adequate financing to fund amounts owing to the hedge counterparties in connection with the resetting at certain of our hedges.

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LEGAL MATTERS

The validity of the notes offered hereby and certain other matters will be passed upon for NRG by Kirkland & Ellis LLP, Chicago, Illinois. The Underwriters have been represented in connection with this offering by Latham & Watkins LLP, New York, New York.

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NRG Energy, Inc.

DEBT SECURITIES
PREFERRED STOCK
COMMON STOCK

NRG Energy, Inc., from time to time, may offer to sell senior or subordinated debt securities, preferred stock and common stock. The debt securities and preferred stock may be convertible into or exercisable or exchangeable for our common stock, our preferred stock, our other securities or the debt or equity securities of one or more other entities. Our common stock is listed on the New York Stock Exchange and trades under the ticker symbol NRG.

We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis.

This prospectus describes some of the general terms that may apply to these securities. The specific terms of any securities to be offered will be described in a supplement to this prospectus.

Neither the Securities and Exchange Commission nor any other state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

Prospectus dated December 21, 2005

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WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the Securities and Exchange Commission, or the SEC. You can inspect and copy these reports, proxy statements and other information at the Public Reference Room of the SEC, 100 F Street, N.E., Washington, D.C. 20549. You can obtain copies of these materials from the Public Reference Section of the SEC, 100 F Street, N.E., Washington, D.C. 20549, at prescribed rates. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference room. NRG s SEC filings will also be available to you on the SEC s website at http://www.sec.gov and through the New York Stock Exchange, 20 Broad Street, New York, New York 10005, on which our common stock is listed.

We have filed with the SEC a registration statement on Form S-3 relating to the securities covered by this prospectus. This prospectus, which forms a part of the registration statement, does not contain all the information that is included in the registration statement. You will find additional information about us in the registration statement. Any statements made in this prospectus concerning the provisions of legal documents are not necessarily complete and you should read the documents that are filed as exhibits to the registration statement or otherwise filed with the SEC for a more complete understanding of the document or matter.

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows the incorporation by reference of the information filed by us with the SEC into this prospectus, which means that important information can be disclosed to you by referring you to those documents and those documents will be considered part of this prospectus. Information that we file later with the SEC will automatically update and supersede the previously filed information. The documents listed below and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act) are incorporated by reference herein:

1. Our annual report on Form 10-K for the year ended December 31, 2004 filed on March 30, 2005.

2. Our Definitive Proxy Statement on Schedule 14A filed on April 12, 2005.

3. Our quarterly reports on Form 10-Q for the quarters ended March 31, 2005 filed on May 10, 2005, June 30, 2005 filed on August 9, 2005 and September 30, 2005 filed on November 7, 2005.

4. Our current reports on Form 8-K filed on February 24, 2005, Form 8-K filed on March 3, 2005, two Forms 8-K filed on March 30, 2005 (which do not include information deemed furnished for purposes of Regulation F-D), Form 8-K filed on May 24, 2005, Form 8-K/A filed on May 24, 2005, Form 8-K/A filed on May 25, 2005, Form 8-K filed on June 15, 2005, Form 8-K/A filed on June 15, 2005, Form 8-K filed on June 17, 2005, Form 8-K filed on July 18, 2005, Form 8-K filed on August 1, 2005, Form 8-K filed on August 3, 2005, Form 8-K filed on August 9, 2005 (which does not include information deemed furnished for purposes of Regulation F-D), Form 8-K filed on August 11, 2005, Form 8-K filed on September 1, 2005, Form 8-K filed on September 7, 2005 (which does not include information deemed furnished for purposes of Regulation F-D), Form 8-K filed on October 3, 2005, Form 8-K filed on October 12, 2005, Form 8-K filed on November 7, 2005 (which does not include information deemed furnished for purposes of Regulation F-D), Form 8-K filed on December 20, 2005 and Form 8-K filed on December 21, 2005.

5. The description of our common stock contained in the Registration Statement on Form 8-A dated March 22, 2004 filed with the SEC to register such securities under the Securities and Exchange Act of 1934, as amended, including any amendment or report filed for the purpose of updating such description.

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If you make a request for such information in writing or by telephone, we will provide you, without charge, a copy of any or all of the information incorporated by reference into this prospectus. Any such request should be directed to:

NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
(609) 524-4500
Attention: General Counsel

You should rely only on the information contained in, or incorporated by reference in, this prospectus. We have not authorized anyone else to provide you with different or additional information. This prospectus does not offer to sell or solicit any offer to buy any notes in any jurisdiction where the offer or sale is unlawful. You should not assume that the information in this prospectus or in any document incorporated by reference is accurate as of any date other than the date on the front cover of the applicable document.

DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, any accompanying prospectus supplement and the documents incorporated by reference herein and therein may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Such forward-looking statements are subject to certain risks, uncertainties and assumptions that include, but are not limited to, expected earnings and cash flows, future growth and financial performance and the expected synergies and other benefits of the acquisition of Texas Genco LLC described herein (including the documents incorporated herein by reference), and typically can be identified by the use of words such as will, expect, estimate, anticipate, forecast, plan, believe and similar terms. Although we believe th expectations are reasonable, we can give no assurance that these expectations will prove to have been correct, and actual results may vary materially. Factors that could cause actual results to differ materially from those contemplated above include, among others:

Risks and uncertainties related to the capital markets generally, including increases in interest rates and the availability of financing for the acquisition of Texas Genco LLC;

NRG s indebtedness and the additional indebtedness that it will incur in connection with the acquisition of Texas Genco LLC;

NRG s ability to successfully complete the acquisition of Texas Genco LLC, regulatory or other limitations that may be imposed as a result of the acquisition of Texas Genco LLC, and the success of the business following the acquisition of Texas Genco LLC;

General economic conditions, changes in the wholesale power markets and fluctuations in the cost of fuel or other raw materials;

Hazards customary to the power production industry and power generation operations such as fuel and electricity price volatility, unusual weather conditions, catastrophic weather-related or other damage to facilities, unscheduled generation outages, maintenance or repairs, unanticipated changes to fossil fuel supply costs or availability due to higher demand, shortages, transportation problems or other developments, environmental incidents, or electric transmission or gas pipeline system constraints and the possibility that we may not have adequate insurance to cover losses as a result of such hazards;

NRG s potential inability to enter into contracts to sell power and procure fuel on terms and prices acceptable to it;

The liquidity and competitiveness of wholesale markets for energy commodities;

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Changes in government regulation, including possible changes of market rules, market structures and design, rates, tariffs, environmental laws and regulations and regulatory compliance requirements;

Price mitigation strategies and other market structures or designs employed by independent system operators, or ISOs, or regional transmission organizations, or RTOs, that result in a failure to adequately compensate our generation units for all of their costs;

NRG s ability to realize its significant deferred tax assets, including loss carry forwards;

The effectiveness of NRG s risk management policies and procedures and the ability of NRG s counterparties to satisfy their financial commitments;

Counterparties collateral demands and other factors affecting NRG s liquidity position and financial condition;

NRG s ability to operate its businesses efficiently, manage capital expenditures and costs (including general and administrative expenses) tightly and generate earnings and cash flow from its asset-based businesses in relation to its debt and other obligations; and

Significant operating and financial restrictions placed on NRG contained in the indenture governing its 8% second priority senior secured notes due 2013, its amended and restated credit facility as well as in debt and other agreements of certain of NRG s subsidiaries and project affiliates generally.

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NRG ENERGY, INC.

NRG Energy is a wholesale power generation company, primarily engaged in the ownership and operation of power generation facilities, the transacting in and trading of fuel and transportation services and the marketing and trading of energy, capacity and related products in the United States and internationally. We have a diverse portfolio of electric generation facilities in terms of geography, fuel type and dispatch levels. Our principal domestic generation assets (without giving effect to the acquisition of Texas Genco LLC) consist of a diversified mix of natural gas-, coal- and oil-fired facilities, representing approximately 40%, 30% and 30% of our total domestic generation capacity, respectively. In addition (without giving effect to the acquisition of Texas Genco LLC), approximately 15% of our domestic generating facilities have dual- or multiple-fuel capacity, which render the ability for plants to dispatch with the lowest cost fuel option.

Our two principal operating objectives are to optimize performance of our entire portfolio, and to protect and enhance the market value of our physical and contractual assets through the execution of risk management, marketing and trading strategies within well-defined risk and liquidity guidelines. We manage the assets in our core regions on a portfolio basis as integrated businesses in order to maximize profits and minimize risk. Our business involves the reinvestment of capital in our existing assets for reasons of repowering, expansion, pollution control, operating efficiency, reliability programs, greater fuel optionality, greater merit order diversity, and enhanced portfolio effect, among other reasons. Our business also may involve acquisitions intended to complement the asset portfolios in our core regions. From time to time we may also consider and undertake other merger and acquisition transactions that are consistent with our strategy, such as our pending acquisition of Texas Genco LLC.

On September 30, 2005, we entered into an acquisition agreement, or the Acquisition Agreement, with Texas Genco LLC and each of the direct and indirect owners of equity interests in Texas Genco LLC, or the Sellers. Pursuant to the Acquisition Agreement, we agreed to purchase all of the outstanding equity interests in Texas Genco LLC for a total purchase price of approximately $5.825 billion and the assumption by us of approximately $2.5 billion of indebtedness. The purchase price is subject to adjustment, and includes an equity component valued at $1.8 billion based on a price per share of $40.50 of NRG s common stock. As a result of the Acquisition, Texas Genco LLC will become a wholly owned subsidiary of NRG and will nearly double our U.S. generation portfolio from approximately 12,005 Megawatts to 23,124 Megawatts.

We were incorporated as a Delaware corporation on May 29, 1992. Our common stock is listed on the New York Stock Exchange under the symbol NRG . Our headquarters and principal executive offices are located at 211 Carnegie Center, Princeton, New Jersey 08540. Our telephone number is (609) 524-4500.

You can get more information regarding our business by reading our Annual Report on Form 10-K for the fiscal year ended December 31, 2004, and the other reports we file with the Securities and Exchange Commission. See Where You Can Find More Information.

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DESCRIPTION OF SECURITIES WE MAY OFFER

DEBT SECURITIES AND GUARANTEES

We may offer secured or unsecured debt securities, which may be convertible. Our debt securities and any related guarantees will be issued under an indenture to be entered into between us and Law Debenture Trust Company of New York. Holders of our indebtedness will be structurally subordinated to holders of any indebtedness (including trade payables) of any of our subsidiaries that do not guarantee our payment obligations under such indebtedness.

We have summarized certain general features of the debt securities from the indenture. A form of indenture is attached as an exhibit to the registration statement of which this prospectus forms a part. The following description of the terms of the debt securities and the guarantees sets forth certain general terms and provisions. The particular terms of the debt securities and guarantees offered by any prospectus supplement and the extent, if any, to which such general provisions may apply to the debt securities and guarantees will be described in the related prospectus supplement. Accordingly, for a description of the terms of a particular issue of debt securities, reference must be made to both the related prospectus supplement and to the following description.

General

The aggregate principal amount of debt securities that may be issued under the indenture is unlimited. The debt securities may be issued in one or more series as may be authorized from time to time.

Reference is made to the applicable prospectus supplement for the following terms of the debt securities (if applicable):

- title and aggregate principal amount;
- whether the securities will be senior or subordinated;
- applicable subordination provisions, if any;
- whether securities issued by us will be entitled to the benefits of the guarantees or any other form of guarantee;
- conversion or exchange into other securities;
- whether securities issued by us will be secured or unsecured, and if secured, what the collateral will consist of;
- percentage or percentages of principal amount at which such securities will be issued;
- maturity date(s);
- interest rate(s) or the method for determining the interest rate(s);
- dates on which interest will accrue or the method for determining dates on which interest will accrue and dates on which interest will be payable;

redemption (including upon a change of control) or early repayment provisions;

authorized denominations;

form;

amount of discount or premium, if any, with which such securities will be issued;

whether such securities will be issued in whole or in part in the form of one or more global securities;

identity of the depositary for global securities;

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whether a temporary security is to be issued with respect to such series and whether any interest payable prior to the issuance of definitive securities of the series will be credited to the account of the persons entitled thereto;

the terms upon which beneficial interests in a temporary global security may be exchanged in whole or in part for beneficial interests in a definitive global security or for individual definitive securities;

conversion or exchange features;

any covenants applicable to the particular debt securities being issued;

any defaults and events of default applicable to the particular debt securities being issued;

currency, currencies or currency units in which the purchase price for, the principal of and any premium and any interest on, such securities will be payable;

time period within which, the manner in which and the terms and conditions upon which the purchaser of the securities can select the payment currency;

securities exchange(s) on which the securities will be listed, if any;

whether any underwriter(s) will act as market maker(s) for the securities;

extent to which a secondary market for the securities is expected to develop;

additions to or changes in the events of default with respect to the securities and any change in the right of the trustee or the holders to declare the principal, premium and interest with respect to such securities to be due and payable;

provisions relating to covenant defeasance and legal defeasance;

provisions relating to satisfaction and discharge of the indenture;

provisions relating to the modification of the indenture both with and without the consent of holders of debt securities issued under the indenture; and

additional terms not inconsistent with the provisions of the indenture.

One or more series of debt securities may be sold at a substantial discount below their stated principal amount, bearing no interest or interest at a rate which at the time of issuance is below market rates. One or more series of debt securities may be variable rate debt securities that may be exchanged for fixed rate debt securities.

United States federal income tax consequences and special considerations, if any, applicable to any such series will be described in the applicable prospectus supplement.

Debt securities may be issued where the amount of principal and/or interest payable is determined by reference to one or more currency exchange rates, commodity prices, equity indices or other factors. Holders of such securities may receive a principal amount or a payment of interest that is greater than or less than the amount of principal or interest

otherwise payable on such dates, depending upon the value of the applicable currencies, commodities, equity indices or other factors. Information as to the methods for determining the amount of principal or interest, if any, payable on any date, the currencies, commodities, equity indices or other factors to which the amount payable on such date is linked and certain additional United States federal income tax considerations will be set forth in the applicable prospectus supplement.

The term debt securities includes debt securities denominated in U.S. dollars or, if specified in the applicable prospectus supplement, in any other freely transferable currency or units based on or relating to foreign currencies.

We expect most debt securities to be issued in fully registered form without coupons and in denominations of $1,000 or $5,000 and any integral multiples thereof. Subject to the limitations provided in

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the indenture and in the prospectus supplement, debt securities that are issued in registered form may be transferred or exchanged at the office of the trustee maintained in the Borough of Manhattan, The City of New York or the principal corporate trust office of the trustee, without the payment of any service charge, other than any tax or other governmental charge payable in connection therewith.

Guarantees

Any debt securities may be guaranteed by one or more of our direct or indirect subsidiaries. Each prospectus supplement will describe any guarantees for the benefit of the series of debt securities to which it relates, including required financial information of the subsidiary guarantors, as applicable.

Global Securities

The debt securities of a series may be issued in whole or in part in the form of one or more global securities that will be deposited with, or on behalf of, a depositary (the depositary) identified in the prospectus supplement. Global securities will be issued in registered form and in either temporary or definitive form. Unless and until it is exchanged in whole or in part for the individual debt securities, a global security may not be transferred except as a whole by the depositary for such global security to a nominee of such depositary or by a nominee of such depositary to such depositary or another nominee of such depositary or by such depositary or any such nominee to a successor of such depositary or a nominee of such successor. The specific terms of the depositary arrangement with respect to any debt securities of a series and the rights of and limitations upon owners of beneficial interests in a global security will be described in the applicable prospectus supplement.

Governing Law

The indenture, the debt securities and the guarantees shall be construed in accordance with and governed by the laws of the State of New York, without giving effect to the principles thereof relating to conflicts of law.

PREFERRED STOCK

The following briefly summarizes the material terms of our preferred stock, other than pricing and related terms that will be disclosed in an accompanying prospectus supplement. You should read the particular terms of any series of preferred stock offered by us, which will be described in more detail in any prospectus supplement relating to such series, together with the more detailed provisions of our amended and restated certificate of incorporation and the certificate of designation relating to each particular series of preferred stock for provisions that may be important to you. The certificate of incorporation, as amended and restated, is incorporated by reference into the registration statement of which this prospectus forms a part. The certificate of designation relating to the particular series of preferred stock offered by an accompanying prospectus supplement and this prospectus will be filed as an exhibit to a document incorporated by reference in the registration statement. The prospectus supplement will also state whether any of the terms summarized below do not apply to the series of preferred stock being offered.

As of the date of this prospectus, we are authorized to issue up to 10,000,000 shares of preferred stock, par value $0.01 per share. As of December 16, 2005, 420,000 shares of 4% Convertible Perpetual Preferred Stock were outstanding and 250,000 shares of 3.625% Convertible Perpetual Preferred Stock were outstanding. Under our amended and restated certificate of incorporation, our board of directors is authorized to issue shares of preferred stock in one or more series, and to establish from time to time a series of preferred stock with the following terms specified:

- the number of shares to be included in the series;

the designation, powers, preferences and rights of the shares of the series; and

the qualifications, limitations or restrictions of such series.

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Prior to the issuance of any series of preferred stock, our board of directors will adopt resolutions creating and designating the series as a series of preferred stock and the resolutions will be filed in a certificate of designation as an amendment to the amended and restated certificate of incorporation. The term board of directors includes any duly authorized committee.

The rights of holders of the preferred stock offered may be adversely affected by the rights of holders of any shares of preferred stock that may be issued in the future. Our board of directors may cause shares of preferred stock to be issued in public or private transactions for any proper corporate purpose. Examples of proper corporate purposes include issuances to obtain additional financing in connection with acquisitions or otherwise, and issuances to our or our subsidiaries officers, directors and employees pursuant to benefit plans or otherwise. Shares of preferred stock we issue may have the effect of rendering more difficult or discouraging an acquisition of us deemed undesirable by our board of directors.

The preferred stock will be, when issued, fully paid and nonassessable. Holders of preferred stock will not have any preemptive or subscription rights to acquire more of our stock.

The transfer agent, registrar, dividend disbursing agent and redemption agent for shares of each series of preferred stock will be named in the prospectus supplement relating to such series.

Rank

Unless otherwise specified in the prospectus supplement relating to the shares of a series of preferred stock, such shares will rank on an equal basis with each other series of preferred stock and prior to the common stock as to dividends and distributions of assets.

Dividends

Holders of each series of preferred stock will be entitled to receive cash dividends when, as and if declared by our board of directors out of funds legally available for dividends. The rates and dates of payment of dividends will be set forth in the prospectus supplement relating to each series of preferred stock. Dividends will be payable to holders of record of preferred stock as they appear on our books or, if applicable, the records of the depositary referred to below on the record dates fixed by the board of directors. Dividends on a series of preferred stock may be cumulative or noncumulative.

We may not declare, pay or set apart for payment dividends on the preferred stock unless full dividends on other series of preferred stock that rank on an equal or senior basis have been paid or sufficient funds have been set apart for payment for

- all prior dividend periods of other series of preferred stock that pay dividends on a cumulative basis; or
- the immediately preceding dividend period of other series of preferred stock that pay dividends on a noncumulative basis.

Partial dividends declared on shares of preferred stock and each other series of preferred stock ranking on an equal basis as to dividends will be declared pro rata. A pro rata declaration means that the ratio of dividends declared per share to accrued dividends per share will be the same for each series of preferred stock.

Similarly, we may not declare, pay or set apart for payment non-stock dividends or make other payments on the common stock or any other of our stock ranking junior to the preferred stock until full dividends on the preferred stock have been paid or set apart for payment for

all prior dividend periods if the preferred stock pays dividends on a cumulative basis; or

the immediately preceding dividend period if the preferred stock pays dividends on a noncumulative basis.

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Conversion and Exchange

The prospectus supplement for a series of preferred stock will state the terms, if any, on which shares of that series are convertible into or exchangeable for shares of our common stock, our preferred stock, our other securities or the debt or equity securities of one or more other entities.

Redemption and Sinking Fund

If so specified in the applicable prospectus supplement, a series of preferred stock may be redeemable at any time, in whole or in part, at our option or the option of the holder thereof and may be mandatorily redeemed. Any partial redemptions of preferred stock will be made in a way that the board of directors decides is equitable.

Unless we default in the payment of the redemption price, dividends will cease to accrue after the redemption date on shares of preferred stock called for redemption and all rights of holders of such shares will terminate except for the right to receive the redemption price.

No series of preferred stock will receive the benefit of a sinking fund except as set forth in the applicable prospectus supplement.

Liquidation Preference

Upon any voluntary or involuntary liquidation, dissolution or winding up, holders of each series of preferred stock will be entitled to receive distributions upon liquidation in the amount set forth in the prospectus supplement relating to such series of preferred stock, plus an amount equal to any accrued and unpaid dividends. Such distributions will be made before any distribution is made on any securities ranking junior relating to liquidation, including common stock.

If the liquidation amounts payable relating to the preferred stock of any series and any other securities ranking on a parity regarding liquidation rights are not paid in full, the holders of the preferred stock of such series and such other securities will share in any such distribution of our available assets on a ratable basis in proportion to the full liquidation preferences. Holders of such series of preferred stock will not be entitled to any other amounts from us after they have received their full liquidation preference.

Voting Rights

The holders of shares of preferred stock will have no voting rights, except:

as otherwise stated in the prospectus supplement;

as otherwise stated in the certificate of designation establishing such series; and

as required by applicable law.

Holders of our 4% Convertible Perpetual Preferred Stock are entitled to one vote for each share held by such holder on all matters voted upon by our common stockholders.

COMMON STOCK

The following description of our common stock is only a summary. We encourage you to read our amended and restated certificate of incorporation, which is incorporated by reference into the registration statement of which this prospectus forms a part. As of the date of this prospectus, we are authorized to issue up to 500,000,000 shares of common stock, $0.01 par value per share. As of December 16, 2005, we had outstanding 80,701,888 shares of our common stock.

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Liquidation Rights

Upon voluntary or involuntary liquidation, dissolution or winding up, the holders of our common stock share ratably in the assets remaining after payments to creditors and provision for the preference of any preferred stock.

Dividends

Except as otherwise provided by the Delaware General Corporation Law or our amended and restated certificate of incorporation, the holders of our common stock, subject to the rights of holders of any series of preferred stock, shall share ratably in all dividends as may from time to time be declared by our board of directors in respect of our common stock out of funds legally available for the payment thereof and payable in cash, stock or otherwise, and in all other distributions (including, without limitation, our dissolution, liquidation and winding up), whether in respect of liquidation or dissolution (voluntary or involuntary) or otherwise, after payment of liabilities and liquidation preference on any outstanding preferred stock.

Voting Rights

Except as otherwise provided by the Delaware General Corporation Law or our certificate of incorporation and subject to the rights of holders of any series of preferred stock, all the voting power of our stockholders shall be vested in the holders of our common stock, and each holder of our common stock shall have one vote for each share held by such holder on all matters voted upon by our stockholders.

Subject to the rights of holders of any outstanding shares of preferred stock to act by written consent, our stockholders may not take any action by written consent in lieu of a meeting and must take any action at a duly called annual or special meeting of stockholders.

The affirmative vote of holders of at least two-thirds of the combined voting power of our outstanding shares eligible to vote in the election of directors is required to alter, amend or repeal provisions in the amended and restated certificate of incorporation regarding indemnification, classification of directors, action by written consent and changes to voting requirements applicable to such provisions.

Conversion and Exchange

Our common stock is not convertible into, or exchangeable for, any other class or series of our capital stock.

Miscellaneous

Holders of our common stock have no preemptive or other rights to subscribe for or purchase additional securities of ours. We are subject to Section 203 of the DGCL. Shares of our common stock are not subject to calls or assessments. No personal liability will attach to holders of our common stock under the laws of the State of Delaware (our state of incorporation) or of the State of New Jersey (the state in which our principal place of business is located). All of the outstanding shares of our common stock are fully paid and nonassessable. Our common stock is listed and traded on the New York Stock Exchange under the symbol NRG.

RATIOS OF EARNINGS TO FIXED CHARGES AND EARNINGS TO COMBINED FIXED CHARGES AND PREFERENCE DIVIDENDS

The ratios of earnings to fixed charges and earnings to combined fixed charges and preference dividends for the periods indicated are stated below. For this purpose, earnings include pre-tax income (loss) before adjustments for

minority interest in our consolidated subsidiaries and income or loss from equity investees, plus fixed charges and distributed income of equity investees, reduced by interest capitalized. Fixed charges include interest, whether expensed or capitalized, amortization of debt expense and the portion of rental expense that is representative of the interest factor in these rentals. Preference dividends equals the

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amount of pre-tax earnings that is required to pay the dividends on outstanding preference securities. Predecessor Company refers to NRG s operations prior to December 6, 2003, before emergence from bankruptcy and Reorganized NRG refers to NRG s operations from December 6, 2003 onwards, after emergence from bankruptcy.

	Reorganized NRG				Predecessor Company		
	Nine Months Ended September 30, 2005	Year Ended December 31, 2004	December 6, 2003 through December 31, 2003	January 1, 2003 through December 5, 2003	Year Ended December 31, 2002	2001	2000
Ratio of Earnings to Fixed Charges	1.19x	1.83x	1.68x	9.82x(1)	(2)	1.26x	1.81x
Ratio of Earnings to Combined Fixed Charges and Preference Dividends	1.04x	1.82x	1.68x	9.82x(1)	(2)	1.26x	1.81x

(1) For the period January 1, 2003 through December 5, 2003, the earnings include a one time earning of $4,118,636,000 due to Fresh Start adjustments.
(2) For the year ended December 31, 2002, the deficiency of earnings to fixed charges was $3,023,467,000.

USE OF PROCEEDS

We intend to use the net proceeds from the sales of the securities as set forth in the applicable prospectus supplement.

VALIDITY OF THE SECURITIES

In connection with particular offerings of the securities in the future, and if stated in the applicable prospectus supplements, the validity of those securities may be passed upon for the Company by Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York, and for any underwriters or agents by counsel named in the applicable prospectus supplement.

EXPERTS

The consolidated financial statements and schedule of NRG Energy, Inc. (the Company) as of December 31, 2004, and for the year then ended, and management s assessment of the effectiveness of internal control over financial reporting as of December 31, 2004, included in the Company s Form 10-K, as amended on Form 8-K dated December 20, 2005, which is incorporated by reference in this registration statement, have been incorporated by reference herein in reliance upon the reports of KPMG LLP, an independent registered accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The consolidated financial statements and schedule of NRG South Central Generating LLC and subsidiaries and the financial statements and schedule of Louisiana Generating LLC as of December 31, 2004 and for the year then ended, the consolidated financial statements of NRG Northeast Generating LLC and subsidiaries, NRG Mid Atlantic Generating LLC and subsidiaries, NRG International LLC and subsidiaries and the financial statements of Indian River Power LLC and subsidiaries as of December 31, 2004 and for the year then ended, the financial statements of Oswego Harbor Power LLC as of December 31, 2004 and 2003 and for the year ended December 31, 2003 and the

period from December 6, 2003 to December 31, 2003 and the statements of operations, member s equity and comprehensive income and cash flows of Oswego Harbor Power LLC for the period from January 1, 2003 to December 5, 2003, have been incorporated by reference herein in reliance on the reports of KPMG LLP, an independent registered public accounting firm, incorporated by reference herein, and upon authority of said firm as experts in accounting and auditing.

The consolidated financial statements of NRG Energy, Inc. as of December 31, 2003 and for the period December 6, 2003 through December 31, 2003, the period January 1, 2003 through December 5, 2003

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and the year ended December 31, 2002 incorporated in this prospectus by reference to NRG Energy, Inc. s annual report on Form 10-K for the year ended December 31, 2004, as amended on Form 8-K dated December 20, 2005, which is incorporated by reference in this registration statement, have been so incorporated in reliance on the reports of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The consolidated financial statements of NRG Northeast Generating LLC, NRG South Central Generating LLC, Louisiana Generating LLC, NRG Mid Atlantic Generating LLC, Indian River Power LLC, and NRG International LLC as of December 31, 2003 and for the period from December 6, 2003 through December 31, 2003, the period from January 1, 2003 through December 5, 2003 and the year ended December 31, 2002 incorporated in this prospectus by reference to NRG Energy, Inc. s current report on Form 8-K dated June 14, 2005, have been so incorporated in reliance on the reports of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The consolidated financial statements of West Coast Power LLC incorporated in this prospectus by reference to NRG Energy, Inc. s annual report on Form 10-K for the year ended December 31, 2004, as amended on Form 8-K dated December 20, 2005, which is incorporated by reference in this registration statement, have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The consolidated balance sheet of Texas Genco LLC and subsidiaries as of December 31, 2004 and the related consolidated statements of operations, cash flows, members equity and comprehensive loss for the period from July 19, 2004 to December 31, 2004, all incorporated in this prospectus by reference to NRG Energy, Inc. s current report on Form 8-K, filed on December 21, 2005, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report, which is incorporated herein by reference and has been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

The consolidated balance sheet of Texas Genco Holdings, Inc. and subsidiaries as of December 31, 2003 and 2004 and the related statements of consolidated operations, cash flows, and capitalization and shareholders equity for each of the three years for the period ended December 31, 2004, and the statement of consolidated comprehensive loss for each of the three years for the period ended December 31, 2004, all incorporated in this prospectus by reference to NRG Energy, Inc. s current report on Form 8-K, filed on December 21, 2005, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report, which is incorporated herein by reference and has been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

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$1,100,000,000

NRG Energy, Inc.

7.375% Senior Notes Due 2017

PROSPECTUS SUPPLEMENT

Merrill Lynch & Co.

Morgan Stanley

November 8, 2006