

accordance with this Agreement or the transactions contemplated hereby, since September 30, 1999, America Online and its Subsidiaries have conducted their business only in the ordinary course and in a manner consistent with past practice and, since December 31, 1998, there have not been any changes, circumstances or events which, individually or in the aggregate, have had, or would reasonably be expected to have, a Material Adverse Effect on America Online.

(j) Intellectual Property: Year 2000.

(i) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on America Online: (a) America Online and each of its Subsidiaries owns, or is licensed to use (in each case, free and clear of any Liens), all Intellectual Property (as defined below) used in or necessary for the conduct of its business as currently conducted; (b) to the knowledge of America Online, the use of any Intellectual Property by America Online and its Subsidiaries does not infringe on or otherwise violate the rights of any Person, (c) the use of the Intellectual Property is in accordance with applicable licenses pursuant to which America Online or any Subsidiary acquired the right to use any Intellectual Property; and (d) to the knowledge of America Online, no Person is challenging, infringing on or otherwise violating any right of America Online or any of its Subsidiaries with respect to any Intellectual Property owned by and/or licensed to America Online or its Subsidiaries. As of the date of this Agreement, except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on America Online, neither America Online nor any of its Subsidiaries has knowledge of any pending claim, order or proceeding with respect to any Intellectual Property used by America Online and its Subsidiaries and to its knowledge no Intellectual Property owned and/or licensed by America Online or its Subsidiaries is being used or enforced in a manner that would reasonably be expected to result in the abandonment, cancellation or unenforceability of such Intellectual Property. For purposes of this Agreement, "Intellectual Property" shall mean trademarks, service marks, brand names, certification marks, trade dress and other indications of origin, the goodwill associated with the foregoing and registrations in any jurisdiction of, and applications in any jurisdiction to register, the foregoing, including any extension, modification or renewal of any such registration or application; inventions, discoveries and ideas, whether patentable or not, in any jurisdiction; patents, applications for patents (including, without limitation, divisions, continuations, continuations in part and renewal applications), and any renewals, extensions or reissues thereof, in any jurisdiction; nonpublic information, trade secrets and confidential information and rights in any jurisdiction to limit the use or disclosure thereof by any person; writings and other works, whether copyrightable or not, in any jurisdiction; and registrations or applications for registration of copyrights in any jurisdiction, and any renewals or extensions thereof: any similar intellectual property or proprietary rights.

(ii) Prior to the date of this Agreement, America Online and its Subsidiaries have undertaken a concerted effort to ensure that all of the computer software, computer firmware, computer hardware, and other similar or related items of automated, computerized, and/or software system(s) that are used or relied on by America Online or any of its Subsidiaries

in the conduct of their respective businesses will not malfunction, will not cease to function, will not generate incorrect data, and will not provide incorrect results when processing, providing and/or receiving (a) date-related data into and between the years 1999 and 2000 and (b) date-related data in connection with any valid date in the twentieth and twenty-first centuries. As of the date of this Agreement, except as would not reasonably be expected, individually or in the aggregate, America Online reasonably believes that such effort will be successful.

(k) Brokers or Finders. No agent, broker, investment banker, financial advisor or other firm or Person is or will be entitled to any broker's or finder's fee or any other similar commission or fee in connection with any of the transactions contemplated by this Agreement based upon arrangements made by or on behalf of America Online, except Salomon Smith Barney, Inc., whose fees and expenses will be paid by America Online.

(l) Opinion of America Online Financial Advisor. America Online has received the opinion of Salomon Smith Barney, Inc., dated the date of this Agreement, to the effect that, as of such date, the Exchange Ratio is fair to America Online, from a financial point of view, a copy of which opinion will be made available to Time Warner promptly after the date of this Agreement.

(m) Taxes. Each of America Online and its Subsidiaries has filed all Tax Returns required to have been filed (or extensions have been duly obtained) and has paid all Taxes required to have been paid by it, except where failure to file such Tax Returns or pay such Taxes would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on America Online. For purposes of this Agreement: (i) "Tax" (and, with correlative meaning, "Taxes") means any federal, state, local or foreign income, gross receipts, property, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add on minimum, ad valorem, transfer or excise tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, imposed by any governmental authority or any obligation to pay Taxes imposed on any entity for which a party to this Agreement is liable as a result of any indemnification provision or other contractual obligation, and (ii) "Tax Return" means any return, report or similar statement required to be filed with respect to any Tax (including any attached schedules), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

Neither America Online nor any of its Subsidiaries has taken any action or knows of any fact that is reasonably likely to prevent the Mergers from qualifying as exchanges within the meaning of Section 351 of the Code and as reorganizations within the meaning of Section 368(a) of the Code.

(n) Certain Contracts. As of the date hereof, except as disclosed in Section 4.1(n) of the America Online Disclosure Schedule, neither America Online nor any of its Subsidiaries is a party to or bound by (i) any "material contracts" (as such term is defined in Item

601(b)(10) of Regulation S-K of the SEC) with respect to America Online and its Subsidiaries or (ii) any material agreement that restricts the ability of America Online or Time Warner or any of their Subsidiaries or affiliates to distribute, promote, market or otherwise offer Internet and interactive services, Internet and interactive programming, or Internet and interactive functionality on the cable systems owned by Time Warner or its Subsidiaries or affiliates (collectively, "America Online Internet Restrictions"). All contracts described in clause (i) are valid and in full force and effect except to the extent they have previously expired in accordance with their terms or if the failure to be in full force and effect, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on America Online. Neither America Online nor any of its Subsidiaries has violated any provision of, or committed or failed to perform any act which with or without notice, lapse of time or both would constitute a default under the provisions of, any contract described in clause (i), except in each case for those violations and defaults which, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect on America Online.

(o) America Online Stockholder Rights Plan. The Board of Directors of America Online has amended the America Online Rights Agreement in accordance with its terms to render it inapplicable to the transactions contemplated by this Agreement and the America Online Stock Option Agreement.

(p) Employee Benefits.

(i) The Benefit Plans, whether oral or written, under which any current or former employee or director of America Online or its Subsidiaries has any present or future right to benefits contributed to, sponsored by or maintained by America Online or its Subsidiaries, or under which America Online or its Subsidiaries has any present or future liability shall be collectively referred to as the "America Online Benefit Plans."

(ii) Except as set forth in Section 4.1(p) of the America Online Disclosure Schedule, with respect to each America Online Benefit Plan, no liability has been incurred and there exists no condition or circumstances in connection with which America Online or any of its Subsidiaries could be subject to any liability that is reasonably likely, individually or in the aggregate, to have a Material Adverse Effect on America Online, in each case under ERISA (as defined in Section 9.11(b)), the Code, or any other applicable law, rule or regulation.

(iii) America Online and its Subsidiaries are in compliance with all Federal, state, local and foreign requirements regarding employment, except for any failures to comply that are not reasonably likely, individually or in the aggregate, to have a Material Adverse Effect on America Online. As of the date of this Agreement, there is no labor dispute, strike or work stoppage against America Online or any of its Subsidiaries pending or, to the knowledge of America Online, threatened which may interfere with the business activities of America Online or any of its Subsidiaries, except where such dispute, strike or work stoppage is not reasonably likely, individually or in the aggregate, to have a Material Adverse Effect on America Online.

4.2 Representations and Warranties of Time Warner. Except as disclosed in the Time Warner Filed SEC Reports (as defined in Section 4.2(d)(ii)) or as set forth in the Time Warner Disclosure Schedule delivered by Time Warner to America Online prior to the execution of this Agreement (the "Time Warner Disclosure Schedule"), Time Warner represents and warrants to America Online as follows:

(a) Organization, Standing and Power: Subsidiaries.

(i) Each of Time Warner and each of its Subsidiaries is a corporation or other organization duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, has the requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted, except where the failure to be so organized, existing and in good standing or to have such power and authority, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on Time Warner, and is duly qualified and in good standing to do business in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification necessary other than in such jurisdictions where the failure so to qualify or to be in good standing, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on Time Warner. The copies of the certificate of incorporation and bylaws of Time Warner which were previously furnished or made available to America Online are true, complete and correct copies of such documents as in effect on the date of this Agreement and the copy of the Agreement of Limited Partnership, dated as of October 29, 1991, as amended, of Time Warner Entertainment Company, L.P. ("TWE") which was previously furnished to America Online is a true, complete and correct copy of such agreement as in effect on the date of this Agreement (the "TWE Partnership Agreement").

(ii) Exhibit 21 to Time Warner's Annual Report on Form 10-K for the year ended December 31, 1998 includes all the Subsidiaries of Time Warner which as of the date of this Agreement are Significant Subsidiaries (as defined in Rule 1-02 of Regulation S-X of the SEC and including TWE). All the outstanding shares of capital stock of, or other equity interests in, each such Significant Subsidiary have been validly issued and are fully paid and nonassessable and are, except as set forth in such Exhibit 21 and in the TWE Partnership Agreement, owned directly or indirectly by Time Warner, free and clear of all Liens and free of any other restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other ownership interests), except for restrictions imposed by applicable securities laws. As of the date of this Agreement, neither Time Warner nor any of its Subsidiaries directly or indirectly owns any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for, any corporation, partnership, joint venture or other business association or entity (other than Subsidiaries), that is or would reasonably be expected to be material to Time Warner and its Subsidiaries taken as a whole.

Time Warner indirectly owns a 74.49% priority capital and residual equity interest in TWE as described in the TWE Partnership Agreement, free and clear of all Liens (except under the TWE Partnership Agreement).

(b) Capital Structure.

(i) As of November 30, 1999, the authorized capital stock of Time Warner consists of (a) 5,000,000,000 shares of Time Warner Common Stock of which 1,172,176,909 shares were outstanding, (B) 600,000,000 shares of Series Common Stock, par value \$.01 per share, of which (1) 140,000,000 shares have been designated as Time Warner Series LMC Common Stock, of which no shares are outstanding and (2) 140,000,000 shares have been designated as Time Warner Series LMCN-V Common Stock, of which 114,123,884 shares are outstanding, and (C) 250,000,000 shares of preferred stock, par value \$.10 per share, of which (1) 8,000,000 shares have been designated Series A Participating Cumulative Preferred Stock and reserved for issuance upon exercise of the rights (the "Time Warner Rights") distributed to holders of Time Warner Common Stock pursuant to the Rights Agreement, dated as of October 10, 1996 between Time Warner and ChaseMellon Shareholder Services, LLC, as Rights Agent, as amended (together with any substitute rights agreement entered into pursuant to Section 6.10(b), the "Time Warner Rights Agreement"), (2) 11,000,000 shares have been designated Series D Convertible Preferred Stock, of which no shares are outstanding, (3) 3,250,000 shares have been designated Series E Convertible Preferred Stock, of which 3,129,251 shares are outstanding, (4) 3,100,000 shares have been designated Series F Convertible Preferred Stock, of which 2,965,761 shares are outstanding, (5) 7,000,000 shares have been designated Series I Convertible Preferred Stock, of which 700,000 shares are outstanding and (6) 3,350,000 shares have been designated Series J Convertible Preferred Stock, of which 1,608,708 shares are outstanding. Since November 30, 1999 to the date of this Agreement, there have been no issuances of shares of the capital stock of Time Warner or any other securities of Time Warner other than issuances of shares pursuant to outstanding convertible securities or options or rights outstanding as of November 30, 1999 and 59,250 Time Warner Restricted Shares under the Benefit Plans of Time Warner, and pursuant to the Time Warner Dividend Reinvestment and Stock Purchase Plan. All issued and outstanding shares of the capital stock of Time Warner are duly authorized, validly issued, fully paid and nonassessable, and free of any preemptive rights. All accrued dividends that were payable on Time Warner Preferred Stock have been paid. There were outstanding as of December 31, 1999 no options, warrants or other rights to acquire capital stock from Time Warner other than (x) the Time Warner Rights and (y) approximately 135,867,893 Time Warner Stock Options (as defined in the next sentence) and 82,000 Time Warner Restricted Shares. The options and other rights to acquire Time Warner Common Stock from Time Warner representing the right to purchase shares of Time Warner Common Stock, together with other employee stock options issued by Time Warner after the date hereof in accordance with the Time Warner Stock Option Plans (as defined in the next sentence) and Section 5.2, are referred to herein collectively as the "Time Warner Stock Options". The Time Warner Stock Options and the Time Warner Restricted Shares have been and will be granted under the Time Warner 1986 Stock Option Plan, the 1988

Stock Incentive Plan of Time Warner Inc., Time Warner 1989 Stock Incentive Plan, Time Warner 1994 Stock Option Plan, Time Warner Corporate Group Stock Incentive Plan, Time Warner 1997 Stock Option Plan, Time Warner 1996 Stock Option Plan for Non-Employee Directors, Time Warner 1989 WCI Replacement Stock Option Plan, 1989 Lorimar Non-Employee Replacement Stock Option Plan, Time Warner 1993 Stock Option Plan, Time Warner Filmed Entertainment Group Stock Incentive Plan, Time Warner Music Group Stock Incentive Plan, Time Warner Programming Group Stock Incentive Plan, Time Warner Publishing Group Stock Incentive Plan, Time Warner Cable Group Stock Incentive Plan, Subsidiary 1988 Stock Option Plan, Subsidiary 1993 Stock Option and Equity-Based Award Plan, Subsidiary 1986 Stock Option Plan, Subsidiary 1990 Stock Option Plan, Subsidiary 1991 Stock Option Plan and Subsidiary Nonqualified Stock Option Agreements, the Time Warner 1999 Restricted Stock Plan, the Time Warner 1988 Restricted Stock Plan for Non-Employee Directors and the Time Warner 1999 International Employees Restricted Stock Plan (collectively, the "Time Warner Stock Option Plans"). Except in connection with pre-employment grants of Time Warner Stock Options made in a manner consistent with past practice to purchase, in the aggregate, not more than 100,000 shares of Time Warner Common Stock, Section 4.2(b)(i) of the Time Warner Disclosure Schedule sets forth a complete and correct list, as of December 31, 1999, of the number of shares of Time Warner Common Stock subject to Time Warner Stock Options or other rights to purchase or receive Time Warner Common Stock granted under the Time Warner Benefit Plans or otherwise and the weighted average exercise price of the outstanding Time Warner Stock Options referenced therein. Except in connection with pre-employment grants of Time Warner Stock Options made in a manner consistent with past practice to purchase, in the aggregate, not more than 100,000 shares of Time Warner Common Stock, no options or warrants or other rights to acquire capital stock from Time Warner have been issued or granted since December 31, 1999 to the date of this Agreement.

(ii) No bonds, debentures, notes or other indebtedness of Time Warner having the right to vote on any matters on which holders of capital stock of Time Warner may vote ("Time Warner Voting Debt") are issued or outstanding.

(iii) Except as otherwise set forth in this Section 4.2(b) or in Section 4.2(b)(iii) of the Time Warner Disclosure Schedule, as of the date of this Agreement, there are no securities, options, warrants, calls, rights, commitments, agreements, arrangements or undertakings of any kind to which Time Warner or any of its Subsidiaries is a party or by which any of them is bound obligating Time Warner or any of its Subsidiaries to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of capital stock or other voting securities of Time Warner or any of its Subsidiaries or obligating Time Warner or any of its Subsidiaries to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, agreement, arrangement or undertaking. As of the date of this Agreement, there are no outstanding obligations of Time Warner or any of its Subsidiaries to repurchase, redeem or otherwise acquire any shares of capital stock of Time Warner or any of its Subsidiaries.

(c) Authority: No Conflicts.

(i) Time Warner has all requisite corporate power and authority to enter into this Agreement and the Stock Option Agreements and to consummate the transactions contemplated hereby and thereby, subject in the case of the consummation of the Time Warner Merger to the adoption of this Agreement by the Required Time Warner Vote (as defined in Section 4.2(g)). The execution and delivery of this Agreement and the Stock Option Agreements and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Time Warner and no other corporate proceedings on the part of Time Warner are necessary to authorize the execution and delivery of the Agreement or to consummate the Time Warner Merger and the other transactions contemplated hereby, subject in the case of the consummation of the Time Warner Merger to the adoption of this Agreement by the Required Time Warner Vote. This Agreement and the Stock Option Agreements have been duly executed and delivered by Time Warner and constitute valid and binding agreements of Time Warner, enforceable against Time Warner in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditors generally or by general equity principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(ii) The execution and delivery of this Agreement and the Stock Option Agreements by Time Warner do not, and the consummation by Time Warner of the Time Warner Merger and the other transactions contemplated hereby and thereby will not, conflict with, or result in a Violation pursuant to: (A) any provision of the certificate of incorporation or bylaws or similar organizational document of Time Warner or any Significant Subsidiary of Time Warner (including the TWE Partnership Agreement) or (B) except (1) as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on Time Warner or (2) would not prevent or materially delay the consummation of the Mergers, subject to obtaining or making the consents, approvals, orders, authorizations, registrations, declarations and filings referred to in paragraph (iii) below or (3) set forth in Section 4.2(c)(ii) of the Time Warner Disclosure Schedule and except with respect to employee stock options and other awards, any loan or credit agreement, note, mortgage, bond, indenture, lease, benefit plan or other agreement, obligation, instrument, permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Time Warner or any Subsidiary of Time Warner or their respective properties or assets.

(iii) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity or any other Person is required by or with respect to Time Warner or any Subsidiary of Time Warner in connection with the execution and delivery of this Agreement and the Stock Option Agreements by Time Warner or the consummation of the Time Warner Merger and the other transactions contemplated hereby and thereby, except the Necessary Consents and such consents, approvals, orders, authorizations, registrations, declarations and filings the failure of which to make or obtain, individually or in

the aggregate, would not reasonably be expected to have a Material Adverse Effect on Time Warner.

(d) Reports and Financial Statements.

(i) Each of Time Warner and TWE have filed all required registration statements, prospectuses, reports, schedules, forms, statements and other documents required to be filed by each of them with the SEC since December 31, 1996 (collectively, including all exhibits thereto, the "Time Warner SEC Reports"). Except as set forth in Section 4.2(d)(i) of the Time Warner Disclosure Schedule, no Subsidiary of Time Warner is required to file any form, report, registration statement, prospectus or other document with the SEC. None of the Time Warner SEC Reports, as of their respective dates (and, if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing), contained or will contain any untrue statement of a material fact or omitted or will omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Each of the financial statements (including the related notes) included in the Time Warner SEC Reports presents fairly, in all material respects, the consolidated financial position and consolidated results of operations and cash flows of Time Warner or TWE, as the case may be, and its consolidated Subsidiaries as of the respective dates or for the respective periods set forth therein, all in conformity with GAAP consistently applied during the periods involved except as otherwise noted therein, and subject, in the case of the unaudited interim financial statements, to the absence of notes and normal year-end adjustments that have not been and are not expected to be material in amount. All of such Time Warner SEC Reports, as of their respective dates (and as of the date of any amendment to the respective Time Warner SEC Report), complied as to form in all material respects with the applicable requirements of the Securities Act and the Exchange Act and the rules and regulations promulgated thereunder.

(ii) Except as disclosed in the Time Warner SEC Reports filed and publicly available prior to the date hereof (the "Time Warner Filed SEC Reports"), Time Warner and its Subsidiaries have not incurred any liabilities that are of a nature that would be required to be disclosed on a balance sheet of Time Warner and its Subsidiaries or the footnotes thereto prepared in conformity with GAAP, other than (A) liabilities incurred in the ordinary course of business, (B) liabilities incurred in accordance with Section 5.2, (C) liabilities for Taxes or (D) liabilities that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on Time Warner.

(e) Information Supplied.

(i) None of the information supplied or to be supplied by Time Warner for inclusion or incorporation by reference in (A) the Form S-4 will, at the time the Form S-4 is filed with the SEC, at any time it is amended or supplemented or at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any



material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (B) the Joint Proxy Statement/Prospectus will, on the date it is first mailed to Time Warner stockholders or America Online stockholders or at the time of the Time Warner Stockholders Meeting or the America Online Stockholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Form S-4 and the Joint Proxy Statement/Prospectus will comply as to form in all material respects with the requirements of the Exchange Act and the Securities Act and the rules and regulations of the SEC thereunder.

(ii) Notwithstanding the foregoing provisions of this Section 4.2(e), no representation or warranty is made by Time Warner with respect to statements made or incorporated by reference in the Form S-4 or the Joint Proxy Statement/Prospectus based on information supplied by America Online for inclusion or incorporation by reference therein.

(f) Board Approval. The Board of Directors of Time Warner, by resolutions duly adopted by unanimous vote of those voting at a meeting duly called and held and not subsequently rescinded or modified in any way (the "Time Warner Board Approval"), has duly (i) determined that this Agreement and the Time Warner Merger and the Time Warner Stock Option Agreement are fair to and in the best interests of Time Warner and its stockholders and declared the Time Warner Merger to be advisable, (ii) approved this Agreement, the Time Warner Stock Option Agreement, the Voting Agreement and the Time Warner Merger and (iii) recommended that the stockholders of Time Warner adopt this Agreement and directed that such matter be submitted for consideration by Time Warner's stockholders at the Time Warner Stockholders Meeting. The Time Warner Board Approval constitutes approval of this Agreement, the Time Warner Stock Option Agreement, the Voting Agreement and the Time Warner Merger for purposes of Section 203 of the DGCL and Article V of the Restated Certificate of Incorporation of Time Warner. To the knowledge of Time Warner, except for Section 203 of the DGCL (which has been rendered inapplicable), no state takeover statute is applicable to this Agreement, the Time Warner Stock Option Agreement, the Voting Agreement or the Time Warner Merger or the other transactions contemplated hereby or thereby.

(g) Vote Required. The affirmative vote of the holders of a majority of the voting power of the outstanding shares of Time Warner Series LMC Common Stock, Time Warner Common Stock and Time Warner Preferred Stock, voting together as a single class, to adopt this Agreement (the "Required Time Warner Vote") is the only vote of the holders of any class or series of Time Warner capital stock necessary to approve or adopt this Agreement, the Time Warner Stock Option Agreement and the Time Warner Merger and to consummate the Time Warner Merger and the other transactions contemplated hereby and thereby.

(h) Litigation: Compliance with Laws.

(i) There are no Actions pending or, to the knowledge of Time Warner, threatened, against or affecting Time Warner or any Subsidiary of Time Warner or any property or asset of Time Warner or any Subsidiary of Time Warner which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on Time Warner, nor are there any judgments, decrees, injunctions, rules or orders of any Governmental Entity or arbitrator outstanding against Time Warner or any Subsidiary of Time Warner which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on Time Warner.

(ii) Except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect on Time Warner, Time Warner and its Subsidiaries hold all permits, licenses, franchises, variances, exemptions, orders and approvals of all Governmental Entities which are necessary for the operation of the businesses as now being conducted of Time Warner and its Subsidiaries, taken as a whole (the "Time Warner Permits"), and no suspension or cancellation of any of the Time Warner Permits is pending or, to the knowledge of Time Warner, threatened. Time Warner and its Subsidiaries are in compliance with the terms of the Time Warner Permits, except where the failure to so comply, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on Time Warner. Neither Time Warner nor its Subsidiaries is in violation of, and Time Warner and its Subsidiaries have not received any notices of violations with respect to, any laws, statutes, ordinances, rules or regulations of any Governmental Entity, except for violations which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on Time Warner.

(i) Absence of Certain Changes or Events. Except as disclosed in Section 4.2(i) of the Time Warner Disclosure Schedule and for liabilities permitted to be incurred in accordance with this Agreement or the transactions contemplated hereby, since September 30, 1999, Time Warner and its Subsidiaries have conducted their business only in the ordinary course and in a manner consistent with past practice and, since December 31, 1998, there have not been any changes, circumstances or events which, individually or in the aggregate, have had, or would reasonably be expected to have, a Material Adverse Effect on Time Warner.

(j) Intellectual Property: Year 2000.

(i) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Time Warner: (a) Time Warner and each of its Subsidiaries owns, or is licensed to use (in each case, free and clear of any Liens), all Intellectual Property used in or necessary for the conduct of its business as currently conducted; (b) to the knowledge of Time Warner, the use of any Intellectual Property by Time Warner and its Subsidiaries does not infringe on or otherwise violate the rights of any Person, (c) the use of the Intellectual Property is in accordance with applicable licenses pursuant to which Time Warner or

any Subsidiary acquired the right to use any Intellectual Property; and (d) to the knowledge of Time Warner, no Person is challenging, infringing on or otherwise violating any right of Time Warner or any of its Subsidiaries with respect to any Intellectual Property owned by and/or licensed to Time Warner or its Subsidiaries. As of the date of this Agreement, except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on Time Warner, neither Time Warner nor any of its Subsidiaries has knowledge of any pending claim, order or proceeding with respect to any Intellectual Property used by Time Warner and its Subsidiaries and to its knowledge no Intellectual Property owned and/or licensed by Time Warner or its Subsidiaries is being used or enforced in a manner that would reasonably be expected to result in the abandonment, cancellation or unenforceability of such Intellectual Property.

(ii) Prior to the date of this Agreement, Time Warner and its Subsidiaries have undertaken a concerted effort to ensure that all of the computer software, computer firmware, computer hardware, and other similar or related items of automated, computerized, and/or software system(s) that are used or relied on by Time Warner or any of its Subsidiaries in the conduct of their respective businesses will not malfunction, will not cease to function, will not generate incorrect data, and will not provide incorrect results when processing, providing and/or receiving (a) date-related data into and between the years 1999 and 2000 and (b) date-related data in connection with any valid date in the twentieth and twenty-first centuries. As of the date of this Agreement, except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on Time Warner, Time Warner reasonably believes that such effort will be successful.

(k) Brokers or Finders. No agent, broker, investment banker, financial advisor or other firm or Person is or will be entitled to any broker's or finder's fee or any other similar commission or fee in connection with any of the transactions contemplated by this Agreement, based upon arrangements made by or on behalf of Time Warner except Morgan Stanley Dean Witter & Co. Incorporated, whose fees and expenses will be paid by Time Warner.

(l) Opinion of Time Warner Financial Advisor. Time Warner has received the opinion of Morgan Stanley Dean Witter & Co. Incorporated, dated the date of this Agreement, to the effect that, as of such date, the Exchange Ratio is fair, from a financial point of view, to the holders of Time Warner Common Stock and Time Warner Series Common Stock, a copy of which opinion will be made available to America Online promptly after the date of this Agreement.

(m) Taxes. Each of Time Warner and its Subsidiaries has filed all Tax Returns required to have been filed (or extensions have been duly obtained) and has paid all Taxes required to have been paid by it, except where failure to file such Tax Returns or pay such Taxes would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Time Warner.

Neither Time Warner nor any of its Subsidiaries has taken any action or knows of any fact that is reasonably likely to prevent the Mergers from qualifying as exchanges within the meaning of Section 351 of the Code and as reorganizations within the meaning of Section 368(a) of the Code.

(n) Certain Contracts. As of the date hereof, except as disclosed in Section 4.2(n) of the Time Warner Disclosure Schedule, neither Time Warner nor any of its Subsidiaries is a party to or bound by (i) any “material contracts” (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC) with respect to Time Warner and its Subsidiaries or (ii) any material agreement that restricts the ability of America Online or Time Warner or any of their Subsidiaries or affiliates to distribute, promote, market or otherwise offer Internet and interactive services, Internet and interactive programming, or Internet and interactive functionality on the cable systems owned by Time Warner or its Subsidiaries or affiliates (collectively, “Time Warner Internet Restrictions”). All contracts described in clause (i) are valid and in full force and effect except to the extent they have previously expired in accordance with their terms or if the failure to be in full force and effect, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on Time Warner. Neither Time Warner nor any of its Subsidiaries has violated any provision of, or committed or failed to perform any act which with or without notice, lapse of time or both would constitute a default under the provisions of, any contract described in clause (i), except in each case for those violations and defaults which, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect on Time Warner.

(o) Time Warner Stockholder Rights Plan. The Board of Directors of Time Warner has amended the Time Warner Rights Agreement in accordance with its terms to render it inapplicable to the transactions contemplated by this Agreement and the Time Warner Stock Option Agreement.

(p) Employee Benefits.

(i) The Benefit Plans, whether oral or written, under which any current or former employee or director of Time Warner or its Subsidiaries has any present or future right to benefits contributed to, sponsored by or maintained by Time Warner or its Subsidiaries, or under which Time Warner or its Subsidiaries has any present or future liability shall be collectively referred to as the “Time Warner Benefit Plans.”

(ii) With respect to each Time Warner Benefit Plan, no liability has been incurred and there exists no condition or circumstances in connection with which Time Warner or any of its Subsidiaries could be subject to any liability that is reasonably likely, individually or in the aggregate, to have a Material Adverse Effect on Time Warner, in each case under ERISA, the Code, or any other applicable law, rule or regulation.

(b) Dividends: Changes in Share Capital. America Online shall not, and shall not permit any of its Subsidiaries to, and shall not propose to, (i) declare or pay any

(ii) Other than in connection with acquisitions permitted by Section 5.1(e) or investments permitted by Section 5.2(g), America Online shall not, and shall not permit any of its Subsidiaries to, (A) enter into any new material line of business or (B) incur or commit to any capital expenditures or any obligations or liabilities in connection therewith other than capital expenditures and obligations or liabilities in connection therewith incurred or committed to in the ordinary course of business consistent with past practice.

(i) America Online and its Subsidiaries shall carry on their respective businesses in the usual, regular and ordinary course in all material respects, in substantially the same manner as heretofore conducted, and shall use its reasonable best efforts to preserve intact their present lines of business, maintain their rights and franchises and preserve their relationships with customers, suppliers and others having business dealings with them to the end that their ongoing businesses shall not be impaired in any material respect at the Effective Time; provided, however, that no action by America Online or its Subsidiaries with respect to matters specifically addressed by any other provision of this Section 5.1 shall be deemed a breach of this Section 5.1(a)(i) unless such action would constitute a breach of one or more of such other provisions.

(a) Ordinary Course.

5.1 Covenants of America Online. During the period from the date of this Agreement and continuing until the Effective Time, America Online agrees as to itself and its Subsidiaries that (except as expressly contemplated or permitted by this Agreement, the Stock Option Agreements or Section 5.1 (including its subsections) of the America Online Disclosure Schedule or as required by a Governmental Entity or to the extent that Time Warner shall otherwise consent in writing, which consent shall not be unreasonably withheld or delayed):

**COVENANTS RELATING TO CONDUCT OF BUSINESS**

**ARTICLE V**

(iii) Time Warner and its Subsidiaries are in compliance with all Federal, state, local and foreign requirements regarding employment, except for any failures to comply that are not reasonably likely, individually or in the aggregate, to have a Material Adverse Effect on Time Warner. As of the date of this Agreement, there is no labor dispute, strike or work stoppage against Time Warner or any of its Subsidiaries pending or, to the knowledge of Time Warner, threatened which may interfere with the business activities of Time Warner or any of its Subsidiaries, except where such dispute, strike or work stoppage is not reasonably likely, individually or in the aggregate, to have a Material Adverse Effect on Time Warner.

dividends on or make other distributions in respect of any of its capital stock, except than as permitted by Section 5.1(b)(ii), (ii) split, combine or reclassify any of its capital stock or issue or authorize or propose the issuance of any other securities in respect of, in lieu of or in substitution for, shares of its capital stock, except for (x) any such transaction by a wholly owned Subsidiary of America Online which remains a wholly owned Subsidiary after consummation of such transaction or (y) a stock split of the America Online Common Stock or (iii) repurchase, redeem or otherwise acquire any shares of its capital stock or any securities convertible into or exercisable for any shares of its capital stock except for the purchase from time to time by America Online of America Online Common Stock (and the associated America Online Rights) in connection with the America Online Benefit Plans in the ordinary course of business consistent with past practice.

(c) Issuance of Securities. America Online shall not, and shall not permit any of its Subsidiaries to, issue, deliver or sell, or authorize or propose the issuance, delivery or sale of, any shares of its capital stock of any class, any America Online Voting Debt or any securities convertible into or exercisable for, or any rights, warrants, calls or options to acquire, any such shares or America Online Voting Debt, or enter into any commitment, arrangement, undertaking or agreement with respect to any of the foregoing, other than (i) the issuance of America Online Common Stock (and the associated America Online Rights) upon the exercise of America Online Stock Options in accordance with their present terms or pursuant to America Online Stock Options or other stock based awards granted pursuant to clause (ii) below, (ii) the granting of America Online Stock Options or other stock based awards of or to acquire shares of America Online Common Stock granted under Benefit Plans outstanding on the date hereof in the ordinary course of business consistent with past practice, (iii) issuances by a wholly owned Subsidiary of America Online of capital stock to such Subsidiary's parent or another wholly owned Subsidiary of America Online, (iv) pursuant to acquisitions and investments as disclosed in Section 5.1(e) or 5.1(g) of the America Online Disclosure Schedule or the financings therefor or as disclosed in Section 5.1(c) of the America Online Disclosure Schedule, (v) issuances in accordance with the America Online Rights Agreement or (vi) issuances pursuant to the America Online Stock Option Agreement.

(d) Governing Documents. Except to the extent required to comply with their respective obligations hereunder or with applicable law, America Online and America Online Merger Sub shall not amend or propose to so amend their respective certificates of incorporation or bylaws.

(e) No Acquisitions. Other than (i) pursuant to the Time Warner Stock Option Agreement, (ii) acquisitions disclosed in Section 5.1(e) of the America Online Disclosure Schedule and (iii) acquisitions in existing or related lines of business of America Online the fair market value of the total consideration (including the value of indebtedness acquired or assumed) for which does not exceed the amount specified in the aggregate for such acquisitions in Section 5.1(e)(iii) of the America Online Disclosure Schedule and none of which acquisitions referred to in this clause (iii) presents a material risk of making it materially more difficult to obtain any

approval or authorization required in connection with the Mergers under applicable Laws, America Online shall not, and shall not permit any of its Subsidiaries to, acquire or agree to acquire by merger or consolidation, or by purchasing a substantial equity interest in or a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof or otherwise acquire or agree to acquire any assets (excluding the acquisition of assets used in the operations of the business of America Online and its Subsidiaries in the ordinary course, which assets do not constitute a business unit, division or all or substantially all of the assets of the transferor); provided, however, that the foregoing shall not prohibit (x) internal reorganizations or consolidations involving existing Subsidiaries of America Online or (y) the creation of new Subsidiaries of America Online organized to conduct or continue activities otherwise permitted by this Agreement.

(f) No Dispositions. Other than (i) internal reorganizations or consolidations involving existing Subsidiaries of America Online, (ii) dispositions referred to in the America Online SEC Reports filed prior to the date of this Agreement or (iii) as may be required by or in conformance with law or regulation in order to permit or facilitate the consummation of the transactions contemplated hereby or as disclosed in Section 5.1(f) of the America Online Disclosure Schedule, America Online shall not, and shall not permit any of its Subsidiaries to, sell, lease or otherwise dispose of, or agree to sell, lease or otherwise dispose of, any of its assets (including capital stock of Subsidiaries of America Online but excluding inventory in the ordinary course of business), if the fair market value of the total consideration (including the value of the indebtedness acquired or assumed) therefor exceeds the amount specified in the aggregate for all such dispositions in Section 5.1(f) of the America Online Disclosure Schedule.

(g) Investments; Indebtedness. America Online shall not, and shall not permit any of its Subsidiaries to, (i) other than in connection with acquisitions permitted by Section 5.1(e) or as disclosed in Section 5.1(g) of the America Online Disclosure Schedule, make any loans, advances or capital contributions to, or investments in, any other Person, other than (x) loans or investments by America Online or a Subsidiary of America Online to or in America Online or any Subsidiary of America Online, (y) employee loans or advances made in the ordinary course of business or (z) in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to America Online and its Subsidiaries taken as a whole (provided that none of such transactions referred to in this clause (z) presents a material risk of making it more difficult to obtain any approval or authorization required in connection with the Mergers under Regulatory Law (as defined in Section 6.4(c)) or (ii) without regard to anything contained in the America Online Disclosure Schedule, incur any indebtedness for borrowed money or guarantee any such indebtedness of another Person, issue or sell any debt securities or warrants or other rights to acquire any debt securities of America Online or any of its Subsidiaries, guarantee any debt securities of another person, enter into any "keep well" or other agreement to maintain any financial statement condition of another Person (other than any wholly owned Subsidiary) or enter into any arrangement having the economic effect of any of the

foregoing (collectively, "America Online Indebtedness"), except for (A) any America Online Indebtedness so long as (x) after the incurrence or issuance of such America Online Indebtedness America Online's consolidated indebtedness would not exceed 125% of the consolidated indebtedness of America Online as of the date hereof and (y) no America Online credit rating would be downgraded by either Moody's Investors Service, Inc. ("Moody's") or Standard & Poor's Corporation ("S&P") (provided that the consummation of this Agreement or any of the transactions contemplated hereby shall not give rise to, cause or result in, a default or event of default under the agreement or instrument governing any such indebtedness or, an obligation to pay any amount thereunder solely as a result of the consummation of this Agreement or any of the transactions contemplated hereby) and (B) intercompany indebtedness between America Online and any of its wholly owned Subsidiaries or between such wholly owned Subsidiaries.

(h) Tax-Free Qualification. America Online shall use its reasonable best efforts not to, and shall use its reasonable best efforts not to permit any of its Subsidiaries to, take any action (including any action otherwise permitted by this Section 5.1) that would prevent or impede the Mergers from qualifying as exchanges under Section 351 of the Code and as reorganizations under Section 368 of the Code; provided, however, that nothing hereunder shall limit the ability of America Online to exercise its rights and/or fulfill its obligations under the Stock Option Agreements.

(i) Compensation. Except (x) as set forth in Sections 5.1(c) or 5.1(i) of the America Online Disclosure Schedule, (y) as required by law or by the terms of any collective bargaining agreement or other agreement currently in effect between America Online or any Subsidiary of America Online and any executive officer or employee thereof or (z) in the ordinary course of business consistent with past practice, America Online shall not increase the amount of compensation of any director, executive officer or key employee of America Online or any material Subsidiary or business unit of America Online, or make any increase in or commitment to increase any employee benefits, issue any additional America Online Stock Options, adopt or amend or make any commitment to adopt or amend any Benefit Plan or make any contribution, other than regularly scheduled contributions, to any America Online Benefit Plan. Any option committed to be granted or granted after the date hereof shall not accelerate as a result of the approval or consummation of any transaction contemplated by this Agreement. Should any modification of the America Online Option Plans necessary to effectuate the immediately preceding sentence render any transaction to which America Online is a party, and which is intended to be eligible for pooling-of-interest accounting under APB No. 16, ineligible for such treatment then such modification shall not be required; provided, that the number of shares subject to options to be granted in the ordinary course consistent with past practice shall be reduced to reflect the effect of such acceleration.

(j) Accounting Methods; Income Tax Elections. Except as disclosed in America Online SEC Reports filed prior to the date of this Agreement, or as required by a Governmental Entity, America Online shall not change its methods of accounting in effect at September 30, 1999, except as required by changes in GAAP as concurred in by America



Online's independent public accountants. America Online shall not (i) change its fiscal year (other than to the calendar year) or (ii) make any tax election that, individually or in the aggregate, would have a Material Adverse Effect on America Online.

(k) Certain Agreements and Arrangements. Except as disclosed in Section 5.1(k) of the America Online Disclosure Schedule, America Online shall not, and shall not permit any of its Subsidiaries to, enter into any America Online Internet Restrictions or any agreements or arrangements (x) that limit or otherwise restrict America Online or any of its Subsidiaries or any of their respective Affiliates or any successor thereto or that could, after the Effective Time, limit or restrict America Online or any of its Affiliates (including Holdco) or any successor thereto, from engaging or competing in any line of business or in any geographic area which agreements or arrangements, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on Holdco and its Subsidiaries, taken together, after giving effect to the Mergers or (y) of a type described in Section 5.1 (k) of the Time Warner Disclosure Schedule.

(l) Satisfaction of Closing Conditions. Except as required by law, America Online shall not, and shall not permit any of its Subsidiaries to, take any action that would, or would reasonably be expected to, result in (i) any of the conditions to the Mergers set forth in Article VII not being satisfied or (ii) a material delay in the satisfaction of such conditions.

(m) No Related Actions. America Online will not, and will not permit any of its Subsidiaries to, agree or commit to do any of the foregoing.

5.2 Covenants of Time Warner. During the period from the date of this Agreement and continuing until the Effective Time, Time Warner agrees as to itself and its Subsidiaries that (except as expressly contemplated or permitted by this Agreement, the Stock Option Agreements or Section 5.2 (including its subsections) of the Time Warner Disclosure Schedule or as required by a Governmental Entity or to the extent that America Online shall otherwise consent in writing, which consent shall not be unreasonably withheld or delayed):

(a) Ordinary Course.

(i) Time Warner and its Subsidiaries shall carry on their respective businesses in the usual, regular and ordinary course in all material respects, in substantially the same manner as heretofore conducted, and shall use its reasonable best efforts to preserve intact their present lines of business, maintain their rights and franchises and preserve their relationships with customers, suppliers and others having business dealings with them to the end that their ongoing businesses shall not be impaired in any material respect at the Effective Time; provided, however, that no action by Time Warner or its Subsidiaries with respect to matters specifically addressed by any other provision of this Section 5.2 shall be deemed a breach of this Section 5.2(a)(i) unless such action would constitute a breach of one or more of such other provisions.

(ii) Other than in connection with acquisitions permitted by Section 5.2(e) or investments permitted by Section 5.2(g), Time Warner shall not, and shall not permit any of its Subsidiaries to, (A) enter into any new material line of business or (B) incur or commit to any capital expenditures or any obligations or liabilities in connection therewith other than capital expenditures and obligations or liabilities in connection therewith as disclosed in Section 5.2(a) of the Time Warner Disclosure Schedule or incurred or committed to in the ordinary course of business consistent with past practice.

(b) Dividends; Changes in Share Capital. Time Warner shall not, and shall not permit any of its Subsidiaries to, and shall not propose to, (i) declare or pay any dividends on or make other distributions in respect of any of its capital stock, except (A) the declaration and payment of regular quarterly cash dividends not in excess of \$0.045 per share of Time Warner Common Stock, \$0.045 per share of Series LMCN-V Common Stock, \$0.9375 per share of Time Warner Series E Preferred Stock, \$0.1874 per share of Time Warner Series F Preferred Stock, \$0.9375 per share of Time Warner Series I Preferred Stock or \$0.9375 per share of Series J Preferred Stock, in each case, with usual record and payment dates for such dividends in accordance with past dividend practice and, in the case of Time Warner Series Common Stock or Time Warner Preferred Stock, the certificate of designations therefor, and (B) for dividends by wholly owned Subsidiaries of Time Warner, distributions by TWE or TWE-A/N to the partners therein according to their respective governing documents in amounts and at times in the ordinary course of business consistent with past practice and as permitted by Section 5.2(b)(ii), (ii) split, combine or reclassify any of its capital stock or issue or authorize or propose the issuance of any other securities in respect of, in lieu of or in substitution for, shares of its capital stock, except for (x) any such transaction by a wholly owned Subsidiary of Time Warner which remains a wholly owned Subsidiary after consummation of such transaction or (y) a stock split of the Time Warner Common Stock, or (iii) except as set forth in Section 5.2(b) of the Time Warner Disclosure Schedule, repurchase, redeem or otherwise acquire any shares of its capital stock or any securities convertible into or exercisable for any shares of its capital stock except for the purchase from time to time by Time Warner of Time Warner Common Stock (and the associated Time Warner Rights) in connection with the Time Warner Benefit Plans in the ordinary course of business consistent with past practice.

(c) Issuance of Securities. Time Warner shall not, and shall not permit any of its Subsidiaries to, issue, deliver or sell, or authorize or propose the issuance, delivery or sale of, any shares of its capital stock of any class, any Time Warner Voting Debt or any securities convertible into or exercisable for, or any rights, warrants, calls or options to acquire, any such shares or Time Warner Voting Debt, or enter into any commitment, arrangement, undertaking or agreement with respect to any of the foregoing, other than (i) the issuance of Time Warner Common Stock (and the associated Time Warner Rights) upon the exercise of Time Warner Stock Options in accordance with their present terms or pursuant to Time Warner Stock Options or other stock based awards granted pursuant to clause (ii) below, (ii) the granting of Time Warner Stock Options or other stock based awards of or to acquire shares of Time Warner Common Stock granted under Benefit Plans outstanding on the date hereof in the ordinary course

of business consistent with past practice, (iii) issuances by a wholly owned Subsidiary of Time Warner of capital stock to such Subsidiary's parent or another wholly owned Subsidiary of Time Warner, (iv) pursuant to acquisitions and investments as disclosed in Section 5.2(e) or 5.2(g) of the Time Warner Disclosure Schedule or the financings therefor, (v) issuances disclosed in Section 5.2(c) of the Time Warner Disclosure Schedule, (vi) issuances in accordance with the Time Warner Rights Agreement or (vii) issuances pursuant to the Time Warner Stock Option Agreement.

(d) Governing Documents. Except as set forth in Section 5.2(d) of the Time Warner Disclosure Schedule or to the extent required to comply with their respective obligations hereunder or with applicable law, Time Warner and Time Warner Merger Sub shall not amend or propose to so amend their respective certificates of incorporation or bylaws.

(e) No Acquisitions. Other than (i) pursuant to the America Online Stock Option Agreement, (ii) acquisitions disclosed in Section 5.2(e) of the Time Warner Disclosure Schedule and (iii) acquisitions in existing or related lines of business of Time Warner the fair market value of the total consideration (including the value of indebtedness acquired or assumed) for which does not exceed the amount specified in the aggregate for such acquisitions in Section 5.2(e)(iii) of the Time Warner Disclosure Schedule and none of which acquisitions referred to in this clause (iii) presents a material risk of making it materially more difficult to obtain any approval or authorization required in connection with the Mergers under applicable Laws, Time Warner shall not, and shall not permit any of its Subsidiaries to, acquire or agree to acquire by merger or consolidation, or by purchasing a substantial equity interest in or a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof or otherwise acquire or agree to acquire any assets (excluding the acquisition of assets used in the operations of the business of Time Warner and its Subsidiaries in the ordinary course, which assets do not constitute a business unit, division or all or substantially of the assets of the transferor); provided, however, that the foregoing shall not prohibit (x) internal reorganizations or consolidations involving existing Subsidiaries of Time Warner or (y) the creation of new Subsidiaries of Time Warner organized to conduct or continue activities otherwise permitted by this Agreement.

(f) No Dispositions. Other than (i) internal reorganizations or consolidations involving existing Subsidiaries of Time Warner, (ii) dispositions referred to in the Time Warner SEC Reports filed prior to the date of this Agreement, (iii) as may be required by or in conformance with law or regulation in order to permit or facilitate the consummation of the transactions contemplated hereby or (iv) as disclosed in Section 5.2(f) of the Time Warner Disclosure Schedule, Time Warner shall not, and shall not permit any of its Subsidiaries to, sell, lease or otherwise dispose of, or agree to sell, lease or otherwise dispose of, any of its assets (including capital stock of Subsidiaries of Time Warner but excluding inventory in the ordinary course of business), if the fair market value of the total consideration (including the value of the indebtedness acquired or assumed) therefor exceeds the amount specified in the aggregate for all such dispositions in Section 5.2(f) of the Time Warner Disclosure Schedule.

(g) Investments; Indebtedness. Time Warner shall not, and shall not permit any of its Subsidiaries to, (i) other than in connection with acquisitions permitted by Section 5.2(e) or as disclosed in Section 5.1(g) of the Time Warner Disclosure Schedule, make any loans, advances or capital contributions to, or investments in, any other Person, other than (x) loans or investments by Time Warner or a Subsidiary of Time Warner to or in Time Warner or any Subsidiary of Time Warner, (y) employee loans or advances made in the ordinary course of business or (z) in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to Time Warner and its Subsidiaries taken as a whole (provided that none of such transactions referred to in this clause (z) presents a material risk of making it more difficult to obtain any approval or authorization required in connection with the Mergers under Regulatory Law or (ii) without regard to anything contained in the Time Warner Disclosure Schedule, incur any indebtedness for borrowed money or guarantee any such indebtedness of another Person, issue or sell any debt securities or warrants or other rights to acquire any debt securities of Time Warner or any of its Subsidiaries, guarantee any debt securities of another person, enter into any "keep well" or other agreement to maintain any financial statement condition of another Person (other than any wholly owned Subsidiary) or enter into any arrangement having the economic effect of any of the foregoing (collectively, "Time Warner Indebtedness"), except for (A) any Time Warner Indebtedness so long as (x) after the incurrence or issuance of such Time Warner Indebtedness Time Warner's consolidated indebtedness would not exceed 125% of the consolidated indebtedness of Time Warner as of the date hereof and (y) no Time Warner credit rating would be downgraded by either Moody's or S&P (provided that the consummation of this Agreement or any of the transactions contemplated hereby shall not give rise to, cause or result in, a default or event of default under the agreement or instrument governing any such indebtedness or, an obligation to pay any amount thereunder solely as a result of the consummation of this Agreement or any of the transactions contemplated hereby) and (B) intercompany indebtedness between Time Warner and any of its wholly owned Subsidiaries or between such wholly owned Subsidiaries.

(h) Tax-Free Qualification. Time Warner shall use its reasonable best efforts not to, and shall use its reasonable best efforts not to permit any of its Subsidiaries to, take any action (including any action otherwise permitted by this Section 5.2) that would prevent or impede the Mergers from qualifying as exchanges under Section 351 of the Code and as reorganizations under Section 368 of the Code; provided, however, that nothing hereunder shall limit the ability of Time Warner to exercise its rights and/or fulfill its obligations under the Stock Option Agreements.

(i) Compensation. Except (x) as set forth in Section 5.2(c) or 5.2 (i) of the Time Warner Disclosure Schedule, (y) as required by law or by the terms of any collective bargaining agreement or other agreement currently in effect between Time Warner or any Subsidiary of Time Warner and any executive officer or employee thereof or (z) in the ordinary course of business consistent with past practice, Time Warner shall not increase the amount of compensation of any director, executive officer or key employee of Time Warner or any material Subsidiary or business unit of Time Warner, or make any increase in or commitment to increase

any employee benefits, issue any additional Time Warner Stock Options, adopt or amend or make any commitment to adopt or amend any Benefit Plan or make any contribution, other than regularly scheduled contributions, to any Time Warner Benefit Plan. Any option granted or committed to be granted after the date hereof shall not accelerate as a result of the approval or consummation of any transaction contemplated by this Agreement. Should any modification of the Time Warner Option Plans necessary to effectuate the immediately preceding sentence render any transaction to which Time Warner is a party, and which is intended to be eligible for pooling-of-interest accounting under APB No. 16, ineligible for such treatment then such modification shall not be required; provided that the number of shares subject to options to be granted in the ordinary course consistent with past practice shall be reduced to reflect the effect of such acceleration.

(j) Accounting Methods: Income Tax Elections. Except as disclosed in Time Warner SEC Reports filed prior to the date of this Agreement, or as required by a Governmental Entity, Time Warner shall not change its methods of accounting in effect at September 30, 1999, except as required by changes in GAAP as concurred in by Time Warner's independent public accountants. Time Warner shall not (i) change its fiscal year or (ii) make any tax election that, individually or in the aggregate, would have a Material Adverse Effect on Time Warner.

(k) Certain Agreements and Arrangements. Time Warner shall not, and shall not permit any of its Subsidiaries to, enter into any Time Warner Internet Restrictions or any agreements or arrangements (x) that limit or otherwise restrict Time Warner or any of its Subsidiaries or any of their respective Affiliates or any successor thereto, or that could, after the Effective Time, limit or restrict America Online or any of its Affiliates (including Holdco) or any successor thereto, from engaging or competing in any line of business or in any geographic area which agreements or arrangements, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on Holdco and its Subsidiaries, taken together, after giving effect to the Mergers or (y) of a type described in Section 5.2(k) of the America Online Disclosure Schedule.

(l) Satisfaction of Closing Conditions. Except as required by law, Time Warner shall not, and shall not permit any of its Subsidiaries to, take any action that would, or would reasonably be expected to, result in (i) any of the conditions to the Mergers set forth in Article VII not being satisfied or (ii) a material delay in the satisfaction of such conditions.

(m) No Related Actions. Time Warner will not, and will not permit any of its Subsidiaries to, agree or commit to do any of the foregoing.

5.3 Governmental Filings. Each party shall (a) confer on a reasonable basis with the other and (b) report to the other (to the extent permitted by law or regulation or any applicable confidentiality agreement) on operational matters. Time Warner and America Online shall file all reports required to be filed by each of them with the SEC (and all other

Governmental Entities) between the date of this Agreement and the Effective Time and shall, if requested by the other party and to the extent permitted by law or regulation or any applicable confidentiality agreement, deliver to the other party copies of all such reports, announcements and publications promptly after such request.

5.4 Control of Other Party's Business. Nothing contained in this Agreement shall give Time Warner, directly or indirectly, the right to control or direct America Online's operations and nothing contained in this Agreement shall give America Online, directly or indirectly, the right to control or direct Time Warner's operations prior to the Effective Time. Prior to the Effective Time, each of Time Warner and America Online shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its respective operations.

## ARTICLE VI

### ADDITIONAL AGREEMENTS

#### 6.1 Preparation of Proxy Statement: Stockholders Meetings.

(a) As promptly as reasonably practicable following the date hereof, America Online and Time Warner shall cooperate in preparing and each shall cause to be filed with the SEC mutually acceptable proxy materials which shall constitute the joint proxy statement/prospectus relating to the matters to be submitted to the America Online stockholders at the America Online Stockholders Meeting and the matters to be submitted to the Time Warner stockholders at the Time Warner Stockholders Meeting (such proxy statement/prospectus, and any amendments or supplements thereto, the "Joint Proxy Statement/Prospectus") and Holdco shall prepare and file with the SEC a registration statement on Form S-4 with respect to the issuance of Holdco Capital Stock in the Mergers (such Form S-4, and any amendments or supplements thereto, the "Form S-4"). The Joint Proxy Statement/Prospectus will be included as a prospectus in and will constitute a part of the Form S-4 as Holdco's prospectus. Each of America Online and Time Warner shall use reasonable best efforts to have the Joint Proxy Statement/Prospectus cleared by the SEC and the Form S-4 declared effective by the SEC and to keep the Form S-4 effective as long as is necessary to consummate the Mergers and the transactions contemplated thereby. America Online and Time Warner shall, as promptly as practicable after receipt thereof, provide the other party copies of any written comments and advise the other party of any oral comments, with respect to the Joint Proxy Statement/Prospectus or Form S-4 received from the SEC. The parties shall cooperate and provide the other with a reasonable opportunity to review and comment on any amendment or supplement to the Joint Proxy Statement/Prospectus and the Form S-4 prior to filing such with the SEC, and will provide each other with a copy of all such filings made with the SEC. Notwithstanding any other provision herein to the contrary, no amendment or supplement (including by incorporation by reference) to the Joint Proxy Statement/Prospectus or the Form S-

4 shall be made without the approval of both parties, which approval shall not be unreasonably withheld or delayed; provided that with respect to documents filed by a party which are incorporated by reference in the Form S-4 or Joint Proxy Statement/Prospectus, this right of approval shall apply only with respect to information relating to the other party or its business, financial condition or results of operations; and provided further that America Online, in connection with a Change in the America Online Recommendation (as defined in Section 6.1(c)), and Time Warner, in connection with a Change in the Time Warner Recommendation (as defined in Section 6.1(b)), may amend or supplement the Joint Proxy Statement/Prospectus or Form S-4 (including by incorporation by reference) pursuant to a Qualifying Amendment (as defined below) to effect such a Change, and in such event, this right of approval shall apply only with respect to information relating to the other party or its business, financial condition or results of operations, and shall be subject to the right of each party to have its Board of Directors' deliberations and conclusions to be accurately described. A "Qualifying Amendment" means an amendment or supplement to the Joint Proxy Statement/Prospectus or Form S-4 (including by incorporation by reference) to the extent it contains (i) a Change in the America Online Recommendation or a Change in the Time Warner Recommendation (as the case may be), (ii) a statement of the reasons of the Board of Directors of America Online or Time Warner (as the case may be) for making such Change in the America Online Recommendation or Change in the Time Warner Recommendation (as the case may be) and (iii) additional information reasonably related to the foregoing. America Online will use reasonable best efforts to cause the Joint Proxy Statements/Prospectus to be mailed to America Online stockholders, and Time Warner will use reasonable best efforts to cause the Joint Proxy Statement/Prospectus to be mailed to Time Warner's stockholders, in each case as promptly as practicable after the Form S-4 is declared effective under the Securities Act. Holdco shall also take any action (other than qualifying to do business in any jurisdiction in which it is not now so qualified or to file a general consent to service of process) required to be taken under any applicable state securities laws in connection with the Mergers and each of Time Warner and America Online shall furnish all information concerning it and the holders of its capital stock as may be reasonably requested in connection with any such action. Each party will advise the other party, promptly after it receives notice thereof, of the time when the Form S-4 has become effective, the issuance of any stop order, the suspension of the qualification of the Holdco Capital Stock issuable in connection with the Mergers for offering or sale in any jurisdiction, or any request by the SEC for amendment of the Joint Proxy Statement/Prospectus or the Form S-4. If at any time prior to the Effective Time any information relating to America Online or Time Warner, or any of their respective affiliates, officers or directors, should be discovered by America Online or Time Warner which should be set forth in an amendment or supplement to any of the Form S-4 or the Joint Proxy Statement/Prospectus so that any of such documents would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other party hereto and, to the extent required by law, rules or regulations, an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and disseminated to the stockholders of America Online and Time Warner.

(b) Time Warner shall duly take all lawful action to call, give notice of, convene and hold a meeting of its stockholders on a date determined in accordance with the mutual agreement of Time Warner and America Online (the "Time Warner Stockholders Meeting") for the purpose of obtaining the Required Time Warner Vote with respect to the transactions contemplated by this Agreement and shall take all lawful action to solicit the adoption of this Agreement by the Required Time Warner Vote; and the Board of Directors of Time Warner shall recommend adoption of this Agreement by the stockholders of Time Warner to the effect as set forth in Section 4.2(f) (the "Time Warner Recommendation"), and shall not, unless America Online makes a Change in the America Online Recommendation, (x) withdraw, modify or qualify (or propose to withdraw, modify or qualify) in any manner adverse to America Online such recommendation or (y) take any action or make any statement (other than any action described in the foregoing clause (x)) in connection with the Time Warner Stockholders Meeting inconsistent with such recommendation (collectively, a "Change in the Time Warner Recommendation"); provided, however, any action or statement under clause (y) will not be deemed a Change in the Time Warner Recommendation provided (I) such action or statement is taken or made pursuant to advice from Cravath, Swaine & Moore, counsel to Time Warner, to the effect that such action or statement is required by applicable Law, (II) if a Time Warner Public Proposal has been made and not rescinded, such action or statement shall not relate to such Time Warner Public Proposal other than any factual statement required by any regulatory authority (including the SEC) and shall in any event include a rejection of such Time Warner Public Proposal and (III) such action or statement also includes a reaffirmation of the Time Warner Board of Directors' approval of the Mergers and the other transactions contemplated hereby and recommendation to the Time Warner stockholders to adopt this Agreement; provided further, however, that the Board of Directors of Time Warner may make a Change in the Time Warner Recommendation pursuant to Section 6.5 hereof. Notwithstanding any Change in the Time Warner Recommendation, this Agreement shall be submitted to the stockholders of Time Warner at the Time Warner Stockholders Meeting for the purpose of adopting this Agreement and nothing contained herein shall be deemed to relieve Time Warner of such obligation.

(c) America Online shall duly take all lawful action to call, give notice of, convene and hold a meeting of its stockholders on a date determined in accordance with the mutual agreement of America Online and Time Warner (the "America Online Stockholders Meeting") for the purpose of obtaining the America Online Stockholder Approval with respect to the transactions contemplated by this Agreement and shall take all lawful action to solicit the adoption of this Agreement, and the Board of Directors of America Online shall recommend adoption of this Agreement by the stockholders of America Online to the effect as set forth in Section 4.1(f) (the "America Online Recommendation"), and shall not, unless Time Warner makes a Change in the Time Warner Recommendation, (x) withdraw, modify or qualify (or propose to withdraw, modify or qualify) in any manner adverse to Time Warner such recommendation or (y) take any action or make any statement (other than any action described in the foregoing clause (x)) in connection with the America Online Stockholders Meeting inconsistent with such recommendation (collectively, a "Change in the America Online Recommendation"); provided, however, any action or statement under clause (y) will not be



deemed a Change in the America Online Recommendation provided (I) such action or statement is taken or made pursuant to advice from Simpson Thacher & Bartlett, counsel to America Online, to the effect that such action or statement is required by applicable Law, (II) if an America Online Public Proposal has been made and not rescinded, such action or statement shall not relate to such America Online Public Proposal other than any factual statement required by any regulatory authority (including the SEC) and shall in any event include a rejection of such America Online Public Proposal and (III) such action or statement also includes a reaffirmation of the America Online Board of Directors' approval of the Mergers and the other transactions contemplated hereby and recommendation to the America Online stockholders to adopt this Agreement; provided further, however, that the Board of Directors of America Online may make a Change in the America Online Recommendation pursuant to Section 6.5 hereof. Notwithstanding any Change in the America Online Recommendation, this Agreement shall be submitted to the stockholders of America Online at the America Online Stockholders Meeting for the purpose of adopting this Agreement and nothing contained herein shall be deemed to relieve America Online of such obligation.

6.2 Holdco Board of Directors; Executive Officers.

(a) At or prior to the Effective Time, each party hereto will take all action necessary to (i) cause the Board of Directors of Holdco and each committee thereof as of the Effective Time to be comprised in accordance with Schedule 6.2(a) hereto and (ii) cause the individuals listed in Schedule 6.2(a) hereto to be appointed as officers of Holdco as of the Effective Time in accordance with Schedule 6.2(a) hereto.

(b) Promptly following the date hereof, each party hereto will take all action necessary to form the Transition Team, in accordance with Schedule 6.2(a) hereto. Following the Effective Time, each party hereto will comply, and will cause Holdco to comply, with the provisions of Schedule 6.2(a) hereto which by their terms are applicable from and after the Effective Time.

6.3 Access to Information. Upon reasonable notice, each party shall (and shall cause its Subsidiaries to) afford to the officers, employees, accountants, counsel, financial advisors and other representatives of the other party reasonable access during normal business hours, during the period prior to the Effective Time, to all its properties, books, contracts, commitments, records, officers and employees and, during such period, such party shall (and shall cause its Subsidiaries to) furnish promptly to the other party (a) a copy of each report, schedule, registration statement and other document filed, published, announced or received by it during such period pursuant to the requirements of Federal or state securities laws, the Communications Act, the HSR Act and the laws, rules and regulations of Franchising Authorities and PUCs, as applicable (other than documents which such party is not permitted to disclose under applicable law), and (b) all other information concerning it and its business, properties and personnel as such other party may reasonably request; provided, however, that either party may restrict the foregoing access to the extent that (i) any law, treaty, rule or regulation of any

Governmental Entity applicable to such party or any contract requires such party or its Subsidiaries to restrict or prohibit access to any such properties or information or (ii) the information is subject to confidentiality obligations to a third party. The parties will hold any such information obtained pursuant to this Section 6.3 in confidence in accordance with, and shall otherwise be subject to, the provisions of the confidentiality letter dated December 10, 1999, between Time Warner and America Online (the "Confidentiality Agreement"), which Confidentiality Agreement shall continue in full force and effect. Any investigation by either of America Online or Time Warner shall not affect the representations and warranties of the other.

#### 6.4 Reasonable Best Efforts.

(a) Subject to the terms and conditions of this Agreement, each party will use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under this Agreement and applicable laws and regulations to consummate the Mergers and the other transactions contemplated by this Agreement as soon as practicable after the date hereof, including (i) preparing and filing as promptly as practicable all documentation to effect all necessary applications, notices, petitions, filings, tax ruling requests and other documents and to obtain as promptly as practicable all Necessary Consents and all other consents, waivers, licenses, orders, registrations, approvals, permits, rulings, authorizations and clearances necessary or advisable to be obtained from any third party and/or any Governmental Entity in order to consummate the Mergers or any of the other transactions contemplated by this Agreement and the Stockholders Agreements (collectively, the "Required Approvals") and (ii) taking all reasonable steps as may be necessary to obtain all such Necessary Consents and the Required Approvals. In furtherance and not in limitation of the foregoing, each party hereto agrees to make, as promptly as practicable, to the extent it has not already done so, (i) an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby (which filing shall be made in any event within 10 Business Days of the date hereof), (ii) appropriate filings with the FCC, Franchising Authorities and PUCs with respect to the transactions contemplated hereby, (iii) appropriate filings with the European Commission in accordance with applicable competition, merger control, antitrust, investment or similar laws and any necessary filings under the Canadian Investment Regulations within the time periods specified thereunder, and (iv) all other necessary filings with other Governmental Entities relating to the Mergers, and, in each case, to supply as promptly as practicable any additional information and documentary material that may be requested pursuant to such laws or by such authorities and to use reasonable best efforts to cause the expiration or termination of the applicable waiting periods under the HSR Act and the receipt of Required Approvals under such other laws or from such authorities as soon as practicable. Notwithstanding the foregoing, nothing in this Section 6.4 shall require, or be deemed to require, (i) America Online or Time Warner to agree to or effect any divestiture, hold separate any business or assets or take any other action if doing so would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect on Holdco after the Mergers or (ii) America Online or Time Warner to agree to or effect any divestiture, hold separate any business or take any other action that is not conditional on the consummation of the