

## **CONFIDENTIALITY PROVISIONS**

### **Typical language from a commitment letter:**

"This Commitment Letter is delivered to you on the understanding that neither this Commitment Letter, the Term Sheet or the Fee Letter nor any of their terms or substance shall be disclosed, directly or indirectly, to any other person except (a) to your officers, agents and advisors who are directly involved in the consideration of this matter or (b) as may be compelled in a judicial or administrative proceeding or as otherwise required by law (in which case you agree to inform us promptly thereof), provided that you may disclose this Commitment Letter and the Term Sheet, and their terms and substance (but not the Fee Letter or its terms and substance), to Worldwide and the Target after this Commitment Letter has been accepted by you."

### **Sample Confidentiality provisions from underwriter's form of High Yield Commitment Letter (revised November, 1999):**

"This letter is delivered to you on the understanding that neither this letter nor any other agreement between us related to this letter or the Transactions, including the Term Sheet, the Conditions, the Bridge Loan Fee Letter and the Warrant Letter, nor any of their terms or substance shall be disclosed, directly or indirectly, to any other person except (a) to your officers, employees, agents and legal advisors who are directly involved in the consideration of this matter (and then only on a confidential and need-to-know basis) or (b) as may be required by applicable law or compulsory legal process (in which case you agree to inform us promptly thereof prior to any such disclosure); provided, however, that, after your acceptance of this letter, the Bridge Loan Fee Letter and the Warrant Letter, (i) you may disclose this letter, the Term Sheet and the Conditions and their terms and substance (but not the Bridge Loan Fee Letter or the Warrant Letter or their respective terms and substance), on a confidential and need-to-know basis, to the Company and the Sellers and their respective directors, officers, employees, agents and legal advisors and (ii) you may disclose the material terms of the Term Sheet, the Conditions and the Warrants (but not the Bridge Loan Fee Letter or its terms and substance) in any offering circular or

prospectus relating to a Loan Refinancing (as defined in the Term Sheet)."

**Sample Confidentiality Letter related to possible Merger  
(March, 2000):**

PARTY A  
LETTERHEAD

PARTY B  
ADDRESSEE

March [ ], 2000

Ladies and Gentlemen:

1. In connection with our mutual consideration of a possible business combination transaction (a "Transaction") involving PARTY B and PARTY A, you may request that we provide information with respect to PARTY A and we may request that you provide information with respect to PARTY B. As a condition to each party furnishing information to the other party, each party agrees (a) to treat confidentially, and to not disclose to any person (other than disclosures expressly permitted by the terms hereof or to which the disclosing party shall have consented), such information and any other non-public information that is furnished by or on behalf of the disclosing party or its Related Persons (as defined below) to the receiving party or its Related Persons, and all notes, analyses, compilations, studies or other documents or material, whether prepared by the receiving party or others, which contain such information (collectively, the "Evaluation Material") and (b) to not use any of the Evaluation Material for any purpose other than evaluating a possible Transaction. With respect to any information disclosed in connection with a possible Transaction or otherwise pursuant to this Agreement, the party who has disclosed such information or on whose behalf such information has been disclosed is referred to herein as the "disclosing party" and the other party is referred to herein as the "receiving party". The term "Related Persons" as used in this Agreement means, with respect to any party, such party's directors, officers,

employees, advisors, affiliates or representatives or any labor union that represents any of such party's employees or any official, advisor or representative of such labor union.

2. The term "Evaluation Material" does not include information that (a) becomes generally available to the public other than as a result of a disclosure by the receiving party or its Related Persons, (b) was available to the receiving party on a non-confidential basis prior to the date hereof or prior to its disclosure to the receiving party by the disclosing party or its Related Persons or (c) becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party or any of its Related Persons, provided that such source is not, to the receiving party's knowledge, bound by a confidentiality agreement with the disclosing party or any of its Related Persons.

3. It is understood that the receiving party may disclose any of the Evaluation Material to those of its Related Persons who require such material for the purpose of evaluating a possible Transaction (provided that such Related Persons shall be informed by the receiving party of the confidential nature of the Evaluation Material, and provided further that the receiving party may not disclose any of the Evaluation Material to any Related Person (other than any Related Person that is a director, officer or advisor of the receiving party) unless and until such Related Person has executed and delivered to the disclosing party a letter agreement substantially identical to the form of letter agreement attached hereto as Exhibit A). The receiving party agrees to cause its Related Persons to not disclose to any person (other than disclosures expressly permitted by the terms hereof or to which the disclosing party shall have consented in writing) any of the Evaluation Material. The receiving party further agrees that its Related Persons will not use any of the Evaluation Material for any purpose other than evaluating a possible Transaction.

4. Without the prior written consent of the disclosing party and except as set forth in paragraph 5, the receiving party will not, and will cause its Related Persons to not, disclose (other than disclosures expressly permitted by the terms hereof or to which the disclosing party shall have consented in writing) to any person (a) the fact that the Evaluation Material has been made available to the receiving party or any of its Related Persons or that the receiving party or any of its

Related Persons has inspected any portion of the Evaluation Material, (b) the fact that any discussions or negotiations are taking place or have taken place concerning a possible Transaction or (c) any of the terms or conditions or any other facts relating to any possible Transaction, including the status thereof. The term "person" as used in this Agreement shall be broadly interpreted to include without limitation any corporation, company, partnership, organization, labor union or subgroup thereof or master executive council or committee with respect thereto, bank or individual. The term "affiliate" as used in this Agreement shall have the meaning assigned to such term in Regulation S-X, 17 C.F.R. part 210, as in effect on the date hereof.

5. In the event that either party or any of its Related Persons is requested or required by a governmental authority or in connection with a legal proceeding or pursuant to legal process or by stock exchange regulation or by applicable law (as reasonably determined by counsel thereto) to disclose any of the Evaluation Material with respect to which such party is the receiving party or any other matter referred to in paragraph 4, it is agreed that such party or Related Person, as the case may be, will provide the disclosing party with prompt notice of each such request or requirement so that the disclosing party may seek promptly an appropriate protective order or other appropriate remedy and/or waive compliance by such party or Related Person subject to such request or requirement with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained promptly, such party or Related Person subject to such request or requirement may furnish that portion (and only that portion) of the Evaluation Material or other information with respect to such matter which, based upon the advice of its counsel, it is legally compelled to disclose and will exercise its reasonable best efforts to obtain reliable assurance that confidential treatment will be accorded any Evaluation Material or other information so furnished.

6. You agree that, during the period (the "Exclusivity Period") from the date hereof to the earlier of (a) the execution by the parties hereto of definitive agreements with respect to a Transaction and (b) the effective date of a written notice (as specified in such notice) delivered by either party to the other party terminating this paragraph 6, which effective date shall in no event occur prior to the date that is six weeks after the date hereof, neither you nor any of your

Related Persons shall (i) solicit, initiate, encourage, or take any other action knowingly to facilitate, any inquiry, proposal or offer from any person relating to, or that is reasonably likely to lead to, any Alternative Transaction or (ii) participate in any discussions or negotiations regarding, or furnish to any person any information with respect to, or otherwise cooperate in any way with, any Alternative Transaction. The term "Alternative Transaction" shall mean any direct or indirect acquisition by any third party (or in the case of a direct merger between PARTY B or any of PARTY B's subsidiaries and such third party, the stockholders of such third party), in one transaction or a series of transactions, including any merger, consolidation, tender offer, exchange offer, binding share exchange, business combination, recapitalization, liquidation, dissolution, joint venture or similar transaction, of (a) assets or businesses that constitute or represent 20% or more of the total revenue, operating income, EBITDA or assets of PARTY B and its subsidiaries, taken as a whole, or (b) 20% or more of the outstanding shares of common stock of PARTY B or capital stock of, or other equity or voting interests in, any of PARTY B's subsidiaries directly or indirectly holding the assets or businesses referred to in clause (a) above.

7. The receiving party will promptly upon the written request of the disclosing party deliver to the disclosing party or destroy all documents or other matter furnished to the receiving party or its Related Persons by or on behalf of the disclosing party or its Related Persons, together with all copies thereof in the possession of the receiving party or its Related Persons. In the event of such request, the receiving party will also promptly destroy all other documents or other matter constituting or containing Evaluation Material in the possession of the receiving party or its Related Persons. Notwithstanding the delivery or destruction of the Evaluation Material required by this paragraph, all duties and obligations existing under this Agreement shall remain in full force and effect.

8. Although each party understands that the other party will endeavor to include in the Evaluation Material information known to it which it believes to be relevant for the purpose of such party's investigation, each party further understands that neither the other party nor any of its Related Persons makes any representation or warranty, express or implied, as to the accuracy or completeness of the Evaluation Material. Each party agrees that neither the other party nor its

Related Persons shall have any liability to such party or any of its Related Persons resulting from the use of the Evaluation Material by such party or its Related Persons. Only those representations and warranties that may be made by a party or any of its affiliates in a definitive written agreement regarding a Transaction, when, as and if executed and subject to such limitations and restrictions as may be specified therein, shall have any legal effect, and each party agrees that any determination to engage in a Transaction will be based solely on the terms of such written agreement and on its own investigation, analysis and assessment of PARTY B, in the case of PARTY A, and PARTY A, in the case of PARTY B. Moreover, unless and until such a definitive written agreement is entered into, no party will be under any legal obligation of any kind whatsoever with respect to a Transaction except for the matters specifically agreed to in this Agreement.

9. Each party hereby acknowledges that money damages would be both incalculable and an insufficient remedy for any breach of this Agreement by such party and that any such breach would cause the other party irreparable harm. Accordingly, each party agrees that in the event of any breach or threatened breach of this Agreement by such party, the other party, in addition to other remedies at law or in equity it may have, shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance.

10. Each party confirms that it is aware, and will advise its Related Persons, that the United States securities laws prohibit any person who has material non-public information about a company from purchasing or selling securities of such company.

11. The terms of this Agreement may be amended, modified or waived only by a separate writing signed by each party expressly so amending, modifying or waiving such terms. It is understood and agreed that no failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. Each of the parties agrees and consents to personal jurisdiction and service and venue

in any federal or state court within the State of Delaware having subject matter jurisdiction, for the purpose of any action, suit or proceeding arising out of or relating to this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and to be fully performed in such State. This Agreement shall terminate on the first anniversary of the date hereof.

If you are in agreement with the foregoing, please sign and return one copy of this letter, which thereupon will constitute our agreement with respect to the subject matter hereof.

Very truly yours,

PARTY A,

by: \_\_\_\_\_  
Name:  
Title:

Confirmed and agreed to as of  
the date first above written:

PARTY B,

by: \_\_\_\_\_  
Name:  
Title:

## EXHIBIT A

PARTY A  
Address

PARTY B  
Address

[DATE]

Dear Ladies and Gentlemen:

Reference is made to the letter agreement dated as of March 3, 2000 (the "Confidentiality Agreement"), between PARTY A and PARTY B.

[I/We], [NAME], as a Related Person (as defined in the Confidentiality Agreement) of [PARTY A], [PARTY B], hereby agree that [I am] [we are] bound by the terms of the Confidentiality Agreement, including without limitation paragraphs 4 and 6 thereof, to the same extent, and in the same manner, as if [I was] [we were] explicitly named as a party thereto.

Very truly yours,

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Name:  
Title:

**Sample Confidentiality Undertaking used in potential bank financing prior to execution of commitment Letter (May 1999):**

**Confidentiality Undertaking  
(the "Undertaking")**

The Receiving Party which has signed this Undertaking has been accepted by the US incorporated company previously identified to the Receiving Party as "Apollo" (the "Company") as a potential underwriter and provider of finance in connection with a term and revolving credit facility of approximately US\$13 billion (the "Facility") to be entered into in connection with the potential offer (the "Offer") by a UK incorporated wholly-owned subsidiary of the Company ("Bidco") to acquire the whole of the issued share capital of the company previously identified to the Receiving Party as "Jaguar" (the "Target").

In the course of its evaluation of obtaining the Facility, the Company has agreed to the Receiving Party having certain confidential information made available by the Company, including, without limitation, material of a technical, operational, administrative, economic, planning, business or financial nature or in the nature of intellectual property of any kind relating to the Company or its affiliates, the Target or its affiliates and/or the Offer (the "Information," which term shall include any information or analysis derived from the Information).

Accordingly, in consideration of the Company making the Information available, whether directly or indirectly, the Receiving Party undertakes and confirms as follows to the Company:

1. It will keep all such Information disclosed to it confidential and will not disclose the whole or any part of it, without the prior written consent of the Company, to any person other than its directors, officers and employees (and legal advisors and other advisors to whom the Company has consented in writing) who in each case need to know the Information for the purposes of evaluating the Company, the Target and/or the Facility and so long as such directors, officers, employees and legal and other advisors shall be informed by the Receiving Party of the confidential nature of the Information and of the provisions of this Undertaking and it shall ensure that they treat such Information confidentially and act as if bound hereby. Because of the highly sensitive nature of the Information, it will limit the disclosure of the Information to the smallest number of persons possible.
2. It shall use the Information only in connection with the potential involvement of the Receiving Party as an underwriter and/or participant in the Facility and not for any other purpose.
3. That it is aware, and that it will advise any of its directors, officers, employees and legal and other advisors to whom any of the Information is disclosed, that it may be illegal for any person who has received from the Company (or any of its advisors) or the Target material, non-public information to deal in, or to encourage others to deal in, securities of the Company, the Target or their respective related companies or to communicate such information to any other person.
4. It will not, without the prior written consent of the Company and will ensure that its directors, officers, employees and legal and other advisors will not, disclose to any person either the approach to it in connection with, or its interest in, the Facility or the fact that discussions or negotiations are taking or have taken place concerning a possible Offer or the possible underwriting of or participation in the Facility, or any of the terms, conditions or other facts with respect to the Offer and/or the Facility, including the status thereof.

5. It will not, without the prior written consent of the Company and shall ensure that its directors, officers, employees and legal and other advisors will not contact any affiliates, directors, officers, employees, advisors, or representatives of the Company or the Target or any other person in circumstances that are reasonably likely to give rise to suspicions that the Company is considering the Offer or that the Receiving Party is considering underwriting and/or participating in the Facility.
6. In the event that the Receiving Party ceases to consider underwriting and/or participating in the Facility, or at any time, at the request of the Company (whichever occurs first), without prejudice to its other obligations under this Undertaking, it shall return, and ensure that its directors, officers, employees and legal and other advisors shall return, to the Company without delay all Information received, whether written or graphic, and will not retain any copies thereof in whatever form, including electronic, and the Receiving Party shall, and shall ensure that its directors, officers, employees and legal and other advisors shall, destroy all documents, memoranda, notes and other writing in whatever form, including electronic, prepared by it or them based on the Information and to the extent reasonably practicable (and to the extent not practicable subject to such Information remaining subject to all the obligations under this Undertaking) expunge all Information from any computer, word processor or any other device in its possession.
7. This Undertaking shall not prohibit the Receiving Party or any of its directors, officers, employees or legal or other advisors from making any disclosure of the Information which is necessary in order to comply with a legal obligation to disclose, a lawful subpoena or other legal process binding on it or him or a binding request or direction of, any government department or government regulatory agency, provided in each case that written notice of any such disclosure is given to the Company as soon as practicable and the Receiving Party shall consult and cooperate with the Company on the advisability of taking legally available steps to resist or narrow such disclosure and, if disclosure is required, cooperate with the Company in any attempt that the Company may make to resist or narrow such obligation to disclosure and/or to obtain an order or other reliable assurance that confidential treatment will be accorded to the Information.
8. The Receiving Party agrees that any disclosure of Information to it shall not be deemed to confer upon it any rights whatsoever and such Information shall remain the property of the Company.
9. (i) Paragraph 1 shall not apply to any of the Information which:
  - (a) at the time of being obtained by the Receiving Party is already within the public domain or
  - (b) subsequently comes within the public domain other than by breach by the Receiving Party or by any of its directors, officers, employees or legal or other advisors, of this Undertaking or
  - (c) has been or is acquired by the Receiving Party from third party who is rightfully in possession of it and free to disclose it without violating any obligation.
- (ii) In disclosing the Information none of the Company and any affiliate, partner, director, employee, agent or representative of the Company makes any representations or warranties, express or implied, concerning the completeness, suitability or accuracy of the Information and none of the Company or any partner, affiliate, director, officer, employee, agent or representative of the

Company shall be under any obligation or liability to the Receiving Party or its directors, officers, employees or legal or other advisors with respect to the Information. If the Receiving Party or its directors, officers, employees or legal or other advisors elect to rely on any of the Information, they do so at their own risk.

(iii) In this Undertaking, the term "affiliate" means any subsidiary or holding company (or any other subsidiary of that holding company) of, or other body or partnership controlling, controlled by or under common control with the Company.

10. The Company shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach or threatened breach of the provisions of this Undertaking and the Receiving Party shall not oppose the granting of such relief. Further, the Receiving Party agrees to indemnify the Company for any costs, claims, damages, losses or liabilities of whatsoever nature arising directly or indirectly from any breach of its obligations hereunder or efforts to enforce such obligations.

11. No failure or delay on the part of the Company in exercising any right, power or privilege conferred by this Undertaking shall operate as a waiver of either that right, power or privilege, or of this Undertaking as a whole. No single or partial exercise of any right, power or privilege shall preclude any further exercise of that right, power or privilege.

If any obligation arising from the Undertaking shall be held unenforceable or illegal, in whole or in part for whatever reason, the enforceability of the rest of the obligations under this Undertaking shall be unaffected.

13. This Undertaking shall be governed by and construed in accordance with laws of the State of New York.

Signed: \_\_\_\_\_

For and on behalf of \_\_\_\_\_  
(the "Receiving Party")

Dated \_\_\_ April 1999