



**AboveNet™**

**CODE OF CONDUCT**

**VERSION DATE 9/2008**

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# CODE OF CONDUCT

## I. INTRODUCTION

This Code of Conduct is a statement by AboveNet, Inc. of the manner in which it intends to conduct its business activities. It sets forth the standards of conduct and ethics which AboveNet, Inc. requires of each of its directors, officers and employees and the directors, officers and employees of each of its subsidiary companies (each, a “*Covered Person*”).

This Code of Conduct is not an employment contract and does not create contractual rights to employment for an employee. Each Covered Person must acknowledge receipt of this Code of Conduct and agree to be bound by its terms.

AboveNet, Inc. reserves the right to modify this Code of Conduct, at its sole discretion. AboveNet, Inc. is responsible for updating the standards as it deems appropriate to reflect changes in the legal and regulatory framework applicable to AboveNet, Inc., the business practices within its industry, its own business practices and the prevailing ethical standards of the community in which it operates. While AboveNet, Inc.’s General Counsel and Audit Committee (each an “*Oversight Officer*”) will oversee the procedures designed to implement this Code of Conduct to ensure that they are operating effectively, it is the individual responsibility of each Covered Person to comply with this Code of Conduct and to use common sense in making business decisions where there is no stated guideline in the Code of Conduct.

Violations of the Code of Conduct will not be tolerated. Any Covered Person who violates the standards in the Code may be subject to disciplinary action, which, depending on the nature of the violation and the history of the Covered Person, may range from a warning or reprimand to and including termination of employment and, in appropriate cases, civil legal action or referral for regulatory or criminal prosecution.

All references in this Code of Conduct to the “*Company*” are intended to include AboveNet, Inc. and each of its subsidiary companies.

## II. CITIZENSHIP AND PUBLIC RESPONSIBILITY

The Code of Conduct is intended to apply to all business activities conducted on behalf of the Company. The success of the Company is predicated on conducting its business affairs in an honest, ethical and socially responsible manner, while seeking to promote the most important dynamic of a public company: earning the profits which make possible the continued existence and growth of the Company, satisfying investors’ expectations of a fair return, providing jobs for employees, and contributing to the well-being of the various communities in which the Company does business.

### 1. *Compliance with Laws, Rules and Regulations*

Recognition of the public interest must be a permanent Company commitment in the conduct of its affairs. The activities of all Covered Person must always be in full compliance with applicable laws and governmental regulations. In this regard, no Covered Person should assist a third party in violating any applicable law or governmental regulation. When there is any

doubt as to the lawfulness of any proposed activity, advice must be sought from an Oversight Officer who, where appropriate, will confer with counsel to the Company. The Company is committed to, among other things:

- maintaining a safe and healthy work environment;
- promoting a workplace that is free from unlawful discrimination or and complying with all applicable federal, state or local employment laws;
- supporting fair competition and laws prohibiting restraints of trade and other unfair trade practices;
- conducting its activities in full compliance with all applicable environmental laws;
- keeping the political activities of the Company's directors, officers and employees separate from the Company's business;
- prohibiting any illegal payments to any government officials or political party representatives of any country; and
- complying with all applicable state and federal securities laws.

Covered Persons are prohibited from illegally trading the Company's securities while in possession of material, nonpublic information about the Company.

Violation of applicable laws or governmental regulations may subject the Company and any involved Covered Person to severe consequences, including injunctions, monetary damages (which could far exceed the value of any gain realized as a result of the violation, and which could be tripled in certain cases), fines, and criminal penalties, including imprisonment. Actual or apparent violations of applicable laws or governmental regulations by the Company and any involved Covered Person can also undermine the confidence of the Company's investors, creditors and bankers, as well as the general public.

## 2. *Relations with Customers and Third Parties*

It shall be the Company's fundamental objective and policy to:

- provide customers with quality service and equipment at fair prices;
- deal with customers fairly, honestly and courteously;
- ascertain and satisfy customers needs; and
- live up to obligations to customers and satisfy their complaints fairly and with dispatch, mindful of the fact that a satisfied customer is a valuable Company asset.

The Company is committed to promoting the values of honesty, integrity and fairness in the conduct of its business and sustaining a work environment that fosters mutual respect, openness and individual integrity. Covered Persons are expected to deal honestly and fairly with the Company's customers, suppliers, competitors and other third parties. To this end, Covered Persons shall not:

- make false or misleading statements to customers, suppliers or other third parties;
- make false or misleading statements about competitors;
- solicit or accept from any person that does business with the Company, or offer or extend to any such person, cash of any amount or gifts, gratuities, meals or entertainment that could influence or reasonably give the appearance of influencing the Company's business relationship with that person or go beyond common courtesies usually associated with accepted business practice;
- solicit or accept any fee, commission or other compensation for referring customers to third-party vendors; or
- otherwise take unfair advantage of the Company's customers or suppliers, or other third parties, through manipulation, concealment, abuse of privileged information or any other unfair-dealing practice.

### 3. *Competition*

The purpose of the U.S. and international antitrust and trade practice laws is to preserve our free enterprise system. These laws are founded on the belief that the public interest is best served by vigorous and fair competition, free from collusive agreements among competitors. The Company is committed to this belief, and while the Company competes aggressively and creatively in its business activities, its efforts in the marketplace will be conducted in a fair and ethical manner in strict accordance with the letter and spirit of applicable antitrust and trade practice laws.

Covered Persons must be aware of the serious criminal and civil consequences of violations of these laws. **First**, a violation of the antitrust laws may be prosecuted as a felony, and conviction may result in heavy corporate and individual fines, and substantial prison sentences. **Second**, injunctions obtained by the United States Department of Justice or a State Attorney General, or orders by the Federal Trade Commission ("**FTC**"), may place severe restrictions on the Company. Violation of an injunction is punishable by fine or imprisonment; and violation of an FTC Order can result in substantial monetary penalties. **Third**, persons injured by violations of certain of the antitrust laws may sue and recover triple the amount of their actual damages.

The antitrust laws forbid collusion among competitors to restrain trade and attempts or conspiracies to monopolize by means of predatory or unfair tactics. They also prohibit certain restrictive arrangements with customers, particularly those that fix resale prices

or otherwise unreasonably restrain customer sales or purchases of merchandise. Any agreement, mutual consent or understanding, whether expressed or implied, oral or written, may be sufficient to establish collusion. It is illegal to collude with competitors to:

- raise, lower, maintain, stabilize or otherwise fix prices, discounts, allowances, credit terms or any other price elements;
- fix the price at which merchandise or services will be purchased from suppliers or resold by customers;
- limit or control production or sales;
- allocate customers or divide markets or marketing territories; or
- boycott suppliers or customers.

No Covered Person may participate in any such collusive arrangement or practice with a competitor. Nor may any Covered Person engage in any predatory or unfair conduct designed to exclude competition; enter into, or discuss, any arrangement with a customer to fix resale prices; or, except with the prior approval of an Oversight Officer, enter into any arrangement with a customer otherwise restricting the customer's ability to purchase or sell merchandise.

It is equally important to avoid contacts and dealings with competitors that might lead to an inference of collusion. Accordingly, no Covered Person may discuss with a competitor any of the above topics, including prices (past, present or future), pricing procedures, profit levels, selection of resources, merchandising plans or other competitive business information. If a simple refusal to participate is not sufficient to end the discussion, a Covered Person should leave the meeting and promptly report the incident to an Oversight Officer who, if appropriate, will confer with counsel to the Company.

Trade associations, trade shows and similar activities are particularly sensitive because they provide an opportunity for gatherings of competitors. The Company supports only those trade associations and activities which perform useful and legitimate functions in our industry. Covered Persons may attend activities of trade associations at which competitors are present only with management's approval.

#### 4. *Proper Accounting and Financial Integrity*

All financial transactions must be executed in accordance with management's general or specific authorization. The Company's books, records and accounts must reflect, accurately and fairly and within the Company's regular system of accountability, all of the Company's transactions and the acquisition and/or disposition of its assets. All transactions must be accurately recorded to permit the preparation of financial statements in conformity with generally accepted accounting principles consistently applied and other applicable rules, regulations and criteria, and to ensure full accountability for all of the Company's assets and activities. Under no circumstances may there be any unrecorded Company funds or assets,

regardless of the purpose for which the funds or assets may have been intended, or any improper or inaccurate entry knowingly made on the Company's books and records. No payment on behalf of the Company may be approved or made with the intention or understanding that any part of the payment is to be used for a purpose other than as described by the documents supporting the payment.

All Covered Persons must cooperate fully with the Company's internal audit staff, independent auditors and counsel to enable them to discharge their responsibilities to the Company. The Company's accounting records are also relied upon to produce reports for the Company's management, stockholders and creditors, as well as for governmental agencies. In particular, the Company relies upon its accounting and other business and corporate records in preparing the periodic and current reports that it files with the Securities and Exchange Commission and other public disclosures that it makes. Securities laws require that these reports and other disclosures provide full, fair, accurate, timely and understandable disclosure and fairly present the Company's financial condition and results of operations. Employees who collect, provide or analyze information for or otherwise contribute in any way in preparing or verifying these reports and other disclosures should strive to ensure that the Company's financial disclosures are accurate and transparent and contain all of the information about the Company that would be important to enable stockholders and potential investors to assess the soundness and risks of its business and finances and the quality and integrity of the Company's accounting and disclosures, as applicable.

### **III. USE OF COMPANY ASSETS, FACILITIES AND SERVICES**

The use of Company assets, including proprietary information, facilities or services, for any unlawful, improper or unauthorized purpose is strictly prohibited.

No Covered Person may make any expenditure or otherwise make any commitments affecting the Company's assets unless properly authorized.

#### *1. Improper Payments*

No payments or gifts of anything of value (in money, property, discounts, services, rebates or otherwise), regardless of form, may be made or offered, directly or indirectly, in the conduct of the Company's affairs to:

- any domestic or foreign government, agency, official, employee or agent, for purposes other than the satisfaction of lawful obligations; or
- any private party, involving the use of the Company's assets or resources, except in the ordinary course of business.

Such payments or gifts, whether or not called gratuities and whether or not expressly or impliedly in exchange for certain conduct, may be perceived to be bribery or otherwise improper and are prohibited.

#### *2. Political Contributions*

No contributions of Company assets or resources or use of its facilities, regardless of form, may be made or offered, directly or indirectly, by any Covered Person to any political party, or any candidate for, or holder of, political office, either domestic or foreign. Covered Persons must refrain from applying any pressure on or harassment of other Covered Persons in political matters.

These restrictions are not intended to prohibit or discourage Covered Persons from making personal contributions to political candidates or parties of their choice, or from participating in the political process for their own account and on their own time. The Company, however, will not reimburse personal political contributions by Covered Persons, directly or indirectly.

### 3. *Safeguarding Assets*

Company assets must be safeguarded not only against inadvertent loss, but also against intentional misappropriation. Assets include not only cash, fixtures, furniture and equipment, but also merchandise, business and product plans, trade secrets and other proprietary or confidential information and related matters.

## **IV. SELECTION OF VENDORS OF GOODS AND SUPPLIERS OF SERVICES**

The selection of a vendor or supplier of goods and/or services to the Company must be based on quality, need, performance and cost.

In dealing with vendors, it is the responsibility of all Covered Persons to actively promote the best interests of the Company, within legal limits, through aggressive attention to opportunities and to obtaining fair terms and treatment for the Company.

## **V. CONFLICT OF INTEREST; CORPORATE OPPORTUNITIES**

Covered Persons should avoid conflicts of interest that occur when their personal interests may interfere in any way with the performance of their duties or the best interests of the Company. Except as otherwise permitted by this Code of Conduct, no Covered Person may directly or indirectly engage or participate in, or authorize, any transaction or arrangement involving, or raising questions of, possible conflict, whether ethical or legal, between the interests of the Company and the personal interests of the Covered Person.

You may not take personal advantage of opportunities for the Company that are presented to you or discovered by you as a result of your position with the Company or through your use of corporate property or information, unless authorized by an Oversight Officer. No Covered Person may use his or her position with the Company or corporate property or information for improper personal gain.

No Covered Person or any member of his or her family may, directly or indirectly, seek, accept or retain gifts or other personal or business favors from any competing company or from any individual or organization doing or seeking to do business with the Company (collectively "Related Entities") that could influence or reasonably give the appearance of influencing the Company's business relationship with that person or which go beyond common courtesies

usually associated with accepted business practice. Examples of customary gifts and/or favors the acceptance of which would generally not be considered likely to influence or give the appearance of influencing the Company's business relationships include:

- normal business courtesies, such as meals, involving no more than ordinary amenities;
- tickets to an athletic, social or cultural event, or participation in corporate promotional events;
- paid trips or guest accommodations in connection with the Company's business and with the prior approval of an Oversight Officer;
- fees or other compensation received from any organization in which membership or an official position is held, but only if approved by an Oversight Officer;
- loans from financial institutions made in the ordinary course of their business on customary terms and at prevailing rates; and
- gifts of nominal value.

Gifts or entertainment which have an aggregate value in any year in excess of \$500 (or in jurisdictions outside the U.S., its local currency equivalent) from a Related Party may not be accepted by any Covered Person without the written consent of an Oversight Officer.

A Covered Person must make every effort to refuse to accept, or to return, any gift or gifts from a Related Entity exceeding \$500 (or in jurisdictions outside the U.S., its local currency equivalent) in aggregate value. If the Covered Person determines that the donor would be insulted or embarrassed if the gift is refused or returned, a conflict can be avoided by promptly reporting the gift to the Covered Person's supervisor and delivering to that person the gift or a check payable to the Company for the fair value of the gift. Entertainment jointly attended by a Covered Person and representatives of a Related Entity paid for by the Related Entity shall not be considered a gift.

No Covered Person and no member of his or her family member may act as a broker, finder or other intermediary for his or her benefit, or for the benefit of any third party, in any transaction involving the Company without the prior written approval of an Oversight Officer who, where appropriate, will confer with counsel to the Company.

Covered Persons shall notify their supervisor and an Oversight Officer in writing of the existence of any actual or potential conflict of interest. A conflict of interest exists where there is an affiliation between a Covered Person or any of his or her family members with a Related Entity where the Covered Person or his or her family member has a material interest in a transaction between such Related Entity and the Company. For the purposes of this provision, family member shall mean parents, siblings, spouse, domestic partners, children and relatives residing in the same household. In some cases where the Company believes a conflict of interest

with a Related Entity exists, the Company may limit the Covered Person's interactions with such Related Entity or take other more restrictive actions as the Company may determine appropriate.

The Company has determined that given the businesses that members of the Board of Directors are engaged in, and the relationships among the members of the Board of Directors and the Company and Related Entities, this Section 5 shall not apply to members of the Board of Directors of the Company. Notwithstanding the foregoing, to the extent that a member of the Board of Directors has a relationship with a Related Entity as outlined in this Section 5, such member shall be required to remove himself or herself from any discussions or voting involving the Company's relationship with such Related Entity. Further, transactions between the Company and Related Entities with such members of the Board of Directors are affiliated may require the approval of the other members of the Board of Directors or the Audit Committee.

If a Related Entity sponsors a sales contest pursuant to which sales employees of the Company are eligible for cash payments or prizes, Company sales employees shall be allowed to participate in such contests and accept such payments or prizes provided that (1) the Senior Vice President of Sales or the CEO determines that participation in the contest would not adversely influence the Company sales employee's sales of the Company's products and services and (2) an Oversight Officer approves the sales employee's participation in the contest.

## **VI. SECURITIES TRADING**

### *1. Inside Information.*

Unless and until material, nonpublic information concerning the Company has been publicly released by the Company, Covered Persons may not disclose such material, nonpublic information to anyone not employed by the Company unless such disclosure is in connection with the conduct of the Company's business, or to any Covered Person who has no business need for such information.

Because the Company interacts with other companies and organizations, there may be times when Covered Persons learn confidential information about other companies before that information has been made available to the public. You must treat this information in the same manner as you are required to treat the Company's confidential and proprietary information. There may even be times when Covered Persons must treat as confidential the fact that the Company has an interest in, or is involved with, another company.

Covered Persons are also prohibited from buying or selling, directly or indirectly through third parties, the publicly-traded securities of any company, including the Company, on the basis of material, nonpublic information concerning, or obtained directly or indirectly from or through, the Company.

### WHAT IS "MATERIAL"?

Material information is information that would be expected to affect either the investment decision of a reasonable investor or the market price of the stock. Material information may include information (whether positive or negative) relating to earnings, dividend actions, mergers or acquisitions, new products, personnel changes, labor operations, marketing changes or other

matters, each depending upon all the relevant facts and circumstances. It may at times be difficult to determine materiality, particularly on a prospective basis, and the facts in each case must be carefully weighed. It should be remembered that plaintiffs who challenge and judges who rule on particular transactions or activities have the benefit of hindsight. Therefore, whenever there is any question concerning materiality, the Covered Person should either refrain from trading or consult the Company's General Counsel who, where appropriate, will confer with counsel to the Company.

#### WHAT IS "NONPUBLIC"?

Information is nonpublic if it has not been disseminated in the Company's annual, quarterly or current report filed with the Securities and Exchange Commission, has not previously been the subject of a widely disseminated press release intended for and made available to the public, or has not been widely reported in the media, market letters, statistical services or the like. The mere existence of widespread rumors or unconfirmed press speculation concerning the information, however, does not mean that the information has been adequately disseminated.

2. *Trading Guidelines.* Investment by Covered Persons in the Company's stock is generally desirable and should not be discouraged. However, such investments must be made with caution and with recognition of the legal prohibitions concerning the use by corporate "insiders" of confidential information for their own profit. Guidelines to aid employees in determining when trading in the Company's stock are appropriate are set forth below. It should be noted that "trading" includes not only purchases and sales, but also exercises of options, warrants, puts and calls, etc. The prohibition on the use of material, nonpublic information also extends to the securities of other entities, such as Related Entities, as to which a Covered Person may become in possession of nonpublic information in the course of his or her employment by the Company.

A Covered Person may not trade if the Covered Person has knowledge of material information about the Company which has not been made widely available to the investing public. If there are questions whether information may be material, or if it has not been made widely available to the investing public, the matter should be discussed with the Company's General Counsel who, where appropriate, will confer with counsel to the Company. Once the Company has released information, a Covered Person must still refrain from trading until sufficient time has passed to insure that the information has been made widely available to the investing public. In most cases, a Covered Person should refrain from trading until the second business day after release by the Company of the information. If there are questions as to whether it is appropriate to trade in given circumstances, the Covered Person should contact the Company's General Counsel for advice before trading. Notwithstanding the foregoing, this Code of Conduct shall not restrict a Covered Person's sale of Company securities to, or purchase of Company securities from, the Company, including the exercise of options and warrants.

Officers may not trade, without prior permission, during any period which the Company's general counsel has designated as a limited trading period for the Company, whether or not they possess any material, nonpublic information about the Company. While the reasons for a limited trading period or entry on a restricted list will generally not be given, Company's

general counsel will attempt to limit the restrictions to those reasonably necessary in the best interests of the Company.

Directors of the Company and officers who have been designated by the Board of Directors or the Chief Executive Officer as “officers” as defined in Rule 16a-1 under the Securities Exchange Act of 1934 (or otherwise fall within the definition of an “officer” under such Rule, each a “Section 16 Officer”) must always obtain prior permission from the General Counsel before trading. Other officers and employees may trade if no limitation on trading has been declared and the officer or employee does not possess any material, nonpublic information about the Company which has not been publicly disclosed.

3. *Reporting and Other Obligations.* Section 16 Officers, directors and significant beneficial owners of the Company are also subject to specific reporting and other requirements under federal and state securities laws. Each of these persons must discuss with the General Counsel his or her reporting obligations in the event they make any trades in the Company’s Securities. The Company will need to obtain for each of the persons an SEC filing number and all of their transactions will need to be reported to the SEC within 48 hours. Each of these persons will also receive questionnaires and requests for information from the Company from time to time to aid the Company in complying with these laws. It is incumbent upon such persons to provide such information promptly, fully and accurately. Each person who is or becomes a beneficial owner of 10% or more of any class of the Company’s equity securities must also comply with the reporting requirements and liability provisions of Section 16 of the Securities Exchange Act of 1934.

## **VII. DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION**

Safeguarding confidential information concerning the Company, its present and prospective business, and its customers, suppliers and investors is essential to the successful conduct of the Company’s business.

All information developed within the Company with respect to its business is confidential and must not be disclosed or otherwise made available except as otherwise provided in this Code of Conduct. If any Covered Person is required by a court of law or by any governmental body to disclose or otherwise make available such information, the Covered Person must promptly notify the Company’s General Counsel of this requirement so that the Company may exhaust its legal rights to maintain the confidentiality of such information or to limit its further disclosure.

The Company’s legal department must approve in advance all external communications intended for the general public, the financial community or the press regarding the Company or its business.

Confidential information encompasses all information relating to, among other matters:

- the business affairs and operations of the Company which is not otherwise available as public information and includes, but is not limited to, information or materials concerning

- vendors, suppliers and customers of the Company (including mailing lists, credit card or charge card numbers, price and mark-up determinations, sales or sales trends, and costs of products or services paid by the Company);
  - Company budgets, business plans and marketing plans;
  - proprietary products or processes and any other confidential or nonpublic information concerning copyrights, trademarks, trade names, service marks, inventions, patents and products; and
  - all confidential information concerning personal information about employees, officers and directors including information concerning medical conditions, family information, and Social Security numbers.
- all confidential information relating to any third party with whom the Company is under an obligation of confidentiality either by contract or by law.

Confidential information may take a variety of forms, including:

- Confidential or proprietary business documents;
- PC disks containing confidential or proprietary information;
- Blueprints or design idea sketches;
- Restricted vendor, supplier or customer information;
- Financial data; and
- Payroll documents or reports or claims for medical or other benefits.

Each Covered Person must keep all papers which include or reflect confidential information at the principal place of business of the Company or at such other place or places as the Company may designate from time to time. All such confidential information should be securely maintained by each Covered Person and should not be left out in the open or otherwise accessible to unauthorized persons, and should not be carelessly discarded or discussed in public (*e.g.*, in an elevator where unauthorized persons may have access to it).

Upon the termination of any Covered Person's employment with the Company, the Covered Person must deliver to the Company all documents, papers, records, files, recordings, digital and electronically stored information, computer or word-processing software, and any and all other materials containing confidential information; and the Covered Person may not retain any copies, duplicates, summaries or other descriptions of any of these materials.

Each Covered Person is bound by these obligations with respect to the confidential information of the Company not only during the period of his or her employment with the Company, but also following the termination of his or her employment with the Company.

## **VIII. OWNERSHIP OF INTELLECTUAL PROPERTY**

Any and all inventions (a) which are made, conceived, developed or enhanced by any Covered Person, either alone or together with others, during his or her employment with the Company, and (b) which relate to the business or operations of the Company, or result from any work performed by the Covered Person for the Company, are the sole property of the Company and the Covered Person waives any and all right or interest that he or she may otherwise have with respect to any such invention. The term “*inventions*” means discoveries, improvements and ideas (whether or not patentable or copyrightable) which relate to any aspect of the Company’s activities or business, or which are made through the use of the Company’s materials, equipment or facilities.

Any Covered Person who makes, conceives, develops or enhances any such inventions during the term of his or her employment with the Company must promptly and fully inform the Company in writing of such inventions and, if requested by the Company, execute, acknowledge and deliver to the Company such written instruments, and do such other acts or render such assistance, as may be necessary or appropriate, in the opinion of the Company, to confirm the title of the Company to such inventions and its right to obtain and maintain letters patent or similar protection with respect thereto.

## **IX. COMPETITION WITH THE COMPANY**

No Covered Person may, during the term of his or her employment with the Company, engage in any of the following activities, directly or indirectly, without written consent of an Oversight Officer:

- be or become interested in or associated with, or represent or otherwise render assistance or services to (whether as an officer, director, stockholder, partner, consultant, contractor, owner, employee, agent or creditor, or otherwise), any business that is then, or which then proposes to become, a competitor of the Company anywhere in the world; except that the Covered Person may own, solely as an investment, the securities of any business if such ownership is (a) not as a controlling person of such business; (b) not as a member of a group that controls such business, and (c) not as a direct or indirect beneficial owner of not in excess of 1% of any class of securities of such business listed on a national securities exchange or traded in an established over-the-counter securities market;
- induce or seek to influence any other Covered Person (or any consultant to) the Company to leave its employ (or terminate its consultancy) or to become financially interested in a similar business;
- aid a competitor or supplier of the Company in any attempt to hire any person who is employed by or a consultant to the Company;
- induce or attempt to influence any person who was a customer or supplier of the Company during such period to transact business with a competitor of the Company or not to do business with the Company; or

- provide any business or assistance directly or indirectly to any competitor of the Company.

These restrictions, however, do not prohibit any Covered Person from (a) serving on the board of directors of a reasonable number of other corporations not engaged in competition with the Company or the boards of a reasonable number of trade associations and/or charitable organizations; (b) engaging in charitable activities and community affairs; (c) managing his or her personal investments and affairs that comply with applicable ownership limitations; or (d) being involved in other business transactions, provided only that these activities do not interfere with the proper performance of his or her duties and responsibilities as a Covered Person of the Company.

The Company has determined that given the businesses that members of the Board of Directors are engaged in, and the relationships among the members of the Board of Directors and the Company and Related Entities, the foregoing portions of Section IX shall not apply to members of the Board of Directors of the Company. Rather, the following guidelines shall apply to members of the Board of Directors related to competition with the Company.

No member of the Board of Director shall without the consent of the Audit Committee be or become interested in or associated with, or represent or otherwise render assistance or services to (whether as an officer, director, stockholder, partner, consultant, contractor, direct or indirect owner, employee, agent or creditor, or otherwise), any business that is then, or which then proposes to go into competition with the Company. Competition with the Company shall be defined as the provision of products or services that are directly competitive with the Company's products or services over geographical territory that overlaps a substantial portion of the Company's markets. The Audit Committee shall be responsible for determining what is defined as "directly competitive" with the Company's products and services. Notwithstanding the foregoing, a member of the Board of Directors may own, solely as an investment, the securities of any competitive business if such ownership is a passive, non-substantial portion of such business. In order for the Audit Committee to monitor compliance with this provision, each member of the Board of Directors shall periodically report to the Audit Committee, at time frames set by the Audit Committee, on his or her affiliation with any communications related business.

## **X. ENVIRONMENT, HEALTH AND SAFETY**

The Company is committed to environmental, health and safety protection for its Covered Persons, customers, neighbors and others who may be affected by its products or activities.

The laws and regulations in this area are complex, and violations can result in severe criminal and civil penalties for the Company and responsible Covered Persons. If a Covered Person is faced with an environmental, health or safety issue, the Covered Person should promptly contact the Company's executive in charge of the office in which the Covered Person works to discuss that matter.

## **XI. EMPLOYMENT ISSUES**

1. *Equal Opportunity.* The Company affords equal opportunity for employment, including equal treatment in hiring, promotion, training, compensation, termination and disciplinary action, to all individuals regardless of race, color, religion, national origin, sex (except where sex is a bona fide occupational qualification), sexual preference, marital status, veteran status, physical or mental disability (except where the disability is a job-related disqualifying factor), or any other status protected by law. Unlawful discrimination can expose the Company to substantial damages and unfavorable publicity. All Covered Persons are required to conduct their Company activities with due regard to this policy.

2. *Harassment.* It is the Company's policy to maintain a work environment free from all forms of harassment and to insist that all Covered Persons be treated with dignity, respect and courtesy. Any comments or conduct relating to a person's race, religion, age, sex or ethnic background that fail to respect the dignity and feelings of the individual are unacceptable. Also unacceptable are comments or conduct of a sexual nature, where such behavior tends to threaten or offend a fellow Covered Person. Covered Persons are cautioned that even joking or mild comments or conduct may violate this policy. It is the Company's goal that such comments or conduct not occur and should they occur, that they be rectified fairly and quickly.

3. *Disability.* The Company is required to make reasonable accommodations to the known physical or mental limitations of a qualified employee or applicant with a disability if, with these accommodations, the person can perform the essential functions of his or her job. The Company may be excused from making a reasonable accommodation if the accommodation would impose an "undue hardship" on its business.

4. *Retaliation.* The Company's policy is to prohibit acts of retaliation against any employee or applicant who makes a complaint of discrimination or other violation of the law, regulation the Code of Conduct or otherwise to the Company or to a governmental agency.

## **XII. INTERNAL COMMUNICATION AND ENFORCEMENT OF POLICY**

The policies contained in this Code of Conduct will be communicated to all Covered Persons, each of whom will be required to sign the attached Certificate of Compliance. New Covered Persons will be required to do so at the date of their initial employment and periodically thereafter. Other Covered Persons will be required to do so upon their receipt of this Code of Conduct and at least periodically thereafter.

It is important that each Covered Person comply not only with the letter but, equally importantly, with the spirit of this Code. If a Covered Person believes that another Covered Person is acting in a manner that is not in compliance with this Code, or that he or she has been requested to act in such a manner, this circumstance should immediately be reported, in person or in writing, to the attention of an Oversight Officer, or if appropriate, the Audit Committee or the Company's Fraud Hotline. In order to encourage uninhibited communication of such matters, such communications will be treated confidentially to the fullest extent possible and no disciplinary or other retaliatory action will be taken against any Covered Person who acts in good faith in communicating such matters.

### **XIII. EFFECTS OF FAILURE TO COMPLY WITH CODE**

Conduct in violation of this Code is expressly forbidden. Any Covered Person whose conduct violates this Code will be subject to disciplinary action by the Company, including, in the Company's discretion, discharge and/or forfeiture of any benefits or rights (including contractual rights) which, under applicable law, are forfeitable upon a discharge for cause, and to the enforcement of such other remedies as the Company may have under applicable law.

The summaries of laws contained in this Code are brief and necessarily omit many subtleties and variations that exist in such laws, as well as other laws that may impose requirements upon the Company. In addition, laws which affect the Company may be supplemented, amended or repealed from time to time. Therefore, a Covered Person should request prior advice from the Company's General Counsel who, where appropriate, will confer with counsel to the Company, if the Covered Person has any question or uncertainty concerning the impact of applicable laws upon his or her Company activities.

### **XIV. WAIVERS**

The General Counsel and the Company's Audit Committee will administer this Code. Except as set forth in the next sentence, the Oversight Officer for all persons governed by this Code shall be the General Counsel. The Oversight Officer for the Chief Executive Officer, Chief Financial Officer, Controller, General Counsel and the members of the board of directors (the "*Senior Officers*") shall be the Audit Committee. The provisions of this Code may be waived for Senior Officers only by a resolution of the Board of Directors. The provisions of this Code may be waived for employees who are not Senior Officers by the Company's General Counsel. Any waiver or amendment of this Code will be publicly disclosed if and as required by the NASDAQ stock market (to the extent it is the Company's principal trading market) or other applicable exchange rules in effect from time to time. Any change in or waiver of this Code will be publicly disclosed if and as required by the Securities and Exchange Commission.

### **XV. CODE NOT A CONTRACT OF EMPLOYMENT, VALIDITY**

This Code is not a contract of employment nor is it meant to limit the Company's rights to discipline or terminate employees for any acts or omissions, including those not set forth as part of this Code of Conduct. Neither does this Code of Conduct change the status of any at-will employee. The Company retains all of its rights in connection with the discipline and/or termination of Covered Persons. This Code of Conduct is in addition to any employment contract that a Covered Person may have with the Company. In the event any term of this Code of Conduct is held invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Code of Conduct will be in any way affected. The parties will interpret the invalid, illegal or unenforceable parts of this Code of Conduct in conformity with the applicable local laws. In the event of any conflict between this Code of Conduct and any provision of local law, the provisions of local law will prevail. In the event of any conflict between this Code of Conduct and an employee's employment agreement (if applicable), the employment agreement will prevail.

## XVI. NAMES AND NUMBERS

<u>Office</u>	<u>Position</u>	<u>Phone Number</u>	<u>E-mail</u>
General Counsel:	Senior Vice President	(914) 421.6708	rsokota@above.net
Audit Committee Contact:	Chairman, Audit Committee	(914) 253-8100	jbrodsky@qtadvisors.com
Company's Fraud Hotline		<b>1-888-475-8376</b>	See www.goabove.net for email process