

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

Form 10-Q

(Mark One)

QUARTERLY REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2012

For the transition period from _____ to _____

Commission file number 001-32172

XPO Logistics, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

03-0450326
(I.R.S. Employer
Identification No.)

**Five Greenwich Office Park
Greenwich, CT 06831**
(Address of principal executive offices)

(855) 976-4636
(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of November 6, 2012, there were 17,921,794 shares of the registrant's common stock, par value \$0.001 per share, outstanding.

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Part I—Financial Information

Item 1. Financial Statements.

XPO Logistics, Inc.
Condensed Consolidated Balance Sheets
(in thousands except share data)

| | <u>September 30, 2012</u> (Unaudited) | <u>December 31, 2011</u> |
|--|--|--------------------------|
| ASSETS | | |
| Current assets: | | |
| Cash and cash equivalents | \$ 296,503 | \$ 74,007 |
| Accounts receivable, net of allowances of \$420 and \$356, respectively | 42,881 | 22,425 |
| Prepaid expenses | 1,174 | 426 |
| Deferred tax asset, current | 1,484 | 955 |
| Income tax receivable | 2,790 | 1,109 |
| Other current assets | 1,376 | 219 |
| Total current assets | <u>346,208</u> | <u>99,141</u> |
| Property and equipment, net of \$4,769 and \$3,937 in accumulated depreciation, respectively | 8,083 | 2,979 |
| Goodwill | 22,521 | 16,959 |
| Identifiable intangible assets, net of \$3,902 and \$3,320 in accumulated amortization, respectively | 10,487 | 8,053 |
| Other long-term assets | 472 | 509 |
| Total long-term assets | <u>41,563</u> | <u>28,500</u> |
| Total assets | <u>\$ 387,771</u> | <u>\$ 127,641</u> |
| LIABILITIES AND STOCKHOLDERS' EQUITY | | |
| Current liabilities: | | |
| Accounts payable | \$ 12,286 | \$ 8,565 |
| Accrued salaries and wages | 2,745 | 2,234 |
| Accrued expenses, other | 11,913 | 2,789 |
| Current maturities of notes payable and capital leases | 359 | 1,675 |
| Other current liabilities | 1,395 | 808 |
| Total current liabilities | <u>28,698</u> | <u>16,071</u> |
| Convertible senior notes (net of discount and issuance costs) | 92,757 | — |
| Notes payable and capital leases, net of current maturities | 734 | 454 |
| Deferred tax liability, long term | 9,761 | 2,346 |
| Other long-term liabilities | 3,083 | 410 |
| Total long-term liabilities | <u>106,335</u> | <u>3,210</u> |
| Stockholders' equity: | | |
| Preferred stock, \$.001 par value; 10,000,000 shares; 75,000 shares issued and outstanding | 42,794 | 42,794 |
| Common stock, \$.001 par value; 150,000,000 shares authorized; 17,863,223 and 8,410,353 shares issued, respectively; and 17,818,223 and 8,365,353 shares outstanding, respectively | 17 | 8 |
| Additional paid-in capital | 260,252 | 102,613 |
| Treasury stock, at cost, 45,000 shares held | (107) | (107) |
| Accumulated deficit | (50,218) | (36,948) |
| Total stockholders' equity | <u>252,738</u> | <u>108,360</u> |
| Total liabilities and stockholders' equity | <u>\$ 387,771</u> | <u>\$ 127,641</u> |

The accompanying notes are an integral part of the condensed consolidated financial statements.

XPO Logistics, Inc.
Condensed Consolidated Statements of Operations
(Unaudited)
(in thousands, except per share amounts)

| | <u>Three Months Ended September 30,</u> | | <u>Nine Months Ended September 30,</u> | |
|--|---|--------------------|--|--------------------|
| | <u>2012</u> | <u>2011</u> | <u>2012</u> | <u>2011</u> |
| Revenues | | | | |
| Operating revenue | \$ 70,988 | \$ 47,389 | \$ 170,088 | \$ 132,991 |
| Expenses | | | | |
| Direct expense | 61,064 | 39,169 | 144,925 | 110,384 |
| Gross margin | <u>9,924</u> | <u>8,220</u> | <u>25,163</u> | <u>22,607</u> |
| Sales general and administrative expense | 19,204 | 7,750 | 42,035 | 18,494 |
| Operating (loss) income | <u>(9,280)</u> | <u>470</u> | <u>(16,872)</u> | <u>4,113</u> |
| Other expense | 314 | — | 319 | 62 |
| Interest expense | 15 | 49 | 30 | 145 |
| (Loss) income before income tax | <u>(9,609)</u> | <u>421</u> | <u>(17,221)</u> | <u>3,906</u> |
| Income tax (benefit) provision | (6,460) | 231 | (6,201) | 1,685 |
| Net (loss) income | <u>(3,149)</u> | <u>190</u> | <u>(11,020)</u> | <u>2,221</u> |
| Preferred stock beneficial conversion charge and dividends | — | (44,586) | — | (44,586) |
| Cumulative preferred dividends | (750) | — | (2,250) | — |
| Net loss available to common shareholders | <u>\$ (3,899)</u> | <u>\$ (44,396)</u> | <u>\$ (13,270)</u> | <u>\$ (42,365)</u> |
| Basic loss per share | | | | |
| Net loss | (0.22) | (5.38) | (0.89) | (5.15) |
| Diluted loss per share | | | | |
| Net loss | (0.22) | (5.38) | (0.89) | (5.15) |
| Weighted average common shares outstanding | | | | |
| Basic weighted average common shares outstanding | 17,663 | 8,253 | 14,952 | 8,227 |
| Diluted weighted average common shares outstanding | 17,663 | 8,253 | 14,952 | 8,227 |

The accompanying notes are an integral part of the condensed consolidated financial statements.

XPO Logistics, Inc.
Condensed Consolidated Statements of Cash Flows
(Unaudited)
(in thousands)

| | Nine Months Ended September 30, | |
|--|---------------------------------|------------------|
| | 2012 | 2011 |
| Operating (loss) activities | | |
| Net income | \$ (11,020) | \$ 2,221 |
| Adjustments to reconcile net income to net cash from operating activities | | |
| Provisions for allowance for doubtful accounts | 645 | (23) |
| Depreciation & amortization expense | 1,463 | 944 |
| Stock compensation expense | 3,485 | 297 |
| Other | 1 | (9) |
| Changes in assets and liabilities, net of effects of acquisitions: | | |
| Accounts receivable | (8,078) | (2,037) |
| Deferred tax expense | (4,276) | 788 |
| Income tax receivable | (1,824) | 479 |
| Other current assets | (14) | 568 |
| Prepaid expenses | (422) | (351) |
| Other long-term assets and advances | 12 | 101 |
| Accounts payable | (3,136) | (1,625) |
| Accrued expenses | 6,232 | 1,653 |
| Other liabilities | 23 | 301 |
| Cash provided (used) by operating activities | <u>(16,909)</u> | <u>3,307</u> |
| Investing activities | | |
| Acquisition of businesses, net of cash acquired | (7,011) | — |
| Payment of acquisition earn-out | (450) | (450) |
| Payment for purchases of property and equipment | (3,986) | (442) |
| Proceeds from sale of assets | — | 9 |
| Cash used by investing activities | <u>(11,447)</u> | <u>(883)</u> |
| Financing Activities | | |
| Credit line, net activity | (2,178) | (2,749) |
| Proceeds from issuance of preferred stock, net of issuance costs | — | 71,628 |
| Proceeds from issuance of convertible senior notes, net | 120,287 | — |
| Payments of notes payable and capital leases | (2,089) | (1,215) |
| Excess tax benefit from stock options | — | 97 |
| Proceeds from common stock offering, net | 136,961 | — |
| Proceeds from exercise of options, net | 131 | 727 |
| Dividends paid to preferred stockholders | (2,250) | — |
| Cash provided by financing activities | <u>250,862</u> | <u>68,488</u> |
| Effect of exchange rate changes on cash | (10) | — |
| Net increase in cash | 222,496 | 70,912 |
| Cash, beginning of period | <u>74,007</u> | <u>561</u> |
| Cash, end of period of period | <u>\$ 296,503</u> | <u>\$ 71,473</u> |
| Supplemental disclosure of noncash activities: | | |
| Cash paid during the period for interest | \$ 29 | \$ 166 |
| Cash paid during the period for income taxes | \$ 244 | \$ 201 |

The accompanying notes are an integral part of the condensed consolidated financial statements.

XPO Logistics, Inc.
Condensed Consolidated Statement of Changes in Stockholders' Equity
Nine Months Ended September 30, 2012
(Unaudited)
(in thousands)

| | <u>Preferred Stock</u> | | <u>Common Stock</u> | | <u>Treasury Stock</u> | | <u>Paid-In Capital</u> | <u>Accumulated Deficit</u> | <u>Total</u> |
|---|------------------------|------------------|---------------------|---------------|-----------------------|-----------------|------------------------|----------------------------|-------------------|
| | <u>Shares</u> | <u>Amount</u> | <u>Shares</u> | <u>Amount</u> | <u>Shares</u> | <u>Amount</u> | | | |
| Balance, December 31, 2011 | <u>75</u> | <u>\$ 42,794</u> | <u>8,410</u> | <u>\$ 8</u> | <u>(45)</u> | <u>\$ (107)</u> | <u>\$ 102,613</u> | <u>\$ (36,948)</u> | <u>\$ 108,360</u> |
| Net loss | — | — | — | — | — | — | — | (11,020) | \$ (11,020) |
| Issuance of common stock for option exercise | — | — | 253 | — | — | — | 131 | — | \$ 131 |
| Dividends paid | — | — | — | — | — | — | — | (2,250) | \$ (2,250) |
| Stock compensation expense | — | — | — | — | — | — | 3,485 | — | \$ 3,485 |
| Proceeds from common stock offering, net of issuance costs | — | — | 9,200 | 9 | — | — | 136,952 | — | \$ 136,961 |
| Equity component of convertible debt offering, net of issuance costs and deferred taxes | — | — | — | — | — | — | 17,071 | — | \$ 17,071 |
| Balance, September 30, 2012 | <u>75</u> | <u>\$ 42,794</u> | <u>17,863</u> | <u>\$ 17</u> | <u>(45)</u> | <u>\$ (107)</u> | <u>\$ 260,252</u> | <u>\$ (50,218)</u> | <u>\$ 252,738</u> |

The accompanying notes are an integral part of the condensed consolidated financial statements.

XPO Logistics, Inc.
Notes to Condensed Consolidated Financial Statements
Three and Nine Months Ended September 30, 2012 and 2011
(Unaudited)

1. Organization

Nature of Business

XPO Logistics, Inc. (the “Company”)—provides premium transportation and logistics services to thousands of customers through its three business units:

Freight Brokerage—provides truckload brokerage transportation services throughout the United States through our wholly-owned subsidiaries Bounce Logistics, Inc. (“Bounce”), XPO Logistics Canada Inc. and XPO Logistics, LLC.

Expedited Transportation—provides time-critical expedited transportation through our wholly-owned subsidiary Express-1, Inc. (“Express-1”). This typically involves dedicating one truck and driver to a load which has a specified time delivery requirement. Most of the services provided are completed through a fleet of exclusive use vehicles that are owned and operated by independent contract drivers, whom we refer to as owner operators. The use of non-owned resources to provide services minimizes the amount of capital investment required and is often described with the terms “non-asset” or “asset-light.”

Freight Forwarding—provides freight forwarding services through our wholly-owned subsidiary Concert Group Logistics, Inc. (“CGL”). Freight forwarding transportation services are sold and arranged for under the authority of CGL through independently-owned stations and seven company-owned branches located throughout the United States.

For specific financial information relating to the above business units, refer to **Note 12—Operating Segments**.

2. Basis of Presentation and Significant Accounting Policies

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements of the Company have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”) and in accordance with the instructions to Form 10-Q. Certain information and note disclosures normally included in annual financial statements have been condensed or omitted pursuant to those rules and regulations. However, we believe that the disclosures contained herein are adequate to make the information presented not misleading.

These unaudited condensed consolidated financial statements reflect, in our opinion, all material adjustments (which include only normal recurring adjustments) necessary to fairly present our financial position as of September 30, 2012 and December 31, 2011, and results of operations for the three- and nine-month periods ended September 30, 2012 and 2011. The preparation of the condensed consolidated financial statements requires management to make estimates and judgments that affect the reported amounts of assets and liabilities and the disclosure of contingencies at the date of the financial statements as well as the reported amounts of revenue and expense during the reporting period. Estimates have been prepared on the basis of the most current and best available information and actual results could differ materially from those estimates.

These unaudited condensed consolidated financial statements and notes thereto should be read in conjunction with the audited consolidated financial statements and notes thereto for the fiscal year ended December 31, 2011 in our Annual Report on Form 10-K and available on the SEC’s website (www.sec.gov). Results of operations for interim periods are not necessarily indicative of results to be expected for a full year.

Use of Estimates

The Company prepares its unaudited condensed consolidated financial statements in conformity with accounting principles generally accepted in the United States of America. These principles require management to make estimates and assumptions that impact the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenue and expense during the

reporting period. The Company reviews its estimates on a regular basis and makes adjustments based on historical experience and existing and expected future conditions. Estimates are made with respect to, among other matters, accrued revenue, purchased transportation, recoverability of long-lived assets, accrual of acquisition earn-outs, estimated legal accruals, valuation allowances for deferred taxes, reserve for uncertain tax positions, and allowance for doubtful accounts. These evaluations are performed and adjustments are made as information is available. Management believes that these estimates, which have been discussed with the audit committee of the Company's board of directors, are reasonable; however, actual results could differ from these estimates.

Significant Accounting Policies

Revenue Recognition

The Company recognizes revenue at the point in time when delivery is completed on the freight shipments it handles, with related costs of delivery being accrued as incurred and expensed within the same period in which the associated revenue is recognized. The Company uses the following supporting criteria to determine that revenue has been earned and should be recognized:

- Persuasive evidence of an arrangement exists;
- Services have been rendered;
- The sales price is fixed and determinable; and
- Collectability is reasonably assured.

The Company reports revenue on a gross basis in accordance with the Financial Accounting Standards Board's ("FASB") Accounting Standard Codification ("ASC") Topic 605, "*Reporting Revenue Gross as Principal Versus Net as an Agent*". The Company believes presentation on a gross basis is appropriate under ASC Topic 605 in light of the following factors:

- The Company is the primary obligor and is responsible for providing the service desired by the customer.
- The customer holds the Company responsible for fulfillment, including the acceptability of the service (requirements may include, for example, on-time delivery, handling freight loss and damage claims, establishing pick-up and delivery times, and tracing shipments in transit).
- For Expedited Transportation and Freight Brokerage, the Company has complete discretion to select its drivers, contractors or other transportation providers (collectively, "service providers"). For Freight Forwarding, the Company enters into agreements with significant service providers that specify the cost of services, among other things, and has ultimate authority in providing approval for all service providers that can be used by Freight Forwarding's independently-owned stations. Independently-owned stations may further negotiate the cost of services with Freight Forwarding-approved service providers for individual customer shipments.
- Expedited Transportation and Freight Brokerage have complete discretion to establish sales prices. Independently-owned stations within Freight Forwarding have the discretion to establish sales prices.
- The Company bears credit risk for all receivables. In the case of Freight Forwarding the independently-owned stations reimburse Freight Forwarding for a portion (typically 70-80%) of credit losses. Freight Forwarding retains the risk that the independent station owners will not meet this obligation.

Cash and cash equivalents

We consider all highly liquid investments with an original maturity of three months or less as of the date of purchase to be cash equivalents unless the investments are legally or contractually restricted for more than three months.

Income Taxes

Taxes on income are provided in accordance with ASC Topic 740, “*Income Taxes*”. Deferred income tax assets and liabilities are recognized for the expected future tax consequences of events that have been reflected in the unaudited condensed consolidated financial statements. Deferred tax assets and liabilities are determined based on the differences between the book values and the tax basis of particular assets and liabilities, and the tax effects of net operating loss and capital loss carry forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in the tax rate is recognized as income or expense in the period that included the enactment date. A valuation allowance is provided to offset the net deferred tax assets if, based upon the available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized. Management periodically assesses the likelihood that the company will utilize its existing deferred tax assets and records a valuation allowance for deferred tax assets when it is more likely than not that such deferred tax assets will not be realized.

Accounting for uncertainty in income taxes is determined based on ASC Topic 740, which clarifies the accounting for uncertainty in income taxes recognized in a company’s financial statements and provides guidance on the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. ASC Topic 740 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosures and transition. For additional information refer to **Note 10—Income Taxes**.

Goodwill and Intangible Assets with Indefinite Lives

Goodwill consists of the excess of cost over the fair value of net assets acquired in business combinations. Intangible assets with indefinite lives consist principally of the Express-1 and CGL trade names. The Company follows the provisions of ASC Topic 350, “*Intangibles—Goodwill and Other*”, which requires an annual impairment test for goodwill and intangible assets with indefinite lives. If the carrying value of intangibles with indefinite lives exceeds their fair value, an impairment loss is recognized in an amount equal to that excess. Goodwill is evaluated using a two-step impairment test at the reporting unit level. The first step compares the book value of a reporting unit, including goodwill, with its fair value. If the book value of a reporting unit exceeds its fair value, the Company completes the second step in order to determine the amount of goodwill impairment loss that should be recorded. In the second step, the Company determines an implied fair value of the reporting unit’s goodwill by allocating the fair value of the reporting unit to all of the assets and liabilities other than goodwill. The amount of impairment is equal to the excess of the book value of goodwill over the implied fair value of that goodwill. The Company performs the annual impairment testing during the third quarter unless events or circumstances indicate impairment of the goodwill may have occurred before that time. For the periods presented, the Company did not recognize any goodwill impairment as the estimated fair value of its reporting units with goodwill exceeded the book value of these reporting units. For additional information refer to **Note 6—Goodwill**.

Identifiable Intangible Assets

The Company follows the provisions of ASC Topic 360, “*Property, Plant and Equipment*”, which establishes accounting standards for the impairment of long-lived assets such as property, plant and equipment and intangible assets subject to amortization. The Company reviews long-lived assets to be held-and-used for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. If the sum of the undiscounted expected future cash flows over the remaining useful life of a long-lived asset group is less than its carrying amount, the asset is considered to be impaired. Impairment losses are measured as the amount by which the carrying amount of the asset group exceeds the fair value of the asset. The Company estimates fair value using the expected future cash flows discounted at a rate commensurate with the risks associated with the recovery of the asset. During the nine-month periods ended September 30, 2012 and 2011, there was no impairment of the identified intangible assets.

The Company’s intangible assets subject to amortization consist of non-compete agreements, customer relationships and other intangibles that are amortized on a straight-line basis over the estimated useful lives of the related intangible asset. The estimated useful lives of the respective intangible assets range from four months to 12 years.

The following table sets forth the Company's identifiable intangible assets as of September 30, 2012 and December 31, 2011 (in thousands):

| | September 30, 2012 | December 31, 2011 |
|---------------------------------------|-----------------------|----------------------|
| Indefinite Lived Intangibles | | |
| Trade names | \$ 6,420 | \$ 6,420 |
| Definite Lived Intangibles: | | |
| Trade names | 521 | 220 |
| Non-compete agreements | 1,250 | 763 |
| Customer lists and relationships | 4,131 | 1,974 |
| Other intangible assets | 2,067 | 1,996 |
| | 7,969 | 4,953 |
| Less: accumulated amortization | (3,902) | (3,320) |
| Intangible assets, net | \$ 4,067 | \$ 1,633 |
| Total Identifiable Intangibles | \$ 10,487 | \$ 8,053 |

Other Long-Term Assets

Other long-term assets consist primarily of balances representing various deposits, and notes receivable from various CGL independent station owners. Also included within this account classification are incentive payments to independent station owners within the CGL network. These payments are made by CGL to certain station owners as an incentive to establish an independently-owned station. These amounts are amortized over the life of each independent station contract and the unamortized portion generally is recoverable in the event of default under the terms of the agreements.

Foreign Currency Translation

Exchange gains or losses incurred on transactions conducted by our business units in a currency other than the business units' functional currency are normally reflected in cost of sales in our Consolidated Statement of Income. Assets and liabilities of Kelron, which has the U.S. dollar as its functional currency (but which maintains its accounting records in Canadian currency), have their values remeasured into U.S. dollars at year-end exchange rates, except for non-monetary items for which historical rates are used. Exchange gains or losses are not material to the condensed consolidated statement of operations for the periods presented.

Foreign Currency Hedging and Derivative Financial Instruments

We enter into derivative contracts, primarily foreign currency forward contracts, to protect against fluctuations in exchange rates. These contracts are for expected future cash flows and not for speculative purposes. The Company reflects changes in fair value of these contracts in the condensed consolidated statement of operation.

Fair Value Measurements

FASB ASC Topic 820, "Fair Value Measurements and Disclosures", defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date and classifies the inputs used to measure fair value into the following hierarchy:

- **Level 1**—Quoted prices for identical instruments in active markets;
- **Level 2**—Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations in which all significant inputs are observable in active markets; and
- **Level 3**—Valuations based on inputs that are unobservable, generally utilizing pricing models or other valuation techniques that reflect management's judgment and estimates.

The following table sets forth the Company's financial assets and liabilities that were accounted for at fair value on a recurring basis as of September 30, 2012 and December 31, 2011 (in thousands):

| | Fair Value Measurements as of September 30, 2012 | | | |
|--------------------------------------|--|------------|---------|---------|
| | Total | Level 1 | Level 2 | Level 3 |
| Assets: | | | | |
| Money market funds | \$ 290,989 | \$ 290,989 | \$ — | \$ — |
| Foreign currency forward contracts | \$ 23 | \$ 23 | \$ — | \$ — |
| Liabilities: | | | | |
| Contingent consideration obligations | \$ 323 | \$ — | \$ — | \$ 323 |

| | Fair Value Measurements as of December 31, 2011 | | | |
|--------------------------------------|---|---------|---------|---------|
| | Total | Level 1 | Level 2 | Level 3 |
| Assets: | | | | |
| Money market funds | \$ — | \$ — | \$ — | \$ — |
| Foreign currency forward contracts | \$ — | \$ — | \$ — | \$ — |
| Liabilities: | | | | |
| Contingent consideration obligations | \$ 450 | \$ — | \$ — | \$ 450 |

Estimated Fair Value of Financial Instruments

The aggregate net fair value estimates discussed herein are based upon certain market assumptions and pertinent information available to management. The respective carrying value of certain financial instruments approximated their fair values as of the periods ended September 30, 2012 and 2011. These financial instruments include cash, accounts receivable, notes receivable, accounts payable, accrued expense, notes payable and short-term borrowings. Fair values approximate carrying values for these financial instruments since they are short-term in nature and they are receivable or payable on demand. The fair value of the Freight Forwarding notes receivable from the owners of the independently-owned stations approximated their respective carrying values based on the interest rates associated with these instruments.

The Company has convertible senior notes for which we are obligated to repay the face value, unless the holder agrees to a lesser amount or elects to convert all or a portion of such notes into the Company's common stock. The aggregate principal amount of these convertible notes at issuance were \$125.0 million with a fair value of \$122.6 million. The convertible notes were allocated to long-term debt and equity in the amounts of \$92.8 million and \$27.5 million, respectively. These amounts are net of debt issuance costs of \$3.6 million for debt and \$1.1 million for equity. The convertible notes contain an optional redemption right in favor of the Company, although it is our present intent not to exercise such redemption right. Accordingly, the fair value of the bifurcated coupon make-whole premium that would be payable to holders in the event of a redemption has been valued at \$0.0 million. For additional information refer to **Note 5—Debt** and **Note 13—Subsequent Events**.

Stock-Based Compensation

The Company accounts for share-based compensation based on the equity instrument's grant date fair value in accordance with ASC Topic 718, "Compensation—Stock Compensation". The fair value of each share-based payment award is established on the date of grant. For grants of restricted stock units, including those subject to service-based vesting conditions and those subject to service and performance-based vesting conditions, the fair value is established based on the market price on the date of the grant. For grants of options, the Company uses the Black-Scholes option pricing model to estimate the fair value of share-based payment awards. The determination of the fair value of share-based awards is affected by the Company's stock price and a number of assumptions, including expected volatility, expected life, risk-free interest rate and expected dividends.

The weighted-average fair value of each stock option recorded in expense for the nine-month period ended September 30, 2012 was estimated on the date of grant using the Black-Scholes option pricing model and is amortized over the requisite service period of the option. The Company has used one grouping for the assumptions, as its option grants have similar characteristics. The expected term of options granted has been derived based upon the Company's history of actual exercise behavior and represents the period of time that options granted are expected to be outstanding. Historical data was also used to estimate option exercises and employee terminations. Estimated volatility is based upon the Company's historical market price at consistent points in a period equal to the expected life of the options. The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant and the expected dividend yield is zero. For additional information refer to **Note 8—Stock-Based Compensation**.

Earnings per Share

Earnings per common share are computed in accordance with ASC Topic 260, "*Earnings per Share*", which requires companies to present basic earnings per share and diluted earnings per share. For additional information refer to **Note 9—Earnings per Share**.

Internal Use Software

The Company has adopted the provisions of ASC Topic 350, "*Intangibles—Goodwill and Other*". Accordingly, certain costs incurred in the planning and evaluation stage of internal use computer software are expensed as incurred. Costs incurred during the application development stage are capitalized and included in property and equipment. Capitalized internal use software totaled \$0.1 million and \$0.0 million as of September 30, 2012 and December 31, 2012, respectively. Capitalized internal use software costs are amortized over the expected economic life of three years using the straight-line method.

Please also refer to Note 1 of the "Notes to Consolidated Financial Statements" in the audited consolidated financial statements included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2011 for a more complete discussion of the Company's significant accounting policies.

3. Acquisitions

Kelron Logistics, Inc.

On August 3, 2012, the Company purchased all of the outstanding capital stock of Kelron Corporate Services Inc. and certain related entities (collectively, "Kelron"), a non-asset, third-party logistics business based in Canada. Founded in 1992, Kelron serves more than 750 customers through locations in Toronto, Ontario; Vancouver, British Columbia; Montreal, Quebec; and Cleveland, Ohio. The purchase price was \$8.0 million, including \$2.6 million of consideration for the outstanding stock and \$5.4 million of assumed debt and liabilities. The working capital adjustments in connection with this acquisition are being finalized, although the Company does not expect there to be a material change in the purchase price as a result.

The Kelron acquisition was accounted for as a purchase business combination in accordance with ASC 805 “*Business Combinations*”. Assets acquired and liabilities assumed were recorded in the accompanying condensed consolidated balance sheet at their estimated fair values as of August 3, 2012, with the remaining unallocated purchase price recorded as goodwill. The following table outlines the Company’s consideration transferred and the identifiable net assets acquired at their estimated fair value as of August 3, 2012 (in thousands).

| | |
|--|-----------------|
| Consideration | \$ 2,646 |
| Net Assets Acquired | (2,426) |
| Intangibles acquired: | |
| Fair value of Trademarks/Trade names | 251 |
| Fair value of Technology | 75 |
| Fair value of Non Compete Agreement | 377 |
| Fair value of Customer Relationships | 1,207 |
| Net deferred tax liability on fair value adjustments | (276) |
| Goodwill | <u>\$ 3,438</u> |

As of September 30, 2012, the purchase price allocation was not finalized. The Company is still evaluating the fair value of accounts receivable, intangible assets and deferred taxes. All goodwill recorded related to the acquisition relates to the Freight Brokerage segment and is not deductible for Canadian income tax purposes.

In conjunction with the acquisition, the Company issued notes payable to the sellers totaling \$1.0 million. The notes do not bear any interest. The notes were treated as consideration transferred as part of the acquisition and are payable in equal quarterly installments on November 3, February 3, May 3 and August 3 of each year with the final installment to be due and payable on August 3, 2015. We used an imputed interest rate of 4.53% to determine the appropriate discount to apply to the notes. The carrying value of the notes payable at September 30, 2012 was \$0.9 million.

In conjunction with the acquisition of Kelron on August 3, 2012, the Company assumed Kelron’s credit agreements with Royal Bank of Canada (“RBC”) dated April 21, 2011 and amended May 8, 2012 (the “Agreements”), which provide for a \$5.0 million revolving demand facility (the “Revolving Demand Facility”) subject to certain borrowing limits. Borrowings under the Revolving Demand Facility can be made either as Royal Bank Prime based loans in Canadian currency at the interest rate equal to the Royal Bank Prime (as defined in the Agreements) rate plus 2.00 percent or as Royal Bank US Base Rate loans in U.S. currency at the interest rate equal to the Royal Bank US Base Rate (as defined in the Agreements) plus 2.00 percent. Borrowings under the Revolving Demand Facility are payable upon demand by RBC. The Revolving Demand Facility is guaranteed by a first ranking security interest in all personal property of Kelron. The Agreements contain customary representations, warranties and general covenants, with which the Company was in compliance at September 30, 2012.

The following unaudited pro forma consolidated results of operations for the nine-month periods ended September 30, 2012 and 2011 present consolidated information of the Company as if the Kelron acquisition had occurred as of January 1, 2011 (in thousands):

| | Pro Forma Nine Months Ended September 30, 2012 | Pro Forma Nine Months Ended September 30, 2011 |
|---------------------------|--|--|
| Revenue | \$ 229,134 | \$ 208,470 |
| Operating Income (Loss) | \$ (17,614) | \$ 3,300 |
| Net Income (Loss) | \$ (20,140) | \$ (43,247) |
| Earnings per common share | | |
| Basic | \$ (1.35) | \$ (5.26) |
| Diluted | \$ (1.35) | \$ (5.26) |

The unaudited pro forma consolidated results for the nine-month periods were prepared using the acquisition method of accounting and are based on the historical financial information of Kelron and the Company. The historical financial information has been adjusted to give effect to the pro forma adjustments that are: (i) directly attributable to the acquisition, (ii) factually supportable and (iii) expected to have a continuing impact on the combined results. The unaudited pro forma consolidated results are not necessarily indicative of what our consolidated results of operations actually would have been had we completed the acquisition on January 1, 2011.

Continental Freight Services, Inc.

On May 8, 2012, the Company purchased all of the outstanding capital stock of Continental Freight Services, Inc. ("Continental") and all of the membership interests in G & W Tanks, LLC. Founded in 1980, Continental is headquartered in Columbia, S.C., with branches and agent locations in Texas, North Carolina, and South Carolina. The Continental acquisition was accounted for as a purchase business combination in accordance with ASC Topic 805 "*Business Combinations*". Assets acquired and liabilities assumed were recorded in the accompanying consolidated balance sheet at their estimated fair values as of May 8, 2012 with the remaining unallocated purchase price recorded as goodwill.

The cash purchase price was \$3.5 million, excluding any working capital adjustments and a potential earn-out of up to \$0.3 million. The Company also accrued \$0.3 million in the opening balance sheet related to a pre-existing employment agreement with an employee that required a payment related to the sale of Continental which was subsequently paid in the period ended June 30, 2012. As a result of the acquisition, the Company recorded goodwill of \$2.1 million and intangible assets of \$1.1 million.

The acquisition of Continental includes a contingent consideration arrangement that requires additional consideration to be paid by the Company to Continental's former owners based on the adjusted gross profit of Continental during the twelve month period commencing June 1, 2012. The range of the undiscounted amounts the Company could pay under the contingent consideration agreement is between \$0.0 million and \$0.3 million. The fair value of the contingent consideration recognized on the acquisition date of \$0.3 million was estimated by applying the income approach.

4. Commitments and Contingencies

Lease Commitments

As of September 30, 2012, the company had approximately \$14.5 million in future minimum payments required under operating leases for various real estate, transportation and office equipment leases that have an initial or remaining non-cancelable lease term. Remaining future minimum payments related to these operating leases amount to approximately \$0.3 million, \$2.2 million, \$1.8 million, \$1.5 million, and \$6.7 million for the periods ending December 31, 2012, 2013, 2014, 2015, and 2016 and thereafter, respectively.

Rent expense was approximately \$0.5 million and \$0.1 million for the three month periods ended September 30, 2012 and 2011, respectively, and \$1.1 million and \$0.3 million for the nine month periods ended September 30, 2012 and 2011, respectively.

Litigation

The Company recently became involved in litigation in the Fourth Judicial District Court, County of Hennepin, State of Minnesota, relating to our hiring of former employees of C.H. Robinson Worldwide, Inc. ("C.H. Robinson"). In the litigation, C.H. Robinson alleges the following against the Company: (1) tortious interference with contractual employment-related relationships; (2) misappropriation of trade secrets; and (3) inducing, aiding and abetting breaches of contract. C.H. Robinson is seeking temporary, preliminary and permanent injunctions, direct and consequential damages, and attorney's fees. On August 23, 2012, the Court denied C.H. Robinson's motion for a temporary injunction to prevent us from communicating with C.H. Robinson employees, among other things, but granted C.H. Robinson's motion for expedited discovery in connection with the litigation and enjoined two individual defendant employees of the Company. The legal discovery process is underway on this matter and the preliminary injunction hearing is scheduled for November 20, 2012. We believe that we have strong legal defenses to the asserted claims and we are evaluating the counterclaims available to us. However, we cannot assure you that an adverse outcome would not significantly impact our ability to execute certain of our growth initiatives.

The Company is a party to a variety of other legal actions, both as a plaintiff and as a defendant that arose in the ordinary course of business, and may in the future become involved in other legal actions. The Company does not currently expect any of these matters or these matters in the aggregate to have a material adverse effect on the Company's results of operations, financial condition or cash flows. However, the results of these matters cannot be predicted with certainty, and an unfavorable resolution of one or more of these matters could have a material adverse effect on the Company's financial condition, results of operations or cash flows.

The Company carries liability and excess umbrella insurance policies that it deems sufficient to cover potential legal claims arising in the normal course of conducting its operations as a transportation company. In the event the Company is required to satisfy a legal claim in excess of the coverage provided by this insurance, the Company's financial condition, results of operations or cash flows could be negatively impacted.

5. Debt

Long-Term Debt and Capital Leases

The Company uses financing for acquisitions and business start-ups, among other things. The Company also enters into long-term debt and capital leases with various third parties from time to time to finance certain operational equipment and other assets used in its business operations. Generally, these loans and capital leases bear interest at market rates, and are collateralized with accounts receivable, equipment and certain other assets of the Company.

On September 26, 2012 XPO Logistics, Inc. completed the registered underwritten public offering of 4.50% convertible senior notes due October 1, 2017, in an aggregate principal amount of \$125.0 million. The convertible notes were allocated to long-term debt and equity in the amounts of \$92.8 million and \$27.5 million, respectively. These amounts are net of debt issuance costs of \$3.6 million for debt and \$1.1 million for equity. Interest is payable on the notes on April 1 and October 1 of each year, beginning on April 1, 2013.

Under certain circumstances at the election of the holder, the convertible notes may be converted until the close of business on the business day immediately preceding April 1, 2017, into cash, shares of the Company's common stock, or a combination of cash and shares of common stock, at the Company's election, at the initial conversion rate of approximately 60.85 shares of common stock per \$1,000 in principal amount, which is equivalent to an initial conversion price of approximately \$16.43 per share. In addition, following certain corporate events that occur prior to the maturity date, the Company will increase the conversion rate for a holder who elects to convert its convertible notes in connection with such corporate event in certain circumstances. On or after April 1, 2017, until the close of business on the business day immediately preceding the maturity date, holders may convert their convertible notes at any time. The convertible notes may be redeemed by the Company on or after October 1, 2015 if the last reported sale price of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive), including the trading day immediately preceding the date on which the Company provides notice of redemption, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company provides notice of redemption. The Company may redeem the convertible notes in whole but not in part, at a redemption price in cash equal to 100% of the principal amount to be redeemed, plus accrued and unpaid interest, but excluding, the redemption date, plus a make-whole premium payment. The "make whole premium" payment or delivery will be made, as the case may be, in cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock, at the Company's election, equal to the present values of the remaining scheduled payments of interest on the convertible notes to be redeemed through October 1, 2017 (excluding interest accrued to, but excluding, the redemption date), computed using a discount rate equal to 4.5%. The make-whole premium is paid to holders whether or not they convert the convertible notes following the Company's issuance of a redemption notice.

For accounting purposes, the redemption feature in the convertible notes is an embedded derivative that is not clearly and closely related to the convertible notes. Consequently, it was initially bifurcated from the indenture and separately recorded at its fair value as a liability with subsequent changes in fair value to be recorded through earnings. As of September 30, 2012, the fair value of the embedded redemption feature was \$0.0 million as management has determined it is not our intent to exercise the conversion feature.

The following table outlines the Company's debt obligations (in thousands) as of September 30, 2012 and December 31, 2011:

| | <u>Interest rates</u> | <u>Term (months)</u> | <u>As of September 30, 2012</u> | <u>As of December 31, 2011</u> |
|--|-----------------------|----------------------|---------------------------------|--------------------------------|
| Capital leases for equipment | 11.98% | 55 | \$ 126 | \$ 45 |
| Notes payable | N/A | N/A | 952 | 2,084 |
| Line of credit | 5.0% | N/A | 15 | — |
| Convertible senior notes | 4.50% | 60 | 92,757 | — |
| Total debt and capital leases | | | 93,850 | 2,129 |
| Less: current maturities of notes payable and capital leases | | | 359 | 1,675 |
| Non-current maturities of debt and capital leases | | | \$ 93,491 | \$ 454 |

6. Goodwill

The following table is a roll-forward of goodwill from December 31, 2011 to September 30, 2012. The current period additions are the result of the goodwill recognized as excess purchase price in the acquisitions of Kelron and Continental (in thousands):

| | <u>Expedited Transportation</u> | <u>Freight Forwarding</u> | <u>Freight Brokerage</u> | <u>Corporate</u> | <u>Total</u> |
|---------------------------------------|---------------------------------|---------------------------|--------------------------|------------------|-----------------|
| Goodwill at December 31, 2011 | \$ 7,737 | \$ 9,222 | — | — | \$16,959 |
| Acquisitions and other adjustments | — | — | 5,562 | — | 5,562 |
| Goodwill at September 30, 2012 | \$ 7,737 | \$ 9,222 | \$ 5,562 | \$ — | \$22,521 |

7. Stockholder's Equity

On each of July 9, April 5, and January 9, 2012, the Company's board of directors approved the declaration of a dividend payable to holders of the Company's Series A Convertible Perpetual Preferred Stock (the "Preferred Stock"). Each declared dividend equaled \$10 per share of Preferred Stock as specified in the Certificate of Designation of the Preferred Stock. The quarterly declared dividends were each \$0.8 million and were paid on July 16, April 16 and January 17, 2012.

On March 20, 2012, the Company closed a registered underwritten public offering of 9,200,000 shares of common stock (the "Offering"), including 1,200,000 shares issued and sold as a result of the full exercise of the underwriters' overallotment option, at a price of \$15.75 per share. The Company received \$137.0 million in net proceeds from the Offering after underwriting discounts and estimated expenses. The Company intends to use the proceeds for general corporate purposes, which may include potential acquisitions.

On September 2, 2011, pursuant to the Investment Agreement, dated as of June 13, 2011 (the "Investment Agreement"), by and among Jacobs Private Equity, LLC ("JPE"), the other investors party thereto (collectively with JPE, the "Investors") and the Company, the Company issued to the Investors, for \$75.0 million in cash: (i) an aggregate of 75,000 shares of the Preferred Stock which are initially convertible into an aggregate of 10,714,286 shares of common stock, and (ii) warrants initially exercisable for an aggregate of 10,714,286 shares of common stock at an initial exercise price of \$7.00 per common share (the "Warrants"). The Company's stockholders approved the issuance of the Preferred Stock and the Warrants at the special meeting of the Company's stockholders on September 1, 2011.

8. Stock-Based Compensation

The following table summarizes the Company's equity awards outstanding and exercisable as of December 31, 2011 and September 30, 2012:

| | <u>Options</u> | | | | <u>Restricted Stock Units</u> | |
|--|------------------|--|-----------------------------|--|-------------------------------|---|
| | <u>Options</u> | <u>Weighted Average Exercise Price</u> | <u>Exercise Price Range</u> | <u>Weighted Average Remaining Term</u> | <u>Restricted Stock Units</u> | <u>Weighted Average Grant Date Fair Value</u> |
| Outstanding at December 31, 2011 | 1,381,958 | 8.53 | 2.28 - 18.07 | 9.00 | 695,000 | 10.33 |
| Granted | 193,000 | 14.38 | 11.46 - 18.07 | | 405,691 | 12.63 |
| Expired | — | — | — | | — | — |
| Exercised | 123,473 | 4.79 | 2.96 - 10.56 | | 231,875 | 11.04 |
| Forfeited | 79,964 | 13.63 | 3.48 - 16.92 | | — | — |
| Outstanding at September 30, 2012 | 1,371,521 | \$ 9.39 | 2.28 - 18.07 | 8.28 | 868,816 | \$ 11.21 |

The stock-based compensation expense for outstanding restricted stock units (“RSUs”) was \$0.9 million and \$2.6 million for the three-month and nine-month periods ended September 30, 2012, respectively. Of the 868,816 outstanding RSUs, 558,816 vest subject to service conditions and 310,000 vest subject to service and performance-based conditions. Based on the Company’s financial performance in 2012, all performance-based conditions relating to outstanding RSUs vesting have been satisfied.

As of September 30, 2012, the Company had approximately \$9.5 million of unrecognized compensation cost related to non-vested RSU compensation that is anticipated to be recognized over a weighted-average period of approximately 3.28 years. Remaining estimated compensation expense related to outstanding restricted stock-based grants is \$0.6 million, \$2.5 million, \$2.5 million, \$2.4 million and \$1.5 million for the years ending December 31, 2012, 2013, 2014, 2015 and 2016, respectively.

As of September 30, 2012, the Company had 573,196 options vested and exercisable and \$3.9 million of unrecognized compensation cost related to stock options. The remaining estimated compensation expense related to the existing stock options is \$0.3 million, \$1.0 million, \$1.0 million, \$1.0 million and \$0.6 million for the years ended December 31, 2012, 2013, 2014, 2015 and 2016, respectively.

9. Earnings per Share

Basic earnings per common share are computed by dividing net income available to common shareholders by the weighted average number of shares of common stock outstanding during the period. Diluted earnings per common share are computed by dividing net income available to common shareholders by the combined weighted average number of shares of common stock outstanding and the potential dilution of stock options, Warrants, RSUs, convertible notes and Preferred Stock outstanding during the period, if dilutive. For the three-month and nine-month periods ended September 30, 2012 and 2011, the weighted average of potentially dilutive securities excluded from the computation of diluted earnings per share is shown per the table below.

| | Three Months Ended | | Nine Months Ended | |
|---|--------------------|--------------------|--------------------|--------------------|
| | September 30, 2012 | September 30, 2011 | September 30, 2012 | September 30, 2011 |
| Basic common stock outstanding | 17,663,403 | 8,252,891 | 14,952,059 | 8,227,375 |
| Potentially Dilutive Securities: | | | | |
| Shares underlying the conversion of preferred stock to common stock | 10,714,286 | 3,260,870 | 10,714,286 | 1,098,901 |
| Shares underlying the conversion of the convertible senior notes | 330,784 | — | 111,066 | — |
| Shares underlying warrants to purchase common stock | 5,516,551 | 4,564,224 | 5,770,577 | 3,634,139 |
| Shares underlying stock options to purchase common stock | 507,425 | 402,819 | 549,084 | 361,707 |
| Shares underlying restricted stock units | 138,921 | 682 | 158,308 | — |
| | 17,207,967 | 8,228,595 | 17,303,321 | 5,094,747 |
| Diluted weighted shares outstanding | 34,871,370 | 16,481,486 | 32,255,380 | 13,322,122 |

The impact of this dilution was not reflected in the earnings per share calculations in the Unaudited Condensed Consolidated Statements of Operations because the impact was anti-dilutive. The treasury method was used to determine the shares underlying the Warrants with an average market price of \$14.43 per share and \$15.17 per share for the three-month and nine-month periods ended September 30, 2012, respectively.

10. Income Taxes

The Company has determined its interim tax provision projecting an estimated annual effective tax rate. For the three months ended September 30, 2012, the Company recorded an income tax benefit of \$6.5 million yielding an effective tax rate of (67.2)%. For the nine months ended September 30, 2012, the Company recorded an income tax benefit of \$6.2 million yielding an effective tax rate of (36.0)%. The effective tax rate differs from the U.S. statutory rate of 35% in the periods ended September 30, 2012, primarily due to the impact of the release of the valuation allowance previously recorded during the three months ended June 30, 2012.

During the three months ended September 30, 2012, the Company reassessed its U.S. valuation allowance requirements taking into consideration deferred tax liabilities created through the issuance of the convertible notes during the quarter. The Company evaluated all available evidence in its analysis, including reversal of the deferred tax liabilities, carrybacks available and historical and projected pre-tax profits generated by the Company’s U.S. operations. The Company also considered tax planning strategies that are prudent and can be reasonably implemented. As a result, the Company recorded a

\$2.8 million tax benefit related to the reversal of a significant portion of the valuation allowance established on U.S. deferred tax assets. The Company has a valuation allowance of \$0.2 million as of September 30, 2012 on the deferred tax assets in the state jurisdictions where it is not more likely than not that the deferred tax assets will be utilized, while at December 31, 2011, the Company had no valuation allowance on its deferred tax assets.

The Company accrued \$0.9 million and \$0.2 million for uncertain tax positions related to certain potential income taxes at September 30, 2012 and December 31, 2011, respectively, of which \$0.7 million and \$0.0 million related to uncertain tax positions from tax filings of the Company's non-U.S. subsidiaries. The Company is currently under audit by the Internal Revenue Service of the United States related to its 2010 fiscal year tax filing.

In general, it is the practice and intention of the Company to reinvest the earnings of its non-U.S. subsidiaries in those operations. As of September 30, 2012, the Company has not made a provision for U.S. or additional foreign withholding taxes for financial reporting over the tax basis of investments in foreign subsidiaries that are essentially permanent in duration. Generally, such amounts become subject to U.S. taxation upon the remittance of dividends and under certain other circumstances. It is not practicable to estimate the amount of deferred tax liability related to investments in these foreign subsidiaries.

To the extent the Company reports income in future periods, the Company intends to use its net operating loss carryforwards to the extent available to offset taxable income and reduce cash outflows for income taxes. Although currently not anticipated, the Company's ability to use its federal and state net operating loss carryforwards may become subject to restrictions attributable to equity transactions in the future resulting from changes in ownership as defined under Internal Revenue Code Section 382

11. Related Party Transactions

There were no related party transactions that occurred during the three- and nine-month periods ended September 30, 2012 and 2011.

12. Operating Segments

The Company has three reportable segments as described in Note 1 of the unaudited condensed consolidated financial statements.

The costs of the Company's board of directors, executive team and certain corporate costs associated with operating as a public company are referred to as "corporate" charges.

The accounting policies of the reportable segments are the same as those described in the summary of significant accounting policies. The Company evaluates performance based on operating income of the respective business segments.

The following schedule identifies select financial data for each of the Company's operating segments for the three-month and nine month periods ended September 30, 2012 and 2011, respectively (in thousands):

XPO Logistics, Inc.
Segment Data
(Unaudited)
(in thousands)

| | <u>Expedited Transportation</u> | <u>Freight Forwarding</u> | <u>Freight Brokerage</u> | <u>Corporate</u> | <u>Eliminations</u> | <u>Total</u> |
|--|-------------------------------------|-------------------------------|------------------------------|------------------|---------------------|--------------|
| Three Months Ended September 30, 2012 | | | | | | |
| Revenue | \$ 23,755 | \$ 17,304 | \$ 32,169 | \$ — | \$ (2,240) | \$ 70,988 |
| Operating income (loss) | 1,217 | 97 | (2,351) | (8,243) | — | (9,280) |
| Depreciation and amortization | 127 | 145 | 316 | 133 | — | 721 |
| Interest expense | 1 | 1 | 1 | 12 | — | 15 |
| Tax benefit | — | — | (415) | (6,045) | — | (6,460) |
| Goodwill | 7,737 | 9,222 | 5,562 | — | — | 22,521 |
| Total assets | 31,728 | 23,272 | 31,038 | 357,127 | (55,394) | 387,771 |
| Three Months Ended September 30, 2011 | | | | | | |
| Revenue | \$ 23,419 | \$ 16,918 | \$ 8,246 | \$ — | \$ (1,194) | \$ 47,389 |
| Operating income (loss) | 2,453 | 639 | 499 | (3,121) | — | 470 |
| Depreciation and amortization | 144 | 144 | 11 | 5 | — | 304 |
| Interest expense | 3 | 38 | 8 | — | — | 49 |
| Tax provision | 660 | 145 | 144 | (718) | — | 231 |
| Goodwill | 7,737 | 9,222 | — | — | — | 16,959 |
| Total assets | 25,061 | 23,561 | 5,066 | 94,067 | (19,725) | 128,030 |
| Nine Months Ended September 30, 2012 | | | | | | |
| Revenue | \$ 71,906 | \$ 49,229 | \$ 53,974 | \$ — | \$ (5,021) | \$ 170,088 |
| Operating income (loss) | 5,171 | 387 | (3,477) | (18,953) | — | (16,872) |
| Depreciation and amortization | 393 | 433 | 413 | 223 | — | 1,462 |
| Interest expense | 3 | 1 | 2 | 24 | — | 30 |
| Tax provision (benefit) | — | — | (415) | (5,786) | — | (6,201) |
| Goodwill | 7,737 | 9,222 | 5,562 | — | — | 22,521 |
| Total assets | 31,728 | 23,272 | 31,038 | 357,127 | (55,394) | 387,771 |
| Nine Months Ended September 30, 2011 | | | | | | |
| Revenue | \$ 67,221 | \$ 48,379 | \$ 20,916 | \$ — | \$ (3,525) | \$ 132,991 |
| Operating income (loss) | 6,368 | 1,510 | 809 | (4,574) | — | 4,113 |
| Depreciation and amortization | 465 | 431 | 32 | 16 | — | 944 |
| Interest expense | 3 | 116 | 25 | 1 | — | 145 |
| Tax provision | 1,774 | 346 | 227 | (662) | — | 1,685 |
| Goodwill | 7,737 | 9,222 | — | — | — | 16,959 |
| Total assets | 25,061 | 23,561 | 5,066 | 94,067 | (19,725) | 128,030 |

13. Subsequent Events

On October 8, 2012, the Company's board of directors approved the declaration of a dividend payable to holders of the Preferred Stock. The declared dividend equaled \$10 per share of Preferred Stock as specified in the Certificate of Designation of the Preferred Stock. The total declared dividend equaled \$0.8 million and was paid on October 15, 2012.

On October 17, 2012, as part of the underwritten registered public offering on September 26, 2012 of the 4.50% convertible notes due October 1, 2017, the underwriters exercised the overallotment option to purchase \$18.8 million additional principal amount of the convertible notes. The Company received approximately \$18.1 million in net proceeds after underwriting discounts, commissions and expenses were paid.

On October 24, 2012, the Company and its wholly-owned subsidiary, XPO Logistics, LLC, entered into a definitive asset purchase agreement (the "Agreement") with Turbo Logistics, Inc. ("Turbo Logistics"), Turbo Dedicated, Inc. ("Turbo Dedicated", and together with Turbo Logistics, "Turbo"), Ozburn-Hessey Logistics, LLC, and OHH Acquisition Corporation.

Turbo primarily operates a non-asset-based, third party logistics business in Gainesville, Ga.; Reno, Nev.; Chicago, Ill.; and Dallas, Texas. Pursuant to the Agreement, on October 24, 2012 the Company purchased substantially all of the assets of Turbo for total cash consideration of \$50.0 million, excluding any working capital adjustments, with no assumption of debt. The assets acquired pursuant to the Agreement included rights under certain contracts, intellectual property, equipment, accounts receivable, and other related assets.

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

Cautionary Statement Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q and other written reports and oral statements we make from time to time contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements of historical fact are, or may be deemed to be, forward-looking statements. In some cases, forward-looking statements can be identified by the use of forward-looking terms such as "anticipate," "estimate," "believe," "continue," "could," "intend," "may," "plan," "potential," "predict," "should," "will," "expect," "objective," "projection," "forecast," "goal," "guidance," "outlook," "effort," "target" or the negative of these terms or other comparable terms. However, the absence of these words does not mean that the statements are not forward-looking. These forward-looking statements are based on certain assumptions and analyses made by us in light of our experience and perception of historical trends, current conditions and expected future developments, as well as other factors we believe are appropriate in the circumstances. These forward-looking statements are subject to known and unknown risks, uncertainties and assumptions that may cause actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by such forward-looking statements. Factors that might cause or contribute to a material difference include, but are not limited to, those discussed elsewhere in this Quarterly Report, the risks discussed in our other filings with the SEC and the following: economic conditions generally; competition; our ability to find suitable acquisition candidates and execute our acquisition strategy; our ability to raise capital; our ability to attract and retain key employees to execute our growth strategy; our ability to develop and implement a suitable information technology system; our ability to maintain positive relationships with our network of third-party transportation providers; litigation; and governmental regulation. All forward-looking statements set forth in this Quarterly Report are qualified by these cautionary statements and there can be no assurance that the actual results or developments anticipated by us will be realized or, even if substantially realized, that they will have the expected consequence to or effects on us or our business or operations. Forward-looking statements set forth in this Quarterly Report speak only as of the date hereof and we do not undertake any obligation to update forward-looking statements to reflect subsequent events or circumstances, changes in expectations or the occurrence of unanticipated events.

The following discussion should be read in conjunction with our Unaudited Condensed Consolidated Financial Statements and related Notes thereto included elsewhere in this Quarterly Report. In addition, reference should be made to our Audited Consolidated Financial Statements and Notes thereto and related Management's Discussion and Analysis of Financial Condition and Results of Operations included in our most recent Annual Report on Form 10-K.

Critical Accounting Policies

The preparation of condensed consolidated financial statements in conformity with United States generally accepted accounting principles requires management to make estimates and assumptions. In certain circumstances, those estimates and assumptions can affect amounts reported in the accompanying unaudited condensed consolidated financial statements. We have made our best estimates and judgments of certain amounts included in the financial statements, giving due consideration to materiality. We do not believe there is a great likelihood that materially different amounts will be reported related to the accounting policies described below. However, application of these accounting policies involves the exercise of judgment and use of assumptions as to future uncertainties and, as a result, actual results could differ materially from these estimates. Note 1 of the "Notes to Consolidated Financial Statements" in the audited consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2011 includes a summary of the significant accounting policies and methods used in the preparation of our consolidated financial statements. "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the year ended December 31, 2011 includes a summary of our critical accounting policies. For the period ended September 30, 2012, there were no significant changes to our critical accounting policies.

New Pronouncements

On September 15, 2011, the FASB approved ASU No. 2011-08, “*Intangibles—Goodwill and Other (Topic 350): Testing Goodwill for Impairment*”. This ASU permits an entity to first assess qualitative factors to determine whether it is more likely than not (a likelihood of more than 50 percent) that the fair value of a reporting unit is less than its carrying amount. After assessing qualitative factors, if an entity determines that it is not more likely than not that the fair value of the reporting unit is less than its carrying amount, no further testing is necessary. If an entity determines that it is more likely than not that the fair value of the reporting unit is less than its carrying value, then the traditional two-step goodwill impairment test must be performed. This ASU is effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011.

Executive Summary

XPO Logistics, Inc., a Delaware corporation (the “Company”, “we”, “our” or “us”), is a non-asset based transportation services provider. We do not own trucks, airplanes or ships. We act as a middleman between shippers and carriers who outsource their transportation logistics to us as a third-party broker.

Our services are offered through three distinct business segments: Freight Brokerage (XPO Brokerage and Bounce Logistics), which places shippers’ freight with qualified carriers; Expedited Transportation (Express-1), which provides urgent freight transportation via independent contractors; and Freight Forwarding (Concert Group Logistics or CGL), which arranges domestic and international shipments using ground, air and ocean transport through a network of agent-owned and Company-owned locations.

In September 2011, following the equity investment in the Company led by Jacobs Private Equity, LLC (the “Equity Investment”), we began to implement a three-pronged strategy to leverage our strengths—including management expertise, operational scale and substantial capital resources—in pursuit of significant growth and value creation:

- *Targeted acquisitions*—We intend to make selective acquisitions of non-asset based freight brokerage businesses that would benefit from our greater scale and potential access to capital. We may also make acquisitions of freight forwarding, expedited and intermodal service businesses, among others, that complement our current service offerings.
- *Cold-starts*—We plan to establish new freight brokerage and freight forwarding offices in locations across North America, and we are actively recruiting managers with a proven track record of building successful brokerage operations. We expect the new brokerage offices to grow revenue by developing customer and carrier relationships in new territories.
- *Optimized operations*—We intend to optimize our existing operations, acquired companies and greenfield locations by investing in an expanded sales and service workforce, implementing an advanced information technology infrastructure, incorporating industry best practices, and leveraging scale to share capacity more efficiently and increase buying power.

The backbone of our customer service organization in all three of our business segments is our information technology. We are developing a scalable platform across the Company, with sales, service, carrier and track-and-trace capabilities, as well as benchmarking and analysis.

Other Reporting Disclosures

The expedited transportation industry commonly negotiates both fuel surcharges charged to its customers as well as fuel surcharges paid to its carriers. Our fuel surcharges are determined on a negotiated customer-by-customer basis and are primarily based on a fuel matrix based on the Department of Energy fuel price index. Fuel surcharge revenue is charged to our customers to provide for variable costs associated with changing fuel prices. Independent contractors and brokered carriers are responsible for the cost of fuel, and therefore are paid a fuel surcharge by us to offset their variable cost of fuel. The fuel surcharge payment is expensed as incurred and included in our cost of transportation. Fuel surcharge payments are consistently applied based on the Department of Energy fuel price index and the type of truck utilized. Because fuel surcharge revenue varies based on negotiated customer rates and the overall mix of business, and because our fuel surcharge expense is applied on a consistent basis, gross margin and our gross margin percentage attributable to fuel surcharges will vary from period to period. The impact of fuel surcharge revenue and expense is discussed within management’s discussion and analysis of our Expedited Transportation business unit.

Within our other two business units, Freight Forwarding and Freight Brokerage, fuel charges to our customers are not commonly negotiated and identified separately from total revenue and the associated cost of transportation. Although fuel costs are factored into overall pricing of these services, they are not typically separately identified by carriers and therefore we have not included an analysis of fuel surcharges for these two operating segments. We believe this is a common practice within the freight forwarding and freight brokerage business sectors.

This discussion and analysis refers from time to time to Expedited Transportation's international operations. These operations involve the transportation of freight shipments that originate in or are delivered to either Canada or Mexico. These freight shipments either originate in or are delivered to the United States, and therefore only a portion of the freight movement actually takes place in Canada or Mexico. This service is provided to domestic customers who pay primarily in U.S. dollars. We discuss this freight separately because our Expedited Transportation business unit has developed an expertise in cross-docking freight at the border through the utilization of Canadian and Mexican carriers, and this portion of our business has seen significant growth.

This discussion and analysis also refers from time to time to our Freight Forwarding international operations. These freight movements also originate in or are delivered to the United States and are primarily paid for in U.S. dollars. We discuss this freight separately because of Freight Forwarding's more recent focus on international freight movements through its purchase of LRG International, Inc. (now known as CGL International).

This discussion and analysis also refers time to time to our Freight Brokerage international operations. These brokered shipments may originate in either the United States or Canada and are largely attributable to our recent acquisition of Kelron. These services are provided to both U.S. and Canadian customers who primarily pay in their home currency.

We often refer to the costs of our board of directors, our executive team and certain operating costs associated with operating as a public company as "corporate" charges. In addition to these costs, certain other charges are reported on a consolidated basis within the corporate line items of the following tables.

The following table is consolidated, not segmented.

XPO Logistics, Inc.
Consolidated Summary Financial Table
(Unaudited)
(in thousands)

| | Three Months Ended September 30, | | \$ Variance Favorable (Unfavorable) | Percentage Variance Favorable (Unfavorable) | Nine Months Ended September 30, | | \$ Variance Favorable (Unfavorable) | Percentage Variance Favorable (Unfavorable) |
|---------------------------------|-------------------------------------|---------------|---|--|------------------------------------|-----------------|---|--|
| | 2012 | 2011 | | | 2012 | 2011 | | |
| Revenue | | | | | | | | |
| Operating revenue | \$70,988 | \$47,389 | \$ 23,599 | 49.8% | \$170,088 | \$132,991 | \$ 37,097 | 27.9% |
| Direct expense | | | | | | | | |
| Transportation services | 57,436 | 35,539 | (21,897) | -61.6% | 134,670 | 99,568 | (35,102) | -35.3% |
| Station commissions | 2,428 | 2,798 | 370 | 13.2% | 7,201 | 8,387 | 1,186 | 14.1% |
| Insurance | 511 | 426 | (85) | -20.0% | 1,348 | 1,182 | (166) | -14.0% |
| Other | 689 | 406 | (283) | -69.7% | 1,706 | 1,247 | (459) | -36.8% |
| Total direct expense | 61,064 | 39,169 | (21,895) | -55.9% | 144,925 | 110,384 | (34,541) | -31.3% |
| Gross margin | 9,924 | 8,220 | 1,704 | 20.7% | 25,163 | 22,607 | 2,556 | 11.3% |
| SG&A expense | | | | | | | | |
| Salaries & benefits | 8,936 | 3,420 | (5,516) | -161.3% | 20,282 | 9,709 | (10,573) | -108.9% |
| Purchased services | 5,177 | 2,996 | (2,181) | -72.8% | 9,783 | 4,912 | (4,871) | -99.2% |
| Depreciation & amortization | 670 | 253 | (417) | -164.8% | 1,309 | 795 | (514) | -64.7% |
| Other | 4,421 | 1,081 | (3,340) | -309.0% | 10,661 | 3,078 | (7,583) | -246.4% |
| Total SG&A expense | 19,204 | 7,750 | (11,454) | -147.8% | 42,035 | 18,494 | (23,541) | -127.3% |
| Operating (loss) income | (9,280) | 470 | (9,750) | -2074.5% | (16,872) | 4,113 | (20,985) | -510.2% |
| Other (income) expense | 314 | — | (314) | | 319 | 62 | (257) | -414.5% |
| Interest expense | 15 | 49 | 34 | 69.4% | 30 | 145 | 115 | 79.3% |
| Income before income tax | (9,609) | 421 | (10,030) | -2382.4% | (17,221) | 3,906 | (21,127) | -540.9% |
| Income tax (benefit) provision | (6,460) | 231 | 6,691 | 2896.5% | (6,201) | 1,685 | 7,886 | 468.0% |
| Net (loss) income | \$ (3,149) | \$ 190 | \$ (3,339) | -1757.4% | \$ (11,020) | \$ 2,221 | \$ (13,241) | -596.2% |

Consolidated Results

Three Months Ended September 30, 2012 Compared to Three Months Ended September 30, 2011

In total, our consolidated revenue for the third quarter of 2012 increased 49.8% to \$71.0 million from \$47.4 million in the same period of 2011. This increase was driven largely by the acquisitions of Kelron and Continental Freight Services, Inc. (“Continental”), and increased revenues in Freight Brokerage attributable to our new cold-start locations.

Direct expense represents cost attributable to freight transportation. Our “asset-light” operating model provides transportation capacity through variable cost third-party transportation arrangements, therefore enabling us to manage the largest component of our operating costs as our volumes fluctuate. Our primary means of providing capacity are through our fleet of independent owner operators in Expedited Transportation and our network of independent ground, ocean and air carriers in Freight Forwarding and Freight Brokerage. We view this operating model as a strategic advantage, particularly in uncertain economic conditions.

Total gross margin for the third quarter of 2012 increased 20.7% to \$9.9 million from \$8.2 million in the same period of 2011. As a percentage of revenue, gross margin was 14.0% in the third quarter of 2012 as compared to 17.3% in the same quarter of 2011. The decrease in gross margin as a percentage of revenue was due to two factors: lower margins in our Expedited Transportation segment; and increased revenues in our Freight Brokerage segment, which typically experiences lower margins than our other operations. Freight Brokerage’s gross margins also have been negatively impacted by lower margin sales during the start-up phases of our cold-start sales offices.

Selling, general and administrative (“SG&A”) expense as a percentage of revenue was 27.1% in the third quarter of 2012, as compared to 16.4% in the same quarter of 2011. Overall, SG&A expense increased by \$11.5 million in the third quarter of 2012 compared to the same quarter of 2011, primarily due to an increase in Corporate SG&A as discussed further in the XPO Corporate operating segment, and costs associated with our new Freight Brokerage offices including our new North American Operations Center in Charlotte, North Carolina (“Operations Center”).

Our effective income tax rate for the three months ended September 30, 2012 and 2011 was (67.2%) and 54.9%, respectively. The significant difference between the tax rates is due to the reversal of the valuation allowance of \$2.8 million previously recorded during the three months ended June 30, 2012 as a result of our convertible notes issuance during the three months ended September 30, 2012. The convertible notes issuance during the three months ended September 30, 2012 created a deferred tax liability which allowed the Company to remove the valuation allowance and recognize a significant portion of the deferred tax assets.

We experienced a net loss of \$3.1 million for the third quarter of 2012 compared to \$0.2 million of net income for the same quarter in 2011. The reduction in net income was due primarily to the costs incurred at Corporate and Freight Brokerage in growing the business through acquisitions and new cold-start sales offices, net of the income tax benefit for the period.

Nine Months Ended September 30, 2012 Compared to Nine Months Ended September 30, 2011

In total, our consolidated revenue for the first nine months of 2012 increased 27.9% to \$170.1 million from \$133.0 million in the same period of 2011. This increase was driven largely due to the acquisitions of Kelron and Continental, strong volume growth in Freight Brokerage attributable to our new cold-start locations, as well as by increased revenue per load in Expedited Transportation.

Total gross margin for the first nine months of 2012 increased 11.3% to \$25.2 million from \$22.6 million in the same period of 2011. As a percentage of revenue, gross margin was 14.8% as compared to 17.0% in 2011. The decrease in gross margin as a percentage of revenue is attributable primarily to increased revenues in our Freight Brokerage segment, which typically experiences lower margins than our other operations. Freight Brokerage’s gross margins also have been negatively impacted by lower margin sales during the start-up phases of our cold-start sales offices.

SG&A expense as a percentage of revenue was 24.7% in the first nine months of 2012, as compared to 13.9% in the same period of 2011. Overall, SG&A expense increased by \$23.6 million for the first nine months of 2012 compared to the same period of 2011, primarily due to an increase in Corporate SG&A as discussed further in the XPO Corporate operating segment and costs associated with our new Freight Brokerage offices and our Operations Center.

Our effective income tax rate for the nine months ended September 30, 2012 and 2011 was (36.0)% and 43.1%, respectively. The significant difference between the tax rates is due to the recognition of a tax benefit for the nine months ended September 30, 2012 due to the net operating losses incurred.

We experienced a net loss of \$11.0 million for the first nine months of 2012 compared to \$2.2 million of net income for the same period in 2011. The reduction in net income was due primarily to the costs incurred at Corporate and Freight Brokerage in growing the business through acquisitions and new cold-start sales offices, net of the income tax benefit.

**Freight Brokerage
Summary Financial Table
(Unaudited)
(in thousands)**

| | Three Months Ended September 30, | | \$ Variance Favorable/ (Unfavorable) | Percentage Variance Favorable/ (Unfavorable) | Nine Months Ended September 30, | | \$ Variance Favorable/ (Unfavorable) | Percentage Variance Favorable/ (Unfavorable) |
|--------------------------------|----------------------------------|---------------|--------------------------------------|--|---------------------------------|---------------|--------------------------------------|--|
| | 2012 | 2011 | | | 2012 | 2011 | | |
| Revenue | | | | | | | | |
| Operating revenue | \$32,169 | \$8,246 | \$ 23,923 | 290.1% | \$53,974 | \$20,916 | \$ 33,058 | 158.1% |
| Direct expense | | | | | | | | |
| Transportation services | 27,959 | 6,868 | (21,091) | -307.1% | 47,119 | 17,562 | (29,557) | -168.3% |
| Insurance | 13 | 20 | 7 | 35.0% | 14 | 45 | 31 | 68.9% |
| Other | 146 | — | (146) | | 239 | 1 | (238) | -23800.0% |
| Total direct expense | 28,118 | 6,888 | (21,230) | -308.2% | 47,372 | 17,608 | (29,764) | -169.0% |
| Gross margin | 4,051 | 1,358 | 2,693 | 198.3% | 6,602 | 3,308 | 3,294 | 99.6% |
| SG&A expense | | | | | | | | |
| Salaries & benefits | 3,961 | 681 | (3,280) | -481.6% | 6,392 | 1,779 | (4,613) | -259.3% |
| Purchased services | 694 | 38 | (656) | -1726.3% | 1,022 | 113 | (909) | -804.4% |
| Depreciation & amortization | 316 | 11 | (305) | -2772.7% | 413 | 32 | (381) | -1190.6% |
| Other | 1,431 | 129 | (1,302) | -1009.3% | 2,252 | 575 | (1,677) | -291.7% |
| Total SG&A expense | 6,402 | 859 | (5,543) | -645.3% | 10,079 | 2,499 | (7,580) | -303.3% |
| Operating (loss) income | \$ (2,351) | \$ 499 | \$ (2,850) | -571.1% | \$ (3,477) | \$ 809 | \$ (4,286) | -529.8% |

Freight Brokerage

Three Months Ended September 30, 2012 Compared to Three Months Ended September 30, 2011

Revenue in our Freight Brokerage segment increased by 290.1% to \$32.2 million in the third quarter of 2012 compared to \$8.2 million for the same period of 2011. Revenue growth was primarily due to the acquisitions of Kelron and Continental, as well as the opening of our eight cold-start sales offices, including the opening of Chicago, Illinois, Jacksonville, Florida, Montgomery, Alabama and Morris County, New Jersey sales offices during the three months ended September 30, 2012.

Freight Brokerage's gross margin increased 198.3% to \$4.1 million in the third quarter of 2012 from \$1.4 million in the same period of 2011. As a percentage of revenue, Freight Brokerage's gross margin was 12.6% in the third quarter of 2012, compared to 16.5% in the same quarter of 2011. The decrease in gross margin as a percentage of revenue was due primarily to the impact of lower margin sales during the start-up phases of our cold-start sales offices.

SG&A expense increased 645.3% to \$6.4 million in the third quarter of 2012 from \$0.9 million in the same quarter of 2011. The increase in SG&A expense was associated with investment in our cold-start sales offices, and new Operations Center in Charlotte as well as integration costs incurred at Kelron and Continental.

Our Freight Brokerage operations generated an operating loss of \$2.4 million for the third quarter of 2012 compared to operating income of \$0.5 million for the same quarter in 2011. The reduction in operating income was due to the increase in SG&A expense, offset in part by increased gross margin, as described above.

Nine Months Ended September 30, 2012 Compared to Nine Months Ended September 30, 2011

Revenue in our Freight Brokerage segment increased by 158.1% to \$54.0 million in the first nine months of 2012 compared to \$20.9 million for the same period of 2011. Revenue growth was primarily due to the acquisitions of Kelron and Continental as well as the opening of our cold-start sales offices.

Freight Brokerage's gross margin increased 99.6% to \$6.6 million in the first nine months of 2012 from \$3.3 million in the same period of 2011. As a percentage of revenue, Freight Brokerage gross margin was 12.2% in the first nine months of 2012, compared to 15.8% in the same period of 2011. The decrease in gross margin as a percentage of revenue was due primarily to the impact of lower margin sales during the start-up phases of our cold-start sales offices.

SG&A expense increased 303.3% to \$10.1 million in the first nine months of 2012 from \$2.5 million in the same period of 2011. The increase in SG&A expense was associated with the investments in our cold-start sales offices and new Operations Center in Charlotte as well as integration costs incurred at Kelron and Continental.

Our Freight Brokerage operations generated an operating loss of \$3.5 million for the first nine months of 2012 compared to operating income of \$0.8 million for the same period in 2011. The reduction in operating income was due to the increase in SG&A expense, offset in part by increased gross margin, as described above.

In connection with the integration of the recent Kelron acquisition, the Company is conducting a review of Kelron's existing business and profit performance. The Company expects that some low-margin or negative-margin business will not be continued in the future. Accordingly, the Company expects the revenue contributed by the Kelron branches to decrease in the near term, although it is not possible to quantify any decrease at this time.

Management's growth strategy for Freight Brokerage is based on:

- Selective acquisitions of non-asset based freight brokerage firms that would benefit from our scale and potential access to capital;
- The opening of new freight brokerage sales offices in the U.S.;
- Investments in our Operations Center in Charlotte, North Carolina focused on our carrier procurement and freight tracking functions;
- Investment in an expanded sales and service workforce;
- Technology investments to improve efficiency in sales and carrier procurement; and
- The integration of industry best practices, with specific focus on better leveraging our scale and lowering administrative overhead.

**Expedited Transportation
Summary Financial Table
(Unaudited)
(in thousands)**

| | Three Months Ended September 30, | | \$ Variance Favorable (Unfavorable) | Percentage Variance Favorable (Unfavorable) | Nine Months Ended September 30, | | \$ Variance Favorable (Unfavorable) | Percentage Variance Favorable (Unfavorable) |
|-------------------------------|-------------------------------------|-----------------|---|--|------------------------------------|-----------------|---|--|
| | 2012 | 2011 | | | 2012 | 2011 | | |
| Revenue | | | | | | | | |
| Operating revenue | \$23,755 | \$23,419 | \$ 336 | 1.4% | \$71,906 | \$67,221 | \$ 4,685 | 7.0% |
| Direct expense | | | | | | | | |
| Transportation services | 18,803 | 17,634 | (1,169) | -6.6% | 55,995 | 50,888 | (5,107) | -10.0% |
| Insurance | 465 | 371 | (94) | -25.3% | 1,206 | 1,038 | (168) | -16.2% |
| Other | 543 | 406 | (137) | -33.7% | 1,467 | 1,247 | (220) | -17.6% |
| Total direct expense | <u>19,811</u> | <u>18,411</u> | <u>(1,400)</u> | <u>-7.6%</u> | <u>58,668</u> | <u>53,173</u> | <u>(5,495)</u> | <u>-10.3%</u> |
| Gross margin | <u>3,944</u> | <u>5,008</u> | <u>(1,064)</u> | <u>-21.2%</u> | <u>13,238</u> | <u>14,048</u> | <u>(810)</u> | <u>-5.8%</u> |
| SG&A expense | | | | | | | | |
| Salaries & benefits | 1,615 | 1,732 | 117 | 6.8% | 4,940 | 5,209 | 269 | 5.2% |
| Purchased services | 259 | 365 | 106 | 29.0% | 707 | 1,066 | 359 | 33.7% |
| Depreciation & amortization | 77 | 93 | 16 | 17.2% | 241 | 317 | 76 | 24.0% |
| Other | 776 | 365 | (411) | -112.6% | 2,179 | 1,088 | (1,091) | -100.3% |
| Total SG&A expense | <u>2,727</u> | <u>2,555</u> | <u>(172)</u> | <u>-6.7%</u> | <u>8,067</u> | <u>7,680</u> | <u>(387)</u> | <u>-5.0%</u> |
| Operating income | <u>\$ 1,217</u> | <u>\$ 2,453</u> | <u>\$ (1,236)</u> | <u>-50.4%</u> | <u>\$ 5,171</u> | <u>\$ 6,368</u> | <u>\$ (1,197)</u> | <u>-18.8%</u> |

Note: Total depreciation and amortization for the Expedited Transportation operating segment included in both direct expense and SG&A was \$127 and \$144 for the three-month periods, respectively, and \$393 and \$465 for the nine-month periods, respectively, ended September 30, 2012 and 2011.

Expedited Transportation

Three Months Ended September 30, 2012 Compared to Three Months Ended September 30, 2011

Revenue in our Expedited Transportation segment increased 1.4% to \$23.8 million in the third quarter of 2012 from \$23.4 million in the same period of 2011. This growth was largely driven by an increase in our temperature control business.

During the third quarter of 2012 fuel surcharge revenue represented 10.0% of total Expedited Transportation revenue, compared to 10.5% in the same period of 2011.

Expedited Transportation gross margin decreased 21.2% to \$3.9 million in the third quarter of 2012 from \$5.0 million in the same period of 2011. As a percentage of revenue, Expedited Transportation gross margin was 16.6% in the third quarter of 2012, compared to 21.4% in the same quarter of 2011. The decrease in gross margin as a percentage of revenue was due largely to an increase in rates paid to our independent contract drivers which went into effect on March 1, 2012, and an increase in fleet recruiting initiatives.

SG&A expense increased 6.7% to \$2.7 million in the third quarter of 2012 from \$2.6 million in the same period of 2011. As a percentage of revenue, SG&A expense was 11.5% in the third quarter of 2012, compared to 10.9% in the same quarter of 2011. The increase in SG&A expense as a percent of revenue was due to an increase in driver recruiting incentives and costs incurred in the opening of our new Birmingham, Alabama facility.

Operating income decreased to \$1.2 million in the third quarter of 2012 compared to \$2.5 million in the same quarter of 2011. The decrease in operating income was primarily related to the decrease in gross margin as a percent of revenue and an increase in SG&A costs as described above.

Nine Months Ended September 30, 2012 Compared to Nine Months Ended September 30, 2011

Revenue in our Expedited Transportation segment increased 7.0% to \$71.9 million in the first nine months of 2012 from \$67.2 million in the same period of 2011. This growth was driven by an increase in temperature control and international revenue as well as an increase in air charter revenue related to a customer project completed in the first quarter.

Expedited Transportation gross margin decreased 5.8% to \$13.2 million in the first nine months of 2012 from \$14.0 million in the same period of 2011. As a percentage of revenue, Expedited Transportation gross margin was 18.4% in the first nine months of 2012, compared to 20.9% in the same period of 2011. The decrease in gross margin as a percentage of revenue was due to an increase in revenue from international and air charter business, which historically have higher revenue per shipment and lower gross margins than other shipments, as well as an increase in rates paid to our independent contract drivers that went into effect on March 1, 2012.

SG&A expense increased 5.0% to \$8.1 million in the first nine months of 2012 from \$7.7 million in the same period of 2011. As a percentage of revenue, SG&A expense was 11.2% in the first nine months of 2012, compared to 11.4% in the same period of 2011. The increase in other SG&A is primarily due to a change in our shared service corporate allocation methodology, which does not have a net impact on consolidated SG&A, and an increase in driver recruiting incentives. The decrease in SG&A as a percentage of revenue in the first nine months of 2012 as compared to the same period of 2011 was due to improved operating leverage as revenues increased.

Operating income decreased to \$5.2 million in the first nine months of 2012 compared to \$6.4 million in the same period of 2011. The decrease in operating income was primarily related to the decrease in gross margin and increase in SG&A, as described above.

Management's growth strategy for our Expedited Transportation unit is based on:

- Targeted investments to expand the sales and service workforce, in order to capture key opportunities in new territories and specialized areas (e.g., temperature control, international and defense);
- Improved utilization of the existing carrier fleet as well as increased focus on carrier recruitment and retention;
- Technology upgrades to improve efficiency in sales and carrier procurement; and
- Selective acquisitions of non-asset based expedited businesses that would benefit from our scale and potential access to capital.

**Freight Forwarding
Summary Financial Table
(Unaudited)
(in thousands)**

| | Three Months Ended September 30, | | \$ Variance Favorable (Unfavorable) | Percentage Variance Favorable (Unfavorable) | Nine Months Ended September 30, | | \$ Variance Favorable (Unfavorable) | Percentage Variance Favorable (Unfavorable) |
|-------------------------------|-------------------------------------|---------------|---|--|------------------------------------|-----------------|---|--|
| | 2012 | 2011 | | | 2012 | 2011 | | |
| Revenue | | | | | | | | |
| Operating revenue | \$17,304 | \$16,918 | \$ 386 | 2.3% | \$49,229 | \$48,379 | \$ 850 | 1.8% |
| Direct expense | | | | | | | | |
| Transportation services | 12,914 | 12,231 | (683) | -5.6% | 36,577 | 34,643 | (1,934) | -5.6% |
| Station commissions | 2,428 | 2,798 | 370 | 13.2% | 7,201 | 8,387 | 1,186 | 14.1% |
| Insurance | 33 | 35 | 2 | 5.7% | 128 | 99 | (29) | -29.3% |
| Other | — | — | — | | — | (1) | (1) | 100.0% |
| Total direct expense | <u>15,375</u> | <u>15,064</u> | <u>(311)</u> | <u>-2.1%</u> | <u>43,906</u> | <u>43,128</u> | <u>(778)</u> | <u>-1.8%</u> |
| Gross margin | <u>1,929</u> | <u>1,854</u> | <u>(75)</u> | <u>-4.0%</u> | <u>5,323</u> | <u>5,251</u> | <u>(72)</u> | <u>-1.4%</u> |
| SG&A expense | | | | | | | | |
| Salaries & benefits | 1,059 | 696 | (363) | -52.2% | 2,770 | 2,123 | (647) | -30.5% |
| Purchased services | 207 | 123 | (84) | -68.3% | 394 | 310 | (84) | -27.1% |
| Depreciation & amortization | 145 | 144 | (1) | -0.7% | 433 | 430 | (3) | -0.7% |
| Other | 421 | 252 | (169) | -67.1% | 1,339 | 878 | (461) | -52.5% |
| Total SG&A expense | <u>1,832</u> | <u>1,215</u> | <u>(617)</u> | <u>-50.8%</u> | <u>4,936</u> | <u>3,741</u> | <u>(1,195)</u> | <u>-31.9%</u> |
| Operating income | <u>\$ 97</u> | <u>\$ 639</u> | <u>\$ (542)</u> | <u>-84.8%</u> | <u>\$ 387</u> | <u>\$ 1,510</u> | <u>\$ (1,123)</u> | <u>-74.4%</u> |

Freight Forwarding

Three Months Ended September 30, 2012 Compared to Three Months Ended September 30, 2011

Revenue in our Freight Forwarding segment increased 2.3% to \$17.3 million in the third quarter of 2012 from \$16.9 million in the same period of 2011. This increase is primarily related to an increase in revenues at our Company-owned branches partially offset by a decrease in revenues at our independently-owned stations.

Direct expense consists primarily of payments for purchased transportation and commissions paid to Freight Forwarding's independently-owned stations. Freight Forwarding's gross margin increased 4.0% to \$1.9 million in the third quarter of 2012 from \$1.8 million in the same period in 2011. As a percentage of revenue, Freight Forwarding gross margin was relatively flat at 11.1% in the third quarter of 2012, compared to 11.0% in the same quarter of 2011.

SG&A expense increased 50.8% to \$1.8 million in the third quarter of 2012 from \$1.2 million in the same quarter of 2011. As a percentage of revenue, SG&A expense increased to 10.6% in the third quarter of 2012 as compared to 7.2% in the same quarter of 2011. The increase in SG&A expense is mainly due to the investment associated with our new Company-owned branches in Charlotte, North Carolina, Atlanta, Georgia, Los Angeles, California, and Houston, Texas.

As of September 30, 2012, Freight Forwarding had 28 locations, including 21 independently-owned stations and seven Company-owned branches. This compared to 25 locations as of September 30, 2011, including 23 independently-owned stations and two Company-owned branches.

Operating income decreased to \$0.1 million for the quarter ended September 30, 2012 compared to \$0.6 million for the same period in 2011. The reduction in operating income was primarily related to the increase in SG&A expense, as described above.

Nine Months Ended September 30, 2012 Compared to Nine Months Ended September 30, 2011

Revenue in our Freight Forwarding segment increased 1.8% to \$49.2 million in the first nine months of 2012 from \$48.4 million in the same period of 2011. The increase was the result of higher revenues at our Company-owned branches partially offset by a decrease in revenues at our independently-owned stations.

Direct expense consists primarily of payments for purchased transportation and commissions paid to Freight Forwarding's independently-owned stations. Freight Forwarding gross margin was relatively flat compared to the same period in 2011. As a percentage of revenue, Freight Forwarding gross margin was 10.8% in the first nine months of 2012, compared to 10.9% in the same period of 2011.

SG&A expense increased 31.9% to \$4.9 million in the first nine months of 2012 from \$3.7 million in the same period of 2011. As a percentage of revenue, SG&A expense was 10.0% in the first nine months of 2012 as compared to 7.7% in the same period of 2011. The increase in SG&A expense is mainly due to the investment associated with our new Company-owned branches in Charlotte, North Carolina, Atlanta, Georgia, Los Angeles, California, and Houston, Texas.

Operating income decreased to \$0.4 million for the first nine months of 2012 compared to \$1.5 million for the same period in 2011. The reduction in operating income was primarily related to the increase in SG&A expense, as described above.

Management's growth strategy for Freight Forwarding is based on:

- Plans to open new offices in key U.S. markets, which will consist of both Company-owned branches and independently-owned stations;
- Growth of international shipments, with a focus on Asia and Latin America;
- Technology upgrades to improve efficiency in sales and carrier procurement; and
- Selective acquisitions of complementary, non-asset based freight forwarding businesses.

XPO Corporate
Summary of Selling, General and Administrative Expense
(Unaudited)
(in thousands)

| | Three Months Ended September 30, | | \$ Variance Favorable/ (Unfavorable) | Percentage Variance Favorable/ (Unfavorable) | Nine Months Ended September 30, | | \$ Variance Favorable/ (Unfavorable) | Percentage Variance Favorable/ (Unfavorable) |
|-------------------------------|-------------------------------------|----------------|--|---|------------------------------------|----------------|--|---|
| | 2012 | 2011 | | | 2012 | 2011 | | |
| SG&A expense | | | | | | | | |
| Salaries & benefits | \$ 2,301 | \$ 311 | \$ (1,990) | -639.9% | \$ 6,180 | \$ 598 | \$ (5,582) | -933.4% |
| Purchased services | 4,017 | 2,470 | (1,547) | -62.6% | 7,660 | 3,423 | (4,237) | -123.8% |
| Depreciation & amortization | 133 | 5 | (128) | -2560.0% | 223 | 16 | (207) | -1293.8% |
| Other | 1,792 | 335 | (1,457) | -434.9% | 4,890 | 537 | (4,353) | -810.6% |
| Total SG&A expense | <u>\$8,243</u> | <u>\$3,121</u> | <u>\$ (5,122)</u> | <u>-164.1%</u> | <u>\$18,953</u> | <u>\$4,574</u> | <u>\$ (14,379)</u> | <u>-314.4%</u> |

Corporate

Three Months Ended September 30, 2012 Compared to Three Months Ended September 30, 2011

Corporate SG&A expense in the third quarter of 2012 increased by \$5.1 million compared to the same period of 2011. As a percentage of consolidated revenue, Corporate SG&A expense was 11.6% in the third quarter of 2012, compared with 6.6% in the same period of 2011. Following the Equity Investment, we assembled a new senior management team. The \$2.0 million increase in salaries and benefits expense relates to the executive team appointments and headcount additions of certain corporate shared services in our Operations Center in Charlotte. Purchased services increased in the third quarter of 2012 due to \$1.4 million of legal fees incurred in connection with pending litigation with C.H. Robinson Worldwide, Inc. (the "Robinson Litigation") and \$1.1 million of acquisition diligence costs. Other SG&A increased primarily due to \$1.0 million of additional stock compensation expense in the third quarter 2012 as well as increased travel costs associated with our acquisitions program.

Nine Months Ended September 30, 2012 Compared to Nine Months Ended September 30, 2011

Corporate SG&A expense for the first nine months of 2012 increased by \$14.4 million, compared to the same period of 2011. As a percentage of total consolidated revenue, Corporate SG&A expense was 11.1% in the first nine months of 2012, compared with 3.4% in the same period of 2011. The increase of \$5.6 million in salaries and benefits expense relates to the executive team appointments and headcount additions related to expansion of corporate shared services. Purchased services increased in the first nine months of 2012 due to an increase in professional service fees incurred for audit and consulting services, acquisition diligence costs and \$1.4 million in legal fees incurred in connection with the Robinson Litigation and \$0.5 million for consulting fees in connection with securing a tax incentive agreement with the state of North Carolina. Subject to our satisfaction of certain employment targets at our Operations Center, we expect to receive up to \$3.2 million of tax incentives from the state of North Carolina during the term of the agreement. Other SG&A increased primarily due to \$3.3 million of stock compensation expense in the first nine months of 2012 and increased travel costs associated with our acquisitions program and the transition of certain corporate shared services to our Operations Center in Charlotte.

Liquidity and Capital Resources

General

As of September 30, 2012, we had \$317.5 million of working capital, including cash of \$296.5 million, compared to working capital of \$83.1 million, including cash of \$74.0 million, as of December 31, 2011. This increase of \$234.4 million in working capital during the nine-month period was due to the receipt of \$137.0 million of net proceeds from the Offering, which closed on March 20, 2012, and \$120.3 million from the convertible senior notes issued on September 26, 2012, offset by the cost of acquiring Kelron and Continental, as well as the cash used in operations. As of September 30, 2012, our cash balances were held in cash depository and money market accounts at four financial institutions.

During the first nine months of 2012, we funded operations, capital expenditures and preferred stock dividends through cash on hand. We continually evaluate our liquidity requirements, capital needs and availability of capital resources based on our operating needs and our planned growth initiatives. In addition to our existing cash balances and net cash provided by operating activities, in certain circumstances we may also use debt financings and issuances of equity or equity-related securities to fund our operating needs and growth initiatives. We are currently evaluating opportunities to enter into an asset-based revolving credit facility that would be supported by our accounts receivable balances. The final terms of this contemplated facility have not been determined.

We believe that our existing cash balances will be sufficient for the next twelve months to finance our existing operations and growth initiatives.

Cash Flow

During the nine months ended September 30, 2012, \$16.9 million was used in cash from operations compared to the generation of \$3.3 million for the comparable period in 2011. The primary use of cash for the period was payment of transportation services and various SG&A expenses.

Cash generated from revenue equaled \$162.0 million for the first nine months of 2012 as compared to \$131.0 million for the same period in 2011 and correlates directly with the revenue increase between the two periods. Cash flow increases are related primarily to volume increases between the periods ended September 30, 2012 and 2011.

Cash used for payment of transportation services for the nine-month period of 2012 equaled \$140.8 million as compared to \$111.2 million for the same period in 2011. The increase in cash outflows between the two periods also directly correlates to the increase in revenues between the two periods. Our average days outstanding in accounts payable and accrued expenses increased by seventeen days between the periods ended September 30, 2012 and 2011.

Other operating uses of cash included SG&A items, which equaled \$37.9 million and \$16.0 million for the nine-month periods ended September 30, 2012 and 2011, respectively. Significant SG&A items include payroll and purchased services. For the nine-month period ended September 30, 2012, payroll expense equaled \$18.1 million as compared to \$9.7 million for the same period in 2011. Included in the \$18.1 million in payroll expense is \$0.8 million of management bonuses accrued during the period, which will be paid in future periods.

Investing activities used approximately \$11.4 million during the first nine months of 2012 compared to a use of \$0.9 million from these activities during the same period in 2011. During the current period, \$7.0 million was used in acquisitions, \$4.0 million was used to purchase fixed assets and \$0.5 million was used to make the final earn-out payment to the former owners of LRG International. During the same period in 2011, we used \$0.5 million to make an earn-out payment and \$0.4 million to purchase fixed assets.

Financing activities generated approximately \$250.9 million for the first nine months of 2012, compared to \$68.5 million for the same period in 2011. Our main source of cash from financing activities during the third quarter of 2012 came from \$120.3 million of net proceeds from the convertible notes and \$137.0 million of net proceeds from the Offering. The primary use of cash in financing activities during the third quarter of 2012 was the payoff of our revolving credit facility and term loan for \$2.1 million and the dividends paid to preferred stockholders of \$2.3 million. During the same period in

2011, sources of cash from financing activities included \$71.6 million of net proceeds from the issuance of the Preferred Stock and the Warrants, and \$0.7 million in proceeds from employee and director stock options. The primary uses of cash for the same period in 2011 were payments on our line of credit of \$2.7 million and payments on our term loan of \$1.2 million.

Long-Term Debt and Line of Credit

During the quarter ended March 31, 2012, we repaid our revolving credit facility and term loan and terminated all related agreements.

In conjunction with the acquisition of Kelron on August 3, 2012, the Company assumed Kelron's credit agreements with Royal Bank of Canada ("RBC") dated April 21, 2011 and amended May 8, 2012 (the "Agreements"), which provided for a \$5.0 million revolving demand facility (the "Revolving Demand Facility") subject to certain borrowing limits. Borrowings under the Revolving Demand Facility can be made either as Royal Bank Prime based loans in Canadian currency at the interest rate equal to the Royal Bank Prime (as defined in the Agreements) rate plus 2.00 percent or as Royal Bank US Base Rate loans in U.S. currency at the interest rate equal to the Royal Bank US Base Rate (as defined in the Agreements) plus 2.00 percent. Borrowings under the Revolving Demand Facility are payable upon demand by RBC. The Revolving Demand Facility is guaranteed by a first ranking security interest in all personal property of Kelron. The Agreements contain customary representations, warranties and general covenants, with which the Company was in compliance at September 30, 2012.

Contractual Obligations

The following table reflects our contractual obligations as of September 30, 2012 (in thousands):

| <u>Contractual Obligations</u> | <u>Payments Due by Period</u> | | | | |
|---|-------------------------------|-------------------------|---------------------|---------------------|--------------------------|
| | <u>Total</u> | <u>Less than 1 Year</u> | <u>1 to 3 Years</u> | <u>3 to 5 Years</u> | <u>More than 5 Years</u> |
| Capital leases payable | \$ 134 | \$ 30 | \$ 64 | \$ 29 | \$ 11 |
| Operating/real estate leases | 14,479 | 2,233 | 4,103 | 1,702 | 6,441 |
| Employment contracts | 14,351 | 3,826 | 7,359 | 3,166 | — |
| Convertible Notes | 28,125 | 5,234 | 11,250 | 11,250 | 391 |
| Total contractual cash obligations | \$57,089 | \$ 11,323 | \$22,776 | \$16,147 | \$ 6,843 |

We do not have any material commitments that have not been disclosed elsewhere.

Off-Balance Sheet Arrangements

We had no off-balance sheet arrangements as of September 30, 2012.

Item 3. Quantitative and Qualitative Disclosures about Market Risk.

The following discussion about our market risk disclosures involves forward-looking statements. Actual results could differ materially from those projected in the forward-looking statements. We are exposed to market risk related to changes in interest rates and foreign currency exchange rates.

Interest Rate Risk. As of September 30, 2012, we held \$296.5 million of cash in cash depository and money market funds held in depository accounts at four financial institutions. The primary market risk associated with these investments is liquidity risk. A hypothetical 100-basis-point change in the interest rate would not have a material effect on our earnings. We do not use derivative financial instruments to manage interest rate risk or to speculate on future changes in interest rates.

Foreign Currency Exchange Risk. As a result of our acquisition of the freight brokerage operations of Kelron on August 3, 2012, our Canadian-based business and results of operations are exposed to movements in the U.S. dollar to Canadian dollar foreign currency exchange rate. As a result of our presence in Canada, a portion of our revenue is denominated in Canadian dollars. If the U.S. dollar strengthens against the Canadian dollar, our revenues reported in U.S. dollars would decline. Movements in the U.S. dollar to Canadian dollar foreign currency exchange rate did not have a material effect on our revenue during the nine months ended September 30, 2012.

With regard to operating expense, our primary exposure to foreign currency exchange risk relates to operating expense incurred in Canadian dollars. If the Canadian dollar strengthens, costs reported in U.S. dollars will increase. Movements in the U.S. dollar to Canadian dollar foreign currency exchange rate did not have a material effect on our operating expense during the nine months ended September 30, 2012.

From time to time, we use foreign currency forward contracts to reduce part of the variability in certain forecasted Canadian dollar denominated cash flows. Generally, these instruments are for maturities of six months or less. We consider several factors when evaluating hedges of our forecasted foreign currency exposures, such as significance of the exposure, offsetting economic exposures and potential costs of hedging. We do not enter into derivative transactions for purposes other than hedging economic exposures. During fiscal 2012, we entered into forward contracts to reduce the variability in our Canadian dollar denominated revenues and operating expenses which relate to the operations of Kelron.

Convertible Debt Outstanding. The fair market value of our outstanding issue of convertible notes is subject to interest rate and market price risk due to the convertible feature of the notes and other factors. Generally the fair market value of fixed interest rate debt will increase as interest rates fall and decrease as interest rates rise. The fair market value of the notes may also increase as the market price of our stock rises and decrease as the market price of our stock falls. Interest rate and market value changes affect the fair market value of the convertible notes, and may affect the prices at which we would be able to repurchase such convertible notes were we to do so. These changes do not impact our financial position, cash flows or results of operations. For additional information on the fair value of our outstanding convertible notes, see Note 2 to our condensed consolidated financial statements.

Item 4. Controls and Procedures.

Evaluation of disclosure controls and procedures. Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of the design and operations of our disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, as of the end of the period covered by this report. Based on their evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective as of such time such that the material information required to be included in our SEC reports is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms relating to the Company, including our consolidated subsidiaries, and was made known to them by others within those entities, particularly during the period when this report was being prepared.

Changes in internal controls. Except as described below, there have not been any changes in the Company's internal control over financial reporting during the quarter ended September 30, 2012 that have materially affected, or are reasonably likely to materially affect, its internal control over financial reporting. On August 3, 2012, the Company completed its acquisition of the freight brokerage operations of Kelron and is in the process of integrating the acquired business into the Company's overall internal controls over financial reporting process. For additional information on the Kelron acquisition, see Note 3 to our condensed consolidated financial statements.

Part II—Other Information

Item 1. Legal Proceedings.

We recently became involved in litigation in the Fourth Judicial District Court, County of Hennepin, State of Minnesota, relating to our hiring of former employees of C.H. Robinson Worldwide, Inc. ("C.H. Robinson"). In the litigation, C.H. Robinson alleges the following against us: (1) tortious interference with contractual employment-related relationships; (2) misappropriation of trade secrets; and (3) inducing, aiding and abetting breaches of contract. C.H. Robinson is seeking temporary, preliminary and permanent injunctions, direct and consequential damages, and attorney's fees. On August 23, 2012, the Court denied C.H. Robinson's motion for a temporary injunction to prevent us from communicating with C.H. Robinson employees, among other things, but granted C.H. Robinson's motion for expedited discovery in connection with the litigation and enjoined two individual defendant employees of the Company. The legal discovery process is underway on this matter and the preliminary injunction hearing is scheduled for November 20, 2012. We believe that we have strong legal defenses to the asserted claims and we are evaluating the counterclaims available to us. However, we cannot assure you that an adverse outcome would not significantly impact our ability to execute certain of our growth initiatives.

We are a party to a variety of other legal actions, both as a plaintiff and as a defendant, that arose in the ordinary course of business, and may in the future become involved in other legal actions. We do not currently expect any of these matters or these matters in the aggregate to have a material adverse effect on our results of operations, financial condition or cash flows. However, the results of these matters cannot be predicted with certainty, and an unfavorable resolution of one or more of these matters could have a material adverse effect on our financial condition, results of operations or cash flows.

We carry liability and excess umbrella insurance policies that we deem sufficient to cover potential legal claims arising in the normal course of conducting our operations as a transportation company. In the event we are required to satisfy a legal claim in excess of the coverage provided by this insurance, our financial condition, results of operations and cash flows could be negatively impacted.

Item 1A. Risk Factors.

In addition to the information set forth in this Form 10-Q, you should carefully consider the risk factors discussed in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2011, which could materially affect our business, financial condition or future results.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

None.

Item 3. Defaults upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

- (a) None.
- (b) Not applicable.

Item 6. Exhibits.

| Exhibit Number | Description |
|----------------|--|
| 2.1 | Share Purchase Agreement dated August 3, 2012 among XPO Logistics Canada Inc., 1272387 Ontario Inc. and 1272393 Ontario Inc., and Keith Matthews and Geoff Bennett |
| 2.2 | Asset Purchase Agreement dated August 3, 2012 among XPO Logistics, LLC, Kelron Distribution Systems (Cleveland) LLC, and Keith Matthews and Geoff Bennett |
| 31.1 | Certification of the Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, with respect to the registrants Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2012. |
| 31.2 | Certification of the Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, with respect to the registrants Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2012. |
| 32.1† | Certification of the Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, with respect to the registrants Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2012. |
| 32.2† | Certification of the Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, with respect to the registrants Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2012. |
| 101.INS | XBRL Instance Document |
| 101.SCH | XBRL Taxonomy Extension Schema |
| 101.CAL | XBRL Taxonomy Extension Calculation Linkbase |
| 101.DEF | XBRL Taxonomy Extension Definition Linkbase |
| 101.LAB | XBRL Taxonomy Extension Label Linkbase |
| 101.PRE | XBRL Taxonomy Extension Presentation Linkbase |

† This exhibit will not be deemed “filed” for purposes of Section 18 of the Exchange Act (15 U.S.C. 78r), or otherwise subject to the liability of that section. Such exhibit will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Securities and Exchange Act of 1934, as amended, except to the extent that the registrant specifically incorporates it by reference.

SIGNATURES

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

XPO Logistics, Inc.

/s/ Bradley S. Jacobs

Bradley S. Jacobs
Chief Executive Officer
(Principal Executive Officer)

/s/ John J. Hardig

John J. Hardig
Chief Financial Officer
(Principal Financial Officer)

Date: November 6, 2012

SHARE PURCHASE AGREEMENT

THIS SHARE PURCHASE AGREEMENT (this "Agreement") is made as of August 3, 2012, by and among: (i) **XPO Logistics Canada Inc.**, an Ontario corporation ("XPO"); (ii) **1272387 Ontario Inc.** and **1272393 Ontario Inc.** (together, "Sellers" and each a "Seller"); and (iii) **Keith Matthews** and **Geoff Bennett**, each of whom is an individual resident in the Province of Ontario (together, the "Principals" and, collectively with the Sellers, the "Seller Parties"). XPO and the Seller Parties are referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

- A. WHEREAS**, Kelron Corporate Services Inc. (the "Company") is engaged in the business of logistics and brokerage services (i.e., arranging for the transportation of freight, whether by truckload, less-than-truckload or otherwise) (the "Business"); and
- B. WHEREAS**, the Business is carried on by the Company and the Company's subsidiaries, and each of their respective subsidiaries, and by its Affiliate, Kelron Cleveland, all of which are listed in Schedule 2.1(a) (each referred to in this Agreement as a "Subsidiary" and, collectively, the "Subsidiaries"). The Company and the Subsidiaries are referred to in this Agreement as the "Company Group"; and
- C. WHEREAS**, the Sellers are the sole owners of all of the issued and outstanding common shares in the capital stock of the Company (the "Common Shares"), being 22 issued and outstanding Common Shares and no more; and
- D. WHEREAS**, XPO desires to purchase from Sellers, and Sellers desire to sell, assign, transfer and convey to XPO all of the Common Shares (the "Shares") for the consideration described herein, all as set forth in this Agreement and the documents executed in connection herewith (collectively, the "Transactions"); and
- E. WHEREAS**, XPO desires to purchase from Benamyze Holdings Ltd. the 10,010 Class "A" common shares in the capital of Kelron Vancouver (as such term is defined below); and
- F. WHEREAS**, XPO desires to purchase (i) from Louis Comitini the 2,500 non-voting common shares, from Darin Pritchard the 1,000 non-voting common shares, and from Tim Ellis the 1,000 non-voting common shares, respectively, in the capital of Kelron Montreal (as such term is defined below), and (ii) from the Company all of the issued and outstanding shares in the capital of Kelron Montreal held by the Company.

NOW, THEREFORE, the Parties agree as follows:

**ARTICLE 1
THE TRANSACTIONS**

1.1 Purchase and Sale.

Effective as of 12:01 a.m. on the date hereof (the "Effective Time"), subject to the terms and conditions in this Agreement, XPO (or its designee) agrees to purchase the following shares:

(a) from the Sellers, and the Sellers hereby agree to sell, assign, transfer and convey to XPO, all of the Shares;

(b) from Benamyze Holdings Ltd. the 10,010 Class "A" common shares in the capital of Kelron Vancouver (the "Kelron Vancouver Shares") pursuant to the exercise by the Sellers of the Sales Notice (as such term is defined in the Kelron Vancouver USA) dated August 1, 2012 and the execution and delivery of stock transfer powers in respect of such shares in favour of XPO; and

(c) from Louis Comitini the 2,500 non-voting common shares, from Darin Pritchard the 1,000 non-voting common shares, and from Tim Ellis the 1,000 non-voting common shares, respectively, in the capital of Kelron Montreal, and from the Company all of the issued and outstanding shares in Kelron Montreal held by the Company (collectively, the "Kelron Montreal Shares") pursuant to the exercise by the Company of the Sale Notice (as such term is defined in the Kelron Montreal USA) and the Offer Notice each dated August 1, 2012 and the execution and delivery of stock transfer powers in respect of such shares in favour of XPO.

1.2 Share Purchase Price.

The aggregate consideration to be paid for the Shares, the Kelron Vancouver Shares and the Kelron Montreal Shares is Two Million Two Hundred Thousand Dollars (\$2,200,000) (collectively, the "Share Purchase Price"). The Share Purchase price shall be paid on the closing of the Transactions in immediately available funds as follows:

(a) the sum of One Million Dollars (\$1,000,000) (the "Holdback") shall be placed into an escrow account with Gowling Lafleur Henderson LLP (the "Escrow Agent") and shall be released from such escrow account pursuant to the terms of an escrow agreement dated the date hereof (the "Escrow Agreement") between the Parties and the Escrow Agent;

(b) the sum of Five Hundred Thousand Dollars (\$500,000) will be paid by delivery of a promissory note of XPO issued in the name of 1272387 Ontario Inc. (the "2387 Note");

(c) the sum of Five Hundred Thousand Dollars (\$500,000) will be paid by delivery of a promissory note of XPO issued in the name of 1272393 Ontario Inc. (the "2393 Note");

(d) the sum of Two Hundred Thousand and Two Hundred Dollars (\$200,200) will be paid to Kelron Vancouver for the benefit of Benamyze Holdings Ltd., or as it may otherwise in writing direct, in respect of the Kelron Vancouver Shares by wire transfer;

(e) the sum of One Dollar (\$1.00) will be paid to Kelron Montreal for distribution to Louis Comitini, the sum of One Dollar (\$1.00) will be paid to Kelron Montreal for distribution to Darin Pritchard and the sum of One Dollar (\$1.00) will be paid to Kelron Montreal for distribution to Tim Ellis, respectively, or as they may otherwise in writing direct, in respect of the Kelron Montreal Shares; and

(f) the amount which is comprised of the balance of the Share Purchase Price after deducting therefrom the amounts set out in above in subsections (a) through (e), inclusive, to the Sellers, or as they shall in writing otherwise direct, by wire transfer.

1.3 **Discharge of Liabilities**

XPO shall, or shall cause the Company to, forthwith on or immediately after the Effective Time, pay the outstanding Bank Indebtedness and outstanding Shareholder Loans.

XPO does hereby indemnify the Seller Parties from any liabilities arising pursuant to guarantees or personal guarantees, as the case may be, in favour of the Royal Bank of Canada relating to indebtedness owed by the Company Group to the bank, to the extent such guarantees relate to the Bank Indebtedness. XPO will take all reasonable steps to obtain the discharge of all such guarantees forthwith after the Effective Time.

1.4 **Working Capital Requirement.**

(a) The Sellers hereby represent and agree that the Working Capital as of the Effective Time equals or exceeds \$2,600,000 (the "Working Capital Target"). As used herein, "Working Capital" shall mean the amount by which the aggregate of the Current Assets exceeds the aggregate of the Current Liabilities; "Current Assets" shall mean all current assets, excluding cash and cash equivalents, owned by the Company Group as of the Effective Time, as determined in accordance with GAAP applied consistently with past practice, with the adjustments noted on, and in the form of, Schedule 1.4 hereto; and "Current Liabilities" shall mean all current liabilities of the Company Group as of the Effective Time, as determined in accordance with GAAP applied consistently with past practice, with the adjustments noted on, and in the form of, Schedule 1.4 hereto, and for the purposes hereof shall exclude the Bank Indebtedness and the Issued Cheques. For certainty, the Accounts Receivables, including those owing by Ronald A. Chisholm Ltd. will be included in Current Assets. No severance costs shall be included in the calculation of Current Liabilities.

(b) On or before the date that is 45 days following the Effective Time, XPO shall prepare a schedule setting forth XPO's determination of Working Capital as of the Effective Time (the "Working Capital Schedule") and shall deliver the Working Capital Schedule to the Sellers. XPO shall make the work papers and back-up materials used in calculating the Working Capital Schedule and appropriate XPO personnel available to the Sellers, their accountants and other representatives in connection with their review.

(c) Within 30 days after XPO's delivery of the Working Capital Schedule, the Sellers shall deliver written notice (the "Working Capital Dispute Notice") to XPO of any dispute or objection to the Working Capital Schedule, specifying in reasonable detail any contested amounts and the basis therefor. Any amounts not disputed in the Working Capital Dispute Notice (if one is delivered) shall be deemed to be accepted by the Sellers as final. The Working Capital as of the Effective Time, as finally determined pursuant to this Section, is referred to herein as the "Final Working Capital".

(d) Within ten days after the determination of the Final Working Capital:

- (i) if the Working Capital Target is greater than the Final Working Capital by at least \$100,000, then the Seller Parties shall be jointly and severally obligated to pay to Buyer an amount, by wire transfer of immediately available funds, equal to (A) \$2,600,000, less (B) the Final Working Capital; or
- (ii) if the Final Working Capital is greater than the Working Capital Target by at least \$100,000, then Buyer shall pay to the Sellers an amount, by wire transfer of immediately available funds, equal to (A) the Final Working Capital, less (B) \$2,600,000.

(e) If a Working Capital Dispute Notice (a "Dispute Notice") is delivered, then the Parties shall each use their commercially reasonable efforts to resolve the dispute and negotiate with each other in good faith to reach a satisfactory resolution. If the Parties are unable to resolve any dispute set forth in a Dispute Notice, then any amounts remaining in dispute shall be submitted to a mutually acceptable independent, firm of chartered accountants (the "Accountants"). In the event that the Parties cannot agree on a mutually acceptable Accountant, each of XPO, on the one hand, and the Seller Parties, on the other hand, shall nominate one independent, firm of chartered accountants and then the two independent, firms of chartered accountants nominated shall identify a third independent, firm of chartered accountants which shall act as the Accountants. The determination by the Accountants of the amounts in dispute shall be made on the basis of the submissions made by the Parties and shall not involve the Accountants' independent review of the records of the Company. Any determination by the Accountants shall not be outside the range defined by XPO's and the Seller's proposed adjustments thereto, and such determination shall be final, binding and non-appealable upon the Parties. The fees of the Accountants shall be borne equally by XPO, on the one hand, and the Sellers, on the other. Each of the Parties agrees that the dispute resolution provisions set forth in this Section constitutes the exclusive mechanism by which disputes relating to the Working Capital Schedule, if any, shall be resolved. Accordingly, each of the Parties agrees not to sue any other Party or become a party to a lawsuit on the basis of any claims of any type relating to such matters following the Effective Time. Each of the Parties understands that any violation of this covenant not to sue will entitle the other Parties to apply for, and receive, an injunction to restrain any such violation.

(f) An adjustment to Working Capital as finally determined shall be allocated to the Gross Proceeds and applied to the Share Purchase Price.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF THE SELLER PARTIES

Each of the Seller Parties represents and warrants, jointly and severally, to XPO as follows as of the Effective Time:

2.1 Organization and Good Standing.

(a) The Company and each Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, as the case may be, with full power and authority to conduct its business, own the properties it owns, and execute, deliver, and perform this Agreement and the other documents related hereto to which it is a party.

(b) The Company and each Subsidiary is duly qualified or registered to do business and is in good standing in each jurisdiction in which the character of the properties owned, operated, or leased by such entity, or the nature of its activities, is such that qualification or registration by such entity in such jurisdiction is required by applicable federal, provincial, state, local, municipal, or foreign law, ordinance, principle of common law, code, regulation, statute or treaty (collectively, the "Legal Requirements"). Schedule 2.1(a) contains a list of all jurisdictions in which the Company and its Subsidiaries are so qualified or registered or required to be so qualified or registered. The Sellers have delivered or made available to XPO copies of the Company's and each Subsidiary's articles or certificate of incorporation, bylaws and similar organizational documents as currently in effect and any amendment to any of the foregoing. Other than as set out in Schedule 2.1(a), the Subsidiaries are wholly owned by the Company, the Subsidiaries do not have any subsidiaries, and neither the Company nor any Subsidiary, directly or indirectly, beneficially owns or is a party to or bound by any Contract to acquire any interest of, or any other security, equity, ownership interest, debt investment, or similar interest in, any other Person.

2.2 Capitalization.

(a) Schedule 2.2 contains (a) a complete and correct description of the number of authorized, issued, and outstanding shares in the capital stock of the Company and each Subsidiary, and (b) a complete and correct list of all holders of the shares and other securities or equity interests of the Company and each Subsidiary and the number of shares and other securities owned by such persons. The authorized capital of the Company consists solely of an unlimited number of Common Shares. The 22 Common Shares (x) constitute all of the issued and outstanding shares in the capital stock of the Company, (y) have been duly authorized and validly issued, and (z) are fully paid and non-assessable. Except for this Agreement and the other documents delivered in connection with this Agreement including, without limitation, the Kelron Cleveland APA (collectively, the "Ancillary Documents") and except pursuant to unanimous shareholders' agreements that have been delivered to XPO, there are no outstanding warrants, options, including stock option plans, Contracts, subscriptions, convertible or exchangeable securities, or other commitments, verbal or written, pursuant to which the Company or any Subsidiary is or may become obligated to issue any shares or any other securities convertible, exchangeable, or exercisable for any such shares in their respective capital stock, and no equity

securities of the Company or any Subsidiary is reserved for issuance for any purpose. None of the Shares were issued in violation of the *Securities Act* (Ontario) (the "Securities Act"), or any other Legal Requirement. On or before the Effective Time, all of the Subsidiaries, except for Kelron TCL, will be wholly owned, directly or indirectly, by the Company.

(b) The Sellers own all of the Shares to be transferred by them hereunder (as set forth in Schedule 2.2), free and clear of all Liens. None of the Seller Parties is a party to any Contracts or commitments including shareholders' agreements or similar relating to the voting, purchase, or sale of the Shares, other than this Agreement. Upon delivery to XPO of certificates representing the Shares or executed share transfer powers (separate from certificate) therefor, duly endorsed for transfer to XPO, and receipt by the Sellers of the net amount of the Share Purchase Price therefor, XPO will acquire the Shares and such shares shall be free and clear of any Liens.

(c) On Closing, XPO will have acquired pursuant to the Company's delivery of the Sales Notice dated August 1, 2012 to Benamyze Holdings Ltd. pursuant to the Vancouver USA and the completion of the purchase and sale terms and conditions under Section 10.1(b) of the Kelron Vancouver USA for the sale and transfer of the Kelron Vancouver Shares all of the issued and outstanding shares of Kelron Vancouver held by Benamyze Holdings Ltd. Such shares together with the shares of Kelron Vancouver held by the Company constitutes all of the issued and outstanding shares of Kelron Vancouver. The allocation of value to the Kelron Vancouver Shares is correct and appropriate for the purposes of the purchase by XPO of the Kelron Vancouver Shares from Benamyze Holdings Ltd. on or prior to the Effective Time.

(d) On Closing, XPO will have acquired pursuant to the Company's delivery of the Sale Notice dated August 1, 2012 to Louis Comitini, Darin Pritchard and Tim Ellis, respectively, pursuant to the Montreal USA and the completion of the purchase and sale terms and conditions under Section 10.1(b) of the Kelron Montreal USA for the sale and transfer of the Kelron Montreal Shares held by Louis Comitini, Darin Pritchard and Tim Ellis, respectively. Such shares together with the shares of Kelron Montreal held by the Company constitutes all of the issued and outstanding shares of Kelron Montreal. The allocation of value to the Kelron Montreal Shares is correct and appropriate for the purposes of the purchase by XPO of the Kelron Montreal Shares from Louis Comitini, Darin Pritchard and Tim Ellis, respectively, on or prior to the Effective Time.

(e) Kelron Montreal has delivered the Call Notice dated August 1, 2012 pursuant to the terms of the Kelron TCL USA to Ray M. Farmer and Brent MacDonald, respectively. Upon Kelron Montreal completing the transactions contemplated under the Kelron TCL USA in respect of the exercise of the Call Option, Kelron Montreal will have acquired and become the sole owner of all of the issued and outstanding shares in the capital of Kelron TCL.

2.3 Enforceability; Authority; No Conflict.

(a) This Agreement and the Ancillary Documents constitutes the legal, valid, and binding obligations of each of the Seller Parties, enforceable against each of them in accordance with their terms, subject to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditor's rights and remedies generally and to general

principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). Each Seller has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and the other Ancillary Documents to which it is a party and to perform its obligations hereunder and thereunder, and such action has been duly authorized by all necessary action by the Company and each Subsidiary, and their respective shareholders and board of directors and the Seller Parties.

(b) Neither the execution and delivery of this Agreement or the Ancillary Documents to which any of the Seller Parties is a party nor the consummation or performance of the Transactions contemplated thereby will, directly or indirectly (with or without notice or lapse of time), (i) contravene, violate, or conflict with any provision of any of the governing documents of the Company or any Subsidiary or any resolution adopted by their respective board of directors; (ii) afford any Person the right to challenge any of the Transactions or to exercise any remedy or obtain any relief under any Legal Requirements to which any of the Seller Parties, or any of the Shares, may be subject; (iii) contravene, conflict with, or result in a violation or breach of any of the terms or requirements of, or give any governmental body the right to revoke, withdraw, suspend, cancel, terminate, or modify, any governmental authorization that is held by the Company or any Subsidiary or that otherwise relates to either such entity; (iv) except as set out in Schedule 2.3(b), breach any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate, or modify, any Material Contract; (v) result in the imposition or creation of any Lien (other than Permitted Liens) upon or with respect to any of the assets of the Company or any Subsidiary; or (vi) result in any Person having the right to exercise dissenter's appraisal rights which are not waived at or prior to the Effective Time.

(c) None of the Seller Parties is required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Agreement or the Ancillary Documents to which any of the Seller Parties is a party or the consummation or performance of any of the Transactions.

2.4 Financial Statements; Books and Records; Undisclosed Liabilities.

(a) Sellers have delivered to XPO (i) the financial statements for the Company on a consolidated and consolidating basis for the fiscal years ended March 31, 2009, 2010, and 2011, (ii) the financial statements for each Subsidiary for the fiscal years ended March 31, 2009, 2010 and 2011 and (iii) the interim financial statements for the Company on a consolidated and consolidating basis and for each Subsidiary for the periods ending June 30, September 30 and December 31, 2011, copies of each of which are attached as Schedule 2.4(a) (the financial statements referred to in clause (i), clause (ii) and clause (iii) are referred to herein as the "Financial Statements"). The balance sheets of the Company on a consolidated and consolidating basis and for each Subsidiary dated as of March 31, 2011 included in the Financial Statements are referred to herein as the "Current Balance Sheets". The Financial Statements fairly present the financial position of the Company on a consolidated basis and the Subsidiaries, as the case may be, at each of the balance sheet dates and the results of operations for the periods covered thereby and have been prepared in accordance with GAAP (without year end adjustments) consistently applied throughout the periods indicated (except to the extent that certain notes and supplemental information otherwise required in accordance with GAAP are not included in the

Financial Statements). The books and records of the Company and each Subsidiary fully and fairly reflect all of their transactions, properties, assets and liabilities. There are no special or non-recurring items of income or expense during the periods covered by the Financial Statements, and the balance sheets included in the Financial Statements do not reflect any write-up or revaluation increasing the book value of any assets. The Financial Statements reflect all adjustments necessary for a fair presentation of the financial information contained therein.

(b) The corporate records and minute books of the Company and each Subsidiary contain complete and accurate minutes of all meetings of, and all written resolutions passed by, the directors and shareholders of the Company and the Subsidiaries, held or passed since incorporation. All those meetings were held, all those resolutions were passed, and any share certificate books, registers of shareholders, registers of transfers and registers of directors of the Company and each of the Subsidiaries are complete and accurate in all respects, except as relates to the discrepancy in share consideration paid by Brett MacDonald for his share interest in Kelron TCL is not accurately reflected in said corporation's minute book.

(c) As of the date hereof, neither the Company nor any Subsidiary has any, and with respect to the Leased Real Property (as defined in Section 2.12(k)) there are no, liabilities or obligations, whether accrued, absolute, contingent or otherwise, except: (i) to the extent reflected on the Current Balance Sheets and not heretofore paid or discharged; (ii) liabilities incurred in the ordinary course of business consistent with past practice since the date of the Current Balance Sheets which, individually and in the aggregate, are not material and are of the same character and nature as the obligations, duties and liabilities set forth on the Current Balance Sheets; (iii) liabilities incurred in the ordinary course of business prior to the date of the Current Balance Sheets which, in accordance with GAAP consistently applied, were not required to be recorded thereon and which, in the aggregate, are not material; and (iv) liabilities and obligations specifically disclosed on the face of the Schedules hereto.

(d) Except as set forth on Schedule 2.4(d) hereto, there is no indebtedness for borrowed money and/or capitalized equipment lease obligations of the Company or any Subsidiary, including with respect to the Leased Real Property, as of the date hereof, other than bank indebtedness which, net of cash on deposit, does not exceed \$766,000 (the "Bank Indebtedness") and issued cheques and uncleared cheques outstanding as at the Effective Time in an amount of not more than \$4,562,000 (the "Issued Cheques").

(e) As of the date hereof, there is only nominal intercompany indebtedness after the application of available offsets and the implementation of a loan reduction plan, and the value of loans owed by the Company Group to the Sellers does not exceed \$500,000 in the aggregate (the "Shareholder Loans").

2.5 Changes Since the Current Balance Sheet Date.

Since March 31, 2012, there has been no Material Adverse Change to the Business, the Company, any Subsidiary or any Subsidiary's business and, except as expressly allowed by the terms of this Agreement or set out in Schedule 2.5, neither the Company nor any Subsidiary has: (a) issued, sold, pledged, disposed of or encumbered any shares of its capital stock of any class or entered into any merger, consolidation, share exchange, or similar transaction; (b) made or

obligated itself to make capital expenditures out of the ordinary course consistent with past practice or in excess of \$10,000 or with a term greater than one year; (c) sold, leased, or transferred any Assets (as defined below) or its interests in the Leased Real Property other than in the ordinary course of business consistent with past practice; (d) waived, cancelled, compromised, or released any rights other than in the ordinary course of business consistent with past practice; (e) made any payment in respect of its liabilities other than in the ordinary course of business consistent with past practice; (f) modified, terminated, or entered into any Material Contract other than as provided herein or in the ordinary course of business consistent with past practice; (g) imposed, permitted to be imposed, or permitted to exist any security interest or other Lien (other than Permitted Liens) on any of the Assets or the Leased Real Property, other than in the ordinary course of business consistent with past practice; (h) other than as set out in Schedule 2.5, changed the compensation payable or to become payable to its employees, officers, or directors or, except as presently bound to do, granted any bonus, severance, or termination pay to, or entered into or modified any bonus, employment, severance, or other compensatory agreement with, any of its directors, officers, or Employees; (i) taken any action with respect to accounting policies or procedures or made any adjustment to its books and records other than in the ordinary course of business and in a manner consistent with past practices; (j) incurred any indebtedness for borrowed money or capitalized equipment lease obligations or made guarantees thereof; (k) delayed paying any account payable beyond the date on which it is due and payable except to the extent consistent with past practice or where such account is being contested in good faith; (l) entered into any material Contract (or series of related Contracts that together are material to the Company, any Subsidiary or the Seller Parties) relating to the Business outside the ordinary course of business; or (m) entered into any transaction with any of the other Seller Parties or any Affiliate thereof.

2.6 Sufficiency of Assets; Condition and Title of Assets.

The Company and each Subsidiary has sole and exclusive, good, valid, and marketable title to, or in the case of property held under a lease or other Contract, an enforceable leasehold interest in, or right to use, all of its properties, rights, and assets, whether real or personal and whether tangible or intangible, including all assets reflected in the Financial Statements or acquired after the date of the Current Balance Sheets (except for such assets which have been sold or otherwise disposed of since the date of the Current Balance Sheets in the ordinary course of business) (collectively, the "Assets"). The Assets comprise all of the assets, properties, and rights of every type and description, whether real or personal, tangible or intangible, used in, held for use in, or necessary to conduct the Business and operations of the Company and the Subsidiaries as of the date hereof in substantially the same manner as presently conducted. Each personal property Asset is in good repair and condition, reasonable wear and tear excepted, is adequate for use in the ordinary course of business as it is currently being used. All Assets owned by the Company or each Subsidiary, as the case may be, are owned free and clear of all Liens other than Permitted Liens and Liens relating to indebtedness that have been paid off, released and discharged in full as of the Effective Time.

2.7 Taxes.

(a) The Company and each Subsidiary has filed or caused to be filed on a timely basis all returns, reports, and other filings (collectively, "Tax Returns") relating to all federal, provincial, state, local, and other governmental income, payroll, excise, sales, personal property, franchise, and other taxes, late fees, fines, or assessments (collectively, "Tax" or "Taxes") that are or were required to be filed prior to the Effective Time pursuant to applicable Legal Requirements. All Tax Returns and reports filed prior to the Effective Time by the Company or any Subsidiary are true, correct, and complete. The Company and each Subsidiary has paid, or made provision for the payment of, all Taxes that have or will become due for all periods prior to the Effective Time. No claim has ever been made prior to the Effective Time or is expected to be made by any Person in a jurisdiction where the Company or any Subsidiary does not file Tax Returns that either such party is or may be subject to taxation by that jurisdiction. No Person has given notice prior to the Effective Time of any alleged deficiency or assessed any additional Taxes for any period for which Tax Returns have been, or should have been, filed, and neither the Company, any Subsidiary nor any of the Seller Parties has any reason prior to the Effective Time to believe any such notice or assessment is pending or threatened. All Taxes that either the Company or any Subsidiary is or was required by Legal Requirements to withhold, deduct, or collect prior to the Effective Time have been duly withheld, deducted, and collected and, to the extent required, have been paid to the proper Person on a timely basis. Prior to the Effective Time, neither the Company nor any Subsidiary has waived any statute of limitations with respect to Taxes or agreed to any extension of time with respect to an assessment or deficiency of Taxes.

(b) Neither the Company nor any Subsidiary will be required to include in a taxation year ending after the Effective Time material taxable income attributable to income that accrued in a taxation year ending on or before the Effective Time but was not recognized for tax purposes in such prior taxation year (or to exclude from taxable income in a taxation year ending after the Effective Time any material deduction the recognition of which was accelerated from such taxation year to a taxation year ending on or before the Effective Time).

(c) There are no circumstances existing which could result in the application to any of the Company or any of the Subsidiaries of Sections 78, 80, 80.01, 80.02, 80.03, 80.04 or 160 of the *Income Tax Act* (Canada) or any analogous provision of any comparable law of any province or territory of Canada.

(d) Other than as set out in Schedule 2.7, since April 1, 2009 neither the Company nor any Subsidiary has entered into any transaction with a Person who is not resident in Canada and with which any of the Seller Parties deals or dealt with not at arm's length, other than Kelron Cleveland, both for the purposes of the *Income Tax Act* (Canada).

(e) The terms and conditions made or imposed in respect of every transaction (or series of transactions) between (x) each of the Company and each of the Subsidiaries and (y) any person that is (A) a non-resident of Canada for purposes of the *Income Tax Act*, and (B) not dealing at arm's length with such Acquired Company for purposes of the *Income Tax Act*, or any partnership of which a person referred to in (A) and (B) is a member, are such that none of the Company and each of the Subsidiaries would be subject to an adjustment under subsection 247(2) of the *Income Tax Act*; and

(f) the Company and each of the Subsidiaries has made or obtained records or documents that meet the requirements of paragraphs 247(4)(a) to (c) of the *Income Tax Act* (Canada) with respect to all material transactions between it and any non-resident person with whom it was not dealing at arm's length within the meaning of the *Income Tax Act* (Canada) (or any partnership of which such a person was a member).

2.8 Employee Benefits.

(a) Schedule 2.8 identifies each of the Company's and each Subsidiary's employee benefit plans or similar arrangements under which either the Company or any Subsidiary has or may have liability in relation to the periods prior to the Effective Time, including without limitation, all retirement, profit sharing, defined contribution, and defined benefit plans as well as any severance, vacation pay, health and welfare, post-retirement, employment, or other agreements (oral or written) relating to current or former employees or independent contractors of the Company or any Subsidiary (collectively, "Plans"). All Plans identified on Schedule 2.8 hereto have been maintained prior to the Effective Time in accordance with their terms and applicable Legal Requirements. All amounts due under any Plan prior to the Effective Time have been fully and timely paid or accrued for periods through the Effective Time, and no accumulated funding deficiency or liquidity shortfall has been incurred prior to the Effective Time with respect to any such Plan, whether or not waived. Except as indicated on Schedule 2.8 hereto, prior to the Effective Time no Plan is a multi-employer or a defined benefit plan, and prior to the Effective Time neither the Company nor any Subsidiary nor any predecessor or related Person of the Company or any Subsidiary or their predecessors has ever been a party to or sponsored a multi-employer or defined benefit plan. Prior to the Effective Time, neither the Company nor any Subsidiary is or has been a member of a group of businesses under common control or businesses constituting a single employer, except any such group in which no member has been a party to a defined benefit plan.

2.9 Compliance with Legal Requirements; Permits.

(a) The Company and each Subsidiary is, and at all times within the immediately preceding five years has been, in compliance with each Legal Requirement that is or was applicable to it or to the conduct or operation of the Business or the Subsidiary's business or the ownership or use of any of their respective Assets. Neither the Company nor any Subsidiary has received, at any time within the immediately preceding five years, any notice from any Person regarding any actual, alleged, possible, or potential violation of, or failure to comply with, any Legal Requirement. Except as set out in Schedule 2.9, all Contractors (as defined in Section 2.13(a) below) have been properly documented and classified as independent contractors for tax and employment law purposes as of and prior to the Effective Time.

(b) Schedule 2.9 sets forth a true, complete and accurate list of all material licenses, approvals, permits, or authorizations from Governmental Authorities (collectively, the "Permits") that are required to be obtained for the business and operations of the Business or a Subsidiary's business. All such Permits are valid and in full force and effect, the Company and each Subsidiary is in compliance with the respective requirements thereof, and no proceeding is pending or, to the Seller Parties' knowledge, threatened to revoke or amend any of them.

2.10 **Legal Proceedings; Orders.**

Except as set forth in Schedule 2.10, there has not been, there is no pending or, to the Seller Parties' knowledge, threatened, and there is no basis for, any action, claim, investigation, litigation, arbitration, or other proceeding ("Legal Proceedings"), or any resulting order, judgment, award, injunction, or other decree: (a) by or against the Company or any Subsidiary or that otherwise relates to or reasonably would be expected to affect the Business or any Subsidiary's business or any of the Employees or Contractors of, or any of the assets owned or used by, the Company or any Subsidiary; or (b) that challenges, or that would have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Transactions. There are no outstanding orders, decrees, or stipulations issued by any Governmental Authority in any proceeding or resulting from any Legal Proceeding to which any of the Seller Parties is or was a party that have not been complied with in full or which continue to impose any obligations on the Seller Parties.

2.11 **Material Contracts; No Defaults.**

(a) The Company and each Subsidiary has delivered or made available to XPO accurate and complete copies, together with all amendments, supplements, side letters, exhibits, schedules, and other attachments thereto, of each of the Material Contracts. Schedule 2.11 hereto sets forth a true and complete list of the Material Contracts to which the Company and/or any Subsidiary is a party. Neither the Company nor any Subsidiary is subject to any liability or payment resulting from renegotiation of amounts paid under any Material Contract that is not reflected in any written amendment to the Material Contract. Neither the Company nor any Subsidiary is subject to any Contract, agreement, decree, or injunction that restricts the continued operation of the Business or any Subsidiary's business or the expansion thereof to other geographical areas, customers, and suppliers or lines of business, including, without limitation, any non-solicit, non-compete, non-disparagement, or similar provisions, whether under carrier, shipper, broker-to-broker, third party logistics provider-to-broker, agent, vendor, or other Contract.

(b) Each Material Contract is in full force and effect and is valid and enforceable in accordance with its terms. Except as set out in Schedule 2.11(b), no event has occurred and no circumstance exists that (with or without notice or lapse of time) may contravene, conflict with, or result in a breach of, or give the Company or any Subsidiary or any other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate, or modify, any Material Contract.

2.12 **Real Property.**

(a) Neither the Company nor any Subsidiary owns any interest (other than a leasehold interest) in any real property.

(b) Schedule 2.12(b) accurately lists and describes in reasonable detail all Leased Real Property (as defined below) and the associated leases and related documents (the "Leases"), including addresses. The Company or the Subsidiaries, as the case may be, has a valid and subsisting leasehold or subleasehold estate in, and enjoys peaceful and undisturbed possession of, all Leased Real Property.

(c) The Leased Real Property comprises all of the real property and interests in real property used in, or otherwise related to, the Business and each Subsidiary's business as presently conducted. There are no outstanding options or rights of first refusal to purchase all or any portion of the Leased Real Property or interests therein granted by or to the Company or any Subsidiary nor is the Leased Real Property subject to any agreement to which the Seller Parties, the Company or any Subsidiary is a party (other than the Leases) with respect to future ownership, use, occupancy, operation, or development. Neither the Seller Parties, the Company nor any Subsidiary is a party to any Contract with any Governmental Authority relating to the provision of financial aid from such Governmental Authority to the Company or any Subsidiary or that requires the Company or any Subsidiary to make minimum investments in, or create or maintain a minimum number of jobs at, any of the facilities or Improvements (as defined in Section 2.12(d)) located on the Leased Real Property.

(d) To the Seller Parties' knowledge, all buildings, structures, fixtures, building systems and equipment, and all components thereof, including the roofs, foundations, load-bearing walls, and other structural elements thereof, heating, ventilation, air conditioning, mechanical, electrical, plumbing, and other building systems, environmental control, remediation, and abatement systems, sewer, storm, and waste water systems, irrigation, and other water distribution systems, parking facilities, fire protection, security, and surveillance systems, and telecommunications, computer, wiring, and cable installations included in the Leased Real Property (the "Improvements"), are in good condition and repair and sufficient for the operation of the Business or each Subsidiary's business as presently conducted; provided, that the foregoing representations shall not be qualified to the Seller Parties' knowledge with respect to any Improvements on any Leased Real Property that are owned by Seller Parties or their Affiliates.

(e) There are no condemnation, eminent domain, or other Legal Proceedings pending or, to the Seller Parties' knowledge, threatened against the Leased Real Property or against the interest of the Company or any Subsidiary in all or any part of the Leased Real Property.

(f) Each parcel of Leased Real Property has direct vehicular and pedestrian access to a public right of way adjoining the Leased Real Property, or has vehicular and pedestrian access to a public right of way via an easement or other Contract benefitting such parcel of Leased Real Property, and such access is not dependent on any land or other real property interest that is not included in the Leased Real Property. None of the Improvements used in the operation of the Business or in any Subsidiary's business as presently conducted is dependent for its access, use, or operation on any land, Improvement, or other real property interest that is not included in the Leased Real Property.

(g) All water, oil, gas, electrical, steam, compressed air, telecommunications, sewer, storm and waste water systems, and other utility services or systems for the Leased Real Property have been installed and are operational and sufficient for the operation of the Business and each Subsidiary's business as presently conducted, and each such utility service enters the Leased Real Property from an adjoining public street or valid easement in favour of the supplier of such utility service or appurtenant to such Leased Real Property, and is not dependent for its access, use, or operation on any land, Improvement, or other real property interest that is not included in the Leased Real Property.

(h) Other than as set out in Schedule 2.12(h), there are no leases, subleases, licenses, concessions, or other Contracts, granting to any Person other than the Company or the Subsidiaries the right of use or occupancy of any portion of the Leased Real Property, and there are no parties, other than the Company or the Subsidiaries, in possession of the Leased Real Property.

(i) None of the Seller Parties has received notice of any special assessment relating to any Leased Real Property or any portion thereof and no such special assessment is pending or, to the Seller Parties' knowledge, threatened.

(j) With respect to the Leased Real Property, (i) true, correct, and complete copies of the Leases have been provided or made available to XPO, (ii) neither the Company nor any Subsidiary has assigned, sublet, transferred, mortgaged, deeded in trust, or encumbered or conveyed any interest in any Leased Real Property; (iii) there is no Legal Proceeding pending against the Company or any Subsidiary, or to the Seller Parties' knowledge threatened, against either the Company or any Subsidiary or any other Person that would reasonably be expected to interfere with the quiet enjoyment of the Leased Real Property after the Effective Time, and (iv) there is no pending dispute with the landlord of the Leased Real Property, and none of the Seller Parties has received any notice alleging breach of any of the covenants and or other obligations on the part of the Company or any Subsidiary.

(k) "Leased Real Property" means the real property, buildings, structures, improvements, fixtures, or other interest leased, subleased, licensed or occupied by the Company or any Subsidiary as tenant, subtenant, licensee, or in such similar capacity under any Lease as identified on Schedule 2.12(b) hereto.

2.13 Employees; Contractors; Consultants; Agents.

(a) Schedule 2.13 sets forth a list of each employee currently employed by the Company or any Subsidiary (collectively, "Employees"), each independent contractor currently engaged by the Company or any Subsidiary, whether incorporated or otherwise (collectively, "Contractors") and each former employee and independent contractor of the Company or any Subsidiary whose employment or engagement ended during the 2 years immediately preceding the date of this Agreement ("Former Employee"). Schedule 2.13 further sets forth the following information for each Employee, Contractor and Former Employee of the Company and each Subsidiary, including each Employee on leave of absence or layoff status: name; job title; date of hiring or engagement; date of commencement of employment or engagement; date of termination of employment or engagement, if applicable; current compensation paid or payable, year to date compensation paid or payable and any change in compensation since the first day of the current fiscal year; sick and vacation leave that is accrued but unused; and service credited for purposes of vesting and eligibility to participate under any Plan.

(b) Neither the Company nor any Subsidiary is a party to any collective bargaining agreement with any trade union or association which might qualify as a trade union, and no trade union, association, council of trade unions, employee bargaining agency or affiliated bargaining agent relating to the Company's Employees, nor does any such agreement determine the terms and conditions of employment of any Employee. In the past five years there has not been any labour unrest or union organizing activity involving the Company or any Subsidiary, whether actual, pending, or, to the Seller Parties' knowledge, threatened.

(c) True and complete copies of each standard form employment contract (collectively, the "Standard Employment Contracts") used for any of the Employees or Former Employees have been provided to XPO.

(d) True, signed and complete copies of all employment contracts, other than Standard Employment Contracts, for all the Employees or Former Employees (collectively, the "Custom Employment Contracts") have been provided to XPO.

(e) Except as expressly set forth on Schedule 2.8 hereto, and other than pursuant to the Standard Employment Contracts and the Custom Employment Contracts, there are no agreements, plans, practices or policies that would give rise to any severance, termination, change-in-control, accrued vacation, or other similar payment to Employees or Contractors as a result of the consummation of the Transactions.

(f) True, signed and complete copies of all contracts entered into with the Contractors have been provided to XPO.

(g) As of the date of this Agreement, no Employee or Contractor has notified the Seller Parties of any plans to terminate his or her relationship with the Company or any Subsidiary, whether as a result of the transactions contemplated herein or otherwise, and, to the Seller Parties' knowledge, there is no basis to believe any such termination is likely.

2.14 Rights to Use Personal Information.

(a) All information about an individual who can be identified by the Person who holds that information (such information being referred to in this Section as "Personal Information") in the possession of the Company and each Subsidiary has been collected, used and disclosed in compliance with all applicable Legal Requirements, including privacy laws in those jurisdictions in which the Company and each Subsidiary conducts, or is deemed by operation of law in those jurisdictions to conduct, its Business.

(b) The Seller has disclosed, or caused to be disclosed to XPO all Contracts and facts concerning the collection, use, retention, destruction and disclosure of Personal Information, and there are no other Contracts, or facts which, on completion of the transactions contemplated by this Agreement, would restrict or interfere with the use of any Personal Information by the Company or any Subsidiary in the continued operation of its Business as conducted before the Effective Time.

(c) There are no claims pending or, to the knowledge of the Seller Parties, threatened, with respect to the Company's or any Subsidiary's collection, use or disclosure of Personal Information.

2.15 **Environment, Health and Safety.**

(a) The Company and each Subsidiary and all of their respective related Persons have complied with all Legal Requirements concerning pollution or protection of the environment, all Legal Requirements concerning public health and safety, and all Legal Requirements concerning employee health and safety, including Legal Requirements relating to emissions, discharges, releases, or threatened release of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes (including petroleum and any fraction or derivative thereof) into ambient air, surface water, ground water, or lands, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or hauling of such substances (all of the foregoing of this Section 2.15, collectively, "Environmental Laws"), and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against any of them alleging any failure to so comply. The Company and each Subsidiary and all of their respective related Persons have obtained and been in compliance with all of the terms and conditions of all governmental authorizations required under all Environmental Laws.

(b) Neither the Company nor any Subsidiary has any liability (and neither the Company nor any Subsidiary nor their respective related Person have handled or disposed of any substance, arranged for the disposal of any substance, exposed any employee or other individual to any substance or condition, or owned or operated any property or facility in any manner in violation of applicable Environmental Laws) for damage to any site, location, or body of water (surface or subsurface), for any illness of or personal injury to any employee or other individual, as a result of violation of any Environmental Laws.

2.16 **Intellectual Property.**

(a) The term "Intellectual Property" means all intellectual property owned or licensed (as licensor or licensee) by the Company or any Subsidiary in which any such party has a proprietary interest, including: (i) each such entity's name, all assumed fictional business names, trade names, registered trademarks, service marks and applications (collectively, "Marks"); (ii) all patents, patent applications and inventions and discoveries that may be patentable (collectively, "Patents"); (iii) all registered copyrights in both published works and unpublished works (collectively, "Copyrights"); (iv) all know-how, trade secrets, confidential information, proprietary information, customer lists, carrier lists and information, software, technical information, data, process technology, plans, drawings, and blue prints (collectively, "Trade Secrets"); and (v) all rights in internet web sites and internet domain names presently used by the Company or any Subsidiary (collectively, "Net Names"); provided, however, that such term shall not include (x) "off-the-shelf" or "shrink-wrap" programs or products, or other programs or products that are generally commercially available software programs that are available on customary commercial terms, or (y) operating software embedded in equipment used by the Company or any Subsidiary.

(b) Schedule 2.16 contains a complete and accurate list of all Intellectual Property and any unregistered trademarks of the Company or any of the Subsidiaries actively used in the Business.

(c) Except as set forth in Schedule 2.16, (i) the Intellectual Property includes all such assets and rights necessary for the operation of the Business and any Subsidiary's business as it is currently conducted; (ii) all right, title, and interest in and to all of the Intellectual Property (other than unregistered trademarks) owned or licensed by the Company or any Subsidiary, as the case may be, is owned or licensed free and clear of all Liens (other than Permitted Liens); (iii) the Company or any Subsidiary, as the case may be, has the right to use the Intellectual Property (other than unregistered trademarks) without payment to any third party (other than payments pursuant to licenses for third party Intellectual Property); (iv) all Marks and Copyrights owned by the Company or any Subsidiary and set forth on Schedule 2.16 hereto have been registered with the proper registration organization; (v) all Net Names have been registered in the name of the Company or any Subsidiary, as the case may be; and (vi) to the Seller Parties' knowledge, all Intellectual Property (other than unregistered trademarks) is not and has not been infringed upon and does not infringe and has not infringed upon the rights of any other Person. To the knowledge of the Seller Parties the unregistered trademarks actively used in the Business do not infringe upon the rights of any other Person.

(d) The Company and each Subsidiary has good title to and the right to use the Trade Secrets owned by them. To the Seller Parties' knowledge, such Trade Secrets are not part of the public knowledge or literature and have not been used, divulged, or appropriated either for the benefit of any Person (other than the Company or any Subsidiary) or to the detriment of the Company or any Subsidiary.

(e) The execution and delivery of this Agreement and the consummation of the Transactions will not result in the Loss of, or any Lien (other than Liens granted by XPO) on, the rights of the Company or any Subsidiary with respect to any Intellectual Property owned or used by the Company or any Subsidiary.

(f) The Company and the Subsidiaries have all of the intellectual property rights necessary to use the Owned IP in the Business as presently conducted.

(g) Neither the Company nor any Subsidiary has assigned, licensed or otherwise granted any interest in any Owned IP, including any right to receive royalties or other payments, to any Person other than a member of the Company Group.

(h) To the Seller Parties knowledge, no Person has infringed or misappropriated, or is infringing or misappropriating, any intellectual property right in any Owned IP.

(i) All intellectual property rights relating to Owned IP are in full force and effect, and all required registration or other fees have been paid to maintain them all in good standing in those jurisdictions where any associated Owned IP is used.

(j) For the purposes of this Section, "Owned IP" means all Intellectual Property that is owned by the Company or any Subsidiary, as well as Intellectual Property rights that are owned or enforceable by the Company or any Subsidiary, including over the Company's proprietary EnvisionX, Virtual Dispatch and DecisionX software.

2.17 Relationships with Related Persons.

Schedule 2.17 describes any contracts, agreements, and commercial relationships existing during the periods covered by the Financial Statements between the Company, on the one hand, and the Seller Parties, a family member of any of the Seller Parties or any Person controlled by a Seller or any Subsidiary, on the other hand, and the Seller Parties or their Affiliates, on the other hand, pursuant to which the Company or any Subsidiary has provided, sold, received or purchased any service or product from such other party. Except as expressly disclosed in Schedule 2.17, (i) all such Contracts, agreements, and commercial relationships described on Schedule 2.17 were on arm's-length terms and (ii) none of the Seller Parties, nor any family member of any of the Seller Parties, nor any related Person of any of them, has currently or has had in the past any interest in or received any financial benefit from (a) any property (whether real, personal, or mixed and whether tangible or intangible) used in or pertaining to the Business or any Subsidiary's business; (b) any Person that has had business dealings or a material financial interest in any transaction with the Company or any Subsidiary; or (c) any contract with, or any claim or right against, the Company or any Subsidiary.

2.18 Insurance.

The Assets, properties, Employees, and operations of the Company and any Subsidiary are insured under various policies of general liability and other forms of insurance, all of which are set forth on Schedule 2.18, which schedule discloses for each policy the type of policy (*i.e.*, "claims made" or "occurrence based"), the risks insured against, coverage limits, deductible amounts, all outstanding claims thereunder, and whether the terms of such policy provide for retrospective premium adjustments. All such policies are in full force and effect in accordance with their terms, no notice of cancellation has been received by the Company or any Subsidiary, and there is no existing default by the Company or any Subsidiary or event which, with the giving of notice or lapse of time or both, would constitute a default by the Company or any Subsidiary thereunder. All policies entered into during the immediately preceding two years have been written by insurers with an A.M. Best's rating of at least "A-", no insurers are currently in liquidation, and none of the limits of liability is currently impaired. Such policies are to the knowledge of the Seller Parties in amounts that are adequate in relation to the Business and any Subsidiary's business and the Assets, as conducted or maintained consistent with past practice, and all premiums to date have been paid in full. Neither the Company nor any Subsidiary has received any refusal of coverage or any notice that a defense will be afforded with reservation of rights during the past five years. Neither the Company nor any Subsidiary has been refused any insurance nor had its coverage limited by any insurance carrier to which it has applied for insurance or with which it has carried insurance during the past five years.

2.19 Operation of Business.

With respect to the Business: (a) the Company and each Subsidiary has at all times operated under federal and/or provincial or state property broker authority, as applicable, and, except as provided on Schedule 2.19 hereto, has not had any operations that would require

federal, provincial, state, or other authority to operate as a freight forwarder, motor carrier, or otherwise; (b) all shipments brokered by the Company or any Subsidiary have been pursuant to written contracts with motor carriers; (c) the motor carriers to which the Company or any Subsidiary has brokered loads are independent contractors who maintain control over the planning, dispatch, route selection, vehicle operation, and delivery of each load brokered by the Company or the Subsidiary, as the case may be, and neither the Company nor any Subsidiary has controlled the method of provision of services of any such motor carrier; (d) neither the Company nor any Subsidiary (whether through contract, instruction, incentive, penalty, or otherwise) has required or condoned any violation of any Legal Requirement by its motor carrier counterparties, including to any such requirement concerning driver safety and fitness, vehicle speed, or route restriction; (e) neither the Company nor any Subsidiary has required any motor carrier to represent that its service within the customer's delivery window will not violate any Legal Requirement; and (f) the Company and each Subsidiary has adequate procedures in place to evaluate and update its contractual counterparties for insurance coverage, operating authority, safe operations and service performance.

2.20 Customers.

Schedule 2.20 sets forth a list of the Company's largest 20 customers and each Subsidiary's largest 20 customers for the twelve months most recently ended prior to the date hereof (collectively, "Significant Customers"), together with the Employee or Contractor of the Company or any Subsidiary who is most directly responsible for servicing each Significant Customer's account. Neither the Company nor any Subsidiary has received advice or notice from any Significant Customer that any of them intends, for any reason, to cease to do business with the Company or any Subsidiary or materially reduce the amount of business done with the Company or any Subsidiary, or to fail to do business with XPO after the Effective Time or materially reduce the amount of business done with XPO, the Company or any Subsidiary after the Effective Time (compared with the amount of business done with the Company and/or the Subsidiaries during the most recent six calendar months), and, except as expressly set forth on Schedule 2.20 hereto, none of the Seller Parties is aware of any reason that any of such Significant Customer may take any such action.

2.21 Receivables.

All accounts receivable of the Company and each Subsidiary reflected in the Financial Statements, or which have come into existence since the date of the most recent Financial Statements (collectively, the "Accounts Receivables"), were created in the ordinary and customary course of the Business from bona fide arm's length transactions, and, except to the extent that they have been paid in the ordinary course of the Business since the date of the Financial Statements, are valid and enforceable and payable in full, without any right of set-off or counterclaim or any reduction for any credit or allowance made or given, and in any event the accounts receivables are to the knowledge of the Seller Parties collectible within six months following the Effective Time, subject to the allowance for doubtful accounts to be applied on a global basis to all of the Accounts Receivables (including, without limitation, the accounts receivables owing by Ronald A. Chisholm Ltd.).

2.22 Accounts and Powers of Attorney.

Schedule 2.22 lists:

(a) name of each bank or other depository in which the Company and each Subsidiary maintains any bank account, trust account or safety deposit box and the names of all individuals authorized to draw on them or who have access to them; and

(b) the name of each Person holding a general or special power of attorney from the Company or any Subsidiary and a summary of its terms.

2.23 Sellers Residence.

Each Seller is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada) (“ITA”).

2.24 Kelron Cleveland Purchase Agreement.

Each of the Seller Parties has reviewed the representations and warranties of Kelron Cleveland provided under that certain Asset Purchase Agreement (the “Kelron Cleveland APA”) dated the date hereof between Kelron Cleveland and XPO Logistics, LLC. The Seller Parties hereby represent and warrant to XPO, intending that XPO shall be entitled to rely upon the representation and warranty provided in this Section in connection with entering into these Transactions, that the representations and warranties of Kelron Cleveland in the Kelron Cleveland APA are true and accurate in all respects.

2.25 Disclosure.

Each of the Seller Parties has provided XPO with true, accurate, and complete copies of all documents listed or described in this Agreement and the various Schedules attached hereto. No representation or warranty or other statement made by any of the Seller Parties in this Agreement or any Ancillary Document delivered in connection with the Transactions contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading. None of the Seller Parties is aware of any material fact that has specific application to the Company or any Subsidiary (other than general economic or industry conditions) that may have a Material Adverse Effect on the Business or any Subsidiary’s business other than as has been expressly set forth in this Agreement or the Schedules hereto.

**ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF BUYER**

XPO represents and warrants to the Sellers Parties as follows:

3.1 Organization and Good Standing.

XPO is a Corporation duly organized, validly existing, and in good standing under the laws of the Province of Ontario, with full corporate or limited liability company power and authority to conduct its business as it is now being conducted.

3.2 Enforceability; Authority; No Conflict.

This Agreement and the Ancillary Documents, to which XPO is a party, constitute the legal, valid, and binding obligations of XPO, enforceable against XPO in accordance with their terms, subject to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditor's rights and remedies generally and to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). XPO has the corporate power and authority to execute and deliver this Agreement and the Ancillary Documents, to which it is a party, to perform its obligations hereunder and thereunder, and to consummate the Transactions. XPO has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and the other Ancillary Documents to which it is a party and to perform its respective obligations hereunder and thereunder, and such action has been duly authorized by all necessary action by XPO and its board of directors.

Neither the execution and delivery of this Agreement or the Ancillary Documents to which XPO is a party nor the consummation or performance of the Transactions by XPO will, directly or indirectly (with or without notice or lapse of time), (i) contravene, violate, or conflict with any provision of any of the governing documents of XPO or any resolution adopted by XPO's Board; or (ii) afford any Person the right to challenge any of the Transactions or to exercise any remedy or obtain any relief under any Legal Requirements to which XPO may be subject.

**ARTICLE 4
CLOSING ARRANGEMENTS**

4.1 Closing Arrangements.

The Sellers are now delivering to XPO the following:

- (i) certificates representing the Shares duly endorsed in blank for transfer or accompanied by duly executed blank stock transfer powers;
- (ii) duly executed Escrow Agreement executed by the Escrow Agent and the Sellers;
- (iii) a favourable opinion of counsel to the Sellers, substantially in the form attached as Exhibit A;
- (iv) duly executed resignations effective as at the Effective Time of each director and officer of the Company and certain of the Subsidiaries specified by XPO;

- (v) duly executed releases from each of the Seller Parties of all claims they may have against the Company and any Subsidiary, in form and substance satisfactory to XPO;
 - (vi) duly executed stock transfer documents and general releases of the Company Group from certain of the minority shareholders of any Subsidiary, such stock transfer documents and general releases to be in form and substance satisfactory to XPO;
 - (vii) copies of required third party consents and any regulatory approvals, if any;
 - (viii) all books and records of and related to the Company and the Business, including copies of all of the Company's insurance policies;
 - (ix) a sublease of the warehouse space currently occupied by North American Distribution Logistics Inc. duly executed by it and Kelron Distribution Ontario Limited ("KDO");
 - (x) the Kelron Cleveland APA duly executed by the Sellers affiliate, Kelron Cleveland; and
 - (xi) all documentation and other evidence reasonably requested by XPO in order to establish the due authorization and completion of the transactions contemplated by this Agreement, including the taking of all corporate proceedings by the boards of directors and shareholders of the Company and the Subsidiaries, as applicable, required to effectively carry out the obligations of the Seller Parties and the Company pursuant to this Agreement.
- (b) XPO is now delivering to the Sellers the following:
- (i) the Share Purchase Price and funds required to satisfy the amount of the Shareholder Loans shall be delivered to Pallet Valo LLP for and on behalf of the Seller Parties, the Kelron Montreal minority shareholders and the Kelron Vancouver minority shareholders, as the case may be;
 - (ii) duly executed 2387 Note;
 - (iii) duly executed 2393 Note;
 - (iv) duly executed Escrow Agreement executed by the Escrow Agent and XPO;
 - (v) copies of any regulatory approvals required to complete the Transactions;

- (vi) a sublease of the warehouse space currently occupied by North American Distribution Logistics Inc. duly executed by KDO, in form and substance acceptable to XPO;
- (vii) the Kelron Cleveland APA duly executed by the XPO affiliate; and
- (viii) all documentation and other evidence reasonably requested by the Sellers in order to establish the due authorization and completion of the transactions contemplated by this Agreement, including the taking of all corporate proceedings by the board of directors and shareholders of XPO required to effectively carry out the obligations of XPO pursuant to this Agreement.

ARTICLE 5 COVENANTS

5.1 Restrictive Covenants.

In order to ensure that XPO will realize the benefits of the Transactions, each Seller Party hereby agrees that it, he or she shall not, during the period commencing at the Effective Time and ending five years after the Effective Time:

(a) directly or indirectly, alone or as a partner, joint venturer, officer, director, member, employee, consultant, agent, independent contractor or shareholder of, or landlord or lender to, any company or business, engage in any Competitive Business (as defined below), whether or not for compensation;

(b) directly or indirectly: (i) solicit, hire, engage or assist any other person or entity in soliciting, hiring, or engaging any Employee or Contractor who was employed or engaged by the Company or any Subsidiary immediately prior to the Effective Time or any employee, contractor, or agent of XPO or an Affiliate of XPO following the Effective Time (collectively, "Restricted Persons") to perform services for any entity (other than the Company, any Subsidiary, XPO, or an Affiliate of XPO), (ii) attempt to induce any such Restricted Person to leave his or her employment or engagement, or (iii) solicit, hire, or engage on behalf of himself or any other person any person who was a Restricted Person at any time during the twelve-month period immediately preceding such hiring or engagement;

(c) directly or indirectly, solicit, encourage, advise, or influence any individuals, partnerships, corporations, professional associations, or other business organizations that have a business relationship with the Company, XPO, or an Affiliate of XPO, whether in a client capacity or a vendor, carrier, independent contractor, or similar capacity (collectively, the "Business Counterparties"), to discontinue or reduce the extent of the relationship between the Company or XPO and the Business Counterparties in any way following the Effective Time; and

(d) directly or indirectly, in any way utilize, disclose, copy, reproduce, or retain in his possession any of the Company's or any Subsidiary's proprietary rights or records, including any of its customer lists or Intellectual Property;

provided, however, that none of the Seller Parties shall be deemed to have violated the prohibitions of Section 5.1 merely due the beneficial ownership of less than one percent (1%) of the shares in the capital stock of any corporation having a class of equity securities actively traded on a national securities exchange or over-the-counter market. For purposes of this Agreement, "Competitive Business" shall mean any individual, corporation, limited liability company, partnership, unincorporated organization, trust, joint venture, or other entity that engages in or may engage in the transportation of, or arranging for the transportation of, freight to, from or within Canada and/or the United States (being the jurisdictions in which the Business is presently conducted) that would require operating, forwarding, or broker authority issued by any federal or state governmental body, including activities commonly referred to as "freight brokerage," "transportation logistics," "third party logistics," "freight forwarding," "common or contract carriage," "dedicated contract carriage," "expediting," "internet load boards" or "intermodal providers" and any other activity related to the foregoing services, provided that accepting and loading of deliveries (and transloading) or arranging the movement of freight with origin or destination from or to warehouses operated by North American Distribution Logistics Inc. shall not be included in the determination of Competitive Business, but only to the extent that such arranging the movement of freight is incidental to and does not constitute more than \$3.0 million in gross revenues derived from such activities by North America Distribution Logistics Inc. during any rolling 12-month period.

5.2 Acknowledgments Regarding Restrictive Covenants.

Each of the Seller Parties agrees and acknowledges that the restrictions contained in Section 5.1 are reasonable in time, geographic area, and scope of prohibited activities and are necessary to protect the Company, any Subsidiary and XPO after the Effective Time. If any provision of Section 5.1, as applied to any party or to any circumstance, is adjudged by a court to be invalid or unenforceable, the same will in no way affect any other circumstance or the validity or enforceability of the remainder of this Agreement. If any such provision, or any part thereof, is held to be unenforceable because of the duration of such provision or the area covered thereby, the parties hereto agree that the court making such determination shall have the power to reduce the duration and/or area of such provision, and/or to delete specific words or phrases, and in its reduced form, such provision shall then be enforceable and shall be enforced. The Parties agree and acknowledge that the breach of Section 5.1 will cause irreparable damage to the Company, any Subsidiary and/or XPO and upon breach of any provision of Section 5.1, the Company, any Subsidiary and/or XPO shall be entitled to injunctive relief, specific performance, or other equitable relief without the requirement to post a bond or other security; provided, however, that the foregoing remedies shall in no way limit any other remedies which the Company, any Subsidiary and XPO may have (including the right to monetary damages).

5.3 Enforceability in Jurisdictions.

The Parties intend to and hereby confer jurisdiction to enforce the restrictive covenants set forth in this Article 5 (the "Restrictive Covenants") upon the courts of any jurisdiction within Canada or the United States in which a breach of the Restrictive Covenants occurred. Each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objections to venue laid therein. If the courts of any one or more jurisdictions hold the Restrictive Covenants unenforceable by reason of the breadth

of their scope or otherwise, it is the intention of the Parties that such determination not bar or in any way affect the Company's, any Subsidiary's or XPO's right to the relief provided for in this Article 5 in the courts of any other jurisdiction within Canada or the United States, as to breaches of the Restrictive Covenants in such other respective jurisdictions, the Restrictive Covenants as they relate to each jurisdiction being, for this purpose, severable into diverse and independent obligations. Process in any action or proceeding to enforce the Restrictive Covenants may be served on any Party anywhere in the world.

ARTICLE 6 INDEMNIFICATION; REMEDIES

6.1 Indemnification for XPO.

Subject to the limitations set forth in this Article 6, each of the Seller Parties hereby agrees, jointly and severally, to indemnify and hold XPO and its shareholders, and their respective directors, officers, employees and Affiliates (the "XPO Indemnified Parties") harmless from and against the aggregate of all expenses, Losses, costs, deficiencies, liabilities and damages (including related investigation costs and reasonable counsel, witness, and paralegal fees and expenses) (collectively, "Obligations") that are incurred or suffered by any of the XPO Indemnified Parties arising out of, relating to or resulting from: (a) any breach of a representation or warranty made by the Seller Parties in or pursuant to this Agreement or any Ancillary Document; (b) any breach of the covenants or agreements made by the Seller Parties in or pursuant to this Agreement or the Ancillary Documents; (c) the Tax or third party liability issues arising from the transfer of the capital stock of North American Distribution Logistics Inc. and its warehouse business prior to the Effective Time and for the consideration paid therefor; (d) the Tax or third party liability issues arising from transfer of the life insurance assets of the Company in settlement of indebtedness due to the Sellers prior to the Effective Time and for the consideration paid therefor; (e) matters relating to the Arnold Bros. Litigation; (f) the failure to collect the Accounts Receivables amounts owing by Ronald A. Chisholm Ltd., or any portion thereof, within 6 months of the Effective Time; (g) any breach of a representation or warranty or covenant made by Kelron Cleveland in or pursuant to the Kelron Cleveland APA; (h) any liabilities, claims, costs, damages, or expenses arising out of or in connection with the operation of the Business or the lease of the Leased Real Property prior to the Effective Time, except if, and only to the extent, any such liabilities, claims, costs, damages, or expenses are reflected in the Current Balance Sheets or the calculation of Final Working Capital; (i) any claim that may be made by the minority shareholders of Kelron Montreal and Kelron Vancouver in connection with the purchase and sale of the Kelron Montreal Shares and the Kelron Vancouver Shares by XPO from such minority shareholders, including any claim which challenges the consideration paid in respect of such shares; (j) a claim or action by Ronald A. Chisholm Ltd. for Losses resulting from the Company Group's provision of goods and services to either of them prior to the Effective Time; (k) amounts required to pay the types of indebtedness referred to in Section 2.4(d) in excess of the amounts set out in Section 2.4(d), which includes for greater certainty, the amount stated therein for Bank Indebtedness and Issued Cheques; or (l) the amount in excess of the amount of the Shareholder Loans set out in Section 2.4(e) hereof and any Tax that results from the discharge and settlement in full of the Shareholder Loans (collectively, the "XPO Indemnifiable Damages").

6.2 Indemnification for Seller Parties.

Subject to the limitations set forth in this Article 6, XPO hereby agrees, jointly and severally, to indemnify and hold the Seller Parties and their shareholders, and their respective directors, officers, employees and Affiliates (the “Seller Indemnified Parties”) harmless from and against the aggregate of all Obligations that are incurred or suffered by any of the Seller Indemnified Parties arising out of, relating to or resulting from: (a) any breach of a representation or warranty made by XPO in or pursuant to this Agreement or any Ancillary Document to which it is a party; (b) any breach of the covenants or agreements made by XPO in or pursuant to this Agreement or the Ancillary Documents to which it is a party; or (c) any liabilities, claims, costs, damages, or expenses arising out of or in connection with the operation of the Business or the lease of the Leased Real Property arising after the Effective Time (collectively, “Seller Indemnifiable Damages”).

6.3 Limitation on Indemnification.

The indemnification obligations of each of the Seller Parties, on the one hand, and XPO, on the other hand, for breaches of representations and warranties pursuant to Sections 6.1 and 6.2, respectively, are:

(a) limited to the sum of the Gross Proceeds in the aggregate, provided, that, in the case of the Seller Parties’ for the XPO Indemnifiable Damages in respect of a breach of Section 5.1 there shall be no liability cap;

(b) not applicable to indemnify an Indemnified Party unless and until and only to the extent that the aggregate of all of its Indemnity Claims exceed in the aggregate \$150,000 (the “Deductible”), provided, that, the Deductible shall not apply to limit the amount recoverable by the XPO Indemnified Parties from the Seller Parties in respect of any Indemnity Claim arising from any of the matters set out in Sections 6.1(c) through (f), inclusive.

Notwithstanding the foregoing, no limitation as to any dollar amount or any time periods on any Indemnity Claim shall apply with respect to the following matters:

- (A) a breach of any of the Indemnifying Party’s representations and warranties, if that breach is attributable to wilful default or fraud;
- (B) any Loss suffered by the Company arising from the Identified Potential Litigation Claims;
- (C) any Loss suffered by the Company from the failure of Ronald A. Chisholm Ltd. to pay its accounts receivables within six months after the Effective Time in respect of those accounts receivables which arose for goods or services provided by the Company Group on or prior to the Effective Time;
- (D) the amounts required to pay the types of indebtedness referred to in Section 2.4(d) in excess of the amounts set out in Section 2.4(d), which includes for greater certainty, the amount stated therein for Bank Indebtedness and Issued Cheques; and

- (E) the amount in excess of the amount of the Shareholder Loans set out in Section 2.4(e) hereof and any Tax that results from the discharge and settlement in full of the Shareholder Loans.

6.4 Survival of Representations and Warranties.

The right of the XPO Indemnified Parties to make a claim for XPO Indemnifiable Damages for breach of representations and warranties set forth herein shall survive for a period of two (2) years after the Effective Time; provided, however, the XPO Indemnified Parties' right to make claims that directly result from an assessment, reassessment or other demand for payment made by any Governmental Authority that has the statutory right to pursue such claim for a period that is longer than two (2) years after the Effective Time under the representations and warranties set forth in Sections 2.7 (Taxes), 2.8 (Employee Benefits), 2.9 (Compliance with Legal Requirements), 2.10 (Legal Proceedings; Orders) and 2.14 (Rights to Use Personal Information) shall survive until 120 days after the expiration of the applicable statutory period of limitations and the right of an XPO Indemnified Party to make claims under the representations and warranties set forth in Sections 2.1 (Organization and Good Standing), 2.2 (Capitalization), 2.3 (Enforceability: Authorization; No Conflict) and the last sentence of Section 2.6 (Sufficiency of Assets: Condition and Title of Assets) shall survive indefinitely. The right of the Seller Indemnified Parties to make a claim for Seller Indemnifiable Damages for breach of representations and warranties set forth in Article 3 shall survive the closing of the Transactions contemplated herein indefinitely. No claim for the recovery of XPO Indemnifiable Damages for breach of a representation or warranty herein may be asserted by an XPO Indemnified Party after the applicable period has expired; provided, however, that claims for XPO Indemnifiable Damages first asserted by timely delivery of a claims notice within such period shall continue to survive until such claims have been satisfied or otherwise resolved. Notwithstanding any knowledge of facts determined or determinable by any Party by investigation or disclosures on the Schedules, the right to indemnification shall not be affected by such knowledge, investigation or disclosure and each Party shall have the right to fully rely on the representations, warranties, covenants, and agreements of the other Parties contained in this Agreement. Each representation, warranty, covenant and agreement of the Parties contained in this Agreement is independent of each other representation, warranty, covenant and agreement. All of the covenants and representations and warranties contained in this Agreement and in any other agreement or document delivered pursuant to this Agreement, including this Article 6, will survive the closing of the Transactions.

6.5 Tax Indemnity.

The Seller Parties will, jointly and severally, indemnify and hold harmless XPO and XPO's directors, officers and employees from and against any Loss suffered by XPO or any of XPO's directors, officers or employees as a result of any assessment or reassessment for Taxes relating to the Company or any Subsidiary for any taxation year or period ending on or before, or that includes, the Effective Time, including, for greater certainty, any liability of the Company for Taxes arising as a result of the acquisition of Kelron Vancouver Shares or Kelron Montreal Shares from any of Benamyze Holdings Ltd., Louis Comitini, Darin Pritchard or Tim Ellis, as the case may be.

(a) Despite the generality of the immediately preceding paragraph, the Seller Parties will have no obligation under this indemnity for any assessment or reassessment arising from, or subsequent to:

- (i) the execution and delivery by or on behalf of the Company or any Subsidiary of a waiver as provided for in subsection 152(4) of the *Income Tax Act* (Canada) or any similar Law, including under provincial Tax laws, unless the Sellers, or any one of them, consented to that waiver, which consent is not to be unreasonably withheld;
- (ii) the post-closing amendment of any Tax Return filed by or on behalf of the Company or any Subsidiary for any taxation year ending on or before the Effective Time unless that amendment is consented to by the Sellers, or any one of them, which consent is not to be unreasonably withheld, or any other action taken by XPO, the Company or any Subsidiary which has the effect of shifting income, deduction, credit, or allowance from one fiscal period to another fiscal period or between or among the Company or any Subsidiary and another Person that results in an increase in Taxes for any taxation year ending on or before the Effective Time or Straddle Period;
- (iii) a post-closing change in any Tax Law or a post-closing publicly announced or disseminated change in the policy of any Governmental Authority in administering any Tax law; or
- (iv) a post-closing reorganization involving the Company or any Subsidiary which has the effect of creating a liability for Taxes with respect to a period before the Effective Time.

6.6 **Set-off.**

Any amounts owed by the Seller Parties to the XPO Indemnified Parties for XPO Indemnifiable Damages after the Effective Time may, at XPO's election, be recovered through set-off against the Holdback (or any portion thereof) or any other amounts owed by XPO to any of the Sellers, including under the Notes, provided that XPO gives the Sellers notice thereof and obtains a judgment of a Governmental Authority, a determination of the Accountants in respect of the determination of the Final Working Capital under Section 1.4, or a written acknowledgment of liability by the Sellers, or any one of them. In the event a claim for indemnification arises for which a proceeding before a Governmental Authority or determination of the Accountants is pending, XPO may suspend payment of any Holdback in any amount (the "Suspension Amount"), which it reasonably estimates will be required to satisfy such claim, and if the Suspension Amount is not sufficient against any other amounts owed by XPO to the Sellers. Any Holdback that exceeds the Suspension Amount shall be delivered by the Seller Parties, on a joint and several basis, to the Company as provided herein. XPO agrees that in respect of any monetary claim it shall first set-off such claim against the Holdback and after the Holdback has been depleted (or in the event the Holdback is insufficient to satisfy such claim) then look to recover such remaining amount against the principal outstanding under the Notes.

6.7 Tax and Other Adjustments.

The amount of any Loss for which indemnification is provided under this Article 6 will be net of any amounts actually recovered by the Indemnified Party under insurance policies with respect to that Loss and will be (i) increased to take account of any net Tax cost incurred by the Indemnified Party arising from the receipt of indemnity payments under this Agreement, and (ii) reduced to take account of any net Tax benefit realized by the Indemnified Party arising from the incurrence or payment of that Loss, to the extent necessary to ensure that the Indemnified Party receives a net amount which, taking into account any net Tax cost or net Tax benefit, is sufficient to fully compensate for the Loss, but results in no net gain to the Indemnified Party. In computing the amount of any net Tax cost or net Tax benefit, the Indemnified Party will be deemed to recognize all other items of income, gain, Loss, deduction or credit before recognizing any item arising from the receipt of any indemnity payment under this Agreement or the incurrence or payment of any indemnified Loss. XPO will cause the members of the Company Group to make claims under all insurance policies that may cover XPO Indemnifiable Damages and diligently pursue such claims.

6.8 No Bar.

Only if the Holdback is insufficient to set off any claim for XPO Indemnifiable Damages made hereunder (or has been delivered to the Company prior to the making or resolution of such claim), then the XPO Indemnified Parties may take any action or exercise any remedy available to them by appropriate legal proceedings to collect the XPO Indemnifiable Damages from the Seller Parties.

6.9 Procedure for Indemnification—Third Party Claims.

(a) Promptly after receipt by a Party entitled to indemnification under this Article 6 (an “Indemnified Party”) of notice of the commencement of any claim or proceeding against it by a third party for which it is entitled to indemnification under this Article 6 (an “Indemnity Claim”), such Indemnified Party shall, if an Indemnity Claim is to be made with respect thereto against a Party obligated to provide indemnification pursuant to this Article 6 (the “Indemnifying Party”), promptly give written notice to such Indemnifying Party of the commencement of such Indemnity Claim, but any delay in notifying such Indemnifying Party will not relieve such Indemnifying Party of any liability that it may have to any Indemnified Party, except to the extent that such Indemnifying Party demonstrates that the defense of such action is prejudiced by the Indemnified Party’s delay in giving such notice.

(b) If an Indemnified Party asserts an Indemnity Claim then the Indemnifying Party shall have the right to participate in the defense of any proceeding in connection with such Indemnity Claim at its expense unless the Indemnifying Party is also a person against whom the Indemnity Claim is made and the Indemnified Party determines in good faith that joint representation would be inappropriate; provided, the Indemnified Party shall control such defense.

(c) The Parties will cooperate with and make available such assistance, personnel, witnesses and materials as may be reasonably requested to defend a third party claim. Each Indemnified Party shall reasonably consult and cooperate with each Indemnifying Party with a view towards mitigating its obligations, in connection with claims for which a party seeks indemnification under this Article 6 and shall have the right to approve the terms of any settlement reached in respect of any such Indemnity Claim, acting in each case reasonably and without delay.

6.10 Procedure for Indemnification—Other Claims.

In the event any Indemnified Party should have a claim against any Indemnifying Party hereunder which does not involve a third party claim and does not relate to a Dispute Notice, the Indemnified Party shall transmit to the Indemnifying Party a written notice describing in reasonable detail the nature of the claim and the basis of the Indemnified Party's request for indemnification under this Agreement. If the Indemnifying Party does not notify the Indemnified Party within forty-five (45) days from its receipt of the Indemnity Notice that the Indemnifying Party disputes such claim, the claim specified by the Indemnified Party in the Indemnity Notice shall, subject to the further provisions of this Article 6, be deemed a liability of the Indemnifying Party under this Article 6.

6.11 Remedies Cumulative and Joint and Several.

The remedies provided herein shall be cumulative and shall not preclude any party hereto from asserting any other right or seeking any other remedies against the other Party. The representations, warranties, covenants, agreements and obligations of each of the Seller Parties are joint and several.

6.12 Adjustment to Gross Proceeds.

Any indemnification amounts under this Agreement shall be treated as an adjustment to the Gross Proceeds for tax purposes, to be applied to adjust the Share Purchase Price.

6.13 Litigation Assistance.

XPO agrees that it shall cause the Company to provide to the Sellers reasonable access, during business hours, to the Employees and the Company books and records upon reasonable request of the Sellers, from time to time, and at the cost and expense of the Sellers, where such access is required in the reasonable opinion of the Sellers in furtherance of the Arnold Bros. Litigation matter. The Parties agree that in the event the Arnold Bros. Litigation is not transferred by the Company to the Sellers, or as they may otherwise direct, then the Sellers shall be responsible for all Losses attributable to the Company continuing to prosecute or advance or failure to advance, as the case may be, the Arnold Bros. Litigation. The Parties further agree that any proceeds arising from the Arnold Bros. Litigation matter whether by way of settlement, judgement, compromise or otherwise shall be paid over to the Sellers forthwith after receipt by the Company, provided that the Company shall first be entitled to deduct against any such sums (a) the amount required to reimburse the Company for any Losses and (b) the amount of any Tax cost to the Company for said sums as the intention amongst the Parties hereunder is that such payment to the Sellers of any such proceeds of settlement, judgement, compromise or otherwise shall be made on an after Tax basis to the Company and shall be treated as an adjustment to the Gross Proceeds.

6.14 **Accounts Receivables Repurchase.**

The Seller Parties shall have the option to repurchase the accounts receivables balances due from Ronald A. Chisholm Ltd. or any other Person, in respect of whom the Seller Parties are or may be required to indemnify XPO, to the Company Group after the expiry of the six month period from the Effective Time for the amount of the accounts receivable balance, and upon making such election the Sellers shall deliver a payment direction to the Escrow Agent to deduct such amount from the amount of the Holdback held in escrow with the Escrow Agent, or if such amount is not sufficient XPO shall be entitled to make a deduction against the principal amount due under the Notes or from other sums due to the Seller Parties by XPO, and the Company shall then be directed by XPO to assign the specific account receivable which is being purchased to the Seller Parties, or as they may otherwise direct.

ARTICLE 7 CERTAIN DEFINITIONS

7.1 **Defined Terms.**

As used herein, the following terms shall have the following meanings:

(a) “Accounts Receivables” has the meaning ascribed to such term in Section 2.21.

(b) “Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person or, with respect to any natural Person, any person having a relationship with such Person by blood, marriage or adoption not more remote than first cousin.

(c) “Ancillary Documents” has the meaning ascribed to such term in Section 2.2.

(d) “Arnold Bros. Litigation” means that litigation claim by the Company, as plaintiff, and Arnold Bros., as defendant, under court file number: CV-06-1635-00.

(e) “Bank Indebtedness” has the meaning ascribed to such term in Section 2.4(d).

(f) “Closing” means the completion of the Transactions contemplated herein on or at the Effective Time.

(g) “Contract” means any agreement, contract, lease, note, mortgage, indenture, loan agreement, franchise agreement, covenant, employment agreement, license, instrument, purchase and sales order, commitment, undertaking, obligation, whether written or oral, express or implied.

(h) “Employee” has the meaning ascribed to such term in Section 2.13(a).

(i) “GAAP” means generally accepted accounting principles in effect in Canada from time to time.

(j) “Gross Proceeds” means the aggregate sum comprised of the Share Purchase Price, the amount of the Bank Indebtedness, net of cash and cash equivalents, the amount of the Issued Cheques and the amount of the Shareholder Loans.

(k) “Governmental Authority” means any nation or government, any federal, provincial, state, regional, local, or other political subdivision thereof, and any entity or official exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government.

(l) “Identified Potential Litigation Claim” means that potential litigation claim by Ronald A. Chisholm Ltd. against the Company Group arising from the brokerage of a shipment of meat products whereby the carrier failed to stop to obtain USFDA approval for the cross-border shipment of meat products.

(m) “Indemnity Claim” has the meaning ascribed to such term in Section 6.9(a).

(n) “Indemnified Party” has the meaning ascribed to such term in Section 6.9(a).

(o) “Issued Cheques” has the meaning ascribed to such term in Section 2.4(d).

(p) “Kelron Cleveland APA” has the meaning ascribed to such term in Section 2.24.

(q) “Kelron Cleveland” means Kelron Distribution Systems (Cleveland) LLC, a Delaware company.

(r) “Kelron Montreal” means Kelron Montreal Inc., a Canada company.

(s) “Kelron Montreal Shares” has the meaning ascribed to such term in Section 1.1(c).

(t) “Kelron Montreal USA” means that certain Unanimous Shareholders Agreement relating to Kelron Montreal dated October 15, 2009 with effect as of the 23rd day of October, 2007 between Louis Comitini, Darin Pritchard, Tim Ellis, Jason Hollingsworth, the Company, Kelron Montreal, as amended by an Agreement to be Bound dated April 21, 2010 between Louis Comitini, Darin Pritchard, Tim Ellis, Jason Hollingsworth, the Company and Kelron Montreal.

(u) “Kelron TCL” means Kelron Montreal (TCL) Inc., a Canada company.

(v) “Kelron TCL Shares” means the 100 non-voting common shares held by Ray M. Farmer and the 100 non-voting common shares held by Brent MacDonald, respectively, in the capital of Kelron TCL.

(w) “Kelron TCL USA” means that certain Unanimous Shareholders Agreement relating to Kelron TCL dated April 26, 2010 between Ray M. Farmer, Kelron Montreal and Kelron TCL, as amended by a Shareholders Acknowledgement dated July 5, 2011 between Brent MacDonald, Ray M. Farmer, Kelron Montreal and Kelron TCL.

(x) "Kelron Vancouver" means Kelron Distribution (Vancouver) Ltd., an Ontario company.

(y) "Kelron Vancouver Shares" has the meaning ascribed to such term in Section 1.1(b).

(z) "Kelron Vancouver USA" means that certain Unanimous Shareholders Agreement relating to Kelron Vancouver dated April 1, 2005 between Howard Breslaw, Benamyze Holdings Ltd., the Company and Kelron Vancouver.

(aa) "Lien" means any mortgage, pledge, security interest, encumbrance, title defect, lien or charge of any kind (including the filing of or agreement to give any financing statement under the *Personal Property Security Act* (Ontario) ("PPSA"), hypothecs for movable property under the Civil Code of Quebec and the Uniform Commercial Code or comparable law or any jurisdiction in connection with such mortgage, pledge, security interest, encumbrance, lien, or charge).

(bb) "Loss" means any loss, liability, damage, cost, expense, charge, fine, penalty or assessment including the costs and expenses of any action, suit, proceeding, demand, assessment, judgment, settlement or compromise and all interest, punitive damages, fines, penalties and reasonable professional fees and disbursements.

(cc) "Material Adverse Change (or Effect)" means a change (or effect) in the financial condition, properties, assets, liabilities, rights, obligations, operations, business or prospects of the Company and any Subsidiary, taken as a whole, which change (or effect) individually or in the aggregate, is materially adverse to such condition, properties, assets, liabilities, rights, obligations, operations, business, or prospects; provided, that in no event shall any of the following be taken into account in the determination of whether a Material Adverse Change (or Effect) has occurred: (a) any change in GAAP; (b) any change resulting from conditions affecting any of the industries in which the Company or any Subsidiary operates or from changes in general business, financial, political, capital market or economic conditions (including any change resulting from any hostilities, war or military or terrorist attack) (provided that such change or effect does not affect the Company or any Subsidiary in a substantially disproportionate manner as compared to similarly situated companies); or (c) any change resulting from the compliance by the Seller Parties with the terms of, or the taking of any action by the Seller Parties contemplated or permitted by, this Agreement.

(dd) "Material Contract" means all Contracts that are material to the business and operations of the Company or any Subsidiary, including, but not limited to, all of the following types of Contracts to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary or any of their respective properties is bound: (a) Contracts that involve performance of services or delivery of goods or materials by or to the Company or any Subsidiary of an amount or value in excess of one hundred thousand dollars (\$100,000) in annual gross revenue based upon the twelve months ended April 30, 2012; (b) Contracts that were not

entered into in the ordinary course of business; (c) leases with respect to the Leased Real Property; (d) mortgages, indentures, loan or credit agreements, security agreements, and other agreements and instruments relating to the borrowing of money or extension of credit; (e) leases for machinery, equipment, motor vehicles, furniture, office equipment, or other personal property; (f) Contracts with any of the Seller Parties or Affiliates of any of the Seller Parties; (g) licensing agreements or other written Contracts with respect to Intellectual Property; (h) joint venture, partnership, or other Contracts (however named) involving a sharing of profits, Losses, costs, or liabilities by the Company or any Subsidiary with any other Person; (i) Contracts containing covenants (including, without limitation, non-solicit, non-compete, non-disparagement, and similar provisions) that in any way purport to restrict the Company, any Subsidiary, or any of their key employees or the continued operation of the Business or any Subsidiary's business or the expansion thereof to other geographical areas, customers, and suppliers or lines of business; (j) Contracts providing for payments to or by any Person based on sales, purchases, or profits, other than direct payments for goods or services; (k) powers of attorney; (l) custom bonds and letters of credit; (m) Contracts, excluding those with an amount or value less than fifty thousand dollars (\$50,000) in annual gross revenue, where the consequences of a breach or default thereunder, or the termination, expiration, or cancellation thereof, would reasonably be expected to have a Material Adverse Effect; (n) employment, independent contractor, and consulting Contracts; (o) Contracts for capital expenditures in excess of ten thousand dollars (\$10,000); (p) contracts in writing with each of the Significant Customers listed in Schedule 2.20; and (q) any amendment, supplement, and modification (whether oral or written) in respect of any of the foregoing; provided, however, that the term "Material Contract" shall not include any Plan.

(ee) "Notes" means the 2387 Note and the 2393 Note.

(ff) "Permitted Lien" means (i) Liens for Taxes not yet due and payable (or the subject of an extension) or being contested in good faith by appropriate procedures); (ii) mechanics, carriers', workmen's, repairmen's or other like Liens arising or incurred in the ordinary course of business or for amounts that are not delinquent and which are reflected in the calculation of Final Working Capital as of the Effective Time or are set forth on the Current Balance Sheets; (iii) easements, encroachments, rights of way, zoning ordinances and other similar encumbrances or minor imperfections in title affecting the Leased Real Property which do not impede the Business or any Subsidiary's business as currently conducted; (iv) Liens, if any, created as a result of any act taken by or through XPO or any of its Affiliates; (v) the right reserved to or vested in any Governmental Authority by any statutory provision; and (vi) any non-exclusive license of Intellectual Property granted in the ordinary course of business.

(gg) "Person" means an individual, partnership, corporation, limited liability company, business trust, joint Share company, estate, trust, unincorporated association, joint venture, Governmental Authority or other entity, of whatever nature.

(hh) "Shareholder Loans" has the meaning ascribed to such term in Section 2.4(e).

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 Expenses.

Except as otherwise herein expressly provided, each Party shall bear its own expenses (including without limitation fees of their respective attorneys, consultants and experts) incurred by such Party in connection with this Agreement or the consummation of the Transaction.

8.2 Notices.

All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally or by recognized overnight courier service on the Party to whom notice is to be given, on receipt of confirmation of good transmission by facsimile, sent via electronic email or other form of electronic communication with proof of receipt of confirmation, or on the fourth day after mailing if mailed to the Party to whom notice is to be given by first class mail, registered or certified, return receipt requested, postage prepaid, and properly addressed as follows:

To the XPO Companies:

XPO Logistics, Inc.
Five Greenwich Office Park
Greenwich, CT 06831
Attention: General Counsel
e-mail: gordon.devens@xpologistics.com

with a copy, which shall not constitute notice, to:

Gowling Lafleur Henderson LLP
One First Canadian Place, Suite 1600
Toronto, ON M5X 1G5
Attention: Nurhan Aycan
e-mail: nurhan.aycan@gowlings.com

To the Designated Seller Parties Representative:

To Matthews and 393 Ontario:
16 Alpen Grove Court,
Heidelberg, Ontario N0B 2M1
Attention: Keith Matthews
e-mail:

to Bennett & 387 Ontario:

60 Old Mill Road, #1001,
Oakville, Ontario L6J 7V9
Attention: Geoff Bennett
e-mail:

with a copy to, which shall not constitute notice, to:

Pallett Valo LLP
Lawyers and Trade-Mark Agents
90 Burnhamthorpe Road West, Suite 1600
Mississauga, Ontario L5B 3C3
Attention: Murray Gottheil
e-mail: gottheil@pallettvalo.com

Any Party may change its address for notice by written notice given to the other Parties in accordance with this Section.

Each of the Seller Parties hereby agrees and covenants that any notice delivered to the Seller Party designated in this Section as the Seller Parties representative (the "Designated Seller Parties Representative"), as may be amended by written notice to XPO signed by all of the Seller Parties, from time to time, shall constitute deemed delivery of such notice to all of the Seller Parties. Furthermore, any consent required to be obtained from the Seller Parties, or any one of them, shall be deemed obtained from such Seller Parties, or the relevant Seller Party, as the case may be, when such consent has been obtained from the Designated Seller Parties Representative.

8.3 **Further Assurances.**

The Parties shall cooperate reasonably with each other and with their respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall execute and deliver to each other such other documents, and do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the Transaction. Each of the Parties agrees to cooperate with the other in the preparation and filing of all forms, notifications, reports and information, if any, required or reasonably deemed advisable pursuant to any law, rule or regulation in connection with the Transaction.

8.4 **Indebtedness Adjustment.**

In the event that the Bank Indebtedness, net of cash on deposit, is determined to be less than the sum of \$766,000, then XPO shall pay to the Sellers, or as they may in writing otherwise direct, the amount equal to the difference that results from subtracting the actual Bank Indebtedness outstanding as at the Effective Time from said sum \$766,000.

Similarly, in the event that the amount of the Issued Cheques actually cashed is determined to be less than the sum of \$4,562,000, then XPO shall pay to the Sellers, or as they may in writing otherwise direct, the amount equal to the difference that results from subtracting the amount of Issued Cheques which have been cashed from \$4,562,000.

Any of the adjustments referenced in this Section shall constitute an adjustment to the Gross Proceeds, which will be applied to adjust the Share Purchase Price.

8.5 Retention of and Access to Records.

XPO shall maintain copies of all of the Company's records for a period of at least five years after the Effective Time. XPO also shall provide the Sellers reasonable access to such records, during normal business hours, to enable them to prepare financial statements or Tax Returns, deal with tax audits, or any similar and reasonable business purpose specified by the Sellers.

8.6 Personal Effects.

The Parties agree that the Seller Parties shall be entitled to the contents of their respective offices at the Company's head office, including furnishings but not including Company computers and telephones, and that the Seller Parties shall be entitled to the hockey paraphernalia located at the Company premises.

8.7 Tax Matters.

XPO will cause to be prepared and filed on a timely basis all Tax Returns for the Company and each Subsidiary for any period which ends on or before the Effective Time and for which Tax Returns have not been filed as of the Effective Time. XPO will also cause to be prepared and filed on a timely basis all Tax Returns for the Company and each Subsidiary for all Straddle Periods (all these Tax Returns together with the Tax Returns referred to in the first sentence of this Section being referred to as "Stub Period Returns"). XPO shall employ the services of Zeifmans LLP to prepare the Stub Period Returns. The Sellers and XPO will co-operate fully with each other and make available to each other in a timely fashion all data and other information as may reasonably be required for the preparation of the 2012 audited financial statements of the Company and all Stub Period Returns and will preserve that data and other information until the expiration of any applicable limitation period for maintaining books and records under any applicable Tax law with respect to the Stub Period Returns. XPO will provide to the Company's auditor for its review a copy of the Stub Period Returns and the Sellers shall approve each Stub Period Return prior to its filing and will pay to XPO the costs (including a reasonable allocation of internal costs) of the preparation and filing of the Stub Period Returns. In addition, XPO will cause the Company to make, and file, an election under subsection 256(9) of the ITA in its Tax Return under the ITA for the Tax year ending immediately before XPO's acquisition of control of the Company on the Effective Time, such that subsection 256(9) of the ITA does not apply, and XPO's acquisition of control of the Company for the purposes of the ITA occurs at the Effective Time, and not at the beginning of the Effective Time. "Straddle Period" means any taxation period of the Company or a Subsidiary ending after the Effective Time which commenced before the Effective Time and includes a period before the Effective Time.

8.8 Pre-Effective Time Transfers and Call Notices.

The Seller Parties hereby covenant that they have taken all steps and made all necessary filings and complied with all Legal Requirements in connection with: (a) the transfer to the Sellers of the capital stock of North American Distribution Logistics Inc. and its warehouse business prior to the Effective Time; (b) the transfer of the life insurance assets of the Company in settlement of indebtedness due to the Sellers prior to the Effective Time; and (c) causing Kelron Montreal to exercise the Call Notice for the acquisition of the Kelron TCL Shares held by the minority shareholders thereof. The Sellers will provide XPO reasonable access, during business hours, to the books and records and other relevant materials relevant to the transferred assets described above upon reasonable request of XPO, from time to time, in connection with XPO's requirement to comply with any Legal Requirement or judicial process or request for information to which XPO is compelled to comply.

8.9 Kelron Cleveland.

The Seller Parties hereby covenant that they have taken all steps and made all necessary filings and complied with all Legal Requirements in connection with transferring or causing the transfer of assets owned by Kelron Cleveland to occur pursuant to the terms of the Kelron Cleveland APA. The Seller Parties understand and agree that this covenant and the granting of the representation and warranty in Section 2.24 of this Agreement amounts to a guarantee of the obligations of Kelron Cleveland under the Kelron Cleveland APA and the Seller Parties hereby each willingly agree to enter into such obligations for the benefit of XPO and its affiliates.

8.10 Confidentiality; Publicity.

Except as may be required by law, rule, regulation, or pursuant to a stock exchange listing agreement or as otherwise permitted or expressly contemplated herein, no Party and none of their respective Affiliates, employees, agents, and representatives shall disclose to any third party this Agreement, the subject matter or terms hereof or any confidential information or other proprietary knowledge concerning the business or affairs of any other party which it may have acquired from such party in the course of pursuing the transactions contemplated by this Agreement without the prior written consent of the other parties hereto; provided, that any information that is otherwise publicly available, without breach of this provision, or has been obtained from a third party without a breach of such third party's duties, shall not be deemed confidential information, and after the Effective Time XPO shall not be restricted with respect to any confidential information of the Company or any Subsidiary. XPO and its Affiliates may issue such press releases and other public announcements concerning the transactions provided herein as they desire in their sole discretion. No press release or other public announcement related to this Agreement or the transactions contemplated hereby shall be issued by any of the Seller Parties without the prior written approval of XPO.

8.11 Governing Law; Forum.

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without regard to conflicts-of-laws principles that would require the application of any other law. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere in the world.

8.12 Entire Agreement.

This Agreement, the Ancillary Documents and the attached Schedules contain the entire agreement among the Parties hereto and supersede all prior agreements among the Parties hereto with respect to the Transaction. All Schedules referred to herein are intended to be, and hereby are, specifically made a part of this Agreement.

8.13 Assignment.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, legal representatives, and permitted assigns. This Agreement may not be assigned by any Seller Party without the prior written consent of XPO or its assignee as the case may be.

8.14 Brokers or Finders.

Each Party shall be solely responsible for, and shall indemnify and defend the other Party from and against, any obligation or liability, contingent or otherwise, for brokerage or finders' fees, commissions or other similar payments payable to any broker, agent or similar intermediary that asserts a claim against such indemnifying Party in connection with the Transaction.

8.15 Severability.

If any provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision there shall be automatically added as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and still be legal, valid and enforceable.

8.16 Amendments.

This Agreement shall not be changed or terminated orally and no waiver of compliance with any provision or condition hereof and no consent provided for herein shall be effective unless evidenced by a written instrument duly executed by the Party to be charged therewith.

8.17 Headings.

Paragraph headings herein are for convenience only and shall not affect the interpretation of any provision.

8.18 Counterparts; Electronic Delivery.

This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one and the same instrument. Delivery of an executed copy of this Agreement by telecopy or other means of electronic communication producing a printed copy

will be deemed to be an execution and delivery of this Agreement on the date of such communication by the Parties so delivering such a copy. Any Party so delivering such a copy via electronic communication shall deliver an executed original of this Agreement to the other Parties upon request.

8.19 Construction.

This Agreement is the joint product of the Parties, and each provision hereof has been subject to mutual consultation, negotiation, and agreement of the Parties and shall not be construed for or against any Party hereto. The word “including” means “including without limitation.” The Parties intend that each representation, warranty, and agreement contained in this Agreement will have independent significance. If any Party has breached any representation, warranty, or agreement in any respect, the fact that there exists another representation, warranty or agreement relating to the same subject matter (regardless of the relative levels of specificity) that the Party has not breached will not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, or agreement. The use of the masculine, feminine, or neuter gender or the singular or plural form of words will not limit any provisions of this Agreement. A statement that an item is listed, disclosed, or described means that it is correctly listed, disclosed, or described, and a statement that a copy of an item has been delivered means a true and correct copy of the item has been delivered. All references to dollar amounts is to the lawful currency of Canada unless otherwise indicated. All references to the knowledge of a Person means after such Person has conducted a diligent enquiry into such fact or matter, but without having conducted any third party investigation or verification.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

XPO LOGISTICS CANADA INC.

Per /s/ Gordon Devens
Name: Gordon Devens
Title: SVP & GC

1272387 ONTARIO INC.

Per /s/ Geoffrey Bennett
Name: Geoffrey Bennett
Title: President

1272393 ONTARIO INC.

Per /s/ Keith L. Matthews
Name: Keith L. Matthews
Title: President

_____)
Witness)
_____)
_____)
_____)
Witness)
_____)
_____)
_____)

/s/ Keith Matthews

Keith Matthews, individually

/s/ Geoff Bennett

Geoff Bennett, individually

XPO LOGISTICS, INC. – GUARANTEE

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by XPO Logistics, Inc., a Delaware corporation (the “XPO Guarantor”), and the XPO Guarantor hereby covenants and agrees in favour of the Seller Parties as follows:

Each of the obligations of XPO contained in this Agreement, including any documents, agreements, covenants, schedules or exhibits referred to herein or therein, to which XPO is a party are hereby guaranteed in its entirety by as of and from the Effective Time (collectively, the “Guaranteed Liabilities”). Furthermore, XPO Guarantor covenants that:

1. The XPO Guarantor certifies to the Seller Parties that XPO Logistics Canada Inc. is a subsidiary or affiliate of the XPO Guarantor;
2. The Seller Parties shall not be bound to exhaust their recourse against XPO or others or any securities or other guarantees they may at any time hold before being entitled to payment from the XPO Guarantor;
3. Without prejudice to or in any way limiting or lessening the XPO Guarantor’s liability and without obtaining the consent of or giving notice to the XPO Guarantor, the Seller Parties may grant time, renewals, extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with XPO and others, including the XPO Guarantor and any other guarantor as the Seller Parties may see fit, and may take, abstain from taking or perfecting, vary, exchange, renew, discharge, give up, realize on or otherwise deal with securities and guarantees in such manner as the Seller Parties may see fit; and
4. This guarantee shall not be discharged or otherwise affected by any change in the name of XPO or in the objects, restrictions on the business that may be carried on or on the powers that may be exercised by, capital structure or constitution of XPO or by the sale of the XPO’s business or any part thereof or by XPO being amalgamated with a corporation, but shall notwithstanding any such event, continue to apply to all Guaranteed Liabilities whether theretofore or thereafter incurred; and in the case of XPO being amalgamated with a corporation, this guarantee shall apply to the liabilities of the resulting partnership or corporation, and the term “XPO” shall include each such resulting partnership and corporation.

DATED this 3rd day of August, 2012.

XPO LOGISTICS, INC.

Per /s/ G. Devens
Name: G. Devens
Title: SVP, GC

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made as of August 3, 2012, by and among: (i) **XPO Logistics, LLC**, a Delaware limited liability company ("Buyer"); (ii) **Kelron Distribution Systems (Cleveland) LLC**, a Delaware limited liability company (the "Company"); and (iii) **Geoff Bennett** and **Keith Matthews**, each of whom is an individual resident in the Province of Ontario (together, the "Principals" and, collectively with the Company, the "Seller Parties"). Buyer and the Seller Parties are referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

- A. WHEREAS**, the Company is engaged in the business of logistics and brokerage services (*i.e.*, arranging for the transportation of freight, whether by truckload, less-than-truckload or otherwise) (the "Business");
- B. WHEREAS**, the Principals indirectly own all of the issued and outstanding equity interests of the Company and as such will receive a substantial benefit as a result of the transactions contemplated by this Agreement and the documents executed in connection herewith (collectively, the "Transactions"); and
- C. WHEREAS**, the Company desires to sell or otherwise transfer, and Buyer desires to purchase or otherwise acquire, certain rights, operations and assets associated with the Business.

NOW, THEREFORE, in consideration of the promises and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**ARTICLE 1
PURCHASE AND SALE OF ASSETS****1.1 Purchased Assets.**

On the terms and subject to the conditions set forth in this Agreement, effective as of 12:01 a.m. Central time on the date hereof (the "Effective Time"), except as expressly set forth in Section 1.2, the Company hereby sells, conveys, assigns, transfers and delivers to Buyer, free and clear of all Liens other than Permitted Liens, and Buyer hereby purchases and assumes from the Company, all of the Company's right, title and interest in and to, all of its assets and property, tangible and intangible, of every kind and description, used in, held for use in, necessary for, or related to the operation of the Business, (collectively, the "Purchased Assets") including, but not limited to, the following:

- (a) **Tangible Personal Property.** All computer hardware and software, furniture, equipment, fixtures, supplies, and other tangible personal property used in the Business, as identified on Schedule 1.1(a), including all manuals, written

warranties and other documents relating thereto, together with any rights, claims and interests arising out of maintenance or service contracts relating thereto or the breach of any express or implied warranty by the manufacturers or sellers of any such assets or any component part thereof;

- (b) **Accounts Receivable.** All trade and other accounts receivable, credits, rights to rebates, deposits, refunds and reimbursements of the Business ("Receivables") other than Receivables owing from any of the Seller Parties or any Affiliates thereof;
- (c) **Contracts.** All right, title and interest the Company has or may have under the Contracts set forth on Schedule 1.1(c) (the "Assumed Contracts"), including all rights to receive payment for products sold or services rendered and to receive goods and services pursuant to such Assumed Contracts, and to assert claims and to take other actions in respect of breaches, defaults and other violations thereunder;
- (d) **Licenses, Permits and Approvals.** All right, title and interest the Company has in and to all Permits related to the Business or the Purchased Assets, including those listed on Schedule 1.1(d) (the "Assumed Permits"), to the extent such Assumed Permits are transferable;
- (e) **Business Information.** All operating, design, test and other data and records (in each case, in whatever form or medium, including electronic media), including all books and records, current, prospective and lapsed customer and supplier lists, commercial and technical information, financial and accounting records, purchase orders and invoices, sales orders, credit and collection records, correspondence and miscellaneous records with respect to customers and supply sources, notes, sales and promotional material and data, advertising materials, cost and pricing information, business plans, reference catalogs, payroll and personnel records of the Company's employees, employee handbooks, policies and procedures, research and development files, databases, telephone, facsimile, and e-mail addresses and listings, and all other similar property, rights and information used in the Business (other than records the Company is required by applicable federal, state, local, municipal or foreign law, ordinance, principle of common law, code, regulation, statute or treaty (collectively, "Legal Requirements") to retain in its possession, as to which copies shall be provided to Buyer);
- (f) **Cash for Outstanding Checks, ACH and Similar Transactions.** Any amount of cash necessary to fund all checks written or automatic clearing house ("ACH") or similar transactions authorized by the Company that are outstanding on or before the Effective Time; provided, however, that the Company agrees to hold such cash in trust for the benefit of Buyer in the bank account(s) against which such outstanding checks, ACH or similar transactions will be drawn until all such check, ACH or similar transactions have been satisfied in full;

- (g) **Intercompany Receivables.** All Receivables of the Business owing from any of the Seller Parties or any Affiliates thereof;
- (h) **Personnel Records.** All personnel records and other pertaining to the Employees; and
- (i) **Other.** Except to the extent specifically listed in Section 1.2, all other rights, property and assets, tangible or intangible, legal or equitable, contingent or infeasible, express or implied, owned by the Company or used, directly or indirectly, in the Business, including, but not limited to, goodwill, going concern value, claims and causes of action against suppliers and claims and causes of action against customers and other third parties (whether or not previously asserted) to the extent such rights, claims and causes of action relate to the Purchased Assets.

1.2 **Excluded Assets.**

Notwithstanding the provisions of Section 1.1, the Company shall not sell, and Buyer shall not purchase or assume, any of the following assets of the Company (collectively, the "Excluded Assets"):

- (a) **Rights Under this Agreement.** All of the Seller Parties' rights under this Agreement and the documents executed in connection with the Transactions;
- (b) **Cash.** All cash of the Company other than the amount described in Section 1.1(f);
- (c) **Corporate Records.** All minute books, membership interest records and corporate seals of the Company and other corporate documents and records other than all personnel records and other pertaining to the Employees;
- (d) **Employee Benefits.** All Plans (as defined in Section 2.8) and any assets or insurance policies related thereto;
- (e) **Other.** All assets of the Company listed on Schedule 1.2(e) hereto.

1.3 **Assumed Liabilities.**

On the terms and subject to the conditions set forth in this Agreement, as of the Effective Time, Buyer hereby assumes the following, and only the following, liabilities (the "Assumed Liabilities"):

- (a) obligations of the Company with respect to accounts payable incurred in the ordinary course of the Business consistent with past practice;
- (b) obligations of the Company with respect to accrued expenses incurred in the ordinary course of the Business consistent with past practice;

- (c) obligations of the Company arising under the express terms of the Assumed Contracts or Assumed Permits attributable to periods of time occurring after the Effective Time and which do not relate to any breach, default or violation by the Company under such Assumed Contract or Assumed Permit on or prior to the Effective Time;
- (d) liabilities attributable to periods of time occurring after the Effective Time and resulting from termination of employment with Buyer of any employee of the Company that is hired by Buyer; and
- (e) all obligations for providing continuation coverage under Part 6 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”), Section 4980B of the Code and any similar state law mandating health insurance continuation coverage to those individuals who are “M&A qualified beneficiaries” (as defined in U.S. Treas. Reg. Section 54.4980B-9, Q&A-4(b)) with respect to the Transactions (which obligations are hereinafter referred to collectively as “COBRA” obligations). If and to the extent Buyer fails to comply fully with this requirement, Buyer shall indemnify and hold harmless the Seller Parties from any resulting liability of any kind relating to continuation coverage.

1.4 **Excluded Liabilities.**

Notwithstanding anything to the contrary contained in this Agreement or any documents executed in connection with the Transactions, and regardless of whether such Obligations are disclosed in the Schedules or otherwise, except as expressly set forth in Section 1.3 or this Section 1.4, Buyer will not assume or in any way be responsible for any Obligations of the Seller Parties or the Business, whether known or unknown, asserted or unasserted, accrued or unaccrued, absolute or contingent, liquidated or unliquidated, due or to become due, and whether contractual, statutory, or otherwise (the “Excluded Liabilities”), including, without limitation, any: (a) indebtedness for borrowed money of the Company (“Indebtedness”); (b) Obligations owed by the Company to any Seller Party or any Affiliates thereof; (c) Obligations related to or arising out of the Excluded Assets; (d) Seller Taxes, subject to Section 6.1; (e) Seller Expenses; (f) regardless of whether such Obligation is disclosed in the Schedules or otherwise, Obligations related to or arising out of the operation of the Business or ownership of the Purchased Assets on or prior to the Effective Time; (g) Obligations related to any insurance policies of the Company; (h) Obligations of the Company related to Environmental Laws; or (i) except for the COBRA obligations described in Section 1.3(e), Obligations under Plans or for severance, other employee benefits or other moneys or damages (including claims under the Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar law) from or on behalf of any of the employees of the Company who are employed by the Company at any time as of or prior to the Effective Time (or from any federal, state or local governmental agency or authority on behalf of such employees or relating to such claims) involving an alleged employment loss or termination as of or prior to the Effective Time, including those which are based upon or arise out of the execution and delivery of this Agreement or any of the transactions contemplated hereby (whether or not such employees are hired by Buyer).

1.5 **Purchase Price.**

In consideration of the conveyance, transfer and assignment of all the Purchased Assets and the rights and benefits conferred herein, including the covenants of the Seller Parties set forth in Section 4.1, Buyer will deliver to the Company the amount of US\$1.00 (the "Purchase Price"). The Purchase Price, less any Indebtedness and Seller Expenses outstanding as of the Effective Time, shall be paid on the date hereof by wire transfer of immediately available funds

ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF THE SELLER PARTIES

Each of the Seller Parties represents and warrants, jointly and severally, to Buyer as follows as of the Effective Time:

2.1 **Organization and Good Standing.**

- (a) The Company is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, with full limited liability company power and authority to conduct its business, own the properties it owns, and execute, deliver, and perform this Agreement and the other documents related hereto to which it is a party.
- (b) The Company is duly qualified or registered to do business and is in good standing as a foreign limited liability company in each jurisdiction in which the character of the properties owned, operated, or leased by the Company, or the nature of its activities, is such that qualification or registration by the Company in such jurisdiction is required by applicable Legal Requirements. Schedule 2.1(b) contains a list of all jurisdictions in which the Company is so qualified or registered or required to be so qualified or registered. The Seller Parties have delivered or made available to Buyer copies of the Company's certificate of formation and limited liability company agreement as currently in effect and any amendment to any of the foregoing. There are no subsidiaries of the Company now or previously established. The Company does not, directly or indirectly, beneficially own or is a party to or bound by any Contract to acquire any capital stock of, or any other security, equity, ownership interest, debt investment, or similar interest in, any other Person.

2.2 **Capitalization.**

Schedule 2.2 contains (a) a complete and correct description of the number of authorized, issued, and outstanding securities or equity interests of the Company, and (b) a complete and correct list of all holders of the membership interests and other securities or equity interests of the Company and the securities or equity interests owned by such persons. There are no outstanding warrants, options, including membership interest option plans, Contracts, subscriptions, convertible or exchangeable securities, or other commitments, verbal or written, pursuant to which the Company is or may become obligated to issue any membership interests or any other securities convertible, exchangeable, or exercisable for any such membership interests, and no equity securities of the Company are reserved for issuance for any purpose.

2.3 Enforceability; Authority; No Conflict.

- (a) This Agreement and the other documents delivered in connection with this Agreement (collectively, the “Ancillary Documents”) constitute the legal, valid, and binding obligations of each of the Seller Parties, enforceable against each of them in accordance with their terms, subject to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditor’s rights and remedies generally and to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). Each of the Seller Parties has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and the other Ancillary Documents to which it is a party and to perform its obligations hereunder and thereunder, and such action has been duly authorized by all necessary action by the Company and its member.
- (b) Neither the execution and delivery of this Agreement or the Ancillary Documents to which any of the Seller Parties is a party nor the consummation or performance of the Transactions will, directly or indirectly (with or without notice or lapse of time), (i) contravene, violate, or conflict with any provision of any of the governing documents of the Company or any resolution adopted by its member; (ii) afford any Person the right to challenge the Transactions or to exercise any remedy or obtain any relief under any Legal Requirements to which any of the Seller Parties may be subject; (iii) contravene, conflict with, or result in a violation or breach of any of the terms or requirements of, or give any governmental body the right to revoke, withdraw, suspend, cancel, terminate, or modify, any governmental authorization that is held by the Company or that otherwise relates to such entity or the Business; (iv) breach any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate, or modify, any Assumed Contract; (v) result in the imposition or creation of any Lien (other than Permitted Liens) upon or with respect to any of the assets of the Company; (vi) result in any Person having the right to exercise dissenter’s appraisal rights which are not waived at or prior to the Effective Time; or (vii) cause Buyer to become subject to or liable for, any Tax other than sales, commodity or value-added tax eligible as a result of the consummation of the Transactions and other than Tax related to Buyer carrying on the Business after the Effective Time.
- (c) None of the Seller Parties is required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Agreement or the Ancillary Documents to which any of the Seller Parties is a party or the consummation or performance of the Transactions.

2.4 Financial Statements; Undisclosed Liabilities.

- (a) The Company has delivered to Buyer (i) the financial statements for the Company for the fiscal years ended March 31, 2009, 2010 and 2011, (ii) the interim financial statements for the Company for the period ended June 30, 2012, copies

of each of which are attached as Schedule 2.4(a)(i) (the financial statements referred to in clause (i) and (ii) are referred to herein as the “Financial Statements”). The balance sheets of the Company dated as of June 30, 2012 included in the Financial Statements are referred to herein as the “Current Balance Sheets.” The Financial Statements fairly present the financial position of the Company at each of the balance sheet dates and the results of operations for the periods covered thereby. The books and records of the Company fully and fairly reflect all of its transactions, properties, assets and liabilities. There are no special or non-recurring items of income or expense during the periods covered by the Financial Statements, and the balance sheets included in the Financial Statements do not reflect any write-up or revaluation increasing the book value of any assets. The Financial Statements reflect all adjustments necessary for a fair presentation of the financial information contained therein.

- (b) As of the date hereof, the Company does not have any, and with respect to the Leased Real Property (as defined in Section 2.12(k)) there are no, liabilities or obligations, whether accrued, absolute, contingent or otherwise, except: (i) to the extent reflected on the Current Balance Sheets and not heretofore paid or discharged; (ii) liabilities incurred in the ordinary course of business consistent with past practice since the date of the Current Balance Sheets which, individually and in the aggregate, are not material and are of the same character and nature as the obligations, duties and liabilities set forth on the Current Balance Sheets; (iii) liabilities incurred in the ordinary course of business prior to the date of the Current Balance Sheets which were not required to be recorded thereon and which, in the aggregate, are not material; and (iv) liabilities and obligations specifically disclosed in Schedule 2.4(b).
- (c) Except as set forth on Schedule 2.4(c) hereto, there is no Indebtedness and/or capitalized equipment lease obligations of the Company, or with respect to the Leased Real Property, as of the date hereof.
- (d) As of the date hereof, there is no other indebtedness of the Company owing to any of the Seller Parties or any other director, officer or Employee of the Company.

2.5 Changes Since the Current Balance Sheets Date.

Since the date of the Current Balance Sheets, there has been no Material Adverse Change to the Business, the Company and, except as expressly allowed by the terms of this Agreement, the Company has not: (a) sold, leased, or transferred any Assets (as defined below) or its interests in the Leased Real Property other than in the ordinary course of business consistent with past practice; (b) waived, cancelled, compromised, or released any rights other than in the ordinary course of business consistent with past practice; (c) made any payment in respect of its liabilities other than in the ordinary course of business consistent with past practice; (d) modified, terminated, or entered into any Material Contract other than as provided herein or in the ordinary course of business consistent with past practice; (e) imposed, permitted to be imposed, or permitted to exist any security interest or other Lien (other than Permitted Liens) on any of the Assets or the Leased Real Property, other than in the ordinary course of business

consistent with past practice; (f) other than as set out in Schedule 2.5, changed the compensation payable or to become payable to its employees, officers, or directors or, except as presently bound to do, granted any bonus, severance, or termination pay to, or entered into or modified any bonus, employment, severance, or other compensatory agreement with, any of its directors, officers, or Employees; (g) taken any action with respect to accounting policies or procedures or made any adjustment to its books and records other than in the ordinary course of business and in a manner consistent with past practices; (h) incurred any indebtedness for borrowed money or capitalized equipment lease obligations or made guarantees thereof; (i) delayed paying any account payable beyond the date on which it is due and payable except to the extent consistent with past practice or where such account is being contested in good faith; (j) entered into any material Contract (or series of related Contracts that together are material to the Company or the Seller Parties) relating to the Business outside the ordinary course of business; or (k) other than as set out in Schedule 2.5, entered into any transaction with any of the other Seller Parties or any Affiliate thereof.

2.6 Sufficiency of Assets; Condition and Title of Assets.

The Company has sole and exclusive, good, valid, and marketable title to, or in the case of property held under a lease or other Contract, an enforceable leasehold interest in, or right to use, all of its properties, rights, and assets, whether real or personal and whether tangible or intangible, included in the Purchased Assets. The Purchased Assets comprise all of the assets, properties, and rights of every type and description (other than the Excluded Assets), whether real or personal, tangible or intangible, or necessary to conduct the Business and operations of the Company as of the date hereof in substantially the same manner as presently conducted. Each personal property asset within the Purchased Assets is in good repair and condition, reasonable wear and tear excepted, and is adequate for use in the ordinary course of business as it is currently being used. All of the Purchased Assets owned by the Company are owned free and clear of all Liens other than Permitted Liens and Liens relating to indebtedness that have been paid off, released and discharged in full as of the Effective Time.

2.7 Taxes.

Except as set forth on Schedule 2.7, the Company has filed or caused to be filed on a timely basis all returns, reports, and other filings (collectively, "Tax Returns") relating to all federal, provincial, state, local, and other governmental income, payroll, excise, sales, personal property, franchise, and other taxes, late fees, fines, or assessments (collectively, "Tax" or "Taxes") that the Company is or was required to file with respect to any period ending on or prior to the Effective Time pursuant to applicable Legal Requirements. All Tax Returns of the Company filed prior to the Effective Time are true, correct, and complete in all material respects. Except as set forth on Schedule 2.7, the Company has paid, or made provision for the payment of, all Taxes that have or will become due for all periods prior to the Effective Time covered by Tax Returns or requirements of applicable Tax law or other Legal Requirements. No claim has ever been made in writing prior to the Effective Time by any Person in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to taxation by that jurisdiction. No Person has given written notice prior to the Effective Time of any alleged deficiency or assessed any additional taxes for any period for which Tax Returns have been filed. All Taxes that the Company is or was required by Legal Requirements to withhold, deduct or

collect with respect to any period ending on or prior to the Effective Time have been duly withheld, deducted and collected and, to the extent required, have been paid to the proper Person. Prior to the Effective Time, the Company (a) is a member of an affiliated group within the meaning of Section 1504(a) of the Code, (b) except as provided in Treasury Regulation Section 1.1502-6, does not have any liability for Taxes of any Person (other than the Company) as a transferee or successor by contract or otherwise, and (c) has not waived any statute of limitations with respect to Taxes or agreed to any extension of time with respect to an assessment or deficiency of Taxes.

2.8 Employee Benefits.

- (a) Schedule 2.8 identifies each of the employee benefit plans or similar arrangements under which the Company has or may have liability in relation to the periods prior to the Effective Time, including without limitation, all retirement, profit sharing, defined contribution, and defined benefit plans as well as any severance, vacation pay, health and welfare, post-retirement, employment, or other agreements (oral or written) relating to current or former employees or independent contractors of the Company (collectively, “Plans”). All Plans identified on Schedule 2.8 hereto have been maintained prior to the Effective Time in accordance with their terms and applicable Legal Requirements. All amounts due under any Plan prior to the Effective Time have been fully and timely paid or accrued for periods through the Effective Time, and no accumulated funding deficiency or liquidity shortfall has been incurred prior to the Effective Time with respect to any such Plan, whether or not waived. Except as indicated on Schedule 2.8 hereto, prior to the Effective Time no Plan is a multi-employer or a defined benefit plan, and prior to the Effective Time neither the Company nor any predecessor or Affiliate of the Company or its predecessors has ever been a party to or sponsored a multi-employer or defined benefit plan. Prior to the Effective Time, the Company is not and has not been a member of a group of businesses under common control or businesses constituting a single employer, except any such group in which no member has been a party to a defined benefit plan.
- (b) Except for the continuation coverage requirements of COBRA, prior to the Effective Time the Company has no obligations or potential liability for benefits to Employees, former employees, or their respective dependents following termination of employment or retirement under any Plan that is an Employee Welfare Benefit Plan (as defined in Section 3(1) of ERISA).. Schedule 2.8 contains a list of (i) all former employees of the Company and their dependents who are currently covered under COBRA prior to the Effective Time, and (ii) all former employees of the Company and their dependents who are prior to the Effective Time eligible to make such elections.

2.9 Compliance with Legal Requirements; Permits.

- (a) The Company is, and at all times since its formation has been, in compliance with each Legal Requirement that is or was applicable to it or to the conduct or operation of the Business or the ownership or use of any of its assets. The Company has not received, at any time since its formation, any notice from any Person regarding any actual, alleged, possible, or potential violation of, or failure to comply with, any Legal Requirement. All Contractors (as defined in Section 2.13(a) below) have been properly documented and classified as independent contractors for tax purposes.
- (b) Schedule 2.9 sets forth a true, complete and accurate list of all material licenses, approvals, permits, or authorizations from Governmental Authorities (collectively, the “Permits”) that are required to be obtained for the business and operations of the Business. All such Permits are valid and in full force and effect, the Company is in compliance with the respective requirements thereof, and no proceeding is pending or, to the Seller Parties’ knowledge, threatened to revoke or amend any of them.

2.10 Legal Proceedings; Orders.

Except as set forth in Schedule 2.10, there has not been, there is no pending or, to the Seller Parties’ knowledge, threatened, and to the Seller Parties’ knowledge there is no basis for, any action, claim, investigation, litigation, arbitration or other proceeding (“Legal Proceedings”), or any resulting order, judgment, award, injunction or other decree: (a) by or against the Company or that otherwise relates to or reasonably would be expected to affect the Business or any of the Employees or Contractors of, or any of the assets owned or used by, the Company; or (b) that challenges, or that would have the effect of preventing, delaying, making illegal, or otherwise interfering with, the Transactions. There are no outstanding orders, decrees, or stipulations issued by any Governmental Authority in any proceeding or resulting from any Legal Proceeding to which any of the Seller Parties is or was a party that have not been complied with in full or which continue to impose any obligations on the Seller Parties.

2.11 Assumed Contracts; No Defaults.

- (a) The Company has delivered or made available to Buyer accurate and complete copies, together with all amendments, supplements, side letters, exhibits, schedules, and other attachments thereto, of each of the Assumed Contracts. The Company is not subject to any liability or payment resulting from renegotiation of amounts paid under any Assumed Contract that is not reflected in any written amendment to the Assumed Contract. The Company is not subject to any Contract, agreement, decree or injunction that restricts the continued operation of the Business or the expansion thereof to other geographical areas, customers, and suppliers or lines of business, including, without limitation, any non-solicit, non-compete, non-disparagement, or similar provisions, whether under carrier, shipper, broker-to-broker, third party logistics provider-to-broker, agent, vendor or other Contract.
- (b) Each Assumed Contract is in full force and effect and is valid and enforceable in accordance with its terms. No event has occurred and no circumstance exists that (with or without notice or lapse of time) may contravene, conflict with, or result in a breach of, or give the Company or any other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Assumed Contract.

2.12 Real Property.

- (a) The Company does not own any interest (other than a leasehold interest) in any real property.
- (b) Schedule 2.12 lists and describes in reasonable detail all Leased Real Property (as defined below) and the associated leases and related documents (the "Leases"), including addresses. The Company has a valid and subsisting leasehold or subleasehold estate in, and enjoys peaceful and undisturbed possession of, all Leased Real Property.
- (c) The Leased Real Property comprises all of the real property and interests in real property used in, or otherwise related to, the Business as presently conducted. There are no outstanding options or rights of first refusal to purchase all or any portion of the Leased Real Property or interests therein granted by or to the Company nor is the Leased Real Property subject to any agreement to which the Seller Parties nor the Company is a party (other than the Leases) with respect to future ownership, use, occupancy, operation or development. Neither the Seller Parties nor the Company is a party to any Contract with any Governmental Authority relating to the provision of financial aid from such Governmental Authority to the Company that requires the Company to make minimum investments in, or create or maintain a minimum number of jobs at, any of the facilities or Improvements (as defined in Section 2.12(d)) located on the Leased Real Property.
- (d) To the Seller Parties' knowledge, all buildings, structures, fixtures, building systems and equipment, and all components thereof, including the roofs, foundations, load-bearing walls, and other structural elements thereof, heating, ventilation, air conditioning, mechanical, electrical, plumbing, and other building systems, environmental control, remediation, and abatement systems, sewer, storm, and waste water systems, irrigation, and other water distribution systems, parking facilities, fire protection, security, and surveillance systems, and telecommunications, computer, wiring, and cable installations included in the Leased Real Property (the "Improvements"), are in good condition and repair and sufficient for the operation of the Business as presently conducted.
- (e) There are no condemnation, eminent domain, or other Legal Proceedings pending or, to the Seller Parties' knowledge, threatened against the Leased Real Property or against the interest of the Company in all or any part of the Leased Real Property.

- (f) Each parcel of Leased Real Property has direct vehicular and pedestrian access to a public right of way adjoining the Leased Real Property, or has vehicular and pedestrian access to a public right of way via an easement or other Contract benefitting such parcel of Leased Real Property, and such access is not dependent on any land or other real property interest that is not included in the Leased Real Property. None of the Improvements used in the operation of the Business as presently conducted is dependent for its access, use or operation on any land, Improvement or other real property interest that is not included in the Leased Real Property.
- (g) To the Seller Parties' knowledge, all water, oil, gas, electrical, steam, compressed air, telecommunications, sewer, storm and waste water systems, and other utility services or systems for the Leased Real Property have been installed and are operational and sufficient for the operation of the Business as presently conducted, and each such utility service enters the Leased Real Property from an adjoining public street or valid easement in favor of the supplier of such utility service or appurtenant to such Leased Real Property, and is not dependent for its access, use, or operation on any land, Improvement, or other real property interest that is not included in the Leased Real Property.
- (h) Other than as set out in Schedule 2.12(h), there are no leases, subleases, licenses, concessions, or other Contracts, granting to any Person other than the Company the right of use or occupancy of any portion of the Leased Real Property, and there are no parties, other than the Company, in possession of the Leased Real Property.
- (i) None of the Seller Parties has received notice of any special assessment relating to any Leased Real Property or any portion thereof and, to the Seller Parties' knowledge, no such special assessment is pending or, to the Seller Parties' knowledge, threatened.
- (j) With respect to the Leased Real Property, (i) true, correct, and complete copies of the Leases have been provided or made available to Buyer, (ii) the Company has not assigned, sublet, transferred, mortgaged, deeded in trust, or encumbered or conveyed any interest in any Leased Real Property; (iii) there is no Legal Proceeding pending against the Company, or to the Seller Parties' knowledge threatened, against the Company or any other Person that would reasonably be expected to interfere with the quiet enjoyment of the Leased Real Property after the Effective Time, and (iv) there is no pending dispute with the landlord of the Leased Real Property, and none of the Seller Parties has received any notice alleging breach of any of the covenants and or other obligations on the part of the Company.
- (k) "Leased Real Property," means the real property, buildings, structures, improvements, fixtures, or other interest leased, subleased, licensed or occupied by the Company as tenant, subtenant, licensee, or in such similar capacity under any Lease as identified on Schedule 2.12 hereto.

2.13 Employees; Contractors; Consultants; Agents.

- (a) Schedule 2.13 sets forth a list of each employee currently employed by the Company (collectively, "Employees"), each independent contractor currently engaged by the Company (collectively, "Contractors") and each former employee of the Company who was terminated during the 90 days immediately preceding the date of this Agreement ("Former Employee"). Schedule 2.13 further sets forth the following information for each Employee, Contractor and Former Employee of the Company, including each Employee on leave of absence or layoff status: name; job title; date of hiring or engagement; date of commencement of employment or engagement; date of termination of employment or engagement, if applicable; current compensation paid or payable and any change in compensation since the first day of the current fiscal year; sick and vacation leave that is accrued but unused; and service credited for purposes of vesting and eligibility to participate under any Plan.
- (b) The Company is not a party to any collective bargaining agreement with any trade union or association which might qualify as a trade union, and no trade union, association, council of trade unions, employee bargaining agency or affiliated bargaining agent relating to the Company's Employees, nor does any such agreement determine the terms and conditions of employment of any Employee. Since the Company's formation there has not been any labor unrest or union organizing activity involving the Company, whether actual, pending, or, to the Seller Parties' knowledge, threatened.
- (c) True and complete copies of each standard form employment contract (collectively, the "Standard Employment Contracts") used for any of the Employees or Former Employees have been provided to Buyer.
- (d) True, signed and complete copies of all employment contracts, other than Standard Employment Contracts, for all the Employees or Former Employees (collectively, the "Custom Employment Contracts") have been provided to Buyer.
- (e) Except as expressly set forth on Schedule 2.8 hereto, and other than pursuant to the Standard Employment Contracts and the Custom Employment Contracts, there are no agreements, plans, practices or policies that would give rise to any severance, termination, change-in-control, accrued vacation, or other similar payment to Employees or Contractors as a result of the consummation of the Transactions.
- (f) True, signed and complete copies of all contracts entered into with the Contractors have been provided to Buyer.
- (g) As of the date of this Agreement, no Employee or Contractor has notified the Seller Parties of any plans to terminate his or her relationship with the Company as a result of the transactions contemplated herein or otherwise, and the Seller Parties are not aware of any specific facts which would cause them to believe any such termination is likely.

- (h) To the Seller Parties' knowledge, each Employee or Contractor of the Company is and has been in compliance with any restrictive covenant agreements in favor of the Company.

2.14 Environment, Health and Safety.

- (a) The Company has complied with all Legal Requirements concerning pollution or protection of the environment, all Legal Requirements concerning public health and safety, and all Legal Requirements concerning employee health and safety, including Legal Requirements relating to emissions, discharges, releases, or threatened release of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes (including petroleum and any fraction or derivative thereof) into ambient air, surface water, ground water, or lands, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or hauling of such substances (all of the foregoing of this Section 2.14, collectively, "Environmental Laws"), and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against the Company or any predecessor or Affiliate for whose conduct the Company is held responsible alleging any failure to so comply. The Company has obtained and been in compliance with all of the terms and conditions of all governmental authorizations required under all Environmental Laws in connection with the Company's business, properties or assets.
- (b) The Company has no liability (and neither the Company nor any predecessor or Affiliate for whose conduct the Company is held responsible have handled or disposed of any substance, arranged for the disposal of any substance, exposed any employee or other individual to any substance or condition, or owned or operated any property or facility in any manner in violation of applicable Environmental Laws) for damage to any site, location, or body of water (surface or subsurface), for any illness of or personal injury to any employee or other individual, as a result of violation of any Environmental Laws.

2.15 Intellectual Property.

The Company does not own or license (as licensor or licensee) any intellectual property other than (x) "off-the-shelf" or "shrink-wrap" programs or products, or other programs or products that are generally commercially available software programs that are available on customary commercial terms, or (y) operating software embedded in equipment used by the Company.

2.16 Relationships with Related Persons.

Schedule 2.16 describes any contracts, agreements and commercial relationships existing during the periods covered by the Financial Statements between the Company, on the one hand, and the Seller Parties, a family member of any of the Seller Parties, a Principal, any Person controlled by a Principal or their Affiliates, on the other hand, pursuant to which the Company has provided, sold, received or purchased any service or product from such other party. Except as expressly disclosed in Schedule 2.16, (i) all such Contracts, agreements, and commercial relationships described on Schedule 2.16 were on arm's-length terms and (ii) none of the Seller Parties, nor any family member of any of the Seller Parties, nor any Affiliate of any of them, has currently or has had in the past any interest in or received any financial benefit from (a) any property (whether real, personal, or mixed and whether tangible or intangible) used in or pertaining to the Business; (b) any Person that has had business dealings or a material financial interest in any transaction with the Company; or (c) any contract with, or any claim or right against, the Company.

2.17 Insurance.

The Purchased Assets, properties, Employees, and operations of the Company are insured under various policies of general liability and other forms of insurance, all of which are set forth on Schedule 2.17, which schedule discloses for each policy the type of policy (*i.e.*, "claims made" or "occurrence based"), the risks insured against, coverage limits, deductible amounts, all outstanding claims thereunder, and whether the terms of such policy provide for retrospective premium adjustments. All such policies are in full force and effect in accordance with their terms, no notice of cancellation has been received by the Company, and there is no existing default by the Company or event which, with the giving of notice or lapse of time or both, would constitute a default by the Company thereunder. All policies entered into during the immediately preceding two years have been written by insurers with an A.M. Best's rating of at least "A-", no insurers are currently in liquidation, and none of the limits of liability is currently impaired. Such policies are in amounts that are adequate in relation to the Business and the Purchased Assets, as conducted or maintained consistent with past practice, and all premiums to date have been paid in full. The Company has not received any refusal of coverage or any notice that a defense will be afforded with reservation of rights since the Company's formation. The Company has not been refused any insurance nor had its coverage limited by any insurance carrier to which it has applied for insurance or with which it has carried insurance since the Company's formation.

2.18 Operation of Business.

With respect to the Business: (a) the Company has at all times operated under federal property broker authority and, except as provided on Schedule 2.18 hereto, has not had any operations that would require federal, state, or other authority to operate as a freight forwarder, motor carrier, or otherwise; (b) all shipments brokered by the Company have been pursuant to written contracts with motor carriers; (c) the motor carriers to which the Company has brokered loads are independent contractors who maintain control over the planning, dispatch, route selection, vehicle operation, and delivery of each load brokered by the Company, and the Company has not controlled the method of provision of services of any such motor carrier; (d) the Company (whether through contract, instruction, incentive, penalty, or otherwise) has not required or condoned any the violation of any Legal Requirement by its motor carrier counterparties, including to any such requirement concerning driver safety and fitness, vehicle speed, or route restriction; (e) the Company has not required any motor carrier to represent that its service within the customer's delivery window will not violate any Legal Requirement; and (f) the Company has adequate procedures in place to evaluate and update its contractual counterparties for insurance coverage, operating authority, safe operations and service performance.

2.19 **Customers.**

Schedule 2.19 sets forth a list of the Company's largest 20 customers for the twelve months most recently ended prior to the date hereof (collectively, "Significant Customers"), together with the Employee of the Company who is most directly responsible for servicing each Significant Customer's account. The Company has not received notice from any Significant Customer that any of them intends, for any reason, to cease to do business with the Company or materially reduce the amount of business done with the Company, or to fail to do business with Buyer after the Effective Time or materially reduce the amount of business done with Buyer after the Effective Time (compared with the amount of business done with the Company during the most recent six calendar months), except as expressly set forth in Schedule 2.19 hereto, and none of the Seller Parties is aware of any reason that any of such Significant Customer may take any such action.

2.20 **Receivables.**

All accounts receivable of the Company reflected in the Financial Statements, or which have come into existence since the date of the most recent Financial Statements (collectively, the "Accounts Receivables"), were created in the ordinary and customary course of the Business from bona fide arm's length transactions, and, except to the extent that they have been paid in the ordinary course of the Business since the date of the Financial Statements, are valid and enforceable and payable in full, without any right of set-off or counterclaim or any reduction for any credit or allowance made or given, and in any event the accounts receivables are collectible within six months following the Effective Time.

2.21 **Disclosure.**

Each of the Seller Parties has provided Buyer with true, accurate, and complete copies of all documents listed or described in this Agreement and the various Schedules attached hereto. No representation or warranty or other statement made by any of the Seller Parties in this Agreement or any Ancillary Document delivered in connection with the Transactions contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading. None of the Seller Parties is aware of any material fact that has specific application to the Company (other than general economic or industry conditions) that may have a Material Adverse Effect on the Business other than as has been expressly set forth in this Agreement or the Schedules hereto.

**ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to the Seller Parties as follows:

3.1 Organization and Good Standing.

Buyer is a limited liability company duly formed, validly existing and in good standing under the laws of Delaware, with full limited liability company power and authority to conduct its business as it is now being conducted.

3.2 Enforceability; Authority; No Conflict.

This Agreement and the Ancillary Documents constitute the legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms, subject to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditor's rights and remedies generally and to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). Buyer has the limited liability company power and authority to execute and deliver this Agreement and the Ancillary Documents, to perform its obligations hereunder and thereunder, and to consummate the Transactions. Buyer has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the other Ancillary Documents to which it is a party and to perform its respective obligations hereunder and thereunder, and such action has been duly authorized by all necessary action by Buyer and its board of directors or managers (as applicable).

Neither the execution and delivery of this Agreement or the Ancillary Documents to which Buyer is a party nor the consummation or performance of the Transactions by Buyer will, directly or indirectly (with or without notice or lapse of time), (i) contravene, violate or conflict with any provision of any of the governing documents of Buyer or any resolution adopted by Buyer's board of directors or managers (as applicable); or (ii) afford any Person the right to challenge the Transactions or to exercise any remedy or obtain any relief under any Legal Requirements to which Buyer may be subject.

3.3 Certain Proceedings.

There has not been, there is no pending or, to Buyer's knowledge, threatened, and to Buyer's knowledge there is no basis for, any Legal Proceedings, or any resulting order, judgment, award, injunction or other decree, that challenges, or that would have the effect of preventing, delaying, making illegal, or otherwise interfering with, the Transactions.

**ARTICLE 4
COVENANTS**

4.1 Restrictive Covenants.

In order to ensure that Buyer will realize the benefits of the Transactions, each Seller Party hereby agrees that it, he or she shall not, during the period commencing at the Effective Time and ending five years after the Effective Time:

- (a) directly or indirectly, alone or as a partner, joint venturer, officer, director, member, employee, consultant, agent, independent contractor or stockholder of, or landlord or lender to, any company or business, engage in any Competitive Business (as defined below), whether or not for compensation;

- (b) directly or indirectly: (i) solicit, hire, engage or assist any other person or entity in soliciting, hiring or engaging any person who was employed or engaged by the Company immediately prior to the Effective Time or any employee, contractor, or agent of Buyer or an Affiliate of Buyer following the Effective Time (collectively, "Restricted Persons") to perform services for any entity (other than Buyer, or an Affiliate of Buyer), (ii) attempt to induce any such Restricted Person to leave his or her employment or engagement, or (iii) solicit, hire, or engage on behalf of himself or any other person any person who was a Restricted Person at any time during the twelve-month period immediately preceding such hiring or engagement;
- (c) directly or indirectly, solicit, encourage, advise, or influence any individuals, partnerships, corporations, professional associations, or other business organizations that have a business relationship with the Company, Buyer or an Affiliate of Buyer, whether in a client capacity or a vendor, carrier, independent contractor, or similar capacity (collectively, the "Business Counterparties"), to discontinue or reduce the extent of the relationship between Buyer and the Business Counterparties in any way following the Effective Time; and
- (d) directly or indirectly, in any way utilize, disclose, copy, reproduce, or retain in his possession any of the Company's proprietary rights or records included in the Purchased Assets (other than as relate to any Excluded Assets or Excluded Liabilities);
- (e) provided, however, that none of the Seller Parties shall be deemed to have violated the prohibitions of Section 4.1 merely due to the beneficial ownership of less than one percent (1%) of the shares in the capital stock of any corporation having a class of equity securities actively traded on a national securities exchange or over-the-counter market. For purposes of this Agreement, "Competitive Business" shall mean any individual, corporation, limited liability company, partnership, unincorporated organization, trust, joint venture, or other entity that engages in or may engage in the transportation of, or arranging for the transportation of, freight to, from or within Canada and/or the United States (being the jurisdictions in which the Business is presently conducted) that would require operating, forwarding, or broker authority issued by any federal or state governmental body, including activities commonly referred to as "freight brokerage," "transportation logistics," "third party logistics," "freight forwarding," "common or contract carriage," "dedicated contract carriage," "expediting," "internet load boards" or "intermodal providers" and any other activity related to the foregoing services.

4.2 Acknowledgments Regarding Restrictive Covenants.

Each of the Seller Parties agrees and acknowledges that the restrictions contained in Section 4.1 are reasonable in time, geographic area, and scope of prohibited activities and are necessary to protect Buyer after the Effective Time. If any provision of Section 4.1, as applied to any party or to any circumstance, is adjudged by a court to be invalid or unenforceable, the same

will in no way affect any other circumstance or the validity or enforceability of the remainder of this Agreement. If any such provision, or any part thereof, is held to be unenforceable because of the duration of such provision or the area covered thereby, the parties hereto agree that the court making such determination shall have the power to reduce the duration and/or area of such provision, and/or to delete specific words or phrases, and in its reduced form, such provision shall then be enforceable and shall be enforced. The parties hereto agree and acknowledge that the breach of Section 4.1 will cause irreparable damage to Buyer and upon breach of any provision of Section 4.1, Buyer shall be entitled to injunctive relief, specific performance, or other equitable relief without the requirement to post a bond or other security; provided, however, that the foregoing remedies shall in no way limit any other remedies which Buyer may have (including the right to monetary damages).

4.3 Enforceability in Jurisdictions.

The Parties intend to and hereby confer jurisdiction to enforce the restrictive covenants set forth in this Article 4 (the "Restrictive Covenants") upon the courts of any jurisdiction within Canada or the United States in which a breach of the Restrictive Covenants occurred. Each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objections to venue laid therein. If the courts of any one or more jurisdictions hold the Restrictive Covenants unenforceable by reason of the breadth of their scope or otherwise, it is the intention of the Parties that such determination not bar or in any way affect Buyer's right to the relief provided for in this Article 4 in the courts of any other jurisdiction within Canada or the United States, as to breaches of the Restrictive Covenants in such other respective jurisdictions, the Restrictive Covenants as they relate to each jurisdiction being, for this purpose, severable into diverse and independent obligations. Process in any action or proceeding to enforce the Restrictive Covenants may be served on any Party anywhere in the world.

ARTICLE 5 CERTAIN DEFINITIONS

5.1 Defined Terms.

As used herein, the following terms shall have the following meanings:

- (a) "Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person or, with respect to any natural Person, any person having a relationship with such Person by blood, marriage or adoption not more remote than first cousin.
- (b) "Code" means the Internal Revenue Code of 1986, as amended.
- (c) "Contract" means any agreement, contract, lease, note, mortgage, indenture, loan agreement, franchise agreement, covenant, employment agreement, license, instrument, purchase and sales order, commitment, undertaking, obligation, whether written or oral, express or implied.

- (d) “Governmental Authority” means any nation or government, any state, regional, local, or other political subdivision thereof, and any entity or official exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government.
- (e) “Lien” means any mortgage, pledge, security interest, encumbrance, title defect, lien or charge of any kind (including the filing of or agreement to give any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction in connection with such mortgage, pledge, security interest, encumbrance, lien, or charge).
- (f) “Material Adverse Change (or Effect)” means a change (or effect) in the financial condition, properties, assets, liabilities, rights, obligations, operations, business or prospects of the Company, taken as a whole, which change (or effect) individually or in the aggregate, is materially adverse to such condition, properties, assets, liabilities, rights, obligations, operations, business, or prospects; provided, that in no event shall any of the following be taken into account in the determination of whether a Material Adverse Change (or Effect) has occurred: (a) any change resulting from conditions affecting any of the industries in which the Company operates or from changes in general business, financial, political, capital market or economic conditions (including any change resulting from any hostilities, war or military or terrorist attack) (provided that such change or effect does not affect the Company in a substantially disproportionate manner as compared to similarly situated companies); or (b) any change resulting from the compliance by the Seller Parties with the terms of, or the taking of any action by the Seller Parties contemplated or permitted by, this Agreement.
- (g) “Obligations” means all expenses, losses, costs, deficiencies, liabilities and damages (including related investigation costs and reasonable counsel, witness, and paralegal fees and expenses).
- (h) “Permitted Liens” means (i) Liens for Taxes not yet due and payable (or the subject of an extension) or being contested in good faith by appropriate procedures); (ii) mechanics, carriers’, workmen’s, repairmen’s or other like Liens arising or incurred in the ordinary course of business or for amounts that are not delinquent and which are set forth on the Current Balance Sheets; (iii) easements, encroachments, rights of way, zoning ordinances and other similar encumbrances or minor imperfections in title affecting the Leased Real Property which do not impede the Business as currently conducted; (iv) Liens, if any, created as a result of any act taken by or through Buyer or any of its Affiliates; (v) the right reserved to or vested in any Governmental Authority by any statutory provision; and (vi) any non-exclusive license of intellectual property granted in the ordinary course of business.
- (i) “Person” means an individual, partnership, corporation, limited liability company, business trust, joint share company, estate, trust, unincorporated association, joint venture, Governmental Authority or other entity, of whatever nature.

- (j) “Seller Taxes” means any Taxes: (a) imposed on any of the Seller Parties for any period; or (b) imposed with respect to the Business or the Purchased Assets for any period (or portion of any period) ending as of or prior to the Effective Time.
- (k) “Seller Expenses” means: (a) all of the fees and expenses incurred or reimbursed by any of the Seller Parties in connection with the negotiation, documentation and consummation of the Transactions, including all fees, expenses, disbursements and other similar amounts paid to attorneys, financial advisors or accountants; (b) all payments required to obtain third party consents in connection with the consummation of the Transactions; and (c) all change of control, severance, bonus, membership interest appreciation, phantom membership interest or similar payments due by the Company to any Person, and any other accelerations or increases in rights or benefits of the Company’s employees (whether payable or occurring prior to, as of or after the Effective Time), under any plan, agreement or arrangement of the Company, which obligation, in each case, arises as of or prior to the Effective Time or in whole or in part as a result of the consummation of the Transactions, including all Taxes that are payable by the Company in connection with or as a result of the payment of such obligations.

**ARTICLE 6
GENERAL PROVISIONS**

6.1 Expenses.

Except as otherwise herein expressly provided, each Party shall bear its own expenses (including without limitation fees of their respective attorneys, consultants and experts) incurred by such Party in connection with this Agreement or the consummation of the Transactions.

6.2 Notices.

All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally or by recognized overnight courier service on the Party to whom notice is to be given, on receipt of confirmation of good transmission by facsimile, sent via electronic email or other form of electronic communication with proof of receipt of confirmation, or on the fourth day after mailing if mailed to the Party to whom notice is to be given by first class mail, registered or certified, return receipt requested, postage prepaid, and properly addressed as follows:

To Buyer:

XPO Logistics, LLC
Five Greenwich Office Park
Greenwich, CT 06831
Attention: General Counsel
e-mail: gordon.devens@xpologistics.com

with a copy, which shall not constitute notice to:

Gowling Lafleur Henderson LLP
One First Canadian Place, Suite 1600
Toronto, ON M5X 1G5
Attn: Nurhan Aycan
e-mail: nurhan.aycan@gowlings.com

To the Designated Seller Parties Representative:

—

with a copy, which shall not constitute notice to:

Pallett Valo LLP
90 Burnhamthorpe Road W, Ste. 1600
Mississauga, ON L5B 3C3
Attn: Murray Gottheil
e-mail: gottheil@pallettvalo.com

Any Party may change its address for notice by written notice given to the other Parties in accordance with this Section.

Each of the Seller Parties hereby agrees and covenants that any notice delivered to the Seller Party designated in this Section as the Seller Parties representative (the "Designated Seller Parties Representative"), as may be amended by written notice to Buyer signed by all of the Seller Parties, from time to time, shall constitute deemed delivery of such notice to all of the Seller Parties. Furthermore, any consent required to be obtained from the Seller Parties, or any one of them, shall be deemed obtained from such Seller Parties, or the relevant Seller Party, as the case may be, when such consent has been obtained from the Designated Seller Parties Representative.

6.3 Further Assurances.

The Parties shall cooperate reasonably with each other and with their respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall execute and deliver to each other such other documents and do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the Transactions. Each of the parties hereto agrees to cooperate with the other in the preparation and filing of all forms, notifications, reports and information, if any, required or reasonably deemed advisable pursuant to any Legal Requirement in connection with the Transactions.

6.4 Retention of and Access to Records.

Buyer shall maintain copies of all of the Company's records within the Purchased Assets for a period of at least five years after the Effective Time. Buyer also shall provide the Seller Parties reasonable access to such records, during normal business hours, to enable them to prepare financial statements or Tax Returns, deal with tax audits, or any similar and reasonable business purpose specified by the Seller Parties.

6.5 Tax Matters.

Buyer and the Seller Parties shall cooperate, as and to the extent reasonably requested by any other Party, in connection with the filing of Tax Returns for periods prior to the Effective Time and any audit, litigation, or other proceeding with respect to Taxes. Buyer acknowledges that Buyer shall be responsible for all Taxes imposed with respect to the Business or the Purchased Assets for any period (or portion of any period) commencing after the Effective Time. Buyer also covenants that it will bear any sales tax arising from the Transactions and that it will promptly comply with any request by the Company to pay any applicable sales tax, acquire an exemption certificate, or with respect to other similar matters. Buyer and the Seller Parties agree to cooperate in preparing and timely filing IRS Forms 8594 (Asset Acquisition Statement) that reflect allocations of consideration that do not conflict.

6.6 Confidentiality; Publicity.

Except as may be required by Legal Requirement or pursuant to a stock exchange listing agreement or as otherwise permitted or expressly contemplated herein, no party hereto and none of their respective Affiliates, employees, agents, and representatives shall disclose to any third party this Agreement, the subject matter or terms hereof or any confidential information or other proprietary knowledge concerning the business or affairs of any other party which it may have acquired from such party in the course of pursuing the transactions contemplated by this Agreement without the prior written consent of the other parties hereto; provided, that any information that is otherwise publicly available, without breach of this provision, or has been obtained from a third party without a breach of such third party's duties, shall not be deemed confidential information, and after the Effective Time Buyer shall not be restricted with respect to any confidential information included within the Purchased Assets. Buyer and its Affiliates may issue such press releases and other public announcements concerning the transactions provided herein as they desire in their sole discretion. No press release or other public announcement related to this Agreement or the transactions contemplated hereby shall be issued by any of the Seller Parties without the prior written approval of Buyer.

6.7 Governing Law; Forum.

This Agreement shall be construed and enforced in accordance with the laws of the State of Delaware without regard to conflicts-of-laws principles that would require the application of any other law. Except as provided in Section 4.3 hereof, any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may only be brought against any of the Parties in the State or Federal courts in the State of Delaware sitting in Wilmington, Delaware, and each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objections to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere in the world.

6.8 Entire Agreement.

This Agreement, the Ancillary Documents and the attached Schedules contain the entire agreement among the Parties hereto and supersede all prior agreements among the Parties hereto with respect to the Transactions. All Schedules referred to herein are intended to be, and hereby are, specifically made a part of this Agreement.

6.9 Assignment.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, legal representatives, and permitted assigns. This Agreement may not be assigned by any Party without the prior written consent of the other Parties; provided, Buyer may assign its rights under this Agreement to an affiliated or related entity or party, so long as Buyer remains liable for performance of any of the duties of Buyer contained herein.

6.10 Brokers or Finders.

Each Party shall be solely responsible for, and shall indemnify and defend the other Party from and against, any obligation or liability, contingent or otherwise, for brokerage or finders' fees, commissions or other similar payments payable to any broker, agent or similar intermediary that asserts a claim against such indemnifying Party in connection with the Transactions.

6.11 Severability.

If any provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision there shall be automatically added as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and still be legal, valid and enforceable.

6.12 Amendments.

This Agreement shall not be changed or terminated orally and no waiver of compliance with any provision or condition hereof and no consent provided for herein shall be effective unless evidenced by a written instrument duly executed by the Party to be charged therewith.

6.13 Headings.

Paragraph headings herein are for convenience only and shall not affect the interpretation of any provision.

6.14 Counterparts; Electronic Delivery.

This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one and the same instrument. Delivery of an executed copy of this Agreement by telecopy or other means of electronic communication producing a printed copy will be deemed to be an execution and delivery of this Agreement on the date of such communication by the Parties so delivering such a copy. Any Party so delivering such a copy via electronic communication shall deliver an executed original of this Agreement to the other Parties upon request.

6.15 **Construction.**

This Agreement is the joint product of the Parties, and each provision hereof has been subject to mutual consultation, negotiation, and agreement of the Parties and shall not be construed for or against any Party hereto. The word “including” means “including without limitation.” The Parties intend that each representation, warranty, and agreement contained in this Agreement will have independent significance. If any Party has breached any representation, warranty, or agreement in any respect, the fact that there exists another representation, warranty or agreement relating to the same subject matter (regardless of the relative levels of specificity) that the Party has not breached will not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, or agreement. The use of the masculine, feminine, or neuter gender or the singular or plural form of words will not limit any provisions of this Agreement. A statement that an item is listed, disclosed, or described means that it is correctly listed, disclosed, or described, and a statement that a copy of an item has been delivered means a true and correct copy of the item has been delivered. All references to the knowledge of a Person means after such Person has conducted a diligent enquiry into such fact or matter, but without having conducted any third party investigation or verification.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

XPO LOGISTICS, LLC, a Delaware limited liability company

By: /s/ Joseph Thomas Connolly
Name: Joseph Thomas Connolly
Title: SVP, Acquisitions

KELRON DISTRIBUTION SYSTEMS (CLEVELAND) LLC

By: /s/ Geoffrey A. Bennett
Name: Geoffrey A. Bennett
Title: President

_____)
Witness)
_____)

/s/ Keith Matthews
Keith Matthews, individually

_____)
Witness)
_____)

/s/ Geoff Bennett
Geoff Bennett, individually

I, Bradley S. Jacobs, certify that:

1. I have reviewed this quarterly report on Form 10-Q of XPO Logistics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Bradley S. Jacobs

Chief Executive Officer
(Principal Executive Officer)

Date: November 6, 2012

I, John J. Hardig, certify that:

1. I have reviewed this quarterly report on Form 10-Q of XPO Logistics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ John J. Hardig

Chief Financial Officer

(Principal Financial Officer)

Date: November 6, 2012

CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER
Pursuant to 18 U.S.C. Section 1350
As adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Solely for the purposes of complying with 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, I, the undersigned Chief Executive Officer of XPO Logistics, Inc. (the "Company"), hereby certify, based on my knowledge, that the Quarterly Report on Form 10-Q of the Company for the quarter ended September 30, 2012 (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ Bradley S. Jacobs
Chief Executive Officer
(Principal Executive Officer)

Date: November 6, 2012

CERTIFICATION OF THE CHIEF FINANCIAL OFFICER**Pursuant to 18 U.S.C. Section 1350****As adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

Solely for the purposes of complying with 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, I, the undersigned Chief Financial Officer of XPO Logistics, Inc. (the "Company"), hereby certify, based on my knowledge, that the Quarterly Report on Form 10-Q of the Company for the quarter ended September 30, 2012 (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ John J. Hardig

Chief Financial Officer

(Principal Financial Officer)

Date: November 6, 2012