

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

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): July 30, 2021

**XPO LOGISTICS, INC.**

(Exact name of registrant as specified in its charter)

Delaware

001-32172

03-0450326

(State or other jurisdiction of  
incorporation)

(Commission File Number)

(I.R.S. Employer  
Identification No.)

Five American Lane, Greenwich, Connecticut 06831

(Address of principal executive offices)

(855) 976-6951

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Securities registered pursuant to Section 12(b) of the Act:**

<u>Title of each class</u>	<u>Trading symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common stock, par value \$0.001 per share	XPO	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

## **Introductory Note**

This Current Report on Form 8-K is being filed in connection with the closing on August 2, 2021 at 12:01 a.m. Eastern Time of the previously announced separation (the “Separation”) of the logistics segment of XPO Logistics, Inc. (“XPO” or the “company”) from the company’s transportation segment. The Separation was effected by the transfer of the logistics segment from the company to GXO Logistics, Inc. (“GXO”) and the distribution of all of the outstanding shares of GXO common stock to the company’s stockholders (the “Distribution”). The company’s stockholders of record as of the close of business on July 23, 2021 (the “Record Date”) received one share of GXO common stock for every one share of the company’s common stock held as of the Record Date. The company did not issue fractional shares of GXO common stock in the Distribution.

As a result of the Distribution, GXO is now an independent public company trading under the symbol “GXO” on the New York Stock Exchange.

### **Item 1.01. Entry into a Material Definitive Agreement.**

#### *Spin-Off Agreements*

In connection with the Distribution, the company entered into several agreements with GXO that govern the relationship of the parties following the Distribution, including a Separation and Distribution Agreement, a Transition Services Agreement, a Tax Matters Agreement, and an Employee Matters Agreement (each entered into on August 1, 2021), and an Intellectual Property License Agreement (entered into on July 30, 2021).

A summary of the material terms of these agreements can be found in the section entitled “Certain Relationships and Related Party Transactions” in the Information Statement, dated July 23, 2021, filed as Exhibit 99.1 to the company’s Current Report on Form 8-K filed with the Securities and Exchange Commission (“SEC”) on July 26, 2021, which is incorporated herein by reference. The summary is qualified in its entirety by reference to the Separation and Distribution Agreement, the Transition Services Agreement, the Tax Matters Agreement, the Employee Matters Agreement and the Intellectual Property License Agreement filed as Exhibits 2.1, 10.1, 10.2, 10.3, and 10.4, respectively, to this Current Report on Form 8-K, each of which is incorporated herein by reference.

#### *ABL Credit Agreement*

In connection with the Distribution, on July 30, 2021, the company entered into Amendment No. 6 to Second Amended and Restated Revolving Loan Credit Agreement (the “Amendment”), by and among the company, certain subsidiaries signatory thereto, the lenders party thereto and Morgan Stanley Senior Funding, Inc., in its capacity as agent (the “Agent”), amending that certain Second Amended and Restated Revolving Loan Credit Agreement, dated as of October 30, 2015 (as previously amended, amended and restated, supplemented or otherwise modified, the “Existing ABL Credit Agreement”), by and among the company, certain subsidiaries signatory thereto, the lenders party thereto and the Agent. The Amendment amended the Existing ABL Credit Agreement to, among other things: (i) reduce the aggregate commitments thereunder from \$1.1 billion to \$1.0 billion upon consummation of the Distribution and (ii) make certain other changes to the covenants and other provisions therein.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the Amendment filed as Exhibit 10.5 to this Current Report on Form 8-K, which is incorporated herein by reference.

### **Item 2.01. Completion of Acquisition or Disposition of Assets.**

The disclosure set forth in the “Introductory Note” above is incorporated by reference into this Item 2.01.

A copy of the press release issued by the company on August 2, 2021 announcing the completion of the Separation and the Distribution is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

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**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

*Resignation of Directors*

As previously disclosed on Current Reports on Form 8-K filed on July 13, 2021 and July 20, 2021, effective as of the completion of the Distribution, Gena Ashe, Marlene Colucci, Jason Papastavrou and Oren Shaffer resigned from the company's board of directors and joined the board of directors of GXO.

*Appointment of Directors*

Effective as of the completion of the Distribution:

- Jason Aiken was appointed a director of the company and chairman of the Audit Committee. Mr. Aiken currently serves as senior vice president and chief financial officer of General Dynamics. Earlier, he served as senior vice president and chief financial officer of Gulfstream Aerospace Corporation, a General Dynamics subsidiary.
- Mary Kissel was appointed a director of the company and a member of the Compensation Committee. Ms. Kissel currently serves as executive vice president and senior policy advisor with Stephens Inc. She is a former senior advisor to the U.S. Secretary of State, and was previously with *The Wall Street Journal* as a member of the Editorial Board and editorial page editor for Asia-Pacific.
- Allison Landry was appointed a director of the company and a member of both the Audit Committee and the Compensation Committee. Ms. Landry is a former senior transportation research analyst with Credit Suisse, covering the trucking, railroad, airfreight and logistics industries.
- Johnny C. Taylor, Jr. was appointed a director of the company and chairman of the Compensation Committee. Mr. Taylor is currently president and chief executive officer of the Society for Human Resource Management (SHRM). He previously held executive positions with IAC/Interactive Corp, Viacom's Paramount Pictures and Blockbuster Entertainment Group, among others.

A copy of the press release issued by the company on August 2, 2021 announcing that its new slate of directors became effective with the completion of the spin-off is filed as Exhibit 99.2 to this Current Report on Form 8-K.

**Item 8.01. Other Events.**

On July 30, 2021, the company provided notice to Wells Fargo Bank, National Association (in such capacity, the "2024 Notes Trustee") under that certain Indenture, dated as of February 22, 2019 (as amended, supplemented or otherwise modified from time to time, the "2024 Notes Indenture"), by and among the company, the guarantors party thereto and the 2024 Notes Trustee, that on August 15, 2021, subject to and conditioned upon consummation of the Distribution (which condition was satisfied on August 2, 2021), the company intends to redeem all \$1.0 billion in aggregate principal amount of its outstanding 6.750% Senior Notes due 2024 at a redemption price of 103.375% of the principal amount thereof in accordance with the terms of the 2024 Notes Indenture.

On August 2, 2021, the company provided notice to The Bank of New York Mellon Trust Company, N.A. (in such capacity, the "2023 Notes Trustee") under that certain Indenture, dated as of August 25, 2016 (as amended, supplemented or otherwise modified from time to time, the "2023 Notes Indenture"), by and among the company, the guarantors party thereto and the 2023 Notes Trustee, that on September 1, 2021, the company intends to redeem all \$535 million in aggregate principal amount of its outstanding 6.125% Senior Notes due 2023 at a redemption price of 100.000% of the principal amount thereof in accordance with the terms of the 2023 Notes Indenture.

**Item 9.01. Financial Statements and Exhibits.**

(b) Pro Forma Financial Information

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The unaudited pro forma consolidated financial information of the company giving effect to the Separation and the Distribution, including the unaudited pro forma combined balance sheet as of March 31, 2021 and the unaudited pro forma combined statement of operations for the years ended December 31, 2020, 2019 and 2018, are attached hereto as Exhibit 99.3 and incorporated herein by reference.

(d) Exhibits.

<b>Exhibit No.</b>	<b>Description</b>
2.1	<a href="#">Separation and Distribution Agreement, dated as of August 1, 2021, by and between XPO Logistics, Inc. and GXO Logistics, Inc.</a>
10.1	<a href="#">Transition Services Agreement, dated as of August 1, 2021, by and between XPO Logistics, Inc. and GXO Logistics, Inc.</a>
10.2	<a href="#">Tax Matters Agreement, dated as of August 1, 2021, by and between XPO Logistics, Inc. and GXO Logistics, Inc.</a>
10.3	<a href="#">Employee Matters Agreement, dated as of August 1, 2021, by and between XPO Logistics, Inc. and GXO Logistics, Inc.</a>
10.4	<a href="#">Intellectual Property License Agreement, dated as of July 30, 2021, by and between XPO Logistics, Inc. and GXO Logistics, Inc.</a>
10.5	<a href="#">Amendment No. 6 to Second Amended and Restated Revolving Loan Credit Agreement, dated as of July 30, 2021, by and among XPO Logistics, Inc., certain subsidiaries signatory thereto, the lenders party thereto and Morgan Stanley Senior Funding, Inc., as agent.</a>
99.1	<a href="#">Press Release, dated August 2, 2021, announcing the completion of the separation</a>
99.2	<a href="#">Press Release, dated August 2, 2021, regarding the board of directors</a>
99.3	<a href="#">Unaudited pro forma consolidated financial information</a>
104.1	Cover Page Interactive Data File (embedded within the Inline XBRL document)

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this Current Report on Form 8-K to be signed on its behalf by the undersigned hereunto duly authorized.

Date: August 3, 2021

XPO LOGISTICS, INC.

By: /s/ Ravi Tulsyan

Name: Ravi Tulsyan

Title: Deputy Chief Financial Officer & Treasurer

SEPARATION AND DISTRIBUTION AGREEMENT

BY AND BETWEEN

XPO LOGISTICS, INC.

AND

GXO LOGISTICS, INC.

DATED AS OF AUGUST 1, 2021

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## EXHIBITS

Exhibit A	Amended and Restated Certificate of Incorporation of GXO Logistics, Inc.
Exhibit B	Amended and Restated Bylaws of GXO Logistics, Inc.

## SEPARATION AND DISTRIBUTION AGREEMENT

This SEPARATION AND DISTRIBUTION AGREEMENT, dated as of August 1, 2021 (this “Agreement”), is by and between XPO Logistics, Inc., a Delaware corporation (“Parent”), and GXO Logistics, Inc., a Delaware corporation (“SpinCo”). Capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to them in Article I.

### R E C I T A L S

WHEREAS, the board of directors of Parent (the “Parent Board”) has determined that it is in the best interests of Parent and its stockholders to create a new publicly traded company that shall operate the SpinCo Business;

WHEREAS, in furtherance of the foregoing, the Parent Board has determined that it is appropriate and desirable to separate the SpinCo Business from the Parent Business (the “Separation”) and, following the Separation, make a distribution, on a pro rata basis, to holders of Parent Shares on the Record Date of all of the outstanding SpinCo Shares (the “Distribution”);

WHEREAS, SpinCo has been incorporated solely for these purposes and has not engaged in activities, except in connection with the Separation and the Distribution;

WHEREAS, for U.S. federal income tax purposes, the Contribution and the Distribution, taken together, are intended to qualify as a transaction that is generally tax-free for U.S. federal income tax purposes under Sections 355 and 368(a)(1)(D) of the Code, and this Agreement is intended to be, and is hereby adopted as, a “plan of reorganization” within the meaning of Treasury Regulations Section 1.368-2(g);

WHEREAS, SpinCo and Parent have prepared, and SpinCo has filed with the SEC, the Form 10, which includes the Information Statement, and which sets forth disclosures concerning SpinCo, the Separation and the Distribution;

WHEREAS, each of Parent and SpinCo has determined that it is appropriate and desirable to set forth the principal corporate transactions required to effect the Separation and the Distribution and certain other agreements that will govern certain matters relating to the Separation and the Distribution and the relationship of Parent, SpinCo and the members of their respective Groups following the Distribution; and

WHEREAS, the Parties acknowledge that this Agreement and the Ancillary Agreements represent the integrated agreement of Parent and SpinCo relating to the Separation and the Distribution, are being entered into together, and would not have been entered into independently.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I  
DEFINITIONS

For the purpose of this Agreement, the following terms shall have the following meanings:

“Action” shall mean any demand, action, claim, dispute, suit, countersuit, arbitration, inquiry, subpoena, proceeding or investigation of any nature (whether criminal, civil, legislative, administrative, regulatory, prosecutorial or otherwise) by or before any federal, state, local, foreign or international Governmental Authority or any arbitration or mediation tribunal.

“Affiliate” shall mean, when used with respect to a specified Person, a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified Person. For the purpose of this definition, “control” (including, with correlative meanings, “controlled by” and “under common control with”), when used with respect to any specified Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other interests, by contract, agreement, obligation, indenture, instrument, lease, promise, arrangement, release, warranty, commitment, undertaking or otherwise. It is expressly agreed that, prior to, at and after the Effective Time, solely for purposes of this Agreement and the Ancillary Agreements, (a) no member of the SpinCo Group shall be deemed to be an Affiliate of any member of the Parent Group and (b) no member of the Parent Group shall be deemed to be an Affiliate of any member of the SpinCo Group.

“Agreement” shall have the meaning set forth in the Preamble.

“Ancillary Agreements” shall mean all agreements (other than this Agreement) entered into by the Parties or the members of their respective Groups (but only agreements as to which no Third Party is a party) in connection with the Separation, the Distribution or the other transactions contemplated by this Agreement, including, but not limited to, the Transition Services Agreement, the Tax Matters Agreement, the Employee Matters Agreement, the Intellectual Property License Agreement, the Transfer Documents and the agreements set forth on Schedule 1.11.

“Approvals or Notifications” shall mean any consents, waivers, approvals, permits or authorizations to be obtained from, notices, registrations or reports to be submitted to, or other filings to be made with, any Third Party, including any Governmental Authority.

“Arbitration Request” shall have the meaning set forth in Section 7.3(a).

“Assets” shall mean, with respect to any Person, the assets, properties, claims and rights (including goodwill) of such Person, wherever located (including in the possession of vendors or other Third Parties or elsewhere), of every kind, character and description, whether real, personal or mixed, tangible, intangible or contingent, in each case whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of such Person, including rights and benefits pursuant to any contract, license, permit, indenture, note, bond, mortgage, agreement, concession, franchise, instrument, undertaking, commitment, understanding or other arrangement.

“CEO Negotiation Request” shall have the meaning set forth in Section 7.2.

“Cash Transfer” shall have the meaning set forth in Section 2.12(a).

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Contribution” shall have the meaning set forth in the Tax Matters Agreement.

“Customer Information” shall mean, with respect to any business, all information to the extent relating to customers of such business, including names, addresses and transaction data (including merchandise or service purchased, purchase price paid, purchase location (such as particular branch or online), date and time of day of purchase, adjustments and related information and means of payment).

“Delayed Parent Asset” shall have the meaning set forth in Section 2.4(h).

“Delayed Parent Liability” shall have the meaning set forth in Section 2.4(h).

“Delayed SpinCo Asset” shall have the meaning set forth in Section 2.4(c).

“Delayed SpinCo Liability” shall have the meaning set forth in Section 2.4(c).

“Disclosure Document” shall mean any registration statement (including the Form 10) filed with the SEC by or on behalf of any Party or any member of its Group, and also includes any information statement (including the Information Statement), prospectus, offering memorandum, offering circular, periodic report or similar disclosure document, whether or not filed with the SEC or any other Governmental Authority, in each case that describes the Separation or the Distribution or the SpinCo Group or primarily relates to the transactions contemplated hereby.

“Dispute” shall have the meaning set forth in Section 7.1.

“Distribution” shall have the meaning set forth in the Recitals.

“Distribution Agent” shall mean the trust company or bank duly appointed by Parent to act as distribution agent, transfer agent and registrar for the SpinCo Shares in connection with the Distribution.

“Distribution Date” shall mean 12:01 a.m. Eastern Time on August 2, 2021, which is the date of the consummation of the Distribution, which shall be determined by the Parent Board in its sole and absolute discretion.

“Distribution Ratio” shall mean a number equal to one (1).

“e-mail” shall have the meaning set forth in Section 10.5.

“Effective Time” shall mean 12:01 a.m., New York City time, on the Distribution Date.

“Employee Matters Agreement” shall mean the Employee Matters Agreement to be entered into by and between Parent and SpinCo in connection with the Separation, the

Distribution or the other transactions contemplated by this Agreement, as it may be amended from time to time.

“Environmental Law” shall mean any Law relating to pollution, protection or restoration of or prevention of harm to the environment or natural resources, including the use, handling, transportation, treatment, storage, disposal, Release or discharge of Hazardous Materials or the protection of or prevention of harm to human health and safety.

“Environmental Liabilities” shall mean all Liabilities relating to, arising out of or resulting from any Hazardous Materials, Environmental Law or contract or agreement relating to environmental, health or safety matters (including all removal, remediation or cleanup costs, investigatory costs, response costs, natural resources damages, property damages, personal injury damages, costs of compliance with any product take-back requirements or with any settlement, judgment or other determination of Liability and indemnity, contribution or similar obligations) and all costs and expenses, interest, fines, penalties or other monetary sanctions in connection therewith.

“Exchange Act” shall mean the U.S. Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

“Force Majeure” shall mean, with respect to a Party, an event beyond the reasonable control of such Party (or any Person acting on its behalf), which event (a) does not arise or result from the fault or negligence of such Party (or any Person acting on its behalf) and (b) by its nature would not reasonably have been foreseen by such Party (or such Person), or, if it would reasonably have been foreseen, was unavoidable, and includes acts of God, acts of civil or military authority, embargoes, epidemics, pandemics, war, riots, insurrections, fires, explosions, earthquakes, floods, unusually severe weather conditions, labor problems or unavailability of parts, or, in the case of computer systems, any significant and prolonged failure in electrical or air conditioning equipment. Notwithstanding the foregoing, the receipt by a Party of an unsolicited takeover offer or other acquisition proposal, even if unforeseen or unavoidable, and such Party’s response thereto shall not be deemed an event of Force Majeure.

“Form 10” shall mean the registration statement on Form 10 filed by SpinCo with the SEC to effect the registration of SpinCo Shares pursuant to the Exchange Act in connection with the Distribution, as such registration statement may be amended or supplemented from time to time prior to the Distribution.

“Former Parent Group Employee” shall have the meaning set forth in the Employee Matters Agreement.

“Former SpinCo Group Employee” shall have the meaning set forth in the Employee Matters Agreement.

“Governmental Approvals” shall mean any Approvals or Notifications to be made to, or obtained from, any Governmental Authority.

“Governmental Authority” shall mean any nation or government, any territory, state, municipality or other political subdivision thereof, and any entity, body, agency,

commission, department, board, bureau, court, tribunal or other instrumentality, whether federal, state, local, domestic, foreign or multinational, exercising executive, legislative, judicial, regulatory, administrative or other similar functions of, or pertaining to, a government and any executive official thereof.

“Group” shall mean either the SpinCo Group or the Parent Group, as the context requires.

“Hazardous Materials” shall mean any chemical, material, substance, waste, pollutant, emission, discharge, release or contaminant that could result in Liability under, or that is prohibited, limited or regulated by or pursuant to, any Environmental Law, and any natural or artificial substance (whether solid, liquid or gas, noise, ion, vapor or electromagnetic) that could cause harm to human health or the environment, including petroleum, petroleum products and byproducts, asbestos and asbestos-containing materials, urea formaldehyde foam insulation, electronic, medical or infectious wastes, polychlorinated biphenyls, radon gas, radioactive substances, chlorofluorocarbons and all other ozone-depleting substances.

“Indemnifying Party” shall have the meaning set forth in Section 4.4(a).

“Indemnitee” shall have the meaning set forth in Section 4.4(a).

“Indemnity Payment” shall have the meaning set forth in Section 4.4(a).

“Information” shall mean information, whether or not patentable or copyrightable, in written, oral, electronic or other tangible or intangible forms, stored in any medium, including studies, reports, records, books, contracts, instruments, surveys, discoveries, ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, artwork, design, research and development files, diagrams, models, prototypes, samples, flow charts, data, computer data, disks, diskettes, tapes, computer programs or other software, marketing plans, Customer Information, cost information, sales and pricing data, customer prospect lists, supplier records and vendor data, correspondence and lists, product literature, communications by or to attorneys (including attorney-client privileged communications), memoranda and other materials prepared by attorneys or under their direction (including attorney work product), and other technical, financial, employee or business information or data; provided that “Information” shall not include Intellectual Property Rights.

“Information Statement” shall mean the information statement to be made available to the holders of Parent Shares in connection with the Distribution, as such information statement may be amended or supplemented from time to time prior to the Distribution.

“Information Technology” means the computer systems (including computers, screens, servers, middleware, workstations, routers, hubs, switches, networks, data communications lines and hardware), network and telecommunications systems hardware and other information technology equipment, and all associated documentation.

“Insurance Proceeds” shall mean those monies:

- (a) received by an insured from an insurance carrier; or



(b) paid by an insurance carrier on behalf of the insured;

in any such case net of any applicable premium adjustments (including reserves and retrospectively rated premium adjustments) and net of any costs or expenses incurred in the collection thereof; provided that in each case Insurance Proceeds shall not include any monies received or paid from an insurance carrier that is Parent or SpinCo or an Affiliate of either Parent or SpinCo.

“Intellectual Property Rights” means any and all common law or statutory rights anywhere in the world arising under or associated with (a) patents, statutory invention registrations, certificates of invention, registered designs, utility models and similar or equivalent rights in inventions and designs, and all rights therein provided by international treaties and conventions, and including any applications for any of the foregoing (“Patents”); (b) trademarks, service marks, slogans, trade dress, trade names, logos, and other designations of origin, and including any applications for any of the foregoing (“Marks”); (c) rights associated with domain names, uniform resource locators, Internet Protocol addresses, social media handles, and other names, identifiers, and locators associated with Internet addresses, sites, and services, and including any applications for any of the foregoing (“Internet Properties”); (d) copyrights, any other equivalent rights in works of authorship or copyrightable subject matter (including rights in software as a work of authorship) and any other related rights of authors, and including any applications for any of the foregoing (“Copyrights”); (d) trade secrets and industrial secret rights, and rights in know-how, inventions, data, and any other confidential or proprietary business or technical information, that derive independent economic value, whether actual or potential, from not being known to other persons (“Trade Secrets”); and (e) other similar or equivalent intellectual property rights anywhere in the world.

“Intellectual Property License Agreement” shall mean the Intellectual Property License Agreement to be entered into by and between Parent and SpinCo or members of their respective Groups in connection with the Separation, the Distribution or the other transactions contemplated by this Agreement, as it may be amended from time to time.

“IRS” shall mean the U.S. Internal Revenue Service.

“JAMS Streamlined Rules” has the meaning set forth in Section 7.3.

“Law” shall mean any national, supranational, federal, state, territorial, provincial, local or similar law (including common law), statute, code, order, ordinance, rule, regulation, treaty (including any income tax treaty), license, permit, authorization, approval, consent, decree, injunction, binding judicial or administrative interpretation or other requirement, in each case enacted, promulgated, issued or entered by a Governmental Authority.

“Liabilities” shall mean all debts, guarantees, assurances, commitments, liabilities, responsibilities, Losses, remediations, deficiencies, damages, fines, penalties, settlements, sanctions, costs, expenses, interest and obligations of any nature or kind, whether accrued or fixed, absolute or contingent, matured or unmatured, accrued or not accrued, asserted or unasserted, liquidated or unliquidated, foreseen or unforeseen, known or unknown, reserved or unreserved, or determined or determinable, including those arising under any Law, claim

(including any Third-Party Claim), demand, Action, or order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority or arbitration tribunal, and those arising under any contract, agreement, obligation, indenture, instrument, lease, promise, arrangement, release, warranty, commitment or undertaking, or any fines, damages or equitable relief that is imposed, in each case, including all costs and expenses relating thereto.

“Linked” shall have the meaning set forth in Section 2.9(a).

“Losses” shall mean actual losses (including any diminution in value), costs, damages, penalties and expenses (including legal and accounting fees and expenses and costs of investigation and litigation), whether or not involving a Third-Party Claim.

“NYSE” shall mean the New York Stock Exchange.

“Officer Negotiation Request” shall have the meaning set forth in Section 7.1.

“Parent” shall have the meaning set forth in the Preamble.

“Parent Accounts” shall have the meaning set forth in Section 2.9(a).

“Parent Assets” shall have the meaning set forth in Section 2.2(b).

“Parent Board” shall have the meaning set forth in the Recitals.

“Parent Business” shall mean all businesses, operations and activities (whether or not such businesses, operations or activities are or have been terminated, divested or discontinued) conducted at any time prior to the Effective Time by either Party or any member of its Group, other than the SpinCo Business.

“Parent Group” shall mean Parent and each Person that is a Subsidiary of Parent (other than SpinCo and any other member of the SpinCo Group).

“Parent Group Employee” shall have the meaning set forth in the Employee Matters Agreement.

“Parent Indemnitees” shall have the meaning set forth in Section 4.2.

“Parent Liabilities” shall have the meaning set forth in Section 2.3(b).

“Parent Names” means the names, Marks or logos of Parent or any of its Affiliates at any time prior to the Effective Time, or any variations or derivatives thereof, either alone or in combination with other words and any names, Marks or logos confusingly similar to or embodying any of the foregoing, in each case other than those names, Marks or logos set forth on Schedule 1.1. For the avoidance of doubt and notwithstanding anything herein to the contrary, the “XPO” name, Mark and logo, including any variations or derivatives thereof, either alone or in combination with other words, shall be part of the Parent Names.

“Parent Policies” shall have the meaning set forth in Section 5.1(b).

“Parent Shares” shall mean the shares of common stock, par value \$0.001 per share, of Parent.

“Parties” shall mean the parties to this Agreement.

“Permits” shall mean any permits, approvals, authorizations, consents, licenses or certificates issued by any Governmental Authority.

“Person” shall mean an individual, a general or limited partnership, a corporation, a trust, a joint venture, an unincorporated organization, a limited liability entity, any other entity and any Governmental Authority.

“Plan of Reorganization” shall mean the plan and structure set forth on Schedule 2.1(a).

“Policies” shall mean insurance policies, reinsurance policies and insurance contracts of any kind, including property, excess and umbrella, commercial general liability, director and officer liability, fiduciary liability, cyber technology, professional liability, libel liability, employment practices liability, automobile, aircraft, marine, workers’ compensation and employers’ liability, employee dishonesty/crime/fidelity, foreign, bonds and self-insurance and captive insurance company arrangements, together with the rights, benefits, privileges and obligations thereunder.

“Prime Rate” shall mean the rate that Bloomberg displays as “Prime Rate by Country United States” or “Prime Rate by Country US-BB Comp” at <http://www.bloomberg.com/quote/PRIME:IND> or on a Bloomberg terminal at PRIMBB Index.

“Privileged Information” shall mean any information, in written, oral, electronic or other tangible or intangible forms, including any communications by or to attorneys (including attorney-client privileged communications), memoranda and other materials prepared by attorneys or under their direction (including attorney work product), as to which a Party or any member of its Group would be entitled to assert or have asserted a privilege or other protection, including the attorney-client and attorney work product privileges.

“Prohibited Business” shall mean (i) with respect to any member of the Parent Group, the SpinCo Business (excluding any services that are ancillary to the core Parent Business (including any natural extensions thereof) as conducted as of the Effective Time; and (ii) with respect to any member of the SpinCo Group, the Parent Business (excluding any services that are ancillary to the core SpinCo Business (including any natural extensions thereof)) as conducted as of the Effective Time.

“Real Property” shall mean land together with all easements, rights and interests arising out of the ownership thereof or appurtenant thereto and all buildings, structures, improvements and fixtures located thereon.

“Real Property Leases” shall mean all leases to Real Property and, to the extent covered by such leases, any and all buildings, structures, improvements and fixtures located thereon.

“Record Date” shall mean the close of business on July 23, 2021, which is the date to be determined by the Parent Board in its sole and absolute discretion as the record date for determining holders of Parent Shares entitled to receive SpinCo Shares pursuant to the Distribution.

“Record Holders” shall mean the holders of record of Parent Shares as of the Record Date.

“Registered IP” shall mean all United States, international or foreign (a) Patents and Patent applications; (b) registered Marks and applications to register Marks; (c) registered Copyrights and applications for Copyright registration; and (d) registered Internet Properties.

“Release” shall mean any release, spill, emission, discharge, leaking, pumping, pouring, dumping, injection, deposit, disposal, dispersal, leaching or migration of Hazardous Materials into the environment (including ambient air, surface water, groundwater and surface or subsurface strata).

“Representatives” shall mean, with respect to any Person, any of such Person’s directors, officers, employees, agents, consultants, advisors, accountants, attorneys or other representatives.

“SEC” shall mean the U.S. Securities and Exchange Commission.

“Security Interest” shall mean any mortgage, security interest, pledge, lien, charge, claim, option, right to acquire, voting or other restriction, right-of-way, covenant, condition, easement, encroachment, restriction on transfer, or other encumbrance of any nature whatsoever.

“Separation” shall have the meaning set forth in the Recitals.

“Shared Contract” shall have the meaning set forth in Section 2.8(a).

“Software” shall mean any and all (a) computer programs, including any and all software implementation of algorithms, models and methodologies, whether in source code, object code, human readable form or other form, (b) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (c) descriptions, flow charts and other work products used to design, plan, organize and develop any of the foregoing, (d) screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons and (e) documentation, including user manuals and other training documentation, relating to any of the foregoing.

“SpinCo” shall have the meaning set forth in the Preamble.

“SpinCo Accounts” shall have the meaning set forth in Section 2.9(a).

“SpinCo Assets” shall have the meaning set forth in Section 2.2(a).

“SpinCo Balance Sheet” shall mean the pro forma combined balance sheet of the SpinCo Business, including any notes and subledgers thereto, as of March 31, 2021, as presented in the Information Statement made available to the Record Holders.

“SpinCo Business” shall mean the contract logistics business and operations of Parent and its relevant Subsidiaries, as such business and operations are described in the “Logistics” segment of Parent in its Annual Report on Form 10-K for the fiscal year ended December 31, 2020 and conducted at any time prior to the Effective Time by either Party or any of their current or former Subsidiaries. For the avoidance of doubt, the SpinCo Business shall include only the business and operations described in the immediately prior sentence, and shall not include any other businesses or operations of Parent or any of its Subsidiaries.

“SpinCo Bylaws” shall mean the Amended and Restated Bylaws of SpinCo, substantially in the form of Exhibit B.

“SpinCo Certificate of Incorporation” shall mean the Amended and Restated Certificate of Incorporation of SpinCo, substantially in the form of Exhibit A.

“SpinCo Contracts” shall mean the following contracts and agreements to which either Party or any member of its Group is a party or by which it or any member of its Group or any of their respective Assets is bound, whether or not in writing (provided that SpinCo Contracts shall not include any contract or agreement that is contemplated to be retained by Parent or any member of the Parent Group from and after the Effective Time pursuant to any provision of this Agreement or any Ancillary Agreement):

(i) (x) any customer, distribution, supply or vendor contract or agreement with a Third Party entered into prior to the Effective Time exclusively related to the SpinCo Business and (y) with respect to any customer, distribution, supply or vendor contract or agreement with a Third Party entered into prior to the Effective Time that primarily relates to the SpinCo Business but is not exclusively related to the SpinCo Business, that portion of any such customer, distribution, supply or vendor contract or agreement to the extent related to the SpinCo Business;

(ii) (x) any license agreement entered into prior to the Effective Time exclusively related to the SpinCo Business and (y) with respect to any license agreement entered into prior to the Effective Time that primarily relates to the SpinCo Business but is not exclusively related to the SpinCo Business, that portion of any such license agreement to the extent related to the SpinCo Business;

(iii) any guarantee, indemnity, representation, covenant, warranty or other Liability of either Party or any member of its Group in respect of any other SpinCo Contract, any SpinCo Liability or the SpinCo Business;

(iv) any proprietary information and inventions agreement or similar agreement assigning or licensing Intellectual Property Rights with any SpinCo Group Employee, Former SpinCo Group Employee, Parent Group Employee, Former Parent Group Employee, current or former consultant of the SpinCo Group or current or former consultant of the Parent Group, in each case entered into prior to the Effective Time (x) that is exclusively related to the SpinCo Business or (y) if not exclusively related to the SpinCo Business but is primarily related to the SpinCo Business, that portion of any such assignment or agreement to the extent related to the SpinCo Business;

(v) any contract or agreement that is entered into pursuant to this Agreement or any of the Ancillary Agreements to be assigned to SpinCo or any member of the SpinCo Group;

(vi) any interest rate, currency, commodity or other swap, collar, cap or other hedging or similar agreements or arrangements exclusively related to the SpinCo Business;

(vii) any credit agreement, indenture, note or other financing agreement or instrument entered into by SpinCo and/or any member of the SpinCo Group in connection with the Separation, including any SpinCo Financing Arrangements;

(viii) any contract or agreement entered into in the name of, or expressly on behalf of, any division, business unit or member of the SpinCo Group, in each case so long as primarily related to the SpinCo Business;

(ix) any other contract or agreement not otherwise set forth herein and exclusively related to the SpinCo Business or SpinCo Assets;

(x) any employment, change of control, retention, consulting, indemnification, termination, severance or other similar agreements with any SpinCo Group Employee or consultants of the SpinCo Group that are in effect as of the Effective Time;

(xi) SpinCo Leases; and

(xii) any contracts, agreements or settlements set forth on Schedule 1.4, including the right to recover any amounts under such contracts, agreements or settlements.

“SpinCo Debt” shall have the meaning set forth in Section 2.12(a).

“SpinCo Designees” shall mean any and all entities (including corporations, general or limited partnerships, trusts, joint ventures, unincorporated organizations, limited liability entities or other entities) designated by Parent that will be members of the SpinCo Group as of immediately prior to the Effective Time.

“SpinCo Financing Arrangements” shall have the meaning set forth in Section 2.12(a).

“SpinCo Group” shall mean (a) prior to the Effective Time, SpinCo and each Person that will be a Subsidiary of SpinCo as of immediately after the Effective Time, including the Transferred Entities, even if, prior to the Effective Time, such Person is not a Subsidiary of SpinCo; and (b) on and after the Effective Time, SpinCo and each Person that is a Subsidiary of SpinCo.

“SpinCo Group Employee” shall have the meaning set forth in the Employee Matters Agreement.

“SpinCo Indemnitees” shall have the meaning set forth in Section 4.3.

“SpinCo Intellectual Property” shall mean (i) all Intellectual Property Rights (other than Registered IP) owned by either Party or any member of its Group as of the Effective Time and embodied in Technology exclusively used or exclusively held for use in the SpinCo Business, and (ii) any Intellectual Property Rights set forth on Schedule 1.6.

“SpinCo IT” shall mean all Information Technology owned by either Party or any member of its Group as of the Effective Time exclusively used or exclusively held for use in the SpinCo Business.

“SpinCo Leases” shall have the meaning set forth in the definition of SpinCo Real Property; provided that SpinCo IT does not include any Software licensed from a third party.

“SpinCo Liabilities” shall have the meaning set forth in Section 2.3(a).

“SpinCo Permits” shall mean all Permits owned or licensed by either Party or any member of its Group primarily used or held for use in the SpinCo Business as of the Effective Time.

“SpinCo Real Property” shall mean (a) all of the Real Property owned by either Party or member of its Group as of immediately prior to the Effective Time listed or described on Schedule 1.7(a), (b) the Real Property Leases to which either Party or member of its Group is party as of immediately prior to the Effective Time set forth on Schedule 1.7(b) (“SpinCo Leases”) and (c) all recorded Real Property notices, easements and obligations with respect to the Real Property and/or Real Property Leases described in clauses (a) and (b) of this paragraph.

“SpinCo Shares” shall mean the shares of common stock, par value \$0.01 per share, of SpinCo.

“SpinCo Technology” shall mean (a) the copies of Technology with respect to which the Intellectual Property Rights therein are owned by either Party or any member of its Group to the extent that such Technology is (i) used or held for use in the SpinCo Business as of the Effective Time and capable of being copied (for example documentation), including Software set forth on Schedule 1.8 and Technology set forth on Schedule 1.9, and (b) the know-how of the SpinCo Group Employees to the extent related to the SpinCo Business, but in each case, excluding Technology and Software set forth on Schedule 2.2(b)(iv), Information Technology and Tangible Information. For purposes of clarity, SpinCo Technology does not include any Intellectual Property Rights.

“Subsidiary” shall mean, with respect to any Person, any corporation, limited liability company, joint venture or partnership of which such Person (a) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (i) the total combined voting power of all classes of voting securities, (ii) the total combined equity interests or (iii) the capital or profit interests, in the case of a partnership, or (b) otherwise has the power to vote, either directly or indirectly, sufficient securities to elect a majority of the board of directors or similar governing body.

“Tangible Information” shall mean information that is contained in written, electronic or other tangible forms.

“Target Cash Amount” shall mean one hundred million (\$100,000,000) U.S. dollars.

“Tax” shall have the meaning set forth in the Tax Matters Agreement.

“Tax Authority” shall have the meaning set forth in the Tax Matters Agreement.

“Tax Matters Agreement” shall mean the Tax Matters Agreement to be entered into by and between Parent and SpinCo in connection with the Separation, the Distribution or the other transactions contemplated by this Agreement, as it may be amended from time to time.

“Tax Return” shall have the meaning set forth in the Tax Matters Agreement.

“Technology” shall mean embodiments of Intellectual Property Rights, including blueprints, designs, design protocols, documentation, specifications for materials, specifications for parts and devices, and design tools, materials, manuals, data, databases, Software and know-how or knowledge of employees, relating to, embodying, or describing products, articles, apparatus, devices, processes, methods, formulae, recipes or other technical information; provided that Technology shall not include personal property and books and records or any Intellectual Property Rights.

“Third Party” shall mean any Person other than the Parties or any members of their respective Groups.

“Third-Party Claim” shall have the meaning set forth in Section 4.5(a).

“Transfer Documents” shall have the meaning set forth in Section 2.1(b).

“Transferred Entities” shall mean the entities set forth on Schedule 1.10.

“Transition Services Agreement” shall mean the Transition Services Agreement to be entered into by and between Parent and SpinCo in connection with the Separation, the Distribution or the other transactions contemplated by this Agreement, as it may be amended from time to time.

“Unreleased Parent Liability” shall have the meaning set forth in Section 2.5(b)(ii).

“Unreleased SpinCo Liability” shall have the meaning set forth in Section 2.5(a)(ii).

## ARTICLE II THE SEPARATION

### 2.1 Transfer of Assets and Assumption of Liabilities.

(a) On or prior to the Effective Time, but in any case prior to the Distribution, in accordance with the Plan of Reorganization:

(i) *Transfer and Assignment of SpinCo Assets.* Parent shall, and shall cause the applicable members of its Group to, contribute, assign, transfer, convey and



deliver to SpinCo, or the applicable SpinCo Designees, and SpinCo or such SpinCo Designees shall accept from Parent and the applicable members of the Parent Group, all of Parent's and such Parent Group member's respective direct or indirect right, title and interest in and to all of the SpinCo Assets (it being understood that if any SpinCo Asset shall be held by a Transferred Entity, such SpinCo Asset shall be deemed assigned, transferred, conveyed and delivered to SpinCo as a result of the transfer of all of the equity interests in such Transferred Entity from Parent or the applicable members of the Parent Group to SpinCo or the applicable SpinCo Designee);

(ii) *Acceptance and Assumption of SpinCo Liabilities.* SpinCo and the applicable SpinCo Designees shall accept, assume and agree faithfully to perform, discharge and fulfill all the SpinCo Liabilities in accordance with their respective terms (it being understood that if any SpinCo Liabilities shall be Liabilities of a Transferred Entity, such SpinCo Liabilities shall be deemed assumed by SpinCo as a result of the transfer of all of the equity interests in such Transferred Entity from Parent or the applicable members of the Parent Group to SpinCo or the applicable SpinCo Designee). SpinCo and such SpinCo Designees shall be responsible for all SpinCo Liabilities, regardless of when or where such SpinCo Liabilities arose or arise, or whether the facts on which they are based occurred prior to or subsequent to the Effective Time, regardless of where or against whom such SpinCo Liabilities are asserted or determined (including any SpinCo Liabilities arising out of claims made by Parent's or SpinCo's respective directors, officers, employees, agents, Subsidiaries or Affiliates against any member of the Parent Group or the SpinCo Group) or whether asserted or determined prior to the date hereof, and regardless of whether arising from or alleged to arise from negligence, recklessness, violation of Law, fraud or misrepresentation by any member of the Parent Group or the SpinCo Group, or any of their respective directors, officers, employees, agents, Subsidiaries or Affiliates;

(iii) *Transfer and Assignment of Parent Assets.* Parent and SpinCo shall cause SpinCo and the SpinCo Designees to contribute, assign, transfer, convey and deliver to Parent or certain members of the Parent Group designated by Parent, and Parent or such other members of the Parent Group shall accept from SpinCo and the SpinCo Designees, all of SpinCo's and such SpinCo Designees' respective direct or indirect right, title and interest in and to all Parent Assets held by SpinCo or a SpinCo Designee; and

(iv) *Acceptance and Assumption of Parent Liabilities.* Parent and certain members of the Parent Group designated by Parent shall accept and assume and agree faithfully to perform, discharge and fulfill all of the Parent Liabilities held by SpinCo or any SpinCo Designee and Parent and the applicable members of the Parent Group shall be responsible for all Parent Liabilities in accordance with their respective terms, regardless of when or where such Parent Liabilities arose or arise, whether the facts on which they are based occurred prior to or subsequent to the Effective Time, where or against whom such Parent Liabilities are asserted or determined (including any such Parent Liabilities arising out of claims made by Parent's or SpinCo's respective directors, officers, employees, agents, Subsidiaries or Affiliates against any member of

the Parent Group or the SpinCo Group) or whether asserted or determined prior to the date hereof, and regardless of whether arising from or alleged to arise from negligence, recklessness, violation of Law, fraud or misrepresentation by any member of the Parent Group or the SpinCo Group, or any of their respective directors, officers, employees, agents, Subsidiaries or Affiliates.

(b) *Transfer Documents.* In furtherance of the contribution, assignment, transfer, conveyance and delivery of the Assets and the assumption of the Liabilities in accordance with Section 2.1(a), (i) each Party shall execute and deliver, and shall cause the applicable members of its Group to execute and deliver, to the other Party, such bills of sale, quitclaim deeds, stock powers, certificates of title, assignments of contracts and other instruments of transfer, conveyance and assignment as and to the extent necessary to evidence the transfer, conveyance and assignment of all of such Party's and the applicable members of its Group's right, title and interest in and to such Assets to the other Party and the applicable members of its Group in accordance with Section 2.1(a), and (ii) each Party shall execute and deliver, and shall cause the applicable members of its Group to execute and deliver, to the other Party, such assumptions of contracts and other instruments of assumption as and to the extent necessary to evidence the valid and effective assumption of the Liabilities by such Party and the applicable members of its Group in accordance with Section 2.1(a). All of the foregoing documents contemplated by this Section 2.1(b) shall be referred to collectively herein as the "Transfer Documents."

(c) *Misallocations.* In the event that at any time or from time to time (whether prior to, at or after the Effective Time), one Party (or any member of such Party's Group) shall receive or otherwise possess any Asset that is allocated to the other Party (or any member of such Party's Group) pursuant to this Agreement or any Ancillary Agreement, such Party shall promptly transfer, or cause to be transferred, such Asset to the Party so entitled thereto (or to any member of such Party's Group), and such Party (or member of such Party's Group) so entitled thereto shall accept such Asset; provided that, cash and cash equivalents received prior to the Effective Time shall not be subject to the requirements of this sentence. Prior to any such transfer, the Person receiving or possessing such Asset shall hold such Asset in trust for such other Person. In the event that at any time or from time to time (whether prior to, at or after the Effective Time), one Party hereto (or any member of such Party's Group) shall receive or otherwise assume or be liable for any Liability that is allocated to the other Party (or any member of such Party's Group) pursuant to this Agreement or any Ancillary Agreement, such other Party shall promptly assume, or cause to be assumed, such Liability and agree to faithfully perform or discharge such Liability in accordance with this Agreement.

(d) *Waiver of Bulk-Sale and Bulk-Transfer Laws.* To the extent permissible under applicable Law, SpinCo hereby waives compliance by each and every member of the Parent Group with the requirements and provisions of any "bulk-sale" or "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the transfer or sale of any or all of the SpinCo Assets to any member of the SpinCo Group. To the extent permissible under applicable Law, Parent hereby waives compliance by each and every member of the SpinCo Group with the requirements and provisions of any "bulk-sale" or "bulk-transfer" Laws of any

jurisdiction that may otherwise be applicable with respect to the transfer or sale of any or all of the Parent Assets to any member of the Parent Group.

(e) *Electronic Transfer*. All transferred SpinCo Assets and Parent Assets, including transferred Technology, that can be delivered by electronic transmission will be so delivered or made available to SpinCo, Parent or their respective designees (as applicable), in an electronic form to be reasonably determined by the Parties.

## 2.2 SpinCo Assets; Parent Assets.

(a) *SpinCo Assets*. For the purposes of this Agreement, “SpinCo Assets” shall mean:

(i) all issued and outstanding capital stock or other equity interests of the Transferred Entities that are owned by either Party or any members of its Group as of the Effective Time;

(ii) except as otherwise contemplated or set forth in this Section 2.2(a), all Assets of either Party or any members of its Group included or reflected as assets of the SpinCo Group on the SpinCo Balance Sheet, subject to any dispositions of such Assets subsequent to the date of the SpinCo Balance Sheet; provided that the amounts set forth on the SpinCo Balance Sheet with respect to any Assets shall not be treated as minimum amounts or limitations on the amount of such Assets that are included in the definition of SpinCo Assets pursuant to this clause (ii);

(iii) except as otherwise contemplated or set forth in this Section 2.2(a), all Assets of either Party or any of the members of its Group as of the Effective Time that are of a nature or type that would have resulted in such Assets being included as Assets of SpinCo or members of the SpinCo Group on a pro forma combined balance sheet of the SpinCo Group or any notes or subledgers thereto as of the Effective Time (were such balance sheet, notes and subledgers to be prepared on a basis consistent with the determination of the Assets included on the SpinCo Balance Sheet), it being understood that (x) the SpinCo Balance Sheet shall be used to determine the types of, and methodologies used to determine, those Assets that are included in the definition of SpinCo Assets pursuant to this clause (iii) and (y) the amounts set forth on the SpinCo Balance Sheet with respect to any Assets shall not be treated as minimum amounts or limitations on the amount of such Assets that are included in the definition of SpinCo Assets pursuant to this clause (iii);

(iv) all Assets of either Party or any of the members of its Group as of the Effective Time that are expressly provided by this Agreement or any Ancillary Agreement as Assets to be transferred to SpinCo or any other member of the SpinCo Group;

(v) all SpinCo Contracts as of the Effective Time and all rights, interests or claims of either Party or any of the members of its Group thereunder as of the Effective Time;

(vi) the SpinCo Intellectual Property as of the Effective Time, including any goodwill appurtenant to any Trademarks included in the SpinCo Intellectual Property and the right to any damages for the infringement of the SpinCo Intellectual Property following the Effective Time;

(vii) the SpinCo IT and SpinCo Technology as of the Effective Time;

(viii) all SpinCo Permits as of the Effective Time and all rights, interests or claims of either Party or any of the members of its Group thereunder as of the Effective Time;

(ix) all cash and cash equivalents of SpinCo or any of the members of its Group as of the Effective Time (after giving effect to the Cash Transfer) in an amount equal to the Target Cash Amount;

(x) all SpinCo Real Property as of the Effective Time;

(xi) all Assets of either Party or any of the members of its Group as of the Effective Time that are exclusively related to the SpinCo Business;

(xii) all rights, interests and claims of either Party or any of the members of its Group as of the Effective Time with respect to Information exclusively related to the SpinCo Assets, the SpinCo Liabilities, the SpinCo Business or the Transferred Entities and, subject to the provisions of the applicable Ancillary Agreements, a non-exclusive right to all Information to the extent related to, but not exclusively related to, the SpinCo Assets, the SpinCo Liabilities, the SpinCo Business or the Transferred Entities; and

(xiii) any and all Assets set forth on Schedule 2.2(a)(xiii).

Notwithstanding the foregoing, the SpinCo Assets shall not in any event include any Asset referred to in clauses (i) through (vii) of Section 2.2(b).

(b) *Parent Assets*. For the purposes of this Agreement, "Parent Assets" shall mean all Assets of either Party or the members of its Group as of the Effective Time, other than the SpinCo Assets, it being understood that, notwithstanding anything herein to the contrary, the Parent Assets shall include:

(i) all Assets that are expressly provided or contemplated by this Agreement or any Ancillary Agreement (or the Schedules hereto or thereto) as Assets to be retained by Parent or any other member of the Parent Group;

(ii) all contracts and agreements of either Party or any of the members of its Group as of the Effective Time (other than the SpinCo Contracts);

(iii) (x) the Intellectual Property Rights set forth on Schedule 2.2(b)(iii), and (y) all Intellectual Property Rights of either Party or any of the members of its Group as of the Effective Time (other than, in the case of this clause (y), the SpinCo Intellectual Property);

(iv) (x) the Technology set forth on Schedule 2.2(b)(iv), (y) all Technology of either Party or any of the members of its Group as of the Effective Time and (z) copies of all SpinCo Technology, other than, in the case of this clauses (y) and (z), the copies of such Technology that are SpinCo Technology;

(v) all Information Technology of either Party or any of the members of its Group as of the Effective Time (other than the SpinCo IT);

(vi) all Permits of either Party or any of the members of its Group as of the Effective Time (other than the SpinCo Permits);

(vii) all cash and cash equivalents of either Party or any of the members of its Group as of the Effective Time (including cash in respect of the Cash Transfer) (other than cash and cash equivalents of SpinCo or any other member of the SpinCo Group as of the Effective Time in an aggregate amount equal to the Target Cash Amount);

(viii) all Real Property of either Party or any of the members of its Group as of the Effective Time (other than the SpinCo Real Property); and

(ix) any and all Assets set forth on Schedule 2.2(b)(ix).

### 2.3 SpinCo Liabilities; Parent Liabilities.

(a) *SpinCo Liabilities.* For the purposes of this Agreement, “SpinCo Liabilities” shall mean the following Liabilities of either Party or any of the members of its Group:

(i) all Liabilities included or reflected as liabilities or obligations of SpinCo or the members of the SpinCo Group on the SpinCo Balance Sheet, subject to any discharge of such Liabilities subsequent to the date of the SpinCo Balance Sheet; provided that the amounts set forth on the SpinCo Balance Sheet with respect to any Liabilities shall not be treated as minimum amounts or limitations on the amount of such Liabilities that are included in the definition of SpinCo Liabilities pursuant to this clause (i);

(ii) all Liabilities as of the Effective Time that are of a nature or type that would have resulted in such Liabilities being included or reflected as liabilities or obligations of SpinCo or the members of the SpinCo Group on a pro forma combined balance sheet of the SpinCo Group or any notes or subledgers thereto as of the Effective Time (were such balance sheet, notes and subledgers to be prepared on a basis consistent with the determination of the Liabilities included on the SpinCo Balance Sheet), it being understood that (x) the SpinCo Balance Sheet shall be used to determine the types of, and methodologies used to determine, those Liabilities that are included in the definition of SpinCo Liabilities pursuant to this clause (ii) and (y) the amounts set forth on the SpinCo Balance Sheet with respect to any Liabilities shall not be treated as minimum amounts or limitations on the amount of such Liabilities that are included in the definition of SpinCo Liabilities pursuant to this clause (ii);

(iii) all Liabilities, including any Environmental Liabilities, to the extent relating to, arising out of or resulting from the actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time), in each case to the extent that such Liabilities relate to, arise out of or result from the SpinCo Business or a SpinCo Asset;

(iv) any and all Liabilities that are expressly provided by this Agreement or any Ancillary Agreement (or the Schedules hereto or thereto) as Liabilities to be assumed by SpinCo or any other member of the SpinCo Group, and all agreements, obligations and Liabilities of any member of the SpinCo Group under this Agreement or any of the Ancillary Agreements;

(v) all Liabilities to the extent relating to, arising out of or resulting from the SpinCo Contracts, the SpinCo Intellectual Property, the SpinCo Technology, the SpinCo Permits, the SpinCo Real Property or the SpinCo Financing Arrangements;

(vi) any and all Liabilities set forth on Schedule 2.3(a)(vi); and

(vii) all Liabilities arising out of claims made by any Third Party (including Parent's or SpinCo's respective directors, officers, stockholders, employees and agents) against any member of the Parent Group or the SpinCo Group to the extent relating to, arising out of or resulting from the SpinCo Business or the SpinCo Assets or the other business, operations, activities or Liabilities of SpinCo referred to in clauses (i) through (vi) above.

(b) *Parent Liabilities.* For the purposes of this Agreement, "Parent Liabilities" shall mean (i) all Liabilities to the extent relating to, arising out of or resulting from actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time) of any member of the Parent Group and, prior to the Effective Time, any member of the SpinCo Group, in each case that are not SpinCo Liabilities, including any and all Liabilities set forth on Schedule 2.3(b), and (ii) all Liabilities arising out of claims made by any Third Party (including Parent's or SpinCo's respective directors, officers, stockholders, employees and agents) against any member of the Parent Group or the SpinCo Group to the extent relating to, arising out of or resulting from the Parent Business or the Parent Assets.

#### 2.4 Approvals and Notifications.

(a) *Approvals and Notifications for SpinCo Assets and Liabilities.* To the extent that the transfer or assignment of any SpinCo Asset, the assumption of any SpinCo Liability, the Separation or the Distribution requires any Approvals or Notifications, the Parties shall use commercially reasonable efforts to obtain or make such Approvals or Notifications as soon as reasonably practicable; provided, however, that, except to the extent expressly provided in this Agreement or any of the Ancillary Agreements or as otherwise agreed in writing between

Parent and SpinCo, neither Parent nor SpinCo shall be obligated to contribute capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial accommodation) to any Person in order to obtain or make such Approvals or Notifications.

(b) *Delayed SpinCo Transfers.* If and to the extent that the valid, complete and perfected transfer or assignment to the SpinCo Group of any SpinCo Asset or assumption by the SpinCo Group of any SpinCo Liability in connection with the Separation or the Distribution would be a violation of applicable Law or require any Approval or Notification that has not been obtained or made by the Effective Time then, unless the Parties shall otherwise mutually determine, the transfer or assignment to the SpinCo Group of such SpinCo Assets or the assumption by the SpinCo Group of such SpinCo Liabilities, as the case may be, shall be automatically deemed deferred and any such purported transfer, assignment or assumption shall be null and void until such time as all legal impediments are removed or such Approval or Notification has been obtained or made. Notwithstanding the foregoing, any such SpinCo Assets or SpinCo Liabilities shall continue to constitute SpinCo Assets and SpinCo Liabilities for all other purposes of this Agreement.

(c) *Treatment of Delayed SpinCo Assets and Delayed SpinCo Liabilities.* If any transfer or assignment of any SpinCo Asset (or a portion thereof) or any assumption of any SpinCo Liability (or a portion thereof) intended to be transferred, assigned or assumed hereunder, as the case may be, is not consummated on or prior to the Effective Time, whether as a result of the provisions of Section 2.4(b) or for any other reason (any such SpinCo Asset (or a portion thereof), a “Delayed SpinCo Asset” and any such SpinCo Liability (or a portion thereof), a “Delayed SpinCo Liability”), then, insofar as reasonably possible and subject to applicable Law, the member of the Parent Group retaining such Delayed SpinCo Asset or such Delayed SpinCo Liability, as the case may be, shall thereafter hold such Delayed SpinCo Asset or Delayed SpinCo Liability, as the case may be, for the use and benefit of the member of the SpinCo Group entitled thereto (at the expense of the member of the SpinCo Group entitled thereto). In addition, the member of the Parent Group retaining such Delayed SpinCo Asset or such Delayed SpinCo Liability shall, insofar as reasonably possible and to the extent permitted by applicable Law, treat such Delayed SpinCo Asset or Delayed SpinCo Liability in the ordinary course of business in accordance with SpinCo Group past practice and take such other actions as may be reasonably requested by the member of the SpinCo Group to whom such Delayed SpinCo Asset is to be transferred or assigned, or which will assume such Delayed SpinCo Liability, as the case may be, in order to place such member of the SpinCo Group in a substantially similar position as if such Delayed SpinCo Asset or Delayed SpinCo Liability had been transferred, assigned or assumed as contemplated hereby and so that all the benefits and burdens relating to such Delayed SpinCo Asset or Delayed SpinCo Liability, as the case may be, including use, risk of loss, potential for gain, and dominion, control and command over such Delayed SpinCo Asset or Delayed SpinCo Liability, as the case may be, and all costs and expenses related thereto, shall inure from and after the Effective Time to the SpinCo Group.

(d) *Transfer of Delayed SpinCo Assets and Delayed SpinCo Liabilities.* If and when the Approvals or Notifications, the absence of which caused the deferral of transfer or assignment of any Delayed SpinCo Asset or the deferral of assumption of any Delayed SpinCo Liability pursuant to Section 2.4(b), are obtained or made, and, if and when any other legal

impediments for the transfer or assignment of any Delayed SpinCo Asset or the assumption of any Delayed SpinCo Liability have been removed, the transfer or assignment of the applicable Delayed SpinCo Asset or the assumption of the applicable Delayed SpinCo Liability, as the case may be, shall be effected in accordance with the terms of this Agreement and/or the applicable Ancillary Agreement.

(e) *Costs for Delayed SpinCo Assets and Delayed SpinCo Liabilities.* Any member of the Parent Group retaining a Delayed SpinCo Asset or Delayed SpinCo Liability due to the deferral of the transfer or assignment of such Delayed SpinCo Asset or the deferral of the assumption of such Delayed SpinCo Liability, as the case may be, shall not be obligated, in connection with the foregoing, to expend any money, unless the necessary funds are advanced (or otherwise made available) by SpinCo or the member of the SpinCo Group entitled to the Delayed SpinCo Asset or Delayed SpinCo Liability, other than reasonable out-of-pocket expenses, attorneys' fees and recording or similar fees, all of which shall be promptly reimbursed by SpinCo or the member of the SpinCo Group entitled to such Delayed SpinCo Asset or Delayed SpinCo Liability.

(f) *Approvals and Notifications for Parent Assets and Liabilities.* To the extent that the transfer or assignment of any Parent Asset, the assumption of any Parent Liability, the Separation or the Distribution requires any Approvals or Notifications, the Parties shall use commercially reasonable efforts to obtain or make such Approvals or Notifications as soon as reasonably practicable; provided, however, that, except to the extent expressly provided in this Agreement or any of the Ancillary Agreements or as otherwise agreed in writing between Parent and SpinCo, neither Parent nor SpinCo shall be obligated to contribute capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial accommodation) to any Person in order to obtain or make such Approvals or Notifications.

(g) *Delayed Parent Transfers.* If and to the extent that the valid, complete and perfected transfer or assignment to the Parent Group of any Parent Asset or assumption by the Parent Group of any Parent Liability in connection with the Separation or the Distribution would be a violation of applicable Law or require any Approval or Notification that has not been obtained or made by the Effective Time then, unless the Parties shall otherwise mutually determine, the transfer or assignment to the Parent Group of such Parent Assets or the assumption by the Parent Group of such Parent Liabilities, as the case may be, shall be automatically deemed deferred and any such purported transfer, assignment or assumption shall be null and void until such time as all legal impediments are removed or such Approval or Notification has been obtained or made. Notwithstanding the foregoing, any such Parent Assets or Parent Liabilities shall continue to constitute Parent Assets and Parent Liabilities for all other purposes of this Agreement.

(h) *Treatment of Delayed Parent Assets and Delayed Parent Liabilities.* If any transfer or assignment of any Parent Asset (or a portion thereof) or any assumption of any Parent Liability (or a portion thereof) intended to be transferred, assigned or assumed hereunder, as the case may be, is not consummated on or prior to the Effective Time whether as a result of the provisions of Section 2.4(g) or for any other reason (any such Parent Asset (or a portion thereof), a "Delayed Parent Asset" and any such Parent Liability (or a portion thereof), a



“Delayed Parent Liability”), then, insofar as reasonably possible and subject to applicable Law, the member of the SpinCo Group retaining such Delayed Parent Asset or such Delayed Parent Liability, as the case may be, shall thereafter hold such Delayed Parent Asset or Delayed Parent Liability, as the case may be, for the use and benefit of the member of the Parent Group entitled thereto (at the expense of the member of the Parent Group entitled thereto). In addition, the member of the SpinCo Group retaining such Delayed Parent Asset or such Delayed Parent Liability shall, insofar as reasonably possible and to the extent permitted by applicable Law, treat such Delayed Parent Asset or Delayed Parent Liability in the ordinary course of business in accordance with Parent Group past practice and take such other actions as may be reasonably requested by the member of the Parent Group to which such Delayed Parent Asset is to be transferred or assigned, or which will assume such Delayed Parent Liability, as the case may be, in order to place such member of the Parent Group in a substantially similar position as if such Delayed Parent Asset or Delayed Parent Liability had been transferred, assigned or assumed and so that all the benefits and burdens relating to such Delayed Parent Asset or Delayed Parent Liability, as the case may be, including use, risk of loss, potential for gain, and dominion, control and command over such Delayed Parent Asset or Delayed Parent Liability, as the case may be, and all costs and expenses related thereto, shall inure from and after the Effective Time to the Parent Group.

(i) *Transfer of Delayed Parent Assets and Delayed Parent Liabilities.* If and when the Approvals or Notifications, the absence of which caused the deferral of transfer or assignment of any Delayed Parent Asset or the deferral of assumption of any Delayed Parent Liability pursuant to Section 2.4(g), are obtained or made, and, if and when any other legal impediments for the transfer or assignment of any Delayed Parent Asset or the assumption of any Delayed Parent Liability have been removed, the transfer or assignment of the applicable Delayed Parent Asset or the assumption of the applicable Delayed Parent Liability, as the case may be, shall be effected in accordance with the terms of this Agreement and/or the applicable Ancillary Agreement.

(j) *Costs for Delayed Parent Assets and Delayed Parent Liabilities.* Any member of the SpinCo Group retaining a Delayed Parent Asset or Delayed Parent Liability due to the deferral of the transfer or assignment of such Delayed Parent Asset or the deferral of the assumption of such Delayed Parent Liability, as the case may be, shall not be obligated, in connection with the foregoing, to expend any money, unless the necessary funds are advanced (or otherwise made available) by Parent or the member of the Parent Group entitled to the Delayed Parent Asset or Delayed Parent Liability, other than reasonable out-of-pocket expenses, attorneys’ fees and recording or similar fees, all of which shall be promptly reimbursed by Parent or the member of the Parent Group entitled to such Delayed Parent Asset or Delayed Parent Liability.

## 2.5 Novation of Liabilities.

### (a) Novation of SpinCo Liabilities.

(i) Each of Parent and SpinCo, at the request of the other, shall use commercially reasonable efforts to obtain, or to cause to be obtained, as soon as reasonably practicable, any consent, substitution, approval or amendment required to

novate or assign all SpinCo Liabilities and obtain in writing the unconditional release of each member of the Parent Group that is a party to any such arrangements, so that, in any such case, the members of the SpinCo Group shall be solely responsible for such SpinCo Liabilities; provided, however, that, except as otherwise expressly provided in this Agreement or any of the Ancillary Agreements, neither Parent nor SpinCo shall be obligated to contribute any capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial accommodation) to any Third Party from whom any such consent, substitution, approval, amendment or release is requested.

(ii) If Parent or SpinCo is unable to obtain, or to cause to be obtained, any such required consent, substitution, approval, amendment or release and the applicable member of the Parent Group continues to be bound by such agreement, lease, license or other obligation or Liability (each, an “Unreleased SpinCo Liability”), SpinCo shall, to the extent not prohibited by Law, as indemnitor, guarantor, agent or subcontractor for such member of the Parent Group, as the case may be, (x) pay, perform and discharge fully all the obligations or other Liabilities of such member of the Parent Group that constitute Unreleased SpinCo Liabilities from and after the Effective Time and (y) use commercially reasonable efforts to effect such payment, performance or discharge prior to any demand for such payment, performance or discharge is permitted to be made by the obligee thereunder on any member of the Parent Group. If and when any such consent, substitution, approval, amendment or release shall be obtained or the Unreleased SpinCo Liabilities shall otherwise become assignable or able to be novated, Parent shall promptly assign, or cause to be assigned, and SpinCo or the applicable SpinCo Group member shall assume, such Unreleased SpinCo Liabilities without exchange of further consideration.

(b) Novation of Parent Liabilities.

(i) Each of Parent and SpinCo, at the request of the other, shall use commercially reasonable efforts to obtain, or to cause to be obtained, as soon as reasonably practicable, any consent, substitution, approval or amendment required to novate or assign all Parent Liabilities and obtain in writing the unconditional release of each member of the SpinCo Group that is a party to any such arrangements, so that, in any such case, the members of the Parent Group shall be solely responsible for such Parent Liabilities; provided, however, that, except as otherwise expressly provided in this Agreement or any of the Ancillary Agreements, neither Parent nor SpinCo shall be obligated to contribute any capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial accommodation) to any Third Party from whom any such consent, substitution, approval, amendment or release is requested.

(ii) If Parent or SpinCo is unable to obtain, or to cause to be obtained, any such required consent, substitution, approval, amendment or release and the applicable member of the SpinCo Group continues to be bound by such agreement, lease, license or other obligation or Liability (each, an “Unreleased Parent Liability”), Parent

shall, to the extent not prohibited by Law, as indemnitor, guarantor, agent or subcontractor for such member of the SpinCo Group, as the case may be, (x) pay, perform and discharge fully all the obligations or other Liabilities of such member of the SpinCo Group that constitute Unreleased Parent Liabilities from and after the Effective Time and (y) use commercially reasonable efforts to effect such payment, performance or discharge prior to any demand for such payment, performance or discharge is permitted to be made by the obligee thereunder on any member of the SpinCo Group. If and when any such consent, substitution, approval, amendment or release shall be obtained or the Unreleased Parent Liabilities shall otherwise become assignable or able to be novated, SpinCo shall promptly assign, or cause to be assigned, and Parent or the applicable Parent Group member shall assume, such Unreleased Parent Liabilities without exchange of further consideration.

2.6 Release of Guarantees. In furtherance of, and not in limitation of, the obligations set forth in Section 2.5:

(a) On or prior to the Effective Time or as soon as practicable thereafter, each of Parent and SpinCo shall, at the request of the other Party and with the reasonable cooperation of such other Party and the applicable member(s) of such other Party's Group, use commercially reasonable efforts to (i) have any member(s) of the Parent Group removed as guarantor of or obligor for any SpinCo Liability to the extent that such guarantee or obligation relates to SpinCo Liabilities, including the removal of any Security Interest on or in any Parent Asset that may serve as collateral or security for any such SpinCo Liability, and (ii) have any member(s) of the SpinCo Group removed as guarantor of or obligor for any Parent Liability to the extent that such guarantee or obligation relates to Parent Liabilities, including the removal of any Security Interest on or in any SpinCo Asset that may serve as collateral or security for any such Parent Liability.

(b) To the extent required to obtain a release from a guarantee of:

(i) any member of the Parent Group, SpinCo shall execute a guarantee agreement substantially in the form of the existing guarantee or such other form as is agreed to by the relevant parties to such guarantee agreement, which agreement shall include the removal of any Security Interest on or in any Parent Asset that may serve as collateral or security for any SpinCo Liability, except to the extent that such existing guarantee contains representations, covenants or other terms or provisions either (x) with which SpinCo would be reasonably unable to comply or (y) which SpinCo would not reasonably be able to avoid breaching; and

(ii) any member of the SpinCo Group, Parent shall execute a guarantee agreement substantially in the form of the existing guarantee or such other form as is agreed to by the relevant parties to such guarantee agreement, which agreement shall include the removal of any Security Interest on or in any SpinCo Asset that may serve as collateral or security for any Parent Liability, except to the extent that such existing guarantee contains representations, covenants or other terms or provisions either (x) with which Parent would be reasonably unable to comply or (y) which Parent would not reasonably be able to avoid breaching.

(c) If Parent or SpinCo is unable to obtain, or to cause to be obtained, any such required removal or release as set forth in clauses (a) and (b) of this Section 2.6, (i) the Party or the relevant member of its Group that has assumed the Liability with respect to such guarantor shall indemnify, defend and hold harmless the guarantor or obligor against or from any Liability arising from or relating thereto in accordance with the provisions of Article IV and shall, as agent or subcontractor for such guarantor or obligor, pay, perform and discharge fully all the obligations or other Liabilities of such guarantor or obligor thereunder, and (ii) each of Parent and SpinCo, on behalf of itself and the other members of their respective Groups, agree not to renew or extend the term of, increase any obligations under, or transfer to a Third Party, any loan, guarantee, lease, contract or other obligation for which the other Party or a member of its Group is or may be liable, unless all obligations of such other Party and the members of such other Party's Group with respect thereto are thereupon terminated by documentation satisfactory in form and substance to such other Party.

## 2.7 Termination of Agreements.

(a) Except as set forth in Section 2.7(b), in furtherance of the releases and other provisions of Section 4.1, SpinCo and each member of the SpinCo Group, on the one hand, and Parent and each member of the Parent Group, on the other hand, hereby terminate any and all agreements, arrangements, commitments or understandings, whether or not in writing, between or among SpinCo and/or any member of the SpinCo Group, on the one hand, and Parent and/or any member of the Parent Group, on the other hand, effective as of the Effective Time. No such terminated agreement, arrangement, commitment or understanding (including any provision thereof which purports to survive termination) shall be of any further force or effect after the Effective Time. Each Party shall, at the reasonable request of the other Party, take, or cause to be taken, such other actions as may be necessary to effect the foregoing.

(b) The provisions of Section 2.7(a) shall not apply to any of the following agreements, arrangements, commitments or understandings (or to any of the provisions thereof): (i) this Agreement and the Ancillary Agreements (and each other agreement or instrument expressly contemplated by this Agreement or any Ancillary Agreement to be entered into by any of the Parties or any of the members of their respective Groups or to be continued from and after the Effective Time); (ii) any agreements, arrangements, commitments or understandings listed or described on Schedule 2.7(b)(ii); (iii) any agreements, arrangements, commitments or understandings to which any Third Party is a party thereto (including for the avoidance of doubt, any Shared Contracts); (iv) any intercompany accounts payable or accounts receivable accrued as of the Effective Time that are reflected in the books and records of the Parties or otherwise documented in writing in accordance with past practices, which shall be settled in the manner contemplated by Section 2.7(c); and (v) any agreements, arrangements, commitments or understandings to which any non-wholly owned Subsidiary of Parent or SpinCo, as the case may be, is a party (it being understood that directors' qualifying shares or similar interests will be disregarded for purposes of determining whether a Subsidiary is wholly owned).

(c) All of the intercompany accounts receivable and accounts payable between any member of the Parent Group, on the one hand, and any member of the SpinCo Group, on the other hand, outstanding as of the Effective Time shall, at the Effective Time or as

promptly as practicable after the Effective Time, be repaid, settled or otherwise eliminated (including by means of cash transfers) as determined by Parent in its sole discretion prior to the Effective Time or as mutually and in good faith determined by Parent and SpinCo after the Effective Time.

## 2.8 Treatment of Shared Contracts.

(a) Subject to applicable Law and without limiting the generality of the obligations set forth in Section 2.1, unless the Parties otherwise agree in writing or the benefits of any contract, agreement, arrangement, commitment or understanding described in this Section 2.8 are expressly conveyed to the applicable Party pursuant to this Agreement or an Ancillary Agreement, any contract or agreement, a portion of which is a SpinCo Contract, but the remainder of which is a Parent Asset (any such contract or agreement, including those set forth on Schedule 2.8, a “Shared Contract”), shall be assigned in relevant part to the applicable member(s) of the applicable Group, if so assignable, or appropriately amended prior to, on or after the Effective Time, so that each Party or the member of its Group shall, as of the Effective Time, (i) be entitled to the rights and benefits, (ii) assume the related portion of any Liabilities, inuring to its respective businesses and (iii) take any actions set forth on Schedule 2.8 with respect to such Shared Contract; provided, however, that (x) in no event shall any member of any Group be required to assign (or amend) any Shared Contract in its entirety or to assign a portion of any Shared Contract that is not assignable (or cannot be amended) by its terms (including any terms imposing consents or conditions on an assignment where such consents or conditions have not been obtained or fulfilled) and (y) if any Shared Contract cannot be so partially assigned by its terms or otherwise, or cannot be amended or if such assignment or amendment would impair the benefit the parties thereto derive from such Shared Contract, then the Parties shall, and shall cause each of the members of their respective Groups to, take such other reasonable and permissible actions (including by providing prompt notice to the other Party with respect to any relevant claim of Liability or other relevant matters arising in connection with a Shared Contract so as to allow such other Party the ability to exercise any applicable rights under such Shared Contract) to cause a member of the SpinCo Group or the Parent Group, as the case may be, to receive the rights and benefits of that portion of each Shared Contract that relates to the SpinCo Business or the Parent Business, as the case may be (in each case, to the extent so related), as if such Shared Contract had been assigned to a member of the applicable Group (or amended to allow a member of the applicable Group to exercise applicable rights under such Shared Contract) pursuant to this Section 2.8, and to bear the burden of the corresponding Liabilities (including any Liabilities that may arise by reason of such arrangement), as if such Liabilities had been assumed by a member of the applicable Group pursuant to this Section 2.8.

(b) Each of Parent and SpinCo shall, and shall cause the members of its Group to, (i) treat for all Tax purposes the portion of each Shared Contract inuring to its respective businesses as an Asset owned by, and/or a Liability of, as applicable, such Party, or the members of its Group, as applicable, not later than the Effective Time, and (ii) neither report nor take any Tax position (on a Tax Return or otherwise) inconsistent with such treatment (unless required by applicable Law).

(c) Nothing in this Section 2.8 shall require any member of any Group to make any non-*de minimis* payment (except to the extent advanced, assumed or agreed in advance to be reimbursed by any member of the other Group), incur any non-*de minimis* obligation or grant any non-*de minimis* concession for the benefit of any member of any other Group in order to effect any transaction contemplated by this Section 2.8.

#### 2.9 Bank Accounts; Cash Balances.

(a) Each Party agrees to take, or cause the members of its Group to take, at the Effective Time (or such earlier time as the Parties may agree), all actions necessary to amend all contracts or agreements governing each bank and brokerage account owned by SpinCo or any other member of the SpinCo Group (collectively, the “SpinCo Accounts”) and all contracts or agreements governing each bank or brokerage account owned by Parent or any other member of the Parent Group (collectively, the “Parent Accounts”) so that each such SpinCo Account and Parent Account, if currently Linked (whether by automatic withdrawal, automatic deposit or any other authorization to transfer funds from or to, hereinafter “Linked”) to any Parent Account or SpinCo Account, respectively, is de-Linked from such Parent Account or SpinCo Account, respectively.

(b) It is intended that, following consummation of the actions contemplated by Section 2.9(a), there will be in place a cash management process pursuant to which the SpinCo Accounts will be managed and funds collected will be transferred into one (1) or more accounts maintained by SpinCo or a member of the SpinCo Group.

(c) It is intended that, following consummation of the actions contemplated by Section 2.9(a), there will continue to be in place a cash management process pursuant to which the Parent Accounts will be managed and funds collected will be transferred into one (1) or more accounts maintained by Parent or a member of the Parent Group.

(d) With respect to any outstanding checks issued or payments initiated by Parent, SpinCo, or any of the members of their respective Groups prior to the Effective Time, such outstanding checks and payments shall be honored following the Effective Time by the Person or Group owning the account on which the check is drawn or from which the payment was initiated, respectively.

(e) As between Parent and SpinCo (and the members of their respective Groups), all payments made and reimbursements received after the Effective Time by either Party (or member of its Group) that relate to a business, Asset or Liability of the other Party (or member of its Group), shall be held by such Party in trust for the use and benefit of the Party entitled thereto and, promptly following receipt by such Party of any such payment or reimbursement, such Party shall pay over, or shall cause the applicable member of its Group to pay over to the other Party, the amount of such payment or reimbursement without right of set-off.

(f) It is understood and agreed that, effective as of the Effective Time (and after giving effect to the Cash Transfer), SpinCo and members of the SpinCo Group shall have

(following the adjustments (if any) contemplated by this Section 2.9) cash and cash equivalents in an aggregate amount that equals the Target Cash Amount.

(g) Within fifteen (15) days after the Distribution Date, SpinCo shall cause to be prepared in good faith and delivered to Parent a statement (the “Statement”) setting forth cash and cash equivalents (net of any overdrafts) held by each member of the SpinCo Group as of the Effective Time (the aggregate amount of such cash and cash equivalents, the “Final Cash Balance”).

(h) Parent shall have ten (10) days to review the Statement delivered by SpinCo from the date of its receipt thereof (the “Review Period”). During the Review Period, Parent shall have reasonable access during normal business hours to the books and records, personnel and advisors of SpinCo to the extent reasonably required in connection with such review. If Parent objects to any aspect of SpinCo’s Statement, Parent shall deliver a written notice of objection (an “Objection Notice”) to SpinCo prior to the expiration of its Review Period setting forth in reasonable detail the basis for any such objection. If Parent delivers an Objection Notice to SpinCo prior to the expiration of its Review Period, the Parties shall for a period of five (5) days thereafter (the “Resolution Period”) attempt in good faith to resolve the matters set forth in such Objection Notice, and any written resolution, signed by both Parties, as to any such matter shall be final, binding, conclusive and non-appealable for all purposes of this Agreement. If Parent does not deliver an Objection Notice in accordance with this paragraph (h) of this Section 2.9 prior to the expiration of its Review Period, Parent shall be deemed to have agreed to the Statement delivered by SpinCo in its entirety, which Preliminary Statement shall be final, binding, conclusive and non-appealable for all purposes of this Agreement.

(i) If, at the conclusion of a Resolution Period, Parent and SpinCo have not reached an agreement with respect to all disputed matters set forth in the applicable Objection Notice, within five (5) days thereafter, Parent and SpinCo shall submit for resolution those matters remaining in dispute to PricewaterhouseCoopers LLP (the “Neutral Arbitrator”). The Neutral Arbitrator shall act as an arbitrator to resolve (based solely on the written and oral presentations of Parent and SpinCo and not by independent review) only those matters submitted to it in accordance with the first sentence of this paragraph (j) of this Section 2.9. Parent and SpinCo shall direct the Neutral Arbitrator to render a resolution of all such disputed matters as promptly as practicable and in any event within thirty (30) days after its engagement. With respect to each disputed matter, the Neutral Arbitrator’s determination, if not in accordance with the position of either Parent or SpinCo, shall not be in excess of the higher, nor less than the lower, of the amounts set forth in the applicable Statement or Objection Notice, as applicable. The resolution of the Neutral Arbitrator shall be set forth in a written statement delivered to each of Parent and SpinCo and shall be final, binding, conclusive and non-appealable for all purposes of this Agreement. A Statement, once modified and/or agreed to in accordance with paragraph (h) or this paragraph (j) of this Section 2.9, shall be final, binding, conclusive and non-appealable for all purposes of this Agreement. All fees and expenses relating to the work performed by the Neutral Arbitrator with respect hereto shall be shared equally between Parent and SpinCo. Except as provided in the immediately preceding sentence, all other costs and expenses incurred by the parties in connection with resolving any dispute under this Section 2.9 shall be borne by the Party incurring such cost or expense.



(j) If the Final Cash Balance exceeds the Target Cash Amount, then SpinCo shall pay or cause to be paid an amount in cash equal to such difference to Parent by wire transfer of immediately available funds to an account or accounts designated in writing by Parent to SpinCo within five (5) Business Days after the date of delivery of the final, binding, conclusive and non-appealable Statement. If the Final Cash Balance is less than the Target Cash Amount, then Parent shall pay or cause to be paid an amount in cash equal to such absolute value of the difference to SpinCo by wire transfer of immediately available funds to an account or accounts designated in writing by SpinCo to Parent within five (5) Business Days after the date of delivery of the final, binding, conclusive and non-appealable Statement. Any such payment shall be treated by the Parties for all purposes as an adjustment to the Cash Transfer.

2.10 Ancillary Agreements. Effective on or prior to the Effective Time, each of Parent and SpinCo will, or will cause the applicable members of their Groups to, execute and deliver all Ancillary Agreements to which it is a party.

2.11 Disclaimer of Representations and Warranties. EACH OF PARENT (ON BEHALF OF ITSELF AND EACH MEMBER OF THE PARENT GROUP) AND SPINCO (ON BEHALF OF ITSELF AND EACH MEMBER OF THE SPINCO GROUP) UNDERSTANDS AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY ANCILLARY AGREEMENT, NO PARTY TO THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY OTHER AGREEMENT OR DOCUMENT CONTEMPLATED BY THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR OTHERWISE, IS REPRESENTING OR WARRANTING IN ANY WAY AS TO: (A) THE ASSETS, BUSINESSES OR LIABILITIES TRANSFERRED OR ASSUMED AS CONTEMPLATED HEREBY OR THEREBY, (B) ANY CONSENTS OR APPROVALS REQUIRED IN CONNECTION THEREWITH, (C) THE VALUE OR FREEDOM FROM ANY SECURITY INTERESTS OF, OR ANY OTHER MATTER CONCERNING, ANY ASSETS OF SUCH PARTY, (D) THE ABSENCE OF ANY DEFENSES OR RIGHT OF SET-OFF OR FREEDOM FROM COUNTERCLAIM WITH RESPECT TO ANY CLAIM OR OTHER ASSET, INCLUDING ANY ACCOUNTS RECEIVABLE, OF ANY PARTY, OR (E) THE LEGAL SUFFICIENCY OF ANY ASSIGNMENT, DOCUMENT OR INSTRUMENT DELIVERED HEREUNDER TO CONVEY TITLE TO ANY ASSET OR THING OF VALUE UPON THE EXECUTION, DELIVERY AND FILING HEREOF OR THEREOF. EXCEPT AS MAY EXPRESSLY BE SET FORTH HEREIN OR IN ANY ANCILLARY AGREEMENT, ALL SUCH ASSETS ARE BEING TRANSFERRED ON AN "AS IS," "WHERE IS" BASIS (AND, IN THE CASE OF ANY REAL PROPERTY, BY MEANS OF A QUITCLAIM OR SIMILAR FORM OF DEED OR CONVEYANCE), AND THE RESPECTIVE TRANSFEREES SHALL BEAR THE ECONOMIC AND LEGAL RISKS THAT (I) ANY CONVEYANCE WILL PROVE TO BE INSUFFICIENT TO VEST IN THE TRANSFEREE GOOD AND MARKETABLE TITLE, FREE AND CLEAR OF ANY SECURITY INTEREST, AND (II) ANY NECESSARY APPROVALS OR NOTIFICATIONS ARE NOT OBTAINED OR MADE OR THAT ANY REQUIREMENTS OF LAWS OR JUDGMENTS ARE NOT COMPLIED WITH.

2.12 SpinCo Financing Arrangements; SpinCo Debt Incurrence.



(a) Prior to the Effective Time and pursuant to the Plan of Reorganization, (i) SpinCo and/or other members of the SpinCo Group will enter into one or more financing arrangements and agreements, as set forth on Schedule 2.12 (the “SpinCo Financing Arrangements”), pursuant to which it or they shall borrow prior to the Effective Time a principal amount of not less than \$800,000,000 (the “SpinCo Debt”) and (ii) SpinCo and/or other members of the SpinCo Group shall distribute, convey or otherwise transfer in the manner determined by Parent some or all (as determined by Parent) of the proceeds of the SpinCo Debt to Parent as partial consideration for the transfer of the SpinCo Assets to SpinCo in the Contribution pursuant to Section 2.1 (such distribution, conveyance or transfer, the “Cash Transfer”). Parent and SpinCo agree to take, and shall cause the respective members of their Group to take, all necessary actions to assure the full release and discharge of Parent and the other members of the Parent Group from all liabilities and other obligations pursuant to the SpinCo Financing Arrangements as of no later than the Effective Time. The Parties agree that SpinCo or another member of the SpinCo Group, as the case may be, and not Parent or any member of the Parent Group, are and shall be responsible for all costs and expenses incurred in connection with the SpinCo Financing Arrangements.

(b) Prior the Effective Time, Parent and SpinCo shall cooperate in the preparation of all materials as may be necessary or advisable to execute the SpinCo Financing Arrangements.

2.13 Financial Information Certifications. Parent’s disclosure controls and procedures and internal control over financial reporting (as each is contemplated by the Exchange Act) are currently applicable to SpinCo as its wholly-owned Subsidiary (and not as a reporting company under the Exchange Act). In order to enable the principal executive officer and principal financial officer of SpinCo to make the certifications required of them under Section 302 of the Sarbanes-Oxley Act of 2002 following the Distribution in respect of any quarterly or annual fiscal period of SpinCo that begins on or prior to the Distribution Date in respect of which financial statements are not included in the Form 10 (a “Straddle Period”), upon twenty (20) Business Days’ advance written request by SpinCo, Parent shall provide SpinCo with one (1) or more certifications with respect to such disclosure controls and procedures and the effectiveness thereof and whether there were any changes in the internal controls over financial reporting that have materially affected or are reasonably likely to materially affect the internal control over financing reporting, which certification(s) shall (x) be with respect to the applicable Straddle Period (it being understood that no certification need be provided with respect to any period or portion of any period after the Distribution Date) and (y) be in substantially the same form as those that had been provided by officers or employees of Parent in similar certifications delivered prior to the Distribution Date, with such changes thereto as Parent may reasonably determine. Such certification(s) shall be provided by Parent (and not by any officer or employee in their individual capacity).

### ARTICLE III THE DISTRIBUTION

#### 3.1 Sole and Absolute Discretion; Cooperation.

(a) Parent shall, in its sole and absolute discretion, determine the terms of the Distribution, including the form, structure and terms of any transaction(s) and/or offering(s) to effect the Distribution and the timing and conditions to the consummation of the Distribution. In addition, Parent may, at any time and from time to time until the consummation of the Distribution, modify or change the terms of the Distribution, including by accelerating or delaying the timing of the consummation of all or part of the Distribution. Nothing shall in any way limit Parent's right to terminate this Agreement or the Distribution as set forth in Article IX or alter the consequences of any such termination from those specified in Article IX.

(b) SpinCo shall cooperate with Parent to accomplish the Distribution and shall, at Parent's direction, promptly take any and all actions necessary or desirable to effect the Distribution, including in respect of the registration under the Exchange Act of SpinCo Shares on the Form 10. Parent shall select any investment bank or manager in connection with the Distribution, as well as any financial printer, solicitation and/or exchange agent and financial, legal, accounting and other advisors for Parent. SpinCo and Parent, as the case may be, will provide to the Distribution Agent any information required in order to complete the Distribution.

3.2 Actions Prior to the Distribution. Prior to the Effective Time and subject to the terms and conditions set forth herein, the Parties shall take, or cause to be taken, the following actions in connection with the Distribution:

(a) *Notice to NYSE*. Parent shall, to the extent possible, give the NYSE not less than ten (10) days' advance notice of the Record Date in compliance with Rule 10b-17 under the Exchange Act.

(b) *SpinCo Certificate of Incorporation and SpinCo Bylaws*. On or prior to the Distribution Date, Parent and SpinCo shall take all necessary actions so that, as of the Effective Time, the SpinCo Certificate of Incorporation and the SpinCo Bylaws shall become the certificate of incorporation and bylaws of SpinCo, respectively.

(c) *SpinCo Directors and Officers*. On or prior to the Distribution Date, Parent and SpinCo shall take all necessary actions so that as of the Effective Time: (i) the directors and executive officers of SpinCo shall be those set forth in the Information Statement made available to the Record Holders prior to the Distribution Date, unless otherwise agreed by the Parties; (ii) each individual referred to in clause (i), with the exception of Bradley S. Jacobs, shall have resigned from his or her position, if any, as a member of the Parent Board and/or as an executive officer of Parent; and (iii) SpinCo shall have such other officers as SpinCo shall appoint.

(d) *NYSE Listing*. SpinCo shall prepare and file, and shall use its best efforts to have approved, an application for the listing of the SpinCo Shares to be distributed in the Distribution on the NYSE, subject to official notice of distribution.

(e) *Securities Law Matters*. SpinCo shall file any amendments or supplements to the Form 10 as may be necessary or advisable in order to cause the Form 10 to become and remain effective as required by the SEC or federal, state or other applicable securities Laws. Parent and SpinCo shall cooperate in preparing, filing with the SEC and

causing to become effective registration statements or amendments thereof that are required to reflect the establishment of, or amendments to, any employee benefit and other plans necessary or advisable in connection with the transactions contemplated by this Agreement and the Ancillary Agreements. Parent and SpinCo will prepare, and SpinCo will, to the extent required under applicable Law, file with the SEC any such documentation and any requisite no-action letters that Parent determines are necessary or desirable to effectuate the Distribution, and Parent and SpinCo shall each use reasonable best efforts to obtain all necessary approvals from the SEC with respect thereto as soon as practicable. Parent and SpinCo shall take all such action as may be necessary or appropriate under the securities or blue sky Laws of the United States (and any comparable Laws under any foreign jurisdiction) in connection with the Distribution.

(f) *Availability of Information Statement.* Parent shall, as soon as is reasonably practicable after the Form 10 is declared effective under the Exchange Act and the Parent Board has approved the Distribution, cause the Information Statement to be mailed or otherwise made available to the Record Holders.

(g) *The Distribution Agent.* Parent shall enter into a distribution agent agreement with the Distribution Agent or otherwise provide instructions to the Distribution Agent regarding the Distribution.

(h) *Stock-Based Employee Benefit Plans.* Parent and SpinCo shall take all actions as may be necessary to approve the grants of adjusted equity awards by Parent (in respect of Parent Shares) and SpinCo (in respect of SpinCo Shares) in connection with the Distribution in order to satisfy the requirements of Rule 16b-3 under the Exchange Act.

### 3.3 Conditions to the Distribution.

(a) The consummation of the Distribution will be subject to the satisfaction, or waiver by Parent in its sole and absolute discretion, of the following conditions:

(i) The SEC shall have declared effective the Form 10; no order suspending the effectiveness of the Form 10 shall be in effect; and no proceedings for such purposes shall have been instituted or threatened by the SEC;

(ii) The Information Statement shall have been mailed or otherwise made available to the Record Holders;

(iii) Parent shall have received an opinion from its external tax counsel, satisfactory to the Parent Board in its sole discretion, regarding the qualification of the Contribution and the Distribution, taken together, as a transaction described in Sections 355 and 368(a)(1)(D) of the Code;

(iv) An independent appraisal firm acceptable to Parent shall have delivered one (1) or more opinions to the Parent Board confirming the solvency and financial viability of Parent immediately prior to the Distribution and of Parent and SpinCo immediately after consummation of the Distribution, and such opinions shall be acceptable to Parent in form and substance in Parent's sole discretion and such opinions shall not have been withdrawn or rescinded;

(v) The transfer of the SpinCo Assets (other than any Delayed SpinCo Asset) and SpinCo Liabilities (other than any Delayed SpinCo Liability) contemplated to be transferred from Parent (or the applicable members of its Group) to SpinCo (or the applicable members of its Group) on or prior to the Distribution shall have occurred as contemplated by Section 2.1, and the transfer of the Parent Assets (other than any Delayed Parent Asset) and Parent Liabilities (other than any Delayed Parent Liability) contemplated to be transferred from SpinCo (or the applicable members of its Group) to Parent (or the applicable members of its Group) on or prior to the Distribution Date shall have occurred as contemplated by Section 2.1, in each case pursuant to the Plan of Reorganization;

(vi) The actions and filings necessary or appropriate under applicable U.S. federal, U.S. state or other securities Laws or blue sky Laws and the rules and regulations thereunder shall have been taken or made, and, where applicable, have become effective or been accepted by the applicable Governmental Authority;

(vii) Each of the Ancillary Agreements shall have been duly executed and delivered by the applicable parties thereto;

(viii) No order, injunction or decree issued by any Governmental Authority of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Separation, the Distribution or any of the transactions related thereto shall be pending or in effect;

(ix) The SpinCo Shares to be distributed to the Parent stockholders in the Distribution shall have been approved for listing on the NYSE, subject to official notice of distribution;

(x) SpinCo and/or other members of the SpinCo Group, as applicable, shall have consummated the SpinCo Financing Arrangements. SpinCo and/or other members of the SpinCo Group shall have issued and incurred the SpinCo Debt on terms satisfactory to Parent in its sole and absolute discretion. Parent shall have received the proceeds from the Cash Transfer. Parent shall be satisfied in its sole and absolute discretion that, as of the Effective Time, it shall have no Liability whatsoever under the SpinCo Financing Arrangements; and

(xi) No other events or developments shall exist or shall have occurred that, in the judgment of the Parent Board, in its sole and absolute discretion, makes it inadvisable to effect the Separation, the Distribution or the transactions contemplated by this Agreement or any Ancillary Agreement.

(b) The foregoing conditions are for the sole benefit of Parent and shall not give rise to or create any duty on the part of Parent or the Parent Board to waive or not waive any such condition or in any way limit Parent's right to terminate this Agreement as set forth in Article IX or alter the consequences of any such termination from those specified in Article IX. Any determination made by the Parent Board prior to the Distribution concerning the satisfaction or waiver of any or all of the conditions set forth in Section 3.3(a) shall be conclusive and

binding on the Parties. If Parent waives any material condition, it shall promptly issue a press release disclosing such fact and file a Current Report on Form 8-K with the SEC describing such waiver.

### 3.4 The Distribution.

(a) Subject to Section 3.3, on or prior to the Effective Time, SpinCo will deliver to the Distribution Agent, for the benefit of the Record Holders, book-entry transfer authorizations for such number of the outstanding SpinCo Shares as is necessary to effect the Distribution, and shall cause the transfer agent for the Parent Shares to instruct the Distribution Agent to distribute at the Effective Time the appropriate number of SpinCo Shares to each such holder or designated transferee or transferees of such holder by way of direct registration in book-entry form. SpinCo will not issue paper stock certificates in respect of the SpinCo Shares. The Distribution shall be effective at the Effective Time.

(b) Subject to Sections 3.3 and 3.4(c), each Record Holder will be entitled to receive in the Distribution a number of whole SpinCo Shares equal to the number of Parent Shares held by such Record Holder on the Record Date multiplied by the Distribution Ratio.

(c) For the avoidance of doubt, no fractional shares will be distributed or credited to book-entry accounts in connection with the Distribution.

(d) Any SpinCo Shares that remain unclaimed by any Record Holder one hundred eighty (180) days after the Distribution Date shall be delivered to SpinCo, and SpinCo or its transfer agent on its behalf shall hold such SpinCo Shares for the account of such Record Holder, and the Parties agree that all obligations to provide such SpinCo Shares shall be obligations of SpinCo, subject in each case to applicable escheat or other abandoned property Laws, and Parent shall have no Liability with respect thereto.

(e) Until the SpinCo Shares are duly transferred in accordance with this Section 3.4 and applicable Law, from and after the Effective Time, SpinCo will regard the Persons entitled to receive such SpinCo Shares as record holders of SpinCo Shares in accordance with the terms of the Distribution without requiring any action on the part of such Persons. SpinCo agrees that, subject to any transfers of such shares, from and after the Effective Time, (i) each such holder will be entitled to receive all dividends, if any, payable on, and exercise voting rights and all other rights and privileges with respect to, the SpinCo Shares then held by such holder, and (ii) each such holder will be entitled, without any action on the part of such holder, to receive evidence of ownership of the SpinCo Shares then held by such holder.

## ARTICLE IV MUTUAL RELEASES; INDEMNIFICATION

### 4.1 Release of Pre-Distribution Claims.

(a) *SpinCo Release of Parent.* Except as provided in Sections 4.1(c) and 4.1(d), effective as of the Effective Time, SpinCo does hereby, for itself and each other member of the SpinCo Group, and their respective successors and assigns, and, to the extent permitted by Law, all Persons who at any time prior to the Effective Time have been stockholders, directors,

officers, agents or employees of any member of the SpinCo Group (in each case, in their respective capacities as such), remise, release and forever discharge (i) Parent and the members of the Parent Group, and their respective successors and assigns, (ii) all Persons who at any time prior to the Effective Time have been stockholders, directors, officers, agents or employees of any member of the Parent Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, and (iii) all Persons who at any time prior to the Effective Time are or have been stockholders, directors, officers, agents or employees of a Transferred Entity and who are not, as of immediately following the Effective Time, directors, officers or employees of SpinCo or a member of the SpinCo Group, in each case from: (A) all SpinCo Liabilities, (B) all Liabilities arising from or in connection with the transactions and all other activities to implement the Separation and the Distribution and (C) all Liabilities arising from or in connection with actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time), in each case to the extent relating to, arising out of or resulting from the SpinCo Business, the SpinCo Assets or the SpinCo Liabilities.

(b) *Parent Release of SpinCo.* Except as provided in Sections 4.1(c) and 4.1(d), effective as of the Effective Time, Parent does hereby, for itself and each other member of the Parent Group and their respective successors and assigns, and, to the extent permitted by Law, all Persons who at any time prior to the Effective Time have been stockholders, directors, officers, agents or employees of any member of the Parent Group (in each case, in their respective capacities as such), remise, release and forever discharge (i) SpinCo and the members of the SpinCo Group and their respective successors and assigns, and (ii) all Persons who at any time prior to the Effective Time have been stockholders, directors, officers, agents or employees of any member of the SpinCo Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from (A) all Parent Liabilities, (B) all Liabilities arising from or in connection with the transactions and all other activities to implement the Separation and the Distribution and (C) all Liabilities arising from or in connection with actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time), in each case to the extent relating to, arising out of or resulting from the Parent Business, the Parent Assets or the Parent Liabilities.

(c) *Obligations Not Affected.* Nothing contained in Section 4.1(a) or 4.1(b) shall impair any right of any Person to enforce this Agreement, any Ancillary Agreement or any agreements, arrangements, commitments or understandings that are specified in Section 2.7(b) or the applicable Schedules thereto as not to terminate as of the Effective Time, in each case in accordance with its terms. Nothing contained in Section 4.1(a) or 4.1(b) shall release any Person from:

(i) any Liability provided in or resulting from any agreement among any members of the Parent Group or any members of the SpinCo Group that is specified in Section 2.7(b) or the applicable Schedules thereto as not to terminate as of the

Effective Time, or any other Liability specified in Section 2.7(b) as not to terminate as of the Effective Time;

(ii) any Liability, contingent or otherwise, assumed, transferred, assigned or allocated to the Group of which such Person is a member in accordance with, or any other Liability of any member of any Group under, this Agreement or any Ancillary Agreement;

(iii) any Liability for the sale, lease, construction or receipt of goods, property or services purchased, obtained or used in the ordinary course of business by a member of one Group from a member of the other Group prior to the Effective Time;

(iv) any Liability that the Parties may have with respect to indemnification or contribution or other obligation pursuant to this Agreement, any Ancillary Agreement or otherwise for claims brought against the Parties by Third Parties, which Liability shall be governed by the provisions of this Article IV and Article V and, if applicable, the appropriate provisions of the Ancillary Agreements; or

(v) any Liability the release of which would result in the release of any Person other than a Person released pursuant to this Section 4.1.

In addition, nothing contained in Section 4.1(a) shall release any member of the Parent Group from honoring its existing obligations to indemnify any director, officer or employee of SpinCo who was a director, officer or employee of any member of the Parent Group on or prior to the Effective Time, to the extent such director, officer or employee becomes a named defendant in any Action with respect to which such director, officer or employee was entitled to such indemnification pursuant to such existing obligations; it being understood that, if the underlying obligation giving rise to such Action is a SpinCo Liability, SpinCo shall indemnify Parent for such Liability (including Parent's costs to indemnify the director, officer or employee) in accordance with the provisions set forth in this Article IV.

(d) *No Claims.* SpinCo shall not make, and shall not permit any other member of the SpinCo Group to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification, against Parent or any other member of the Parent Group, or any other Person released pursuant to Section 4.1(a), with respect to any Liabilities released pursuant to Section 4.1(a). Parent shall not make, and shall not permit any other member of the Parent Group to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification, against SpinCo or any other member of the SpinCo Group, or any other Person released pursuant to Section 4.1(b), with respect to any Liabilities released pursuant to Section 4.1(b).

(e) *Execution of Further Releases.* At any time at or after the Effective Time, at the request of either Party, the other Party shall cause each member of its respective Group to execute and deliver releases reflecting the provisions of this Section 4.1.

4.2 Indemnification by SpinCo. Except as otherwise specifically set forth in this Agreement or in any Ancillary Agreement, to the fullest extent permitted by Law, SpinCo

shall, and shall cause the other members of the SpinCo Group to, indemnify, defend and hold harmless Parent, each member of the Parent Group and each of their respective past, present and future directors, officers, employees and agents, in each case in their respective capacities as such, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the “Parent Indemnitees”), from and against any and all Liabilities of the Parent Indemnitees relating to, arising out of or resulting from, directly or indirectly, any of the following items (without duplication):

(a) any SpinCo Liability;

(b) any failure of SpinCo, any other member of the SpinCo Group or any other Person to pay, perform or otherwise promptly discharge any SpinCo Liabilities in accordance with their terms, whether prior to, on or after the Effective Time;

(c) any breach by SpinCo or any other member of the SpinCo Group of this Agreement or any of the Ancillary Agreements;

(d) except to the extent it relates to a Parent Liability, any guarantee, indemnification or contribution obligation, surety bond or other credit support agreement, arrangement, commitment or understanding for the benefit of any member of the SpinCo Group by any member of the Parent Group that survives following the Distribution; and

(e) any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to all information contained in the Form 10, the Information Statement (as amended or supplemented if SpinCo shall have furnished any amendments or supplements thereto) or any other Disclosure Document, other than the matters described in clause (e) of Section 4.3.

4.3 Indemnification by Parent. Except as otherwise specifically set forth in this Agreement or in any Ancillary Agreement, to the fullest extent permitted by Law, Parent shall, and shall cause the other members of the Parent Group to, indemnify, defend and hold harmless SpinCo, each member of the SpinCo Group and each of their respective past, present and future directors, officers, employees or agents, in each case in their respective capacities as such, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the “SpinCo Indemnitees”), from and against any and all Liabilities of the SpinCo Indemnitees relating to, arising out of or resulting from, directly or indirectly, any of the following items (without duplication):

(a) any Parent Liability;

(b) any failure of Parent, any other member of the Parent Group or any other Person to pay, perform or otherwise promptly discharge any Parent Liabilities in accordance with their terms, whether prior to, on or after the Effective Time;

(c) any breach by Parent or any other member of the Parent Group of this Agreement or any of the Ancillary Agreements;



(d) except to the extent it relates to a SpinCo Liability, any guarantee, indemnification or contribution obligation, surety bond or other credit support agreement, arrangement, commitment or understanding for the benefit of any member of the Parent Group by any member of the SpinCo Group that survives following the Distribution; and

(e) any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to statements made explicitly in Parent's name in the Form 10, the Information Statement (as amended or supplemented if SpinCo shall have furnished any amendments or supplements thereto) or any other Disclosure Document; it being agreed that the statements set forth on Schedule 4.3(e) shall be the only statements made explicitly in Parent's name in the Form 10, the Information Statement or any other Disclosure Document, and all other information contained in the Form 10, the Information Statement or any other Disclosure Document shall be deemed to be information supplied by SpinCo.

#### 4.4 Indemnification Obligations Net of Insurance Proceeds and Other Amounts.

(a) The Parties intend that any Liability subject to indemnification, contribution or reimbursement pursuant to this Article IV or Article V will be net of Insurance Proceeds or other amounts actually recovered (net of any out-of-pocket costs or expenses incurred in the collection thereof) from any Person by or on behalf of the Indemnitee in respect of any indemnifiable Liability. Accordingly, the amount that either Party (an "Indemnifying Party") is required to pay to any Person entitled to indemnification or contribution hereunder (an "Indemnitee") will be reduced by any Insurance Proceeds or other amounts actually recovered (net of any out-of-pocket costs or expenses incurred in the collection thereof) from any Person by or on behalf of the Indemnitee in respect of the related Liability. If an Indemnitee receives a payment (an "Indemnity Payment") required by this Agreement from an Indemnifying Party in respect of any Liability and subsequently receives Insurance Proceeds or any other amounts in respect of such Liability, then within ten (10) days after receipt of such Insurance Proceeds, the Indemnitee will pay to the Indemnifying Party an amount equal to the excess of the Indemnity Payment received over the amount of the Indemnity Payment that would have been due if the Insurance Proceeds or such other amounts (net of any out-of-pocket costs or expenses incurred in the collection thereof) had been received, realized or recovered before the Indemnity Payment was made.

(b) The Parties agree that an insurer that would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto or, solely by virtue of any provision contained in this Agreement or in any Ancillary Agreement, have any subrogation rights with respect thereto, it being understood that no insurer or any other Third Party shall be entitled to a "windfall" (*i.e.*, a benefit they would not be entitled to receive in the absence of the indemnification provisions) by virtue of the indemnification and contribution provisions hereof. Each Party shall, and shall cause the members of its Group to, use commercially reasonable efforts (taking into account the probability of success on the merits and the cost of expending such efforts, including attorneys' fees and expenses) to collect or recover any Insurance Proceeds

that may be collectible or recoverable respecting the Liabilities for which indemnification or contribution may be available under this Article IV. Notwithstanding the foregoing, an Indemnifying Party may not delay making any indemnification payment required under the terms of this Agreement, or otherwise satisfying any indemnification obligation, pending the outcome of any Action to collect or recover Insurance Proceeds, and an Indemnitee need not attempt to collect any Insurance Proceeds prior to making a claim for indemnification or contribution or receiving any Indemnity Payment otherwise owed to it under this Agreement or any Ancillary Agreement.

#### 4.5 Procedures for Indemnification of Third-Party Claims.

(a) *Notice of Claims.* If, at or following the Effective Time, an Indemnitee shall receive notice or otherwise learn of the assertion by a Person (including any Governmental Authority) who is not a member of the Parent Group or the SpinCo Group of any claim or of the commencement by any such Person of any Action (collectively, a “Third-Party Claim”) with respect to which an Indemnifying Party may be obligated to provide indemnification to such Indemnitee pursuant to Section 4.2 or 4.3, or any other Section of this Agreement or any Ancillary Agreement, such Indemnitee shall give such Indemnifying Party written notice thereof as soon as practicable, but in any event within fourteen (14) days (or sooner if the nature of the Third-Party Claim so requires) after becoming aware of such Third-Party Claim. Any such notice shall describe the Third-Party Claim in reasonable detail, including the facts and circumstances giving rise to such claim for indemnification, and include copies of all notices and documents (including court papers) received by the Indemnitee relating to the Third-Party Claim. Notwithstanding the foregoing, the failure of an Indemnitee to provide notice in accordance with this Section 4.5(a) shall not relieve an Indemnifying Party of its indemnification obligations under this Agreement, except to the extent to which the Indemnifying Party is materially prejudiced by the Indemnitee’s failure to provide notice in accordance with this Section 4.5(a).

(b) *Control of Defense.* An Indemnifying Party may elect to defend (and seek to settle or compromise), at its own expense and with its own counsel, any Third-Party Claim; provided that, prior to the Indemnifying Party assuming and controlling the defense of such Third-Party Claim, it shall first confirm to the Indemnitee in writing that, assuming the facts presented to the Indemnifying Party by the Indemnitee are true, the Indemnifying Party shall indemnify the Indemnitee for any such damages to the extent resulting from, or arising out of, such Third-Party-Claim. Notwithstanding the foregoing, if the Indemnifying Party assumes such defense and, in the course of defending such Third-Party Claim, (i) the Indemnifying Party discovers that the facts presented at the time the Indemnifying Party acknowledged its indemnification obligation in respect of such Third-Party Claim were not true in all material respects and (ii) such untruth provides a reasonable basis for asserting that the Indemnifying Party does not have an indemnification obligation in respect of such Third-Party Claim, then (A) the Indemnifying Party shall not be bound by such acknowledgment, (B) the Indemnifying Party shall promptly thereafter provide the Indemnitee written notice of its assertion that it does not have an indemnification obligation in respect of such Third-Party Claim and (C) the Indemnitee shall have the right to assume the defense of such Third-Party Claim. Within thirty (30) days after the receipt of a notice from an Indemnitee in accordance with Section 4.5(a) (or sooner, if the nature of the Third-Party Claim so requires), the Indemnifying Party shall provide written

notice to the Indemnitee indicating whether the Indemnifying Party shall assume responsibility for defending the Third-Party Claim. If an Indemnifying Party elects not to assume responsibility for defending any Third-Party Claim or fails to notify an Indemnitee of its election within thirty (30) days after receipt of the notice from an Indemnitee as provided in Section 4.5(a), then the Indemnitee that is the subject of such Third-Party Claim shall be entitled to continue to conduct and control the defense of such Third-Party Claim.

(c) *Allocation of Defense Costs.* If an Indemnifying Party has elected to assume the defense of a Third-Party Claim, then such Indemnifying Party shall be solely liable for all fees and expenses incurred by it in connection with the defense of such Third-Party Claim and shall not be entitled to seek any indemnification or reimbursement from the Indemnitee for any such fees or expenses incurred by the Indemnifying Party during the course of the defense of such Third-Party Claim by such Indemnifying Party, regardless of any subsequent decision by the Indemnifying Party to reject or otherwise abandon its assumption of such defense. If an Indemnifying Party elects not to assume responsibility for defending any Third-Party Claim or fails to notify an Indemnitee of its election within thirty (30) days after receipt of a notice from an Indemnitee as provided in Section 4.5(a), and the Indemnitee conducts and controls the defense of such Third-Party Claim and the Indemnifying Party has an indemnification obligation with respect to such Third-Party Claim, then the Indemnifying Party shall be liable for all reasonable, documented fees and expenses incurred by the Indemnitee in connection with the defense of such Third-Party Claim.

(d) *Right to Monitor and Participate.* An Indemnitee that does not conduct and control the defense of any Third-Party Claim, or an Indemnifying Party that does not elect to defend any Third-Party Claim as contemplated hereby, nevertheless shall have the right to employ separate counsel (including local counsel as necessary) of its own choosing to monitor and participate in (but not control) the defense of any Third-Party Claim for which it is a potential Indemnitee or Indemnifying Party, as applicable, but the fees and expenses of such counsel shall be at the expense of such Indemnitee or Indemnifying Party, as the case may be, and the provisions of Section 4.5(c) shall not apply to such fees and expenses. Notwithstanding the foregoing, but subject to Sections 6.7 and 6.8, such Party shall cooperate with the Party entitled to conduct and control the defense of such Third-Party Claim in such defense and make available to the controlling Party, at the non-controlling Party's expense, all witnesses, information and materials in such Party's possession or under such Party's control relating thereto as are reasonably required by the controlling Party. In addition to the foregoing, if any Indemnitee reasonably determines in good faith that such Indemnitee and the Indemnifying Party have actual or potential differing defenses or conflicts of interest between them that make joint representation inappropriate, then the Indemnitee shall have the right to employ separate counsel (including local counsel) and to participate in (but not control) the defense, compromise, or settlement thereof, and in such case the Indemnifying Party shall bear the reasonable, documented fees and expenses of such counsel for all Indemnitees.

(e) *No Settlement.* Neither Party may settle or compromise any Third-Party Claim for which either Party is seeking to be indemnified hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld, unless such settlement or compromise is solely for monetary damages that are fully payable by the settling or

compromising Party, does not involve any admission, finding or determination of wrongdoing or violation of Law by the other Party and provides for a full, unconditional and irrevocable release of the other Party from all Liability in connection with the Third-Party Claim. The Parties hereby agree that if a Party delivers the other Party a written notice containing a proposal to settle or compromise a Third-Party Claim for which either Party is seeking to be indemnified hereunder and the Party receiving such proposal does not respond in any manner to the Party presenting such proposal within ten (10) business days (or within any such shorter time period that may be required by applicable Law or court order) after receipt of such proposal, then the Party receiving such proposal shall be deemed to have consented to the terms of such proposal.

#### 4.6 Additional Matters.

(a) *Timing of Payments.* Indemnification or contribution payments in respect of any Liabilities for which an Indemnatee is entitled to indemnification or contribution under this Article IV shall be paid reasonably promptly (but in any event within forty-five (45) days after the final determination of the amount that the Indemnatee is entitled to indemnification or contribution under this Article IV) by the Indemnifying Party to the Indemnatee as such Liabilities are incurred upon demand by the Indemnatee, including reasonably satisfactory documentation setting forth the basis for the amount of such indemnification or contribution payment, including documentation with respect to calculations made and consideration of any Insurance Proceeds that actually reduce the amount of such Liabilities. The indemnity and contribution provisions contained in this Article IV shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any Indemnatee, and (ii) the knowledge by the Indemnatee of Liabilities for which it might be entitled to indemnification hereunder.

(b) *Notice of Direct Claims.* Any claim for indemnification or contribution under this Agreement or any Ancillary Agreement that does not result from a Third-Party Claim shall be asserted by written notice given by the Indemnatee to the applicable Indemnifying Party; provided that the failure by an Indemnatee to so assert any such claim shall not prejudice the ability of the Indemnatee to do so at a later time, except to the extent (if any) that the Indemnifying Party is materially prejudiced thereby. Such Indemnifying Party shall have a period of thirty (30) days after the receipt of such notice within which to respond thereto. If such Indemnifying Party does not respond within such thirty (30)-day period, such specified claim shall be conclusively deemed a Liability of the Indemnifying Party under this Section 4.6(b) or, in the case of any written notice in which the amount of the claim (or any portion thereof) is estimated, on such later date when the amount of the claim (or such portion thereof) becomes finally determined. If such Indemnifying Party does not respond within such thirty (30)-day period or rejects such claim in whole or in part, such Indemnatee shall, subject to the provisions of Article VII, be free to pursue such remedies as may be available to such party as contemplated by this Agreement and the Ancillary Agreements, as applicable, without prejudice to its continuing rights to pursue indemnification or contribution hereunder.

(c) *Pursuit of Claims Against Third Parties.* If (i) a Party incurs any Liability arising out of this Agreement or any Ancillary Agreement, (ii) an adequate legal or equitable remedy is not available for any reason against the other Party to satisfy the Liability incurred by

the incurring Party and (iii) a legal or equitable remedy may be available to the other Party against a Third Party for such Liability, then the other Party shall use commercially reasonable efforts to cooperate with the incurring Party, at the incurring Party's expense, to permit the incurring Party to obtain the benefits of such legal or equitable remedy against the Third Party.

(d) *Subrogation.* In the event of payment by or on behalf of any Indemnifying Party to any Indemnitee in connection with any Third-Party Claim, such Indemnifying Party shall be subrogated to and shall stand in the place of such Indemnitee as to any events or circumstances in respect of which such Indemnitee may have any right, defense or claim relating to such Third-Party Claim against any claimant or plaintiff asserting such Third-Party Claim or against any other Person. Such Indemnitee shall cooperate with such Indemnifying Party in a reasonable manner, and at the cost and expense of such Indemnifying Party, in prosecuting any subrogated right, defense or claim.

(e) *Substitution.* In the event of an Action in which the Indemnifying Party is not a named defendant, if either the Indemnitee or Indemnifying Party shall so request, the Parties shall endeavor to substitute the Indemnifying Party for the named defendant. If such substitution or addition cannot be achieved for any reason or is not requested, the named defendant shall allow the Indemnifying Party to manage the Action as set forth in Section 4.5 and this Section 4.6, and the Indemnifying Party shall fully indemnify the named defendant against all reasonable costs of defending the Action (including court costs, sanctions imposed by a court, attorneys' fees, experts fees and all other external expenses), the costs of any judgment or settlement and the cost of any interest or penalties relating to any judgment or settlement.

(f) *Tax Matters Agreement Coordination.* The above provisions of this Section 4.6 and the provisions of Section 4.2 through Section 4.10 (other than this Section 4.6(f)) shall not apply to Taxes and Tax matters. It is understood and agreed that Taxes and Tax matters, including the control of Tax-related proceedings, shall be governed by the Tax Matters Agreement. In the case of any conflict or inconsistency between this Agreement and the Tax Matters Agreement in relation to any matters addressed by the Tax Matters Agreement, the Tax Matters Agreement shall prevail.

#### 4.7 Right of Contribution.

(a) *Contribution.* If any right of indemnification contained in Section 4.2 or Section 4.3 is held unenforceable or is unavailable for any reason, or is insufficient to hold harmless an Indemnitee in respect of any Liability for which such Indemnitee is entitled to indemnification hereunder, then the Indemnifying Party shall contribute to the amounts paid or payable by the Indemnitees as a result of such Liability (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and the members of its Group, on the one hand, and the Indemnitees entitled to contribution, on the other hand, as well as any other relevant equitable considerations.

(b) *Allocation of Relative Fault.* Solely for purposes of determining relative fault pursuant to this Section 4.7: (i) any fault associated with the business conducted with the Delayed SpinCo Assets or Delayed SpinCo Liabilities (except for the gross negligence or intentional misconduct of a member of the Parent Group) or with the ownership, operation or

activities of the SpinCo Business prior to the Effective Time shall be deemed to be the fault of SpinCo and the other members of the SpinCo Group, and no such fault shall be deemed to be the fault of Parent or any other member of the Parent Group; (ii) any fault associated with the business conducted with Delayed Parent Assets or Delayed Parent Liabilities (except for the gross negligence or intentional misconduct of a member of the SpinCo Group) shall be deemed to be the fault of Parent and the other members of the Parent Group, and no such fault shall be deemed to be the fault of SpinCo or any other member of the SpinCo Group; and (iii) any fault associated with the ownership, operation or activities of the Parent Business prior to the Effective Time shall be deemed to be the fault of Parent and the other members of the Parent Group, and no such fault shall be deemed to be the fault of SpinCo or any other member of the SpinCo Group.

4.8 Covenant Not to Sue. Each Party hereby covenants and agrees that none of it, the members of such Party's Group or any Person claiming through it shall bring suit or otherwise assert any claim against any Indemnitee, or assert a defense against any claim asserted by any Indemnitee, before any court, arbitrator, mediator or administrative agency anywhere in the world, alleging that: (a) the assumption of any SpinCo Liabilities by SpinCo or a member of the SpinCo Group on the terms and conditions set forth in this Agreement and the Ancillary Agreements is void or unenforceable for any reason; (b) the retention of any Parent Liabilities by Parent or a member of the Parent Group on the terms and conditions set forth in this Agreement and the Ancillary Agreements is void or unenforceable for any reason; or (c) the provisions of this Article IV are void or unenforceable for any reason.

4.9 Remedies Cumulative. The remedies provided in this Article IV shall be cumulative and, subject to the provisions of Article VIII, shall not preclude assertion by any Indemnitee of any other rights or the seeking of any and all other remedies against any Indemnifying Party.

4.10 Survival of Indemnities. The rights and obligations of each of Parent and SpinCo and their respective Indemnitees under this Article IV shall survive (a) the sale or other transfer by either Party or any member of its Group of any assets or businesses or the assignment by it of any Liabilities or (b) any merger, consolidation, business combination, sale of all or substantially all of its Assets, restructuring, recapitalization, reorganization or similar transaction involving either Party or any of the members of its Group.

## ARTICLE V CERTAIN OTHER MATTERS

### 5.1 Insurance Matters.

(a) Subject to the terms and conditions of this Agreement, Parent and SpinCo agree to cooperate in good faith to attempt to implement an orderly transition of applicable insurance coverage from the date hereof through the Effective Time. In no event shall Parent or any other member of the Parent Group or any Parent Indemnitee have any Liability or obligation whatsoever to any member of the SpinCo Group in the event that any Policy or other Policy-related contract shall be terminated or otherwise cease to be in effect for any reason, shall be

unavailable or inadequate to cover any Liability of any member of the SpinCo Group for any reason whatsoever or shall not be renewed or extended beyond the current expiration date.

(b) From and after the Effective Time, with respect to any losses, damages and Liability incurred by any member of the SpinCo Group prior to the Effective Time that constitutes a SpinCo Liability, at the request of SpinCo, Parent will use commercially reasonable efforts to pursue claims, at SpinCo's sole cost and expense (to the extent not otherwise covered by such insurance policies then in effect prior to the Effective date), on behalf of the applicable member of the SpinCo Group under (with such member of the SpinCo Group entitled to all Insurance Proceeds resulting from or arising out of any such claims) Policies of Parent or any other member of the Parent Group in place immediately prior to the Effective Time (and any extended reporting periods for claims-made Policies of Parent or any other member of the Parent Group) and historical Policies of Parent or any other member of the Parent Group (such Policies, collectively, the "Parent Policies"), but solely to the extent that such Parent Policies provided coverage for the applicable member of the SpinCo Group prior to the Effective Time; provided that such obligation of Parent to make claims on behalf of the applicable member of the SpinCo Group under such Parent Policies shall be subject to the terms and conditions of such Parent Policies, including any limits on coverage or scope, any deductibles, self-insured retentions and other fees and expenses, and shall be subject to the following additional conditions:

(i) SpinCo shall provide written notification to Parent of any request for Parent to pursue a claim on behalf of the applicable member of the SpinCo Group pursuant to this Section 5.1(b), and Parent shall use commercially reasonable efforts to pursue such claim, at SpinCo's sole cost and expense (to the extent not otherwise covered by such insurance policies then in effect prior to the Effective date), as promptly as is reasonably practicable;

(ii) SpinCo and the other members of the SpinCo Group shall indemnify, hold harmless and reimburse Parent and the other members of the Parent Group for any deductibles, self-insured retention, retrospective premium payments, indemnity payments, settlements, judgments, legal fees, allocated claims expenses, claim handling fees and expenses, and other expenses incurred by Parent or any other member of the Parent Group to the extent resulting from any pursuit of any claims on behalf of SpinCo or any other members of the SpinCo Group, whether such claims are pursued on behalf of SpinCo or any other members of the SpinCo Group, employees of SpinCo or any other members of the SpinCo Group, or Third Parties;

(iii) SpinCo shall, and shall cause the other members of the SpinCo Group to, cooperate with and assist Parent and the other members of the Parent Group and share such Information as is reasonably necessary in order to permit Parent and the other members of the Parent Group to manage and conduct the insurance matters contemplated by this Section 5.1; and

(iv) SpinCo shall exclusively bear (and neither Parent nor any other member of the Parent Group shall have any obligation to repay or reimburse SpinCo or any other member of the SpinCo Group for) and shall be liable for all excluded, uninsured, uncovered, unavailable or uncollectible amounts of all such claims pursued on



behalf of SpinCo or any other member of the SpinCo Group under the Parent Policies as provided for in this Section 5.1(b). In the event a Parent Policy aggregate is exhausted, or believed likely to be exhausted, due to noticed claims, the SpinCo Group, on the one hand, and the Parent Group, on the other hand, shall be responsible for their pro rata portion of the reinstatement premium, if any, based upon the losses of such Group submitted to Parent's insurance carrier(s) (including any submissions prior to the Effective Time). To the extent that the SpinCo Group or the Parent Group is allocated more than its pro rata portion of such premium due to the timing of losses submitted to Parent's insurance carrier(s), the other party shall promptly pay the first party an amount so that each Group has been properly allocated its pro rata portion of the reinstatement premium. Subject to the following sentence, Parent may elect not to reinstate the Parent Policy aggregate. In the event that Parent elects not to reinstate the Parent Policy aggregate, it shall provide prompt written notice to SpinCo, and SpinCo may direct Parent in writing to, and Parent shall, in such case reinstate the Parent Policy aggregate; provided that SpinCo shall be responsible for all reinstatement premiums and other costs associated with such reinstatement.

In the event that any member of the Parent Group incurs any losses, damages or Liability prior to or in respect of the period prior to the Effective Time for which such member of the Parent Group is entitled to coverage under the Policies of SpinCo or any other member of the SpinCo Group, the same process pursuant to this Section 5.1(b) shall apply, substituting "Parent" for "SpinCo" and "SpinCo" for "Parent", as applicable.

(c) Except as provided in Section 5.1(b), from and after the Effective Time, neither SpinCo nor any member of the SpinCo Group shall have any rights to or under any of the Parent Policies. At the Effective Time, SpinCo shall have in effect all insurance programs required to comply with the contractual obligations of SpinCo and the SpinCo Group and such other Policies required by Law or as reasonably necessary or appropriate for companies operating a business similar to SpinCo's.

(d) In connection with Parent's pursuit of a claim on behalf of SpinCo or any other member of the SpinCo Group under any Parent Policy pursuant to this Section 5.1, Parent shall not be required to take any action that would be reasonably likely to: (i) have an adverse impact on the then-current relationship between Parent or any member of the Parent Group, on the one hand, and the applicable insurance company, on the other hand; (ii) result in the applicable insurance company terminating or reducing coverage, or increasing the amount of any premium owed by Parent or any other member of the Parent Group under the applicable Parent Policy; or (iii) otherwise compromise, jeopardize or interfere with the rights of Parent or any other member of the Parent Group under the applicable Parent Policy.

(e) All payments and reimbursements by SpinCo pursuant to this Section 5.1 shall be made within thirty (30) days after SpinCo's receipt of an invoice therefor from Parent. If Parent incurs costs to enforce SpinCo's obligations herein, SpinCo agrees to indemnify and hold harmless Parent for such enforcement costs, including reasonable attorneys' fees pursuant to Section 4.6. Parent shall retain the exclusive right to control the Parent Policies and the insurance programs of Parent or any other member of the Parent Group, including the right to



exhaust, settle, release, commute, buy back or otherwise resolve disputes with respect to any such Parent Policies and programs and to amend, modify or waive any rights under any such Parent Policies and programs, notwithstanding whether any such Parent Policies or programs apply to any SpinCo Liabilities and/or claims SpinCo has made or could make in the future, and no member of the SpinCo Group shall erode, exhaust, settle, release, commute, buy back or otherwise resolve disputes with insurers of Parent or any other member of the Parent Group with respect to any of the Parent Policies and the insurance programs of Parent or any other member of the Parent Group, or amend, modify or waive any rights under any such Parent Policies and programs. No member of the Parent Group shall have any obligation to secure extended reporting for any claims under any Parent Policy for any acts or omissions of any member of the SpinCo Group incurred prior to the Effective Time.

(f) This Agreement shall not be considered as an attempted assignment of any Policy or other Policy-related contract and shall not be construed to waive any right or remedy of any member of the Parent Group in respect of any Policy or other Policy-related contract.

(g) SpinCo does hereby, for itself and each other member of the SpinCo Group, agree that no member of the Parent Group shall have any Liability whatsoever as a result of the Parent Policies or the insurance practices of Parent or any other member of the Parent Group as in effect at any time, including as a result of the level or scope of any insurance, the creditworthiness of any insurance carrier, the terms and conditions of any policy, or the adequacy or timeliness of any notice to any insurance carrier with respect to any claim or potential claim or otherwise.

5.2 Late Payments. Except as expressly provided to the contrary in this Agreement or in any Ancillary Agreement, any amount not paid when due pursuant to this Agreement or any Ancillary Agreement (and any amounts billed or otherwise invoiced or demanded and properly payable that are not paid within thirty (30) days after receipt of such bill, invoice or other demand) shall accrue interest at a rate per annum equal to the Prime Rate plus two percent (2%).

5.3 Inducement. SpinCo acknowledges and agrees that Parent's willingness to cause, effect and consummate the Separation and the Distribution has been conditioned upon and induced by SpinCo's covenants and agreements in this Agreement and the Ancillary Agreements, including SpinCo's assumption of the SpinCo Liabilities pursuant to the Separation and the provisions of this Agreement and SpinCo's covenants and agreements contained in Article IV.

5.4 Post-Effective Time Conduct. The Parties acknowledge that, after the Effective Time, each Party shall be independent of the other Party, with responsibility for its own actions and inactions and its own Liabilities relating to, arising out of or resulting from the conduct of its business, operations and activities following the Effective Time, except as may otherwise be provided in any Ancillary Agreement, and each Party shall (except as otherwise provided in Article IV) use commercially reasonable efforts to prevent such Liabilities from being inappropriately borne by the other Party.

5.5 Use of Parent Names.

(a) Except as expressly provided in this Section 5.5, SpinCo agrees that neither SpinCo nor any other member of the SpinCo Group shall use, or have or acquire the right to use or any other rights in, the Parent Names.

(b) As soon as reasonably practicable after the Effective Time, SpinCo shall cause any member of the SpinCo Group having a name, trademark, service mark or logo that includes the Parent Names (“Corporate Names”) to change its name to a name that does not include any Parent Name, including making any legal filings necessary to effect such change. In any event within sixty (60) days after the Effective Time, SpinCo shall file at the applicable local registry all documentation required to effect a name change.

(c) Except as provided in Section 5.5(b) with respect to the change of Corporate Names, the SpinCo Group may continue temporarily to use the Parent Names following the Effective Time, to the extent and in substantially the same manner as used immediately prior to Effective Time, so long as SpinCo shall, and shall cause it’s other members of the SpinCo Group to, (i) immediately after the Effective Time, cease to hold itself out as having any affiliation with the Parent Group and (ii) use reasonable best efforts to minimize and eliminate use of the Parent Names by the SpinCo Group as soon as practicable; provided, that as soon as practicable after the Effective Time (and in any event within six (6) months thereafter), SpinCo shall, and shall cause it’s the other members of the SpinCo Group to (i) cease and discontinue use of all Parent Names and (ii) complete the removal of the Parent Names from all products, services, platforms, websites, signage, vehicles, properties, technical information, stationery and promotional or other marketing materials and other assets.

(d) Any use of the Parent Names authorized in this Section 5.5 shall be subject to (x) compliance with the Parent Group’s reasonable quality control requirements and guidelines in effect for the Parent Names and (y) to the extent practicable, the placement of a reasonably appropriate disclaimer on any materials bearing the Parent Names (including stationery, business cards, signage, advertising materials, inventory, packaging, product, service and training literature, and other similar materials) identifying in a readily observable manner that the members of the SpinCo Group are no longer Affiliates of the Parent Group. Any and all goodwill arising from the use of the Parent Names as described in this Section 5.5 shall inure to the sole and exclusive benefit of the Parent Group.

(e) Notwithstanding the foregoing, nothing in this Section 5.5 shall preclude either Group from making any reference to the Marks of the other Group in internal historical, tax, employment or similar records or for purposes of disclosures as are reasonably necessary and appropriate to describe the historical relationship of the Parties.

#### 5.6 Non-Competition.

(a) *Non-Competition.* Each Party covenants and agrees that, from the Effective Time until the second (2nd) anniversary of the Distribution Date (the “Non-Compete Period”), neither Party will, and will cause each other member of its respective Group not to, directly or indirectly, own, invest in, operate, manage, control, participate or engage in any Prohibited Business (as applicable) without the prior written consent of the other Party; provided, that nothing in this Section 5.6(a) will prohibit (i) the ownership by Parent or SpinCo, as the case

may be, or any member of its respective Group, of debt, equity or any other class of securities of any Person that owns, invests in, operates, manages, controls, participates or engages directly or indirectly in a Prohibited Business (as applicable), provided ownership of such securities (either directly, indirectly or upon conversion) is less than 5% of such class of securities of such Person or (ii) exercising its rights or performing or complying with its obligations under this Agreement or any Ancillary Agreement. Notwithstanding the foregoing, in the event that a merger, acquisition, consolidation or other business combination with or from an affiliated Person that directly or indirectly owns, invests in, operates, manages, controls, participates or engages in a Prohibited Business (so long as such Prohibited Business represents less than 40% of such Person's consolidated assets or revenue) results in Parent or SpinCo, as the case may be, directly or indirectly owning, investing in, operating, managing, controlling, participating or engaging in a Prohibited Business in breach of this Section 5.6(a) at the time of such transaction, such transaction (and resulting operations of such business) shall not be deemed a breach of this Section 5.6(a) if such party uses commercially reasonable efforts to cure such breach as promptly as practicable (by divestiture or otherwise).

(b) *Remedies; Enforcement.* Each Party acknowledges and agrees that (i) injury to the other Party from any breach of the obligations of such party set forth in this Section 5.6 would be irreparable and impossible to measure and (ii) the remedies at law for any breach or threatened breach of this Section 5.6, including monetary damages, would therefore be inadequate compensation for any loss and the other Party shall have the right to specific performance and injunctive or other equitable relief in accordance with Section 10.13, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. Each Party understands and acknowledges that the restrictive covenants and other agreements contained in this Section 5.6 are an essential part of this Agreement and the transactions contemplated hereby. It is the intent of the Parties that the provisions of this Section 5.6 shall be enforced to the fullest extent permissible under applicable Law applied in each jurisdiction in which enforcement is sought. If any particular provision or portion of this Section 5.6 shall be adjudicated to be invalid or unenforceable, such provision or portion thereof shall be deemed amended to the minimum extent necessary to render such provision or portion valid and enforceable, such amendment to apply only with respect to the operation of such provision or portion thereof in the particular jurisdiction in which such adjudication is made.

## ARTICLE VI EXCHANGE OF INFORMATION; CONFIDENTIALITY

### 6.1 Agreement for Exchange of Information.

(a) Subject to Section 6.9 and any other applicable confidentiality obligations, each of Parent and SpinCo, on behalf of itself and each member of its Group, agrees to use commercially reasonable efforts to provide or make available, or cause to be provided or made available, to the other Party and the members of such other Party's Group, at any time before, on or after the Effective Time, as soon as reasonably practicable after written request therefor, any information (or a copy thereof) in the possession or under the control of such Party or its Group that the requesting Party or its Group requests and, with respect to clause (iii), access to the

facilities, systems, infrastructure and personnel of such Party or its Group, in each case to the extent that (i) such information relates to the SpinCo Business, or any SpinCo Asset or SpinCo Liability, if SpinCo is the requesting Party, or to the Parent Business, or any Parent Asset or Parent Liability, if Parent is the requesting Party, (ii) such information is required by the requesting Party to comply with its obligations under this Agreement or any Ancillary Agreement or (iii) such information is required by the requesting Party to comply with any laws or regulations or stock exchange rules or obligations imposed by any Governmental Authority, including, without limitation, the obligation to verify the accuracy of internal controls over information technology reporting of financial data and related processes employed in connection with verifying compliance with Section 404 of the Sarbanes-Oxley Act of 2002; provided, however, that, in the event that the Party to whom the request has been made determines that any such provision of information could be detrimental to the Party providing the information, violate any Law or agreement, or waive any privilege available under applicable Law, including any attorney-client privilege, then the Parties shall use commercially reasonable efforts to permit compliance with such obligations to the extent and in a manner that avoids any such harm or consequence. The Party providing information pursuant to this Section 6.1 shall only be obligated to provide such information in the form, condition and format in which it then exists, and in no event shall such Party be required to perform any improvement, modification, conversion, updating or reformatting of any such information, and nothing in this Section 6.1 shall expand the obligations of any Party under Section 6.4. Each Party shall cause its and its Subsidiaries' employees to, and shall use commercially reasonable efforts to cause its Representatives' employees to, when on the property of any Party or its Subsidiaries, or when given access to any facilities, systems, infrastructure or personnel of the other Party or any members of its Group, conform to the policies and procedures of such Party and its Group concerning health, safety, conduct and security that are made known or provided to the accessing Party from time to time.

(b) Without limiting the generality of the foregoing, until the end of Parent's fiscal year during which the Distribution Date occurs (and for a reasonable period of time afterwards as required for each Party to prepare consolidated financial statements or complete a financial statement audit for the fiscal year during which the Distribution Date occurs), each Party shall use commercially reasonable efforts to cooperate with the other Party's information requests to enable (i) the other Party to meet its timetable for dissemination of its earnings releases, financial statements and management's assessment of the effectiveness of its disclosure controls and procedures and its internal control over financial reporting in accordance with Items 307 and 308, respectively, of Regulation S-K promulgated under the Exchange Act and (ii) the other Party's accountants to timely complete their review of the quarterly financial statements and audit of the annual financial statements, including, to the extent applicable to such Party, its auditor's audit of its internal control over financial reporting and management's assessment thereof in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, the SEC's and Public Company Accounting Oversight Board's rules and auditing standards thereunder and any other applicable Laws.

(c) Subject to any limitation imposed by applicable Law and to the extent that it has not done so before the Effective Time, Parent shall transfer to SpinCo any employment

records (including any Form I-9, Form W-2 or other IRS forms) with respect to SpinCo Group Employees and Former SpinCo Group Employees and other records reasonably required by SpinCo to enable SpinCo to properly carry out its obligations under this Agreement. Such transfer of records generally shall occur as soon as administratively practicable at or after the Effective Time. Each Party shall permit the other Party reasonable access to its employee records, to the extent reasonably necessary for such accessing Party to carry out its obligations hereunder.

6.2 Ownership of Information. The provision of any information pursuant to Section 6.1 or Section 6.7 shall not affect the ownership of such information (which shall be determined solely in accordance with the terms of this Agreement and the Ancillary Agreements), or constitute a grant of rights in or to any such information.

6.3 Compensation for Providing Information. The Party requesting information after the Effective Time agrees to reimburse the other Party for the reasonable costs, if any, of creating, gathering, copying, transporting and otherwise complying with the request with respect to such information (including any reasonable costs and expenses incurred in any review of information for purposes of protecting the Privileged Information of the providing Party or in connection with the restoration of backup media for purposes of providing the requested information). Except as may be otherwise specifically provided elsewhere in this Agreement, any Ancillary Agreement or any other agreement between the Parties, such costs shall be computed in accordance with the providing Party's standard methodology and procedures.

6.4 Record Retention.

(a) To facilitate the possible exchange of information pursuant to this Article VI and other provisions of this Agreement after the Effective Time, the Parties agree to use commercially reasonable efforts, which shall be no less rigorous than those used for retention of such Party's own information, to retain all information in their respective possession or control at the Effective Time, including all Employee-related information, in accordance with the policies of Parent as in effect at the Effective Time or such other policies as may be adopted by Parent after the Effective Time (provided, in the case of SpinCo, that Parent notifies SpinCo of any such change). Notwithstanding the foregoing, Section 9.01 of the Tax Matters Agreement will govern the retention of Tax-related records, and Section 7.02(a) of the Employee Matters Agreement will govern the retention of employment- and benefits-related records.

(b) Each Party shall preserve and keep all documents subject to a litigation hold as of the date of this Agreement until such Party has been notified that such litigation hold is no longer applicable.

6.5 Limitations of Liability. Neither Party shall have any Liability to the other Party in the event that any information exchanged or provided pursuant to this Agreement is found to be inaccurate in the absence of gross negligence, bad faith or willful misconduct by the Party providing such information. Neither Party shall have any Liability to any other Party if any information is destroyed after commercially reasonable efforts by such Party to comply with the provisions of Section 6.4.

6.6 Other Agreements Providing for Exchange of Information.

(a) The rights and obligations granted under this Article VI are subject to any specific limitations, qualifications or additional provisions on the sharing, exchange, retention or confidential treatment of information set forth in any Ancillary Agreement.

(b) Any Party that receives, pursuant to a request for information in accordance with this Article VI, Tangible Information that is not relevant to its request shall, at the request of the providing Party, (i) return it to the providing Party or, at the providing Party's request, destroy such Tangible Information and (ii) deliver to the providing Party written confirmation that such Tangible Information was returned or destroyed, as the case may be, which confirmation shall be signed by an authorized representative of the requesting Party.

6.7 Production of Witnesses; Records; Cooperation.

(a) After the Effective Time, except in the case of a Dispute between Parent and SpinCo, or any members of their respective Groups, each Party shall use commercially reasonable efforts to make available to the other Party, upon written request, the former, current and future directors, officers, employees, other personnel and agents of the members of its respective Group as witnesses and any books, records or other documents within its control or which it otherwise has the ability to make available without undue burden, to the extent that any such person (giving consideration to business demands of such directors, officers, employees, other personnel and agents) or books, records or other documents may reasonably be required in connection with any Action in which the requesting Party (or member of its Group) may from time to time be involved, regardless of whether such Action is a matter with respect to which indemnification may be sought hereunder. The requesting Party shall bear all costs and expenses in connection therewith.

(b) If an Indemnifying Party chooses to defend or to seek to compromise or settle any Third-Party Claim, the other Party shall make available to such Indemnifying Party, upon written request, the former, current and future directors, officers, employees, other personnel and agents of the members of its respective Group as witnesses and any books, records or other documents within its control or which it otherwise has the ability to make available without undue burden, to the extent that any such person (giving consideration to business demands of such directors, officers, employees, other personnel and agents) or books, records or other documents may reasonably be required in connection with such defense, settlement or compromise, or such prosecution, evaluation or pursuit, as the case may be, and shall otherwise cooperate in such defense, settlement or compromise, or such prosecution, evaluation or pursuit, as the case may be.

(c) Without limiting the foregoing, the Parties shall cooperate and consult to the extent reasonably necessary with respect to any Actions.

(d) Without limiting any provision of this Section 6.7, each of the Parties agrees to cooperate, and to cause each member of its respective Group to cooperate, with each other in the defense of any infringement or similar claim with respect to any Intellectual Property Rights and shall not claim to acknowledge, or permit any member of its respective Group to

claim to acknowledge, the validity or infringing use of any Intellectual Property Rights of a Third Party in a manner that would hamper or undermine the defense of such infringement or similar claim.

(e) The obligation of the Parties to provide witnesses pursuant to this Section 6.7 is intended to be interpreted in a manner so as to facilitate cooperation and shall include the obligation to provide as witnesses directors, officers, employees, other personnel and agents without regard to whether such person or the employer of such person could assert a possible business conflict (subject to the exception set forth in the first sentence of Section 6.7(a)).

(f) Without limiting any provision of this Section 6.7, each Party shall use commercially reasonable efforts to cooperate and work together to unify, consolidate and share (to the extent permissible under applicable privacy/data protection Laws) all relevant documents, resolutions, government filings, data, payroll, employment and benefit plan information on regular timetables and cooperate as needed with respect to (i) any claims under or audit of or litigation with respect to any employee benefit plan, policy or arrangement contemplated by this Agreement, (ii) efforts to seek a determination letter, private letter ruling or advisory opinion from the IRS or U.S. Department of Labor on behalf of any employee benefit plan, policy or arrangement contemplated by this Agreement, (iii) any filings that are required to be made or supplemented to the IRS, U.S. Pension Benefit Guaranty Corporation, U.S. Department of Labor or any other Governmental Authority, and (iv) any audits by a Governmental Authority or corrective actions, relating to any Benefit Plan, labor or payroll practices; provided, however, that requests for cooperation must be reasonable and not interfere with daily business operations.

#### 6.8 Privileged Matters.

(a) The Parties recognize that legal and other professional services that have been and will be provided prior to the Effective Time have been and will be rendered for the collective benefit of each of the members of the Parent Group and the SpinCo Group, and that each of the members of the Parent Group and the SpinCo Group should be deemed to be the client with respect to such services for the purposes of asserting all privileges that may be asserted under applicable Law in connection therewith. The Parties recognize that legal and other professional services will be provided following the Effective Time, which services will be rendered solely for the benefit of the Parent Group or the SpinCo Group, as the case may be. In furtherance of the foregoing, each Party shall authorize the delivery to and/or retention by the other Party of materials existing as of the Effective Time that are necessary for such other Party to perform such services.

(b) The Parties agree as follows:

(i) Parent shall be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any Privileged Information that relates solely to the Parent Business and not to the SpinCo Business, whether or not the Privileged Information is in the possession or under the control of any member of the Parent Group or any member of the SpinCo Group. Parent shall also be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in

connection with any Privileged Information that relates solely to any Parent Liabilities resulting from any Actions that are now pending or may be asserted in the future, whether or not the Privileged Information is in the possession or under the control of any member of the Parent Group or any member of the SpinCo Group.

(ii) SpinCo shall be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any Privileged Information that relates solely to the SpinCo Business and not to the Parent Business, whether or not the Privileged Information is in the possession or under the control of any member of the SpinCo Group or any member of the Parent Group. SpinCo shall also be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any Privileged Information that relates solely to any SpinCo Liabilities resulting from any Actions that are now pending or may be asserted in the future, whether or not the Privileged Information is in the possession or under the control of any member of the SpinCo Group or any member of the Parent Group.

(iii) If the Parties do not agree as to whether certain information is Privileged Information, then such information shall be treated as Privileged Information, and the Party that believes that such information is Privileged Information shall be entitled to control the assertion or waiver of all privileges and immunities in connection with any such information, unless the Parties otherwise agree. The Parties shall use the procedures set forth in Article VII to resolve any disputes as to whether any information relates solely to the Parent Business, solely to the SpinCo Business, or to both the Parent Business and the SpinCo Business.

(c) Subject to the remaining provisions of this Section 6.8, the Parties agree that they shall have a shared privilege or immunity with respect to all privileges and immunities not allocated pursuant to Section 6.8(b) and all privileges and immunities relating to any Actions or other matters that involve both Parties (or one (1) or more members of their respective Groups) and in respect of which both Parties have Liabilities under this Agreement, and that no such shared privilege or immunity may be waived by either Party without the consent of the other Party.

(d) If any Dispute arises between the Parties or any members of their respective Groups regarding whether a privilege or immunity should be waived to protect or advance the interests of either Party and/or any member of their respective Groups, each Party agrees that it shall (i) negotiate with the other Party in good faith, (ii) endeavor to minimize any prejudice to the rights of the other Party and (iii) not unreasonably withhold consent to any request for waiver by the other Party. Further, each Party specifically agrees that it shall not withhold its consent to the waiver of a privilege or immunity for any purpose, except in good faith to protect its own legitimate interests.

(e) In the event of any Dispute between Parent and SpinCo, or any members of their respective Groups, either Party may waive a privilege in which the other Party or member of such other Party's Group has a shared privilege, without obtaining consent pursuant to Section 6.8(c); provided that the Parties intend such waiver of a shared privilege to be effective only as to the use of information with respect to the Action between the Parties and/or



the applicable members of their respective Groups, and is not intended to operate as a waiver of the shared privilege with respect to any Third Party.

(f) Upon receipt by either Party, or by any member of its respective Group, of any subpoena, discovery or other request that may reasonably be expected to result in the production or disclosure of Privileged Information subject to a shared privilege or immunity or as to which another Party has the sole right hereunder to assert a privilege or immunity, or if either Party obtains knowledge that any of its, or any member of its respective Group's, current or former directors, officers, agents or employees has received any subpoena, discovery or other request that may reasonably be expected to result in the production or disclosure of such Privileged Information, such Party shall promptly notify the other Party of the existence of the request (which notice shall be delivered to such other Party no later than five (5) business days following the receipt of any such subpoena, discovery or other request) and shall provide the other Party a reasonable opportunity to review the Privileged Information and to assert any rights it or they may have under this Section 6.8 or otherwise, to prevent the production or disclosure of such Privileged Information.

(g) Any furnishing of, or access or transfer of, any information pursuant to this Agreement is made in reliance on the agreement between Parent and SpinCo set forth in this Section 6.8 and in Section 6.9 to maintain the confidentiality of Privileged Information and to assert and maintain all applicable privileges and immunities. The Parties agree that their respective rights to any access to information, witnesses and other Persons, the furnishing of notices and documents and other cooperative efforts between the Parties contemplated by this Agreement, and the transfer of Privileged Information between the Parties and members of their respective Groups as needed pursuant to this Agreement, shall not be deemed a waiver of any privilege that has been or may be asserted under this Agreement or otherwise.

(h) In connection with any matter contemplated by Section 6.7 or this Section 6.8, the Parties agree to, and to cause the applicable members of their Group to, use commercially reasonable efforts to maintain their respective separate and joint privileges and immunities, including by executing joint defense and/or common interest agreements where necessary or useful for this purpose.

#### 6.9 Confidentiality.

(a) *Confidentiality.* Subject to Section 6.10, from and after the Effective Time until the five (5)-year anniversary of the Effective Time, each of Parent and SpinCo, on behalf of itself and each member of its respective Group, agrees to hold, and to cause its respective Representatives to hold, in strict confidence, with at least the same degree of care that applies to Parent's confidential and proprietary information pursuant to policies in effect as of the Effective Time, all confidential and proprietary information concerning the other Party or any member of the other Party's Group or their respective businesses that is either in its possession (including confidential and proprietary information in its possession prior to the date hereof) or furnished by any such other Party or any member of such Party's Group or their respective Representatives at any time pursuant to this Agreement, any Ancillary Agreement or otherwise, and shall not use any such confidential and proprietary information other than for such purposes as shall be expressly permitted hereunder or thereunder, except, in each case, to the extent that such

confidential and proprietary information has been (i) in the public domain or generally available to the public, other than as a result of a disclosure by such Party or any member of such Party's Group or any of their respective Representatives in violation of this Agreement, (ii) later lawfully acquired from other sources by such Party (or any member of such Party's Group), which sources are not themselves bound by a confidentiality obligation or other contractual, legal or fiduciary obligation of confidentiality with respect to such confidential and proprietary information, or (iii) independently developed or generated without reference to or use of any confidential or proprietary information of the other Party or any member of such Party's Group. If any confidential and proprietary information of one Party or any member of its Group is disclosed to the other Party or any member of such other Party's Group in connection with providing services to such first Party or any member of such first Party's Group under this Agreement or any Ancillary Agreement, then such disclosed confidential and proprietary information shall be used only as required to perform such services.

(b) *No Release; Return or Destruction.* Each Party agrees not to release or disclose, or permit to be released or disclosed, any information addressed in Section 6.9(a) to any other Person, except its Representatives who need to know such information in their capacities as such (who shall be advised of their obligations hereunder with respect to such information), and except in compliance with Section 6.10. Without limiting the foregoing, when any such information is no longer needed for the purposes contemplated by this Agreement or any Ancillary Agreement, and is no longer subject to any legal hold or other document preservation obligation, each Party will promptly after request of the other Party either return to the other Party all such information in a tangible form (including all copies thereof and all notes, extracts or summaries based thereon) or notify the other Party in writing that it has destroyed such information (and such copies thereof and such notes, extracts or summaries based thereon); provided, that the Parties may retain electronic backup versions of such information maintained on routine computer system backup tapes, disks or other backup storage devices; provided, further, that any such information so retained shall remain subject to the confidentiality provisions of this Agreement or any Ancillary Agreement.

(c) *Third-Party Information; Privacy or Data Protection Laws.* Each Party acknowledges that it and members of its Group may presently have and, following the Effective Time, may gain access to or possession of confidential or proprietary information of, or legally protected personal information relating to, Third Parties (i) that was received under privacy policies and/or confidentiality or non-disclosure agreements entered into between such Third Parties, on the one hand, and the other Party or members of such other Party's Group, on the other hand, prior to the Effective Time, or (ii) that, as between the two (2) Parties, was originally collected by the other Party or members of such other Party's Group and that may be subject to and protected by privacy policies, as well as privacy, data protection or other applicable Laws. Each Party agrees that it shall hold, protect and use, and shall cause the members of its Group and its and their respective Representatives to hold, protect and use, in strict confidence the confidential and proprietary information of, or legally protected personal information relating to, Third Parties in accordance with privacy policies and privacy, data protection or other applicable Laws and the terms of any agreements that were either entered into before the Effective Time or affirmative commitments or representations that were made before the Effective Time by,

between or among the other Party or members of the other Party's Group, on the one hand, and such Third Parties, on the other hand.

6.10 Protective Arrangements. In the event that a Party or any member of its Group either determines on the advice of its counsel that it is required to disclose any information pursuant to applicable Law or receives any request or demand under lawful process or from any Governmental Authority to disclose or provide information of the other Party (or any member of the other Party's Group) that is subject to the confidentiality provisions hereof, such Party shall notify the other Party (to the extent legally permitted) as promptly as practicable under the circumstances prior to disclosing or providing such information and shall cooperate, at the expense of the other Party, in seeking any appropriate protective order requested by the other Party. In the event that such other Party fails to receive such appropriate protective order in a timely manner and the Party receiving the request or demand reasonably determines that its failure to disclose or provide such information shall actually prejudice the Party receiving the request or demand, then the Party that received such request or demand may thereafter disclose or provide information to the extent required by such Law (as so advised by its counsel) or by lawful process or such Governmental Authority, and the disclosing Party shall promptly provide the other Party with a copy of the information so disclosed, in the same form and format so disclosed, together with a list of all Persons to whom such information was disclosed, in each case to the extent legally permitted.

## ARTICLE VII DISPUTE RESOLUTION

7.1 Good Faith Officer Negotiation. Subject to Section 7.4, either Party seeking resolution of any dispute, controversy or claim arising out of or relating to this Agreement or any Ancillary Agreement (including regarding whether any Assets are SpinCo Assets, any Liabilities are SpinCo Liabilities or the validity, interpretation, breach or termination of this Agreement or any Ancillary Agreement) (a "Dispute"), shall provide written notice thereof to the other Party (the "Officer Negotiation Request"). Within fifteen (15) days after the delivery of the Officer Negotiation Request, the Parties shall attempt to resolve the Dispute through good faith negotiation. All such negotiations shall be conducted by executives who hold, at a minimum, the title of Senior Vice President and who have authority to settle the Dispute. All such negotiations shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Parties are unable for any reason to resolve a Dispute within fifteen (15) days after receipt of the Officer Negotiation Request, and such fifteen (15)-day period is not extended by mutual written consent of the Parties, the Chief Executive Officers of the Parties shall enter into good faith negotiations in accordance with Section 7.2.

7.2 CEO Negotiation. If any Dispute is not resolved pursuant to Section 7.1, the Party that delivered the Officer Negotiation Request shall provide written notice of such Dispute to the Chief Executive Officer of each Party (a "CEO Negotiation Request"). As soon as reasonably practicable following receipt of a CEO Negotiation Request, the Chief Executive Officers of the Parties shall begin conducting good faith negotiations with respect to such Dispute. All such negotiations shall be confidential and shall be treated as compromise and

settlement negotiations for purposes of applicable rules of evidence. If the Chief Executive Officers of the Parties are unable for any reason to resolve a Dispute within fifteen (15) days after receipt of a CEO Negotiation Request, and such fifteen (15)-day period is not extended by mutual written consent of the Parties, the Dispute shall be submitted to arbitration in accordance with Section 7.3.

### 7.3 Arbitration.

(a) In the event that a Dispute has not been resolved within fifteen (15) days after the receipt of a CEO Negotiation Request in accordance with Section 7.2, or within such longer period as the Parties may agree in writing, then such Dispute shall, upon the written request of a Party (the "Arbitration Request"), be submitted to be finally resolved by binding arbitration. The JAMS Streamlined Arbitration Rules and Procedures ("JAMS Streamlined Rules") in effect at the time of the arbitration shall govern the arbitration, except as they may be modified herein or by mutual written agreement of the Parties. The arbitration shall be held in (i) New York City, New York or (ii) such other place as the Parties may mutually agree in writing. Unless otherwise agreed by the Parties in writing, any Dispute to be decided pursuant to this Section 7.3 will be decided (x) before a sole arbitrator if the amount in dispute, inclusive of all claims and counterclaims, totals less than \$10,000,000, or (y) by a panel of three (3) arbitrators if the amount in dispute, inclusive of all claims and counterclaims, totals \$10,000,000 or more.

(b) The panel of three (3) arbitrators will be chosen as follows: (i) within fifteen (15) days from the date of the receipt of the Arbitration Request, each Party will name an arbitrator; and (ii) the two (2) Party-appointed arbitrators will thereafter, within thirty (30) days from the date on which the second (2nd) of the two (2) arbitrators was named, name a third (3rd), independent arbitrator who will act as chairperson of the arbitral tribunal. In the event that either Party fails to name an arbitrator within fifteen (15) days from the date of receipt of the Arbitration Request, then upon written application by either Party, that arbitrator shall be appointed pursuant to the JAMS Streamlined Rules. In the event that the two (2) Party-appointed arbitrators fail to appoint the third (3rd), then the third (3rd) independent arbitrator will be appointed pursuant to the JAMS Streamlined Rules. If the arbitration will be before a sole independent arbitrator, then the sole independent arbitrator will be appointed by agreement of the Parties within fifteen (15) days from the date of receipt of the Arbitration Request. If the Parties cannot agree to a sole independent arbitrator during such fifteen (15)-day period, then upon written application by either party, the sole independent arbitrator will be appointed pursuant to the JAMS Streamlined Rules.

(c) The arbitrator(s) will have the right to award, on an interim basis, or include in the final award, any relief that it deems proper in the circumstances, including money damages (with interest on unpaid amounts from the due date), injunctive relief (including specific performance) and attorneys' fees and costs; provided that the arbitrator(s) will not award any relief not specifically requested by the Parties and, in any event, will not award any indirect, punitive, exemplary, remote, speculative or similar damages in excess of compensatory damages of the other arising in connection with the transactions contemplated hereby (other than any such Liability with respect to a Third-Party Claim). Upon selection of the arbitrator(s) following any grant of interim relief by a special arbitrator or court pursuant to Section 7.4, the arbitrator(s)

may affirm or disaffirm that relief, and the Parties will seek modification or rescission of the order entered by the court as necessary to accord with the decision of the arbitrator(s). The award of the arbitrator(s) shall be final and binding on the Parties, and may be enforced in any court of competent jurisdiction. The initiation of arbitration pursuant to this Article VII will toll the applicable statute of limitations for the duration of any such proceedings. Notwithstanding applicable state law, the arbitration and this agreement to arbitrate shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*

7.4 Litigation and Unilateral Commencement of Arbitration. Notwithstanding the foregoing provisions of this Article VII, (a) a Party may seek preliminary provisional or injunctive judicial relief with respect to a Dispute without first complying with the procedures set forth in Section 7.1, Section 7.2 and Section 7.3 if such action is reasonably necessary to avoid irreparable damage, and (b) either Party may initiate arbitration before the expiration of the periods specified in Section 7.1, Section 7.2 and Section 7.2 if such Party has submitted an Officer Negotiation Request, a CEO Negotiation Request and/or an Arbitration Request and the other Party has failed to comply with Section 7.1, Section 7.2 and/or Section 7.3 in good faith with respect to such negotiation and/or the commencement and engagement in arbitration. In such event, the other Party may commence and prosecute such arbitration unilaterally in accordance with the provisions of the JAMS Streamlined Rules.

7.5 Conduct During Dispute Resolution Process. Unless otherwise agreed in writing, the Parties shall, and shall cause the respective members of their Groups to, continue to honor all commitments under this Agreement and each Ancillary Agreement to the extent required by such agreements during the course of dispute resolution pursuant to the provisions of this Article VII, unless such commitments are the specific subject of the Dispute at issue.

7.6 Dispute Resolution Coordination. Except to the extent otherwise provided in Section 14 of the Tax Matters Agreement, the provisions of this Article VII (other than this Section 7.6) shall not apply with respect to the resolution of any dispute, controversy or claim arising out of or relating to Taxes or Tax matters (it being understood and agreed that the resolution of any dispute, controversy or claim arising out of or relating to Taxes or Tax matters shall be governed by the Tax Matters Agreement).

## ARTICLE VIII FURTHER ASSURANCES AND ADDITIONAL COVENANTS

### 8.1 Further Assurances.

(a) In addition to the actions specifically provided for elsewhere in this Agreement, each of the Parties shall use reasonable best efforts, prior to, on and after the Effective Time, to take, or cause to be taken, all actions, and to do, or cause to be done, all things, reasonably necessary, proper or advisable under applicable Laws, regulations and agreements to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements.

(b) Without limiting the foregoing, prior to, on and after the Effective Time, each Party hereto shall cooperate with the other Party, and without any further consideration, but

at the expense of the requesting Party, to execute and deliver, or use reasonable best efforts to cause to be executed and delivered, all instruments, including instruments of conveyance, assignment and transfer, and to make all filings with, and to obtain all Approvals or Notifications of, any Governmental Authority or any other Person under any permit, license, agreement, indenture or other instrument (including any consents or Governmental Approvals), and to take all such other actions as such Party may reasonably be requested to take by the other Party from time to time, consistent with the terms of this Agreement and the Ancillary Agreements, in order to effectuate the provisions and purposes of this Agreement and the Ancillary Agreements and the transfers of the SpinCo Assets and the Parent Assets and the assignment and assumption of the SpinCo Liabilities and the Parent Liabilities and the other transactions contemplated hereby and thereby. Without limiting the foregoing, each Party will, at the reasonable request, cost and expense of the other Party, take such other actions as may be reasonably necessary to vest in such other Party good and marketable title to the Assets allocated to such Party under this Agreement or any of the Ancillary Agreements, free and clear of any Security Interest, if and to the extent it is practicable to do so.

(c) On or prior to the Effective Time, Parent and SpinCo in their respective capacities as direct and indirect stockholders of the members of their Groups, shall each ratify any actions that are reasonably necessary or desirable to be taken by Parent, SpinCo or any of the members of their respective Groups, as the case may be, to effectuate the transactions contemplated by this Agreement and the Ancillary Agreements.

(d) Parent and SpinCo, and each of the members of their respective Groups, waive (and agree not to assert against any of the others) any claim or demand that any of them may have against any of the others for any Liabilities or other claims relating to or arising out of: (i) the failure of SpinCo or any other member of the SpinCo Group, on the one hand, or of Parent or any other member of the Parent Group, on the other hand, to provide any notification or disclosure required under any state Environmental Law in connection with the Separation or the other transactions contemplated by this Agreement, including the transfer by any member of any Group to any member of the other Group of ownership or operational control of any Assets not previously owned or operated by such transferee; or (ii) any inadequate, incorrect or incomplete notification or disclosure under any such state Environmental Law by the applicable transferor. To the extent any Liability to any Governmental Authority or any Third Party arises out of any action or inaction described in clauses (i) or (ii) above, the transferee of the applicable Asset hereby assumes and agrees to pay any such Liability.

## ARTICLE IX TERMINATION

9.1 Termination. This Agreement and all Ancillary Agreements may be terminated and the Distribution may be amended, modified or abandoned at any time prior to the Effective Time by Parent, in its sole and absolute discretion, without the approval or consent of any other Person, including SpinCo. After the Effective Time, this Agreement may not be terminated, except by an agreement in writing signed by a duly authorized officer of each of the Parties.

9.2 Effect of Termination. In the event of any termination of this Agreement prior to the Effective Time, no Party (nor any of its directors, officers or employees) shall have any Liability or further obligation to the other Party by reason of this Agreement.

ARTICLE X  
MISCELLANEOUS

10.1 Counterparts; Entire Agreement; Corporate Power.

(a) This Agreement and each Ancillary Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

(b) This Agreement, the Ancillary Agreements and the Exhibits, Schedules and appendices hereto and thereto contain the entire agreement between the Parties with respect to the subject matter hereof, supersede all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter, and there are no agreements or understandings between the Parties other than those set forth or referred to herein or therein. This Agreement and the Ancillary Agreements together govern the arrangements in connection with the Separation and the Distribution and would not have been entered into independently.

(c) Parent represents on behalf of itself and each other member of the Parent Group, and SpinCo represents on behalf of itself and each other member of the SpinCo Group, as follows:

(i) each such Person has the requisite corporate or other power and authority and has taken all corporate or other action necessary in order to execute, deliver and perform this Agreement and each Ancillary Agreement to which it is a party and to consummate the transactions contemplated hereby and thereby; and

(ii) this Agreement and each Ancillary Agreement to which it is a party has been duly executed and delivered by it and constitutes a valid and binding agreement of it enforceable in accordance with the terms thereof.

(d) Each Party acknowledges that it and each other Party is executing certain of the Ancillary Agreements by facsimile, stamp or mechanical signature, and that delivery of an executed counterpart of a signature page to this Agreement or any Ancillary Agreement (whether executed by manual, stamp or mechanical signature) by facsimile or by e-mail in portable document format (.pdf) shall be effective as delivery of such executed counterpart of this Agreement or any Ancillary Agreement. Each Party expressly adopts and confirms each such facsimile, stamp or mechanical signature (regardless of whether delivered in person, by mail, by courier, by facsimile or by e-mail in portable document format (.pdf)) made in its respective name as if it were a manual signature delivered in person, agrees that it will not assert that any such signature or delivery is not adequate to bind such Party to the same extent as if it were signed manually and delivered in person and agrees that, at the reasonable request of the other Party at any time, it will as promptly as reasonably practicable cause each such Ancillary

Agreement to be manually executed (any such execution to be as of the date of the initial date thereof) and delivered in person, by mail or by courier.

10.2 Governing Law. This Agreement and, unless expressly provided therein, each Ancillary Agreement (and any claims or disputes arising out of or related hereto or thereto or to the transactions contemplated hereby and thereby or to the inducement of any party to enter herein and therein, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall be governed by and construed and interpreted in accordance with the Laws of the State of Delaware irrespective of the choice of laws principles of the State of Delaware, including all matters of validity, construction, effect, enforceability, performance and remedies.

10.3 Assignability. Except as set forth in any Ancillary Agreement, this Agreement and each Ancillary Agreement shall be binding upon and inure to the benefit of the Parties and the parties thereto, respectively, and their respective successors and permitted assigns; provided, however, that neither Party nor any such party thereto may assign its rights or delegate its obligations under this Agreement or any Ancillary Agreement without the express prior written consent of the other Party hereto or other parties thereto, as applicable. Notwithstanding the foregoing, no such consent shall be required for the assignment of a Party's rights and obligations under this Agreement and the Ancillary Agreements (except as may be otherwise provided in any such Ancillary Agreement) in whole (*i.e.*, the assignment of a Party's rights and obligations under this Agreement and all Ancillary Agreements at the same time) in connection with a change of control or a sale of all or substantially all of a Party (or its assets) so long as the resulting, surviving or transferee Person assumes all the obligations of the relevant party thereto by operation of Law or pursuant to an agreement in form and substance reasonably satisfactory to the other Party.

10.4 Third Party Beneficiaries. Except for the indemnification rights under this Agreement and each Ancillary Agreement of any Parent Indemnitee or SpinCo Indemnitee in their respective capacities as such, (a) the provisions of this Agreement and each Ancillary Agreement are solely for the benefit of the Parties and are not intended to confer upon any Person except the Parties any rights or remedies hereunder, and (b) there are no Third Party beneficiaries of this Agreement or any Ancillary Agreement and neither this Agreement nor any Ancillary Agreement shall provide any Third Party with any remedy, claim, Liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement or any Ancillary Agreement.

10.5 Notices. All notices, requests, claims, demands or other communications under this Agreement and, to the extent applicable and unless otherwise provided therein, under each of the Ancillary Agreements, shall be in writing and shall be given or made (and except as provided herein, shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service, by certified mail, return receipt requested, or by electronic mail ("e-mail"), so long as confirmation of receipt of such e-mail is requested and received, to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 10.5):



If to Parent, to:

XPO Logistics, Inc.  
Five American Lane  
Greenwich, Connecticut 06831  
Attention: Deputy Chief Financial Officer, Ravi Tulsyan  
E- ravi.tulsyan@xpo.com

mail:

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Adam O. Emmerich  
Viktor Sapezhnikov  
E-mail: AOEmmerich@wlrk.com  
VSapezhnikov@wlrk.com

If to SpinCo (prior to the Effective Time), to:

GXO Logistics, Inc.  
Two American Lane  
Greenwich, Connecticut 06831  
Attention: Chief Legal Officer, Karlis Kirsis  
E-mail: Karlis.Kirsis@gxo.com  
with a copy (which shall not constitute notice), to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Adam O. Emmerich  
Viktor Sapezhnikov  
E-mail: AOEmmerich@wlrk.com  
VSapezhnikov@wlrk.com

If to SpinCo (from and after the Effective Time), to:

GXO Logistics, Inc.  
Two American Lane  
Greenwich, Connecticut 06831  
Attention: Chief Legal Officer, Karlis Kirsis  
E-mail: Karlis.Kirsis@gxo.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019



Attention: Adam O. Emmerich  
Viktor Sapezhnikov  
E-mail: AOEmmerich@wlrk.com  
VSapezhnikov@wlrk.com

A Party may, by notice to the other Party, change the address to which such notices are to be given or made.

10.6 Severability. If any provision of this Agreement or any Ancillary Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof or thereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon such determination, the Parties shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the Parties.

10.7 Force Majeure. No Party shall be deemed in default of this Agreement or, unless otherwise expressly provided therein, any Ancillary Agreement for any delay or failure to fulfill any obligation (other than a payment obligation) hereunder or thereunder so long as and to the extent to which any delay or failure in the fulfillment of such obligation is prevented, frustrated, hindered or delayed as a consequence of circumstances of Force Majeure. In the event of any such excused delay, the time for performance of such obligations (other than a payment obligation) shall be extended for a period equal to the time lost by reason of the delay. A Party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event, (a) provide written notice to the other Party of the nature and extent of any such Force Majeure condition and (b) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement and the Ancillary Agreements, as applicable, as soon as reasonably practicable.

10.8 No Set-Off. Except as expressly set forth in any Ancillary Agreement or as otherwise mutually agreed to in writing by the Parties, neither Party nor any member of such Party's group shall have any right of set-off or other similar rights with respect to (a) any amounts received pursuant to this Agreement or any Ancillary Agreement or (b) any other amounts claimed to be owed to the other Party or any member of its Group arising out of this Agreement or any Ancillary Agreement.

10.9 Expenses. Except as otherwise expressly set forth in this Agreement or any Ancillary Agreement, or as otherwise agreed to in writing by the Parties, all fees, costs and expenses incurred on or prior to the Effective Time in connection with the preparation, execution, delivery and implementation of this Agreement, including the Separation and the Distribution, and any Ancillary Agreement, the Separation, the Form 10, the Plan of Reorganization and the consummation of the transactions contemplated hereby and thereby will be borne by the Party or its applicable Subsidiary incurring such fees, costs or expenses. The Parties agree that certain specified costs and expenses shall be allocated between the Parties as set forth on Schedule 10.9.

10.10 Headings. The article, section and paragraph headings contained in this Agreement and in the Ancillary Agreements are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or any Ancillary Agreement.

10.11 Survival of Covenants. Except as expressly set forth in this Agreement or any Ancillary Agreement, the covenants, representations and warranties contained in this Agreement and each Ancillary Agreement, and Liability for the breach of any obligations contained herein, shall survive the Separation and the Distribution and shall remain in full force and effect.

10.12 Waivers of Default. Waiver by a Party of any default by the other Party of any provision of this Agreement or any Ancillary Agreement shall not be deemed a waiver by the waiving Party of any subsequent or other default, nor shall it prejudice the rights of the other Party. No failure or delay by a Party in exercising any right, power or privilege under this Agreement or any Ancillary Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof prejudice any other or further exercise thereof or the exercise of any other right, power or privilege.

10.13 Specific Performance. Subject to the provisions of Article VII, in the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement or any Ancillary Agreement, the Party or Parties who are, or are to be, thereby aggrieved shall have the right to specific performance and injunctive or other equitable relief in respect of its or their rights under this Agreement or such Ancillary Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The Parties agree that the remedies at law for any breach or threatened breach, including monetary damages, are inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are waived by each of the Parties.

10.14 Amendments. No provisions of this Agreement or any Ancillary Agreement shall be deemed waived, amended, supplemented or modified by a Party, unless such waiver, amendment, supplement or modification is in writing and signed by the authorized representative of the Party against whom it is sought to enforce such waiver, amendment, supplement or modification.

10.15 Interpretation. In this Agreement and in any Ancillary Agreement: (a) words in the singular shall be deemed to include the plural and vice versa and words of one gender shall be deemed to include the other genders as the context requires; (b) the terms “hereof,” “herein,” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement (or the applicable Ancillary Agreement) as a whole (including all of the Schedules, Exhibits and Appendices hereto and thereto) and not to any particular provision of this Agreement (or such Ancillary Agreement); (c) Article, Section, Schedule, Exhibit and Appendix references are to the Articles, Sections, Schedules, Exhibits and Appendices to this Agreement (or the applicable Ancillary Agreement), unless otherwise specified; (d) unless otherwise stated, all references to any agreement (including this Agreement and each Ancillary Agreement) shall be deemed to include the exhibits, schedules and annexes

(including all Schedules, Exhibits and Appendixes) to such agreement; (e) the word “including” and words of similar import when used in this Agreement (or the applicable Ancillary Agreement) shall mean “including, without limitation,” unless otherwise specified; (f) the word “or” shall not be exclusive; (g) unless otherwise specified in a particular case, the word “days” refers to calendar days; (h) references to “business day” shall mean any day other than a Saturday, a Sunday or a day on which banking institutions are generally authorized or required by law to close in the United States or New York, New York; (i) references herein to this Agreement or any other agreement contemplated herein shall be deemed to refer to this Agreement or such other agreement as of the date on which it is executed and as it may be amended, modified or supplemented thereafter, unless otherwise specified; and (j) unless expressly stated to the contrary in this Agreement or in any Ancillary Agreement, all references to “the date hereof,” “the date of this Agreement,” “hereby” and “hereupon” and words of similar import shall all be references to August 1, 2021.

10.16 Limitations of Liability. Notwithstanding anything in this Agreement to the contrary, neither SpinCo or any member of the SpinCo Group, on the one hand, nor Parent or any member of the Parent Group, on the other hand, shall be liable under this Agreement to the other for any indirect, incidental, punitive, exemplary, remote, speculative or similar damages in excess of compensatory damages of the other arising in connection with the transactions contemplated hereby (other than any such Liability with respect to a Third-Party Claim).

10.17 Performance. Parent will cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth in this Agreement or in any Ancillary Agreement to be performed by any member of the Parent Group. SpinCo will cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth in this Agreement or in any Ancillary Agreement to be performed by any member of the SpinCo Group. Each Party (including its permitted successors and assigns) further agrees that it will (a) give timely notice of the terms, conditions and continuing obligations contained in this Agreement and any applicable Ancillary Agreement to all of the other members of its Group and (b) cause all of the other members of its Group not to take any action or fail to take any such action inconsistent with such Party’s obligations under this Agreement, any Ancillary Agreement or the transactions contemplated hereby or thereby.

10.18 Mutual Drafting. This Agreement and the Ancillary Agreements shall be deemed to be the joint work product of the Parties and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable.

10.19 Ancillary Agreements.

(a) In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Transition Services Agreement, the Tax Matters Agreement, the Employee Matters Agreement or the Intellectual Property License Agreement (each, a “Specified Ancillary Agreement”), the terms of the applicable Specified Ancillary Agreement, shall control with respect to the subject matter addressed by such Specified Ancillary Agreement to the extent of such conflict or inconsistency.

(b) In the event of any conflict or inconsistency between the terms of this Agreement or any Specified Ancillary Agreement, on the one hand, and any Transfer Document, on the other hand, including with respect to the allocation of Assets and Liabilities as among the Parties or the members of their respective Groups, this Agreement or such Specified Ancillary Agreement shall control.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties have caused this Separation and Distribution Agreement to be executed by their duly authorized representatives as of the date first written above.

XPO LOGISTICS, INC.

By: /s/ Ravi Tulsyan  
Name: Ravi Tulsyan  
Title: Deputy Chief Financial Officer & Treasurer

GXO LOGISTICS, INC.

By: /s/ Karlis P. Kirsis  
Name: Karlis P. Kirsis  
Title: Chief Legal Officer

*[Signature Page to Separation and Distribution Agreement]*

TRANSITION SERVICES AGREEMENT

BY AND BETWEEN

XPO LOGISTICS, INC.

AND

GXO LOGISTICS, INC.

DATED AS OF AUGUST 1, 2021



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## TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (this “Agreement”) is entered into as of August 1, 2021, by and between XPO Logistics, Inc., a Delaware corporation (“Parent”), and GXO Logistics, Inc., a Delaware corporation (“SpinCo”).

### R E C I T A L S:

WHEREAS, the board of directors of Parent (the “Parent Board”) has determined that it is in the best interests of Parent and its stockholders to create a new publicly traded company that shall operate the SpinCo Business;

WHEREAS, in furtherance of the foregoing, the Parent Board has determined that it is appropriate and desirable to separate the SpinCo Business from the Parent Business (the “Separation”) and, following the Separation, make a distribution, on a *pro rata* basis, to holders of Parent Shares on the Record Date of all the outstanding SpinCo Shares owned by Parent (the “Distribution”);

WHEREAS, SpinCo has been incorporated solely for these purposes and has not engaged in activities, except in connection with the Separation and the Distribution;

WHEREAS, SpinCo and Parent have prepared, and SpinCo has filed with the SEC, the Form 10, which includes the Information Statement, and which sets forth disclosures concerning SpinCo, the Separation and the Distribution;

WHEREAS, to effectuate the Separation and the Distribution, Parent and SpinCo have entered into a Separation and Distribution Agreement, dated as of August 1, 2021 (the “Separation and Distribution Agreement”);

WHEREAS, to facilitate and provide for an orderly transition in connection with the Separation and the Distribution, the Parties desire to enter into this Agreement to set forth the terms and conditions pursuant to which each of the Parties shall provide Services to the other Party for a transitional period; and

WHEREAS, the Parties acknowledge that this Agreement, the Separation and Distribution Agreement, and the other Ancillary Agreements represent the integrated agreement of Parent and SpinCo relating to the Separation and the Distribution, are being entered together, and would not have been entered independently.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I  
DEFINITIONS

Section 1.01 Definitions. For purposes of this Agreement (including the Recitals hereof), the following terms have the following meanings, and capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Separation and Distribution Agreement:

“Action” has the meaning in the Separation and Distribution Agreement.

“Additional Services” has the meaning set forth in Section 2.01(b).

“Affiliate” has the meaning set forth in the Separation and Distribution Agreement.

“Agreement” has the meaning set forth in the Preamble.

“Ancillary Agreements” has the meaning set forth in the Separation and Distribution Agreement.

“Charge” and “Charges” have the meaning set forth in Section 2.03.

“Confidential Information” means all Information that is either confidential or proprietary.

“Contract Manager” has the meaning set forth in Section 2.08.

“Dispute” has the meaning set forth in Section 8.16(a).

“Distribution” has the meaning set forth in the Recitals.

“Distribution Date” means the date of the consummation of the Distribution, which shall be determined by the Parent Board in its sole and absolute discretion.

“Effective Time” means 12:01 a.m., New York City time, on the Distribution Date.

“e-mail” has the meaning set forth in Section 8.10

“Force Majeure” means, with respect to a Party, an event beyond the reasonable control of such Party (or any Person acting on its behalf), which event (a) does not arise or result from the fault or negligence of such Party (or any Person acting on its behalf) and (b) by its nature would not reasonably have been foreseen by such Party (or such Person), or, if it would reasonably have been foreseen, was unavoidable, and includes acts of God, acts of civil or military authority, embargoes, epidemics, pandemics, war, riots, insurrections, fires, explosions, earthquakes, floods, unusually severe weather conditions, labor problems or unavailability of

parts, or, in the case of computer systems, any significant and prolonged failure in electrical or air conditioning equipment. Notwithstanding the foregoing, (i) the receipt by a Party of an unsolicited takeover offer or other acquisition proposal, even if unforeseen or unavoidable, and such Party's response thereto and (ii) the inability to obtain sufficient funds needed for the performance of a Party's obligation hereunder, shall not be deemed an event of Force Majeure.

"Governmental Authority" has the meaning in the Separation and Distribution Agreement.

"Information" has the meaning in the Separation and Distribution Agreement.

"Interest Payment" has the meaning set forth in Section 4.02.

"Law" has the meaning in the Separation and Distribution Agreement.

"Level of Service" has the meaning set forth in Section 2.02(c).

"Liabilities" has the meaning in the Separation and Distribution Agreement.

"Non-Income Taxes" has the meaning set forth in Section 4.03(a).

"Parent" has the meaning set forth in the Preamble.

"Parent Board" has the meaning set forth in the Recitals.

"Parent Business" has the meaning set forth in the Separation and Distribution Agreement.

"Parent Shares" means the shares of common stock, par value \$0.001 per share, of Parent.

"Party" or "Parties" means the parties to this Agreement.

"Person" has the meaning in the Separation and Distribution Agreement.

"Project Work" has the meaning set forth in Section 2.01(c).

"Provider" means, with respect to any Service, the Party providing such Service.

"Provider Indemnitees" has the meaning set forth in Section 7.03.

"Recipient" means, with respect to any Service, the Party receiving such Service.

"Recipient Indemnitees" has the meaning set forth in Section 7.04.

“Record Date” means the close of business on the date to be determined by the Parent Board as the record date for determining holders of Parent Shares entitled to receive SpinCo Shares pursuant to the Distribution.

“Representatives” has the meaning in the Separation and Distribution Agreement.

“Separation” has the meaning set forth in the Recitals.

“Separation and Distribution Agreement” has the meaning set forth in the Recitals.

“Service Baseline Period” has the meaning set forth in Section 2.02(c).

“Service Period” means, with respect to any Service, the period commencing on the Distribution Date and ending on the earliest to occur of (a) the date that a Party terminates the provision of such Service pursuant to Section 5.02 and (b) the earlier of the date, if any, specified for termination of such Service on the Schedules hereto or twelve months from the Effective Date.

“Services” has the meaning set forth in Section 2.01(a).

“SpinCo” has the meaning set forth in the Preamble.

“SpinCo Business” has the meaning set forth in the Separation and Distribution Agreement.

“SpinCo Change of Control” means the first of the following events, if any, to occur following the Distribution Date:

- (i) the acquisition by any person, entity or “group” (as defined in Section 13(d) of the Exchange Act) of beneficial ownership of fifty percent (50%) or more of the combined voting power of SpinCo’s then-outstanding voting securities, other than any such acquisition by SpinCo, any of its Subsidiaries, any employee benefit plan of SpinCo or any of its Subsidiaries, or any Affiliates of any of the foregoing;
- (ii) the merger, consolidation or other similar transaction involving SpinCo, as a result of which persons who were stockholders of SpinCo immediately prior to such merger, consolidation, or other similar transaction do not, immediately thereafter, own, directly or indirectly, more than fifty percent (50%) of the combined voting power entitled to vote generally in the election of directors of the merged or consolidated company; or
- (iii) the sale, transfer or other disposition of all or substantially all of the assets of SpinCo and its Subsidiaries.

“SpinCo Shares” means the shares of common stock, par value \$0.01 per share, of SpinCo.

“Subsidiary” has the meaning in the Separation and Distribution Agreement.

“Tax” has the meaning in the Tax Matters Agreement.

“Tax Matters Agreement” has the meaning set forth in the Separation and Distribution Agreement.

“Taxing Authority” has the meaning in the Tax Matters Agreement.

“Termination Charges” shall mean, with respect to the termination of any Service pursuant to Section 4.02(a)(i), the sum of (a) any and all costs, fees and expenses (other than any severance or retention costs) payable by Provider of such Service to a Third Party principally because of the early termination of such Service; provided, however, that Provider shall use commercially reasonable efforts to minimize any costs, fees or expenses payable to any Third Party in connection with such early termination of such Service and credit any such reductions against the Termination Charges payable by Recipient; and (b) any additional severance and retention costs, if any, because of the early termination of such Service that Provider of such terminated Service incurs to employees who had been retained primarily to provide such terminated Service (it being agreed that the costs set forth in this clause (b) shall only be the amount, if any, in excess of the severance and retention costs that such Provider would have paid to such employees if the Service had been provided for the full period during which such Service would have been provided hereunder but for such early termination).

“Third Party” means any Person other than the Parties or any of their respective Affiliates.

“Third-Party Claim” means any Action commenced by any Third Party against any Party or any of its Affiliates.

## ARTICLE II SERVICES

### Section 2.01 Services.

(a) Commencing as of the Effective Time, Provider agrees to provide, or to cause one or more of its Subsidiaries to provide, to Recipient, or any Subsidiary of Recipient, the applicable services (the “Services”) set forth on the Schedules hereto.

(b) After the date of this Agreement, if (i) SpinCo identifies a service that Parent provided to SpinCo during the last sixty (60) days prior to the Distribution Date that SpinCo reasonably needs in order for the SpinCo Business to continue to operate in substantially



the same manner in which the SpinCo Business operated during the last sixty (60) days prior to the Distribution Date, and such service was not included on the Schedules hereto (other than because the Parties agreed such service shall not be provided), or (ii) Parent identifies a service that SpinCo provided to Parent during the last sixty (60) days prior to the Distribution Date that Parent reasonably needs in order for the Parent Business to continue to operate in substantially the same manner in which the Parent Business operated during the last sixty (60) days prior to the Distribution Date, and such service was not included on the Schedules hereto (other than because the Parties agreed such service shall not be provided) then, in each case, if such Party provides written notice to the other Party within sixty (60) days after the Distribution Date requesting such additional services, then the Party receiving such notice shall use its commercially reasonable efforts to provide such requested additional services (such requested additional services, the “Additional Services”); provided, however, that neither Party shall be obligated to provide any Additional Service if it does not, in its commercially reasonable judgment, have adequate resources to provide such Additional Service or if the provision of such Additional Service would significantly disrupt the operation of such Party’s or its Subsidiaries’ businesses; and provided, further, that a Party shall not be required to provide any Additional Services if the Parties, acting reasonably and in good faith, are unable to reach agreement on the terms thereof (including with respect to Charges therefor). In connection with any request for Additional Services in accordance with this Section 2.01(b), the Parties shall negotiate in good faith the terms of a supplement to the applicable Schedule, which terms shall be consistent with the terms of, and the pricing methodology used for, similar Services provided under this Agreement. Upon the mutual written agreement of the Parties, the supplement to the applicable Schedule shall describe in reasonable detail the nature, scope, Service Period(s), termination provisions and other terms applicable to such Additional Services in a manner similar to that in which the Services are described in the existing Schedules. Each supplement to the applicable Schedule, as agreed to in writing by the Parties, shall be deemed part of this Agreement as of the date of such agreement and the Additional Services set forth therein shall be deemed “Services” provided under this Agreement, in each case subject to the terms and conditions of this Agreement.

(c) After the date of this Agreement, if SpinCo identifies in good faith that additional work project support or resources are reasonably required to transition off the Services, including with respect to any migration, and such service was not included on the Schedules hereto (other than because the Parties agreed such service shall not be provided) and does qualify as “Additional Services” pursuant to Section 2.01(b), then, if SpinCo provides written notice to Parent during the Term hereof requesting such additional work project support or resources, Parent shall use its commercially reasonable efforts to provide such requested additional work project support or resources (such requested additional work project support or resources, the “Project Work”); provided, however, that Parent shall be obligated to provide any

Project Work if it does not, in its commercially reasonable judgment, have adequate resources to provide such Project Work or if the provision of such Project Work would significantly disrupt the operation of Parent's or its Subsidiaries' businesses; and provided, further, that Parent shall not be required to provide any Project Work if the Parties, acting reasonably and in good faith, are unable to reach agreement on the terms thereof (it being agreed that the Charges for such Project Work that is to be performed by employees of Parent shall be billed at the rate set forth in the Schedules hereto under the heading "Project Work"). Upon the mutual written agreement of the Parties, the supplement to the applicable Schedule shall describe in reasonable detail the nature, scope, Service Period(s), termination provisions and other terms applicable to such Project Work in a manner similar to that in which the Services are described in the existing Schedules. Each supplement to the applicable Schedule, as agreed to in writing by the Parties, shall be deemed part of this Agreement as of the date of such agreement and the Project Work set forth therein shall be deemed "Services" provided under this Agreement, in each case subject to the terms and conditions of this Agreement.

(d) It is not the intent of Provider to render, nor of Recipient to receive from Provider, professional advice or opinions, whether with regard to Tax, generally accepted accounting principles, legal, treasury, finance, employment or other business and financial matters, technical advice, whether with regard to information technology or other matters; Recipient shall not rely on, or construe, any Service rendered by or on behalf of Provider as such professional advice or opinions or technical advice; and Recipient shall seek all third-party professional advice and opinions or technical advice as it may desire or need from persons other than Provider or its Affiliates.

#### Section 2.02 Performance of Services.

(a) Subject to Section 2.05, Provider shall perform, or shall cause one or more of its Subsidiaries to perform (directly, through one or more of its Subsidiaries, or through a Third Party service provider in accordance herewith), all Services to be provided in a manner that is substantially similar in all material respects to the analogous services provided by or on behalf of Provider or any of its Subsidiaries to its applicable functional group or Subsidiary during the twelve (12)-month period ending on the last day of Provider's last fiscal quarter completed on or prior to the date of the Distribution Date (the "Service Baseline Period") and that in any event, conforms in all material respects with the terms of the Schedules hereto.

(b) Nothing in this Agreement shall require Provider to perform or cause to be performed any Service to the extent that the manner of such performance would constitute a violation of any applicable Law or any existing contract or agreement with a Third Party. If Provider is or becomes aware that any such violation is reasonably likely, Provider shall use commercially reasonable efforts to promptly advise Recipient of such potential violation, and Provider and Recipient will mutually seek an alternative that addresses such potential violation.

The Parties agree to cooperate in good faith and use commercially reasonable efforts to obtain any necessary Third Party consents required under any existing contract or agreement with a Third Party to allow Provider to perform, or cause to be performed, all Services to be provided hereunder in accordance with the standards set forth in this Section 2.02. Recipient shall reimburse Provider for all reasonable out-of-pocket costs and expenses (if any) incurred by Provider or any of its Subsidiaries in connection with obtaining any such Third Party consent that is required to allow Provider to perform or cause to be performed such Services. If, with respect to a Service, the Parties, despite the use of such commercially reasonable efforts, are unable to obtain a required Third Party consent, or the performance of such Service by Provider would constitute a violation of any applicable Law, Provider shall have no obligation whatsoever to perform or cause to be performed such Service.

(c) Unless otherwise provided with respect to a specific Service on the Schedules hereto, Provider shall not be obligated to perform or cause to be performed any Service in a manner that is more burdensome in any material respect (with respect to service quality or quantity) than analogous services provided by Provider or its applicable functional group or Subsidiary (collectively referred to as the “Level of Service”) during the Service Baseline Period. If Recipient requests that Provider perform or cause to be performed any Service that exceeds the Level of Service during the Service Baseline Period, then the Parties shall cooperate and negotiate in good faith to determine whether Provider will be required to provide such requested increased Level of Service. If the Parties determine that Provider shall provide the requested increased Level of Service, then such increased Level of Service shall be documented in a written agreement signed by the Parties. Each amended section of the Schedules hereto, as agreed in writing by the Parties, shall be deemed part of this Agreement as of the date of such written agreement, and the Level of Service increases set forth in such written agreement shall be deemed a part of the “Services” provided under this Agreement, in each case subject to the terms and conditions of this Agreement.

(d) (i) Neither Provider nor any of its Subsidiaries shall be required to perform or cause to be performed any of the Services for the benefit of any Third Party or any other Person other than Recipient and its Subsidiaries, and (ii) EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.04, RECIPIENT ACKNOWLEDGES AND AGREES THAT ALL SERVICES ARE PROVIDED ON AN “AS-IS” BASIS, THAT RECIPIENT ASSUMES ALL RISK AND LIABILITY ARISING FROM OR RELATING TO ITS USE OF AND RELIANCE UPON THE SERVICES, AND THAT PROVIDER MAKES NO REPRESENTATIONS OR GRANTS ANY WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, WITH RESPECT TO THE SERVICES. PROVIDER SPECIFICALLY DISCLAIMS ANY WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF QUALITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE

OR THE NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.

(e) Each Party shall be responsible for its own compliance with any and all Laws applicable to its performance under this Agreement. No Party shall knowingly take any action in violation of any such applicable Law that results in Liability being imposed on the other Party.

Section 2.03 Charges for Services. Unless otherwise provided with respect to a specific Service on the Schedules hereto, Recipient shall pay Provider a fee (either one (1)-time or recurring) for such Services (or category of Services, as applicable) (each fee, a “Charge” and, collectively, “Charges”), which Charges shall be set forth on the applicable Schedules hereto, or if not so set forth, then, unless otherwise provided with respect to a specific Service on the Schedule hereto, based upon the cost of providing such Services. During the term of this Agreement, the amount of a Charge for any Service may be modified to the extent of (a) any adjustments mutually agreed by the Parties, (b) any adjustments due to a change in Level of Service requested by Recipient and agreed by Provider, and (c) any adjustment in the rates or charges imposed by any Third-Party service provider that is providing Services; provided that Provider will use commercially reasonable efforts to notify Recipient of any such material change in rates as promptly as practicable. Together with any invoice for Charges, Provider shall provide Recipient with reasonable documentation, including any additional documentation reasonably requested by Recipient to the extent that such documentation is in Provider’s or its Subsidiaries’ possession or control, to support the calculation of such Charges.

Section 2.04 Reimbursement for Out-of-Pocket Costs and Expenses. In addition to any increase to a Charge contemplated by Section 2.02(c) and Section 2.03, Recipient shall reimburse Provider for reasonable out-of-pocket costs and expenses incurred by Provider or any of its Subsidiaries in connection with providing the Services (including reasonable travel-related expenses) to the extent that such costs and expenses are not reflected in the Charges for such Services; provided, however, that any such cost or expense in excess of ten thousand dollars (\$10,000.00) that is not consistent with historical practice between the Parties for any individual Service (including business travel and related expenses) shall require advance written approval of Recipient; provided, further, that if Recipient does not provide such advance written approval and the incurrence of such cost or expense is reasonably necessary for Provider to provide such Service in accordance with the standards set forth in this Agreement, Provider shall not be required to perform such Service. Any authorized travel-related expenses incurred in performing the Services shall be charged to Recipient in accordance with Provider’s then-applicable business travel policies.

Section 2.05 Changes in the Performance of Services.

(a) Notwithstanding the foregoing, Provider may make changes from time to time in the manner of performing the Services if Provider is making similar changes in performing analogous services for itself and if Provider furnishes to Recipient reasonable prior written notice (in content and timing) of such changes; provided, that if such change shall materially adversely affect the timeliness or quality of, or the Charges for, the applicable Service, the Parties shall cooperate in good faith to agree on modifications to such Services as are commercially reasonable in consideration of the circumstances.

(b) Subject to the limitations on Additional Services or Project Work set forth in Section 2.02(b), Recipient may request a change to a Service by submitting a request in writing to Provider describing the proposed change in reasonable detail. Provider shall respond to the request as soon as reasonably practicable, and the Parties shall use commercially reasonable efforts to agree to such request, unless the change requested would adversely impact the cost, liability, or risk associated with providing or receiving the applicable Service, or cause any other disruption or adverse impact on the business or operations of Recipient or its Affiliates. Each agreed upon change shall be documented by an amendment in writing to the applicable Schedule.

Section 2.06 Transitional Nature of Services. The Parties acknowledge the transitional nature of the Services and agree to cooperate in good faith and to use commercially reasonable efforts to avoid a disruption in the transition of the Services from Provider to Recipient (or its designee). Recipient agrees to use commercially reasonable efforts to reduce or eliminate its and its Affiliates' dependency on each Service to the extent and as soon as is reasonably practicable.

Section 2.07 Subcontracting. Provider may hire or engage one or more Third Parties to perform any or all of its obligations under this Agreement; provided, however, that (a) Provider shall use substantially the same degree of care (but at least reasonable care) in selecting each such Third Party as it would if such Third Party was being retained to provide similar services to Provider and (b) Provider shall in all cases remain responsible (as primary obligor) for all of its obligations under this Agreement with respect to the scope of the Services, the performance standard for Services set forth in Sections 2.02(a), 2.02(b) and 2.02(c) and the content of the Services provided to Recipient. Provider shall be liable for any breach of its obligations under this Agreement by any Third-Party service provider engaged by Provider. Subject to the confidentiality provisions set forth in Article V, Provider shall, and shall cause its Affiliates to, provide, upon fifteen (15) business days' prior written notice, any Information within Provider's or its Affiliates' control that Recipient reasonably requests in connection with any Services being provided to Recipient by a Third Party, including any applicable invoices, agreements documenting the arrangements between such Third Party and Provider and other supporting documentation; provided, further, that Recipient may make no more than one (1) such request per Third Party during any calendar quarter.

Section 2.08 Contract Manager. Each Party shall appoint an individual to act as its primary point of operational contact for the administration and operation of this Agreement (each, a “Contract Manager”) who shall have overall responsibility for coordinating all activities undertaken by such Party hereunder, for acting as a day-to-day contact with the other Party, and for making available to the other Party the data, facilities, resources and other support services required for the performance of the services in accordance with the terms of this Agreement; provided that for each Service, the Contract Manager shall be permitted to delegate the foregoing responsibilities for such Service to an individual identified on the Schedules, and such representative shall be deemed to be the Contract Manager with respect to such Service. The initial Contract Managers for the Parties are set forth on the applicable Schedules. The Parties may change their respective Contract Managers from time to time upon notice to the other Party in accordance herewith.

### ARTICLE III OTHER ARRANGEMENTS

#### Section 3.01 Access.

(a) Upon reasonable advance written notice, SpinCo shall, and shall cause its Subsidiaries to, allow Parent and its Subsidiaries and their respective Representatives reasonable access to the facilities of SpinCo and its Subsidiaries that is necessary for Parent and its Subsidiaries to fulfill their obligations under this Agreement. In addition to the foregoing right of access, SpinCo shall, and shall cause its Subsidiaries to, afford Parent, its Subsidiaries and their respective Representatives, upon reasonable advance written notice, reasonable access during normal business hours to the facilities, Information, systems, infrastructure and personnel of SpinCo and its Subsidiaries as reasonably necessary for Parent to verify the adequacy of internal controls over information technology, reporting of financial data and related processes employed in connection with the Services being provided by SpinCo or its Subsidiaries, including in connection with verifying compliance with Section 404 of the Sarbanes-Oxley Act of 2002; provided that (i) such access shall not unreasonably interfere with any of the business or operations of SpinCo or any of its Subsidiaries and (ii) in the event that SpinCo determines that providing such access could violate any applicable Law or agreement or waive any attorney-client privilege, then the Parties shall use commercially reasonable efforts to permit such access in a manner that avoids any such consequence. Parent agrees that all of its and its Subsidiaries’ employees shall, and that it shall use commercially reasonable efforts to cause its Representatives’ employees to, when on the property of SpinCo or its Subsidiaries, or when given access to any facilities, Information, systems, infrastructure or personnel of SpinCo or its Subsidiaries, conform to the policies and procedures of SpinCo and its Subsidiaries, as applicable, concerning health, safety, conduct and security which are made known or provided to Parent from time to time.

(b) Upon reasonable advance written notice, Parent shall, and shall cause its Subsidiaries to, allow SpinCo and its Subsidiaries and their respective Representatives reasonable access to the facilities of Parent and its Subsidiaries that is necessary for SpinCo and its Subsidiaries to fulfill their obligations under this Agreement. In addition to the foregoing right of access, Parent shall, and shall cause its Subsidiaries to, afford SpinCo, its Subsidiaries and their respective Representatives, upon reasonable advance written notice, reasonable access during normal business hours to the facilities, Information, systems, infrastructure and personnel of Parent and its Subsidiaries as reasonably necessary for SpinCo to verify the adequacy of internal controls over information technology, reporting of financial data and related processes employed in connection with the Services being provided by Parent or its Subsidiaries, including in connection with verifying compliance with Section 404 of the Sarbanes-Oxley Act of 2002; provided that (i) such access shall not unreasonably interfere with any of the business or operations of Parent or any of its Subsidiaries and (ii) in the event that Parent determines that providing such access could violate any applicable Law or agreement or waive any attorney-client privilege, then the Parties shall use commercially reasonable efforts to permit such access in a manner that avoids any such consequence. SpinCo agrees that all of its and its Subsidiaries' employees shall, and that it shall use commercially reasonable efforts to cause its Representatives' employees to, when on the property of Parent or its Subsidiaries, or when given access to any facilities, Information, systems, infrastructure or personnel of Parent or its Subsidiaries, conform to the policies and procedures of Parent and its Subsidiaries, as applicable, concerning health, safety, conduct and security which are made known or provided to SpinCo from time to time.

#### ARTICLE IV BILLING; TAXES

Section 4.01. Procedure. Recipient shall pay, or cause to be paid to, Provider the fees for the Services as set forth in this Agreement, including, as applicable, on the Schedules, and, without duplication, all other costs incurred by Provider as set forth in this Agreement. Amounts payable pursuant to this Agreement shall be paid by wire transfer or Automated Clearing House payment (or such other method of payment as may be agreed between the Parties from time to time) to Provider (as directed by Provider), which amounts shall be due (a) in the case of recurring fees, on a quarterly basis on or prior to the first (1st) day of the calendar quarter for which the applicable Service is to be provided, and (b) in the case of all other amounts, within thirty (30) days of Recipient's receipt of each invoice for Charges, including reasonable documentation pursuant to Section 2.03. All amounts due and payable hereunder shall be paid in U.S. dollars. In the event of any billing dispute, Recipient shall promptly pay any undisputed amount.

Section 4.01 Late Payments. Charges not paid when due (including any undisputed amounts) pursuant to this Agreement (and any amounts billed or otherwise invoiced or demanded and properly payable that are not paid within thirty (30) days of the receipt of such bill, invoice or other demand) shall accrue interest at a rate per annum equal to the Prime Rate plus two percent (2%) (the “Interest Payment”).

Section 4.02 Taxes.

(a) Without limiting any provisions of this Agreement, Recipient shall be responsible for and shall pay any and all excise, sales, use, value-added, goods and services, transfer, stamp, documentary, filing, recordation and other similar Taxes, in each case, imposed or, payable with respect to, or assessed as a result of the provision of Services by Provider or any fees or charges (including any Charges) payable by Recipient pursuant to this Agreement (collectively, “Non-Income Taxes”), but excluding any Taxes measured by reference to net income. The Party required to account for such Non-Income Tax shall provide to the other Party appropriate Tax invoices and, if applicable, evidence of the remittance of the amount of such Non-Income Tax to the relevant Governmental Authority. The Parties shall use commercially reasonable efforts to minimize Non-Income Taxes and to obtain any refund, return, rebate or the like of any Non-Income Tax, including by filing any necessary exemption or other similar forms, certificates or other similar documents, in each case, to the extent legally permissible.

(b) Notwithstanding anything to the contrary set forth in this Agreement, Recipient shall be entitled to deduct and withhold from any payment to Provider any such Taxes that Recipient is required by any applicable Law to withhold. To the extent any amounts are so deducted and withheld, Recipient shall timely pay when due such deducted and withheld amounts to the proper Governmental Authority and promptly provide to Provider evidence of such payment to such Governmental Authority. The Parties shall use commercially reasonable efforts to minimize withholding Taxes to the extent legally permissible.

(c) If Provider (i) receives any refund (whether by payment, offset, credit or otherwise) or (ii) utilizes any overpayment, in each case, of Taxes that were borne by Recipient pursuant to this Agreement, then Provider shall promptly pay, or cause to be paid, to Recipient an amount equal to such refund or overpayment, net of any additional Taxes payable by Provider as a result of the receipt of such refund or such overpayment.

Section 4.03 No Set-Off. Except as mutually agreed in writing by the Parties, no Party nor any of its Affiliates shall have any right of set-off or other similar rights with respect to (a) any amounts received pursuant to this Agreement or (b) any other amounts claimed to be owed to the other Party or any of its Subsidiaries arising out of this Agreement.

Section 4.04 Audit Rights. Subject to the confidentiality provisions of this Agreement, each Party shall, and shall cause their respective Affiliates to, provide, upon ten (10) days’ prior



written notice from the other Party, any Information within such Party's or its Affiliates' possession that the requesting Party reasonably requests in connection with any Services being provided to such requesting Party by the other Party or a Third Party service provider, including any applicable invoices or other supporting documentation, and in the case of a Third Party service provider, agreements documenting the arrangements between such Third Party service provider and Provider; provided, however, that each Party shall make no more than one such request during any calendar month. The requesting Party shall reimburse the other Party for any reasonable, documented, out-of-pocket costs incurred in connection with such other Party providing such information.

## ARTICLE V TERM AND TERMINATION

Section 5.01 Term. This Agreement shall commence at the Effective Time and shall terminate upon the earliest to occur of (a) the close of business on the last day of the last Service Period with respect to any Service either Party is obligated to provide to the other Party in accordance with the terms of this Agreement and the Schedules hereto and (b) the mutual written agreement of the Parties to terminate this Agreement in its entirety. Unless otherwise terminated pursuant to Section 4.02, this Agreement shall terminate with respect to each Service as of the close of business on the last day of the Service Period for such Service; provided that Recipient may request to extend any Service Period for any Service to the extent reasonably necessary, in order to continue the operations of the Recipient in a manner consistent with its operations during the Service Baseline Period, by providing written notice to the Provider, specifying the requested length of such extension, no later than fifteen (15) days prior to the scheduled end of the Service Period with respect to such Service. Upon receipt of such extension request, the Provider shall continue to perform such Service for the extended period as set out in such extension request on the same terms and conditions as are provided on the applicable Schedule and this Agreement; provided, however, that the cost set forth in the applicable Schedule for the applicable Service shall be increased by twenty percent (20%) with respect to any such Service each three (3) month period occurring after the initial Service Period. Without the prior agreement of the Provider, in no event shall the Recipient be entitled to extend a service for a period that is more than three (3) months after the end of the initial Service Period set forth in the applicable Schedule.

### Section 5.02 Early Termination.

(a) Without prejudice to Recipient's rights with respect to Force Majeure, Recipient may from time to time terminate this Agreement with respect to the entirety of any Service (but not any portion thereof) (i) for any reason or no reason, upon the giving of at least fifteen (15) days' prior written notice to Provider; provided, however, that such termination (x) may only be effective as of the last day of a calendar month and (y) shall be subject to the

obligation to pay any applicable Termination Charges pursuant to Section 5.04, or (ii) if Provider has failed to perform any of its material obligations under this Agreement with respect to such Service, and such failure shall continue to be uncured by Provider for a period of at least thirty (30) days after receipt by Provider of written notice of such failure from Recipient; provided, however, that (i) such termination may only be effective as of the last day of a month and (ii) Recipient shall not be entitled to terminate this Agreement with respect to the applicable Service if, as of the end of such period, there remains a good-faith Dispute between the Parties (undertaken in accordance with the terms of Section 7.16) as to whether Provider has cured the applicable breach.

(b) Provider may terminate this Agreement with respect to the entirety or portion of any Service at any time upon prior written notice to Recipient, if Recipient has failed to perform any of its material obligations under this Agreement with respect to such Service, including making payment of Charges for such Service when due, and such failure shall continue to be uncured by Recipient for a period of at least thirty (30) days after receipt by Recipient of a written notice of such failure from Provider; provided, however, that Provider shall not be entitled to terminate this Agreement with respect to the applicable Service if, as of the end of such period, there remains a good-faith Dispute between the Parties (undertaken in accordance with the terms of Section 7.16) as to whether Recipient has cured the applicable breach.

(c) Parent may terminate this Agreement with respect to all Services provided by Parent if there is a SpinCo Change of Control.

(d) The Schedules hereto shall be updated to reflect any terminated Service.

Section 5.03 Interdependencies. The Parties acknowledge and agree that (a) there may be interdependencies among the Services being provided under this Agreement; (b) upon the request of either Party, the Parties shall cooperate and act in good faith to determine whether (i) any such interdependencies exist with respect to the particular Service that Recipient is seeking to terminate pursuant to Section 5.02, and (ii) in the case of such termination, Provider's ability to provide a particular Service in accordance with this Agreement would be materially and adversely affected by such termination of another Service; and (c) in the event that the Parties have determined that such interdependencies exist and such termination would materially and adversely affect Provider's ability to provide a particular Service in accordance with this Agreement, the Parties shall (i) negotiate in good faith to amend the Schedules hereto with respect to such impacted Service prior to such termination, which amendment shall be consistent with the terms of comparable Services, and (ii) if after such negotiation, the Parties are unable to agree on such amendment, Provider's obligation to provide such Service shall terminate automatically with such termination.

Section 5.04 Effect of Termination. Upon the termination of any Service pursuant to this Agreement, Provider shall have no further obligation to provide the terminated Service, and Recipient shall have no obligation to pay any future Charges relating to such Service; provided, however, that Recipient shall remain obligated to Provider for (a) the Charges owed and payable in respect of Services provided prior to the effective date of termination for such Service and (b) any applicable Termination Charges (which Termination Charges shall be payable only in the event that Recipient terminates any Service pursuant to Section 5.02(a)(i)). In connection with the termination of any Service, the provisions of this Agreement not relating solely to such terminated Service shall survive any such termination, and in connection with a termination of this Agreement, Article I, this Article V, Article VII and Article VIII, all confidentiality obligations under this Agreement and Liability for all due and unpaid Charges and Termination Charges shall continue to survive indefinitely.

Section 5.05 Information Transmission. Provider, on behalf of itself and its Subsidiaries, shall use commercially reasonable efforts to provide or make available, or cause to be provided or made available, to Recipient, in accordance with Section 6.1 of the Separation and Distribution Agreement and to the extent permissible, any Information received or computed by Provider for the benefit of Recipient concerning the relevant Service during the Service Period as reasonably requested by Recipient; provided, however, that, except as otherwise agreed in writing by the Parties, (a) Provider shall not have any obligation to provide, or cause to be provided, Information in any nonstandard format, (b) Provider and its Subsidiaries shall be reimbursed for their reasonable costs in accordance with Section 6.3 of the Separation and Distribution Agreement for creating, gathering, copying, transporting and otherwise providing such Information and (c) Provider shall use commercially reasonable efforts to maintain any such Information in accordance with Section 6.4 of the Separation and Distribution Agreement.

#### ARTICLE VI CONFIDENTIALITY; PROTECTIVE ARRANGEMENTS

Section 6.01 Parent and SpinCo Obligations. Subject to Section 6.04, until the five (5)-year anniversary of the date of the termination of this Agreement in its entirety, each of Parent and SpinCo, on behalf of itself and each of its Subsidiaries, agrees to hold, and to cause its respective Representatives to hold, in strict confidence, with at least the same degree of care that applies to Parent's Confidential Information pursuant to policies in effect as of the Effective Time, all Confidential Information concerning the other Party or its Subsidiaries or their respective businesses that is either in its possession (including Confidential Information in its possession prior to the date hereof) or furnished by such other Party or such other Party's Subsidiaries or their respective Representatives at any time pursuant to this Agreement, and shall not use any such Confidential Information other than for such purposes as may be expressly permitted hereunder, except, in each case, to the extent that such Confidential Information (a) is

in the public domain or is generally available to the public, other than as a result of a disclosure by such Party or any of its Subsidiaries or any of their respective Representatives in violation of this Agreement; (b) is lawfully acquired from other sources by such Party or any of its Subsidiaries, which sources are not themselves known by such Party or any of its Subsidiaries to be bound by a confidentiality obligation or other contractual, legal or fiduciary obligation of confidentiality with respect to such Confidential Information; or (c) is independently developed or generated without reference to or use of the Confidential Information of the other Party or any of its Subsidiaries. If any Confidential Information of a Party or any of its Subsidiaries is disclosed to the other Party or any of its Subsidiaries in connection with providing the Services, then such disclosed Confidential Information shall be used only as required to perform such Services.

Section 6.02 No Release; Return or Destruction. Each Party agrees (a) not to release or disclose, or permit to be released or disclosed, any Confidential Information of the other Party pursuant to Section 6.01 to any other Person, except its Representatives who need to know such Confidential Information in their capacities as such (who shall be advised of their obligations hereunder with respect to such Confidential Information) and except in compliance with Section 6.04, and (b) to use commercially reasonable efforts to maintain such Confidential Information in accordance with Section 6.4 of the Separation and Distribution Agreement. Without limiting the foregoing, when any such Confidential Information is no longer needed for the purposes contemplated by the Separation and Distribution Agreement, this Agreement or any other Ancillary Agreements, each Party will promptly after request of the other Party either return to the other Party all such Confidential Information in a tangible form (including all copies thereof and all notes, extracts or summaries based thereon) or notify the other Party in writing that it has destroyed such information (and such copies thereof and such notes, extracts or summaries based thereon); provided that the Parties may retain electronic back-up versions of such Confidential Information maintained on routine computer system back-up tapes, disks or other back-up storage devices; and provided, further, that any such retained back-up information shall remain subject to the confidentiality provisions of this Agreement.

Section 6.03 Privacy and Data Protection Laws. Each Party shall comply with all applicable state, federal and foreign privacy and data protection Laws that are or that may in the future be applicable to the provision of the Services under this Agreement.

Section 6.04 Protective Arrangements. In the event that a Party or any of its Subsidiaries either determines on the advice of its counsel that it is required to disclose any information pursuant to applicable Law or receives any request or demand under lawful process or from any Governmental Authority to disclose or provide information of the other Party (or any of its Subsidiaries) that is subject to the confidentiality provisions hereof, such Party shall notify the other Party (to the extent legally permitted) as promptly as practicable under the circumstances prior to disclosing or providing such information and shall cooperate, at the

expense of the other Party, in seeking any appropriate protective order requested by the other Party. In the event that such other Party fails to receive such appropriate protective order in a timely manner and the Party receiving the request or demand reasonably determines that its failure to disclose or provide such information shall actually prejudice the Party receiving the request or demand, then the Party that received such request or demand may thereafter disclose or provide information to the extent required by such Law (as so advised by its counsel) or by lawful process or such Governmental Authority, and the disclosing Party shall promptly provide the other Party with a copy of the information so disclosed, in the same form and format so disclosed, together with a list of all Persons to whom such information was disclosed, in each case to the extent legally permitted.

ARTICLE VII  
LIMITED LIABILITY AND INDEMNIFICATION

Section 7.01 Limitations on Liability.

(a) SUBJECT TO SECTION 7.02 AND EXCEPT FOR THE FAILURE TO PAY FOR SERVICES, THE TOTAL LIABILITIES OF EITHER PARTY AND ITS SUBSIDIARIES AND THEIR RESPECTIVE REPRESENTATIVES, COLLECTIVELY, UNDER THIS AGREEMENT FOR ANY ACT OR FAILURE TO ACT IN CONNECTION HEREWITH (INCLUDING THE PERFORMANCE OR BREACH OF THIS AGREEMENT), OR FROM THE SALE, DELIVERY, PROVISION OR USE OF ANY SERVICES PROVIDED UNDER OR CONTEMPLATED BY THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL NOT EXCEED 100% OF THE AGGREGATE CHARGES PAID AND PAYABLE UNDER THIS AGREEMENT TO SUCH PARTY IN RESPECT OF SERVICES PROVIDED BY SUCH PARTY UNDER THIS AGREEMENT.

(b) IN NO EVENT SHALL EITHER PARTY, ITS SUBSIDIARIES OR THEIR RESPECTIVE REPRESENTATIVES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, REMOTE, SPECULATIVE OR SIMILAR DAMAGES IN EXCESS OF COMPENSATORY DAMAGES OF THE OTHER PARTY IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT (OTHER THAN ANY SUCH LIABILITY WITH RESPECT TO A THIRD-PARTY CLAIM), AND EACH PARTY HEREBY WAIVES ON BEHALF OF ITSELF, ITS SUBSIDIARIES AND ITS REPRESENTATIVES ANY CLAIM FOR SUCH DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.

(c) The limitations in Section 7.01(a) and Section 7.01(b) shall not apply in respect of any Liability arising out of or in connection with (i) either Party's Liability for

breaches of confidentiality under Article V, (ii) the Parties' respective obligations under Section 7.03 or (iii) the willful misconduct or fraud of or by the Party to be charged.

Section 7.02 Obligation to Re-Perform; Liabilities. In the event of any breach of this Agreement by Provider with respect to the provision of any Services (with respect to which Provider can reasonably be expected to re-perform in a commercially reasonable manner), Provider shall, at the request of Recipient, promptly correct in all material respects such error, defect or breach or re-perform in all material respects such Services at the sole cost and expense of Provider. Notwithstanding anything herein to the contrary, the remedy set forth in this Section 7.02 shall be the sole and exclusive remedy of Recipient for any such breach of this Agreement; provided, however, that the foregoing shall not prohibit Recipient from exercising its right to terminate this Agreement in accordance with the provisions of Section 5.02(a) or to seek specific performance in accordance with Section 8.17. Any request for re-performance in accordance with this Section 7.02 by Recipient must be in writing and specify in reasonable detail the particular error, defect or breach, and such request must be made no more than one month from the later of (a) the date on which such breach occurred and (b) the date on which such breach was reasonably discovered by Recipient.

Section 7.03 Third-Party Claims. In addition to (but not in duplication of) its other indemnification obligations (if any) under the Separation and Distribution Agreement, this Agreement or any other Ancillary Agreement, Recipient shall indemnify, defend and hold harmless Provider, its Subsidiaries and each of their respective Representatives, and each of the successors and assigns of any of the foregoing (collectively, the "Provider Indemnitees"), from and against any and all claims of Third Parties relating to, arising out of or resulting from Recipient's use or receipt of the Services provided by Provider hereunder, other than Third-Party Claims to the extent arising out of the gross negligence, willful misconduct or fraud of any Provider Indemnitee.

Section 7.04 Provider Indemnity. Subject to the limitations in Section 7.01(a) and Section 7.01(b), in addition to (but not in duplication of) its other indemnification obligations (if any) under the Separation and Distribution Agreement, this Agreement or any other Ancillary Agreement, Provider shall indemnify, defend and hold harmless Recipient and its Subsidiaries, and each of the successors and assigns of any of the foregoing (collectively, the "Recipient Indemnitees"), from and against any and all Liabilities to the extent relating to, arising out of or resulting from the sale, delivery or provision of any Services provided by Provider hereunder, but only to the extent that such Liability relates to, arises out of or results from Provider's gross negligence, bad faith, willful misconduct or fraud with respect to the sale, delivery or provision of any Services provided by Provider hereunder.

Section 7.05 Recipient Indemnity. Subject to the limitations in Section 7.01(a) and Section 7.01(b), in addition to (but not in duplication of) its other indemnification obligations (if

any) under the Separation and Distribution Agreement, this Agreement or any other Ancillary Agreement, Recipient shall indemnify, defend and hold harmless Provider Indemnitees, from and against any and all Liabilities to the extent relating to, arising out of or resulting from the sale, delivery or provision of any Services provided by Provider hereunder, but only to the extent that such Liability relates to, arises out of or results from Recipient's gross negligence, bad faith, willful misconduct or fraud with respect to the sale, delivery or provision of any Services provided by Provider hereunder.

Section 7.06 Indemnification Procedures. The procedures for indemnification set forth in Sections 4.5, 4.6 and 4.7 of the Separation and Distribution Agreement shall govern claims for indemnification under this Agreement.

## ARTICLE VIII MISCELLANEOUS

Section 8.01 Mutual Cooperation. Each Party shall, and shall cause its Subsidiaries to, cooperate with the other Party and its Subsidiaries in connection with the performance of the Services hereunder; provided, however, that such cooperation shall not unreasonably disrupt the normal operations of such Party or its Subsidiaries; and, provided, further, that this Section 8.01 shall not require such Party to incur any out-of-pocket costs or expenses, unless and except as expressly provided in this Agreement or otherwise agreed in writing by the Parties.

Section 8.02 Further Assurances. Subject to the terms of this Agreement, each Party shall take, or cause to be taken, any and all reasonable actions, including the execution, acknowledgment, filing and delivery of any and all documents and instruments that any other Party may reasonably request in order to effect the intent and purpose of this Agreement and the transactions contemplated hereby.

Section 8.03 Audit Assistance. Each of the Parties and their respective Subsidiaries are or may be subject to regulation and audit by a Governmental Authority (including a Taxing Authority), standards organizations, customers or other parties to contracts with such Parties or their respective Subsidiaries under applicable Law, standards or contract provisions. If a Governmental Authority, standards organization, customer or other party to a contract with a Party or its Subsidiary exercises its right to examine or audit such Party's or its Subsidiary's books, records, documents or accounting practices and procedures pursuant to such applicable Law, standards or contract provisions, and such examination or audit relates to the Services, then the other Party shall provide, at the sole cost and expense of the requesting Party, all assistance reasonably requested by the Party that is subject to the examination or audit in responding to such examination or audits or requests for Information, to the extent that such assistance or Information is within the reasonable control of the cooperating Party and is related to the Services.

Section 8.04 Title to Intellectual Property. Except as expressly provided for under the terms of this Agreement, the Separation and Distribution Agreement or the Intellectual Property License Agreement, Recipient acknowledges that it shall acquire no right, title or interest (including any license rights or rights of use) in any intellectual property that is owned or licensed by Provider, by reason of the provision of the Services hereunder. Recipient shall not remove or alter any copyright, trademark, confidentiality or other proprietary notices that appear on any intellectual property owned or licensed by Provider, and Recipient shall reproduce any such notices on any and all copies thereof. Recipient shall not attempt to decompile, translate, reverse engineer or make excessive copies of any intellectual property owned or licensed by Provider, and Recipient shall promptly notify Provider of any such attempt, regardless of whether by Recipient or any Third Party, of which Recipient becomes aware.

Section 8.05 Independent Contractors. The Parties each acknowledge and agree that they are separate entities, each of which has entered into this Agreement for independent business reasons. The relationships of the Parties hereunder are those of independent contractors and nothing contained herein shall be deemed to create a joint venture, partnership or any other relationship between the Parties. Employees performing Services hereunder do so on behalf of, under the direction of, and as employees of, Provider, and Recipient shall have no right, power or authority to direct such employees, unless otherwise specified with respect to a particular Service on the Schedules hereto.

Section 8.06 Counterparts; Entire Agreement; Corporate Power.

(a) This Agreement may be executed in one (1) or more counterparts, all of which shall be considered one (1) and the same agreement, and shall become effective when one (1) or more counterparts have been signed by each of the Parties and delivered to the other Party.

(b) This Agreement, the Separation and Distribution Agreement and the other Ancillary Agreements and the Exhibits, Schedules and appendices hereto and thereto contain the entire agreement between the Parties with respect to the subject matter hereof, supersede all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter, and there are no agreements or understandings between the Parties other than those set forth or referred to herein or therein. This Agreement, the Separation and Distribution Agreement, and the other Ancillary Agreements govern the arrangements in connection with the Separation and the Distribution and would not have been entered independently.

(c) Parent represents on behalf of itself and, to the extent applicable, each of its Subsidiaries, and SpinCo represents on behalf of itself and, to the extent applicable, each of its Subsidiaries, as follows:



(i) each such Person has the requisite corporate or other power and authority and has taken all corporate or other action necessary in order to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby; and

(ii) this Agreement has been duly executed and delivered by it and constitutes a valid and binding agreement of it and is enforceable in accordance with the terms hereof.

(d) Each Party acknowledges and agrees that delivery of an executed counterpart of a signature page to this Agreement (whether executed by manual, stamp or mechanical signature) by facsimile or by e-mail in portable document format (PDF) shall be effective as delivery of such executed counterpart of this Agreement. Each Party expressly adopts and confirms each such facsimile, stamp or mechanical signature (regardless of whether delivered in person, by mail, by courier, by facsimile or by e-mail in portable document format (PDF)) made in its respective name as if it were a manual signature delivered in person, agrees that it will not assert that any such signature or delivery is not adequate to bind such Party to the same extent as if it were signed manually and delivered in person and agrees that, at the reasonable request of the other Party at any time, it will as promptly as reasonably practicable cause this Agreement to be manually executed (any such execution to be as of the date of the initial date thereof) and delivered in person, by mail or by courier.

Section 8.07 Governing Law. This Agreement (and any claims or disputes arising out of or related hereto or to the transactions contemplated hereby or to the inducement of any Party to enter herein, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall be governed by and construed and interpreted in accordance with the Laws of the State of Delaware, irrespective of the choice of Laws principles of the State of Delaware, including all matters of validity, construction, effect, enforceability, performance and remedies.

Section 8.08 Assignability. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns; provided, however, that neither Party may assign its rights or delegate its obligations under this Agreement without the express prior written consent of the other Party. Notwithstanding the foregoing, no such consent shall be required for the assignment of a Party's rights and obligations under the Separation and Distribution Agreement, this Agreement and the other Ancillary Agreements in whole (*i.e.*, the assignment of a Party's rights and obligations under the Separation and Distribution Agreement, this Agreement and all of the other Ancillary Agreements all at the same time) in connection with a merger, consolidation or other business combination of a Party with or into any other Person or a sale of all or substantially all of the assets of a Party to another Person, in each case so long as the resulting, surviving or acquiring Person assumes all of the obligations of the relevant Party by operation of Law or pursuant to an agreement in form and

substance reasonably satisfactory to the other Party; provided, further, that, in connection with the acquisition by a purchaser of all or a significant portion of a business unit of Parent or its Affiliates, whether such acquisition is effected by a share purchase or sale of assets, Parent may assign its rights and obligations, in whole or in part, under this Agreement to such purchaser upon the consummation of such acquisition.

Section 8.09. Third-Party Beneficiaries. Except as provided in Article VII with respect to the Provider Indemnitees and the Recipient Indemnitees in their respective capacities as such, (a) the provisions of this Agreement are solely for the benefit of the Parties and are not intended to confer upon any other Person except the Parties any rights or remedies hereunder; and (b) there are no other third-party beneficiaries of this Agreement and this Agreement shall not provide any other Third Party with any remedy, claim, Liability, reimbursement, claim of action or other right.

Section 8.09 Notices. All notices, requests, claims, demands or other communications under this Agreement shall be in writing and shall be given or made (and except as provided herein shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service, by certified mail, return receipt requested, by facsimile, or by electronic mail (“e-mail”), so long as confirmation of receipt of such e-mail is requested and received, to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 8.10):

If to Parent, to:

XPO Logistics, Inc.

Five American Lane  
Greenwich, CT 06831

Attention: Deputy Chief Financial Officer, Ravi Tulsyan

E-mail: ravi.tulsyan@xpo.com

with a copy (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz

51 West 52nd Street  
New York, NY 10019

Attention: Adam O. Emmerich, Esq.

Viktor Sapezhnikov, Esq.

E-mail: AOEmmerich@wlrk.com

VSapezhnikov@wlrk.com

If to SpinCo, to:

GXO Logistics, Inc.

Two American Lane  
Greenwich, CT 06831

Attention: Chief Legal Officer, Karlis Kirsis

E-mail: Karlis.Kirsis@gxo.com

with a copy (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz

51 West 52nd Street  
New York, NY 10019

Attention: Adam O. Emmerich, Esq.

Viktor Sapezhnikov, Esq.

E-mail: AOEmmerich@wlrk.com

VSapezhnikov@wlrk.com

Any Party may, by notice to the other Party, change the address to which such notices are to be given.

Section 8.10 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon such determination, the Parties shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the Parties.

Section 8.11 Force Majeure. No Party shall be deemed in default of this Agreement for any delay or failure to fulfill any obligation hereunder so long as and to the extent to which any delay or failure in the fulfillment of such obligations is prevented, frustrated, hindered or delayed as a consequence of circumstances of Force Majeure. Without limiting the termination rights contained in this Agreement, in the event of any such excused delay, the time for performance shall be extended for a period equal to the time lost by reason of the delay. A Party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such Force Majeure, (a) provide written notice to the other Party of the nature and extent of such Force Majeure; and (b) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement as soon as reasonably practicable (and in no event later than the date that the affected Party resumes analogous performance under any other agreement for itself, its Affiliates or any Third Party), unless this Agreement has previously been terminated under Article V or this Section 8.12. Recipient shall be (i) relieved of the obligation to pay Charges for the affected Service(s) throughout the duration of such Force Majeure and (ii) entitled to permanently terminate such Service(s) if the delay or failure in providing such Services because of a Force Majeure shall continue to exist for more than thirty (30) consecutive days (it being understood that Recipient shall not be required to provide any advance notice of such termination to Provider).

Section 8.12 Headings. The Article, Section and Paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.13 Survival of Covenants. Except as expressly set forth in this Agreement, the covenants, representations and warranties and other agreements contained in this Agreement, and Liability for the breach of any obligations contained herein, shall survive the Effective Time and shall remain in full force and effect thereafter.

Section 8.14 Waivers of Default. Waiver by any Party of any default by the other Party of any provision of this Agreement shall not be deemed a waiver by the waiving Party of any subsequent or other default, nor shall it prejudice the rights of the waiving Party. No failure or delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof prejudice any other right or further exercise thereof or the exercise of any other right, power or privilege.

Section 8.15 Dispute Resolution.

(a) In the event of any controversy, dispute or claim (a “Dispute”) arising out of or relating to any Party’s rights or obligations under this Agreement (whether arising in contract, tort or otherwise), calculation or allocation of the costs of any Service or otherwise arising out of or relating in any way to this Agreement (including the interpretation or validity of this Agreement), such Dispute shall be resolved by submitting such Dispute first to the relevant Contract Manager of each Party, and the Contract Managers shall seek to resolve such Dispute through informal good faith negotiation. In the event that the Contract Managers fail to meet or, if they meet and fail to resolve a Dispute within twenty (20) Business Days, then either Party may pursue the remedy set forth in Section 8.16(b).

(b) If the procedures set forth in Section 8.16(a) have been followed with respect to a Dispute and such Dispute remains unresolved, such Dispute shall be resolved in accordance with the dispute resolution process referred to in Article VII of the Separation and Distribution Agreement.

(c) In any Dispute regarding the amount of a Charge or a Termination Charge, if such Dispute is finally resolved pursuant to the dispute resolution process set forth or referred to in Section 8.16(a) and (b) and it is determined that the Charge or the Termination Charge, as applicable, that Provider has invoiced Recipient, and that Recipient has paid to Provider, is greater or less than the amount that the Charge or the Termination Charge, as applicable, should have been, then (i) if it is determined that Recipient has overpaid the Charge or the Termination Charge, as applicable, Provider shall within ten (10) calendar days after such determination reimburse Recipient an amount of cash equal to such overpayment, plus the Interest Payment, accruing from the date of payment by Recipient to the time of reimbursement by Provider; and (ii) if it is determined that Recipient has underpaid the Charge or the Termination Charge, as applicable, Recipient shall within ten (10) calendar days after such determination reimburse Provider an amount of cash equal to such underpayment, plus the Interest Payment, accruing from the date such payment originally should have been made by Recipient to the time of payment by Recipient.

Section 8.16 Specific Performance. Subject to Section 8.16, the Parties agree that if any of the provisions of this Agreement were not to be performed or threatened not to be

performed as required by their specific terms or were to be otherwise breached, irreparable damage will occur, no adequate remedy at law would exist and damages would be difficult to determine, and that each Party shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches, and to specific performance of the terms, of this Agreement, in addition to any other remedy at law or equity. Any requirements for the securing or posting of any bond with such remedy are hereby waived by each of the Parties. Unless otherwise agreed in writing, Provider shall continue to provide Services and the Parties shall honor all other commitments under this Agreement during the course of dispute resolution pursuant to the provisions of Section 8.16 and this Section 8.17 with respect to all matters not subject to such Dispute; provided, however, that this obligation shall only exist during the term of this Agreement.

Section 8.17 Amendments. This Agreement may not be modified or amended except by an instrument in writing signed on behalf of each of the Parties. By an instrument in writing, Purchaser, on the one hand, or Parent, on the other hand, may waive compliance by the other with any term or provision of this Agreement that the other Party or Parties was or is obligated to comply with or perform. Such waiver or failure to insist on strict compliance with such term or provision shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure of compliance.

Section 8.18 Precedence of Schedules. Each Schedule attached to or referenced in this Agreement is hereby incorporated into and shall form a part of this Agreement; provided, however, that the terms contained in such Schedule shall only apply with respect to the Services provided under that Schedule. In the event of a conflict between the terms contained in an individual Schedule and the terms in the body of this Agreement, the terms in the Schedule shall take precedence with respect to the Services under such Schedule only. No terms contained in individual Schedules shall otherwise modify the terms of this Agreement.

Section 8.19 Interpretation. In this Agreement, (a) words in the singular shall be deemed to include the plural and vice versa and words of one gender shall be deemed to include the other genders as the context requires; (b) the terms “hereof,” “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules, Annexes and Exhibits hereto) and not to any particular provision of this Agreement; (c) Article, Section, Exhibit, Annex and Schedule references are to the Articles, Sections, Exhibits, Annexes and Schedules to this Agreement, unless otherwise specified; (d) unless otherwise stated, all references to any agreement shall be deemed to include the exhibits, schedules and annexes to such agreement; (e) the word “including” and words of similar import when used in this Agreement shall mean “including, without limitation,” unless otherwise specified; (f) the word “or” need not be exclusive; (g) unless otherwise specified in a particular case, the word “days” refers to calendar days; (h) references to “business day” shall

mean any day other than a Saturday, a Sunday or a day on which banking institutions are generally authorized or required by Law to close in New York, New York; (i) references herein to this Agreement or any other agreement contemplated herein shall be deemed to refer to this Agreement or such other agreement as of the date on which it is executed and as it may be amended, modified or supplemented thereafter, unless otherwise specified; and (j) unless expressly stated to the contrary in this Agreement, all references to “the date hereof,” “the date of this Agreement” and “hereby” and words of similar import shall all be references to August 1, 2021.

Section 8.20 Mutual Drafting. This Agreement shall be deemed to be the joint work product of the Parties and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable to this Agreement.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

XPO LOGISTICS, INC.

By: /s/ Ravi Tulsyan

Name: Ravi Tulsyan

Title: Deputy Chief Financial Officer & Treasurer

GXO LOGISTICS, INC.

By: /s/ Karlis P. Kirsis

Name: Karlis P. Kirsis

Title: Chief Legal Officer

*[Signature Page to Transition Services Agreement]*



**TAX MATTERS AGREEMENT**

**BY AND BETWEEN**

**XPO LOGISTICS, INC.**

**AND**

**GXO LOGISTICS, INC.**

**DATED AS OF August 1, 2021**

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## TAX MATTERS AGREEMENT

This TAX MATTERS AGREEMENT, dated as of August 1, 2021 (this “Agreement”), is by and between XPO Logistics, Inc., a Delaware corporation (“XPO”), and GXO Logistics, Inc., a Delaware corporation and a wholly owned subsidiary of XPO (“SpinCo”) (collectively, the “Companies” and each a “Company”).

### R E C I T A L S

WHEREAS, XPO and SpinCo have entered into a Separation and Distribution Agreement, dated as of August 1, 2021 (the “Separation and Distribution Agreement”), providing for (i) the separation of the SpinCo Group from the XPO Group (the “Separation”) and, following the Separation, (i) the distribution, on a *pro rata* basis, to holders of XPO Shares on the Record Date of all the outstanding SpinCo Shares (the “Distribution”);

WHEREAS, pursuant to the terms of the Separation and Distribution Agreement, among other things, XPO has taken or will take the following actions: (a) (i) contribute the SpinCo Assets to SpinCo and cause SpinCo to assume the SpinCo Liabilities, in actual or constructive exchange for (A) the issuance by SpinCo to XPO of SpinCo Shares and (B) the transfer by SpinCo to XPO of cash, including some or all of the proceeds of the SpinCo Financing Arrangements (the “SpinCo Cash Proceeds” and such contribution, the “Contribution”) and (ii) transfer the SpinCo Cash Proceeds to one or more third-party creditors of XPO (the “XPO Debt Repayment”) in connection with the Plan of Reorganization; and (b) effect the Distribution;

WHEREAS, for Federal Income Tax purposes, it is intended that each of the Internal Distribution and the Distribution (together with the Contribution) shall qualify as a transaction that is generally tax-free pursuant to Section 355(a) (or Sections 355(a) and 368(a)(1)(D)) of the Code;

WHEREAS, as of the date hereof, XPO is the common parent of an affiliated group (as defined in Section 1504 of the Code) of corporations, including SpinCo, which has elected to file consolidated Federal Income Tax Returns;

WHEREAS, as a result of the Distribution, SpinCo and its subsidiaries will cease to be members of the affiliated group of which XPO is the common parent (the “SpinCo Deconsolidation”);

WHEREAS, the Parties desire to provide for and agree upon the allocation between the Parties of liabilities for Taxes arising prior to, as a result of, and subsequent to the Distribution, and to provide for and agree upon other matters relating to Taxes;

NOW THEREFORE, in consideration of the mutual agreements contained herein, the Parties hereby agree as follows:

**Section 1. Definition of Terms.** For purposes of this Agreement (including the recitals hereof), the following terms have the following meanings, and capitalized terms

used but not otherwise defined herein shall have the meaning ascribed to them in the Separation and Distribution Agreement:

“Adjustment Request” shall mean any formal or informal claim or request filed with any Tax Authority, or with any administrative agency or court, for the adjustment, refund, or credit of Taxes, including (a) any amended Tax Return claiming adjustment to the Taxes as reported on the Tax Return or, if applicable, as previously adjusted, (b) any claim for equitable recoupment or other offset, and (c) any claim for refund or credit of Taxes previously paid.

“Agreement” shall mean this Tax Matters Agreement.

“Capital Stock” shall mean all classes or series of capital stock, including (a) common stock, (b) all options, warrants and other rights to acquire such capital stock and (c) all instruments properly treated as stock for Federal Income Tax purposes.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Companies” and “Company” shall have the meaning provided in the first sentence of this Agreement.

“Compensatory Equity Interests” shall have the meaning set forth in Section 6.02(a).

“Contribution” shall have the meaning set forth in the Recitals.

“Debt Reallocation” shall mean (a) any actual or deemed assumption of XPO debt by SpinCo in connection with the Contribution, (b) the receipt by XPO of the SpinCo Cash Proceeds, and (c) the XPO Debt Repayment.

“Deconsolidation Date” shall mean the last day on which SpinCo qualifies as a member of the affiliated group (as defined in Section 1504 of the Code) of which XPO is the common parent.

“DGCL” shall mean the Delaware General Corporation Law.

“Distribution” shall have the meaning provided in the Recitals.

“External Separation Transaction” shall mean each of (a) the Contribution and the Distribution and (b) the Debt Reallocation.

“Federal Income Tax” shall mean any Tax imposed by Subtitle A of the Code, and any interest, penalties, additions to tax, or additional amounts in respect of the foregoing.

“Federal Other Tax” shall mean any Tax imposed by the federal government of the United States other than any Federal Income Taxes, and any interest, penalties, additions to tax, or additional amounts in respect of the foregoing.

“Fifty-Percent or Greater Interest” shall have the meaning ascribed to such term for purposes of Sections 355(d) and (e) of the Code.

“Final Determination” shall mean the final resolution of liability for any Tax, which resolution may be for a specific issue or adjustment or for a Tax Period, (a) by IRS Form 870 or 870-AD (or any successor forms thereto), on the date of acceptance by or on behalf of the taxpayer, or by a comparable form under the laws of a State, local, or foreign taxing jurisdiction, except that a Form 870 or 870-AD or comparable form shall not constitute a Final Determination to the extent that it reserves (whether by its terms or by operation of law) the right of the taxpayer to file a claim for refund or the right of the Tax Authority to assert a further deficiency in respect of such issue or adjustment or for such Tax Period (as the case may be); (b) by a decision, judgment, decree, or other order by a court of competent jurisdiction, which has become final and unappealable; (c) by a closing agreement or accepted offer in compromise under Sections 7121 or 7122 of the Code, or a comparable agreement under the laws of a State, local, or foreign taxing jurisdiction; (d) by any allowance of a refund or credit in respect of an overpayment of Income Tax or Other Tax, but only after the expiration of all Tax Periods during which such refund may be recovered (including by way of offset) by the jurisdiction imposing such Income Tax or Other Tax; or (e) by any other final disposition, including by reason of the expiration of the applicable statute of limitations or by mutual agreement of the Parties.

“Foreign Income Tax” shall mean any Tax imposed by any foreign country or any possession of the United States, or by any political subdivision of any foreign country or United States possession, which is an income tax as defined in Treasury Regulations Section 1.901-2, and any interest, penalties, additions to tax, or additional amounts in respect of the foregoing.

“Foreign Other Tax” shall mean any Tax imposed by any foreign country or any possession of the United States, or by any political subdivision of any foreign country or United States possession, other than any Foreign Income Taxes, and any interest, penalties, additions to tax, or additional amounts in respect of the foregoing.

“Foreign Separations” shall mean the internal restructuring transactions intended to effect the separation of (a) the XPO Assets and XPO Liabilities from the SpinCo Assets and SpinCo Liabilities, and/or (b) the SpinCo Assets and SpinCo Liabilities from the XPO Assets and XPO Liabilities, in each case, held by certain subsidiaries of XPO organized in jurisdictions outside of the United States (including through the transfer of equity interests in any such subsidiary).

“Foreign Tax” shall mean any Foreign Income Taxes or Foreign Other Taxes.

“Foreign Tax-Free Status” shall mean, with respect to (a) each of the Foreign Separations, the qualification thereof for non-recognition of income or gain (or similar treatment) for Foreign Income Tax purposes under the laws of the relevant foreign jurisdiction and (b) any Foreign Separation that is covered by a Tax Opinion or other written guidance addressing the Foreign Tax treatment thereof, the qualification of such transaction for the Foreign Tax treatment set forth in such Tax Opinion or other written guidance.

“Former SpinCo Group Employee” shall have the meaning set forth in the Employee Matters Agreement.

“Former XPO Group Employee” shall have the meaning set forth in the Employee Matters Agreement.

“French Tax Combined Group Exit Agreement” refers to the exit agreement (*convention de sortie d’intégration fiscale*) to be entered into between one or more members of the SpinCo Group and one or more members of the XPO Group providing for the consequences of the exit of certain members of the XPO Group from the SpinCo French Combined Group.

“Governmental Authority” shall have the meaning set forth in the Separation and Distribution Agreement.

“Group” shall mean the XPO Group or the SpinCo Group, as the context requires.

“Income Tax” shall mean any Federal Income Tax, State Income Tax or Foreign Income Tax.

“Internal Distribution” shall mean (a) the deemed contribution by XPO CNW, Inc. to XPO Logistics WW, LLC of SpinCo Assets and SpinCo Liabilities and (b) the distribution by CNW, Inc. to XPO of all membership interests in XPO Logistics WW, LLC in a transaction intended to qualify, for Federal Income Tax purposes, as a reorganization pursuant to Sections 355(a) and 368(a)(1) (D) of the Code.

“IRS” shall mean the U.S. Internal Revenue Service.

“Joint Adjustment” shall mean any proposed adjustment by a Tax Authority or claim for refund asserted in a Tax Contest that is not a SpinCo Adjustment or a XPO Adjustment.

“Joint Return” shall mean any Return of a member of the XPO Group or the SpinCo Group that is not a Separate Return.

“Notified Action” shall have the meaning set forth in Section 7.04(a).

“Other Tax” shall mean any Federal Other Tax, State Other Tax, or Foreign Other Tax.

“Parties” shall mean the parties to this Agreement.

“Past Practices” shall have the meaning set forth in Section 4.05(a).

“Payment Date” shall mean (a) with respect to any XPO Federal Consolidated Income Tax Return, the due date for any required installment of estimated Taxes determined under Section 6655 of the Code, the due date (determined without regard to extensions) for filing the Tax Return determined under Section 6072 of the Code, and the date the Tax Return is filed, and (b) with respect to any other Tax Return, the corresponding dates determined under applicable Tax Law; in each case, taking into account any automatic or validly elected extensions, deferrals or postponements of the due date for payment of any such estimated Taxes or any Tax shown on such Tax Return, as applicable.

“Payor” shall have the meaning set forth in Section 5.02(a).

“Person” shall mean any individual, partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, unincorporated organization or a Governmental Authority or any department, agency or political subdivision thereof, without regard to whether any entity is treated as disregarded for Federal Income Tax purposes.



“Plan of Reorganization” shall have the meaning set forth in the Separation and Distribution Agreement.

“Post-Deconsolidation Period” shall mean any Tax Period beginning after the Deconsolidation Date, and, in the case of any Straddle Period, the portion of such Straddle Period beginning the day after the Deconsolidation Date.

“Pre-Deconsolidation Period” shall mean any Tax Period ending on or prior to the Deconsolidation Date, and, in the case of any Straddle Period, the portion of such Straddle Period ending on the Deconsolidation Date.

“Prime Rate” shall have the meaning set forth in the Separation and Distribution Agreement.

“Privilege” shall mean any privilege that may be asserted under applicable law, including, any privilege arising under or relating to the attorney-client relationship (including the attorney-client and work product privileges), the accountant-client privilege and any privilege relating to internal evaluation processes.

“Proposed Acquisition Transaction” shall mean, with respect to SpinCo, a transaction or series of transactions (or any agreement, understanding or arrangement, within the meaning of Section 355(e) of the Code and Treasury Regulations Section 1.355-7, or any other Treasury Regulations promulgated thereunder, to enter into a transaction or series of transactions), whether such transaction is supported by the management or shareholders of SpinCo, is a hostile acquisition, or otherwise, as a result of which SpinCo would merge or consolidate with any other Person or as a result of which any Person or Persons would (directly or indirectly) acquire, or have the right to acquire, from SpinCo and/or one or more holders of outstanding shares of Capital Stock of SpinCo, a number of shares of Capital Stock of SpinCo that would, when combined with any other changes in ownership of Capital Stock of SpinCo pertinent for purposes of Section 355(e) of the Code, comprise 45% or more of (a) the value of all outstanding shares of Capital Stock of SpinCo as of the date of such transaction, or in the case of a series of transactions, the date of the last transaction of such series, or (b) the total combined voting power of all outstanding shares of voting stock of SpinCo as of the date of such transaction, or in the case of a series of transactions, the date of the last transaction of such series.

Notwithstanding the foregoing, a Proposed Acquisition Transaction shall not include (i) the adoption by SpinCo of a shareholder rights plan or (ii) issuances by SpinCo that satisfy Safe Harbor VIII (relating to acquisitions in connection with a person’s performance of services) or Safe Harbor IX (relating to acquisitions by a retirement plan of an employer) of Treasury Regulations Section 1.355-7(d). For purposes of determining whether a transaction constitutes an indirect acquisition, any recapitalization resulting in a shift of voting power or any redemption of shares of stock shall be treated as an indirect acquisition of shares of stock by the non-exchanging shareholders. This definition and the application thereof is intended to monitor compliance with Section 355(e) of the Code and shall be interpreted accordingly. Any clarification of, or change in, the statute or Treasury Regulations promulgated under Section 355(e) of the Code shall be incorporated into this definition and its interpretation.

“PTEP” shall mean any earnings and profits of a foreign corporation that would be excluded from gross income pursuant to Section 959 of the Code.

“Representation Letters” shall mean the representation letters and any other materials delivered by, or on behalf of, XPO, SpinCo or others to a Tax Advisor in connection with the issuance by such Tax Advisor of a Tax Opinion.

“Required Party” shall have the meaning set forth in Section 5.02(a).

“Reserve” shall mean a financial statement reserve, in accordance with generally accepted accounting principles, pursuant to ASC Topic 740, excluding, for the avoidance of doubt, any reserve related to Taxes imposed with respect to the Transactions.

“Responsible Company” shall mean, with respect to any Tax Return, the Company having responsibility for filing such Tax Return.

“Restriction Period” shall mean the period beginning on the date hereof and ending on the two-year anniversary of the Distribution.

“Retention Date” shall have the meaning set forth in Section 9.01.

“Section 7.02(e) Acquisition Transaction” shall mean any transaction or series of transactions that is not a Proposed Acquisition Transaction but would be a Proposed Acquisition Transaction if the percentage reflected in the definition of Proposed Acquisition Transaction were 35% instead of 45%.

“Section 336(e) Election” shall have the meaning set forth in Section 7.06.

“Separate Return” shall mean (a) in the case of any Tax Return of any member of the SpinCo Group (including any consolidated, combined or unitary return), any such Tax Return that does not include any member of the XPO Group and (b) in the case of any Tax Return of any member of the XPO Group (including any consolidated, combined or unitary return), any such Tax Return that does not include any member of the SpinCo Group.

“Separation and Distribution Agreement” shall have the meaning set forth in the Recitals.

“Separation-Related Tax Contest” shall mean any Tax Contest in which the IRS, another Tax Authority or any other Person asserts a position that could reasonably be expected to adversely affect the (a) U.S. Tax-Free Status of the Internal Distribution or any External Separation Transaction or (b) Foreign Tax-Free Status of any Foreign Separation.

“Shared Taxes” shall have the meaning set forth in Section 7.05(d).

“Specified Percentage Interest” shall have the meaning set forth on Schedule 7.07.

“SpinCo” shall have the meaning provided in the first sentence of this Agreement, and references herein to SpinCo shall include any entity treated as a successor to SpinCo.

“SpinCo Active Trade or Business” shall mean the active conduct (as defined in Section 355(b)(2) of the Code and the Treasury Regulations thereunder) by SpinCo and its “separate affiliated group” (as defined in Section 355(b)(3)(B) of the Code) of the trade or

business(es) relied upon to satisfy Section 355(b) of the Code with respect to the Distribution (as described in the Representation Letters), as conducted immediately prior to the Distribution.

“SpinCo Adjustment” shall mean any proposed adjustment by a Tax Authority or claim for refund asserted in a Tax Contest to the extent SpinCo would be exclusively liable for any resulting Tax under this Agreement or exclusively entitled to receive any resulting Tax Benefit under this Agreement.

“SpinCo Affiliated Group” shall mean the affiliated group (as defined in Section 1504 of the Code and the Treasury Regulations thereunder) of which SpinCo is the common parent.

“SpinCo Allocated Income Taxes” shall mean Income Taxes for which SpinCo is responsible pursuant to Section 2.02(a), 2.03(a), or 2.04(a).

“SpinCo Business” shall have the meaning set forth in the Separation and Distribution Agreement.

“SpinCo Carryback” shall mean any net operating loss, net capital loss, excess tax credit, or other similar Tax item of any member of the SpinCo Group that may or must be carried from one Tax Period to another prior Tax Period under the Code or other applicable Tax Law.

“SpinCo Cash Proceeds” shall have the meaning provided in the Recitals.

“SpinCo CFO Certificate” shall have the meaning set forth in Section 7.02(e)(i).

“SpinCo Federal Consolidated Income Tax Return” shall mean any United States Federal Income Tax Return for the affiliated group (as defined in Section 1504 of the Code) of which SpinCo is the common parent.

“SpinCo Filing Date” shall have the meaning set forth in Section 7.05(e)(iii)(A).

“SpinCo French Combined Group” shall mean the French tax consolidated group established in accordance with articles 223 A et seq. of the French Tax Code (*Code général des impôts*) and headed by XPO Logistics Europe S.A..

“SpinCo French Combined Income Tax Return” shall mean any Foreign Income Tax Return with respect to Taxes imposed by France or any subdivision, locality or Governmental Authority thereof with respect to the SpinCo French Combined Group.

“SpinCo Group” shall mean SpinCo and its Affiliates, as determined immediately after the Distribution.

“SpinCo Group Employee” shall have the meaning set forth in the Employee Matters Agreement.

“SpinCo Post-Deconsolidation Period” shall mean any Post-Deconsolidation Period determined by reference to the SpinCo Deconsolidation Date.

“SpinCo Pre-Deconsolidation Period” shall mean any Pre-Deconsolidation Period determined by reference to the SpinCo Deconsolidation Date.

“SpinCo Proposed Acquisition Transaction” shall mean a Proposed Acquisition Transaction with respect to SpinCo.

“SpinCo Separate Return” shall mean any Separate Return of SpinCo or any member of the SpinCo Group.

“State Income Tax” shall mean any Tax imposed by any State of the United States (or by any political subdivision of any such State) or the District of Columbia, or any city or municipality located therein, which is imposed on or measured by net income, including state and local franchise or similar Taxes measured by net income, and any interest, penalties, additions to tax, or additional amounts in respect of the foregoing.

“State Other Tax” shall mean any Tax imposed by any State of the United States (or by any political subdivision of any such State) or the District of Columbia, or any city or municipality located therein, other than any State Income Taxes, and any interest, penalties, additions to tax, or additional amounts in respect of the foregoing.

“Straddle Period” shall mean any Tax Period that with respect to SpinCo, begins on or before and ends after the Deconsolidation Date.

“Tax” or “Taxes” shall mean any income, gross income, gross receipts, profits, capital stock, franchise, withholding, payroll, social security, workers compensation, unemployment, disability, property, *ad valorem*, stamp, excise, severance, occupation, service, sales, use, license, lease, transfer, import, escheat and unclaimed property, export, value added, alternative minimum, estimated or other tax (including any fee, assessment, or other charge in the nature of or in lieu of any tax) imposed by any Governmental Authority or political subdivision thereof, and any interest, penalties, additions to tax, or additional amounts in respect of the foregoing.

“Tax Advisor” shall mean any Tax counsel or accountant of recognized national standing in the United States (or, in the case of any Tax Opinion that is an opinion regarding the Foreign Tax treatment of any Foreign Separation, in the relevant foreign jurisdiction(s)).

“Tax Advisor Dispute” shall have the meaning set forth in Section 14.

“Tax Attribute” shall mean a net operating loss, net capital loss, unused investment credit, unused foreign tax credit, excess charitable contribution, general business credit or any other Tax Item that could reduce a Tax.

“Tax Authority” shall mean, with respect to any Tax, the Governmental Authority or political subdivision thereof that imposes such Tax, and the agency (if any) charged with the collection of such Tax for such entity or subdivision.

“Tax Benefit” shall mean any reduction in liability for Tax as a result of any loss, deduction, refund, credit, or other item reducing Taxes otherwise payable.

“Tax Contest” shall mean an audit, review, examination, assessment or any other administrative or judicial proceeding with the purpose or effect of redetermining Taxes (including any administrative or judicial review of any claim for refund).

“Tax Item” shall mean, with respect to any Income Tax, any item of income, gain, loss, deduction, or credit.

“Tax Law” shall mean the law of any Governmental Authority or political subdivision thereof relating to any Tax.

“Tax Opinion” shall mean (a) each opinion of a Tax Advisor delivered to XPO or any of its subsidiaries in connection with, and regarding the Federal Income Tax treatment of, (i) any External Separation Transaction or (ii) the Internal Distribution, and (b) each opinion of a Tax Advisor delivered to XPO or any of its subsidiaries in connection with, and regarding the Foreign Tax treatment of, any Foreign Separation.

“Tax Period” shall mean, with respect to any Tax, the period for which the Tax is reported as provided under the Code or other applicable Tax Law.

“Tax Records” shall mean any Tax Returns, Tax Return workpapers, documentation relating to any Tax Contests, and any other books of account or records (whether or not in written, electronic or other tangible or intangible forms and whether or not stored on electronic or any other medium) required to be maintained under the Code or other applicable Tax Laws or under any record retention agreement with any Tax Authority.

“Tax-Related Losses” shall mean (a) all federal, state, local and foreign Taxes imposed pursuant to any settlement, Final Determination, judgment or otherwise (including Taxes required to be reflected on any Tax Return prepared in accordance with Section 4.05(b)); (b) all accounting, legal and other professional fees, and court costs incurred in connection with such Taxes; and (c) all costs, expenses and damages associated with stockholder litigation or controversies and any amount paid by XPO (or any XPO Affiliate) or SpinCo (or any SpinCo Affiliate) in respect of the liability of shareholders, whether paid to shareholders or to the IRS or any other Tax Authority; in each case, resulting from the failure of, (i) any External Separation Transaction or the Internal Distribution to have U.S. Tax-Free Status, or (ii) any Foreign Separation to have Foreign Tax-Free Status.

“Tax Return” or “Return” shall mean any report of Taxes due, any claim for refund of Taxes paid, any information return with respect to Taxes, or any other similar report, statement, declaration, or document filed or required to be filed under the Code or other Tax Law, including any attachments, exhibits, or other materials submitted with any of the foregoing, and including any amendments or supplements to any of the foregoing.

“Transactions” shall mean the External Separation Transactions and the other transactions contemplated by the Separation and Distribution Agreement (including the Internal Distribution, the Foreign Separations, and the other transactions contemplated by the Plan of Reorganization).

“Treasury Regulations” shall mean the regulations promulgated from time to time under the Code as in effect for the relevant Tax Period.

“Unqualified Tax Opinion” shall mean an unqualified opinion of a Tax Advisor on which XPO may rely to the effect that a transaction will not (a) affect the U.S. Tax-Free Status of any External Separation Transaction or the Internal Distribution or (b) adversely affect any of the conclusions set forth in any Tax Opinion regarding the U.S. Tax-Free Status of any External Separation Transaction or the Internal Distribution; *provided*, that any Tax opinion obtained in connection with a proposed acquisition of Capital Stock of SpinCo (or any entity that was a “distributing corporation” or “controlled corporation” in the Internal Distribution) entered into during the Restriction Period shall not qualify as an Unqualified Tax Opinion unless such Tax opinion concludes that such proposed acquisition will not be treated as “part of a plan (or series of related transactions),” within the meaning of Section 355(e) of the Code and the Treasury Regulations promulgated thereunder, that includes the Distribution (or applicable Internal Distribution). Any such opinion must assume that the External Separation Transactions and/or the Internal Distribution, as relevant, would have qualified for U.S. Tax-Free Status if the transaction in question did not occur but shall not be required to make the assumption set forth in Section 7.07.

“U.S. Tax-Free Status” shall mean, with respect to each External Separation Transaction and the Internal Distribution, the qualification thereof (i) as a transaction described in Section 368(a)(1)(D) and/or Section 355(a) of the Code, (ii) as a transaction in which the stock distributed thereby is “qualified property” for purposes of Sections 355(c)(2) and 361(c)(2) of the Code and (iii) as a transaction in which XPO, SpinCo, and the members of their respective Groups (as relevant) recognize no income or gain for Federal Income Tax purposes pursuant to Sections 355, 361 and 1032 of the Code, other than intercompany items or excess loss accounts taken into account pursuant to the Treasury Regulations promulgated pursuant to Section 1502 of the Code.

“XPO” shall have the meaning provided in the first sentence of this Agreement, and references herein to XPO shall include any entity treated as a successor to XPO.

“XPO Adjustment” shall mean any proposed adjustment by a Tax Authority or claim for refund asserted in a Tax Contest to the extent XPO would be exclusively liable for any resulting Tax under this Agreement or exclusively entitled to receive any resulting Tax Benefit under this Agreement.

“XPO Affiliated Group” shall mean the affiliated group (as defined in Section 1504 of the Code and the Treasury Regulations thereunder) of which XPO is the common parent.

“XPO Debt Repayment” shall have the meaning provided in the Recitals.

“XPO Federal Consolidated Income Tax Return” shall mean any United States Federal Income Tax Return for the XPO Affiliated Group.

“XPO Foreign Combined Income Tax Return” shall mean (a) a consolidated, combined or unitary or other similar Foreign Income Tax Return or (b) any Foreign Income Tax Return with respect to any profit and/or loss sharing group, group payment or similar group or fiscal unity, in the case of each of clauses (a) and (b), that actually includes, by election or otherwise, one or more members of the XPO Group together with one or more members of the SpinCo Group; *provided*, that, for the avoidance of doubt, in the case of a Foreign Income Tax Return of a

member of the SpinCo Group that (x) is required to be filed with respect to a Straddle Period and (y) would otherwise (without regard to this proviso) be a XPO Foreign Combined Income Tax Return, any portion of such Foreign Income Tax Return reflecting Tax Items with respect to any Post-Deconsolidation Period (i) shall in no event be a XPO Foreign Combined Income Tax Return and (ii) shall instead be a Separate Return of such member of the SpinCo Group; *provided, further*, that, any SpinCo French Combined Income Tax Return shall in no event be a XPO Foreign Combined Income Tax Return.

“XPO Group” shall mean XPO and its Affiliates, excluding any entity that is a member of the SpinCo Group.

“XPO Group Employee” shall have the meaning set forth in the Employee Matters Agreement.

“XPO Filing Date” shall have the meaning set forth in Section 7.05(e)(i).

“XPO Separate Return” shall mean any Separate Return of XPO or any member of the XPO Group.

“XPO Shares” shall mean the shares of common stock, par value \$0.001 per share, of XPO.

“XPO State Combined Income Tax Return” shall mean a consolidated, combined or unitary Tax Return with respect to State Income Taxes that actually includes, by election or otherwise, one or more members of the XPO Group and one or more members of the SpinCo Group.

## **Section 2. Allocation of Tax Liabilities.**

### *Section 2.01 General Rule.*

(a) *XPO Liability.* XPO shall be liable for, and shall indemnify and hold harmless each SpinCo Group from and against any liability for, Taxes that are allocated to XPO under this Section 2.

(b) *SpinCo Liability.* SpinCo shall be liable for, and shall indemnify and hold harmless the XPO Group from and against any liability for, Taxes that are allocated to SpinCo under this Section 2.

*Section 2.02 Allocation of Federal Income Tax and Federal Other Tax.* Except as otherwise provided in Section 2.05, Federal Income Tax and Federal Other Tax shall be allocated as follows:

(a) *Allocation of Tax Relating to XPO Federal Consolidated Income Tax Returns.* With respect to any XPO Federal Consolidated Income Tax Return, XPO shall be responsible for any and all Federal Income Taxes due or required to be reported on any such Tax Return (including any increase in such Tax as a result of a Final Determination); *provided*, that SpinCo shall be responsible for any such Federal Income Taxes with respect to any Tax Period (or portion thereof) ending on or prior to the Distribution Date to the extent such Tax is imposed as a result of any adjustment pursuant to a Final Determination of any item of income, gain, loss, deduction or credit on any XPO Federal Consolidated Income Tax Return that is attributable (as reasonably determined by XPO) to members of the SpinCo Group.

*(b) Allocation of Tax Relating to Federal Separate Income Tax Returns.* (i) XPO shall be responsible for any and all Federal Income Taxes due with respect to or required to be reported on any XPO Separate Return; and (ii) SpinCo shall be responsible for any and all Federal Income Taxes due with respect to or required to be reported on any SpinCo Separate Return; in each case, including any increase in such Tax as a result of a Final Determination.

*(c) Allocation of Federal Other Tax.* (i) XPO shall be responsible for any and all Federal Other Taxes due with respect to or required to be reported on any (A) XPO Separate Return or (B) Joint Return that XPO or any member of the XPO Group is obligated to file under the Code; and (ii) SpinCo shall be responsible for any and all Federal Other Taxes due with respect to or required to be reported on any (A) SpinCo Separate Return or (B) Joint Return that SpinCo or any member of the SpinCo Group is obligated to file under the Code; in each case, including any increase in such Tax as a result of a Final Determination.

*Section 2.03 Allocation of State Income and State Other Taxes.* Except as otherwise provided in Section 2.05, State Income Tax and State Other Tax shall be allocated as follows:

*(a) Allocation of Tax Relating to XPO State Combined Income Tax Returns.* With respect to any XPO State Combined Income Tax Return, XPO shall be responsible for any and all State Income Taxes due with respect to or required to be reported on any such Tax Return (including any increase in such Tax as a result of a Final Determination); *provided*, that SpinCo shall be responsible for any such State Income Taxes with respect to any Tax Period (or portion thereof) ending on or prior to the Distribution Date to the extent such Tax is imposed as a result of any adjustment pursuant to a Final Determination of any item of income, gain, loss, deduction or credit on any XPO State Combined Income Tax Return that is attributable (as reasonably determined by XPO) to members of the SpinCo Group.

*(b) Allocation of Tax Relating to State Separate Income Tax Returns.* (i) XPO shall be responsible for any and all State Income Taxes due with respect to or required to be reported on any XPO Separate Return; and (ii) SpinCo shall be responsible for any and all State Income Taxes due with respect to or required to be reported on any SpinCo Separate Return; in each case, including any increase in such Tax as a result of a Final Determination.

*(c) Allocation of State Other Tax.* (i) XPO shall be responsible for any and all State Other Taxes due with respect to or required to be reported on any (A) XPO Separate Return or (B) Joint Return that XPO or any member of the XPO Group is obligated to file under applicable Tax Law; and (ii) SpinCo shall be responsible for any and all State Other Taxes due with respect to or required to be reported on any (A) SpinCo Separate Return or (B) Joint Return that SpinCo or any member of the SpinCo Group is obligated to file under applicable Tax Law; in each case, including any increase in such Tax as a result of a Final Determination.

*Section 2.04 Allocation of Foreign Taxes.* Except as otherwise provided in Section 2.05 and Section 2.04(d), Foreign Income Tax and Foreign Other Tax shall be allocated as follows:

*(a) Allocation of Tax Relating to XPO Foreign Combined Income Tax Returns.* XPO shall be responsible for any and all Foreign Income Taxes due with respect to or required to be reported on any XPO Foreign Combined Income Tax Return (including any increase in such Tax



as a result of a Final Determination); *provided*, that SpinCo shall be responsible for any such Foreign Income Taxes with respect to any Tax Period (or portion thereof) ending on or prior to the Distribution Date to the extent such Tax is imposed as a result of any adjustment pursuant to a Final Determination of any item of income, gain, loss, deduction or credit on any XPO Foreign Combined Income Tax Return that is attributable (as reasonably determined by XPO) to members of the SpinCo Group.

*(b) Allocation of Tax Relating to Foreign Separate Income Tax Returns.* (i) XPO shall be responsible for any and all Foreign Income Taxes due with respect to or required to be reported on any XPO Separate Return; and (ii) SpinCo shall be responsible for any and all Foreign Income Taxes due with respect to or required to be reported on any SpinCo Separate Return; in each case, including any increase in such Tax as a result of a Final Determination.

*(c) Allocation of Foreign Other Tax.* (i) XPO shall be responsible for any and all Foreign Other Taxes due with respect to or required to be reported on any (A) XPO Separate Return or (B) Joint Return that XPO or any member of the XPO Group is obligated to file under applicable Tax Law; and (ii) SpinCo shall be responsible for any and all Foreign Other Taxes due with respect to or required to be reported on any (A) SpinCo Separate Return or (B) Joint Return that SpinCo or any member of the SpinCo Group is obligated to file under applicable Tax Law; in each case, including any increase in such Tax as a result of a Final Determination.

*(d) Allocation of Tax Relating to SpinCo French Combined Income Tax Returns.* Notwithstanding anything to the contrary herein, the responsibility for any and all Foreign Income Taxes due with respect to or required to be reported on any SpinCo French Combined Income Tax Return (including any increase in such Tax as a result of a Final Determination) shall be governed exclusively by the French Tax Combined Group Exit Agreement.

#### *Section 2.05 Certain Transaction and Other Taxes.*

*(a) SpinCo Liability.* SpinCo shall be liable for, and shall indemnify and hold harmless the XPO Group from and against any liability for:

- (i) any stamp, sales and use, gross receipts, or other transfer Taxes imposed by any Tax Authority on any member of the SpinCo Group (if such member is primarily liable for such Tax) on the transfers occurring pursuant to the Transactions;
- (ii) any value-added or goods and services Tax imposed by any Tax Authority on any transfer occurring pursuant to the Transactions to the extent any member of the SpinCo Group is the transferee with respect to the relevant transfer;
- (iii) any Tax (other than Tax-Related Losses) resulting from a breach by SpinCo of any covenant made by SpinCo in this Agreement, the Separation and Distribution Agreement or any Ancillary Agreement; and
- (iv) any Tax-Related Losses for which SpinCo is responsible pursuant to Section 7.05.

The amounts for which SpinCo is liable pursuant to Section 2.05(a)(i), (ii), and (iii) shall include all accounting, legal, and other professional fees and court costs incurred in connection with the relevant Taxes.

*(b) XPO Liability.* XPO shall be liable for, and shall indemnify and hold harmless the SpinCo Group from and against any liability for:

- (i) Any stamp, sales and use, gross receipts, or other transfer Taxes imposed by any Tax Authority on any member of the XPO Group (if such member is primarily liable for such Tax) on the transfers occurring pursuant to the Transactions;
- (ii) any value-added or goods and services Tax imposed by any Tax Authority on any transfer occurring pursuant to the Transactions to the extent any member of the XPO Group is the transferee with respect to the relevant transfer;
- (iii) any Tax (other than Tax-Related Losses) resulting from a breach by XPO of any covenant made by XPO in this Agreement, the Separation and Distribution Agreement, any Ancillary Agreement; and
- (iv) any Tax-Related Losses for which XPO is responsible pursuant to Section 7.05.

The amounts for which XPO is liable pursuant to Section 2.05(b)(i), (ii) and (iii) shall include all accounting, legal, and other professional fees and court costs incurred in connection with the relevant Taxes.

### **Section 3. Proration of Taxes for Straddle Periods.**

*(a) General Method of Proration.* In the case of any Straddle Period, Tax Items shall be apportioned between Pre-Deconsolidation Periods and Post-Deconsolidation Periods in accordance with the principles of Treasury Regulations Section 1.1502-76(b) as reasonably interpreted and applied by XPO. With respect to the XPO Federal Consolidated Income Tax Return for the taxable year that includes the Distribution, XPO may determine in its sole discretion whether to make a ratable election under Treasury Regulations Section 1.1502-76(b)(2)(ii) with respect to SpinCo. SpinCo shall, and shall cause each member of the SpinCo Group to, take all actions necessary to give effect to any such election.

*(b) Transactions Treated as Extraordinary Item.* In determining the apportionment of Tax Items between Pre-Deconsolidation Periods and Post-Deconsolidation Periods, any Tax Items relating to the Transactions shall be treated as extraordinary items described in Treasury Regulations Section 1.1502-76(b)(2)(ii)(C) and shall (to the extent arising on or prior to the Deconsolidation Date) be allocated to the Pre-Deconsolidation Period(s), and any Taxes related to such items shall be treated under Treasury Regulations Section 1.1502-76(b)(2)(iv) as relating to such extraordinary item and shall (to the extent arising on or prior to the Deconsolidation Date) be allocated to the Pre-Deconsolidation Period(s).

#### **Section 4. Preparation and Filing of Tax Returns.**

*Section 4.01 General.* Except as otherwise provided in this Section 4, Tax Returns shall be prepared and filed when due (taking into account extensions) by the Person obligated to file such Tax Returns under the Code or applicable Tax Law. The Companies shall, and shall cause their respective Affiliates to, provide assistance and cooperation to one another in accordance with Section 8 with respect to the preparation and filing of Tax Returns (including by providing information required to be provided pursuant to Section 8). Notwithstanding anything to the contrary herein, the obligations and rights to prepare and file, or to cause to be prepared and filed, any SpinCo French Combined Income Tax Return shall be governed exclusively by the French Tax Combined Group Exit Agreement.

*Section 4.02 XPO's Responsibility.* XPO has the exclusive obligation and right to prepare and file, or to cause to be prepared and filed:

(a) XPO Federal Consolidated Income Tax Returns for any Tax Periods ending before, on or after any Deconsolidation Date;

(b) XPO State Combined Income Tax Returns, XPO Foreign Combined Income Tax Returns and any other Joint Returns that XPO reasonably determines are required to be filed (or that XPO chooses to be filed) by XPO or any member of the XPO Group for Tax Periods ending before, on or after the Deconsolidation Date; and

(c) XPO Separate Returns and SpinCo Separate Returns that XPO reasonably determines are required to be filed by the Companies or any of their Affiliates for Tax Periods ending before, on or after the Deconsolidation Date (limited, in the case of SpinCo Separate Returns, to such Tax Returns as are required to be filed (taking into account extensions) on or before the Deconsolidation Date).

*Section 4.03 SpinCo's Responsibility.* SpinCo shall prepare and file, or shall cause to be prepared and filed, all Tax Returns required to be filed by or with respect to members of the SpinCo Group other than those Tax Returns that XPO is required or entitled to prepare and file under Section 4.02. The Tax Returns required to be prepared and filed by SpinCo under this Section 4.03 shall include (a) any SpinCo Federal Consolidated Income Tax Return for Tax Periods ending after the SpinCo Deconsolidation Date and (b) SpinCo Separate Returns required to be filed (taking into account extensions) after the SpinCo Deconsolidation Date.

*Section 4.04 Reserved.*

*Section 4.05 Tax Accounting Practices.*

(a) *General Rule.* Except as otherwise provided in Section 4.05(b), with respect to any Tax Return that SpinCo has the obligation and right to prepare and file, or cause to be prepared and filed, under Section 4.03, for any Pre-Deconsolidation Period or any Straddle Period (or any Tax Period beginning after the Deconsolidation Date to the extent items reported on such Tax Return could reasonably be expected to affect items reported on any Tax Return that XPO has the obligation or right to prepare and file for any Pre-Deconsolidation Period or any Straddle Period), such Tax Return shall be prepared in accordance with past practices, accounting

methods, elections or conventions (“Past Practices”) used with respect to the Tax Returns in question (unless there is no reasonable basis for the use of such Past Practices), and to the extent any items are not covered by Past Practices (or in the event that there is no reasonable basis for the use of such Past Practices), in accordance with reasonable Tax accounting practices selected by SpinCo (unless such Tax accounting practice would have an adverse and material impact on XPO in which case such Tax accounting practices shall be selected by SpinCo in consultation with XPO and with the written consent of XPO (such consent not to be unreasonably withheld, delayed or conditioned)). Except as otherwise provided in Section 4.05(b), XPO shall prepare any Tax Return that it has the obligation and right to prepare and file, or cause to be prepared and filed, under Section 4.02, in accordance with reasonable Tax accounting practices selected by XPO.

*(b) Reporting of Transactions.* Except to the extent otherwise required (x) by a change in applicable law or (y) as a result of a Final Determination, (i) neither XPO nor SpinCo shall (and neither shall permit or cause any member of its Group to) take any position that is inconsistent with the treatment of (A) any External Separation Transaction or the Internal Distribution, in each case, as having U.S. Tax-Free Status (or analogous status under state or local law) or (B) any Foreign Separation intended to have Foreign Tax-Free Status as having such status, and (ii) SpinCo shall not (and shall not permit or cause any member of the SpinCo Group to) take any position with respect to any material item of income, deduction, gain, loss, or credit on a Tax Return, or otherwise treat such item in a manner that is inconsistent with the manner such item is reported on a Tax Return required to be prepared or filed by XPO pursuant to Section 4.02 (including, without limitation, the claiming of a deduction previously claimed on any such Tax Return); *provided, however*, that, notwithstanding anything to the contrary herein, (1) if XPO determines that there has been a change in relevant facts after the Deconsolidation Date as a result of which (I) any External Separation Transaction or the Internal Distribution does not qualify for U.S. Tax-Free Status or (II) any Foreign Separation intended to have Foreign Tax-Free Status does not qualify for such status, then (2) XPO shall promptly notify SpinCo in writing and, following such notice, each of the Parties shall report such External Separation Transaction, Internal Distribution, or Foreign Separation, as applicable, in the manner set forth in such notice (and shall not be permitted to take positions inconsistent with such notice).

*Section 4.06 Consolidated or Combined Tax Returns.* SpinCo shall elect and join, and shall cause its Affiliates to elect and join, in filing any XPO State Combined Income Tax Returns and any Joint Returns that XPO determines are required to be filed or that XPO chooses to file pursuant to Section 4.02(b). With respect to any Tax Return relating to any Tax Period (or portion thereof) ending on or prior to the Deconsolidation Date, which Tax Return otherwise would be a SpinCo Separate Return, SpinCo will elect and join, and will cause its Affiliates to elect and join, in filing consolidated, unitary, combined, or other similar joint Tax Returns, to the extent each entity is eligible to join in such Tax Returns, upon XPO’s request. In the event that, following the Deconsolidation Date, XPO or a member of the XPO Group makes a Tax election (other than consistent with Past Practices) with respect to any XPO Federal Consolidated Income Tax Return, XPO State Combined Income Tax Return or XPO Foreign Combined Income Tax Return and determines that the making of such Tax election would have a material and adverse impact on the Tax liability or Tax attributes of any member of the SpinCo Group in a Tax Period ending after the Deconsolidation Date, XPO shall provide written notice of such determination to SpinCo within a reasonable period of time following such determination.

Section 4.07      *Right to Review Tax Returns.*

*(a) General.* The Company that has responsibility for preparing and filing any material Tax Return under this Agreement shall make such Tax Return (or the relevant portions thereof) and related workpapers available for review by the other Company, if requested, to the extent the requesting party (i) is or would reasonably be expected to be liable for Taxes reflected on such Tax Return, (ii) is or would reasonably be expected to be liable for any additional Taxes owing as a result of adjustments to the amount of such Taxes reported on such Tax Return, (iii) has or would reasonably be expected to have a claim for Tax Benefits under this Agreement in respect of items reflected on such Tax Return, or (iv) reasonably requires such documents to confirm compliance with the terms of this Agreement; *provided, however*, that notwithstanding anything in this Agreement to the contrary, XPO shall not be required to make any XPO Federal Consolidated Income Tax Return available for review by SpinCo. The Company that has responsibility for preparing and filing such Tax Return under this Agreement shall use reasonable efforts to make such Tax Return (or the relevant portions thereof) and related workpapers available for review as required under this paragraph sufficiently in advance of the due date for filing such Tax Return to provide the requesting Party with a meaningful opportunity to review and comment on such Tax Return and shall consider such comments in good faith. The Companies shall attempt in good faith to resolve any material disagreement arising out of the review of such Tax Return and, failing such resolution, any material disagreement shall be resolved in accordance with the provisions of Section 14 as promptly as practicable.

*(b) Execution of Returns Prepared by Other Party.* In the case of any Tax Return that is required to be prepared by one Company under this Agreement and that is required by law to be signed by the other Company (or by its authorized representative), the Company that is legally required to sign such Tax Return shall not be required to sign such Tax Return under this Agreement unless there is at least a “reasonable basis” (or comparable standard under state, local or foreign law) for the Tax treatment of each material item reported on the Tax Return.

*Section 4.08 SpinCo Carrybacks and Claims for Refund.* SpinCo hereby agrees that, unless XPO consents in writing, (a) no Adjustment Request with respect to any Joint Return shall be filed, and (b) any available elections to waive the right to claim in any SpinCo Pre-Deconsolidation Period with respect to any Joint Return any SpinCo Carryback arising in a SpinCo Post-Deconsolidation Period shall be made, and no affirmative election shall be made to claim any such SpinCo Carryback; *provided, however,* that the Parties agree that any such Adjustment Request shall be made with respect to any SpinCo Carryback related to Federal or State Income Taxes, upon the reasonable request of SpinCo, if (i) such SpinCo Carryback is necessary to prevent the loss of the Federal and/or State Income Tax Benefit of such SpinCo Carryback (including, but not limited to, an Adjustment Request with respect to a SpinCo Carryback of a federal or state capital loss arising in a Post-Deconsolidation Period to a Pre-Deconsolidation Period) and (ii) such Adjustment Request, based on XPO's reasonable determination, will cause no Tax detriment to XPO, the XPO Group or any member of the XPO Group. Any Adjustment Request to which XPO consents under this Section 4.08 shall be prepared and filed by the Responsible Company with respect to the Tax Return to be adjusted.

*Section 4.09 Apportionment of Earnings and Profits and Other Tax Attributes.*

(a) If the XPO Affiliated Group has a Tax Attribute, the portion, if any, of such Tax Attribute apportioned to SpinCo or any member of the SpinCo Group and treated as a carryover to the first Post-Deconsolidation Period of SpinCo (or such member) shall be determined by XPO in accordance with Treasury Regulations Sections 1.1502-21, 1.1502-21T, 1.1502-22, 1.1502-79 and, if applicable, 1.1502-79A.

(b) No Tax Attribute with respect to consolidated Federal Income Tax of the XPO Affiliated Group, other than those described in Section 4.09(a), and no Tax Attribute with respect to any consolidated, combined or unitary State or Foreign Income Tax, in each case, arising in respect of a Joint Return shall be apportioned to SpinCo or any member of the SpinCo Group, except as XPO (or such member of the XPO Group as XPO shall designate) determines is otherwise required under applicable law.

(c) XPO shall use commercially reasonable efforts to determine or cause its designee to determine the portion, if any, of any Tax Attribute that must (absent a Final Determination to the contrary) be apportioned to (i) SpinCo or any member of the SpinCo Group from any member of the XPO Group and (ii) XPO or any member of the XPO Group from any member of the SpinCo Group, in each case, in accordance with this Section 4.09 and applicable law, and the amount of Tax basis and earnings and profits (including, for the avoidance of doubt, PTEP) to be apportioned to (iii) SpinCo or any member of the SpinCo Group from any member of the XPO Group and (iv) XPO or any member of the XPO Group from any member of the SpinCo Group, in each case, in accordance with this Section 4.09 and applicable law, and shall provide written notice of the calculation thereof to SpinCo as soon as reasonably practicable after XPO or its designee prepares such calculation. For the absence of doubt, XPO shall not be liable to SpinCo or any member of the SpinCo Group for any failure of any determination under this Section 4.09 to be accurate or sustained under applicable law, including as the result of any Final Determination.

(d) Any written notice delivered by XPO pursuant to Section 4.09(c) shall be binding on SpinCo and each member of the SpinCo Group and shall not be subject to dispute resolution;

*provided* that XPO shall consider in good faith any reasonable comments SpinCo may timely provide with respect to such written notice. Except to the extent otherwise required by a change in applicable law or pursuant to a Final Determination, SpinCo shall not take any position (whether on a Tax Return or otherwise) that is inconsistent with the information contained in any such written notice.

*Section 4.10 Gain Recognition Agreements.* SpinCo shall, and shall cause its applicable domestic subsidiaries to, enter into a new “gain recognition agreement” within the meaning of Treasury Regulations Section 1.367(a)-8(b)(1)(iv) and (c) (5) with respect to each of the transfers notified in writing by XPO to SpinCo within 180 days following the Distribution Date in order to avoid the occurrence of any “triggering event” within the meaning of Treasury Regulations Section 1.367(a)-8(j) that would otherwise occur as a result of the Transactions.

## **Section 5. Tax Payments.**

*Section 5.01 Payment of Taxes with Respect to Tax Returns.* Subject to Section 5.02, (a) the Responsible Company with respect to any Tax Return shall pay any Tax required to be paid to the applicable Tax Authority on or before the relevant Payment Date, and (b) in the case of any adjustment pursuant to a Final Determination with respect to any Tax Return, the Responsible Company shall pay to the applicable Tax Authority when due (taking into account any automatic or validly elected extensions, deferrals or postponements) any additional Tax due with respect to such Tax Return required to be paid as a result of such adjustment pursuant to a Final Determination.

### *Section 5.02 Indemnification Payments.*

(a) If a Company (the “Payor”) is required pursuant to Section 5.01 (or otherwise under applicable Tax Law) to pay to a Tax Authority a Tax for which the other Company (the “Required Party”) is liable, in whole or in part, under this Agreement (including, for the avoidance of doubt, any administrative or judicial deposit required to be paid by the Payor to a Tax Authority or other Governmental Authority to pursue any Tax Contest, to the extent the Required Party would be liable under this Agreement for any Tax resulting from such Tax Contest), the Required Party shall reimburse the Payor within 15 days of delivery by the Payor to the Required Party of an invoice for the amount due from the Required Party, accompanied by evidence of payment and a statement detailing the Taxes paid and describing in reasonable detail the particulars relating thereto. If the amount to be paid by the Required Party pursuant to this Section 5.02 is in respect of any Tax in excess of \$20 million required to be paid by the Payor to a single Tax Authority on or prior to a single due date (taking into account any automatic or validly elected extensions, deferrals or postponements), then the Required Party shall pay the Payor such amount no later than the later of (i) three days after delivery by the Payor to the Required Party of an invoice for the amount due, accompanied by a statement detailing the Taxes required to be paid and describing in reasonable detail the particulars relating thereto and (ii) three days prior to the due date for the payment of such Tax (taking into account any automatic or validly elected extensions, deferrals or postponements).

(b) All indemnification payments under this Agreement shall be made by XPO directly to SpinCo, and by SpinCo directly to XPO; *provided, however*, that if the Companies mutually agree with respect to any such indemnification payment, (i) any member of the XPO Group, on

the one hand, may make such indemnification payment to any member of the SpinCo Group, on the other hand, and (ii) any member of the SpinCo Group, on the one hand, may make such indemnification payment to any member of the XPO Group, as applicable.

## **Section 6. Tax Benefits.**

### *Section 6.01 Tax Benefits.*

(a) Except as set forth below, (i) XPO shall be entitled to any refund (and any interest thereon received from the applicable Tax Authority) of (A) Income Taxes and Other Taxes for which XPO is liable hereunder (except as otherwise provided in clause (ii)(A)) and (B) Foreign Income Taxes reported on any Tax Return for a Tax Period ending on or prior to (or including) the Deconsolidation Date to the extent such refund results in a disallowance or adjustment of any foreign Tax credit claimed by the XPO Group (and any interest payable to the applicable Tax Authority as a result of such disallowance or adjustment), (ii) SpinCo shall be entitled to any refund (and any interest thereon received from the applicable Tax Authority) (A) to the extent such refund arises as a result of any adjustment pursuant to a Final Determination of any item of income, gain, loss, deduction or credit on any XPO Federal Consolidated Income Tax Return, XPO State Combined Income Tax Return or XPO Foreign Combined Income Tax Return, in each case, that is attributable (as reasonably determined by XPO) to members of the SpinCo Group and (B) of any other Income Taxes and Other Taxes for which SpinCo is liable hereunder, and (iii) a Company receiving a refund to which another Company is entitled hereunder in whole or in part shall pay over such refund (or portion thereof), net of cost (including Taxes) resulting therefrom, to such other Company within 30 days after such refund is received; it being understood that, with respect to any refund (or any interest thereon received from the applicable Tax Authority) of Shared Taxes or Taxes for which both Companies are liable under Section 7.05(c)(i), each Company shall be entitled to the portion of such refund that reflects its proportionate liability for such Taxes.

(b) If (i) (A) a member of the SpinCo Group actually realizes in cash any Tax Benefit as a result of an adjustment pursuant to a Final Determination or reporting required by clause (x) or clause (y) of Section 4.05(b), in each case, that increases Taxes for which a member of the XPO Group is liable hereunder (or reduces any Tax Attribute of a member of the XPO Group) and such Tax Benefit would not have arisen but for such adjustment or reporting (determined on a “with and without” basis), or (B) a member of the XPO Group actually realizes in cash any Tax Benefit as a result of an adjustment pursuant to a Final Determination or reporting required by clause (x) or clause (y) of Section 4.05(b), in each case, that increases Taxes for which a member of the SpinCo Group is liable hereunder (or reduces any Tax Attribute of a member of the SpinCo Group) and such Tax Benefit would not have arisen but for such adjustment or reporting (determined on a “with and without” basis), and (ii) the aggregate Tax Benefit realized or realizable by a member of the SpinCo Group or a member of the XPO Group, as applicable, as a result of such adjustment or reporting would reasonably be expected to exceed \$1 million, then, SpinCo or XPO, as the case may be, shall make a payment to XPO or SpinCo, as appropriate, within 30 days following such actual realization of the Tax Benefit, in an amount equal to such Tax Benefit actually realized in cash (including any Tax Benefit actually realized as a result of the payment); *provided, further*, that no Company (or any Affiliates of any Company) shall be obligated to make a payment otherwise required pursuant to this Section 6.01(b) to the extent making such payment would place such Company (or any of its Affiliates) in a less favorable net



after-Tax position than such Company (or such Affiliate) would have been in if the relevant Tax Benefit had not been realized. If a Company or one of its Affiliates pays over any amount pursuant to the preceding sentence and such Tax Benefit is subsequently disallowed or adjusted, the Parties shall promptly make appropriate payments (including in respect of any interest paid or imposed by any Tax Authority) to reflect such disallowance or adjustment.

(c) No later than 30 days after a Tax Benefit described in Section 6.01(b) is actually realized in cash by a member of the XPO Group or a member of the SpinCo Group, XPO (if a member of the XPO Group actually realizes such Tax Benefit) or SpinCo (if a member of the SpinCo Group actually realizes such Tax Benefit) shall provide the other Company with a written calculation of the amount payable to such other Company by XPO or SpinCo pursuant to this Section 6. In the event that XPO or SpinCo disagrees with any such calculation described in this Section 6.01(c), XPO or SpinCo shall so notify the other Company in writing within 30 days of receiving the written calculation set forth above in this Section 6.01(c). XPO and SpinCo shall endeavor in good faith to resolve such disagreement, and, failing that, the amount payable under this Section 6 shall be determined in accordance with the provisions of Section 14 as promptly as practicable.

(d) SpinCo shall be entitled to any refund that is attributable to, and would not have arisen but for, a SpinCo Carryback pursuant to the proviso set forth in Section 4.08; *provided, however*, that SpinCo shall indemnify and hold the members of the XPO Group harmless from and against any and all collateral Tax consequences resulting from or caused by any such SpinCo Carryback, including (but not limited to) the loss or postponement of any benefit from the use of Tax Attributes generated by a member of the XPO Group or an Affiliate thereof if (x) such Tax Attributes expire unutilized, but would have been utilized but for such SpinCo Carryback, or (y) the use of such Tax Attributes is postponed to a later Tax Period than the Tax Period in which such Tax Attributes would have been utilized but for such SpinCo Carryback. Any such payment of such refund made by XPO to SpinCo pursuant to this Section 6.01(d) shall be recalculated in light of any Final Determination (or any other facts that may arise or come to light after such payment is made, such as a carryback of a XPO Group Tax Attribute to a Tax Period in respect of which such refund is received) that would affect the amount to which SpinCo is entitled, and an appropriate adjusting payment shall be made by SpinCo to XPO such that the aggregate amount paid pursuant to this Section 6.01(d) equals such recalculated amount.

*Section 6.02 XPO and SpinCo Income Tax Deductions in Respect of Certain Equity Awards and Incentive Compensation.*

(a) *Allocation of Deductions.* To the extent permitted by applicable law, Income Tax deductions arising by reason of exercises of options or vesting or settlement of restricted stock units, in each case, following the Distribution, with respect to XPO stock or SpinCo stock (such options and restricted stock units, collectively, "Compensatory Equity Interests") held by any Person shall be claimed (i) in the case of a XPO Group Employee or Former XPO Group Employee, solely by the XPO Group, (ii) in the case of a SpinCo Group Employee or Former SpinCo Group Employee, solely by the SpinCo Group, and (iii) in the case of a non-employee director, by the Company for which the director serves as a director following the Distribution (*provided*, that in the case of any director who serves on the board of directors of XPO and SpinCo, each Company shall be entitled only to the deductions arising in respect of its own stock or equity awards).

*(b) Withholding, and Reporting.* Each Company entitled to claim the Tax deductions described in Section 6.02(a) with respect to Compensatory Equity Interests shall be responsible for all applicable Taxes (including, but not limited to, withholding and excise Taxes) and shall satisfy, or shall cause to be satisfied, all applicable Tax reporting obligations with respect to such Compensatory Equity Interests; *provided, however*, that such Company shall be entitled to receive, within 10 days following the event giving rise to the relevant deduction, any amounts collected (or deemed collected) by the issuing corporation or any of its Affiliates or agents from or on behalf of a holder of the applicable Compensatory Equity Interests in respect of Taxes required to be paid by such holder in connection with the exercise, vesting or settlement thereof (including any payments made by such holder to the issuing corporation, any proceeds from the sale of underlying equity securities on behalf of such holder, or the fair market value of any equity securities withheld by the issuing corporation in respect of such holder's Taxes by way of "net" settlement).

## **Section 7. Tax-Free Status.**

### *Section 7.01 Representations.*

*(a)* Each of XPO and SpinCo hereby represents and warrants that (i) it has reviewed the Representation Letters and the Tax Opinions and (ii) subject to any qualifications therein, all information, representations and covenants contained therein that relate to such Company or any member of its Group are true, correct and complete.

*(b)* SpinCo hereby represents and warrants that it has no plan or intention of taking any action, or failing to take any action (or causing or permitting any member of its Group to take or fail to take any action), that could reasonably be expected to cause any representation, covenant, or factual statement made in this Agreement, the Separation and Distribution Agreement, any Representation Letters, any of the Ancillary Agreements, or any of the Tax Opinions to be untrue.

*(c)* SpinCo hereby represents and warrants that, during the two-year period ending on the Distribution Date, there was no "agreement, understanding, arrangement, substantial negotiations or discussions" (as such terms are defined in Treasury Regulations Section 1.355-7(h)) by any one or more officers or directors of any member of the SpinCo Group or by any other person or persons with the implicit or explicit permission of one or more of such officers or directors regarding an acquisition of all or a significant portion of the SpinCo Capital Stock (or the Capital Stock of any member of the SpinCo Group that was a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(b) of the Code) in the Internal Distribution or any predecessor of SpinCo or such member of the SpinCo Group); *provided, however*, that no representation is made regarding the absence of any "agreement, understanding, arrangement, substantial negotiations or discussions" (as such terms are defined in Treasury Regulations 1.355-7(h)) by any one or more officers or directors of XPO (or by any other person or persons with the implicit or explicit permission of one or more of such officers or directors) who are not officers or directors of SpinCo.

Section 7.02      *Restrictions on SpinCo.*

(a) SpinCo agrees that it will not take or fail to take, and will not cause or permit any of its Affiliates to take or fail to take, any action where such action or failure to act would be inconsistent with or cause to be untrue any material, information, covenant or representation in this Agreement, the Separation and Distribution Agreement, any of the Ancillary Agreements, any Representation Letters, or any Tax Opinion. SpinCo agrees that it will not take or fail to take, and will not cause or permit any of its Affiliates to take or fail to take, any action where such action or failure to act would, or could reasonably be expected to, prevent U.S. Tax-Free Status or Foreign Tax-Free Status.

(b) SpinCo agrees that, from the date hereof until the first day after the Restriction Period, it will (and will cause its “separate affiliated group” (as defined in Section 355(b)(3)(B) of the Code) to) (i) maintain the active conduct (as defined in Section 355(b)(2) of the Code and the Treasury Regulations promulgated thereunder) of the SpinCo Active Trade or Business and (ii) not engage in any transaction that would result in it ceasing to be engaged in the SpinCo Active Trade or Business for purposes of Section 355(b)(2) of the Code. SpinCo further agrees that, from the date hereof until the first day after the Restriction Period, it will cause each member of the SpinCo Group that was a “distributing corporation” or a “controlled corporation” (within the meaning of Section 355(b) of the Code) in the Internal Distribution (and such member’s “separate affiliated group” (as defined in Section 355(b)(3)(B) of the Code)) to (x) maintain the active conduct (as defined in Section 355(b)(2) of the Code and the Treasury Regulations promulgated thereunder) of the trade or business(es) relied upon to satisfy Section 355(b) of the Code with respect to the Internal Distribution (as described in the relevant Representation Letters, and/or relevant Tax Opinion), as conducted immediately prior to the Internal Distribution and (y) not engage in any transaction that would result in such member ceasing to be engaged in the active conduct of such trade or business for purposes of Section 355(b)(2) of the Code.

(c) Reserved.

(d) SpinCo agrees that, from the date hereof until the first day after the Restriction Period, it will not:

(A) enter into any Proposed Acquisition Transaction or, to the extent SpinCo has the right to prohibit any Proposed Acquisition Transaction, permit any Proposed Acquisition Transaction to occur (whether by (1) redeeming rights under a shareholder rights plan, (2) finding a tender offer to be a “permitted offer” under any such plan or otherwise causing any such plan to be inapplicable or neutralized with respect to any Proposed Acquisition Transaction, or (3) approving any Proposed Acquisition Transaction, whether for purposes of Section 203 of the DGCL or any similar corporate statute, any “fair price” or other provision of SpinCo’s charter or bylaws or otherwise),

(B) merge or consolidate with any other Person or liquidate or partially liquidate,

(C) in a single transaction or series of transactions (1) sell or transfer (other than sales or transfers of inventory in the ordinary course of business) all or substantially all of the assets that were transferred to SpinCo pursuant to the Contribution, (2) sell or transfer to any Person that is not a member of SpinCo's "separate affiliated group" (as defined in Section 355(b)(3)(B) of the Code) 30% or more of the gross assets of the SpinCo Active Trade or Business, or (3) sell or transfer 30% or more of the consolidated gross assets of SpinCo and its Affiliates,

(D) redeem or otherwise repurchase (directly or through a SpinCo Affiliate) any SpinCo Capital Stock, or rights to acquire SpinCo Capital Stock, except to the extent such repurchases satisfy Section 4.05(1)(b) of Revenue Procedure 96-30 (as in effect prior to the amendment by Revenue Procedure 2003-48),

(E) amend its certificate of incorporation (or other organizational documents) or take any other action, whether through a stockholder vote or otherwise, affecting the voting rights of SpinCo Capital Stock (including, without limitation, through the conversion of one class of SpinCo Capital Stock into another class of SpinCo Capital Stock),

(F) take any other action or actions (including any action or transaction that would be reasonably likely to be inconsistent with any representation or covenant made in any Representation Letters or any Tax Opinion) that, in the aggregate (and taking into account any other transactions described in this subparagraph (d)), would be reasonably likely to have the effect of causing or permitting one or more persons to acquire, directly or indirectly, Capital Stock representing a Fifty-Percent or Greater Interest in SpinCo or otherwise jeopardize the U.S. Tax-Free Status of the Distribution or the Internal Distribution, or

(G) cause or permit any member of the SpinCo Group that was a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(b) of the Code) in the Internal Distribution to take any action or enter into any transaction described in the preceding clauses (B), (C), (D), (E) or (F) (substituting references therein to "SpinCo", the "Contribution," the "SpinCo Active Trade or Business" and "SpinCo Capital Stock" with references to the relevant corporation, the transfer of assets to such corporation pursuant to the Transactions, the active conduct of the trade or business(es) relied upon with respect to the Internal Distribution (as described in the relevant Representation Letters and/or relevant Tax Opinion) for purposes of Section 355(b)(2) of the Code, and the Capital Stock of such corporation),

unless, in each case, prior to taking any such action set forth in the foregoing clauses (A) through (G), (x) SpinCo shall have requested that XPO obtain a private letter ruling from the IRS and/or any other applicable Tax Authority in accordance with Section 7.04(b) and (d) to the effect that such transaction will not affect the U.S. Tax-Free Status of any External Separation Transaction or the Internal Distribution, and XPO shall have received such a private letter ruling in form and substance satisfactory to XPO in its sole and absolute discretion (and in determining whether a private letter ruling is satisfactory, XPO may consider, among other factors, the appropriateness

of any underlying assumptions and management's representations made in connection with such private letter ruling), (y) SpinCo shall have provided XPO with an Unqualified Tax Opinion in form and substance satisfactory to XPO in its sole and absolute discretion, (and in determining whether an opinion is satisfactory, XPO may consider, among other factors, the appropriateness of any underlying assumptions and management's representations if used as a basis for the opinion and XPO may determine that no opinion would be acceptable to XPO) or (z) XPO shall have waived the requirement to obtain such private letter ruling or Unqualified Tax Opinion.

(e) *Certain Acquisitions of SpinCo Capital Stock.* If SpinCo proposes to enter into any Section 7.02(e) Acquisition Transaction or, to the extent SpinCo has the right to prohibit any Section 7.02(e) Acquisition Transaction, proposes to permit any Section 7.02(e) Acquisition Transaction to occur, in each case, during the period from the date hereof until the first day after the Restriction Period, SpinCo shall provide XPO, no later than ten days following the signing of any written agreement with respect to the Section 7.02(e) Acquisition Transaction, with a written description of such transaction (including the type and amount of SpinCo Capital Stock to be issued in such transaction) and a certificate of the Chief Financial Officer of SpinCo to the effect that the Section 7.02(e) Acquisition Transaction is not a Proposed Acquisition Transaction or any other transaction to which the requirements of Section 7.02(d) apply (a "SpinCo CFO Certificate").

(f) *Certain Additional Restrictions on SpinCo.* SpinCo shall not (and shall not cause or permit any of its Subsidiaries to) take any action set forth on Schedule 7.02(f).

*Section 7.03 Restrictions on XPO.* XPO agrees that it will not take or fail to take, or cause or permit any member of the XPO Group to take or fail to take, any action where such action or failure to act would be inconsistent with or cause to be untrue any material, information, covenant or representation in this Agreement, the Separation and Distribution Agreement, any of the Ancillary Agreements, any Representation Letters, or any Tax Opinion. XPO agrees that it will not take or fail to take, or cause or permit any member of the XPO Group to take or fail to take, any action where such action or failure to act would or could reasonably be expected to prevent U.S. Tax-Free Status or Foreign Tax-Free Status.

*Section 7.04 Procedures Regarding Opinions and Rulings.*

(a) If SpinCo notifies XPO that it desires to take one of the actions described in clauses (A) through (G) of Section 7.02(d)(a "Notified Action"), XPO and SpinCo shall reasonably cooperate to attempt to obtain the private letter ruling or Unqualified Tax Opinion referred to in Section 7.02(d), unless XPO shall have waived the requirement to obtain such private letter ruling or Unqualified Tax Opinion.

(b) *Rulings or Unqualified Tax Opinions at SpinCo's Request.* At the reasonable request of SpinCo pursuant to Section 7.02(d), XPO shall cooperate with SpinCo and use commercially reasonable efforts to seek to obtain, as expeditiously as reasonably practicable, a private letter ruling from the IRS or an Unqualified Tax Opinion for the purpose of permitting SpinCo to take the Notified Action. Further, in no event shall XPO be required to file any request for a private letter ruling under this Section 7.04(b) unless SpinCo represents that (i) it has reviewed the request for such private letter ruling, and (ii) all information and representations, if any, relating to any member of the SpinCo Group, contained in the related documents are (subject to any

qualifications therein) true, correct and complete. SpinCo shall reimburse XPO for all reasonable costs and expenses incurred by the XPO Group in obtaining a private letter ruling or Unqualified Tax Opinion requested by SpinCo within 15 business days after receiving an invoice from XPO therefor.

*(c) Rulings or Tax Opinions at XPO's Request.* XPO shall have the right to seek a private letter ruling (or other ruling) from the IRS (and/or any other applicable Tax Authority) concerning any Transaction (including the impact of any transaction thereon) or an Unqualified Tax Opinion (or other opinion of a Tax Advisor with respect to any of the Transactions) at any time in its sole and absolute discretion. If XPO determines to seek such a private letter ruling (or other ruling) or an Unqualified Tax Opinion (or other opinion), SpinCo shall (and shall cause each of its Affiliates to) cooperate with XPO and take any and all actions reasonably requested by XPO in connection with obtaining the private letter ruling (or other ruling) or Unqualified Tax Opinion (or other opinion) (including, without limitation, by making any representation or covenant or providing any materials or information requested by the IRS (and/or any other applicable Tax Authority) or any Tax Advisor; *provided*, that SpinCo shall not be required to make (or cause any of its Affiliate to make) any representation or covenant that is inconsistent with historical facts or as to future matters or events over which it has no control). XPO and SpinCo shall each bear its own costs and expenses in obtaining such a private letter ruling (or other ruling) or an Unqualified Tax Opinion (or other opinion) requested by XPO.

*(d) Ruling Process Control.* SpinCo hereby agrees that XPO shall have sole and exclusive control over the process of obtaining any private letter ruling (or other ruling), and that only XPO shall apply for such a private letter ruling (or other ruling). In connection with obtaining a private letter ruling pursuant to Section 7.04(b), XPO shall (i) keep SpinCo informed in a timely manner of all material actions taken or proposed to be taken by XPO in connection therewith; (ii) (A) reasonably in advance of the submission of any related private letter ruling documents provide SpinCo with a draft copy thereof, (B) reasonably consider SpinCo's comments on such draft copy, and (C) provide SpinCo with a final copy; and (iii) provide SpinCo with notice reasonably in advance of, and SpinCo shall have the right to attend, any formally scheduled meetings with the IRS (subject to the approval of the IRS) that relate to such private letter ruling. Neither SpinCo nor any of its directly or indirectly controlled Affiliates shall seek any guidance from the IRS or any other Tax Authority (whether written, verbal or otherwise) at any time concerning any Transaction that is the subject of a Tax Opinion (including the impact of any transaction on any of the foregoing).

#### *Section 7.05 Liability for Tax-Related Losses.*

*(a)* Notwithstanding anything in this Agreement or the Separation and Distribution Agreement to the contrary, subject to Section 7.05(c), SpinCo shall be responsible for, and shall indemnify and hold harmless XPO, its Affiliates and its officers, directors and employees from and against, 100% of any Tax-Related Losses that are attributable to or result from any one or more of the following: (A) the acquisition, after the Effective Time, of all or a portion of SpinCo's Capital Stock and/or its or its subsidiaries' assets (including any Capital Stock of any member of the SpinCo Group that was a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(b) of the Code) in the Internal Distribution) by any means whatsoever by any Person(s), (B) any action or failure to act by SpinCo after the Distribution (including, without limitation, any amendment to SpinCo's certificate of incorporation (or other

organizational documents), whether through a stockholder vote or otherwise) affecting the voting rights of SpinCo Capital Stock (including, without limitation, through the conversion of one class of SpinCo Capital Stock into another class of SpinCo Capital Stock), (C) any act or failure to act by SpinCo or any SpinCo Affiliate described in Section 7.02 (regardless whether such act or failure to act is covered by a private letter ruling, Unqualified Tax Opinion or waiver described in clause (x), (y) or (z) of Section 7.02(d) or in a SpinCo CFO Certificate described in Section 7.02(e)(i)), or (E) any breach by SpinCo of its agreement and representations set forth in Section 7.01 (other than Section 7.01(a)).

(b) Notwithstanding anything in this Agreement or the Separation and Distribution Agreement to the contrary, subject to Section 7.05(c), XPO shall be responsible for, and shall indemnify and hold harmless SpinCo, its Affiliates and each of its officers, directors and employees from and against, 100% of any Tax-Related Losses that are attributable to, or result from any one or more of the following: (i) the acquisition, after the Effective Time, of all or a portion of XPO's Capital Stock and/or its or its subsidiaries' assets (including any Capital Stock of any member of the XPO Group that was a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(b) of the Code) in the Internal Distribution) by any means whatsoever by any Person(s), or (ii) any act or failure to act by XPO or a member of the XPO Group described in Section 7.03.

(c)

(i) To the extent that any Tax-Related Loss is subject to indemnity under Sections 7.05(a), and (b), responsibility for such Tax-Related Loss shall be shared by SpinCo and XPO according to relative fault.

(ii) Notwithstanding anything in Section 7.05(b) or (c)(i) or any other provision of this Agreement or the Separation and Distribution Agreement to the contrary:

(A) with respect to (1) any Tax-Related Loss resulting from the application of Section 355(e) or Section 355(f) of the Code (other than as a result of an acquisition of a Fifty-Percent or Greater Interest in XPO or any member of the XPO Group that was a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(b) of the Code) in the Internal Distribution) and (2) any other Tax-Related Loss, in each case, resulting, in whole or in part, from an acquisition after the Distribution of any Capital Stock or assets of SpinCo (or any SpinCo Affiliate) by any means whatsoever by any Person or any action or failure to act by SpinCo affecting the voting rights of SpinCo, SpinCo shall be responsible for, and shall indemnify and hold harmless XPO its Affiliates, and each of its officers, directors and employees from and against, 100% of such Tax-Related Loss;

(B) for purposes of calculating the amount and timing of any Tax-Related Loss for which SpinCo is responsible under this Section 7.05, Tax-Related Losses shall be calculated by assuming that XPO, the XPO Affiliated Group, and each member of the XPO Group(1) pay Tax at the highest marginal corporate Tax rates in effect in each relevant Tax Period and (2) have no Tax Attributes in any relevant Tax Period; and

(iii) Notwithstanding anything in Section 7.05(a) or (c)(i) or any other provision of this Agreement or the Separation and Distribution Agreement to the contrary, with respect to (A) any Tax-Related Loss resulting from the application of Section 355(e) or Section 355(f) of the Code (other than as a result of an acquisition of a Fifty-Percent or Greater Interest in SpinCo or any member of the SpinCo Group that was a “distributing corporation” or a “controlled corporation” (within the meaning of Section 355(b) of the Code) in the Internal Distribution) and (B) any other Tax-Related Loss, in each case, resulting, in whole or in part, from an acquisition after the Distribution of any Capital Stock or assets of XPO (or any XPO Affiliate) by any means whatsoever by any Person (other than as a result of an acquisition in the Internal Distribution), XPO shall be responsible for, and shall indemnify and hold harmless SpinCo, its Affiliates and each of its officers, directors and employees from and against, 100% of such Tax-Related Loss.

(d) *Allocation of Certain Separation-Related Taxes.* Each of XPO and SpinCo shall be liable for, and shall indemnify and hold harmless the SpinCo Group or the XPO Group, as applicable, from and against any liability for Tax-Related Losses with respect to Income Taxes (except to the extent (A) such Tax is a Tax-Related Loss for which SpinCo or XPO is responsible pursuant to Section 7.05(a) or (b), respectively, or (B) XPO or SpinCo would otherwise be responsible for such amounts pursuant to Section 7.05(c) (such Taxes, “Shared Taxes”) in the proportions set forth on Schedule 7.05(d).

(e) Notwithstanding any other provision of this Agreement or the Separation and Distribution Agreement to the contrary:

(i) SpinCo shall pay XPO the amount for which SpinCo has an indemnification obligation under this Section 7.05: (A) in the case of Tax-Related Losses described in clause (a) of the definition of Tax-Related Losses, no later than the later of (x) seven business days after delivery by XPO to SpinCo of an invoice for the amount of such Tax-Related Losses or (y) three business days prior to the date XPO files, or causes to be filed, the applicable Tax Return for the year of the relevant transaction, as applicable (the “XPO Filing Date”) (*provided*, that if such Tax-Related Losses arise pursuant to a Final Determination described in clause (a), (b) or (c) of the definition of “Final Determination,” then SpinCo shall pay XPO no later than the later of (x) seven business days after delivery by XPO to SpinCo of an invoice for the amount of such Tax-Related Losses or (y) three business days prior to the date for making payment with respect to such Final Determination) and (B) in the case of Tax-Related Losses described in clause (b) or (c) of the definition of Tax-Related Losses, no later than the later of (x) seven business days after delivery by XPO to SpinCo of an invoice for the amount of such Tax-Related Losses or (y) two business days after the date XPO pays such Tax-Related Losses.

(ii) XPO shall pay SpinCo the amount for which XPO has an indemnification obligation under this Section 7.05: (A) in the case of Tax-Related Losses described in clause (a) of the definition of Tax-Related Losses, no later than the later of (x) seven business days after delivery by SpinCo to XPO of an invoice for the amount of such Tax-Related Losses or (y) three business days prior to the date SpinCo files, or causes to be filed, the applicable Tax Return for the year of the relevant transaction, as applicable (the “SpinCo Filing Date”) (*provided*, that if such Tax-Related Losses arise pursuant to a



Final Determination described in clause (a), (b) or (c) of the definition of “Final Determination,” then XPO shall pay SpinCo no later than the later of (x) seven business days after delivery by SpinCo to XPO of an invoice for the amount of such Tax-Related Losses or (y) than three business days prior to the date for making payment with respect to such Final Determination); and (B) in the case of Tax-Related Losses described in clause (b) or (c) of the definition of Tax-Related Losses, no later than the later of (x) seven business days after delivery by SpinCo to XPO of an invoice for the amount of such Tax-Related Losses or (y) two business days after the date SpinCo pays such Tax-Related Losses.

*Section 7.06 Section 336(e) Election.* If XPO determines, in its sole discretion, that one or more protective elections under Section 336(e) of the Code (each, a “Section 336(e) Election”) shall be made with respect to the Distribution and/or the Internal Distribution, SpinCo shall (and shall cause any relevant member of the SpinCo Group to) join with XPO and/or any relevant member of the XPO Group, as applicable, in the making of any such election and shall take any action reasonably requested by XPO or that is otherwise necessary to give effect to any such election (including making any other related election). If a Section 336(e) Election is made with respect to the Distribution and/or the Internal Distribution, then this Agreement shall be amended in such a manner as is determined by XPO in good faith to take into account such Section 336(e) Election(s), including by requiring that, in the event (a) the Contribution, Distribution, or the Internal Distribution fails to have U.S. Tax-Free Status and (b) a Company (or such Company’s Group) that does not have exclusive responsibility pursuant to this Agreement for Tax-Related Losses arising from such failure actually realizes in cash a Tax Benefit from the step-up in Tax basis resulting from the Section 336(e) Election, such Company shall pay over to the Company that has exclusive responsibility pursuant to this Agreement for such Tax-Related Losses any such Tax Benefits realized (*provided*, that, if such Tax-Related Losses are Shared Taxes or Taxes for which more than one Company is liable under Section 7.05(c)(i), the Company that actually realizes in cash the Tax Benefit resulting from the relevant Section 336(e) Election shall pay over to the other Company responsible for such Taxes the percentage of any such Tax Benefits realized that corresponds to such Company’s percentage share of such Taxes).

*Section 7.07 Certain Assumptions.* For purposes of determining whether any transaction or series of transactions is a Section 7.02(e) Acquisition Transaction or a Proposed Acquisition Transaction, it shall be assumed that certain transactions occurring prior to the Distribution resulted in one or more persons acquiring directly or indirectly common stock representing no less than the Specified Percentage Interest in SpinCo for purposes of Section 355(e) of the Code.

## **Section 8. Assistance and Cooperation.**

*Section 8.01 Assistance and Cooperation.*

(a) Each of the Companies shall provide (and shall cause its Affiliates to provide) the other Company and its agents, including accounting firms and legal counsel, with such cooperation or information as they may reasonably request in connection with (i) preparing and filing Tax Returns, (ii) determining the liability for and amount of any Taxes due (including

estimated Taxes) or the right to and amount of any refund of Taxes, (iii) examinations of Tax Returns, and (iv) any administrative or judicial proceeding in respect of Taxes assessed or proposed to be assessed. Such cooperation shall include making available, upon reasonable notice, all information and documents in its possession relating to the other Company and its Affiliates as provided in Section 9. Each of the Companies shall also make available to the other Company, as reasonably requested and available, personnel (including employees and agents of the Companies or their respective Affiliates) responsible for preparing, maintaining, and interpreting information and documents relevant to Taxes. In addition, SpinCo shall provide (and shall cause its Affiliates to provide) XPO and its agents, including accounting firms and legal counsel, with such cooperation or information as they may reasonably request in connection with the preparation and filing of any Tax Return (including any statement, agreement or informational Tax Return) or in connection with any potential election by XPO under Treasury Regulations Section 1.245A-5(e)(3)(i) to close the taxable year of any controlled foreign corporation transferred to the SpinCo Group (which election shall be made at XPO's sole and absolute discretion).

(b) Any information or documents provided under this Section 8 or Section 9 shall be kept confidential by the Company receiving the information or documents, except as may otherwise be necessary in connection with the filing of Tax Returns or in connection with any administrative or judicial proceedings relating to Taxes. Notwithstanding any other provision of this Agreement or any other agreement, in no event shall either Company or any of its Affiliates be required to provide the other Company or any of its Affiliates or any other Person access to or copies of any information if such action could reasonably be expected to result in the waiver of any Privilege. In addition, in the event that either Company determines that the provision of any information to the other Company or its respective Affiliates could be commercially detrimental, violate any law or agreement or waive any Privilege, the Parties shall use reasonable best efforts to permit compliance with their obligations under this Section 8 or Section 9 in a manner that avoids any such harm or consequence.

*Section 8.02 Income Tax Return Information.* XPO and SpinCo acknowledge that time is of the essence in relation to any request for information, assistance or cooperation made by SpinCo or XPO pursuant to Section 8.01 or this Section 8.02. XPO and SpinCo acknowledge that failure to comply with the deadlines set forth herein or reasonable deadlines otherwise set by SpinCo or XPO could cause irreparable harm. Each Company shall provide to the other Company information and documents relating to its Group required by such other Company to prepare its Tax Returns. Any information or documents required by the Company that is responsible for preparing such Tax Returns under this Agreement shall be provided in such form as the preparing Company reasonably requests and in sufficient time for such Tax Returns to be filed on a timely basis; *provided*, that, this Section 8.02 shall not apply to information governed by Section 4.09. In the event that, following the Distribution Date, SpinCo receives notice from any Tax Authority that any Foreign Income Taxes reported on any Tax Return for a Tax Period ending on or prior to (or including) the Deconsolidation Date may be subject to adjustment, SpinCo shall provide written notice thereof to XPO promptly following receipt of such notice.

*Section 8.03 Reliance by XPO.* If any member of the SpinCo Group supplies information to a member of the XPO Group in connection with a Tax liability and an officer of a member of the XPO Group signs a statement or other document under penalties of perjury in

reliance upon the accuracy of such information, then, upon the written request of XPO identifying the information being so relied upon, the Chief Financial Officer of SpinCo (or any officer of SpinCo as designated by the Chief Financial Officer of SpinCo) shall certify in writing that to his or her knowledge (based upon consultation with appropriate employees) the information so supplied is accurate and complete. SpinCo agrees to indemnify and hold harmless each member of the XPO Group and its directors, officers and employees from and against any fine, penalty, or other cost or expense of any kind attributable to a member of the SpinCo Group having supplied, pursuant to this Section 8, a member of the XPO Group with inaccurate or incomplete information in connection with a Tax liability.

*Section 8.04 Reliance by SpinCo.* If any member of the XPO Group supplies information to a member of the SpinCo Group in connection with a Tax liability and an officer of a member of the SpinCo Group signs a statement or other document under penalties of perjury in reliance upon the accuracy of such information, then upon the written request of SpinCo identifying the information being so relied upon, the Chief Financial Officer of XPO (or any officer of XPO as designated by the Chief Financial Officer of XPO) shall certify in writing that to his or her knowledge (based upon consultation with appropriate employees) the information so supplied is accurate and complete. XPO agrees to indemnify and hold harmless each member of the SpinCo Group and its directors, officers and employees from and against any fine, penalty, or other cost or expense of any kind attributable to a member of the XPO Group having supplied, pursuant to this Section 8, a member of the SpinCo Group with inaccurate or incomplete information in connection with a Tax liability; *provided*, that, this Section 8.04 shall not apply to information governed by Section 4.09.

## **Section 9. Tax Records.**

*Section 9.01 Retention of Tax Records.* Each Company shall preserve and keep all Tax Records exclusively relating to the assets and activities of its Group for the relevant Pre-Deconsolidation Period(s), and XPO shall preserve and keep all other Tax Records relating to Taxes of the Groups for the relevant Pre-Deconsolidation Periods, for so long as the contents thereof may become material in the administration of any matter under the Code or other applicable Tax Law, but in any event until the later of (a) the expiration of any applicable statutes of limitations, or (b) ten years after the Deconsolidation Date (such later date, the "Retention Date"). After the Retention Date, each Company may dispose of such Tax Records upon 90 days' prior written notice to the other Company. If, prior to the Retention Date, a Company reasonably determines that any Tax Records that it would otherwise be required to preserve and keep under this Section 9 are no longer material in the administration of any matter under the Code or other applicable Tax Law and the other Company agrees, then such first Company may dispose of such Tax Records upon 90 days' prior notice to the other Company. Any notice of an intent to dispose given pursuant to this Section 9.01 shall include a list of the Tax Records to be disposed of describing in reasonable detail the files, books, or other records being disposed. The notified Company shall have the opportunity, at its cost and expense, to copy or remove, within such 90-day period, all or any part of such Tax Records.

*Section 9.02 Access to Tax Records.* Each of the Companies and their respective Affiliates shall make available to each other for inspection and copying during normal business hours upon reasonable notice all Tax Records for Pre-Deconsolidation Periods to the extent

reasonably required by the other Company in connection with the preparation of financial accounting statements, audits, litigation, or the resolution of items under this Agreement.

**Section 10. Tax Contests.**

*Section 10.01 Notice.* Each of the Companies shall provide prompt notice to the other of any written communication from a Tax Authority regarding any pending or threatened Tax audit, assessment or proceeding or other Tax Contest for which it may be entitled to indemnification by the other Company hereunder. Such notice shall include copies of the pertinent portion of any written communication from a Tax Authority and contain factual information (to the extent known) describing any asserted Tax liability in reasonable detail. The failure of one Company to notify the other of such communication in accordance with the immediately preceding sentences shall not relieve the other Company of any liability or obligation to pay such Tax or make indemnification payments under this Agreement, except to the extent that the failure timely to provide such notification actually prejudices the ability of the other Company to contest such Tax liability or increases the amount of such Tax liability.

*Section 10.02 Control of Tax Contests.*

*(a) Separate Company Taxes and Joint Returns with Respect to Other Taxes.* In the case of any Tax Contest with respect to any (i) Separate Return or (ii) Joint Return with respect to Other Taxes, the Company having liability for the Tax shall have exclusive control over the Tax Contest, including exclusive authority with respect to any settlement of such Tax liability, subject to Section 10.02(e).

*(b) XPO Federal Consolidated Income Tax Return and XPO State Combined Income Tax Return.* In the case of any Tax Contest with respect to any XPO Federal Consolidated Income Tax Return or XPO State Combined Income Tax Return, XPO shall have exclusive control over the Tax Contest, including exclusive authority with respect to any settlement of such Tax liability, subject to Section 10.02(e)(i).

*(c) XPO Foreign Combined Income Tax Return.* In the case of any Tax Contest with respect to any XPO Foreign Combined Income Tax Return, XPO shall have exclusive control over the Tax Contest, including exclusive authority with respect to any settlement of such Tax liability, subject to Section 10.02(e)(i).

*(d) Other Joint Returns.* In the case of any Tax Contest with respect to any Joint Return (other than any XPO Federal Consolidated Income Tax Return, XPO State Combined Income Tax Return, XPO Foreign Combined Income Tax Return, or Joint Return with respect to Other Taxes), (i) XPO shall control the defense or prosecution of the portion of the Tax Contest, if any, directly and exclusively related to any XPO Adjustment, including settlement of any such XPO Adjustment, (ii) SpinCo shall control the defense or prosecution of the portion of the Tax Contest, if any, directly and exclusively related to any SpinCo Adjustment, including settlement of any such SpinCo Adjustment, and (iii) XPO and SpinCo shall jointly control the defense or prosecution of Joint Adjustments and any and all administrative matters not directly and exclusively related to any XPO Adjustment or SpinCo Adjustment. In the event of any disagreement regarding any matter described in clause (iii), the provisions of Section 14 shall apply.

(e) *Separation-Related and Certain Other Tax Contests.*

(i) In the event of any:

(A) (x) Separation-Related Tax Contest as a result of which SpinCo could reasonably be expected to become exclusively liable for any Tax or Tax-Related Losses or (y) Tax Contest as a result of which SpinCo could reasonably be expected to become liable for any SpinCo Allocated Income Taxes, and, in each case, which XPO has the right to administer and control pursuant to Section 10.02(a), (b) or (c), (1) XPO shall consult with SpinCo reasonably in advance of taking any significant action in connection with such Tax Contest, (2) XPO shall offer SpinCo a reasonable opportunity to comment before submitting any written materials prepared or furnished in connection with such Tax Contest, (3) XPO shall defend such Tax Contest diligently and in good faith as if it were the only party in interest in connection with such Tax Contest, and (4) XPO shall provide SpinCo copies of any written materials relating to such Tax Contest received from the relevant Tax Authority; and

(B) (x) Separation-Related Tax Contest as a result of which SpinCo could reasonably be expected to become liable for any portion of any Tax or Tax-Related Losses pursuant to Section 7.05(c)(i) or (y) Tax Contest as a result of which SpinCo could reasonably be expected become liable for any Shared Taxes, and, in each case, which XPO has the right to administer and control pursuant to Section 10.02(a), (b) or (c), (1) XPO shall keep SpinCo reasonably informed with respect to such Tax Contest, (2) XPO shall defend such Tax Contest diligently and in good faith as if it were the only party in interest in connection with such Tax Contest, and (3) XPO shall provide SpinCo copies of any written materials relating to such Tax Contest received from the relevant Tax Authority.

(ii) In the event of any Separation-Related Tax Contest with respect to any SpinCo Separate Return as a result of which XPO could reasonably be expected to become liable for any Tax or Tax-Related Losses, (A) SpinCo shall consult with XPO reasonably in advance of taking any significant action in connection with such Tax Contest, (B) SpinCo shall consult with XPO and offer XPO a reasonable opportunity to comment before submitting any written materials prepared or furnished in connection with such Tax Contest, (C) SpinCo shall defend such Tax Contest diligently and in good faith as if it were the only party in interest in connection with such Tax Contest, (D) XPO shall be entitled to participate in such Tax Contest and receive copies of any written materials relating to such Tax Contest received from the relevant Tax Authority, and (E) SpinCo shall not settle, compromise or abandon any such Tax Contest without obtaining the prior written consent of XPO which consent shall not be unreasonably withheld; *provided, however*, that in the case of any (1) Separation-Related Tax Contest as a result of which XPO could reasonably be expected to become liable for any Tax or Tax-Related Losses pursuant to Section 7.05(b) or Section 7.05(c)(i), or (2) Tax Contest as a result of which XPO could reasonably be expected become liable for any Shared Taxes, and, in each case, which SpinCo has the right to administer and control pursuant to Section 10.02(a), XPO shall have the right to elect to assume control of such Tax Contest, in which case the provisions of Section 10.02(e)(i)(B) shall apply.

(f) *Power of Attorney.* SpinCo shall (and shall cause each member of the SpinCo Group to) execute and deliver to XPO (or such member of the XPO Group as XPO shall designate) any power of attorney or other similar document reasonably requested by XPO (or such designee) connection with any Tax Contest controlled by XPO described in this Section 10.

(g) *Tax Contests of any SpinCo French Combined Income Tax Return.* Notwithstanding anything to the contrary herein, the rights and obligations with respect to any Tax Contest of any SpinCo French Combined Income Tax Return shall be governed exclusively by the French Tax Combined Group Exit Agreement.

**Section 11. Effective Date; Termination of Prior Intercompany Tax Allocation Agreements.** This Agreement shall be effective as of the Effective Time. As of the Effective Time, (a) all prior intercompany Tax allocation agreements or arrangements solely between or among XPO and/or any of its Subsidiaries, on the one hand, and SpinCo and/or members of the SpinCo Group, on the other hand, shall be terminated, and (b) amounts due under such agreements or arrangements as of the date on which the Effective Time occurs shall be settled. Upon such termination and settlement, no further payments by or to XPO or such Subsidiaries or by or to SpinCo or such members of the SpinCo Group, with respect to such agreements or arrangements shall be made, and all other rights and obligations resulting from such agreements or arrangements shall cease at such time. Any payments pursuant to such agreements shall be disregarded for purposes of computing amounts due under this Agreement; *provided*, that to the extent appropriate, as determined by XPO, payments made pursuant to such agreements or arrangements shall be credited to SpinCo or XPO, respectively, in computing their respective obligations pursuant to this Agreement, in the event that such payments relate to a Tax liability that is the subject matter of this Agreement for a Tax Period that is the subject matter of this Agreement.

**Section 12. Survival of Obligations.** The representations, warranties, covenants and agreements set forth in this Agreement shall be unconditional and absolute and shall remain in effect without limitation as to time.

**Section 13. Treatment of Payments; Tax Gross Up.**

*Section 13.01 Treatment of Tax Indemnity and Tax Benefit Payments.* In the absence of any change in Tax treatment under the Code or other applicable Tax Law, for all Income Tax purposes, the Companies agree to treat, and to cause their respective Affiliates to treat, (a) any indemnity payment required by this Agreement or by the Separation and Distribution Agreement to be made (i) by XPO to SpinCo as a contribution by XPO to SpinCo (or a reduction in the SpinCo Cash Proceeds transferred from SpinCo to XPO) and (ii) by SpinCo to XPO as a distribution by SpinCo to XPO, in each case, occurring immediately prior to the Distribution; and (b) any payment of interest or State Income Taxes by or to a Tax Authority, as taxable or deductible, as the case may be, to the Company entitled under this Agreement to retain such payment or required under this Agreement to make such payment. The Parties shall cooperate in good faith (including, where relevant, by using commercially reasonable efforts to establish local payment arrangements between each Party's Subsidiaries) to minimize or eliminate, to the extent permissible under applicable law, any Tax that would otherwise be imposed with respect to any payment required by this Agreement or by the Separation and Distribution Agreement (or maximize the ability to obtain a credit for, or refund of, any such Tax).

*Section 13.02 Tax Gross Up.* If notwithstanding the manner in which payments described in Section 13.01(a) were reported, there is a Tax liability or an adjustment to a Tax liability of a Company as a result of its receipt of a payment pursuant to this Agreement or the Separation and Distribution Agreement, such payment shall be appropriately adjusted so that the amount of such payment, reduced by the amount of all Income Taxes payable with respect to the receipt thereof (but taking into account all correlative Tax Benefits resulting from the payment of such Income Taxes), shall equal the amount of the payment that the Company receiving such payment would otherwise be entitled to receive.

*Section 13.03 Interest.* Anything herein to the contrary notwithstanding, to the extent one Company makes a payment of interest to another Company under this Agreement with respect to the period from (a) the date that the payor was required to make a payment to the payee to (b) the date that the payor actually made such payment, the interest payment shall be treated as interest expense to the payor (deductible to the extent provided by law) and as interest income by the payee (includible in income to the extent provided by law). The amount of the payment shall not be adjusted to take into account any associated Tax Benefit to the payor or increase in Tax to the payee.

**Section 14. Disagreements.** The Companies desire that collaboration will continue between them. Accordingly, they will try, and they will cause their respective Group members to try, to resolve in good faith all disagreements regarding their respective rights and obligations under this Agreement, including any amendments hereto. In furtherance thereof, in the event of any dispute or disagreement (a “Tax Advisor Dispute”) between any member of the XPO Group and any member of the SpinCo Group as to the interpretation of any provision of this Agreement or the performance of obligations hereunder, representatives of the Tax departments of the Companies shall negotiate in good faith to resolve the Tax Advisor Dispute. If such good faith negotiations do not resolve the Tax Advisor Dispute, then such Tax Advisor Dispute shall be resolved pursuant to the procedures set forth in Article VII of the Separation and Distribution Agreement; *provided*, that each of the mediators or arbitrators selected in accordance with Article VII of the Separation and Distribution Agreement must be Tax Advisors. Nothing in this Section 14 will prevent either Company from seeking injunctive relief if any delay resulting from the efforts to resolve the Tax Advisor Dispute through the procedures set forth in Article VII of the Separation and Distribution Agreement could result in serious and irreparable injury to such Company. Notwithstanding anything to the contrary in this Agreement, the Separation and Distribution Agreement or any Ancillary Agreement, XPO and SpinCo are the only members of their respective Groups entitled to commence a dispute resolution procedure under this Agreement, and each of XPO and SpinCo will cause its respective Group members not to commence any dispute resolution procedure other than through such Party as provided in this Section 14.

**Section 15. Late Payments.** Any amount owed by one Party to another Party under this Agreement that is not paid when due shall bear interest at the Prime Rate plus two percent (2%), compounded semiannually, from the due date of the payment to the date paid. To the extent interest required to be paid under this Section 15 duplicates interest required to be paid under any other provision of this Agreement, interest shall be computed at the high-

er of the interest rate provided under this Section 15 or the interest rate provided under such other provision.

**Section 16. Expenses.** Except as otherwise provided in this Agreement, each Party and its Affiliates shall bear their own expenses incurred in connection with the preparation of Tax Returns, Tax Contests, and other matters related to Taxes under the provisions of this Agreement.

**Section 17. General Provisions.**

*Section 17.01 Addresses and Notices.* All notices, requests, claims, demands or other communications under this Agreement shall be in writing and shall be given or made (and except as provided herein, shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service, by certified mail, return receipt requested, or by electronic mail (“e-mail”), so long as confirmation of receipt of such e-mail is requested and received, to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 17.01):

If to XPO, to:

XPO Logistics, Inc.  
Five American Lane  
Greenwich, Connecticut 06831  
Attention: Deputy Chief Financial Officer, Ravi Tulsyan  
E-mail: ravi.tulsyan@xpo.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Adam O. Emmerich  
Viktor Sapezhnikov  
E-mail: AOEmmerich@wlrk.com  
VSapezhnikov@wlrk.com

If to SpinCo (prior to the Effective Time), to:

GXO Logistics, Inc.  
Two American Lane  
Greenwich, Connecticut 06831  
Attention: Chief Legal Officer, Karlis Kirsis  
E-mail: Karlis.Kirsis@gxo.com

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

Wachtell, Lipton, Rosen & Katz



51 West 52nd Street  
New York, New York 10019  
Attention: Adam O. Emmerich  
Viktor Sapezhnikov  
E-mail: AOEmmerich@wlrk.com  
VSapezhnikov@wlrk.com

If to SpinCo (from and after the Effective Time), to:

GXO Logistics, Inc.  
Two American Lane  
Greenwich, Connecticut 06831  
Attention: Chief Legal Officer, Karlis Kirsis  
E-mail: Karlis.Kirsis@gxo.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Adam O. Emmerich  
Viktor Sapezhnikov  
E-mail: AOEmmerich@wlrk.com  
VSapezhnikov@wlrk.com

A Party may, by notice to the other Parties, change the address to which such notices are to be given or made.

*Section 17.02 Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

*Section 17.03 Waiver of Default.* Waiver by a Party of any default by another Party of any provision of this Agreement shall not be deemed a waiver by the waiving Party of any subsequent or other default, nor shall it prejudice the rights of any other Party. No failure or delay by a Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof prejudice any other or further exercise thereof or the exercise of any other right, power or privilege.

*Section 17.04 Severability.* If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof or thereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon such determination, the Parties shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the Parties.

*Section 17.05 Authority.* XPO represents on behalf of itself and each other member of the XPO Group and SpinCo represents on behalf of itself and each other member of the SpinCo Group, as follows:

(a) each such Person has the requisite corporate or other power and authority and has taken all corporate or other action necessary in order to execute, deliver and perform this Agreement; and

(b) this Agreement has been duly executed and delivered by it and constitutes a valid and binding agreement of it enforceable in accordance with the terms hereof.

*Section 17.06 Further Action.* Prior to, on, and after the Effective Time, each Party hereto shall cooperate with the other Parties, at the expense of the requesting Party, to execute and deliver, or use its reasonable best efforts to cause to be executed and delivered, all instruments, including the execution and delivery to the other Parties and their Affiliates and representatives of such powers of attorney or other authorizing documentation as is reasonably necessary or appropriate in connection with Tax Contests (or portions thereof) under the control of such other Parties in accordance with Section 10, and to make all filings with any Governmental Authority, and to take all such other actions as such Party may reasonably be requested to take by the other Parties from time to time, consistent with the terms of this Agreement, in order to effectuate the provisions and purposes of this Agreement.

*Section 17.07 Integration.* This Agreement, together with each of the exhibits and schedules appended hereto, contain the entire agreement among the Parties with respect to the subject matter hereof, supersede all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter, and there are no agreements or understandings among the Parties other than those set forth herein and in the Separation and Distribution Agreement and the other Ancillary Agreements. This Agreement, the Separation and Distribution Agreement, and the other Ancillary Agreements together govern the arrangements in connection with the Separation and the Distribution and would not have been entered independently. In the event of any inconsistency between this Agreement and the Separation and Distribution Agreement, or any other agreements relating to the transactions contemplated by the Separation and Distribution Agreement, with respect to matters addressed herein, the provisions of this Agreement shall control (it being understood that the terms pursuant to which any transition services related to Tax matters shall be provided under the Transition Services Agreement shall be governed by the Transition Services Agreement).

*Section 17.08 Construction.* The language in all parts of this Agreement shall in all cases be construed according to its fair meaning and shall not be strictly construed for or against any Party. The captions, titles and headings included in this Agreement are for convenience only, and do not affect this Agreement's construction or interpretation. Unless otherwise indicated, all "Section" references in this Agreement are to sections of this Agreement.

*Section 17.09 No Double Recovery.* No provision of this Agreement shall be construed to provide an indemnity or other recovery for any costs, damages, or other amounts for which the damaged Party has been fully compensated under any other provision of this Agreement or under any other agreement or action at law or equity. Unless expressly required in this Agreement, a

Party shall not be required to exhaust all remedies available under other agreements or at law or equity before recovering under the remedies provided in this Agreement.

*Section 17.10 Counterparts.* Each Party acknowledges that it and each other Party may execute this Agreement by facsimile, stamp or mechanical signature and that delivery of an executed counterpart of a signature page to this Agreement (whether executed by manual, stamp or mechanical signature) by facsimile or by e-mail in portable document format (.pdf) shall be effective as delivery of such executed counterpart of this Agreement. Each Party expressly adopts and confirms each such facsimile, stamp or mechanical signature (regardless of whether delivered in person, by mail, by courier, by facsimile or by e-mail in portable document format (.pdf)) made in its respective name as if it were a manual signature delivered in person, agrees that it will not assert that any such signature or delivery is not adequate to bind such Party to the same extent as if it were signed manually and delivered in person and agrees that, at the reasonable request of the other Party at any time, it will as promptly as reasonably practicable cause this Agreement to be manually executed (any such execution to be as of the date of the initial date thereof) and delivered in person, by mail or by courier.

*Section 17.11 Governing Law.* This Agreement (and any claims or disputes arising out of or related hereto or to the transactions contemplated hereby or to the inducement of any Party to enter herein, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall be governed by and construed and interpreted in accordance with the Laws of the State of Delaware irrespective of the choice of Laws principles of the State of Delaware including all matters of validity, construction, effect, enforceability, performance and remedies.

*Section 17.12 Amendment.* No provisions of this Agreement shall be deemed waived, amended, supplemented or modified by a Party, unless such waiver, amendment, supplement or modification is in writing and signed by the authorized representatives of the Parties against whom it is sought to enforce such waiver, amendment, supplement or modification.

*Section 17.13 SpinCo Subsidiaries.* If, at any time, SpinCo acquires or creates one or more subsidiaries that are includable in the SpinCo Group, they shall be subject to this Agreement and all references to the SpinCo Group herein shall thereafter include a reference to such subsidiaries.

*Section 17.14 Successors.* This Agreement shall be binding upon and inure to the benefit of the Parties and the parties thereto, respectively, and their respective successors and permitted assigns; provided, however, that neither Party nor any such party thereto may assign its rights or delegate its obligations under this Agreement without the express prior written consent of the other Party hereto or other parties thereto, as applicable. Notwithstanding the foregoing, no such consent shall be required for the assignment of a Party's rights and obligations under this Agreement in whole (*i.e.*, the assignment of a Party's rights and obligations under this Agreement) in connection with a change of control or a sale of all or substantially all of a Party (or its assets) so long as the resulting, surviving or transferee Person assumes all the obligations of the relevant party thereto by operation of Law or pursuant to an agreement in form and substance reasonably satisfactory to the other Party.

*Section 17.15 Specific Performance.* Subject to the provisions of Section 14, in the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, the Party or Parties who are, or are to be, thereby aggrieved shall have the right to specific performance and injunctive or other equitable relief in respect of its or their rights under this Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The Parties agree that the remedies at law for any breach or threatened breach, including monetary damages, are inadequate compensation for any loss and that any defense in any Action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are waived by each of the Parties.

*Section 17.16 Survival of Covenants.* Except as expressly set forth in this Agreement, the covenants, representations and warranties contained in this Agreement, and Liability for the breach of any obligations contained herein, shall survive the Separation and the Distribution and shall remain in full force and effect.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

XPO LOGISTICS, INC.

By: /s/ Ravi Tulsyan

\_\_\_\_\_  
Name: Ravi Tulsyan

Title: Deputy Chief Financial Officer &  
Treasurer

GXO LOGISTICS, INC.

By: /s/ Karlis P. Kirsis

\_\_\_\_\_  
Name: Karlis P. Kirsis

Title: Chief Legal Officer

EMPLOYEE MATTERS AGREEMENT

BY AND BETWEEN

XPO LOGISTICS, INC.

AND

GXO LOGISTICS, INC.

DATED AS OF AUGUST 1, 2021

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## EMPLOYEE MATTERS AGREEMENT

This EMPLOYEE MATTERS AGREEMENT, dated as of August 1, 2021 (this “Agreement”), is by and between XPO Logistics, Inc., a Delaware corporation (“Parent”), and GXO Logistics, Inc., a Delaware corporation (“SpinCo”).

### R E C I T A L S:

WHEREAS, the board of directors of Parent (the “Parent Board”) has determined that it is in the best interests of Parent and its stockholders to create a new publicly traded company that shall operate the SpinCo Business;

WHEREAS, in furtherance of the foregoing, the Parent Board has determined that it is appropriate and desirable to separate the SpinCo Business from the Parent Business (the “Separation”) and, following the Separation, make a distribution, on a pro rata basis, to holders of Parent Shares on the Record Date of all of the outstanding SpinCo Shares (the “Distribution”);

WHEREAS, SpinCo has been incorporated solely for these purposes and has not engaged in activities, except in connection with the Separation and the Distribution;

WHEREAS, SpinCo and Parent have prepared, and SpinCo has filed with the SEC, the Form 10, which includes the Information Statement and which sets forth disclosures concerning SpinCo, the Separation and the Distribution;

WHEREAS, in order to effectuate the Separation and Distribution, Parent and SpinCo have entered into a Separation and Distribution Agreement, dated as of the date hereof (the “Separation and Distribution Agreement”);

WHEREAS, in addition to the matters addressed by the Separation and Distribution Agreement, the Parties desire to enter into this Agreement to set forth the terms and conditions of certain employment, compensation and benefit matters; and

WHEREAS, the Parties acknowledge that this Agreement, the Separation and Distribution Agreement and the other Ancillary Agreements represent the integrated agreement of Parent and SpinCo relating to the Separation and the Distribution, are being entered into together and would not have been entered into independently.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

### ARTICLE I DEFINITIONS

Section 1.01. Definitions. For purposes of this Agreement (including the recitals hereof), the following terms have the following meanings, and capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Separation and Distribution Agreement.

“Agreement” shall have the meaning set forth in the Preamble to this Agreement and shall include all Schedules hereto and all amendments, modifications, and changes hereto entered into pursuant to Section 8.16.

“Benefit Plan” shall mean any contract, agreement, policy, practice, program, plan, trust, commitment or arrangement providing for benefits, perquisites or compensation of any nature from an employer to any Employee or Former Employee, or to any family member, dependent, or beneficiary of any such Employee or Former Employee, including cash or deferred arrangement plans, profit-sharing plans, post-employment programs, pension plans, supplemental pension plans, welfare plans, stock purchase, and contracts, agreements, policies, practices, programs, plans, trusts, commitments and arrangements providing for terms of employment, fringe benefits, severance benefits, change-in-control protections or benefits, life, accidental death and dismemberment, disability and accident insurance, tuition reimbursement, adoption assistance, travel reimbursement, vacation, sick, personal or bereavement days, leaves of absences and holidays; provided, however, that the term “Benefit Plan” does not include any government-sponsored benefits, such as workers’ compensation, unemployment or any similar plans, programs or policies or Individual Agreements.

“COBRA” shall mean the U.S. Consolidated Omnibus Budget Reconciliation Act of 1985, as codified at Section 601 *et seq.* of ERISA and at Section 4980B of the Code and including all regulations promulgated thereunder.

“Distribution” shall have the meaning set forth in the Recitals.

“Employee” shall mean any Parent Group Employee or SpinCo Group Employee. “ERISA” shall mean the U.S. Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“Former Employees” shall mean Former Parent Group Employees and Former SpinCo Group Employees.

“Former Parent Group Employee” shall mean any individual who is a former employee of the Parent Group as of the Effective Time and who is not a Former SpinCo Group Employee.

“Former SpinCo Group Employee” shall mean any individual who is a former employee of Parent or any of its Subsidiaries or former Subsidiaries as of the Effective Time, in each case, who was primarily dedicated to the SpinCo Business as of immediately prior to termination of employment with any such entity.

“Group” shall mean either the SpinCo Group or the Parent Group, as the context requires.

“HIPAA” shall mean the U.S. Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated thereunder.

“Individual Agreement” shall mean any individual (a) employment contract, (b) retention, severance or change in control agreement, or (c) other agreement containing

restrictive covenants (including confidentiality, noncompetition and nonsolicitation provisions) between a member of the Parent Group and a SpinCo Group Employee or any Former SpinCo Group Employee, as in effect immediately prior to the Effective Time; provided that, such term shall not include the Confidential Information Protection Agreement.

“Labor Agreement” shall have the meaning set forth in Section 2.01. “Parent” shall have the meaning set forth in the Preamble.

“Parent 401(k) Plans” shall mean the following plans: the XPO Logistics 401(k) Plan and XPO Logistics Retirement Savings Plan, as in effect or as it may be amended from time to time.

“Parent Awards” shall mean Parent Option Awards, Parent RSU Awards, Parent Event-Based RSU Awards and Parent Performance-Based RSU Awards, collectively.

“Parent Benefit Plan” shall mean any Benefit Plan established, sponsored or maintained by Parent or any of its Subsidiaries immediately prior to the Effective Time, but excluding any SpinCo Benefit Plan.

“Parent Board” shall have the meaning set forth in the Recitals.

“Parent Business” shall have the meaning set forth in the Separation and Distribution Agreement.

“Parent Canada Defined Contribution Plan” shall mean The Pension Plan for Employees of XPO Logistics Freight Canada Inc.

“Parent Compensation Committee” shall mean the Compensation Committee of the Parent Board.

“Parent Deferred Compensation Plan” shall mean each of the following plans: Con-Way Inc. 1993 Deferred Compensation Plan for Executives and Key Employees, Con-Way Inc. 2005 Deferred Compensation Plan for Executives and Key Employees (the “2005 Con-Way Plan”), CNF Inc. Supplemental Excess Retirement Plan, Con-Way Inc. 2005 Supplemental Excess Retirement Plan, and Con-Way Supplemental Retirement Savings Plan.

“Parent Director” shall mean each Parent nonemployee director as of immediately after the Effective Time who served on the Parent Board immediately prior to the Effective Time.

“Parent ESPP” shall mean the XPO Logistics, Inc. Employee Stock Purchase Plan.

“Parent Event-Based RSU Award” shall mean a restricted stock unit award with a performance vesting condition relating to the occurrence of a corporate transaction, including without limitation the Distribution, that is outstanding as of immediately prior to the Effective Time, granted pursuant to the Parent Omnibus Plan.

“Parent Group Employees” shall have the meaning set forth in Section 3.01(a)(ii).

“Parent Non-Equity Incentive Practices” shall mean the corporate non-equity incentive practices of the Parent Group.

“Parent Omnibus Plan” shall mean any equity compensation plan sponsored or maintained by the Parent immediately prior to the Effective Time, including the XPO Logistics, Inc. 2016 Omnibus Incentive Compensation Plan, as amended from time to time and the XPO Logistics, Inc. Amended and Restated 2011 Omnibus Incentive Compensation Plan, as amended from time to time.

“Parent Option Award” shall mean an award of options to purchase Parent Shares granted pursuant to a Parent Omnibus Plan that is outstanding as of immediately prior to the Effective Time.

“Parent Puerto Rico Savings Plan” shall mean the XPO Logistics, Inc. Puerto Rico Savings Plan.

“Parent Performance-Based RSU Award” shall mean a restricted stock unit award that is subject to performance-based vesting (other than a Parent Event-Based RSU Award) outstanding as of immediately prior to the Effective Time, granted pursuant to the Parent Omnibus Plan.

“Parent Ratio” shall mean the quotient obtained by dividing (a) the Pre-Separation Parent Stock Value by (b) the Post-Separation Parent Stock Value.

“Parent Retiree Medical Plan” shall mean each of the following plans: the XPO Logistics, Inc. Retiree Benefit Plan (formerly, Con-Way Retiree Benefit Plan) and XPO Logistics Retiree Health Savings Account (401(h)).

“Parent RSU Award” shall mean a restricted stock unit award outstanding as of immediately prior to the Effective Time that is not subject to performance-based vesting conditions, granted pursuant to the Parent Omnibus Plan.

“Parent Welfare Plan” shall mean any Parent Benefit Plan that is a Welfare Plan, including the XPO Benefit Plan and XPO Logistics Canada Inc. Group Benefits Policy.

“Parties” shall mean the parties to this Agreement.

“Post-Separation Parent Awards” shall mean Post-Separation Parent Option Awards, Post-Separation Parent RSU Awards, and Post-Separation Parent Performance-Based RSU Awards, collectively.

“Post-Separation Parent Option Award” shall mean a Parent Option Award, as adjusted as of the Effective Time in accordance with Section 4.02(a).

“Post-Separation Parent Performance-Based RSU Award” shall mean a Parent Performance-Based RSU Award, as adjusted as of the Effective Time in accordance with Section 4.02(d), as applicable.

“Post-Separation Parent RSU Award” shall mean a Parent RSU Award, as adjusted as of the Effective Time in accordance with Section 4.02(b) or Section 4.02(c), as applicable.

“Post-Separation Parent Stock Value” shall mean the closing per-share price of Parent Shares on the NYSE on the first regular trading session (9:30 a.m. to 4:00 p.m. EST) commencing after the Effective Time.

“Pre-Separation Parent Stock Value” shall mean the closing per-share price of Parent Shares trading “regular way with due bills” on the NYSE on the last regular trading session (9:30 am to 4:00 pm EST) ending prior to the Effective Time.

“QDRO” shall mean a qualified domestic relations order within the meaning of Section 206(d) of ERISA and Section 414(p) of the Code.

“Securities Act” shall mean the U.S. Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

“Separation” shall have the meaning set forth in the Recitals.

“Separation and Distribution Agreement” shall have the meaning set forth in the Recitals.

“SpinCo” shall have the meaning set forth in the Preamble.

“SpinCo 401(k) Plan” shall mean the SpinCo 401(k) Savings Plans, to be adopted by SpinCo prior to or on the Distribution Date as described in Section 5.03.

“SpinCo 401(k) Trust” shall have the meaning set forth in Section 5.03(a). “SpinCo Awards” shall mean SpinCo Option Awards and SpinCo RSU Awards, collectively.

“SpinCo Benefit Plan” shall mean any Benefit Plan established, sponsored, maintained or contributed to by a member of the SpinCo Group as of or after the Effective Time. “SpinCo Board” shall mean the Board of Directors of SpinCo.

“SpinCo Business” shall have the meaning set forth in the Separation and Distribution Agreement.

“SpinCo Canada Defined Contribution Fund” shall have the meaning set forth in 5.05(a).

“SpinCo Canada Defined Contribution Plan” shall mean the SpinCo Canada Defined Contribution Plan, to be adopted by SpinCo prior to or on the Distribution Date as described in Section 5.05.

“SpinCo Flex Plan” shall mean the Health Flexible Spending Account and the Dependent Care Flexible Spending Account under a cafeteria plan established by SpinCo as described in Section 7.04.

“SpinCo Group Employees” shall have the meaning set forth in Section 3.01(a)(i).

“SpinCo Non-Equity Incentive Practices” shall mean the corporate non-equity incentive practices, as established by SpinCo as of the Effective Time pursuant to Section 2.03(a) and Section 4.04.

“SpinCo Omnibus Plan” shall mean the SpinCo 2021 Omnibus Incentive Plan, as established by SpinCo as of the Effective Time pursuant to Section 2.03(a) and Section 4.01.

“SpinCo Option Award” shall mean an award of stock options assumed and granted by SpinCo pursuant to the SpinCo Omnibus Plan in accordance with Section 4.02(a).

“SpinCo Puerto Rico Savings Plan” shall mean the SpinCo Puerto Rico Savings Plans, to be adopted by SpinCo prior to or on the Distribution Date as described in Section 5.04.

“SpinCo Ratio” shall mean the quotient obtained by dividing (a) the Pre- Separation Parent Stock Value by (b) the SpinCo Stock Value.

“SpinCo RSU Award” shall mean an award of restricted stock units that is not subject to performance-based vesting conditions, assumed and granted pursuant to the SpinCo Omnibus Plan in accordance with Section 4.02(b) or Section 4.02(c), as applicable.

“SpinCo Stock Value” shall mean the closing per-share price of SpinCo Shares on the NYSE on the first regular trading session (9:30 a.m. to 4:00 p.m. EST) commencing after the Effective Time.

“SpinCo Welfare Plan” shall mean a Welfare Plan established, sponsored, maintained or contributed to by any member of the SpinCo Group for the benefit of SpinCo Group Employees and Former SpinCo Group Employees.

“Transferred Account Balances” shall have the meaning set forth in Section 7.04.

“Transferred Director” shall mean each SpinCo nonemployee director as of immediately after the Effective Time who served on the Parent Board immediately prior to the Effective Time.

“U.S.” shall mean the United States of America.

“Welfare Plan” shall mean any “welfare plan” (as defined in Section 3(1) of ERISA) or a “cafeteria plan” under Section 125 of the Code, and any benefits offered thereunder, and any other plan offering health benefits (including medical, prescription drug, dental, vision, mental health, substance abuse and retiree health), disability benefits, or life, accidental death and dismemberment, and business travel insurance, pre-Tax premium conversion benefits, dependent care assistance programs, employee assistance programs, paid time off programs, contribution funding toward a health savings account, flexible spending accounts or severance.

Section 1.02. Interpretation. Section 10.15 of the Separation and Distribution Agreement is hereby incorporated by reference.

ARTICLE II  
GENERAL PRINCIPLES FOR ALLOCATION OF LIABILITIES

Section 2.01. General Principles. All provisions herein shall be subject to the requirements of all applicable Law and any collective bargaining, works council or similar agreement or arrangement with any labor union, works council or other labor representative (each, a "Labor Agreement"). Notwithstanding anything in this Agreement to the contrary, if the terms of a Labor Agreement or applicable Law require that any Assets or Liabilities be retained or assumed by, or transferred to, a Party in a manner that is different than what is set forth in this Agreement, such retention, assumption or transfer shall be made in accordance with the terms of such Labor Agreement and applicable Law and shall not be made as otherwise set forth in this Agreement; provided that, in such case, the Parties shall take all necessary action to preserve the economic terms of the allocation of Assets and Liabilities contemplated by this Agreement. The provisions of this Agreement shall apply in respect of all jurisdictions.

(a) *Acceptance and Assumption of SpinCo Liabilities*. Except as otherwise provided by this Agreement, on or prior to the Effective Time, but in any case prior to the Distribution, SpinCo and the applicable SpinCo Designees shall accept, assume and agree faithfully to perform, discharge and fulfill all of the following Liabilities in accordance with their respective terms (each of which shall be considered a SpinCo Liability), regardless of when or where such Liabilities arose or arise, or whether the facts on which they are based occurred prior to, at or subsequent to the Effective Time, regardless of where or against whom such Liabilities are asserted or determined (including any Liabilities arising out of claims made by Parent's or SpinCo's respective directors, officers, Employees, Former Employees, agents, Subsidiaries or Affiliates against any member of the Parent Group or the SpinCo Group) or whether asserted or determined prior to the date hereof, and regardless of whether arising from or alleged to arise from negligence, recklessness, violation of Law, fraud or misrepresentation by any member of the Parent Group or the SpinCo Group, or any of their respective directors, officers, Employees, Former Employees, agents, Subsidiaries or Affiliates:

(i) any and all wages, salaries, incentive compensation, equity compensation, commissions, bonuses and any other employee compensation or benefits payable to or on behalf of any SpinCo Group Employees and Former SpinCo Group Employees after the Effective Time, without regard to when such wages, salaries, incentive compensation, equity compensation, commissions, bonuses or other employee compensation or benefits are or may have been awarded or earned;

(ii) any and all Liabilities whatsoever with respect to claims under a SpinCo Benefit Plan, taking into account the SpinCo Benefit Plan's assumption of Liabilities with respect to SpinCo Group Employees and Former SpinCo Group Employees that were originally the Liabilities of the corresponding Parent Benefit Plan with respect to periods prior to the Effective Time;

(iii) any and all Liabilities arising out of, relating to or resulting from the employment, or termination of employment of all SpinCo Group Employees and Former SpinCo Group Employees; and

(iv) any and all Liabilities expressly assumed or retained by any member of the SpinCo Group pursuant to this Agreement.

(b) *Acceptance and Assumption of Parent Liabilities.* Except as otherwise provided by this Agreement, on or prior to the Effective Time, but in any case prior to the Distribution, Parent and certain members of the Parent Group designated by Parent shall accept, assume and agree faithfully to perform, discharge and fulfill all of the following Liabilities in accordance with their respective terms (each of which shall be considered a Parent Liability), regardless of when or where such Liabilities arose or arise, or whether the facts on which they are based occurred prior to, at or subsequent to the Effective Time, regardless of where or against whom such Liabilities are asserted or determined (including any Liabilities arising out of claims made by Parent's or SpinCo's respective directors, officers, Employees, Former Employees, agents, Subsidiaries or Affiliates against any member of the Parent Group or the SpinCo Group) or whether asserted or determined prior to the date hereof, and regardless of whether arising from or alleged to arise from negligence, recklessness, violation of Law, fraud or misrepresentation by any member of the Parent Group or the SpinCo Group, or any of their respective directors, officers, Employees, Former Employees, agents, Subsidiaries or Affiliates:

(i) any and all wages, salaries, incentive compensation, equity compensation, commissions, bonuses and any other employee compensation or benefits payable to or on behalf of any Parent Group Employees and Former Parent Group Employees after the Effective Time, without regard to when such wages, salaries, incentive compensation, equity compensation, commissions, bonuses or other employee compensation or benefits are or may have been awarded or earned;

(ii) any and all Liabilities whatsoever with respect to claims under a Parent Benefit Plan, taking into account a corresponding SpinCo Benefit Plan's assumption of Liabilities with respect to SpinCo Group Employees and Former SpinCo Group Employees that were originally the Liabilities of such Parent Benefit Plan with respect to periods prior to the Effective Time;

(iii) any and all Liabilities arising out of, relating to or resulting from the employment, or termination of employment of all Parent Group Employees and Former Parent Group Employees; and

(iv) any and all Liabilities expressly assumed or retained by any member of the Parent Group pursuant to this Agreement.

(c) *Unaddressed Liabilities.* To the extent that this Agreement does not address particular Liabilities under any Benefit Plan and the Parties later determine that they should be allocated in connection with the Distribution, the Parties shall agree in good faith on the allocation, taking into account the handling of comparable Liabilities under this Agreement.

(d) *Non-U.S. Employees.* SpinCo Group Employees and Former SpinCo Group Employees who are residents outside of the United States or otherwise are subject to non- U.S. Law and their related benefits and Liabilities shall be treated in the same manner as the SpinCo Group Employees and Former SpinCo Group Employees, respectively, who are residents



of the United States and are not subject to non-U.S. Law. Notwithstanding anything in this Agreement to the contrary, all actions taken with respect to non-U.S. Employees or U.S. Employees working in non-U.S. jurisdictions, including any action under a Benefit Plan, shall be subject to and accomplished in accordance with applicable Law in the custom of the applicable jurisdictions and SpinCo may make such changes, modifications or amendments to the SpinCo Benefit Plans as may be required by applicable Law, vendor limitations or as are necessary to reflect the Separation.

Section 2.02. Service Credit Recognized by SpinCo and SpinCo Benefit Plans. As of the Effective Time, the SpinCo Benefit Plans shall, and SpinCo shall cause each member of the SpinCo Group to, recognize each SpinCo Group Employee's and each Former SpinCo Group Employee's full service with Parent or any of its Subsidiaries or predecessor entities at or before the Effective Time, to the same extent that such service was recognized by Parent for similar purposes prior to the Effective Time as if such full service had been performed for a member of the SpinCo Group, for purposes of eligibility, vesting and determination of level of benefits under any SpinCo Benefit Plans.

Section 2.03. Adoption and Transfer and Assumption of Benefit Plans.

(a) *Adoption by SpinCo of Benefit Plans.* As of no later than the Effective Time, SpinCo shall, or shall cause the members of the SpinCo Group to, adopt Benefit Plans (and related trusts, if applicable) as contemplated and in accordance with the terms of this Agreement, which Benefit Plans are generally intended to contain terms substantially similar in all material respects to those of the corresponding Parent Benefit Plans as in effect immediately prior to the Effective Time, with such changes, modifications or amendments to the SpinCo Benefit Plans as may be required by applicable Law or to reflect the Separation and Distribution, including limiting participation in any such SpinCo Benefit Plan to SpinCo Group Employees and Former SpinCo Group Employees who participated in the corresponding Benefit Plan immediately prior to the Effective Time.

(b) *Plans Not Required to Be Adopted.* With respect to any Benefit Plan not otherwise addressed in this Agreement, the Parties shall agree in good faith on the treatment of such plan, taking into account the handling of any comparable plan under this Agreement and, notwithstanding that SpinCo shall not have an obligation to continue to maintain any such plan with respect to the provision of future benefits from and after the Effective Time, SpinCo shall remain obligated to pay or provide any previously accrued or incurred benefits to the SpinCo Group Employees and Former SpinCo Group Employees consistent with Section 2.01(a) of this Agreement.

(c) *Information, Elections and Beneficiary Designations.* Each Party shall use its commercially reasonable efforts to provide the other Party with information describing each Benefit Plan election made by an Employee or Former Employee that may have application to such Party's Benefit Plans from and after the Effective Time, and each Party shall use its commercially reasonable efforts to administer its Benefit Plans using those elections, including any beneficiary designations. Each Party shall, upon reasonable request, use its commercially reasonable efforts to provide the other Party and the other Party's respective Affiliates, agents,

and vendors all information reasonably necessary to the other Party's operation or administration of its Benefit Plans.

(d) *No Duplication or Acceleration of Benefits.* Notwithstanding anything to the contrary in this Agreement, the Separation and Distribution Agreement or any Ancillary Agreement, no participant in any Benefit Plan shall receive service credit or benefits or recognition of compensation or other factors to the extent that receipt of such service credit or benefits or recognition of compensation or other factors would result in duplication of benefits provided to such participant by the corresponding Benefit Plan or any other plan, program or arrangement sponsored or maintained by a member of the Group that sponsors the corresponding Benefit Plan. Furthermore, unless expressly provided for in this Agreement, the Separation and Distribution Agreement or in any Ancillary Agreement or required by applicable Law, no provision in this Agreement shall be construed to (i) create any right to accelerate vesting distributions or entitlements under any Benefit Plan sponsored or maintained by a member of the Parent Group or member of the SpinCo Group on the part of any Employee or Former Employee or (ii) limit the ability of a member of the Parent Group or SpinCo Group to amend, merge, modify, eliminate, reduce or otherwise alter in any respect any benefit under any Benefit Plan sponsored or maintained by a member of the Parent Group or SpinCo Group, respectively, or any trust, insurance policy or funding vehicle related thereto.

(e) *Transition Services.* The Parties acknowledge that the Parent Group or the SpinCo Group may provide administrative services for certain of the other Party's compensation and benefit programs for a transitional period under the terms of the Transition Services Agreement. The Parties agree to enter into a business associate agreement (if required by HIPAA or other applicable health information privacy Laws) in connection with such Transition Services Agreement.

(f) *Beneficiaries.* References to Parent Group Employees, Former Parent Group Employees, SpinCo Group Employees, Former SpinCo Group Employees, and current and former nonemployee directors of either Parent or SpinCo shall be deemed to refer to their beneficiaries, dependents, survivors and alternate payees, as applicable.

#### Section 2.04. Reimbursement.

(a) *By SpinCo.*

(i) From time to time after the completion of the Separation, SpinCo shall promptly reimburse Parent for the cost of any obligations or Liabilities that Parent elects to, or is compelled to, pay or otherwise satisfy, that are or that pursuant to this Agreement have become, the responsibility of the SpinCo Group. Parent shall invoice SpinCo after the end of each fiscal month for all such costs (if any) in such fiscal month. SpinCo shall pay any amounts due by SpinCo hereunder in immediately available funds within thirty (30) days of SpinCo's receipt of each invoice therefor. Any amount not paid within thirty (30) days after the date when payable shall bear interest at the rate described in the definition of Interest Payment (as defined in the Transition Services Agreement) from the date such amount is due. SpinCo shall not deduct, set off, counterclaim or otherwise withhold any amount owed by it to Parent (on account of any obligation owed by the Parent Group, whether or not such obligation has been finally

adjudicated, settled or otherwise agreed upon in writing) against the amounts payable pursuant to this Agreement; provided that if SpinCo disputes any amount on an invoice, SpinCo shall notify Parent in writing within twenty (20) days after SpinCo's receipt of such invoice and shall describe in detail the reason for disputing such amount, provide any documents or other materials supporting its dispute, and will be entitled to withhold only the amount in dispute during the pendency of the dispute. SpinCo shall cause the timely payment of the undisputed portion of each invoice in the manner set forth in this Agreement and shall be subject to late charges at the rate described in the definition of Interest Payment and any other costs incurred by Parent pursuant to this Section 2.04(a) on any amount that is unsuccessfully disputed.

(ii) In addition, if SpinCo or any member of the SpinCo group receives a repayment of relocation expenses, sign-on bonus, or other compensation that was originally paid by a member of the Parent Group, then SpinCo shall, or shall cause a SpinCo Group entity to, pay to Parent the amount of such compensation repayment in immediately available funds within thirty (30) days of the receipt of such compensation repayment by SpinCo or a member of the SpinCo Group.

(b) *By Parent.* From time to time after the completion of the Separation, Parent shall promptly reimburse SpinCo for the cost of any obligations or Liabilities that SpinCo elects to, or is compelled to, pay or otherwise satisfy, that are or that pursuant to this Agreement have become, the responsibility of the Parent Group. SpinCo shall invoice Parent after the end of each fiscal month for all such costs (if any) in such fiscal month. Parent shall pay any amounts due by Parent hereunder in immediately available funds within thirty (30) days of Parent's receipt of each invoice therefor. Any amount not paid within thirty (30) days after the date when payable shall bear interest at the rate described in the definition of Interest Payment from the date such amount is due. Parent shall not deduct, set off, counterclaim or otherwise withhold any amount owed by it to SpinCo (on account of any obligation owed by the SpinCo Group, whether or not such obligation has been finally adjudicated, settled or otherwise agreed upon in writing) against the amounts payable pursuant to this Agreement; provided that if Parent disputes any amount on an invoice, Parent shall notify SpinCo in writing within twenty (20) days after Parent's receipt of such invoice and shall describe in detail the reason for disputing such amount, provide any documents or other materials supporting its dispute, and will be entitled to withhold only the amount in dispute during the pendency of the dispute. Parent shall cause the timely payment of the undisputed portion of each invoice in the manner set forth in this Agreement and shall be subject to late charges at the rate described in the definition of Interest Payment and any other costs incurred by SpinCo and controlled pursuant to this Section 2.04(b) on any amount that is unsuccessfully disputed.

### ARTICLE III ASSIGNMENT OF EMPLOYEES

#### Section 3.01. Active Employees.

(a) *Assignment and Transfer of Employees.* Effective as of no later than the Effective Time and except as otherwise agreed to by the Parties, (i) the applicable member of the Parent Group shall have taken such actions as are necessary to ensure that each individual who is intended to be an employee of the SpinCo Group as of immediately after the Effective Time

(including any such individual who is not actively working as of the Effective Time as a result of an illness, injury or an approved leave of absence) (collectively, the “SpinCo Group Employees”) is employed by a member of the SpinCo Group as of immediately after the Effective Time, and (ii) the applicable member of the Parent Group shall have taken such actions as are necessary to ensure that each individual who is intended to be an employee of the Parent Group as of immediately after the Effective Time (including any such individual who is not actively working as of the Effective Time as a result of an illness, injury or an approved leave of absence) and any other individual employed by the Parent Group as of the Effective Time who is not a SpinCo Group Employee (collectively, the “Parent Group Employees”) is employed by a member of the Parent Group as of immediately after the Effective Time. Each of the Parties agrees to execute, and to seek to have the applicable Employees execute, such documentation, if any, as may be necessary to reflect such assignment and/or transfer.

(b) *At-Will Status*. Nothing in this Agreement shall create any obligation on the part of any member of the Parent Group or any member of the SpinCo Group to (i) continue the employment of any Employee or permit the return from a leave of absence for any period after the date of this Agreement (except as required by applicable Law) or (ii) change the employment status of any Employee from “at-will,” to the extent that such Employee is an “at-will” employee under applicable Law. Except as provided in this Agreement, this Agreement shall not limit the ability of the Parent Group or the SpinCo Group to change the position, compensation or benefits of any Employees for performance-related, business or any other reason.

(c) *Non-compete, Severance, Change in Control, or Other Payments*. The Parties acknowledge and agree that the Separation, Distribution and the assignment, transfer or continuation of the employment of Employees as contemplated by this Section 3.01 shall not be deemed an involuntary termination of employment entitling any SpinCo Group Employee or Parent Group Employee to non-compete, severance, change in control, or other payments or benefits.

(d) *Not a Change in Control*. The Parties acknowledge and agree that neither the consummation of the Separation, Distribution nor any transaction contemplated by this Agreement, the Separation and Distribution Agreement or any other Ancillary Agreement shall be deemed a “change in control,” “change of control,” or term of similar import for purposes of any Benefit Plan sponsored or maintained by any member of the Parent Group or member of the SpinCo Group and except as provided in this Agreement or as otherwise required by applicable law or Individual Agreement, no provision of this Agreement shall be construed to accelerate any vesting or create an right or entitlement to any compensation or benefits on the part of any Employee.

#### Section 3.02. Individual Agreements.

(a) *Assignment by Parent*. To the extent necessary, Parent shall assign, or cause an applicable member of the Parent Group to assign, to SpinCo or another member of the SpinCo Group, as designated by SpinCo, all Individual Agreements (other than any provision relating to restrictive covenants), with such assignment to be effective as of no later than the Effective Time; provided, however, that to the extent that assignment of any such Individual

Agreement is not permitted by the terms of such agreement or by applicable Law, effective as of the Effective Time, each member of the SpinCo Group shall be considered to be a successor to each member of the Parent Group for purposes of, and a third-party beneficiary with respect to, such Individual Agreement, such that each member of the SpinCo Group shall enjoy all the rights and benefits under such agreement (including rights and benefits as a third-party beneficiary); provided, further, that in no event shall Parent be permitted to enforce any Individual Agreement (including any agreement containing noncompetition or nonsolicitation covenants) against a SpinCo Group Employee or Former SpinCo Group Employee for action taken in such individual's capacity as a SpinCo Group Employee or Former SpinCo Group Employee.

(b) *Assumption by SpinCo.* Effective as of the Effective Time, SpinCo shall, or shall cause the members of the SpinCo Group to, assume and honor any Individual Agreement to the extent assigned, including any obligations thereunder to which any SpinCo Group Employee or Former SpinCo Group Employee is a party with any member of the Parent Group.

Section 3.03. Consultation with Labor Representatives; Labor Agreements. The Parties shall cooperate to notify, inform and/or consult with any labor union, works council or other labor representative regarding the Separation and Distributions to the extent required by Law or a Labor Agreement. No later than as of immediately before the Effective Time, SpinCo shall have taken, or caused another member of the SpinCo Group to take, all actions that are necessary (if any) for SpinCo or another member of the SpinCo Group to (a) assume any Labor Agreements in effect with respect to SpinCo Group Employees and Former SpinCo Group Employees (excluding obligations thereunder with respect to any Parent Group Employees or Former Parent Group Employees, to the extent applicable) and (b) unless otherwise provided in this Agreement, assume and honor any obligations of the Parent Group under any Labor Agreements as such obligations relate to SpinCo Group Employees and Former SpinCo Group Employees. No later than as of immediately before the Effective Time, Parent shall have taken, or caused another member of the Parent Group to take, all actions that are necessary (if any) for Parent or another member of the Parent Group to (a) assume any Labor Agreements in effect with respect to Parent Group Employees and Former Parent Group Employees (excluding obligations thereunder with respect to any SpinCo Group Employees, or Former SpinCo Group Employees, the extent applicable) and (b) assume and honor any obligations of the SpinCo Group under any Labor Agreements as such obligations relate to Parent Group Employees and Former Parent Group Employees.

Section 3.04. Non-Solicitation.

(a) *Non-Solicitation, Non-Hire.* Each Party agrees that, for the period of two (2) years immediately following the Effective Time, such Party shall, and shall cause each member in its Group, to not solicit for employment or hire any individual who is a salaried employee of a member of the other Group as of immediately prior to the Effective Time ("Restricted Employees"); provided that the foregoing restrictions shall not apply to: (i) any Restricted Employee who terminates employment (which for the avoidance of doubt, occurs at the end of any garden leave, if applicable) at least six (6) months prior to the applicable solicitation and/or hiring, (ii) the solicitation of a Restricted Employee whose employment was

involuntarily terminated by the employing Party in a severance qualifying termination before the employment discussions with the soliciting Party commenced, and (iii) any Restricted Employee whose prospective employment is agreed to in writing by the soliciting Party and the employing Party, or in the case of a Restricted Employee who is not currently employed, the Party who last employed Restricted Employee; and provided, further that it shall not be deemed to be a violation of this Section 3.04 for either Party, or the members of its Group, to post a general solicitation that is not targeted at Restricted Employees of the other Party and the members of its Group.

(b) *Remedies; Enforcement.* Each Party acknowledges and agrees that (i) injury to the employing Party from any breach by the other Party of the obligations set forth in this Section 3.04 would be irreparable and impossible to measure and (ii) the remedies at Law for any breach or threatened breach of this Section 3.04, including monetary damages, would therefore be inadequate compensation for any loss and the employing Party shall have the right to specific performance and injunctive or other equitable relief in accordance with this Section 3.04, in addition to any and all other rights and remedies at Law or in equity, and all such rights and remedies shall be cumulative. Each Party understands and acknowledges that the restrictive covenants and other agreements contained in this Section 3.04 are an essential part of this Agreement and the transactions contemplated hereby. It is the intent of the Parties that the provisions of this Section 3.04 shall be enforced to the fullest extent permissible under applicable Law applied in each jurisdiction in which enforcement is sought. If any particular provision or portion of this Section 3.04 shall be adjudicated to be invalid or unenforceable, such provision or portion thereof shall be deemed amended to the minimum extent necessary to render such provision or portion valid and enforceable, such amendment to apply only with respect to the operation of such provision or portion thereof in the particular jurisdiction in which such adjudication is made.

#### ARTICLE IV EQUITY, INCENTIVE AND EXECUTIVE COMPENSATION

Section 4.01. Generally. Each Parent Award that is outstanding as of immediately prior to the Effective Time shall be adjusted as described below; provided, however that, prior to the Effective Time, the Parent Compensation Committee may provide for different adjustments with respect to some or all Parent Awards to the extent that the Parent Compensation Committee deems such adjustments necessary and appropriate. Any adjustments made by the Parent Compensation Committee pursuant to the foregoing sentence shall be deemed incorporated by reference herein as if fully set forth below and shall be binding on the Parties and their respective Affiliates. Before the Effective Time, the SpinCo Omnibus Plan shall be established, with such terms as are necessary to permit the implementation of the provisions of Section 4.02.

Section 4.02. Equity Incentive Awards.

(a) *Option Awards.* Each Parent Option Award that is outstanding immediately prior to the Effective Time shall be converted as of the Effective Time into either a Post-Separation Parent Option Award or a SpinCo Option Award as described below:

(i) Each Parent Option Award held by a Parent Group Employee and Former Employee shall be converted as of the Effective Time, through an adjustment thereto, into a Post-Separation Parent Option Award and shall, except as otherwise provided in this Section 4.02(a), be subject to the same terms and conditions (including with respect to vesting and expiration) after the Effective Time as applicable to such Parent Option Award immediately prior to the Effective Time. From and after the Effective Time:

(A) the number of Parent Shares subject to such Post-Separation Parent Option Award, rounded down to the nearest whole number of shares, shall be equal to the product obtained by multiplying (1) the number of Parent Shares subject to the corresponding Parent Option Award immediately prior to the Effective Time, by (2) the Parent Ratio; and

(B) the per share exercise price of such Post-Separation Parent Option Award, rounded up to the nearest cent, shall be equal to the quotient obtained by dividing (1) the per share exercise price of the corresponding Parent Option Award as of immediately prior to the Effective Time, by (2) the Parent Ratio.

(ii) Each Parent Option Award held by a SpinCo Group Employee (or, if applicable, a consultant who is expected to continue service with SpinCo following the Effective Time) shall be converted as of the Effective Time into a SpinCo Option Award outstanding under the SpinCo Omnibus Plan and shall, except as otherwise provided in this Section 4.02(a), be subject to the same terms and conditions (including with respect to vesting and expiration) after the Effective Time as applicable to such Parent Option Award immediately prior to the Effective Time. From and after the Effective Time:

(A) the number of SpinCo Shares subject to such SpinCo Option Award, rounded down to the nearest whole number of shares, shall be equal to the product obtained by multiplying (1) the number of Parent Shares subject to the corresponding Parent Option Award immediately prior to the Effective Time, by (2) the SpinCo Ratio; and

(B) the per share exercise price of such SpinCo Option Award, rounded up to the nearest cent, shall be equal to the quotient obtained by dividing (1) the per share exercise price of the corresponding Parent Option Award as of immediately prior to the Effective Time, by (2) the SpinCo Ratio.

Notwithstanding anything to the contrary in this Section 4.02(a), the exercise price, the number of Parent Shares and SpinCo Shares subject to each Post-Separation Parent Option Award and SpinCo Option Award, and the terms and conditions of exercise of such options, shall be determined in a manner consistent with the requirements of Section 409A of the Code.

(b) *RSU Awards*. Each Parent RSU Award that is outstanding as of immediately prior to the Effective Time shall be treated as follows:

(i) If the holder is a Parent Group Employee, Former Employee, or Parent Director, such award shall be converted, as of the Effective Time, into a Post-Separation Parent RSU Award, and shall, except as otherwise provided in this Section 4.02, be subject to the same terms and conditions (including with respect to vesting) after the Effective Time as were applicable to such Parent RSU Award immediately prior to the Effective Time; provided, however, that from and after the Effective Time, the number of Parent Shares subject to such Post-Separation Parent RSU Award shall be equal to the product, rounded to the nearest whole number of shares, obtained by multiplying (A) the number of Parent Shares subject to the corresponding Parent RSU Award immediately prior to the Effective Time, by (B) the Parent Ratio.

(ii) If the holder is a SpinCo Group Employee or a Transferred Director, such award shall be converted, as of the Effective Time, into a SpinCo RSU Award, and shall, except as otherwise provided in this Section 4.02, be subject to the same terms and conditions (including with respect to vesting) after the Effective Time as were applicable to such Parent RSU Award immediately prior to the Effective Time; provided, however, that from and after the Effective Time, the number of SpinCo Shares subject to such SpinCo RSU Award shall be equal to the product, rounded to the nearest whole number of shares, obtained by multiplying (A) the number of Parent Shares subject to the corresponding Parent RSU Award immediately prior to the Effective Time, by (B) the SpinCo Ratio.

(c) *Event-Based RSU Awards*. Each Parent Event-Based RSU Award that is outstanding as of immediately prior to the Effective Time and held by a Parent Group Employee or Former Employee shall be converted in the same manner as described in Section 4.02(b)(i) into a Post-Separation Parent RSU Award. Each Parent Event-Based RSU Award that is outstanding as of immediately prior to the Effective Time and held by a SpinCo Group Employee shall be converted in the same manner as described in Section 4.02(b)(ii) into a SpinCo RSU Award.

(d) *Performance-Based RSU Awards*. Each Parent Performance-Based RSU Award that is outstanding as of immediately prior to the Effective Time shall be converted, as of the Effective Time, into a Post-Separation Parent Performance-Based RSU Award, and shall, except as otherwise provided in this Section 4.02(d), be subject to the same terms and conditions (including with respect to time-based vesting) after the Effective Time as were applicable to such Parent Performance-Based RSU Award immediately prior to the Effective Time; provided, however, that from and after the Effective Time, the number of Parent Shares subject to such Post-Separation Parent Performance-Based RSU Award shall be equal to the product, rounded to the nearest whole number of shares, obtained by multiplying (A) the number of Parent Shares subject to the corresponding Parent Performance-Based RSU Award immediately prior to the Effective Time, by (B) the Parent Ratio. The applicable performance-based vesting conditions may be modified in a manner determined by the Parent Compensation Committee prior to the Effective Time.



(e) *Miscellaneous Award Terms.* None of the Separation, the Distribution or any employment transfer described in Section 3.01(a) shall constitute a termination of employment for any Employee or termination of service for any non-employee director for purposes of any Post-Separation Parent Award or any SpinCo Award. After the Effective Time, for any award adjusted under this Section 4.02, any reference to a “change in control,” “change of control” or similar definition in an award agreement, employment agreement or Parent Omnibus Plan applicable to such award (x) with respect to Post-Separation Parent Awards shall be deemed to refer to a “change in control,” “change of control” or similar definition as set forth in the applicable award agreement, employment agreement or Parent Omnibus Plan, and (y) with respect to SpinCo Awards, shall be deemed to refer to a “Change in Control” as defined in the SpinCo Omnibus Plan.

(f) *Registration and Other Regulatory Requirements.* SpinCo agrees to file the appropriate registration statements with respect to, and to cause to be registered pursuant to the Securities Act, the SpinCo Shares authorized for issuance under the SpinCo Omnibus Plan, as required pursuant to the Securities Act, on or promptly following the Effective Time and in any event before the date of issuance of any SpinCo Shares pursuant to the SpinCo Omnibus Plan. The Parties shall take such additional actions as are deemed necessary or advisable to effectuate the foregoing provisions of this Section 4.02(f), including, to the extent applicable, compliance with securities Laws and other legal requirements associated with equity compensation awards in affected non-U.S. jurisdictions.

Section 4.03. Employee Stock Purchase Plan. The accumulated payroll deductions of any SpinCo Group Employee under the Parent ESPP immediately prior to the Effective Time shall be returned to such SpinCo Group Employee as soon as practical following the Effective Time in accordance with the procedure established by Parent for such purpose.

Section 4.04. Non-Equity Incentive Practices and Plans.

(a) *Corporate Bonus Practices.*

(i) The SpinCo Group shall be responsible for determining all bonus awards that would otherwise be payable under the SpinCo Non-Equity Incentive Practices to SpinCo Group Employees or Former SpinCo Group Employees for any performance periods that are open when the Effective Time occurs. The SpinCo Group shall also determine for SpinCo Group Employees or Former SpinCo Group Employees (A) the extent to which established performance criteria (as interpreted by the SpinCo Group, in its sole discretion) have been met, and (B) the payment level for each SpinCo Group Employee or Former SpinCo Group Employee. The SpinCo Group shall assume all Liabilities with respect to any such bonus awards payable to SpinCo Group Employees or Former SpinCo Group Employees for any performance periods that are open when the Effective Time occurs and thereafter, and no member of the Parent Group shall have any obligations with respect thereto.

(ii) The Parent Group shall be responsible for determining all bonus awards that would otherwise be payable under the Parent Non-Equity Incentive Practices to Parent Group Employees or Former Parent Group Employees for any performance periods that are open when the Effective Time occurs. The Parent Group shall also determine for Parent

Group Employees or Former Parent Group Employees (A) the extent to which established performance criteria (as interpreted by the Parent Group, in its sole discretion) have been met, and (B) the payment level for each Parent Group Employee or Former Parent Group Employee. The Parent Group shall retain (or assume as necessary) all Liabilities with respect to any such bonus awards payable to Parent Group Employees or Former Parent Group Employees for any performance periods that are open when the Effective Time occurs and thereafter, and no member of the SpinCo Group shall have any obligations with respect thereto.

*(b) Cash Long-Term Incentive Awards.*

(i) The SpinCo Group shall assume all Liabilities with respect to any long-term cash incentive awards payable to SpinCo Group Employees or Former SpinCo Group Employees for any performance periods that are open when the Effective Time occurs and thereafter, and no member of the Parent Group shall have any obligations with respect thereto.

(ii) The Parent Group shall retain (or assume as necessary) all Liabilities with respect to any long-term cash incentive awards payable to Parent Group Employees or Former Parent Group Employees for any performance periods that are open when the Effective Time occurs and thereafter, and no member of the SpinCo Group shall have any obligations with respect thereto. The applicable performance-based vesting conditions may be modified in a manner determined by the Parent Compensation Committee prior to the Effective Time.

*(c) Other Cash Incentive Plans.*

(i) No later than the Effective Time, the Parent Group shall continue to retain (or assume as necessary) any cash incentive plan for the exclusive benefit of Parent Group Employees and Former Parent Group Employees, whether or not sponsored by the Parent Group, and, from and after the Effective Time, shall be solely responsible for all Liabilities thereunder.

(ii) No later than the Effective Time, the SpinCo Group shall continue to retain (or assume as necessary) any cash incentive plan for the exclusive benefit of SpinCo Group Employees and Former SpinCo Group Employees, whether or not sponsored by the SpinCo Group, and, from and after the Effective Time, shall be solely responsible for all Liabilities thereunder.

Section 4.05. Director Compensation. Parent shall be responsible for the payment of any fees for service on the Parent Board that are earned at, before, or after the Effective Time, and SpinCo shall not have any responsibility for any such payments. With respect to any SpinCo nonemployee director, SpinCo shall be responsible for the payment of any fees for service on the SpinCo Board that are earned at any time after the Effective Time, and Parent shall not have any responsibility for any such payments. For the avoidance of doubt, with respect to the quarter in which the Distribution Date occurs, for any Transferred Director, Parent shall be responsible for the payment of director's fees for the period up to the Distribution Date and SpinCo shall be responsible for the payment of director's fees for the period on or after the Distribution Date.

ARTICLE V  
QUALIFIED RETIREMENT PLANS

Section 5.01. Parent Employee Retirement Plan. Parent shall assume and retain the XPO Logistics Pension Plan as of the Effective Time and no member of the SpinCo Group shall assume or retain any Liability with respect to the XPO Logistics Pension Plan. Following the Effective Time, no SpinCo Group Employee shall be credited with any additional service under the XPO Logistics Pension Plan.

Section 5.02. U.K. Retirement Plan. SpinCo shall assume and retain the XPO Pension Scheme as of the Effective Time and no member of the Parent Group shall assume or retain any Liability with respect to the XPO Pension Scheme. Following the Effective Time, no Parent Group Employee shall be credited with any additional service under the XPO Pension Scheme.

Section 5.03. SpinCo 401(k) Plans.

(a) *Establishment of Plan*. Effective on or before the Distribution Date, SpinCo shall or shall cause the members of the SpinCo Group to, adopt and establish SpinCo 401(k) Plans and a related trusts (the "SpinCo 401(k) Trust"), which shall be intended to meet the tax qualification requirements of Section 401(a) of the Code, the tax exemption requirement of Section 501(a) of the Code, and the requirements described in Sections 401(k) and (m) of the Code and which shall have substantially the similar terms in all material respects as of immediately prior to the Distribution Date as each corresponding Parent 401(k) Plan. Notwithstanding the foregoing, SpinCo may make such changes, modifications or amendments to each SpinCo 401(k) Plan as may be required by applicable Law or as are necessary and appropriate to reflect the Separation or which result from vendor limitations. SpinCo shall undertake to obtain a favorable determination letter with respect to the SpinCo 401(k) Plan.

(b) *Transfer of Account Balances*. No later than thirty (30) days following the Effective Time (or such other times as mutually agreed to by the Parties), Parent shall cause the trustee of each Parent 401(k) Plan to transfer from the trust which forms a part of each Parent 401(k) Plan to the corresponding SpinCo 401(k) Trust, the account balances of SpinCo Group Employees under the corresponding Parent 401(k) Plan, determined as of the date of the transfer. Unless otherwise agreed by the Parties, such transfers shall be made in kind, including promissory notes evidencing the transfer of outstanding loans. Any Asset and Liability transfers pursuant to this Section 5.03 shall comply in all respects with Sections 414(l) and 411(d)(6) of the Code and, if required, shall be made not less than thirty (30) days after Parent shall have filed the notice under Section 6058(b) of the Code with respect to the applicable Parent 401(k) Plan. The Parties agree that to the extent that any Assets are not transferred in kind, the assets transferred will be mapped into an appropriate investment vehicle.

(c) *Transfer of Liabilities*. Effective as of the Effective Time but subject to the Asset transfer specified in Section 5.03(b) above, each SpinCo 401(k) Plan shall assume and be solely responsible for all the Liabilities for or relating to SpinCo Group Employees under the corresponding Parent 401(k) Plan. SpinCo shall be responsible for all ongoing rights of or relating to SpinCo Group Employees for future participation (including the right to make payroll deductions) in each SpinCo 401(k) Plan.

(d) *Plan Provisions of SpinCo 401(k) Plans.* Each SpinCo 401(k) Plan shall provide that:

(i) SpinCo Group Employees shall be eligible to participate in a SpinCo 401(k) Plan as of the Effective Time to the extent that they were eligible to participate in the corresponding Parent 401(k) Plan as of immediately prior to the Effective Time;

(ii) the account balance of each SpinCo Group Employee under a Parent 401(k) Plan as of the date of the transfer of Assets from such Parent 401(k) Plan (including any outstanding promissory notes relating to outstanding loans) shall be credited to such individual's account under the corresponding SpinCo 401(k) Plan; and

(iii) each SpinCo 401(k) Plan shall assume and honor the terms of all QDROs in effect under the corresponding Parent 401(k) Plan in respect of SpinCo Group Employees immediately prior to the Effective Time.

(e) *Plan Fiduciaries.* For all periods at and after the Effective Time, the parties agree that the applicable fiduciaries of each of the Parent 401(k) Plans and the SpinCo 401(k) Plans, respectively, shall have the authority with respect to the Parent 401(k) Plans and the SpinCo 401(k) Plans, respectively, to determine the investment alternatives, the terms and conditions with respect to those investment alternatives and such other matters as are within the scope of their duties under ERISA and the terms of the applicable plan documents.

Section 5.04. Puerto Rico Savings Plan. Effective on or before the Distribution Date, SpinCo shall or shall cause the members of the SpinCo Group to adopt and establish a SpinCo Puerto Rico Savings Plan and related trust which shall have substantially similar terms in all material respects as of immediately prior to the Distribution Date as the corresponding Parent Puerto Rico Savings Plan. Notwithstanding the foregoing, SpinCo may make such changes, modifications or amendments to the SpinCo Puerto Rico Savings Plan as may be required by applicable Law or as are necessary and appropriate to reflect the Separation or which result from vendor limitations. The Parties shall implement the provisions of Section 5.03 to the extent applicable under the same or similar substantive requirements of Puerto Rico and comply with applicable Law (including any regulatory approvals) to effectuate the transfer of account balances, liabilities and participation of eligible SpinCo Group Employees in the SpinCo Puerto Rico Savings Plan.

Section 5.05. Canada Defined Contribution Plan.

(a) Effective on or before the Distribution Date, SpinCo shall, or shall cause the members of the SpinCo Group to, adopt and establish the SpinCo Canada Defined Contribution Plan and a related fund (the "SpinCo Canada Defined Contribution Fund") that shall have substantially similar terms in all material respects as of immediately prior to the Distribution Date as the Parent Canada Defined Contribution Plan. Notwithstanding the foregoing, SpinCo may make such changes, modifications or amendments to the SpinCo Canada Defined Contribution Plan as may be required by applicable Law or as are necessary and appropriate to reflect the Separation or that result from vendor limitations.

(b) *Transfer of Account Balances.* No later than thirty (30) days following the Effective Time (or such other times as mutually agreed to by the Parties), Parent shall cause the funding agent of the Parent Canada Defined Contribution Plan to transfer from the fund that forms a part of the Parent Canada Defined Contribution Plan to the SpinCo Canada Defined Contribution Fund, the account balances of SpinCo Group Employees under the Parent Canada Defined Contribution Plan, determined as of the date of the transfer. Any Asset and Liability transfers pursuant to this Section 5.05 shall comply in all respects with the requirements of applicable Law. For greater certainty, the Parties shall, or shall cause their respective Affiliates to, cooperate in providing such notices to the affected SpinCo Group Employees as may be necessary to effect such transfer of account balances in compliance with applicable Law and published regulatory guidance. The Parties agree that to the extent that any Assets are not transferred in kind, SpinCo will map the Assets transferred into an appropriate investment vehicle.

(c) *Transfer of Liabilities.* Effective as of the Effective Time but subject to the Asset transfer specified in Section 5.05(b) above, the SpinCo Canada Defined Contribution Plan shall assume and be solely responsible for all the Liabilities for or relating to SpinCo Group Employees under the Parent Canada Defined Contribution Plan. SpinCo shall be responsible for all ongoing rights of or relating to SpinCo Group Employees for future participation in the SpinCo Canada Defined Contribution Plan.

(d) *SpinCo Canada Defined Contribution Plan Provisions.* The SpinCo Canada Defined Contribution Plan shall provide that:

(i) SpinCo Group Employees shall be eligible to participate in a SpinCo Canada Defined Contribution Plan as of the Effective Time to the extent that they were eligible to participate in the corresponding Parent Canada Defined Contribution Plan as of immediately prior to the Effective Time;

(ii) the account balance of each SpinCo Group Employee under the Parent Canada Defined Contribution Plan as of the date of the transfer of Assets from such Parent Canada Defined Contribution Plan shall be credited to such individual's account under the corresponding SpinCo Canada Defined Contribution Plan; and

(e) *Plan Fiduciaries.* For all periods at and after the Effective Time, the Parties agree that the applicable fiduciaries of the Parent Canada Defined Contribution Plan and the SpinCo Canada Defined Contribution Plan, respectively, shall have the authority with respect to the Parent Canada Defined Contribution Plan and the SpinCo Canada Defined Contribution Plan, respectively, to determine the investment alternatives, the terms and conditions with respect to those investment alternatives and such other matters as are within the scope of their duties under applicable Law and the terms of the applicable plan documents.

## ARTICLE VI NONQUALIFIED DEFERRED COMPENSATION PLANS

Section 6.01. Parent Deferred Compensation Plans. Parent shall, or shall cause a member of the Parent Group to, assume and retain all Liabilities and Assets with respect to the

Parent Deferred Compensation Plans and related rabbi trusts with respect to Employees and Former Employees, whether arising before, on or after the Distribution Date and no member of the SpinCo Group shall assume or retain any Liabilities and Assets with respect to such Parent Deferred Compensation Plan and the related rabbi trust. Following the Effective Time, no SpinCo Employee or Former SpinCo Employee shall be credited with any additional service under the Parent Deferred Compensation Plans; provided that, any SpinCo Group Employee who is a participant in the 2005 Con-Way Plan immediately prior to the Effective Time and has made an irrevocable salary deferral election for the 2021 calendar year with respect to such plan shall be credited under such plan with any salary deferral amounts made pursuant to such election. In connection with the forgoing, promptly following the end of the 2021 calendar year, SpinCo shall transfer to Parent an aggregate amount in cash equal to the aggregate amount of such salary deferrals less any applicable payroll Taxes, which amount shall be promptly contributed by Parent to the rabbi trust associated with the 2005 Con-Way Plan.

Section 6.02. Jacobson Companies Deferred Compensation Plan. SpinCo Group shall assume and retain the Liabilities and Assets of the Jacobson Companies Deferred Compensation Plan and related rabbi trust as of the Effective Time and no member of the Parent Group shall assume or retain any Liabilities and Assets with respect to the Jacobson Companies Deferred Compensation Plan and the related rabbi trust. Following the Effective Time, to the extent applicable, no Parent Group Employee shall be credited with any additional service under the Jacobson Companies Deferred Compensation Plan.

Section 6.03. Participation; Distributions. The Parties acknowledge that none of the transactions contemplated by this Agreement, the Separation and Distribution Agreement or any Ancillary Agreement shall trigger a payment or distribution of compensation under any of the Parent Deferred Compensation Plans or under the Jacobson Companies Deferred Compensation Plan for any participant and, consequently, that the payment or distribution of any compensation to which such participant is entitled under any such plan shall occur upon such participant's separation from service from the Parent Group or SpinCo Group or at such other time as provided in the applicable deferred compensation plan or participant's deferral election.

## ARTICLE VII WELFARE BENEFIT PLANS

### Section 7.01. Welfare Plans.

(a) *Establishment of SpinCo Welfare Plans*. Except as otherwise provided in this Article VII, as of or before the Effective Time, SpinCo shall, or shall cause the members of the SpinCo Group to establish the SpinCo Welfare Plans pursuant to Section 2.03(a) that generally correspond to the Parent Welfare Plans in which such SpinCo Group Employees participate immediately prior to the Effective Time, with such changes, modifications or amendments as may be required by applicable Law or as are necessary and appropriate to reflect the Separation. In addition, SpinCo or members of the SpinCo Group shall retain the right to modify, amend, alter or terminate the terms of any SpinCo Welfare Plan to the same extent that the Parent Group had such rights under the corresponding Parent Welfare Plan.

(b) *Waiver of Conditions; Benefit Maximums.* SpinCo shall, or shall cause the members of the SpinCo Group to, use commercially reasonable efforts to cause the SpinCo Welfare Plans to:

(i) with respect to the enrollment as of the Effective Time, waive (x) all limitations as to preexisting conditions, exclusions, and service conditions with respect to participation and coverage requirements applicable to any SpinCo Group Employee or Former SpinCo Group Employee, other than limitations that were in effect with respect to the SpinCo Group Employee or Former SpinCo Group Employee under the applicable Parent Welfare Plan as of immediately prior to the Effective Time, and (y) any waiting period limitation or evidence of insurability requirement applicable to a SpinCo Group Employee or Former SpinCo Group Employee other than limitations or requirements that were in effect with respect to such SpinCo Group Employee or Former SpinCo Group Employee under the applicable Parent Welfare Plans as of immediately prior to the Effective Time; and

(ii) take into account (x) with respect to aggregate annual, lifetime, or similar maximum benefits available under the SpinCo Welfare Plans, a SpinCo Group Employee's or Former SpinCo Group Employee's prior claim experience under the Parent Welfare Plans and any Benefit Plan that provides leave benefits; and (y) any eligible expenses incurred by a SpinCo Group Employee or Former SpinCo Group Employee and his or her covered dependents during the portion of the plan year of the applicable Parent Welfare Plan ending as of the Effective Time to be taken into account under such SpinCo Welfare Plan for purposes of satisfying all deductible, coinsurance, and maximum out-of-pocket requirements applicable to such SpinCo Group Employee or Former SpinCo Group Employee and his or her covered dependents for the applicable plan year to the same extent as such expenses were taken into account by Parent for similar purposes prior to the Effective Time as if such amounts had been paid in accordance with such SpinCo Welfare Plan.

(c) *Allocation of Welfare Plan Assets and Liabilities.* Effective as of the Effective Time and except as otherwise provided in this Article VII, the Parent Group shall retain or assume, as applicable, and be responsible for all assets (including any insurance contracts, policies or other funding vehicles) and Liabilities relating to, arising out of or resulting from health and welfare coverage or claims incurred by or on behalf of Parent Group Employees or Former Parent Group Employees under the Parent Welfare Plans or SpinCo Welfare Plans before, at, or after the Effective Time, and the SpinCo Group shall retain or assume, as applicable, and be responsible for all assets (including any insurance contracts, policies or other funding vehicles) and Liabilities relating to, arising out of or resulting from health and welfare coverage or claims incurred by or on behalf of SpinCo Group Employees or Former SpinCo Group Employees under the SpinCo Welfare Plans or Parent Welfare Plans before, at, or after the Effective Time. No SpinCo Welfare Plan shall provide coverage to any Parent Group Employee or Former Parent Group Employee after the Effective Time, and except as provided in this Article VII, no Parent Welfare Plan shall provide coverage to any SpinCo Group Employee or Former SpinCo Group Employee after the Effective Time.

Section 7.02. Retiree Medical Plans.

(a) *Retention of Retiree Medical.* Parent shall retain all Liabilities and Assets under the Parent Retiree Medical Plans with respect to any Employee or Former Employee who immediately prior to the Effective Time (i) is a participant in a Parent Retiree Medical Plan or (ii) will satisfy the eligibility, participation and other applicable requirements under the Parent Retiree Medical Plan upon commencement of retirement, taking into account any additional credit for vesting under Section 7.02(b). Such Employee and Former Employees shall be entitled to coverage under such Parent Retiree Medical Plan in accordance with and subject to the terms of such plan as such plan may be amended from time to time by a member of the Parent Group, unless such plan is terminated by a member of the Parent Group. For the avoidance of doubt, (i) Parent or members of the Parent of Group shall retain the right to modify, amend, alter or terminate the terms of any Parent Welfare Plan, including the Retiree Medical Plan and (ii).no member of the SpinCo Group shall be required to establish a retiree medical plan pursuant to the terms of this Agreement.

(b) *Additional Vesting Credit.* Parent shall or shall cause another member of the Parent Group to amend the XPO Logistics, Inc. Retiree Benefit Plan (formerly the Con-Way Retiree Medical Plan) to provide that for the period commencing at the Effective Time and ending on December 31, 2021, each SpinCo Employee who was eligible for such plan as of immediately prior to the Effective Time shall be given vesting credit for service with members of the SpinCo Group during such period for purposes of such plan.

Section 7.03. COBRA. The Parent Group shall continue to be responsible for complying with, and providing coverage pursuant to, the health care continuation requirements of COBRA, and the corresponding provisions of the Parent Welfare Plans with respect to any Parent Group Employees and any Former Parent Group Employees (and their covered dependents) who experience a qualifying event under COBRA before, as of, or after the Effective Time, including, where applicable, administration of the COBRA premium assistance subsidy under the American Rescue Plan Act of 2021. Effective as of the Effective Time, the SpinCo Group shall assume responsibility for complying with, and providing coverage pursuant to, the health care continuation requirements of COBRA, and the corresponding provisions of the SpinCo Welfare Plans with respect to any SpinCo Group Employees or Former SpinCo Group Employees (and their covered dependents) who experience a qualifying event under the SpinCo Welfare Plans and/or the Parent Welfare Plans before, as of, or after the Effective Time, including, where applicable, administration of the COBRA premium assistance subsidy under the American Rescue Plan Act of 2021. The Parties agree that the consummation of the transactions contemplated by the Separation and Distribution Agreement shall not constitute a COBRA qualifying event for any purpose of COBRA. The Parties further agree to work together to ensure that refunds for COBRA payments are promptly made to assistance eligible individuals and to provide the other Party with whatever information is necessary to enable that Party to timely and accurately claim its respective share of the premium assistance tax credit.

Section 7.04. Flexible Spending Accounts. As of no later than the Effective Time, SpinCo shall, or shall cause the members of the SpinCo Group to, establish SpinCo Welfare Plans, including a cafeteria plan that shall provide health or dependent care flexible spending



account benefits to SpinCo Group Employees on and after the Effective Time (collectively, the “SpinCo Flex Plan”). The Parties shall use commercially reasonable efforts to ensure that as of the Effective Time any health and dependent care flexible spending accounts of SpinCo Group Employees (whether positive or negative) (the “Transferred Account Balances”) under Parent Welfare Plans are transferred as soon as practicable after the Effective Time, from the Parent Welfare Plans to the SpinCo Flex Plan. Such SpinCo Flex Plan shall assume responsibility as of the Effective Time for all outstanding health or dependent care claims under the corresponding Parent Welfare Plans of each SpinCo Group Employee as of the first day of the year in which the Effective Time occurs and shall assume and agree to perform the obligations of the corresponding Parent Welfare Plans from and after the Effective Time. As soon as practicable after the Effective Time, and in any event within thirty (30) days after the amount of the Transferred Account Balances is determined or such later date as mutually agreed upon by the Parties, Parent shall pay SpinCo the net aggregate amount of the Transferred Account Balances, if such amount is positive, and SpinCo shall pay Parent the net aggregate amount of the Transferred Account Balances, if such amount is negative. Section 7.05. Disability Plans. The Parent Group shall assume and retain all Liabilities for long-term disability benefits with respect to any Parent Group Employee or Former Parent Group Employee. The SpinCo Group shall assume and retain all Liabilities for long-term disability benefits with respect to any SpinCo Group Employee or Former SpinCo Group Employee.

Section 7.06. Vacation, Holidays and Leaves of Absence. Effective as of no later than the Effective Time, the SpinCo Group shall assume all Liabilities of the SpinCo Group with respect to vacation, holiday, annual leave or other leave of absence, and required payments related thereto, for each SpinCo Group Employee, unless otherwise required by applicable Law. The Parent Group shall retain all Liabilities with respect to vacation, holiday, annual leave or other leave of absence, and required payments related thereto, for each Parent Group Employee.

Section 7.07. Workers’ Compensation. The treatment of workers’ compensation claims shall be governed by Section 5.1 of the Separation and Distribution Agreement.

Section 7.08. Insurance Contracts. To the extent that any Welfare Plan is funded through the purchase of an insurance contract or is subject to any stop-loss contract, the Parties shall cooperate and use their commercially reasonable efforts to replicate such insurance contracts for SpinCo or Parent as applicable (except to the extent that changes are required under applicable Law or filings by the respective insurers) and to maintain any pricing discounts or other preferential terms for both Parent and SpinCo for a reasonable term. Neither Party shall be liable for failure to obtain such insurance contracts, pricing discounts, or other preferential terms for the other Party. Each Party shall be responsible for any additional premiums, charges, or administrative fees that such Party may incur pursuant to this Section 7.08.

Section 7.09. Third-Party Vendors. Except as provided below, to the extent that any Welfare Plan is administered by a third-party vendor, the Parties shall cooperate and use their commercially reasonable efforts to replicate any contract with such third-party vendor for Parent or SpinCo, as applicable, and to maintain any pricing discounts or other preferential terms for both Parent and SpinCo for a reasonable term. Neither Party shall be liable for failure to obtain

such pricing discounts or other preferential terms for the other Party. Each Party shall be responsible for any additional premiums, charges, or administrative fees that such Party may incur pursuant to this Section 7.09.

ARTICLE VIII  
MISCELLANEOUS

Section 8.01. Preservation of Rights to Amend. Except as set forth in this Agreement, the rights of each member of the Parent Group and each member of the SpinCo Group to amend, waive, or terminate any plan, arrangement, agreement, program, or policy referred to herein shall not be limited in any way by this Agreement.

Section 8.02. Fiduciary Matters. Parent and SpinCo each acknowledge that actions required to be taken pursuant to this Agreement may be subject to fiduciary duties or standards of conduct under ERISA or other applicable Law, and no Party shall be deemed to be in violation of this Agreement if it fails to comply with any provisions hereof based upon its good faith determination (as supported by advice from counsel experienced in such matters) that to do so would violate such a fiduciary duty or standard. Each Party shall be responsible for taking such actions as are deemed necessary and appropriate to comply with its own fiduciary responsibilities and shall fully release and indemnify the other Party for any Liabilities caused by the failure to satisfy any such responsibility.

Section 8.03. Further Assurances. Each Party hereto shall take, or cause to be taken, any and all reasonable actions, including the execution, acknowledgment, filing and delivery of any and all documents and instruments that any other Party hereto may reasonably request in order to effect the intent and purpose of this Agreement and the transactions contemplated hereby.

Section 8.04. Counterparts; Entire Agreement; Corporate Power.

(a) This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

(b) This Agreement, the Separation and Distribution Agreement and the Ancillary Agreements and the Exhibits, Schedules and appendices hereto and thereto contain the entire agreement between the Parties with respect to the subject matter hereof, supersede all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter, and there are no agreements or understandings between the Parties other than those set forth or referred to herein or therein. This Agreement, the Separation and Distribution Agreement and the Ancillary Agreements together govern the arrangements in connection with the Separation and the Distribution and would not have been entered into independently.

(c) Parent represents on behalf of itself and each other member of the Parent Group, and SpinCo represents on behalf of itself and each other member of the SpinCo Group, as follows:

(i) each such Person has the requisite corporate or other power and authority and has taken all corporate or other action necessary in order to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby; and

(ii) this Agreement has been duly executed and delivered by it and constitutes a valid and binding agreement of it enforceable in accordance with the terms hereof.

(d) Each Party acknowledges that it and each other Party is executing this Agreement by facsimile, stamp or mechanical signature, and that delivery of an executed counterpart of a signature page to this Agreement (whether executed by manual, stamp or mechanical signature) by facsimile or by e-mail in portable document format (.pdf) shall be effective as delivery of such executed counterpart of this Agreement. Each Party expressly adopts and confirms each such facsimile, stamp or mechanical signature (regardless of whether delivered in person, by mail, by courier, by facsimile or by e-mail in portable document format (.pdf)) made in its respective name as if it were a manual signature delivered in person, agrees that it will not assert that any such signature or delivery is not adequate to bind such Party to the same extent as if it were signed manually and delivered in person and agrees that, at the reasonable request of the other Party at any time, it will as promptly as reasonably practicable cause this Agreement to be manually executed (any such execution to be as of the date of the initial date thereof) and delivered in person, by mail or by courier.

Section 8.05. Governing Law. This Agreement (and any claims or disputes arising out of or related hereto or to the transactions contemplated hereby or to the inducement of any party to enter herein, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall be governed by and construed and interpreted in accordance with the Laws of the State of Delaware, irrespective of the choice of laws principles of the State of Delaware, including all matters of validity, construction, effect, enforceability, performance and remedies.

Section 8.06. Assignability. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns; provided, however, that neither Party may assign its rights or delegate its obligations under this Agreement without the express prior written consent of the other Party hereto. Notwithstanding the foregoing, no such consent shall be required for the assignment of a Party's rights and obligations under this Agreement, the Separation and Distribution Agreement and all other Ancillary Agreements (except as may be otherwise provided in any such Ancillary Agreement) in whole (*i.e.*, the assignment of a Party's rights and obligations under this Agreement and all Ancillary Agreements at the same time) in connection with a change of control or a sale of all or substantially all of a Party (or its assets) so long as the resulting, surviving or transferee Person assumes all the obligations of the relevant party thereto by operation of Law or pursuant to an agreement in form and substance reasonably satisfactory to the other Party.

Section 8.07. Third-Party Beneficiaries. The provisions of this Agreement are solely for the benefit of the Parties and are not intended to confer upon any Person except the Parties any rights or remedies hereunder. There are no third-party beneficiaries of this Agreement, and this Agreement shall not provide any Third Party with any remedy, claim, Liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement. Nothing in this Agreement is intended to amend any employee benefit plan or affect the applicable plan sponsor's right to amend or terminate any employee benefit plan pursuant to the terms of such plan. The provisions of this Agreement are solely for the benefit of the Parties, and no current or former Employee, officer, director, or independent contractor or any other individual associated therewith shall be regarded for any purpose as a third-party beneficiary of this Agreement.

Section 8.08. Notices. All notices, requests, claims, demands or other communications under this Agreement shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service, by certified mail, return receipt requested or by electronic mail (e-mail) so long as the confirmation of receipt of such e-mail is requested and received, to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 8.08):

If to Parent, to:

XPO Logistics, Inc.  
Five American Lane  
Greenwich, Connecticut 06831  
Attention: Deputy Chief Financial Officer, Ravi Tulsyan  
E-mail: ravi.tulsyan@xpo.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Adam O. Emmerich  
  
Viktor Sapezhnikov  
E-mail: AOEmmerich@wlrk.com  
VSapezhnikov@wlrk.com

If to SpinCo (prior to the Effective Time), to:

GXO Logistics, Inc.  
Two American Lane  
Greenwich, Connecticut 06831  
Attention: Chief Legal Officer, Karlis Kirsis  
E-mail: Karlis.Kirsis@gxo.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Adam O. Emmerich  
Viktor Sapezhnikov  
E-mail: AOEmmerich@wlrk.com  
VSapezhnikov@wlrk.com

If to SpinCo (from and after the Effective Time), to:

GXO Logistics, Inc.  
Two American Lane  
Greenwich, Connecticut 06831  
Attention: Chief Legal Officer, Karlis Kirsis  
E-mail: Karlis.Kirsis@gxo.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Adam O. Emmerich  
Viktor Sapezhnikov  
E-mail: AOEmmerich@wlrk.com  
VSapezhnikov@wlrk.com

A Party may, by notice to the other Party, change the address to which such notices are to be given or made.

Section 8.09. Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon such determination, the Parties shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the Parties.

Section 8.10. Force Majeure. No Party shall be deemed in default of this Agreement or, unless otherwise expressly provided therein, any Ancillary Agreement for any delay or failure to fulfill any obligation (other than a payment obligation) hereunder or thereunder so long as and to the extent to which any delay or failure in the fulfillment of such obligation is prevented, frustrated, hindered or delayed as a consequence of circumstances of Force Majeure. In the event of any such excused delay, the time for performance of such obligations (other than a payment obligation) shall be extended for a period equal to the time lost by reason of the delay.

A Party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event, (a) provide written notice to the other Party of the nature and extent of any such Force Majeure condition; and (b) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement and the Ancillary Agreements, as applicable, as soon as reasonably practicable.

Section 8.11. Headings. The article, section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.12. Survival of Covenants. Except as expressly set forth in this Agreement, the covenants, representations and warranties contained in this Agreement, and Liability for the breach of any obligations contained herein, shall survive the Separation and Distribution and shall remain in full force and effect.

Section 8.13. Waivers of Default. Waiver by a Party of any default by the other Party of any provision of this Agreement shall not be deemed a waiver by the waiving Party of any subsequent or other default, nor shall it prejudice the rights of the other Party. No failure or delay by a Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof prejudice any other or further exercise thereof or the exercise of any other right, power or privilege.

Section 8.14. Dispute Resolution. The dispute resolution procedures set forth in Article VII of the Separation and Distribution Agreement shall apply to any dispute, controversy or claim arising out of or relating to this Agreement.

Section 8.15. Specific Performance. Subject to the provisions of Article VII of the Separation and Distribution Agreement, in the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, the Party or Parties who are, or are to be, thereby aggrieved shall have the right to specific performance and injunctive or other equitable relief in respect of its or their rights under this Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The Parties agree that the remedies at law for any breach or threatened breach, including monetary damages, are inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are waived by each of the Parties.

Section 8.16. Amendments. No provisions of this Agreement shall be deemed waived, amended, supplemented or modified by a Party, unless such waiver, amendment, supplement or modification is in writing and signed by the authorized representative of the Party against whom it is sought to enforce such waiver, amendment, supplement or modification.

Section 8.17. Interpretation. In this Agreement, (a) words in the singular shall be deemed to include the plural and vice versa, and words of one gender shall be deemed to include the other genders as the context requires; (b) the terms “hereof,” “herein,” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as

a whole (including all of the Schedules, Exhibits and Appendices hereto and thereto) and not to any particular provision of this Agreement; (c) Article, Section, Schedule, Exhibit and Appendix references are to the Articles, Sections, Schedules, Exhibits and Appendices to this Agreement unless otherwise specified; (d) unless otherwise stated, all references to any agreement (including this Agreement and each Ancillary Agreement) shall be deemed to include the exhibits, schedules and annexes (including all Schedules, Exhibits and Appendices) to such agreement; (e) the word “including” and words of similar import when used in this Agreement (or the applicable Ancillary Agreement) shall mean “including, without limitation,” unless otherwise specified; (f) the word “or” shall not be exclusive; (g) unless otherwise specified in a particular case, the word “days” refers to calendar days; (h) references to “business day” shall mean any day other than a Saturday, a Sunday or a day on which banking institutions are generally authorized or required by law to close in the United States or New York, New York; (i) references herein to this Agreement or any other agreement contemplated herein shall be deemed to refer to this Agreement or such other agreement as of the date on which it is executed and as it may be amended, modified or supplemented thereafter, unless otherwise specified; and (j) unless expressly stated to the contrary in this Agreement or in any Ancillary Agreement, all references to “the date hereof,” “the date of this Agreement,” “hereby” and “hereupon” and words of similar import shall all be references to August 1, 2021.

Section 8.18. Limitations of Liability. Notwithstanding anything in this Agreement to the contrary, neither SpinCo or any member of the SpinCo Group, on the one hand, nor Parent or any member of the Parent Group, on the other hand, shall be liable under this Agreement to the other for any indirect, incidental, punitive, exemplary, remote, speculative or similar damages in excess of compensatory damages of the other arising in connection with the transactions contemplated hereby (other than any such Liability with respect to a Third-Party Claim).

Section 8.19. Mutual Drafting. This Agreement shall be deemed to be the joint work product of the Parties, and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties have caused this Employee Matters Agreement to be executed by their duly authorized representatives as of the date first written above.

XPO LOGISTICS, INC.

By: /s/ Ravi Tulsyan

Name: Ravi Tulsyan

Deputy Chief Financial Officer &

Title: Treasurer

GXO LOGISTICS, INC.

By: /s/ Karlis P. Kirsis

Name: Karlis P. Kirsis

Title: Chief Legal Officer



**INTELLECTUAL PROPERTY LICENSE AGREEMENT  
BY AND BETWEEN**

XPO LOGISTICS, INC.

**AND**

GXO LOGISTICS, INC.

\_\_\_\_\_

**Dated as of July 30, 2021**

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## INTELLECTUAL PROPERTY LICENSE AGREEMENT

This INTELLECTUAL PROPERTY LICENSE AGREEMENT, dated as of July 30, 2021 (this “Agreement”), is by and between XPO Logistics, Inc., a Delaware corporation (“Parent”), and GXO Logistics, Inc., a Delaware corporation (“SpinCo” and, together with Parent, the “Parties”).

### R E C I T A L S

WHEREAS, Parent, acting through itself and its direct and indirect Subsidiaries, currently operates the SpinCo Business;

WHEREAS, the board of directors of Parent (the “Parent Board”) has determined that it is in the best interests of Parent and its stockholders to create a new publicly traded company that shall operate the SpinCo Business;

WHEREAS, in furtherance of the foregoing, the Parent Board has determined that it is appropriate and desirable to separate the SpinCo Business from the Parent Business (the “Separation”) and, following the Separation, make a distribution, on a *pro rata* basis, to holders of Parent Shares on the Record Date of all the outstanding SpinCo Shares owned by Parent (the “Distribution”);

WHEREAS, in order to effectuate the Separation and the Distribution, Parent and SpinCo are expected to enter into a Separation and Distribution Agreement, date as of August 1, 2021 (as amended, modified or supplemented from time to time, the “Separation Agreement”);

WHEREAS, the SpinCo Assets include certain Intellectual Property Rights and Technology;

WHEREAS, in connection with the transfer of the SpinCo Assets, on the terms and subject to the conditions set forth herein, Parent and its Subsidiaries that are members of the Parent Group (in such capacity, the “Parent Licensors”) wish to grant to SpinCo and its Subsidiaries that are members of the SpinCo Group (in such capacity, the “SpinCo Licensees”) licenses to certain Parent Licensed Other IP, Parent Licensed Patents and Parent Licensed Software, and prior to the transfer of the SpinCo Assets to SpinCo, on the terms and subject to the conditions set forth herein, SpinCo and Subsidiaries that are members of the SpinCo Group (in such capacity, the “SpinCo Licensors”) wish to grant to Parent and its Subsidiaries (in such capacity, the “Parent Licensees”) licenses to certain SpinCo Licensed Other IP, SpinCo Licensed Patents and NA Warehouse Management Platforms; and

WHEREAS, this Agreement constitutes the Intellectual Property License Agreement referred to in the Separation Agreement.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS AND INTERPRETATION**

Section 1.1 Certain Definitions. As used herein, the following terms have the meanings set forth below. Capitalized terms that are not defined in this Agreement shall have the meanings set forth in the Separation Agreement.

(a) “Change of Control” means, with respect to any Person (the “Target Person”), the consummation of any transaction or series of related transactions involving any direct or indirect purchase or acquisition (whether by way of merger, share purchase or exchange, consolidation, license, lease, business combination, or similar transaction or otherwise) by another Person or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended), other than by any Person who, prior to such transaction or series of related transactions, is an Affiliate of the Target Person, of either (i) a majority of the voting power of the securities entitled to elect the board of directors or equivalent governing body of the Target Person (or any direct or indirect parent company) or (ii) all or substantially all of the assets of the Target Person and its Subsidiaries, taken together as a whole.

(b) “EU Warehouse Management Platforms” means the Software developed by Parent or its Subsidiaries prior to the Distribution in connection with the operation of the SpinCo Business and used for supporting and implementing (including customizations and customer-specific integrations) the (i) Reflex warehouse management platform; (ii) Red Prairie/DLX warehouse management platform; and (iii) Infolog warehouse management platform.

(c) “Licensed Software” means, depending upon the context of use, either the Parent Licensed Software or the NA Warehouse Management Platforms licensed to such Party as a Licensee.

(d) “Licensee” means a Party and, where the context requires, its Affiliates, in its or their capacity as the licensee of the rights or licenses granted to it by the other Party pursuant to Article III.

(e) “Licensor” means a Party in its capacity as the licensor or grantor of any rights or licenses granted by it to the other Party pursuant to Article III, as applicable.

(f) “NA Warehouse Management Platforms” means the Software developed by Parent or its Subsidiaries prior to the Distribution in connection with the operation of the SpinCo Business and used for supporting and implementing (including customizations and customer-specific integrations) the (i) WMx Product Suite; and (ii) WM7, WM5 and SIMS warehouse management platforms.

(g) “Open Source Software” means Software that is subject to any license meeting the definition of “Open Source” promulgated by the Open Source Initiative, available online at <http://www.opensource.org/osd.html> (including any GNU General Public License, Library General Public License, Lesser General Public License, Mozilla Public License, Berkeley Software Distribution License, MIT and the Apache License).

- (h) “Other IP” means Intellectual Property Rights other than Patents, Marks and Internet Properties.
- (i) “Parent Field” means the field of the Parent Business.
- (j) “Parent Licensed Other IP” means the Other IP (other than the SpinCo Intellectual Property) that is owned by Parent or its Subsidiaries as of immediately after the Distribution and embodied in or by any of the Business Technology.
- (k) “Parent Licensed Patents” means (i) the Patents set forth on Schedule A, (ii) any Patent that issues after the Distribution that claims priority to any Patent in clause (i), and (iii) any foreign counterparts to any of the foregoing.
- (l) “Parent Licensed Software” means the Software customizations and customer-specific integrations for Oracle, HRIS, CRM, Auth XPO, Elastic XRT and corporate BI (including the Oracle Hub proprietary platform), in object code form, developed by Parent or its Subsidiaries prior to the Distribution in connection with the operation of the SpinCo Business.
- (m) “Parent Products” means any product or service of the Parent Businesses, as such products or services currently exist and natural evolutions of such products and services within the Parent Field.
- (n) “Parent Technology” means all Technology, including any know-how or knowledge of any employees of the Parent Business, used in or held for use in the operation of the Parent Business.
- (o) “SpinCo Field” means the field of the SpinCo Business.
- (p) “SpinCo Licensed Other IP” means the Other IP included in the SpinCo Intellectual Property.
- (q) “SpinCo Licensed Patents” means (i) the Patents set forth on Schedule 1.6 of the Separation Agreement, (ii) any Patent that issues after the Distribution that claims priority to any Patent in clause (i), and (iii) any foreign counterparts to any of the foregoing.
- (r) “SpinCo Product” means the products and services provided to customers and end users by or on behalf of the Business, as such products or services currently exist and natural evolutions of such products and services within the SpinCo Field.
- (s) “WMx Product Suite” means the application referred to as the “Warehouse Management System” operated by and hosted by, or on behalf of, SpinCo or its Subsidiaries and provided to Parent and its Subsidiaries as a hosted service in accordance with the terms set forth in Schedule B.
- (t) “XPO Smart Software” means the Software (including related documentation) described on Schedule C hereto and developed by Parent or its Subsidiaries prior to the Distribution in connection with operation of the SpinCo Business and used for supporting and implementing (including customizations and customer-specific integrations) the XPO Smart and XPO Smart Lite labor optimization platforms.

Section 1.2 Other Defined Terms. In addition, the following terms shall have the meanings ascribed to them in the corresponding section of this Agreement:

<u>Term</u>	<u>Section</u>
Acquired Party	Section 5.1
Acquiring Party	Section 5.1
Agreement	Preamble
Bankruptcy Code	Section 6.1
Cooperating Party	Section 2.2
Distribution	Recitals
Enforcing Party	Section 2.2
Non-Acquired Party	Section 5.1
Open Source License	Section 4.6
Parent	Preamble
Parent Board	Recitals
Parent Licensees	Recitals
Parent Licensors	Recitals
Parties	Preamble
Separation	Recitals
Separation Agreement	Recitals
Shared Software	Section 3.3
SpinCo	Preamble
SpinCo Licensees	Recitals
SpinCo Licensors	Recitals
Spin-Out	Section 4.1(b)
Target Person	Section 1.1(a)
Warehouse Management Platforms	Section 2.1

## **ARTICLE II ASSIGNED INTELLECTUAL PROPERTY**

Section 2.1 Assignment of the Warehouse Management Platforms. To the extent that Other IP of Parent and its Subsidiaries embodied in the NA Warehouse Management Platforms and the EU Warehouse Management Platforms (collectively, the “Warehouse Management Platforms”) are not held prior to the Distribution by SpinCo or Subsidiaries that are members of the SpinCo Group, Parent hereby transfers and assigns effective as of immediately prior to the Distribution, on behalf of itself and its applicable Subsidiaries, to SpinCo, and SpinCo does hereby acquire and accept, effective as of immediately prior to the Distribution, all Intellectual Property Rights embodied in the Warehouse Management Platforms held by Parent or its Subsidiaries that are members of the Parent Group, including the right to enforce such Intellectual Property Rights and to retain all damages and awards resulting from such enforcement. Parent and its Subsidiaries that are members of the Parent Group shall, effective as of immediately prior to the Distribution, deliver to SpinCo a copy of the existing Warehouse Management Platforms, including any related documentation in the possession or control of

Parent and such Subsidiaries. Nothing set forth in the foregoing shall preclude Parent from retaining a copy of the Warehouse Management Platforms in the form of Software licensed under Article II.

Section 2.2 Assignment of the XPO Smart Software. Effective as of immediately prior to the Distribution, Parent, on behalf of itself and its Subsidiaries that are members of the Parent Group, shall deliver or otherwise make available to SpinCo or its designee a copy of the XPO Smart Software as it exists as of such date. Parent and its Subsidiaries that are members of the Parent Group may retain one or more copies of its version of the XPO Smart Software and any Software derived from the XPO Smart Software or from which the XPO Smart Software was derived. Parent shall and, effective as of immediately prior to the Distribution, hereby transfers and assigns to SpinCo, and SpinCo does hereby acquire and accept, effective as of immediately prior to the Distribution, an undivided half interest in its full right, title and interest in and to all Copyrights (including all exclusive rights comprising such Copyrights) in the version of the XPO Smart Software as provided to SpinCo. Accordingly, SpinCo and Parent shall become joint owners of the Copyrights (including all exclusive rights comprising such Copyrights) in XPO Smart Software but without the duty to account. In accordance with Section 201 of the Copyright Act, each Party shall have the independent right to all and each of the rights comprising the Copyrights in its version of the XPO Smart Software, including the right to license, transfer and sue for the infringement of such Copyrights without the duty to account for, or share, any profits or value received from, any of the foregoing. Upon the reasonable request of SpinCo, Parent shall execute any and all documentation, otherwise provide assistance, (including, but not limited to, the execution and delivery of instruments of further assurance or confirmation) to assign an undivided one-half interest in the Copyrights in the XPO Smart Software to SpinCo in accordance with the foregoing. If, and to the extent, necessary, each Party (the “Cooperating Party”) shall, upon the request of the other party (the “Enforcing Party”) use reasonable commercial efforts to cooperate in any infringement action brought the Enforcing Party, provided that the Enforcing Party shall reimburse the Cooperating Party for any costs or expenses as incurred by the Cooperating Party, in providing such cooperation. Without limiting the foregoing neither Party shall have any obligation to disclose, license or otherwise share with the other Party any improvements to, or any derivative works it may create with respect to, the XPO Smart Software. To the extent that the XPO Smart Software embodies any confidential information or Trade Secrets of Parent, effective as of immediately prior to the Distribution, Parent agrees to grant, and hereby grants, to SpinCo a perpetual, irrevocable, sublicensable, transferable, non-exclusive license to use and disclose such confidential information or Trade Secrets in the exercise of SpinCo’s rights as an owner of the Copyrights in the XPO Smart Software.

### **ARTICLE III INTELLECTUAL PROPERTY LICENSES**

Section 3.1 License to SpinCo Licensees of Parent Licensed Software. Parent, on behalf of itself and Parent Licensors, agrees to grant, and hereby grants, effective as of immediately prior to the Distribution, to SpinCo Licensees, subject to the terms and conditions of this Agreement, including Section 5.2, a nonexclusive, nontransferable (except as set forth in Section 5.1), nonsublicensable (except as provided in Section 4.2), perpetual, irrevocable, worldwide, fully paid, royalty-free license under the Parent Licensed Other IP embodied in the



Parent Licensed Software to (i) internally use, reproduce, modify and create derivative works of such Parent Licensed Software, (ii) copy and use internally (or have hosted) the Parent Licensed Software (and any derivative works thereof created by SpinCo Licensees pursuant to the foregoing clause (i)) solely for the purposes of hosting and providing the SpinCo Products to third parties as a service (SaaS) and (iii) copy and distribute (subject to any applicable confidentiality restrictions), the Parent Licensed Software (and any derivative works thereof created by SpinCo Licensees pursuant to the foregoing clause (i)), in object code form only, and only to the extent incorporated in SpinCo Products, in each case of clauses (i)-(iii), solely in the SpinCo Field.

Section 3.2 License to Parent Licensees of the NA Warehouse Management Platforms. Subject to the terms and conditions of this Agreement, including Section 5.2, effective as of the date hereof, Parent Licensees hereby retain, and SpinCo, on behalf of itself and the SpinCo Licensors, agrees to grant, and the Parties hereby cause to be granted by the SpinCo Licensors, to Parent Licensees a nonexclusive, nontransferable (except as set forth in Section 5.1), nonsublicensable (except as provided in Section 4.2), perpetual, irrevocable, worldwide, fully paid, royalty-free license under the SpinCo Licensed Other IP embodied in the NA Warehouse Management Platforms to (i) internally use, reproduce, modify and create derivative works of such NA Warehouse Management Platforms, (ii) copy and use internally (or have hosted) the NA Warehouse Management Platforms (and any derivative works thereof created by Parent Licensees pursuant to the foregoing clause (i)) solely for the purposes of hosting and providing the Parent Products to third parties as a service (SaaS) and (iii) copy and distribute (subject to any applicable confidentiality restrictions) the NA Warehouse Management Platforms (and any derivative works thereof created by Parent Licensees pursuant to the foregoing clause (i)) in object code form only, and only to the extent incorporated in Parent Products, in each case of clauses (i)-(iii), solely in the Parent Field.

Section 3.3 Shared Software. The Parties acknowledge and agree that (a) the Warehouse Management Platforms may include discrete Software code (including routines, drivers and linked libraries) that originated from, or were adapted from Software created by Parent or its Subsidiaries prior to the Distribution, and (b) such discrete items of Warehouse Management Platforms, derivatives of such Warehouse Management Platforms, and Software from which such Warehouse Management Platforms were derived, are being used or are held for use by Parent and its Subsidiaries in their products other than the SpinCo Products (such Software as described in clauses (a) and (b), the “Shared Software”). Accordingly, the Parties agree that the Intellectual Property Rights embodied in or by such Shared Software shall be considered “SpinCo Licensed Other IP” for purposes of this Agreement and licensed to Parent Licensees pursuant to Section 3.5 of this Agreement.

Section 3.4 License to SpinCo Licensees of Parent Licensed IP. Subject to the terms and conditions of this Agreement, including Section 5.2, Parent, on behalf of itself and the Parent Licensors, agrees to grant, and hereby grants, effective immediately prior to the Distribution, to SpinCo Licensees a nonexclusive, nontransferable (except as set forth in Section 5.1), sublicensable (in accordance with Section 4.2), perpetual, irrevocable, worldwide, fully paid, royalty-free license:

(a) under the Parent Licensed Patents, to make, have made, import, use, offer to sell, sell, and otherwise provide any SpinCo Product, including to practice any method, process or procedure claimed in any of the Parent Licensed Patents, in each case with respect to the operation of the SpinCo Business; and

(b) under the Parent Licensed Other IP, to use, reproduce, distribute, disclose, make, modify, improve, display and perform, create derivative works of, or otherwise exploit any SpinCo Technology in any field; provided that the foregoing license does not extend to the Parent Licensed Software or any Intellectual Property Rights embodied therein.

Section 3.5 License to Parent Licensees of Licensed-Back IP. Subject to the terms and conditions of this Agreement, effective as of the date hereof, the Parent Licensees hereby retain, and SpinCo, on behalf of itself and the SpinCo Licensors, agrees to grant, and the Parties hereby cause to be granted by the SpinCo Licensors, to Parent Licensees a nonexclusive, nontransferable (except as set forth in Section 5.1), sublicensable (in accordance with Section 4.2), perpetual, irrevocable, worldwide, fully paid, royalty-free license:

(a) under the SpinCo Licensed Patents, to make, have made, import, use, offer to sell, sell, and otherwise provide any Retained Product, including to practice any method, process or procedure claimed in any of the SpinCo Licensed Patents, in each case with respect to the operation of the Parent Businesses; and

(b) under the SpinCo Licensed Other IP, to use, reproduce, distribute, disclose, make, modify, improve, display and perform, create derivative works of, or otherwise exploit the Parent Technology in any field; provided that the foregoing license does not extend to the NA Warehouse Management Platforms (other than Shared Software) or any Intellectual Property Rights embodied therein.

Section 3.6 WMx Software as a Service. Subject to the terms and conditions of this Agreement, SpinCo agrees to provide or cause to be provided to Parent Licensees access to the WMx Product Suite in accordance herewith and with the terms for the hosted service set forth in Schedule B.

#### **ARTICLE IV LICENSE LIMITATIONS**

Section 4.1 Rights of Subsidiaries.

(a) All rights and licenses granted to SpinCo in Section 3.1 and Section 3.4, and all rights and licenses granted to Parent in Section 3.2 and Section 3.5, are granted to such Party as Licensee and to any entity that is a Subsidiary of such Party, but only for so long as such entity is a Subsidiary of such Party, and they will automatically terminate with respect to such entity when it ceases to be a Subsidiary of such Party, except in the case of a Spin-Out of such entity as provided in Section 4.1(b).

(b) In the event of a transaction or series of related transactions in which (i) an entity that is a Subsidiary of a Party actively engaged in a line of business ceases to be a Subsidiary of such Party, or (ii) Parent sells or divests a business unit or assets to which the

licenses in Article III (or part thereof) relate (such transaction in clause (i) or clause (ii), a “Spin-Out”), such spun-out entity may retain (by way of a sublicense), and the acquiror of such business unit or assets of Parent will receive (in whole or in part), any licenses granted or sublicensed to such entity or business unit hereunder, but only with respect to the line of business that such entity or business unit is engaged in at the effective time of such Spin-Out (and not to any products of an acquirer of such entity or business unit); provided that such entity in the case of clause (i) or its successor provides the Licensor hereunder with written notice of the Spin-Out and agrees in writing to be bound by the terms of this Agreement, including any license limitations. If such entity resulting from, or in connection with, the Spin-Out is acquired by, or merges with, a third party, such sublicense will not extend to any products, business or operations of such third party.

#### Section 4.2 Sublicensing.

(a) Where a license granted to a Party as a Licensee in Article III includes a license to distribute Software, such Licensee may, in connection with such distribution to an end user, grant to the end user a sublicense to such Software pursuant to an industry-standard, object code only, nonexclusive license.

(b) Each Party, as a Licensee, may sublicense the license and rights granted to such Licensee with respect to Other IP in Section 3.4(b) and Section 3.5(b), respectively, freely to a third party in connection with the operation of such Licensee’s business in the ordinary course or to such entity resulting from a Spin-Out, including in connection with the licensing of its products and services; provided that each Party shall treat any material Trade Secrets or confidential information that embodies, or is, licensed to it hereunder in the same manner, and with the same degree of care, that it treats its own like confidential information and Trade Secrets and in accordance with applicable Law, but in no event with less than reasonable care, and neither Party shall disclose such Trade Secrets or confidential information to a third party, except in connection with the disclosure of such Party’s own confidential information or Trade Secrets of at least comparable importance and value.

(c) Except as provided in Section 4.1(b), neither Parent Licensee nor SpinCo Licensee shall sublicense the Patents licensed to it in Section 3.4(a) and Section 3.5(a), except (i) in connection with the licensing by such Licensee of material other Patents owned by it and on the same terms or (ii) to third parties as necessary for the receipt of products and services from, or the provision of products and services to, such third parties, as applicable, in the operation of such Licensee’s business in the ordinary course.

(d) Except as provided in Section 4.1(b) and Section 4.2(a), neither Party, as a Licensee, will be permitted to sublicense or disclose the source code for the Licensed Software to any third party.

#### Section 4.3 No Other Rights; Retained Ownership.

(a) Each Party acknowledges and agrees that (i) its rights and licenses to the other Party’s Intellectual Property Rights are solely as set forth in, and as may be limited by, this Agreement, and (ii) neither Party has, nor will it claim to have, any rights or licenses to the other

Party's Intellectual Property Rights as a result of its status as a Subsidiary of such other Party or otherwise. Each Party shall retain all rights, including all Intellectual Property Rights, in and to any improvement to, or derivative works of, any Technology or Software licensed to it hereunder, and it shall have no obligation to provide or disclose such improvements or derivative works to the other Party.

(b) Notwithstanding anything to the contrary set forth in this Agreement, this Agreement grants to Parent Licensees no right or license to any Intellectual Property Rights that SpinCo Licensors may own now or in the future, except as expressly set forth in Section 3.2 and Section 3.5, whether by implication, estoppel or otherwise.

(c) Notwithstanding anything to the contrary set forth in this Agreement, this Agreement grants to SpinCo Licensees no right or license to any Intellectual Property Rights that Parent Licensors may own now or in the future, except as expressly set in Section 3.1 and Section 3.4, and, whether by implication, estoppel or otherwise. For the avoidance of doubt, Parent Licensors retain sole ownership of Intellectual Property Rights licensed by the Parent Licensors under this Agreement.

Section 4.4 Other Restrictions. Neither Party, as a Licensee, will be permitted to offer the Software licensed to such Licensee in Section 3.1 and Section 3.2, respectively, as a stand-alone Software as a Service (SaaS) offering.

Section 4.5 Delivery. Promptly following the date hereof, Parent shall provide or cause to be provided the Parent Licensed Software to SpinCo Licensees in all existing forms, including in source code or modifiable form.

Section 4.6 Open Source. The Parties acknowledge that certain Software licensed hereunder may include Open Source Software and that any use or distribution of such Software shall be subject to the terms and requirements of the license applicable to such Open Source Software. Neither Party shall use Open Source Software in connection with the Software licensed to it hereunder in a manner that would subject such Software to the terms of a license under which a component of Open Source Software is licensed (an "Open Source License").

Section 4.7 Treatment of Source Code. Each Party, as a Licensee, acknowledges and agrees that the source code of the Licensed Software licensed to such Party as Licensee is the confidential information of the other Party as Licensor under the terms of Section 6.2 and shall in addition be subject to the terms of this Section 4.7. Each Party, as a Licensee, shall limit access to the source code of the Licensed Software to its employees who have a need to access the source code for the purposes of exercising Licensee's rights under this Agreement. Each Party, as a Licensee, shall use reasonable commercial efforts to protect the confidentiality of the source code of the Licensed Software, including, without limitation, securing the network, server, hard drives and other media on which the source code is stored or maintained.

Section 4.8 Source Code Restrictions. Without limiting Section 4.7, each Party, as a Licensee, acknowledges and agrees that the source code of the Licensed Software licensed to such Party as Licensee is subject to the following restrictions:

(a) Licensee's rights to internally use, modify and create derivative works of the source code of such Licensed Software are solely for the purpose of internally evaluating the source code for debugging, correcting errors in the source code and creating object code versions of such Licensed Software, but not to create any other derivative works of such source code or to use or modify such source code for any other purpose.

(b) Except as expressly licensed herein, any use or distribution of such Licensed Software that requires the source code of the Licensed Software to be made available to anyone but the Licensee is expressly prohibited. Such prohibited use includes, but is not limited to, the incorporation of such source code of the Licensed Software into Software licensed under an Open Source License.

## **ARTICLE V TRANSFERABILITY**

Section 5.1 Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and permitted assigns; provided, however, that, except as provided in Section 4.1 and Section 5.3, neither Party may assign its rights or delegate its obligations under this Agreement without the express prior written consent of the other Party (the "Non-Acquired Party") hereto, as applicable. Notwithstanding the foregoing, subject to Section 5.2, no such consent shall be required for the assignment or assumption of a Party's rights and obligations under this Agreement, the Separation Agreement and the other Transaction Documents (except as may be otherwise provided in any such Transaction Document) in whole (*i.e.*, the assignment of a Party's rights and obligations under this Agreement and all Transaction Documents all at the same time) in connection with a Change of Control of a Party (such party, the "Acquired Party"); provided that the resulting, surviving or transferee Person (the "Acquiring Party") (a) assumes all of the obligations of the Acquired Party by operation of Law or by express assignment, as the case may be, and (b) delivers to the Non-Acquired Party, prior to or concurrently with the consummation of such Change of Control, a writing executed by the Acquiring Party prior to the consummation of any transaction resulting in a Change of Control, an express acknowledgement regarding the limitations on the licenses granted hereunder to the Acquired Party as a result of such Change of Control. Any purported assignment in violation of this Section 5.1 shall be null and void.

Section 5.2 Limitations on Change of Control. In the event of a Change of Control where SpinCo is the Acquired Party as set forth in Section 5.1: (i) the license set forth in Section 3.1 to Parent Licensed Software and Section 3.4(a) to Parent Licensed Patents shall automatically become limited and shall not extend to (x) any product or service of the Acquiring Party or its Affiliates (other than SpinCo Licensees) that is sold, distributed, provided or otherwise commercialized at any time, or (y) any product or service of SpinCo Licensees other than such products and services sold by SpinCo Licensees as of the date of the agreement providing for such Change of Control of SpinCo (and natural extensions of such products and services), and (ii) the licenses granted hereunder to Parent Licensees shall continue in accordance

with the terms of this Agreement and shall not otherwise be affected by the Change of Control of SpinCo.

Section 5.3 Divestiture of Parent Business Unit. The Parties agree that upon the closing of a transaction or series of related transactions in which Parent or its Subsidiaries undergo a Change of Control (whether by stock purchase, merger or asset sale) to a third party or in which Parent sells or divests all or a significant portion of a business unit or assets (including equity interests) to which any such license (or part thereof) relates, Parent shall have the right to transfer, or permit the assumption of, this Agreement or any rights or licenses of Parent or its Subsidiaries hereunder, in whole or in part, by operation of Law or by express assignment, as the case may be, and this Agreement shall survive, in connection with such transaction; provided that such transfer or assumption shall not in any way limit either Parent's and its Subsidiaries' or SpinCo's and its Subsidiaries' rights and licenses hereunder.

## **ARTICLE VI ADDITIONAL TERMS**

Section 6.1 Bankruptcy Rights. All rights and licenses granted to a Party as Licensee hereunder are, for purposes of Section 365(n) of the United States Bankruptcy Code (the "Bankruptcy Code"), licenses of intellectual property rights within the scope of Section 101 of the Bankruptcy Code. The Licensor acknowledges that the Licensee, as a licensee of such rights and licenses hereunder, will retain and may fully exercise all of its rights and elections under the Bankruptcy Code. Each Party irrevocably waives all arguments and defenses arising under 11 U.S.C. § 365(c)(1) or successor provisions to the effect that applicable Law excuses such Party from accepting performance from or rendering performance to an entity other than the debtor or debtor-in-possession as a basis for opposing assumption of this Agreement in a case under Chapter 11 of the Bankruptcy Code to the extent that such consent is required under 11 U.S.C. § 365(c)(1) or any successor statute.

Section 6.2 Confidentiality. Notwithstanding the transfer or disclosure of any Technology or grant or retention of any license to a Trade Secret or other proprietary right in confidential information to or by a Party hereunder, each Party agrees on behalf of itself and its Subsidiaries that (a) it (and each of its Subsidiaries) shall treat the Trade Secrets and confidential information of the other Party with at least the same degree of care as they treat their own similar Trade Secrets and confidential information, but in no event with less than reasonable care, and (b) neither Party (nor any of its Subsidiaries) may use or disclose the Trade Secrets or confidential information, as applicable, licensed or disclosed to it by the other Party under this Agreement, except in accordance with their respective license granted in Article III. Nothing herein will limit either Party's ability to enforce its rights against any third party that misappropriates or attempts to misappropriate any Trade Secrets or confidential information from it, regardless of whether it is an owner or licensee of such Trade Secrets or confidential information.

**ARTICLE VII**  
**NO REPRESENTATIONS OR WARRANTIES**

Section 7.1 NO OTHER REPRESENTATIONS OR WARRANTIES. ALL LICENSES AND RIGHTS GRANTED HEREUNDER ARE GRANTED ON AN AS-IS BASIS WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, CUSTOM, TRADE, NONINFRINGEMENT, NON-VIOLATION OR NON-MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY, ARE MADE OR GIVEN BY OR ON BEHALF OF A PARTY. ALL SUCH REPRESENTATIONS AND WARRANTIES, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED.

Section 7.2 General Disclaimer. Nothing contained in this Agreement shall be construed as:

- (a) a warranty or representation by either Party as to the validity, enforceability or scope of any Intellectual Property Rights;
- (b) an agreement by either Party to maintain any Intellectual Property Rights in force;
- (c) an agreement by either Party to bring or prosecute actions or suits against any third party for infringement of Intellectual Property Rights or any other right, or conferring upon either Party any right to bring or prosecute actions or suits against any third party for infringement of Intellectual Property Rights or any other right;
- (d) conferring upon either Party any right to use in advertising, publicity or otherwise any trademark, trade name or names, or any contraction, abbreviation or simulations thereof, of the other Party;
- (e) conferring upon either Party by implication, estoppel or otherwise any license or other right, except the licenses and rights expressly granted hereunder; or
- (f) except as may be provided in the Transaction Documents, an obligation to provide any technical information, know-how, consultation, technical services or other assistance or deliverables to the other Party.

Section 7.3 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING FROM THIS AGREEMENT.

## **ARTICLE VIII TERM**

Section 8.1 Term and Termination. The term of this Agreement shall commence on the date hereof and shall continue until the expiration of the last to expire of the Intellectual Property Rights licensed under this Agreement; provided that the term of the Patent licenses granted pursuant to Section 3.4(a) and Section 3.5(a) shall end upon the expiration of the last Patent licensed thereunder. The transfers, assignments, conveyances and licenses granted in this Agreement are irrevocable and cannot be earlier terminated. Each Party acknowledges and agrees that its sole remedies for breach by the other Party of the licenses granted hereunder, or of any other provision hereof, shall be to bring a claim to recover damages and to seek appropriate equitable relief, subject to the restriction in the following sentence. Each Party agrees that the transfers, assignments, conveyances and licenses such Party grants or makes to the other Party shall continue in full force and effect, notwithstanding any breach of or default under any term hereof by the other Party, and in no event shall such Party, directly or indirectly, seek to have this Agreement (including any of the rights or licenses granted by such Party herein) rescinded, revoked or otherwise terminated, in part or in whole, or seek to enjoin the lawful exercise of any rights or licenses granted by such Party hereunder or take any similar action.

## **ARTICLE IX GENERAL PROVISIONS**

Section 9.1 Transfer of IPR. Nothing set forth herein shall restrict either Party from transferring, assigning or licensing any Intellectual Property Rights owned by it and licensed to the other Party hereunder; provided that any transfer or assignment of any Intellectual Property Rights licensed to a Party hereunder shall be subject to the licenses granted in this Agreement, and the proposed transferee or assignee shall provide written acknowledgment that the Intellectual Property Rights such proposed transferee or assignee is acquiring are subject to the licenses granted in this Agreement.

Section 9.2 Entire Agreement. This Agreement, the Separation Agreement, the other Transaction Documents and the Exhibits, Schedules and appendices hereto and thereto constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, whether written or oral, relating to such subject matter. In the event of any conflict between the terms of this Agreement and the Separation Agreement or any other Transaction Document, the terms of this Agreement shall prevail. This Agreement, the Separation Agreement and the other Transaction Documents together govern the arrangements in connection with the transaction and would not have been entered independently.

Section 9.3 Amendment and Waivers. Subject to applicable Law, any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each of the Parties, or, in the case of a waiver, by the Party against whom the waiver is to be effective. No course of dealing and no failure or delay on the part of any Party hereto in exercising any right, power or remedy conferred by this Agreement shall operate as a waiver thereof or otherwise prejudice such Party's rights, powers and remedies. The failure of any of the Parties to this Agreement to require the



performance of a term or obligation under this Agreement or the waiver by any of the Parties to this Agreement of any breach hereunder shall not prevent subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach hereunder. No single or partial exercise of any right, power or remedy conferred by this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Section 9.4 No Third-Party Beneficiaries. The provisions of this Agreement are solely for the benefit of the Parties and are not intended to confer in or on behalf of any Person, except the Parties (and their successors and assigns), any rights, benefits, causes of action or remedies hereunder, and there are no third-party beneficiaries of this Agreement, and this Agreement shall not provide any third person with any remedy, claim, Liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement.

Section 9.5 Other Remedies. Except to the extent set forth otherwise herein, any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by Law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy. It is accordingly agreed that, subject to Section 8.1, the Parties will be entitled (in addition to any other remedy that may be available to it) to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions hereof and that no Party shall be required to provide any bond or other security in connection with any such decree, order or injunction or in connection with any related action.

Section 9.6 Notices. All notices and other communications to be given to any Party hereunder shall be sufficiently given for all purposes hereunder if in writing and delivered by hand, courier or overnight delivery service, or five days after being mailed by certified or registered mail, return receipt requested, with appropriate postage prepaid, or when received in the form of email transmission (receipt confirmation requested), and shall be directed to the address set forth below (or at such other address or email address as such Party shall designate by like notice):

(a) if to SpinCo:

GXO Logistics, Inc.  
Two American Lane  
Greenwich, Connecticut 06831  
Attention: Chief Legal Officer, Karlis Kirsis  
Email: Karlis.Kirsis@gxo.com

with a copy (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Facsimile: (212) 403-2000  
Attention: Adam O. Emmerich, Esq.

Viktor Sapezhnikov, Esq.  
Email: AOEmmerich@wlrk.com  
VSapezhnikov@wlrk.com

(b) if to Parent:

XPO Logistics, Inc.  
Five American Lane  
Greenwich, Connecticut 06831  
Attention: Deputy Chief Financial Officer, Ravi Tulsyan  
E-mail: ravi.tulsyan@xpo.com

with a copy (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Facsimile: (212) 403-2000  
Attention: Adam O. Emmerich, Esq.

Viktor Sapezhnikov, Esq.  
Email: AOEmmerich@wlrk.com  
VSapezhnikov@wlrk.com

Section 9.7 Governing Law; Jurisdiction and Forum; Waiver of Jury Trial.

(a) This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. In addition, each of the Parties irrevocably and unconditionally (i) submits to the exclusive personal jurisdiction of the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware) (and, in the case of appeals, appropriate appellate courts therefrom), in the event that any dispute (whether in contract, tort or otherwise) arises out of this Agreement or the Transaction or the other transactions contemplated hereby; (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court; (iii) agrees that it will not bring any Proceeding or arbitration relating to this Agreement or the Transaction or the other transactions contemplated hereby in any court other than the above-named courts; and (iv) agrees that it will not seek to assert by way of motion, as a defense or otherwise, that any such Proceeding (A) is brought in an inconvenient forum, (B) should be transferred or removed to any court other than one of the above-named courts, (C) should be stayed by reason of the pendency of some other Proceeding in any court other than one of the above-named courts, or (D) that this Agreement or the subject matter hereof may not be enforced in or by the above-named courts. Each Party agrees that service of process upon such Party in any such action or Proceeding shall be effective if Notice is given in accordance with Section 9.6.

(b) EACH PARTY TO THIS AGREEMENT WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE ADMINISTRATION THEREOF OR ANY OF THE SERVICES OR OTHER TRANSACTIONS CONTEMPLATED HEREIN. NO PARTY TO THIS AGREEMENT SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEDURE BASED UPON, OR ARISING OUT OF, THIS AGREEMENT OR RELATED INSTRUMENTS. NO PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EACH PARTY TO THIS AGREEMENT CERTIFIES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS SET FORTH ABOVE IN THIS Section 9.7. NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS Section 9.7 WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

Section 9.8 Relationship of the Parties. Nothing contained herein shall be deemed to create a partnership, joint venture or similar relationship between the Parties. Neither Party is the agent, employee, joint venturer, partner, franchisee or representative of the other Party. Each Party specifically acknowledges that it does not have the authority to, and shall not, incur any obligations or responsibilities on behalf of the other Party. Notwithstanding anything to the contrary in this Agreement, each Party (and its officers, directors, agents, employees and members) shall not hold themselves out as employees, agents, representatives or franchisees of the other Party or enter into any agreements on such Party's behalf.

Section 9.9 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other competent authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order to replace such provision with a valid, legal and enforceable provision that will achieve, to the maximum extent legally permissible, the economic, business and other purposes of such provision.

Section 9.10 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and shall become effective when one or more such counterparts have been signed by each Party and delivered (by facsimile, e-mail, or otherwise) to the other Party. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in "portable document format" from, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, shall have the same effect as physical delivery of the paper document bearing the original signatures. This Agreement has been executed in the English language. If this Agreement is translated into another language, the English language text shall in any event prevail.

IN WITNESS WHEREOF, the Parties have caused this Intellectual Property License Agreement to be executed by their duly authorized representatives as of the date first written above.

XPO LOGISTICS, INC.

By: /s/ Ravi Tulsyan  
Name: Ravi Tulsyan  
Title: Deputy Chief Financial Officer & Treasurer

GXO LOGISTICS, INC.

By: /s/ Karlis P. Kirsis  
Name: Karlis P. Kirsis  
Title: Chief Legal Officer

*[Signature Page to the Intellectual Property License Agreement]*

**AMENDMENT NO. 6 TO**  
**SECOND AMENDED AND RESTATED REVOLVING LOAN CREDIT AGREEMENT**

**July 30, 2021**

Amendment No. 6 to the Second Amended and Restated Revolving Loan Credit Agreement, dated as of October 30, 2015 (this "Amendment"), by and among XPO LOGISTICS, INC., a Delaware corporation ("Parent Borrower"), certain of Parent Borrower's Subsidiaries signatory thereto, as borrowers (collectively with Parent Borrower, the "Borrowers" and each, individually, as a "Borrower"), the Lenders from time to time party thereto, MORGAN STANLEY SENIOR FUNDING, INC., in its capacity as agent (in such capacity and together with any successors and assigns in such capacity, the "Agent") and MORGAN STANLEY SENIOR FUNDING, INC., JPMORGAN CHASE BANK, N.A. (up to the Amendment Effective Date (as defined below)) and CITIBANK, N.A. (as successor to JPMORGAN CHASE BANK, N.A. in its capacity as co-collateral agent on and after the Amendment Effective Date), as co-collateral agents (in such capacity and together with any successors and assigns in such capacity, the "Co-Collateral Agents") (as amended, restated, modified and supplemented prior to the date hereof, the "Credit Agreement"; the Credit Agreement, as amended by this Amendment, the "Amended Credit Agreement"); capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

WHEREAS, pursuant to Section 12.2(a) and 12.2(c) of the Credit Agreement, the Parent Borrower has requested that the Credit Agreement be amended on the Amendment Effective Date (as defined below) to permit the Spin Transactions (as defined in the Amended Credit Agreement) and make the other changes to the Credit Agreement as set forth on Exhibit A hereto (the changes set forth in Section 1(i), the "Stage 1 Amendments");

WHEREAS, pursuant to Section 12.2(a) and 12.2(c) of the Credit Agreement, the Parent Borrower has further requested that as of, and subject to the occurrence of, the Separation Effective Date (as defined below) (a) the aggregate Commitments be reduced from \$1,100 million to \$1,000 million, (b) the Commitments and the Canadian Commitments be reallocated among the Lenders as set forth on Exhibit B-1 hereto and (c) the L/C Issuer Fronting Sublimit Amounts of the L/C Issuers be modified as set forth on Exhibit B-2 hereto (the changes set forth in Section 1(ii), the "Stage 2 Amendments");

WHEREAS, each Consenting Lender has agreed, on the terms and conditions set forth herein and in the Amended Credit Agreement, (x) that after giving effect to the Stage 2 Amendments, it shall have a Commitment or Canadian Commitment, as applicable in the amount set forth opposite such Consenting Lender's name on Exhibit B-1 hereto and (y) to remain a Lender for all purposes under the Amended Credit Agreement;

WHEREAS, the Lenders identified on the signature pages hereto as a "Consenting Lender" (the "Consenting Lenders") constitute the Requisite Lenders and all Lenders under the Credit Agreement immediately prior to the Amendment Effective Date;

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

Section 1. **Amendment.**

(i) Stage 1 Amendments. As of the Amendment Effective Date, (i) the Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as

the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Exhibit A hereto and (ii) Citibank, N.A. hereby replaces JPMorgan Chase Bank, N.A. as Co-Collateral Agent.

(ii) Stage 2 Amendments. As of, and subject to the occurrence of, the Separation Effective Date:

(A) (i) The aggregate Commitments shall be automatically reduced from \$1,100,000,000 to \$1,000,000,000 and (ii) the aggregate Canadian Commitments shall be automatically reduced from \$150,000,000 to \$100,000,000, in each case pursuant to Section 2.3(a) of the Credit Agreement. The parties hereto agree that this Amendment constitutes the required notice pursuant to Section 2.3(a).

(B) Each Consenting Lender (including each Lender not party to the Credit Agreement immediately prior to the Amendment Effective Date) severally (and not jointly) agrees (i) that it shall have Commitments and Canadian Commitments in the aggregate principal amounts equal to the amounts set forth opposite such Consenting Lender's name on Exhibit B-1 hereto, (ii) from time to time thereafter to be bound by all obligations of a Lender under the Amended Credit Agreement and to make Revolving Loans in accordance with the terms thereof and (iii) that such Exhibit B-1 replaces in its entirety Annex C to the Credit Agreement.

(C) Each L/C Issuer (including each L/C Issuer not party to the Credit Agreement in such capacity immediately prior to the Amendment Effective Date) severally (and not jointly) agrees (i) that its L/C Issuer Fronting Sublimit will be in an aggregate principal amount equal to the amount set forth opposite such L/C Issuer's name on Exhibit B-2 hereto and (ii) that such Exhibit B-2 replaces in its entirety Annex D to the Credit Agreement.

(D) Schedule A-1 and Schedule 2.2 to the Credit Agreement shall be amended, restated and replaced in their entirety with Schedule A-1 and Schedule 2.2, respectively, attached hereto (as such schedules may be updated by the Borrower prior to the occurrence of the Separation Effective Date).

(E) For purposes hereof, the "Separation Effective Date" shall be the first date on which (i) the Separation shall have been consummated and (ii) Parent Borrower shall have delivered to the Agent an updated Borrowing Base Certificate as of June 30, 2021 giving effect to the Spin Transactions (which certificate Agent acknowledges and confirms it has received prior to the date hereof).

If the Separation Effective Date shall not have occurred on or before August 15, 2021, (i) the Stage 2 Amendments shall not go into effect, and (ii) the Credit Agreement (as amended by the Stage 1 Amendments) shall remain in effect (for the avoidance of doubt, without any reduction in the aggregate Commitments or Canadian Commitment or any modification of the L/C Issuer Fronting Sublimit Amounts).

Section 2. **Representations and Warranties, No Default.**

(i) Each Credit Party hereby represents and warrants that as of the Amendment Effective Date, after giving effect to this Amendment, (i) no Default or Event of Default has

occurred and is continuing under the Credit Agreement (as amended by the Stage 1 Amendments) and (ii) all representations and warranties made by any Credit Party contained in the Credit Agreement (as amended by the Stage 1 Amendments) or in the other Loan Documents are true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of the date hereof (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date); provided that any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct in all respects on the date hereof or on such earlier date, as the case may be (after giving effect to such qualification).

(ii) After giving effect to this Amendment, neither the modification of the Credit Agreement effected pursuant to this Amendment nor the execution, delivery, performance or effectiveness of this Amendment: (i) impairs the grant, validity, priority or perfection of the Liens granted by the Credit Parties party hereto pursuant to any Loan Document, and such Liens continue unimpaired with the same priority to secure repayment of all Obligations, whether heretofore or hereafter incurred; or (ii) requires that any new filings be made or other action taken to perfect or to maintain the perfection of such Liens.

Section 3. **Reallocation of Outstanding Revolving Loans and Participations in Letters of Credit and Swing Line Loans.** As of, and subject to the occurrence of, the Separation Effective Date:

(i) The Consenting Lenders shall assign to each of the other Consenting Lenders, and each of the Consenting Lenders shall purchase from each of the other Consenting Lenders, at the principal amount thereof, such interests in the Revolving Loans outstanding on the Separation Effective Date (or in lieu of such assignments, the Borrower Representative shall be deemed to have made a borrowing of Revolving Loans from the Consenting Lenders and a prepayment of Revolving Loans outstanding under the Commitments or Canadian Commitments, as applicable, immediately prior to the Separation Effective Date), in each case, as shall be necessary in order that, after giving effect to all such assignments and purchases (or such borrowings and prepayments), such outstanding Revolving Loans will be held by the Consenting Lenders ratably in accordance with their Pro Rata Share of the Commitments as reflected on Exhibit B-1 hereto.

(ii) All risk participations with respect to Letters of Credit issued for the account of any Borrower on or prior to the Separation Effective Date shall be reallocated to the Consenting Lenders in accordance with their Pro Rata Share of the Commitments as reflected on Exhibit B-1 hereto.

(iii) All risk participations with respect to Swing Line Loans incurred by any Borrower on or prior to the Separation Effective Date shall be reallocated to the Consenting Lenders in accordance with their Pro Rata Share of the Commitments as reflected on Exhibit B-1 hereto.

Section 4. **Effectiveness.** This Amendment shall become effective on the date (such date, the “Amendment Effective Date”) that the following conditions have been satisfied (which date is July 30, 2021):

(i) Consents. Agent shall have received executed signature pages hereto from each Credit Party, the Agent, each Consenting Lender (which constitute all Lenders under the Credit Agreement immediately before and after the Amendment Effective Date), the Swing Line Lender and each L/C Issuer;

(ii) Expenses. All fees and out-of-pocket expenses of Agent required to be paid or reimbursed by the Borrowers on the Amendment Effective Date under Section 12.3 of the Credit Agreement shall, in each case to the extent invoiced and provided in writing to the Parent Borrower at least one Business Day prior to the Amendment Effective Date, have been paid or reimbursed;

(iii) Officer's Certificate. Agent shall have received, in form and substance reasonably satisfactory to Agent, a certificate of a Financial Officer of Borrower Representative, dated the Amendment Effective Date, stating that: (i) before and after giving effect to this Amendment, no Default or Event of Default has occurred and is continuing and (ii) before and after giving effect to this Amendment, all representations and warranties made by any Credit Party contained in this Amendment, the Credit Agreement (as amended for the Stage 1 Amendments) or in the other Loan Documents are true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of the date hereof (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date); provided that any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects on the date hereof or on such earlier date, as the case may be (after giving effect to such qualification).

(iv) PATRIOT Act; Beneficial Ownership.

(A) Agent and the Consenting Lenders shall have received, at least three business days prior to the Amendment Effective Date, from the Credit Parties all documentation and other information required by Governmental Authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act, in each case to the extent requested by Agent from Parent Borrower in writing at least 10 business days prior to the Amendment Effective Date.

(B) Agent shall have received, at least three business days prior to the Amendment Effective Date, from any Borrower that qualifies as a "legal entity customer" under 31 C.F.R. § 1010.230, a certification regarding beneficial ownership in relation to such Borrower to the extent required by such regulation.

Section 5. [Reserved].

Section 6. [Reserved].

Section 7. Counterparts. This Amendment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Delivery of an executed counterpart of a signature page to this Amendment by facsimile or electronic (i.e., "pdf" or "tif") transmission shall be effective as delivery of a manually executed counterpart of this Amendment. Any signature to this Amendment may be delivered by electronic mail (including pdf) or any electronic signature complying with the U.S. federal E-SIGN Act of 2000 or the New York Electronic Signature and Records Act or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes to the fullest extent permitted by applicable law.

Section 8. Headings. The headings of this Amendment are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.



Section 9. **Effect of Amendment.** Except as expressly set forth herein, (i) this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders, the L/C Issuers, Agent, or Co-Collateral Agents in each case under the Credit Agreement or any other Loan Document, and (ii) shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other Loan Document. Except as expressly set forth herein, each and every term, condition, obligation, covenant and agreement contained in the Credit Agreement or any other Loan Document is hereby ratified and re-affirmed in all respects and shall continue in full force and effect and each Credit Party reaffirms its obligations under the Loan Documents to which it is party and the grant of its Liens on the Collateral made by it pursuant to the Collateral Documents. The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein or as provided in the exhibits hereto, operate as a waiver of any right, power or remedy of any Lender or Agent under any of the Loan Documents, or constitute a waiver of any provision of any of the Loan Documents. This Amendment shall not extinguish the Obligations for the payment of money outstanding prior to the Amendment Effective Date. Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Credit Agreement, which shall remain in full force and effect, except to any extent modified hereby or as provided in the exhibits hereto. Except as expressly provided in the Credit Agreement, nothing implied in this Amendment or in any other document contemplated hereby shall be construed as a release or other discharge of any of the Credit Parties from the Loan Documents. This Amendment shall constitute a Loan Document for purposes of the Amended Credit Agreement and from and after the Amendment Effective Date, all references to the Credit Agreement in any Loan Document and all references in the Credit Agreement to “this Agreement,” “hereunder,” “hereof” or words of like import referring to the Credit Agreement, shall, unless expressly provided otherwise, refer to the Amended Credit Agreement. Each of the Credit Parties hereby consents to this Amendment and confirms that all obligations of such Credit Party under the Loan Documents to which such Credit Party is a party shall continue to apply to the Credit Agreement as amended hereby. Without limiting the generality of the foregoing, the Collateral Documents and all of the Collateral described therein do and shall continue to secure the payment of all Obligations of the Credit Parties under the Loan Documents, in each case, as amended by this Amendment. Each Credit Party hereby expressly acknowledges the terms of this Amendment and reaffirms, as of the date hereof, (i) the covenants and agreements contained in each Loan Document to which it is a party, including, in each case, such covenants and agreements as in effect immediately after giving effect to this Amendment and the transactions contemplated hereby, (ii) its guarantee of the Obligations under the Loan Documents and (iii) its grant of Liens on the Collateral to secure the Obligations under the Loan Documents pursuant to the Loan Documents. This Amendment shall be binding on each party hereto and its successors and assigns.

Section 10. **Governing Law.**

(a) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ANY OF THE LOAN DOCUMENTS, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT STATE AND ANY APPLICABLE LAWS OF THE UNITED STATES.

(b) EACH PARTY HERETO HEREBY CONSENTS AND AGREES THAT THE STATE OR FEDERAL COURTS LOCATED IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK, NEW YORK SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE CREDIT PARTIES, AGENT AND LENDERS PERTAINING TO THIS AMENDMENT OR ANY OF THE OTHER LOAN DOCUMENTS RELATED TO THIS AMENDMENT OR TO ANY MATTER ARISING OUT OF OR RELATING TO AGENT, CO-COLLATERAL AGENTS OR ANY OF THE OTHER LOAN DOCUMENTS; PROVIDED, THAT

AGENT, CO-COLLATERAL AGENTS, LENDERS AND THE CREDIT PARTIES ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF NEW YORK COUNTY; PROVIDED, FURTHER, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE AGENT OR CO-COLLATERAL AGENTS FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF SUCH PERSON. EACH CREDIT PARTY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH CREDIT PARTY HEREBY WAIVES ANY OBJECTION THAT SUCH CREDIT PARTY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT.

(c) EACH PARTY HERETO HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINT AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO SUCH CREDIT PARTY AT THE ADDRESS SET FORTH IN SECTION 12.10 OF THE CREDIT AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF SUCH CREDIT PARTY'S ACTUAL RECEIPT THEREOF OR FIVE (5) BUSINESS DAYS AFTER DEPOSIT IN THE UNITED STATES MAIL, PROPER POSTAGE PREPAID.

Section 11. **[Reserved]**.

Section 12. **Entire Agreement.** This Amendment, the Credit Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all other prior agreements and understandings, both written and verbal, among the parties or any of them with respect to the subject matter hereof.

Section 13. **WAIVER OF JURY TRIAL. BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, THE PARTIES HERETO KNOWINGLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AMONG AGENT, LENDERS, L/C ISSUERS AND ANY CREDIT PARTY ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH, THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS RELATED THERETO.**

Section 14. **Severability.** Any term or provision of this Amendment which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Amendment or affecting the validity or enforceability of any of the terms or provisions of this Amendment in any other jurisdiction. If any provision of this Amendment is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as would be enforceable.

Section 15. **Titles/Roles.** With respect to this Amendment, each of the institutions listed below shall have the titles and roles set forth opposite its name.

<b>Institution</b>	<b>Title(s) and Role(s)</b>
Citigroup Global Markets Inc.	Joint Lead Arranger and Joint Bookrunner
Citibank, N.A.	Co-Collateral Agent
Barclays Bank PLC	Joint Lead Arranger and Joint Bookrunner
Credit Agricole Corporate and Investment Bank	Joint Lead Arranger and Joint Bookrunner
Morgan Stanley Senior Funding, Inc.	Administrative Agent and Co-Collateral Agent

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the day and year first above written.

**BORROWERS:**

**XPO LOGISTICS, INC.**

By: /s/ Ravi Tulsyan  
Name: Ravi Tulsyan  
Title: Deputy Chief Financial Officer and Treasurer

**XPO LOGISTICS CANADA INC.**

By: /s/ Ravi Tulsyan  
Name: Ravi Tulsyan  
Title: Senior Vice President and Treasurer

[Signature Page to Amendment No. 6]

BOUNCE LOGISTICS, LLC  
CON-WAY MULTIMODAL INC.  
GXO ENTERPRISE SERVICES, LLC  
GXO LOGISTICS FINANCE, LLC  
JACOBSON LOGISTICS COMPANY, L.C.  
JACOBSON PACKAGING COMPANY, L.C.  
JACOBSON TRANSPORTATION COMPANY, INC.  
JACOBSON WAREHOUSE COMPANY, INC.  
MANUFACTURERS CONSOLIDATION SERVICE OF CANADA, INC.  
XPO AIR CHARTER, LLC  
XPO CNW, INC.  
XPO COURIER, LLC  
XPO CUSTOMS CLEARANCE SOLUTIONS, LLC  
XPO DEDICATED, LLC  
XPO ENTERPRISE SERVICES, LLC  
XPO GLOBAL FORWARDING, INC.  
XPO INTERMODAL SERVICES, LLC  
XPO INTERMODAL SOLUTIONS, INC.  
XPO INTERMODAL, INC.  
XPO LAND HOLDINGS, LLC  
XPO LAST MILE CANADA INC.  
XPO LAST MILE HOLDING, INC.  
XPO LAST MILE, INC.  
XPO LOGISTICS CARTAGE, LLC  
XPO LOGISTICS DRAYAGE, LLC  
XPO LOGISTICS EXPRESS, LLC  
XPO LOGISTICS FREIGHT, INC.  
XPO LOGISTICS MANAGED TRANSPORTATION, LLC  
XPO LOGISTICS MANUFACTURING, LLC  
XPO LOGISTICS NLM, LLC  
XPO LOGISTICS PORT SERVICES, LLC  
XPO LOGISTICS SUPPLY CHAIN CANADA INC.  
XPO LOGISTICS SUPPLY CHAIN CORPORATE SERVICES, INC.  
XPO LOGISTICS SUPPLY CHAIN HOLDING COMPANY  
XPO LOGISTICS SUPPLY CHAIN OF NEW JERSEY, LLC  
XPO LOGISTICS SUPPLY CHAIN OF TEXAS, LLC  
XPO LOGISTICS SUPPLY CHAIN, INC.  
XPO LOGISTICS TRANSPORT SERVICES, LLC  
XPO LOGISTICS WORLDWIDE GOVERNMENT SERVICES, LLC  
GXO LOGISTICS WORLDWIDE, LLC  
XPO LOGISTICS WORLDWIDE, LLC

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XPO LOGISTICS, LLC  
XPO LTL HOLDINGS, LLC  
XPO LTL SOLUTIONS, LLC  
XPO MANUFACTURING HOLDINGS, LLC  
XPO NAT SOLUTIONS, LLC  
XPO PROPERTIES, INC.  
XPO SERVCO, LLC

[Signature Page to Amendment No. 6]

XPO STACKTRAIN, LLC  
XPO TRANSPORT, LLC

By: /s/ Ravi Tulsyan  
Name: Ravi Tulsyan  
Title: Senior Vice President and Treasurer

PDS TRUCKING, INC.  
XPO DISTRIBUTION SERVICES, INC.

By: /s/ Karlis P. Kirsis  
Name: Karlis P. Kirsis  
Title: President and Secretary

[Signature Page to Amendment No. 6]









**CITIBANK, N.A.**, as a Consenting Lender and L/C Issuer

By: /s/ Allister Chan

Name: Allister Chan

Title: Vice President

[Signature Page to Amendment No. 6]

**BARCLAYS BANK PLC**, as a Consenting Lender and L/C Issuer

By: /s/ Craig Malloy

Name: Craig Malloy

Title: Director

[Signature Page to Amendment No. 6]

**CREDIT AGRICOLE CORPORATE AND INVESTMENT  
BANK, as a Consenting Lender and L/C Issuer**

By: /s/ Christopher Rosenkranz  
Name: Christopher Rosenkranz  
Title: Director

By: /s/Gordon Yip  
Name: Gordon Yip  
Title: Director

[Signature Page to Amendment No. 6]



**BANK OF AMERICA, N.A.**, as a Consenting Lender

By: /s/ Matthew Bourgeois

Name: Matthew Bourgeois

Title: Senior Vice President

[Signature Page to Amendment No. 6]





**BNP PARIBAS, as a Consenting Lender and L/C Issuer**

By: /s/ Guelay Mese  
Name: Guelay Mese  
Title: Director

By: /s/ John McCulloch  
Name: John McCulloch  
Title: Vice President

[Signature Page to Amendment No. 6]

**CAPITAL ONE, NATIONAL ASSOCIATION**, as a Consenting Lender

By: /s/ Julianne Low

Name: Julianne Low

Title: Senior Director

[Signature Page to Amendment No. 6]

**CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as a  
Consenting Lender**

By: /s/ Vipul Dhadha

Name: Vipul Dhadha

Title: Authorized Signatory

By: /s/ Cassandra Droogan

Name: Cassandra Droogan

Title: Authorized Signatory

[Signature Page to Amendment No. 6]

**DEUTSCHE BANK AG NEW YORK BRANCH**, as a  
Consenting Lender and L/C Issuer

By: /s/ Michael Strobel

Name: Michael Strobel

Title: Vice President

By: /s/ Yumi Okabe

Name: Yumi Okabe

Title: Vice President

[Signature Page to Amendment No. 6]

**GOLDMAN SACHS BANK USA, as a Consenting Lender**

By: /s/ Dan Martis

Name: Dan Martis

Title: Authorized Signatory

[Signature Page to Amendment No. 6]



**JPMORGAN CHASE BANK, N.A., TORONTO BRANCH, as  
a Consenting Lender**

By: /s/ Auggie Marchetti

Name: Auggie Marchetti

Title: Authorized Officer

[Signature Page to Amendment No. 6]





**WELLS FARGO CAPITAL FINANCE CORPORATION  
CANADA, as a Consenting Lender**

By: /s/ David G. Phillips

Name: David G. Phillips

Title: Senior Vice President

[Signature Page to Amendment No. 6]

**U.S. BANK NATIONAL ASSOCIATION**, as a Consenting  
Lender and L/C Issuer

By: /s/ Lisa Freeman

Name: Lisa Freeman

Title: Senior Vice President

[Signature Page to Amendment No. 6]

**CITY NATIONAL BANK, a National Banking Association, as a  
Consenting Lender**

By: /s/ Brent Phillips

Name: Brent Phillips

Title: Senior Vice President

[Signature Page to Amendment No. 6]

**HSBC BANK USA, N.A., as a Consenting Lender**

By: /s/ Patrick D. Mueller

Name: Patrick D. Mueller

Title: Managing Director

[Signature Page to Amendment No. 6]

**KEYBANK NATIONAL ASSOCIATION**, as a Consenting  
Lender

By: /s/ Paul Steiger

Name: Paul Steiger

Title: Vice President

[Signature Page to Amendment No. 6]

**MUFG UNION BANK, N.A., as a Consenting Lender**

By: /s/ Thomas Kainamura

Name: Thomas Kainamura

Title: Director

[Signature Page to Amendment No. 6]

**THE BANK OF NOVA SCOTIA**, as a Consenting Lender and  
L/C Issuer

By: /s/ Kevin McCarthy

Name: Kevin McCarthy

Title: Director

[Signature Page to Amendment No. 6]

**EXHIBIT A**  
**To**  
**Amendment No. 6**

[See attached]



---

**\$1,100,000,000**  
**SECOND AMENDED AND RESTATED REVOLVING LOAN CREDIT AGREEMENT**

by and among

**XPO LOGISTICS, INC. AND  
CERTAIN SUBSIDIARIES OF XPO LOGISTICS, INC.  
NAMED HEREIN,**  
as Borrowers,

**THE OTHER CREDIT PARTIES SIGNATORY HERETO,**  
as Credit Parties,

**THE LENDERS SIGNATORY HERETO  
FROM TIME TO TIME,**  
as Lenders,

**MORGAN STANLEY SENIOR FUNDING, INC.,**  
as Agent,

**MORGAN STANLEY SENIOR FUNDING, INC. AND ~~JPMORGAN CHASE BANK~~ CITIBANK, N.A.,**  
as Co-Collateral Agents

**MORGAN STANLEY SENIOR FUNDING, INC.,  
J.P. MORGAN SECURITIES LLC,  
BARCLAYS BANK PLC,  
CITIBANK, N.A. AND  
DEUTSCHE BANK SECURITIES INC.,**  
as Joint Lead Arrangers and Joint Bookrunners<sup>1</sup>

**BANK OF AMERICA, N.A.,  
CAPITAL ONE, NATIONAL ASSOCIATION,  
CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,  
CREDIT SUISSE SECURITIES (USA) LLC,  
GOLDMAN SACHS BANK USA,  
U.S. BANK NATIONAL ASSOCIATION AND  
WELLS FARGO BANK, N.A.,**  
as Co-Syndication Agents

Dated as of October 30, 2015

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<sup>1</sup> For purposes of Amendment No. 6 to this Second Amended and Restated Credit Agreements, Citibank Global Markets, Inc., Barclays Bank PLC and Credit Agricole Corporate and Investment Bank have acted as joint lead arrangers and joint bookrunners.

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## SECOND AMENDED AND RESTATED REVOLVING LOAN CREDIT AGREEMENT

This SECOND AMENDED AND RESTATED REVOLVING LOAN CREDIT AGREEMENT (as the same may be amended, supplemented, restated or otherwise modified from time to time, this “Agreement”), dated as of October 30, 2015, by and among XPO LOGISTICS, INC., a Delaware corporation (“Parent Borrower”), and certain of Parent Borrower’s wholly-owned domestic subsidiaries from time to time signatory hereto, as borrowers (collectively, referred to herein as the “U.S. Borrowers” and each, individually, as a “U.S. Borrower”), XPO Logistics Canada Inc., an Ontario corporation, and certain of Parent Borrower’s wholly-owned other Canadian subsidiaries from time to time signatory hereto, as borrowers (collectively, referred to herein as the “Canadian Borrowers” and each, individually, as a “Canadian Borrower” and together with the U.S. Borrowers, collectively, referred to herein as “Borrowers” and each, individually, as a “Borrower”); the other Credit Parties (with such term and each other capitalized term used but not defined in this preamble having the meaning assigned thereto in Article 1), from time to time, signatory hereto; MORGAN STANLEY SENIOR FUNDING, INC. (“MSSF”), as administrative agent for the Lenders (together, with any permitted successors in such capacity, “Agent”); MSSF and ~~JPMORGAN CHASE BANK~~CITIBANK, N.A. (“~~JPMorgan Chase~~Citibank”), as co-collateral agents for the Lenders (together, with any permitted successors in such capacity, “Co-Collateral Agents”); the Lenders and L/C Issuers signatory hereto from time to time.

### RECITALS

WHEREAS, certain Borrowers, Agent, Co-Collateral Agents, certain Lenders and certain L/C Issuers are party to that certain Amended and Restated Revolving Loan Credit Agreement, dated as of April 1, 2014, and as amended on August 8, 2014 and May 29, 2015 (as amended, restated, amended and restated, extended, supplemented, or otherwise modified prior to the date hereof, the “Existing Credit Agreement”);

WHEREAS, Borrowers have requested that Agent, Co-Collateral Agents, Lenders and L/C Issuers replace the Existing Credit Agreement with this Agreement to, among other things, permit the Con-way Acquisition and certain related transactions, in each case, on the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the U.S. Borrowers and the U.S. Guarantors have agreed to secure all of their Obligations under the Loan Documents by granting to Agent, for the benefit of the Secured Parties, a security interest in the U.S. ABL Priority Collateral and the U.S. Term Priority Collateral;

WHEREAS, the Canadian Borrowers and the Canadian Guarantors have agreed to secure all of their Obligations under the Loan Documents by granting to Agent, for the benefit of the Secured Parties, a security interest in the Canadian Collateral;

WHEREAS, the Lenders are willing to make certain loans and other extensions of credit to Borrowers of up to such amounts upon the terms and conditions set forth herein; and

WHEREAS, all annexes, schedules, exhibits and other attachments (collectively, “Appendices”) to this Agreement are incorporated herein by reference, and taken together with this Agreement, shall constitute but a single agreement. These Recitals shall be construed as part of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. ~~DEFINITIONS, ACCOUNTING PRINCIPLES AND OTHER INTERPRETIVE MATTERS~~DEFINITIONS, ACCOUNTING PRINCIPLES AND OTHER INTERPRETIVE MATTERS.

1.1 Definitions. For purposes of this Agreement:

“~~2022~~2023 Notes” means Parent Borrower’s ~~6.50~~6.125% Senior Notes due ~~2022~~2023 issued on ~~June 9, 2015~~August 25, 2016 in an initial aggregate principal amount of ~~\$1,600,000,000~~\$535,000,000.

“~~2022~~2023 Notes Indenture” means the Indenture dated as of ~~June 9, 2015~~August 25, 2016 among Parent Borrower and The Bank of New York Mellon Trust Company, N.A., ~~a national banking association,~~ as trustee, ~~The Bank of New York Mellon, London Branch as London paying agent and The Bank of New York Mellon (Luxembourg) S.A. as Luxembourg paying agent,~~ under which the ~~2022~~2023 Notes were issued.

~~“2022 Notes Offering Memorandum” means the “Offering Memorandum” (as defined in the 2022 Notes Indenture).~~

“~~2022~~2023 Notes Transactions” means the “Refinancing Transactions” (as defined in the ~~2022~~2023 Notes Indenture).

“~~2023~~2024 Notes” means Parent Borrower’s ~~6.125~~6.750% Senior Notes due ~~2023~~2024 issued on ~~August 25, 2016~~February 22, 2019 in an initial aggregate principal amount of ~~\$535,000,000~~\$1,000,000,000.

“~~2023~~2024 Notes Indenture” means the Indenture dated as of ~~August 25, 2016~~February 22, 2019 among Parent Borrower and ~~The Bank of New York Mellon Trust Company, N.A.~~Wells Fargo Bank, National Association, as trustee, under which the ~~2023~~2024 Notes were issued.

“2024 Notes Transactions” means the “Refinancing Transactions” (as defined in the 2024 Notes Indenture).

“~~2024~~2025 Notes” means, collectively, Parent Borrower’s ~~6.750~~6.250% Senior Notes due ~~2024~~2025 issued on ~~February 22, 2019~~April 28, 2020 in an ~~initial~~ aggregate principal amount of ~~\$1,000,000,000~~\$850,000,000 and 6.250% Senior Notes due 2025 issued on May 27, 2020 in an aggregate principal amount of \$300,000,000.

“~~2024~~2025 Notes Indenture” means the Indenture dated as of ~~February 22, 2019~~April 28, 2020 among Parent Borrower and Wells Fargo Bank, National Association, as trustee, under which the ~~2024~~2025 Notes were issued.

“2025 Notes Offering Memoranda” means, collectively, the “Offering Memorandum” (as defined in the 2025 Notes Indenture) and the Offering Memorandum, dated May 21, 2020, relating to the issuance of the and 6.250% Senior Notes due 2025 issued on May 27, 2020 in an aggregate principal amount of \$300,000,000.

“2025 Notes Transactions” means the “Refinancing Transactions” (as defined in the 2025 Notes Indenture).

“30 Day Availability” means the quotient obtained by dividing (a) the sum of each day’s Availability during the 30-consecutive day period immediately preceding a proposed transaction by (b) 30.

“AAR” means the Association of American Railroads or any successor thereto.

“AAR Rules” means the Code of Car Service Rules/Code of Car Hire Rules contained in AAR Circular OT-10 as promulgated in the Official Railway Equipment Register, as in effect from time to time, or any successor thereto.

“ABL Fixed Charges” means, for any period, the sum of (a) any scheduled amortization payments paid or payable during such period on all Indebtedness of Parent Borrower and its Subsidiaries (including the principal component of all obligations in respect of all Capitalized Lease Obligations), plus (b) consolidated cash Interest Expense of Parent Borrower and its Subsidiaries for such period, plus (c) all dividends paid in cash on any series of Disqualified Capital Stock or Preferred Stock of Parent Borrower and its Restricted Subsidiaries, other than dividends payable solely in Qualified Capital Stock of Parent Borrower or to Parent Borrower or a Restricted Subsidiary of Parent Borrower, in each case, on a consolidated basis in accordance with GAAP.

“ABL Intercreditor Agreement” means the intercreditor agreement dated as of the Restatement Date among Agent, the Term Administrative Agent and the Credit Parties, substantially in the form of Exhibit 1.1, as modified by the ABL Intercreditor Agreement Joinder and as the same may be further amended, restated, supplemented or otherwise modified from time to time, or any other intercreditor agreement among the Term Administrative Agent, Agent and the Credit Parties on terms that are not less favorable in any material respect to the Secured Parties than those contained in the form attached as Exhibit 1.1.

“ABL Intercreditor Agreement Joinder” means that certain Lien Sharing and Priority Confirmation Joinder, dated as of April 9, 2020, among Agent, Bilateral Agent and Term Administrative Agent.

“ABL Priority Collateral” has the meaning specified in the ABL Intercreditor Agreement.

“Account” means all “accounts” as defined in the Code or the PPSA, as applicable, now owned or hereafter acquired by any Credit Party.

“Account Debtor” means any Person who may become obligated to any Credit Party on account of, an Account, Chattel Paper or General Intangibles (including a payment intangible).

“Acquired Indebtedness” means, with respect to any specified Person: (1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, and (2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person. Acquired Indebtedness will be deemed to have been Incurred, with respect to clause (1) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary and, with respect to clause (2) of the preceding sentence, on the date of consummation of such acquisition of such assets.

“Acquisition” means, with respect to any Person, (a) the acquisition by such Person of the Capital Stock of any other Person resulting in such other Person becoming a Subsidiary of such Person, (b) the acquisition by such Person of all or substantially all of the assets of any other Person or of a division or business line of such Person, or (c) any merger, amalgamation or consolidation of such Person or a Subsidiary of such Person with any other Person so long as the surviving or continuing entity of such merger, amalgamation or consolidation is such Person or a Subsidiary of such Person.

“Activation Event” and “Activation Notice” have the meanings specified in Annex A.

“Additional Refinancing Amount” means, in connection with the Incurrence of any Refinancing Indebtedness, the aggregate principal amount of additional Indebtedness, Disqualified Capital Stock or Preferred Stock Incurred to pay accrued and unpaid interest, premiums (including tender premiums), expenses, defeasance costs and fees in respect thereof.

“Administrative Services Agreement” means that certain Administrative Services Agreement, dated October 15, 2001, by and between XPO Intermodal and Greenbrier Leasing Company LLC, as amended, restated, supplemented or otherwise modified from time to time.

“Advance” means any Revolving Credit Advance or Swing Line Advance, as the context may require.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affected L/C Issuer” has the meaning specified in Section 2.2.

“Affected Lender” has the meaning specified in Section 2.14(d).

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. Notwithstanding the foregoing, the term “Affiliate” shall

specifically exclude Agent, each Co-Collateral Agent, each Lender, each L/C Issuer and each Lead Arranger.

“Affiliate Transaction” has the meaning specified in Section 7.5(a).

“Agent” has the meaning specified in the preamble to this Agreement.

“Aggregate Revolving Credit Exposure” means, at any time, the sum of (a) the aggregate amount of U.S. Loans and (b) the aggregate amount of Canadian Loans, in each case at such time.

“Agreement” has the meaning specified in the preamble to this Agreement.

“Allocable Amount” has the meaning specified in Section 13.7(b).

“Alternative Currency” means each of Euros, Pounds Sterling, Singapore Dollars and each other currency (other than Dollars and Canadian Dollars) that is approved by the applicable L/C Issuer in accordance with Section 1.4.

“Amendment No. 3” means that certain Amendment No. 3 to Second Amended and Restated Revolving Loan Credit Agreement dated as of April 30, 2019 by and among the Parent Borrower, the other Credit Parties party thereto, certain Lenders and other parties signatory thereto, and Agent.

“Amendment No. 3 Effective Date” means April 30, 2019.

“Amendment No. 5” means that certain Amendment No. 5 to Second Amended and Restated Revolving Loan Credit Agreement dated as of June 29, 2020 by and among the Parent Borrower, the other Credit Parties party thereto, certain Lenders and other parties signatory thereto, and Agent.

“Amendment No. 5 Effective Date” means June 29, 2020.

[“Amendment No. 6” means that certain Amendment No. 6 to Second Amended and Restated Revolving Loan Credit Agreement dated as of July 30, 2021 by and among the Parent Borrower, the other Credit Parties party thereto, certain Lenders and other parties signatory thereto, and Agent.](#)

[“Amendment No. 6 Effective Date” means July 30, 2021.](#)

“Appendices” has the meaning specified in the recitals to this Agreement.

“Applicable Commitment Fee Percentage” means, for any day, the applicable percentage set forth below under the caption “Applicable Commitment Fee Percentage” based upon the Quarterly Average Unused Revolving Facility Balance as of the last day of the most recently ended Fiscal Quarter:

Quarterly Average Unused Revolving Facility Balance	Applicable Commitment Fee Percentage
<i>Category 1</i> > 60% of the Total Commitments	0.25% per annum
<i>Category 2</i> ≤ 60% of the Total Commitments	0.20% per annum

(i) the Applicable Commitment Fee Percentage shall be calculated once each Fiscal Quarter, as of the last day of each such Fiscal Quarter, based upon the Quarterly Average Unused Revolving Facility Balance for such Fiscal Quarter, (ii) the Applicable Commitment Fee Percentage from the Amendment No. 3 Effective Date through and including the last day of the first Fiscal Quarter to end following the Amendment No. 3 Effective Date shall be the applicable percentage set forth in Category 2 above and thereafter shall be adjusted in accordance with the provisions hereof, (iii) in the event that Borrowers fail to provide any Borrowing Base Certificate required hereunder with respect thereto for any period on the date required hereunder, effective as of the date on which such Borrowing Base Certificate was otherwise required, the Applicable Commitment Fee Percentage shall be deemed to be Category 1 above for all purposes until the date on which such required Borrowing Base Certificate is provided, and (iv) at any time after the occurrence and during the continuance of an Event of Default, the Applicable Commitment Fee Percentage shall be deemed to be Category 1 above.

In the event that the Borrowing Base Certificate delivered is inaccurate (regardless of whether this Agreement or the Commitments are in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Commitment Fee Percentage for any period (an “Applicable Period”) than the Applicable Commitment Fee Percentage applied for such Applicable Period, then (a) Parent Borrower shall as promptly as practicable deliver to Agent a corrected Borrowing Base Certificate for such Applicable Period, (b) the Applicable Commitment Fee Percentage shall be determined based on the corrected Borrowing Base Certificate for such Applicable Period, and (c) Borrowers shall as promptly as practicable pay to Agent (for the account of the Lenders during the Applicable Period or their successors and assigns) the accrued additional Commitment Fee owing as a result of such increased Applicable Commitment Fee Percentage for such Applicable Period. This paragraph shall not limit the rights of Agent, Co-Collateral Agents or the Lenders with respect to Article 9 hereof, and shall survive the termination of this Agreement.

All Commitment Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

“Applicable Conditions” means (a) there is no Default or Event of Default existing immediately before or after such transaction, (b) (x) the 30 Day Availability immediately preceding the proposed transaction and (y) Availability on the date of the proposed transaction (in each case, calculated on a pro forma basis for such transaction and/or any Advance) is equal to or greater than the greater of (i) 10.0% of Available Credit and (ii) ~~\$75,000,000~~ 70,000,000 and (c) for transactions in an amount in excess of \$100,000,000, Parent Borrower shall have

delivered a customary Officer's Certificate to Agent certifying as to compliance with the requirements of clauses (a) and (b).

"Applicable Margin" means for any day with respect to any LIBOR Loan or any Base Rate Loan, the applicable margin *per annum* set forth below under the caption "LIBOR Margin" or "Base Rate Margin," as the case may be, based upon the Quarterly Average Availability Percentage as of the last day of the most recently ended Fiscal Quarter:

Quarterly Average Availability Percentage	LIBOR Margin	Base Rate Margin
<i>Category 1</i> < 40%	1.50%	0.50%
<i>Category 2</i> ≥ 40%	1.25%	0.25%

(i) the Applicable Margin shall be calculated and established once each Fiscal Quarter, as of the last day of each such Fiscal Quarter and shall remain in effect until adjusted thereafter after the end of each such Fiscal Quarter, (ii) the Applicable Margin from the Amendment No. 3 Effective Date through and including the last day of the first Fiscal Quarter to end following the Amendment No. 3 Effective Date shall be the applicable percentage set forth in Category 2 above and shall be adjusted in accordance with the provisions hereof, (iii) thereafter, each adjustment of the Applicable Margin shall be effective as of the first day of a Fiscal Quarter based on the Quarterly Average Availability Percentage for the immediately preceding Fiscal Quarter, (iv) in the event that Borrowers fail to provide any Borrowing Base Certificate required hereunder with respect thereto for any period on the date required hereunder, effective as of the date on which such Borrowing Base Certificate was otherwise required, the Applicable Margin shall be deemed to be Category 1 above for all purposes until the date on which such required Borrowing Base Certificate is provided and (v) at any time after the occurrence and during the continuance of an Event of Default, upon notice from Agent to Parent Borrower the Applicable Margin shall be deemed to be Category 1 above.

Notwithstanding anything to the contrary contained above in this definition or elsewhere in this Agreement, if it is subsequently determined that the Borrowing Base Certificate delivered is inaccurate (regardless of whether this Agreement or the Commitments are in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any applicable period than the Applicable Margin applied for such applicable period, then (i) Parent Borrower shall as promptly as possible deliver to Agent a corrected Borrowing Base Certificate for such Applicable Period, (ii) the Applicable Margin shall be determined based on the corrected Borrowing Base Certificate for such Applicable Period, and (iii) Borrowers shall as promptly as possible pay to Agent (for the account of the Lenders during the applicable period or their successors and assigns) the accrued additional interest owing as a result of such increased Applicable Margin for such Applicable Period. This paragraph shall not limit the rights of Agent, Co-Collateral Agents or the Lenders with respect to Article 9 hereof, and shall survive the termination of this Agreement.

“Applicable Period” has the meaning specified in the definition of “Applicable Commitment Fee Percentage.”

“Approved Fund” means, with respect to any Lender, any Person (other than a natural Person) that (a) is or will be engaged in making, purchasing, holding or otherwise investing in revolving commercial loans and similar extensions of credit in the ordinary course of its business and (b) is advised or managed by (i) such Lender, (ii) any Affiliate of such Lender or (iii) any Person (other than a natural Person) or any Affiliate of any Person (other than a natural Person) that administers or manages such Lender.

“Assignment Agreement” has the meaning specified in Section 11.1(a)(i).

“Availability” means, as of any date of determination, the amount (if any) by which (a) the Available Credit as of such date, exceeds (b) the sum of the aggregate Dollar Equivalent of (i) Revolving Credit Advances plus (ii) Letter of Credit Obligations (other than Letter of Credit Obligations cash collateralized in accordance with the terms of the Loan Documents) plus (iii) Swing Line Loans, in each case outstanding as of such date.

“Available Credit” means, as of any date of determination, the lesser of (a) the Commitment of all Lenders and (b) the Borrowing Base as most recently reported by Borrowers on or prior to such date of determination.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of a LIBOR Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “LIBOR Period” pursuant to clause (g) of Section 2.15.

“Average Availability Percentage” means, as of any date of determination with respect to any period, an amount equal to the sum of the actual amount of Availability on each day during such period expressed as a percentage of the Available Credit for such day, divided by the number of days in such period.

“Average Unused Revolving Facility Balance” means, as of any date of determination, an amount equal to the sum of (a) the Commitments as of such date less (b) the sum of (i) the aggregate Dollar Equivalent of the Revolving Credit Advances outstanding on such day, plus (ii) Letter of Credit Obligations (other than Letter of Credit Obligations cash collateralized in accordance with the terms of the Loan Documents) outstanding as of such date, divided by the number of days in such period.

“BA Rate” means (i) the rate of interest per annum equal to the average rate applicable to bankers’ acceptances with a comparable face amount to the principal amount of the applicable Canadian Dollar Loans and having an identical or comparable term as the LIBOR Period of the proposed Canadian Dollar Loans, displayed and identified as such on the display referred to as the “CDOR Page” (or any display substituted therefor) of Reuters Monitor Money Rates Service as at or about 10:00 A.M. (Toronto time) on the day that is the first day of such LIBOR Period (or, if such day is not a Business Day, as of 10:00 A.M. (Toronto time) on the immediately



preceding Business Day) (the “CDOR Screen Rate”), or (ii) if such rates do not appear on the CDOR Page at such time and on such date, the rate for such date will be the annual discount rate (rounded upward to the nearest whole multiple of 1/100 of 1.0%) as of 10:00 A.M. (Toronto time) on such day at which Agent (or a bank that is listed on Schedule 1 of the Bank Act (Canada) acceptable to Agent) is then offering to purchase such bankers’ acceptances having such specified term (or a term as closely as possible comparable to such specified term). If at any time the BA Rate is less than 0.00%, it shall be deemed to be 0.00%.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, ~~regulation~~-rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bank Products” means any one or more of the following types of services or facilities extended to the Credit Parties by a Person who at the time such services or facilities were extended was a Lender or Agent (or any Affiliate or branch of a Lender or Agent): (a) any treasury or other cash management services, including (i) deposit account, (ii) automated clearing house (ACH) origination and other funds transfer, (iii) depository (including cash vault and check deposit), (iv) zero balance accounts and sweep, and other ACH Transactions, (v) return items processing, (vi) controlled disbursement, (vii) positive pay, (viii) lockbox, (ix) account reconciliation and information reporting, (x) payables outsourcing, (xi) payroll processing, and (xii) daylight overdraft facilities and (b) card services, including (i) credit card (including purchasing card and commercial card), (ii) prepaid card, including payroll, stored value and gift cards, (iii) merchant services processing, and (iv) debit card services.

“Bank Products Obligations” means any debts, liabilities and obligations as existing from time to time of any Credit Party arising from or in connection with any Bank Products under any Bank Product Document and, if Agent or any Lender ceases to be Agent or a Lender, as applicable, any debts, liabilities and obligations as existing from time to time of any Credit Party to Agent or such Lender, as applicable, arising from or in connection with any Bank Product Documents entered into at a time when Agent was Agent or such Lender was a Lender, as applicable.

“Bank Product Document” means any agreement or instrument providing for Bank Products.

“Bankruptcy Code” means the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

“Base Rate” means, for any day, a floating rate equal to the highest of (i) the rate of interest per annum from time to time published in the “Money Rates” section of *The Wall Street Journal* as being the “Prime Lending Rate” or, if more than one rate is published as the Prime Lending Rate, then the highest of such rates (the “Prime Rate”) (each change in the Prime Rate to be effective as of the date of publication in *The Wall Street Journal* of a “Prime Lending Rate” that is different from that published on the preceding domestic ~~business-day~~Business Day); provided, that in the event that *The Wall Street Journal* shall, for any reason, fail or cease to publish the Prime Lending Rate, Agent shall choose (in a manner consistent with its choice under similar credit agreements in respect of which Agent is acting as administrative agent) a reasonably comparable index or source to use as the basis for the Prime Lending Rate, (ii) the Federal Funds Rate plus 50 basis points per annum and (iii) LIBOR Rate for a LIBOR Period of one-month beginning on such day plus 1.00%. In no event shall the Base Rate be less than 0.00%. Each change in any interest rate provided for in this Agreement based upon the Base Rate shall take effect at the time of such change in the Base Rate. If the Base Rate is being used as an alternate rate of interest pursuant to Section 2.15 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.15(d)), then the Base Rate shall be the greater of clauses (i) and (ii) above and shall be determined without reference to clause (iii) above.

“Base Rate Loan” means a Loan or portion thereof bearing interest by reference to the (a) Base Rate, with respect to Base Rate Loans made in Dollars and (b) Canadian Base Rate, with respect to Canadian Base Rate Loans made in Canadian Dollars.

“Base Rate Margin” means the per annum interest rate margin from time to time in effect and payable in addition to the (a) Base Rate, with respect to Base Rate Loans made in Dollars and (b) Canadian Base Rate, with respect to Canadian Base Rate Loans made in Canadian Dollars, applicable to the Revolving Credit Advances, as determined in accordance with to the definition of Applicable Margin.

“Benchmark” means, initially, the LIBOR Rate; provided that if a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to the LIBOR Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (h) or clause (i) of Section 2.15.

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Agent for the applicable Benchmark Replacement Date:

- (1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;
- (2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;

(3) the sum of: (a) the alternate benchmark rate that has been selected by the Agent and the Parent Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time in the U.S. syndicated loan market and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Agent in its reasonable discretion; provided further that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, upon the occurrence of a Term SOFR Transition Event, and the delivery of a Term SOFR Notice, on the applicable Benchmark Replacement Date the “Benchmark Replacement” shall revert to and shall be deemed to be the sum of (a) Term SOFR and (b) the related Benchmark Replacement Adjustment, as set forth in clause (1) of this definition (subject to the first proviso above).

If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable LIBOR Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Agent:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such LIBOR Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such LIBOR Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(2) for purposes of clause (3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Agent and Parent Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark

Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities;

provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Agent in its reasonable discretion.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “LIBOR Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, the formula for calculating any successor rates identified pursuant to the definition of “Benchmark Replacement,” the formula, methodology or convention for applying the successor Floor to the successor Benchmark Replacement and other technical, administrative or operational matters) that the Agent decides in its reasonable discretion is appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides in its reasonable discretion that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Agent decides in its reasonable discretion is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein;

(3) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the date a Term SOFR Notice is provided to the Lenders and the Parent Borrower pursuant to Section 2.15(d); or

(4) in the case of an Early Opt-in Election, the sixth (6<sup>th</sup>) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Agent has not received, by 5:00 P.M. (New York City time) on the fifth (5<sup>th</sup>) Business Day after the date notice

of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Requisite Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

- (1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
- (2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or
- (3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set

forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.15 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.15.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the ~~Code~~IRC or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the ~~Code~~IRC) the assets of any such “employee benefit plan” or “plan”.

“BHC Act Affiliate” has the meaning specified in Section 13.13(b).

“BIA” means the *Bankruptcy and Insolvency Act* (Canada).

“Bilateral Agent” means Credit Agricole Corporate and Investment Bank, in its capacity as administrative agent and collateral agent under the Bilateral Credit Agreement, and any successors thereto.

“Bilateral Credit Agreement” means the Senior Secured Term Loan Credit Agreement, dated as of April 3, 2020 (as amended, amended and restated, extended, supplemented or otherwise modified from time to time prior to the date hereof), among the Parent Borrower, certain subsidiaries of the Parent Borrower from time to time party thereto, the lenders from time to time party thereto and Credit Agricole Corporate and Investment Bank, in its capacity as administrative agent and collateral agent for the lenders party thereto.

“Bilateral Credit Facility” means the term loan and letter of credit facilities under the Bilateral Credit Agreement.

“Blocked Accounts” has the meaning specified in Annex A.

“Board of Directors” means, as to any Person, the board of directors or managers, as applicable, of such Person or any direct or indirect parent of such Person (or, if such Person is a partnership, the board of directors or other governing body of the general partner of such Person) or any duly authorized committee thereof.

“Borrower” and “Borrowers” have the respective meanings specified in the preamble to this Agreement, it being understood that any Person shall cease to be a Borrower if released in accordance with Section 13.11 hereof and any Person shall become a Borrower if joined as such in accordance with Section 13.11(e) hereof. Any Borrower (other than the Parent Borrower) shall cease to be a Borrower hereunder in the event that it ceases to be a Wholly Owned Subsidiary of the Parent Borrower.

“Borrower Materials” has the meaning specified in Section 10.13(a).

“Borrower Representative” means Parent Borrower in its capacity as Borrower Representative pursuant to the provisions of Section 2.1(c).

“Borrower Workspace” has the meaning specified in Section 10.13(a).

“Borrowing Base” means, at any time, the sum of the U.S. Borrowing Base plus the Canadian Borrowing Base.

“Borrowing Base Certificate” means a certificate to be executed and delivered from time to time by Borrower Representative substantially in the form attached to this Agreement as Exhibit 5.2, as such form, subject to the terms hereof, may from time to time be modified as agreed by Parent Borrower and Co-Collateral Agents.

“Borrowing Base Collateral” has the meaning specified in Section 2.18.

“Bridge Credit Agreement” means that certain Credit Agreement, dated as of December 24, 2018, by and among Parent Borrower, as Borrower, Citibank, N.A., as Agent and the other parties thereto.

“Business Day” means any day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in the State of New York, and in reference to LIBOR Loans means any such day that is also a LIBOR Business Day. When used in connection with any Loan to a Canadian Borrower or any payment made in connection therewith, the term “Business Day” shall also exclude any day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the Province of Ontario.

“Business Plan” means Borrowers’ and their Subsidiaries’ forecasted consolidated: (a) balance sheets; (b) income statements; and (c) cash flow statements, in a format consistent with the historical Financial Statements of Borrowers and their Subsidiaries, together with appropriate supporting details and a statement of underlying assumptions.

“Canadian Availability” means, as of any date of determination, the amount (if any) by which (a) Canadian Available Credit, exceeds (b) the sum of the aggregate Dollar Equivalent of (i) Revolving Credit Advances made to the Canadian Borrowers plus (ii) the Canadian Borrowers’ Letter of Credit Obligations (other than the Canadian Borrowers’ Letter of Credit Obligations cash collateralized in accordance with the terms of the Loan Documents).

“Canadian Available Credit” means, as of any date of determination, the lesser of (a) the Canadian Commitment and (b) the Canadian Borrowing Base as most recently reported by the Credit Parties on or prior to such date of determination.

“Canadian Base Rate” means, at any time, the annual rate of interest equal to the greater of (a) the annual rate from time to time publicly announced by Agent (or a bank that is listed on Schedule 1 of the Bank Act (Canada) acceptable to Agent) as its prime rate in effect for determining interest rates on Canadian Dollar denominated commercial loans made in Canada and (b) the annual rate of interest equal to the sum of the 30-day BA Rate at such time plus 1%

percent per annum. In no event shall the Canadian Base Rate be less than zero for purposes of this Agreement.

“Canadian Borrower” and “Canadian Borrowers” has the meaning specified in the preamble to this Agreement.

“Canadian Borrowers’ Letter of Credit Obligations” means the aggregate Dollar Equivalent of all Letter of Credit Obligations in connection with the issuance of Letters of Credit on behalf of a Canadian Borrower or in respect of the Canadian Commitments.

“Canadian Borrowing Base” means, as of any date of determination, from time to time, as to the Canadian Credit Parties, an amount equal to the aggregate Dollar Equivalent of the sum at such time of:

(a) an amount equal to the least of:

(i) the sum at such time of (A) the U.S. Borrowing Base minus the sum of (x) Revolving Credit Advances plus (y) Letter of Credit Obligations (other than Letter of Credit Obligations cash collateralized in accordance with the terms of the Loan Documents) plus (z) Swing Line Loans plus (B) the product of (x) 85% multiplied by (y) the Canadian Credit Parties’ Eligible Accounts plus (C) 20% multiplied by (y) the Canadian Credit Parties’ Eligible 90-Day Accounts plus (D) the lesser of (x) the product of (1) 65% multiplied by (2) the cost of the Canadian Credit Parties’ Eligible Equipment (but net of delivery charges, sales tax and other costs incidental to the purchase thereof), and (y) the product of (1) 85% multiplied by (2) the cost of the Canadian Credit Parties’ Eligible Equipment (but net of delivery charges, sales tax and other costs incidental to the purchase thereof) multiplied by the Net Orderly Liquidation Value percentage identified in the most recent Equipment appraisal obtained by Agent, at such time; provided that the Canadian Borrowing Base shall not include sub-clause (D) above until such time as each Co-Collateral Agent consents after the Restatement Date to include assets described in sub-clause (D) above in the calculation of the Canadian Borrowing Base; provided further that (x) a maximum of 25% of the Canadian Borrowing Base that is calculated under this clause (i) shall be attributable to the Canadian Credit Parties’ Eligible Equipment and (y) the amount contributed to the Canadian Borrowing Base at any time pursuant to sub-clause (C) of this clause (i), taken together with the amount contributed to the U.S. Borrowing Base at such time pursuant to clause (b) of the definition of “U.S. Borrowing Base”, shall not exceed at such time the Eligible 90-Day Accounts Cap (it being understood that, unless otherwise elected by Parent Borrower in its sole discretion from time-to-time (which election shall be revocable in its sole discretion), Eligible 90-Day Accounts shall be applied to the Eligible 90-Day Accounts Cap first for the benefit of the U.S. Borrowing Base, and thereafter for the benefit of the Canadian Borrowing Base);

(ii) \$150,000,000 (reducing to \$100,000,000 on and after the Separation Effective Date); and

(iii) Availability; minus



(b) the Dilution Reserve, the Discretionary FILO Dilution Reserve, if applicable, the Rent Reserve, the Canadian Priority Payables Reserve, and such other Reserves established by Co-Collateral Agents in their Permitted Discretion in conformity with Section 2.18.

The Canadian Borrowing Base shall be determined by reference to the most recent Borrowing Base Certificate delivered to Agent pursuant to Section 5.2. Notwithstanding anything to the contrary contained herein, determinations as to Reserves, and adjustments related to the Canadian Borrowing Base shall be made by Co-Collateral Agents in their Permitted Discretion in conformity with Section 2.18 and to assure that the Canadian Borrowing Base is calculated in accordance with the terms of this Agreement.

“Canadian Collateral” means the Collateral owned by (or, in the event such Collateral has been foreclosed upon, immediately prior to such foreclosure that was owned by) a Canadian Credit Party.

“Canadian Commitment” means, as to any Lender, the commitment of such Lender to make Advances as set forth on Annex C (or, from and after, and subject to the occurrence of, the Separation Effective Date, Annex C to Amendment No. 6) to the Canadian Borrowers, which commitment constitutes a subfacility of the Commitment of such Lender. The aggregate Canadian Commitment on the Amendment No. ~~36~~ Effective Date is One Hundred Fifty Million Dollars (\$150,000,000), which commitment constitutes a subfacility of the aggregate Commitments of all Lenders. Subject to the occurrence of the Separation Effective Date, the aggregate Canadian Commitment on the Separation Effective Date is One Hundred Million Dollars (\$100,000,000), which commitment constitutes a subfacility of the aggregate Commitments of all Lenders.

“Canadian Credit Party” means each Canadian Borrower and each Canadian Guarantor.

“Canadian Dollars” or “C\$” means the lawful currency of Canada.

“Canadian Guarantor” means each Guarantor that is incorporated or otherwise organized under the laws of Canada or any province or territory thereof.

“Canadian Guaranty” means the guarantee of the Obligations of each Canadian Credit Party hereunder by the Canadian Credit Parties in Article 13 hereunder or in a supplemental guarantee in accordance with Section 6.12 of this Agreement.

“Canadian Lenders” means the Persons (or an Affiliate or branch of any such Person that is acting on behalf of such Person, in which case the term “Canadian Lenders” shall include any such Affiliate or branch with respect to the Canadian Loans made by such Affiliate or branch) having a Canadian Commitment and any other Person that shall acquire a Canadian Commitment, other than any such Person that ceases to be a Canadian Lender pursuant to an Assignment Agreement.

“Canadian Letters of Credit” has the meaning specified in Section 2.2(f).

“Canadian Loans” means, at any time, the sum of the aggregate Dollar Equivalent of (a) the aggregate amount of Revolving Credit Advances outstanding to the Canadian Borrowers plus

(b) the aggregate Canadian Borrowers' Letter of Credit Obligations. Unless the context otherwise requires, references to the outstanding principal balance of the Canadian Loans shall include the outstanding balance of the Canadian Borrowers' Letter of Credit Obligations.

“Canadian Overadvance” means, as of any date of determination, the sum of the aggregate Dollar Equivalent of (i) Canadian Loans then outstanding less (ii) the Canadian Available Credit.

“Canadian Pension Plan” means a “registered pension plan”, as that term is defined in subsection 248(1) of the *Income Tax Act (Canada)*.

“Canadian Priority Payables Reserve” means, on any date of determination and only with respect to a Canadian Credit Party, Reserves established by Agent in its Permitted Discretion for amounts secured by any Liens, choate or inchoate, which rank or which would reasonably be expected to rank in priority senior to or *pari passu* with Agent's Liens on Collateral in the Canadian Borrowing Base, including, without duplication, amounts deemed to be held in trust, or held in trust, pursuant to applicable law, any such amounts due and not paid for wages, vacation pay, amounts payable under the Wage Earner Protection Program Act (Canada) pursuant to the BIA or the CCAA, amounts due and not paid pursuant to any legislation on account of workers' compensation or to employment insurance, all amounts deducted or withheld and not paid and remitted when due under the Income Tax Act (Canada), on account of sales tax, goods and services tax, value added tax, harmonized sales tax, amounts currently or past due and not paid for realty, municipal or similar taxes and all amounts currently or past due and not contributed, remitted or paid to any Canadian Pension Plans or the Canada Pension Plan, and other pension fund obligations and contributions (including in respect of any wind-up deficiency in respect of any Defined Benefit Plan) as required under applicable law, or any similar statutory or other claims that would have or would reasonably be expected to have priority over or be *pari passu* with any Liens granted to Agent in the future.

“Canadian Security Agreements” means, collectively, those certain Amended and Restated Security Agreements, dated as of the Restatement Date, and those certain deeds of movable hypothec dated on or about the Restatement Date, made by the Canadian Credit Parties party thereto in favor of Agent, on behalf of itself and for the benefit of the Secured Parties, as amended, restated, supplemented or otherwise modified from time to time.

“Capital Expenditures” means, for any period, the additions to property, plant and equipment, capitalized investment and development costs, and other capital expenditures (including capitalized software) of Parent Borrower and its consolidated Subsidiaries that are (or should be) set forth in a consolidated statement of cash flows of Parent Borrower for such period prepared in accordance with GAAP.

~~“Capital Stock” means:~~

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

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

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

~~(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.~~

“Capitalized Lease Obligation” means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP, as in effect on December 31, 2018; provided that, for the avoidance of doubt, obligations of Parent Borrower or the Restricted Subsidiaries, or of a special purpose or other entity not consolidated with Parent Borrower and the Restricted Subsidiaries that (a) initially were not included on the consolidated balance sheet of Parent Borrower as capital lease obligations and were subsequently characterized as capital lease obligations or, in the case of such a special purpose or other entity becoming consolidated with Parent Borrower and the Restricted Subsidiaries were required to be characterized as capital lease obligations upon such consolidation, in either case, due to a change in accounting treatment or otherwise, or (b) were required to be characterized as capital lease obligations but would not have been required to be treated as capital lease obligations on December 31, 2018 had they existed at that time, shall for all purposes not be treated as Capitalized Lease Obligations or Indebtedness.

“Capital Stock” means:

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

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

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

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Cash Collateral” has the meaning specified in Section 2.2(c)(i).

“Cash Collateral Account” has the meaning specified in Section 2.2(c)(i).

“Cash Dominion Period” means the date from and after a Cash Dominion Triggering Event and continuing at all times thereafter for a period of 30 consecutive days during which no Cash Dominion Triggering Event exists.

“Cash Dominion Triggering Event” means (a) an Event of Default has occurred and is continuing, (b) one or more of Borrowers have failed to comply in any material respect with cash management provisions relating to cash dominion, or (c) Availability is less than the greater of (x) 10.0% of the Available Credit and (y) ~~\$75,000,000~~70,000,000 for 5 consecutive Business Days.

“Cash Equivalents” means:

(1) Dollars, Pounds Sterling, Euros, Canadian Dollars, Singapore Dollars, the national currency of any member state in the European Union or such other local currencies held by Parent Borrower or a Restricted Subsidiary from time to time in the ordinary course of business;

(2) securities issued or directly and fully guaranteed or insured by the U.S. government, Canada, Switzerland or any country that is a member of the European Union or any agency or instrumentality thereof in each case maturing not more than two years from the date of acquisition;

(3) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers’ acceptances, in each case with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus in excess of \$250.0 million and whose long-term debt is rated at least “A” or the equivalent thereof by Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency);

(4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;

(5) commercial paper issued by a corporation (other than an Affiliate of Parent Borrower) rated at least “A-1” or the equivalent thereof by Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) and in each case maturing within one year after the date of acquisition;

(6) readily marketable direct obligations issued by any state of the United States of America or any political subdivision thereof or any Canadian province having at least a rating of Aa3 from Moody’s or a rating of AA- from S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) in each case with maturities not exceeding two years from the date of acquisition;

(7) Indebtedness issued by Persons with a rating of “A” or higher from S&P or “A2” or higher from Moody’s (or reasonably equivalent ratings of another internationally recognized ratings agency) in each case with maturities not exceeding two years from the date of acquisition;

(8) investment funds investing at least 95% of their assets in securities of the types described in clauses (1) through (7) above; and

(9) instruments equivalent to those referred to in clauses (1) through (8) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above and commonly used by corporations for cash management purposes in any jurisdiction outside the United States of America to the extent reasonably required in connection with any business conducted by any Subsidiary organized in such jurisdiction.

“Cash Management Systems” has the meaning specified in Section 2.6.

“CCAA” means the *Companies’ Creditors Arrangement Act* (Canada).

“CERCLA” has the meaning specified in the definition of “Environmental Laws”.

“CDOR Successor Amendment” has the meaning specified in Section 2.15.

“CDOR Successor Rate” has the meaning specified in Section 2.15.

“CDOR Successor Rate Conforming Changes” means, with respect to any proposed CDOR Successor Rate, any conforming changes to the definition of BA Rate or the applicable period or provisions herein relating to the timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the reasonable discretion of Agent, to reflect the adoption of such CDOR Successor Rate and to permit the administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such CDOR Successor Rate exists, in such other manner of administration as Agent reasonably determines in consultation with Parent Borrower).

“CFC” means a “controlled foreign corporation” within the meaning of Section 957 of the IRC.

“Change of Control” means (a) any “person” or “group” (within the meaning of Sections 13(d) and 14(d) of the Exchange Act) other than Permitted Holders, becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 35%, or more, of the Capital Stock of Parent Borrower entitled (without regard to the occurrence of any contingency) to vote for the election of members of the Board of Directors of Parent Borrower, (b) a majority of the members of the Board of Directors of Parent Borrower do not constitute Continuing Directors or (c) any Borrower ceases to be a Wholly Owned Subsidiary of Parent Borrower (unless any such Borrower is not directly liable in respect of a Loan that was requested thereby, or any Letter of Credit Obligation that was issued for the account thereof, at the time it ceases to be a Wholly Owned Subsidiary of Parent Borrower).

“Charges” means all federal, state, provincial, county, city, municipal, local, foreign or other governmental taxes (including taxes owed to the PBGC at the time due and payable), levies, assessments, charges, claims or encumbrances owed by any Credit Party and upon or relating to (a) the Obligations, (b) the Collateral, (c) the employees, payroll, income, capital or gross receipts of any Credit Party, (d) any Credit Party’s ownership or use of any properties or other assets, or (e) any other aspect of any Credit Party’s business.

“Chassis” means any intermodal chassis owned by Parent Borrower or any Restricted Subsidiary consisting of steel frames with rubber tires and employed in the conduct of such Person’s business to transport containers over highways.

“Chattel Paper” means any “chattel paper,” as such term is defined in the Code or the PPSA, as applicable, including electronic chattel paper, now owned or hereafter acquired by any Credit Party.

“Citibank” has the meaning specified in the preamble to this Agreement.

“Co-Collateral Agent” has the meaning specified in the preamble to this Agreement.

“Code” means the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of New York; provided, that to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided, further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, publication or priority of, or remedies with respect to, Agent’s, Co-Collateral Agent’s or any Lender’s Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in another State other than the State of New York, the term “Code” means the Uniform Commercial Code in such other State.

“Collateral” means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Borrower or any Guarantor in or upon which a Lien is granted by such Person in favor of Agent under any of the Collateral Documents.

“Collateral Access Agreement” means an agreement in writing, in form and substance reasonably satisfactory to Agent, from any lessor of premises to any Credit Party or any Person to whom any Collateral is consigned or who has custody, control or possession of any such Collateral or is otherwise the owner or operator of any premises on which any of such Collateral is located.

“Collateral Documents” means the U.S. Security Agreement, the Mortgages, the Canadian Security Agreements, the Intellectual Property Security Agreements, the Memorandum of Security Agreement(s) and all similar agreements entered into guarantying payment of, or granting a Lien upon property as security for payment of, the Obligations under this Agreement and the Secured Hedge Agreements.

“Collection Account” means that certain account of Agent specified on Annex B hereto, or such other account as may be specified in writing by Agent as the “Collection Account.”

“Commitment” means with respect to each Lender, its Commitment, and, with respect to all Lenders, the aggregate amount of their Commitments, in each case, as such Dollar amounts are set forth on Annex C (or, from and after, and subject to the occurrence of, the Separation Effective Date, Annex C to Amendment No. 6) or in the most recent Assignment Agreement executed by such Lender as the same may be increased from time to time pursuant to Section 2.16. The aggregate Commitment on the Amendment No. ~~36~~ Effective Date is \$1,100,000,000. Subject to the occurrence of the Separation Effective Date, the aggregate Commitment on the Separation Effective Date is \$1,000,000,000.

“Commitment Fee” has the meaning specified in Section 2.7(b).

“Commitment Termination Date” means the earliest of (a) the Stated Termination Date, (b) the date that is 91 days prior to the maturity date of the ~~2022 Notes (or the maturity date of any Refinancing Indebtedness incurred with respect thereto if such Refinancing Indebtedness matures on or earlier than the Stated Termination Date), (c) the date that is 91 days prior to the maturity date of the~~ 2023 Notes (or the maturity date of any Refinancing Indebtedness incurred

with respect thereto if such Refinancing Indebtedness matures on or earlier than the Stated Termination Date), ~~and (c) the date that is 91 days prior to the maturity date of the 2024 Notes (or the maturity date of any Refinancing Indebtedness incurred with respect thereto if such Refinancing Indebtedness matures on or earlier than the Stated Termination Date)~~, (d) the date that is 91 days prior to the maturity date of the 2025 Notes (or the maturity date of any Refinancing Indebtedness incurred with respect thereto if such Refinancing Indebtedness matures on or earlier than the Stated Termination Date) and (e) the date that is 91 days prior to the maturity date of any Ratio Liens Indebtedness (or the maturity date of any Refinancing Indebtedness incurred with respect thereto if such Refinancing Indebtedness matures on or earlier than the Stated Termination Date) (each such date in the foregoing clauses (b), (c) ~~and~~, (d) and (e), an “Early Termination Date”); provided, that clauses (b), (c), ~~and~~ (d) and (e) shall apply solely in the event that more than \$200,000,000 aggregate principal amount of ~~2022~~2023 Notes (or such Refinancing Indebtedness), 2024 Notes (or such Refinancing Indebtedness), ~~2023~~2025 Notes (or such Refinancing Indebtedness) or Ratio Liens Indebtedness (or such Refinancing Indebtedness), as applicable, remains outstanding as of such Early Termination Date.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Compliance Certificate” has the meaning specified in Section 5.1(b).

“Concentration Account” and “Concentration Accounts” have the meanings specified in Annex A.

“Concentration Account Bank” and “Concentration Accounts Banks” have the meanings specified in Annex A.

“Consolidated Depreciation and Amortization Expense” means, with respect to any Person for any period, the total amount of depreciation and amortization expense, including the amortization of intangible assets and deferred financing fees and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits, of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

“Consolidated EBITDA” means, as of any date of determination, the EBITDA of Parent Borrower and its Restricted Subsidiaries for the most recently ended four full fiscal quarters for which internal financial statements are available, on a consolidated basis, calculated on a pro forma basis consistent with the calculations made under the definition of Consolidated Secured Net Leverage Ratio or Pro Forma Compliance, as applicable.

“Consolidated Interest Expense” means, with respect to any Person for any period, the sum, without duplication, of:

(1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted in computing Consolidated Net Income (including the interest component of Capitalized Lease Obligations and net payments and receipts (if any) pursuant to interest rate Hedging Obligations, amortization of deferred financing fees and original issue discount, debt

issuance costs, commissions, fees and expenses, expensing of any bridge, commitment or other financing fees and non-cash interest expense attributable to movement in mark to market valuation of Hedging Obligations or other derivatives (in each case permitted hereunder) under GAAP); plus

(2) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; plus

(3) commissions, discounts, yield and other fees and charges Incurred in connection with any Securitization Financing which are payable to Persons other than Parent Borrower and the Restricted Subsidiaries; minus

(4) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by Parent Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

“Consolidated Net Income” means, with respect to any Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis; provided, however, that:

(1) any net after-tax extraordinary, nonrecurring or unusual gains or losses (less all fees and expenses relating thereto) or expenses or charges shall be excluded;

(2) any severance expenses, relocation expenses, restructuring expenses, curtailments or modifications to pension and post-retirement employee benefit plans, excess pension charges, any expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternate uses and fees, expenses or charges relating to facilities closing costs, acquisition integration costs, facilities opening costs, project start-up costs, business optimization costs, signing, retention or completion bonuses, expenses, commissions or charges related to any issuance, redemption, repurchase, retirement or acquisition of Equity Interests, Investment, acquisition, disposition, recapitalization or issuance, repayment, refinancing, amendment or modification of Indebtedness (in each case, whether or not successful), and any fees, expenses or charges related to the [Spin Transactions](#), [the Refinancing Transactions](#), [the Transactions](#), [the Norbert Transactions](#) ~~or~~, [the 2022](#)[2023 Notes Transactions](#), [the 2024 Notes Transactions](#) and [the 2025 Notes Transactions](#), in each case, shall be excluded;

(3) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such Person and such Subsidiaries and including, without limitation, the effects of adjustments to (A) Capitalized Lease Obligations or (B) any other deferrals of income) in amounts required or permitted by GAAP, resulting from the application of purchase accounting or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded;

(4) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period;



(5) any net after-tax income or loss from disposed, abandoned, transferred, closed or discontinued operations or fixed assets and any net after-tax gains or losses on disposal of disposed, abandoned, transferred, closed or discontinued operations or fixed assets shall be excluded; provided that notwithstanding any classification of any Person, business, assets or operations as discontinued operations because a definitive agreement for the sale, transfer or other disposition in respect thereof has been entered into, such Person shall not exclude any such net after-tax income or loss or any such net after-tax gains or losses attributable thereto until such sale, transfer or other disposition has been consummated;

(6) any net after-tax gains or losses (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by management of Parent Borrower) shall be excluded;

(7) any net after-tax gains or losses (less all fees and expenses or charges relating thereto) attributable to the early extinguishment of indebtedness, Hedging Obligations or other derivative instruments shall be excluded;

(8) (a) the Net Income for such period of any Person that is not a Subsidiary of such Person, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be included only to the extent of the amount of dividends or distributions or other payments paid in cash (or to the extent converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period and (b) the Net Income for such period shall include any dividend, distribution or other payment in cash (or to the extent converted into cash) received by the referent Person or a Subsidiary thereof (other than an Unrestricted Subsidiary of such referent Person) from any Person in excess of, but without duplication of, the amounts included in subclause (a);

(9) [reserved];

(10) an amount equal to the amount of Tax Distributions actually made to any parent or equity holder of such Person in respect of such period in accordance with Section 7.2(b)(xi) shall be included as though such amounts had been paid as income taxes directly by such Person for such period;

(11) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles and other fair value adjustments arising pursuant to GAAP shall be excluded;

(12) any non-cash expense realized or resulting from management equity plans, stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded;

(13) any (a) non-cash compensation charges, (b) costs and expenses related to employment of terminated employees, or (c) costs or expenses realized in connection with or resulting from stock appreciation or similar rights, stock options or other rights

existing on the Amendment No. 36 Effective Date of officers, directors and employees, in each case of such Person or any Restricted Subsidiary, shall be excluded;

(14) accruals and reserves that are established or adjusted within 12 months after the Amendment No. 36 Effective Date and that are so required to be established or adjusted in accordance with GAAP or as a result of adoption or modification of accounting policies shall be excluded;

(15) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded;

(16) any currency translation gains and losses related to currency remeasurements of Indebtedness, and any net loss or gain resulting from hedging transactions for currency exchange risk, shall be excluded;

(17) (a) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded and (b) amounts in respect of which such Person has determined that there exists reasonable evidence that such amounts will in fact be reimbursed by insurance in respect of lost revenues or earnings in respect of liability or casualty events or business interruption shall be included (with a deduction for amounts actually received up to such estimated amount, to the extent included in Net Income in a future period); and

(18) non-cash charges for deferred tax asset valuation allowances shall be excluded.

“Consolidated Non-Cash Charges” means, with respect to any Person for any period, the non-cash expenses (other than Consolidated Depreciation and Amortization Expense) of such Person and its Restricted Subsidiaries reducing Consolidated Net Income of such Person for such period on a consolidated basis and otherwise determined in accordance with GAAP, provided that if any such non-cash expenses represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from EBITDA in such future period to the extent paid, but excluding from this proviso, for the avoidance of doubt, amortization of a prepaid cash item that was paid in a prior period.

“Consolidated Secured Net Leverage Calculation Date” has the meaning specified in the definition of “Consolidated Secured Net Leverage Ratio.”

“Consolidated Secured Net Leverage Ratio” means, with respect to any Person, at any date, the ratio of (i) Secured Indebtedness of such Person and its Restricted Subsidiaries as of such date of calculation (determined on a consolidated basis in accordance with GAAP) less the amount of cash and Cash Equivalents in excess of any Restricted Cash that would be stated on

the balance sheet of such Person and its Restricted Subsidiaries and held by such Person and its Restricted Subsidiaries as of such date of determination to (ii) EBITDA of such Person for the four full fiscal quarters for which internal financial statements are available immediately preceding such date on which such additional Indebtedness is Incurred.

In the event that Parent Borrower or any Restricted Subsidiary Incurs, repays, repurchases or redeems any Indebtedness or issues, repurchases or redeems Disqualified Capital Stock or Preferred Stock subsequent to the commencement of the period for which the Consolidated Secured Net Leverage Ratio is being calculated but prior to the event for which the calculation of the Consolidated Secured Net Leverage Ratio is made (the “Consolidated Secured Net Leverage Calculation Date”), then the Consolidated Secured Net Leverage Ratio shall be calculated giving pro forma effect to such Incurrence, repayment, repurchase or redemption of Indebtedness, or such issuance, repurchase or redemption of Disqualified Capital Stock or Preferred Stock as if the same had occurred at the beginning of the applicable four-quarter period; provided that, for purposes of clause 6(B) of the definition of “Permitted Lien”, Parent Borrower may elect pursuant to an Officer’s Certificate delivered to Agent to treat all or any portion of the commitment under any Indebtedness as being Incurred at the time of delivery of such Officer’s Certificate, in which case any subsequent Incurrence of Indebtedness under such commitment shall not be deemed, for purposes of this calculation, to be an Incurrence at such subsequent time, and to the extent Parent Borrower elects pursuant to such an Officer’s Certificate delivered to Agent to treat all or any portion of the commitment under any Indebtedness as being Incurred at the time of delivery of such Officer’s Certificate, solely for purposes of clause 6(B) of the definition of “Permitted Lien”, Parent Borrower shall deem all or such portion of such commitment as having been Incurred and to be outstanding for purposes of calculating the Consolidated Secured Net Leverage Ratio for any period in which Parent Borrower makes any such election and for any subsequent period until such commitments are no longer outstanding or until Parent Borrower elects to withdraw such election.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, amalgamations, consolidations and discontinued operations (as determined in accordance with GAAP), in each case with respect to an operating unit of a business, that Parent Borrower or any Restricted Subsidiary has made during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Consolidated Secured Net Leverage Calculation Date (each, for purposes of this definition, a “pro forma event”) shall be calculated on a pro forma basis assuming that all such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations or discontinued operations (and the change of any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period; provided that, notwithstanding any classification of any Person, business, assets or operations as discontinued operations because a definitive agreement for the sale, transfer or other disposition in respect thereof has been entered into, Parent Borrower shall not make such computations on a pro forma basis for any such classification for any period until such sale, transfer or other disposition has been consummated. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into Parent Borrower or any Restricted Subsidiary since the beginning of such period shall have consummated any pro forma event that would have required adjustment pursuant to this definition, then the Consolidated Secured Net Leverage Ratio shall be calculated giving pro forma effect thereto for such period as if such pro forma

event had occurred at the beginning of the applicable four-quarter period. If since the beginning of such period any Restricted Subsidiary is designated an Unrestricted Subsidiary or any Unrestricted Subsidiary is designated a Restricted Subsidiary, then the Consolidated Secured Net Leverage Ratio shall be calculated giving pro forma effect thereto for such period as if such designation had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever pro forma effect is to be given to any pro forma event, the pro forma calculations shall be made in good faith by a responsible financial or accounting officer of Parent Borrower. Any such pro forma calculation may include adjustments appropriate, in the reasonable good faith determination of Parent Borrower, to reflect operating expense reductions and other operating improvements or synergies reasonably expected to result from the applicable event within 18 months of the date the applicable event is consummated. For the avoidance of doubt, adjustments to the computation of the Consolidated Secured Net Leverage Ratio arising from any pro forma event and made in accordance with this paragraph and the paragraph immediately above shall not be subject to the 20% cap set forth in clause (9) of the definition of "EBITDA".

If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Consolidated Secured Net Leverage Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness if such Hedging Obligation has a remaining term in excess of 12 months). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of Parent Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as Parent Borrower may designate.

For purposes of this definition, any amount in a currency other than Dollars will be converted to Dollars based on the average exchange rate for such currency for the most recent twelve month period immediately prior to the date of determination in a manner consistent with that used in calculating EBITDA for the applicable period.

"Consolidated Taxes" means, with respect to any Person for any period, the provision for taxes based on income, profits or capital, including, without limitation, state, franchise, property and similar taxes, foreign withholding taxes (including penalties and interest related to such taxes or arising from tax examinations) and any Tax Distributions taken into account in calculating Consolidated Net Income.

"Consolidated Total Indebtedness" means, as of any date of determination, an amount equal to the sum (without duplication) of (1) the aggregate principal amount of all outstanding Indebtedness of Parent Borrower and the Restricted Subsidiaries (excluding any undrawn letters

of credit) consisting of bankers' acceptances and Indebtedness for borrowed money, plus (2) the aggregate amount of all outstanding Disqualified Capital Stock of Parent Borrower and the Restricted Subsidiaries and all Preferred Stock of Restricted Subsidiaries, with the amount of such Disqualified Capital Stock and Preferred Stock equal to the greater of their respective voluntary or involuntary liquidation preferences, in each case determined on a consolidated basis in accordance with GAAP.

“Contingent Obligations” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent:

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor,

(2) to advance or supply funds:

(a) for the purchase or payment of any such primary obligation; or

(b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“Continuing Director” means (a) any member of the Board of Directors who was a director of Parent Borrower on the Amendment No. [36 Effective Date or the Separation](#) Effective Date and (b) any individual who becomes a member of the Board of Directors after the Amendment No. [36 Effective Date](#) if such individual was approved, appointed or nominated for election to the Board of Directors by Jacobs Private Equity, LLC (or any Affiliate thereof) or a majority of the Continuing Directors.

“Contractual Obligations” means, with respect to any Person, any security issued by such Person or any document or undertaking (other than a Loan Document) to which such Person is a party or by which it or any of its property is bound or to which any of its property is subject.

[“Contribution” means the transfer of the stock of certain Subsidiaries of Parent Borrower holding the assets, liabilities and/or operations of all or a portion of the logistics and warehousing businesses of the Parent Borrower and its Subsidiaries, along with the transfer and assignment of certain related assets and liabilities of the Parent Borrower or its Subsidiaries to GXO Logistics and its Subsidiaries.](#)

“Controlled Affiliates” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, has Majority Control of or is Majority Controlled by or is under common Majority Control with the Person specified.

“Con-way” means ~~Con-way~~[XPO CNW](#), Inc., a Delaware corporation.

“Con-way Acquisition” means the acquisition by Parent Borrower, directly or indirectly, of all of the outstanding capital stock of Con-way in accordance with the Con-way Acquisition Agreement.

“Con-way Acquisition Agreement” means that certain Agreement and Plan of Merger by and among Parent Borrower, Con-way and Canada Merger Corp. dated as of September 9, 2015, together with all exhibits, annexes and schedules thereto, as amended or modified from time to time.

“Con-way Existing Indebtedness” means Indebtedness under ~~Conway’s~~ Con-way’s 6.70% Senior Debentures due 2034.

“Con-way Merger” means the merger of Canada Merger Corp., a wholly owned subsidiary of Parent Borrower, with and into Con-way pursuant to Section 251(h) of the Delaware General Corporation Law, with Con-way surviving such merger as a wholly owned subsidiary of Parent Borrower in accordance with the Con-way Acquisition Agreement.

“Con-way Subsidiary” means any direct or indirect Subsidiary of Con-way.

“Copyrights” has the meaning specified in the U.S. Security Agreement.

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Covenant Trigger Period” means the period (a) commencing on the date that (i) an Event of Default occurs or (ii) Availability is less than the greater of (x) 10% of Available Credit and (y) ~~\$75,000,000~~ 70,000,000 and (b) continuing until there has been a period of 30 consecutive days thereafter during which at all times (i) no Event of Default exists and (ii) Availability shall have been not less than the greater of (x) 10% of Available Credit and (y) ~~\$75,000,000~~ 70,000,000.

“Covered Entity” has the meaning specified in Section 13.13(b).

“Covered Party” has the meaning specified in Section 13.13(a).

“Credit Parties” means each Borrower and each Guarantor.

“Cure Amount” has the meaning specified in Section 9.4(a).

“Cure Right” has the meaning specified in Section 9.4(a).

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided that, if the Agent decides that any such convention is not administratively feasible for the Agent, then the Agent may establish another convention in its reasonable discretion.

“Default” means any event that, with the passage of time or notice or both, would, unless cured or waived, become an Event of Default.

“Default Rate” has the meaning specified in Section 2.5(d).

“Default Right” has the meaning specified in Section 13.13(b).

“Defined Benefit Plan” means a Canadian Pension Plan which contains a “defined benefit provision” as defined in subsection 147.1(1) of the Income Tax Act (Canada).

“Dentressangle Initiatives” means Dentressangle Initiatives SAS, a French limited liability company (*société par actions simplifiée*).

“Deposit Accounts” means all “deposit accounts” as such term is defined in the Code, now or hereafter held in the name of any Credit Party.

“Designated Guarantor” has the meaning assigned to such term in the definition of “Excluded Subsidiary”.

“Designated Non-cash Consideration” means the Fair Market Value (as determined in good faith by Parent Borrower) of non-cash consideration received by Parent Borrower or a Restricted Subsidiary in connection with a Disposition that is so designated as Designated Non-cash Consideration ~~pursuant to an Officer’s Certificate~~, setting forth such valuation, less the amount of Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

“Designated Preferred Stock” means Preferred Stock of Parent Borrower or any direct or indirect parent of Parent Borrower (other than Disqualified Capital Stock), that is issued for cash (other than to Parent Borrower or any of its Subsidiaries or an employee stock ownership plan or trust established by Parent Borrower or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer’s Certificate, on the issuance date thereof.

“Dilution” means, without duplication, with respect to any period, a percentage based upon the experience of the immediately prior twelve (12) month period that is the result of dividing the aggregate dollar amount of (a) all deductions, credit memos, returns, adjustments, allowances, bad debt write-offs and other non-cash credits which are recorded to reduce the Credit Parties’ Accounts in a manner consistent with current and historical accounting practices of the Credit Parties, by (b) the Credit Parties’ total gross sales during such period.

“Dilution Reserve” means, as of any date of determination, with respect to the Initial Revolving Facility Loans and/or Incremental Facility Revolving Loans, a reserve established by Co-Collateral Agents in an amount equal to the result of (a) the percentage by which Dilution is greater than 5%, *times* (b) the amount of Eligible Accounts as set forth on the most recent Borrowing Base Certificate received by Co-Collateral Agents. If the Dilution does not exceed 5%, the Dilution Reserve shall be zero dollars (\$0).

“Disbursement Account” and “Disbursement Accounts” have the meanings specified in Annex A.

“Discretionary FILO Dilution Reserve” means, as of any date of determination, with respect to Permitted Incremental FILO Loans, a reserve which may be established in the discretion of Co-Collateral Agents in an amount equal to the result of (a) the percentage by which Dilution is greater than 2.5%, *times* (b) the amount of Eligible Accounts as set forth on the most recent Borrowing Base Certificate received by Co-Collateral Agents. If the Dilution does not exceed 2.5%, the Discretionary FILO Dilution Reserve shall be zero dollars (\$0).

“Disposition” means with respect to any property, any sale, lease, license, sale and leaseback, assignment, conveyance, transfer or other disposition thereof (including by means of a “plan of division” under the Delaware Limited Liability Company Act or any comparable transaction under any similar law). The terms “Dispose” and “Disposed of” shall have correlative meanings.

“Disqualified Capital Stock” means, with respect to any Person, any Capital Stock of such Person which, by its terms (or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable), or upon the happening of any event:

(1) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than as a result of a change of control or asset sale),

(2) is convertible or exchangeable for Indebtedness or Disqualified Capital Stock of such Person or any of its Restricted Subsidiaries, or

(3) is redeemable at the option of the holder thereof, in whole or in part (other than solely as a result of a change of control or asset sale), in each case prior to 91 days after the Latest Maturity Date; provided, however, that only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Capital Stock; provided, further, however, that if such Capital Stock is issued to any employee or to any plan for the benefit of employees of Parent Borrower or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by such Person in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability; provided, further, that any class of Capital Stock of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Capital Stock that is not Disqualified Capital Stock shall not be deemed to be Disqualified Capital Stock.

“Disqualified Institution” means (i) any Person identified by name in writing to Agent as a Disqualified Institution on or prior to the Restatement Date and (ii) a competitor of any Borrower or its Subsidiaries identified by name in writing to Agent as Disqualified Institutions prior to the Restatement Date and any other Person identified by name in writing to Agent after the Restatement Date to the extent such Person becomes a direct competitor of any Borrower or its Subsidiaries, which designations shall be promptly provided by Agent to the Lenders and shall become effective two days after delivery of each such written supplement to Agent, but which shall not apply retroactively to disqualify any Persons that have previously acquired an assignment or participation interest in the Loans; provided that a “competitor” shall not include any bona fide debt fund or investment vehicle that is engaged in making, purchasing, holding or otherwise investing in commercial revolving loans and similar extensions of credit in the ordinary course of business which is managed, sponsored or advised by any Person controlling,



controlled by or under common control with such competitor, and for which no personnel involved with the investment of such competitor thereof, as applicable, (i) makes any investment decisions or (ii) has access to any information (other than information publicly available) relating to the Credit Parties or any entity that forms a part of the Credit Parties' business (including their Subsidiaries).

“Distribution” means the distribution, on a pro rata basis, to the equityholders of Parent Borrower of any Equity Interests of GXO Logistics (with cash in lieu of any fractional shares).

“Documents” means all “documents,” as such term is defined in the Code or the PPSA, as applicable, now owned or hereafter acquired by any Credit Party, wherever located.

“Dodd-Frank Act” has the meaning specified in Section 2.14(e).

“Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in Dollars, such amount and (b) with respect to any amount denominated in Canadian Dollars or any Alternative Currency, the equivalent in Dollars of such amount as determined by Agent at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with Canadian Dollars or such Alternative Currency, as applicable. In making any determination of the Dollar Equivalent, Agent shall use the relevant Spot Rate in effect on the date on which a Dollar Equivalent is required to be determined pursuant to the provisions of this Agreement. As appropriate, amounts specified herein as amounts in Dollars shall be or include any relevant Dollar Equivalent amount. The Agent shall provide written notice to the Parent Borrower of the Spot Rate on each Revaluation Date (it being understood that the Agent may provide such written notice to the Parent Borrower by email).

“Dollars” or “\$” means the lawful currency of the United States.

“Domestic Subsidiary” means a Restricted Subsidiary that is not a Foreign Subsidiary.

“Driver” means an operator of a motor vehicle.

“Driver Contract” means any contract, agreement or arrangement between a Credit Party and a Driver for the operation of a motor vehicle owned or leased by such Credit Party.

“Driver Payables” means all amounts owed by any Credit Party to a Driver under the terms of a Driver Contract between such Credit Party and such Driver.

“Early Opt-in Election” means the occurrence of:

(a) a notification by the Agent to (or the request by Parent Borrower to the Agent to notify) each of the other parties hereto that at least five currently outstanding Dollar-denominated syndicated credit facilities in the U.S. syndicated loan market at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

[\(b\) the joint election by the Agent and the Parent Borrower to trigger a fallback from the applicable then-current Benchmark and the provision by the Agent of written notice of such election to the Lenders.](#)

“Early Termination Date” has the meaning specified in the definition of “Commitment Termination Date.”

“EBITDA” means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Restricted Subsidiaries for such period *plus*, without duplication, to the extent the same was deducted in calculating Consolidated Net Income:

- (1) Consolidated Taxes; plus
- (2) Fixed Charges and costs of surety bonds in connection with financing activities; plus
- (3) Consolidated Depreciation and Amortization Expense; plus
- (4) Consolidated Non-Cash Charges; plus

(5) any expenses or charges (other than Consolidated Depreciation and Amortization Expense) related to any issuance of Equity Interests, Investment, acquisition, disposition, recapitalization or the incurrence, modification or repayment of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), including (i) such fees, expenses or charges related to the Refinancing Transactions, the Transactions, the Norbert Transactions, the ~~2022~~2023 Notes Transactions, [the 2024 Notes Transactions and the 2025 Notes Transactions, the Bilateral Credit Facility](#) or the Term Credit Agreement, (ii) any amendment or other modification of the ~~2022~~2023 Notes, [2024 Notes, 2025 Notes](#) or other Indebtedness and (iii) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Qualified Securitization Financing; plus

(6) business optimization expenses and other restructuring charges, reserves or expenses (which, for the avoidance of doubt, shall include, without limitation, the effect of facility closures, facility consolidations, retention, severance, systems establishment costs, contract termination costs, future lease commitments and excess pension charges); plus

(7) the amount of loss or discount on sale of assets and any commissions, yield and other fees and charges, in each case in connection with a Qualified Securitization Financing; plus

(8) any costs or expense incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of Parent Borrower or any Credit Party or net cash proceeds of an issuance of Equity Interests of Parent Borrower (other than Disqualified Capital Stock) solely to the extent that such net cash proceeds are excluded from the calculation of Excluded Contributions; plus

(9) the amount of net cost savings, operating improvements or synergies projected by Parent Borrower in good faith to be realized within eighteen months following the date of any operational changes, business realignment projects or initiatives, restructurings or reorganizations which have been or are intended to be initiated (other than those operational changes, business realignment projects or initiatives, restructurings or reorganizations entered into in connection with any pro forma event (as defined in “Consolidated Secured Net Leverage Ratio”)) (calculated on a pro forma basis as though such cost savings had been realized on the first day of such period)), net of the amount of actual benefits realized during such period from such actions; provided that such net cost savings and operating improvements or synergies are reasonably identifiable and quantifiable; provided, further, that the aggregate amount added to EBITDA pursuant to this clause (9) shall not exceed 20% of EBITDA for such period (determined after giving effect to such adjustments); and

less, without duplication, to the extent the same increased Consolidated Net Income,

(10) non-cash items increasing Consolidated Net Income for such period (excluding the recognition of deferred revenue or any items which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that reduced EBITDA in any prior period and any items for which cash was received in a prior period).

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in ~~clauses~~ clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any ~~person~~ Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

~~“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.~~

“E-Fax” means any system used to receive or transmit faxes electronically.

“Electronic Transmission” means each document, instruction, authorization, file, information and any other communication transmitted, posted or otherwise made or communicated by e-mail or E-Fax, or otherwise to or from an E-System or other equivalent service acceptable to Agent.

“Eligible 90-Day Account” means any Account that satisfies all of the criteria of the definition of “Eligible Accounts”, other than clause (e) or (g) of such definition, other than any Account (x) for which the Account Debtor has failed to pay within two hundred and ten (210)

days after the date of the original invoice therefor or (y) which is unpaid more than one hundred and eighty (180) days after the original due date therefor.

“Eligible 90-Day Accounts Cap” means \$25,000,000.

“Eligible Accounts” means Accounts created by any Credit Party other than any Account:

- (a) with respect to which the applicable Credit Party does not have good and valid title to such Account;
- (b) that is not a valid, legally enforceable obligation of an Account Debtor payable in Dollars (in the case of a U.S. Credit Party) or payable in Canadian Dollars or Dollars (in the case of a Canadian Credit Party), to such Person in the United States (in the case of a U.S. Credit Party) or the United States or Canada (in the case of a Canadian Credit Party) in the ordinary course of business of such Credit Party;
- (c) which is not subject to a first priority perfected security interest in favor of Agent (other than Liens that are the subject of a Canadian Priority Payables Reserve);
- (d) which is subject to any Lien other than (i) a Lien in favor of Agent and (ii) a Permitted Lien which does not have priority over the Lien in favor of Agent;
- (e) for which the Account Debtor has failed to pay within one hundred and twenty (120) days after the date of the original invoice therefor;
- (f) with respect to which (i) the goods giving rise to such Account have not been shipped and billed to the Account Debtor or (ii) the services giving rise to such Account have not been performed and billed to the Account Debtor; provided that Accounts which satisfy all of the other criteria described in this definition and would be deemed ineligible solely because of the failure to comply with this clause (f) shall nevertheless be eligible in an aggregate amount not to exceed at any time twenty-five percent (25%) of all Eligible Accounts and Eligible 90-Day Accounts if (i) the Account Debtor has not been billed but the goods giving rise to such Account have been shipped and/or the services have been completed, and (ii) the Accounts have been unbilled from the date of shipment or performance, as applicable, for not more than thirty (30) days;
- (g) which is unpaid more than ninety (90) days after the original due date therefor;
- (h) which is owing by an Account Debtor for which fifty percent (50%) or more of the dollar amount of all accounts owing from such Account Debtor and its Controlled Affiliates are ineligible pursuant to clauses (e) or (g) above;
- (i) which is owing by an Account Debtor but only to the extent of the aggregate amount of Accounts owing from such Account Debtor and its Affiliates to all Credit Parties in excess of fifteen percent (15%) (or, with respect to the Account Debtor identified in writing by Parent Borrower to Agent prior to the Restatement Date, twenty percent (20%)) of the aggregate amount of Eligible Accounts and Eligible 90-Day Accounts of all Credit Parties;

(j) with respect to which any applicable covenant, representation or warranty contained in this Agreement or in any other Loan Document (including documentation with respect to applicable foreign jurisdictions) has been breached or is not true, in each case, in any material respect;

(k) which (i) does not arise from the sale of goods in the ordinary course of the Credit Parties' business or from the performance of services in the ordinary course of the Credit Parties' business, (ii) is not (subject to clause (f)(ii) above) evidenced by an invoice issued by a U.S. Credit Party (in case of the U.S. Borrowing Base) or a Canadian Credit Party (in case of the Canadian Borrowing Base) which has been sent to the Account Debtor (provided, that it is understood and agreed that Railcar Receivables are not evidenced by invoices, and that the absence of such invoice shall not be a basis for excluding such Accounts from Eligible Accounts or Eligible 90-Day Accounts), (iii) represents progress billing or a billing that is contingent upon any Credit Party's completion of any further performance, (iv) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery or any other repurchase or return basis, (v) relates to payments of interest, (vi) relates to restricted proceeds of Inventory which are subject to a title retention arrangement or (vii) relates to tooling or other similar activities;

(l) was invoiced more than once (including chargebacks, debit memos, credits and rebills) other than payment reminders and multiple invoices with respect to Accounts in which partial or multiple shipments are made on such Account, in each case, sent in the ordinary course of business;

(m) with respect to which any check or other instrument of payment has been returned uncollected for any reason (other than bank error);

(n) which is owed by an Account Debtor which, to the actual knowledge of a Credit Party, has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, monitor, liquidator or similar person of its assets, (ii) has had possession of all or a material part of its property taken by any receiver, custodian, monitor, liquidator or similar person of its assets, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, insolvent, winding up, or voluntary or involuntary case under any Insolvency Laws (other than post-petition accounts payable of an Account Debtor that is a debtor-in-possession under any Insolvency Laws and reasonably acceptable to Co-Collateral Agents), (iv) has admitted in writing its inability, or is generally unable, to pay its debts as they become due, (v) become insolvent, or (vi) ceased operation (or has announced plans to cease operation) of its business;

(o) which is owed by any Account Debtor which, to the actual knowledge of a Credit Party, has sold all or substantially all of its assets, other than the discontinuance or sale of a line of business or brand by such Account Debtor;

(p) which is owed by an Account Debtor which, (x) does not maintain a material place of business in the United States or Canada or (y) is not organized under applicable law of the United States or Canada or any state of the United States or province of Canada;

(q) [reserved];

(r) which is owed by (i) the government (or any department, agency, public corporation, or instrumentality thereof) of any country other than the United States or Canada unless such Account is backed by a Letter of Credit reasonably acceptable to Co-Collateral Agents which is in the possession of Agent, (ii) the government of Canada or a province or territory thereof unless the Account has been assigned, if required, to Agent in compliance with the *Financial Administration Act (Canada)* (or similar applicable law of such province or territory), and any other steps necessary to perfect or render opposable the Lien of Agent in such Account have been complied with to Co-Collateral Agents' reasonable satisfaction, or (iii) the government of the United States, or any department, agency, public corporation or instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 et seq. and 41 U.S.C. § 15 et seq.), and any other steps necessary to perfect the Lien of Agent in such Account have been complied with to Agent's reasonable satisfaction;

(s) which is owed by any Controlled Affiliate, employee, officer, director or agent of any Credit Party; provided that, so long as transactions between them and the Credit Parties are arms-length, portfolio companies of Jacobs Private Equity, LLC (or any Affiliate thereof), that do business with a Credit Party in the ordinary course of business, will not be treated as Controlled Affiliates for purposes of this clause (s);

(t) which is owed by an Account Debtor or any Affiliate of such Account Debtor to which any Credit Party is indebted, but only to the extent of such indebtedness or is subject to any security, deposit, progress payment, retainage or other similar advance made by or for the benefit of an Account Debtor, in each case to the extent thereof, in each case, unless a no-set-off letter in form and substance reasonably acceptable to Co-Collateral Agents has been provided by the Account Debtor with respect to any claims, rights, setoff or dispute;

(u) which is subject to any counterclaim, deduction, defense, setoff or dispute but only to the extent of any such counterclaim, deduction, defense, setoff or dispute (it being understood and agreed that this clause (u) shall apply to Accounts subject to deduction by Account Debtors on account of payables owing from Parent Borrower or any of its Subsidiaries to a third-party logistics provider, Driver or other service provider);

(v) which is evidenced by any promissory note, chattel paper, or instrument;

(w) with respect to which such Credit Party has made any agreement with the Account Debtor for any reduction thereof, other than discounts and adjustments given in the ordinary course of business, or any Account which was partially paid and such Credit Party created a new receivable for the unpaid portion of such Account with a later due date than the original receivable;

(x) which does not comply in all material respects with the requirements of all applicable laws and regulations, whether federal, state, provincial, foreign, municipal or local, including, without limitation, the Federal Consumer Credit Protection Act, the Federal Truth in Lending Act and Regulation Z of the Federal Reserve Board;

(y) which was created on cash on delivery terms; or

(z) which, in the case of Railcar Receivables, exceed the product of monthly average of Railcar Receivables reported in the three most recent monthly “car-hire reports” made by AAR, or any successor thereto, to Greenbrier Leasing Company LLC or to a U.S. Credit Party, multiplied by two (2).

There shall be excluded from each Account any portion of such Account representing sales tax, excise tax, goods and services tax, harmonized tax or any other Taxes or collections on behalf of any Governmental Authority which such Credit Party is obligated to distribute or remit to such Governmental Authority.

Subject to Section 12.2(b), Agent shall establish a Dilution Reserve and a Rent Reserve and Agent shall have the right to establish, modify or eliminate (i) such other Reserves against Eligible Accounts and Eligible 90-Day Accounts and (ii) with respect to Permitted Incremental FILO Loans only, a Discretionary FILO Dilution Reserve, in each case, from time to time in its Permitted Discretion in conformity with Section 2.18. Any Accounts which are not Eligible Accounts or Eligible 90-Day Accounts shall nevertheless be part of (i) in the case of the U.S. Credit Parties, the ABL Priority Collateral and (ii) in the case of the Canadian Credit Parties, the Canadian Collateral.

In the event that an Account, which was previously an Eligible Account or an Eligible 90-Day Account, ceases to be an Eligible Account or an Eligible 90-Day Account, as applicable, hereunder, Borrower Representative shall exclude such Account from Eligible Accounts and Eligible 90-Day Accounts on, and at the time of submission to Agent of, the next Borrowing Base Certificate. In determining the amount of the Eligible Account or Eligible 90-Day Account, as applicable, the face amount of an Account shall be reduced by, without duplication and to the extent such reduction is not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including, any amount that any Credit Party is obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)), and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by any Credit Party to reduce the amount of such Account.

“Eligible Assignee” means (a) a Lender, (b) a commercial bank, insurance company, finance company, financial institution, any fund that invests in revolving loans, (c) any Affiliate of a Lender, or (d) an Approved Fund of a Lender; provided that in any event, “Eligible Assignee” shall not include (i) any natural person, (ii) any Disqualified Institution or (iii) any Borrower, any Subsidiary or any Affiliate thereof.

“Eligible Billed Accounts” means Eligible Accounts other than Eligible Unbilled Accounts.

“Eligible Equipment” means Equipment of the U.S. Credit Parties (in case of the U.S. Borrowing Base) or all Credit Parties (in case of the Canadian Borrowing Base) (a) that is located at one of the business locations of a Credit Party, (b) that is not excluded as ineligible by

virtue of the one or more of the criteria set forth below, and (c) in respect of which Agent has completed a Borrowing Base Collateral review and an appraisal report, in form and substance reasonably satisfactory to Co-Collateral Agents, has been delivered to Agent. An item of Equipment shall not be included in Eligible Equipment if:

- (i) a Credit Party does not have good and valid title thereto;
- (ii) (A) with respect to Equipment of the U.S. Credit Parties, it is not located in the continental United States, and (B) with respect to Equipment of the Canadian Credit Parties, it is not located in Canada or the continental United States;
- (iii) it is located on real property not owned by a Credit Party, unless (A) (1) it is subject to a written subordination or waiver, in form and substance reasonably satisfactory to Co-Collateral Agents, executed by each owner and each lessor of such real property (and any holder of a Lien on such real property) or (2) solely with respect to Equipment, that is located on real property not owned by a Credit Party, a Rent Reserve has been established by Agent with respect to such Equipment, and (B) it is segregated or otherwise separately identifiable from goods of others, if any, located on such real property;
- (iv) it is located on real property owned by a Credit Party and is subject to a Lien in favor of a mortgagee, unless it is subject to a written subordination or waiver, in form and substance reasonably satisfactory to Co-Collateral Agents;
- (v) it is not subject to a valid and perfected first priority Lien in favor of Agent, other than Permitted Liens in favor of any bailee, landlord, warehouseman, mechanic or other non-consensual Lien arising by operation of law (provided that either (x) the holder of such Permitted Lien has waived or subordinated such Permitted Lien to Agent's reasonable satisfaction pursuant to a landlord waiver, bailee letter or comparable agreement or (y) a rent reserve has been established by Agent in the exercise of its Permitted Discretion, which rent reserve, with respect to landlord Liens shall not be in excess of three (3) months' rent (or for such longer time period that is determined by Agent in its Permitted Discretion as reasonably necessary to protect and/or realize upon the Collateral));
- (vi) it (A) is not in good repair and normal operating condition in accordance with its intended use in the business of such Credit Party, (B) is substantially worn, damaged, defective or obsolete, or (C) constitutes furnishings, fixtures or parts, or
- (vii) the receipts received by any Credit Party from any warehouse states that the goods covered thereby are to be delivered to bearer or to the order of a named Person or to a named Person and such named Person's assigns.

"Eligible Rolling Stock" means Rolling Stock constituting Railcars, Chassis, trucks, trailers and tractors that:

- (i) are owned by any of the U.S. Credit Parties,
- (ii) in the case of Rolling Stock other than Railcars, is either subject to a valid certificate



of title (other than with respect to trailers that are registered or located in a State that does not provide that a “certificate of title” is an evidence of ownership of trailers registered or located in such State), or if not so subject, has been fully assembled and delivered to a U.S. Credit Party and, in each case, is subject to a manufacturer’s statement of origin that has been delivered to the applicable titling authority to promptly cause such Rolling Stock to become titled and Agent’s Lien (subject to Section 6.17(b)) has been indicated on such “certificate of title”,

(iii) in the case of Railcars, Parent Borrower has elected to include in the Borrowing Base and the applicable U.S. Credit Party has executed and delivered to Agent such Memorandum of Security Agreements as Agent may request and recorded such Memorandum of Security Agreements with the Surface Transportation Board and taken such other action as Co-Collateral Agents may reasonably request to perfect Agent’s first priority Liens and security interests in such Railcars,

(iv) are in good operating condition, are not unmerchantable (other than in connection with Agent’s Liens), are not out for repair for more than 30 consecutive days, meet in all material respects all standards imposed by any Governmental Authority having regulatory authority over such Rolling Stock, are usable and in good working order,

(v) are not located outside the continental United States and Canada, including in connection with any “over the road use” or “over the rail use”,

(vi) (a) other than with respect to Railcars, are not subject to any lease or other similar arrangement (or if subject to a lease or other similar arrangement, such arrangement is reasonably satisfactory to Co-Collateral Agents and is subject to an acknowledgement of Agent’s Liens and, if applicable, Collateral Access Agreements) and (b) with respect to Railcars, are not subject to any lease, contract or arrangement for hire other than in connection with participation in the Interchange System through Brandon Railroad LLC’s (or any successor railroad acceptable to Agent in its Permitted Discretion under whose marks the Railcars operate) status as “Subscriber” under the Interchange System and which participation is managed by Greenbrier Leasing Company LLC (or its successor or assign) in accordance with the terms of the Administrative Services Agreement (or other similar arrangement, including, if applicable, Collateral Access Agreements), and

(vii) in respect of which Co-Collateral Agents are satisfied in their Permitted Discretion that all actions necessary or desirable, including, without limitation pursuant to Section 6.17, in order to create a perfected first priority Lien in favor of Agent on such Rolling Stock have been taken.

“Eligible Unbilled Accounts” means Accounts of the type set forth in the proviso to clause (f) of the definition of Eligible Accounts.

“EMU Legislation” means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

“Environmental Laws” means all applicable federal, state, provincial, local and foreign laws, statutes, ordinances, codes, rules, standards and regulations, now or hereafter in effect,

including any applicable judicial or administrative order, consent decree, order or judgment, in each case having the force or effect of law, imposing liability or standards of conduct for or relating to the regulation and protection of human health, safety, the environment and natural resources (including ambient air, soil, vapor, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation). Environmental Laws include the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) (“CERCLA”); the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §§ 5101 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §§ 136 et seq.); the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.); the Toxic Substance Control Act (15 U.S.C. §§ 2601 et seq.); the Clean Air Act (42 U.S.C. §§ 7401 et seq.); the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.); the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.); and the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), and any and all regulations promulgated thereunder, and all analogous federal, state, provincial, local and foreign counterparts or equivalents and any transfer of ownership notification or approval statutes related to the protection of human health, safety or the environment.

“Environmental Liabilities” means, with respect to any Person, all liabilities, obligations, responsibilities, response, remedial and removal costs, investigation and feasibility study costs, losses, damages, punitive damages, property damages, natural resource damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants), fines, penalties, sanctions and interest incurred as a result of or related to any claim, suit, action, investigation, proceeding or demand by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, arising under or related to any Environmental Laws, Environmental Permits, or in connection with any Release or threatened Release or presence of a Hazardous Material whether on, at, in, under, from or about or in the vicinity of any real or personal property.

“Environmental Permits” means, with respect to any Person, all permits, licenses, authorizations, certificates, approvals or registrations required by any Governmental Authority under any Environmental Laws for conducting the operations of such Person.

“Equipment” means all “equipment,” as such term is defined in the Code or the PPSA, as applicable, now owned or hereafter acquired by any Credit Party, wherever located.

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

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any regulations promulgated thereunder.

“ERISA Affiliate” means, with respect to any Credit Party, any trade or business (whether or not incorporated) that, together with such Credit Party, are treated as a single employer within the meaning of Sections 414(b), (c), (m) or (o) of the IRC.

“ERISA Event” means, with respect to any Credit Party or any ERISA Affiliate, (a) any event described in Section 4043(c) of ERISA with respect to a Title IV Plan (other than an event for which the thirty (30) day notice period is waived); (b) the withdrawal of any Credit Party or ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (c) the complete or partial withdrawal of any Credit Party or any ERISA Affiliate from any Multiemployer Plan; (d) the filing of a notice of intent to terminate a Title IV Plan or the treatment of a plan amendment as a termination under Section 4041 of ERISA; (e) the termination of a Title IV Plan or Multiemployer Plan by the PBGC pursuant to Section 4042 of ERISA; (f) the failure by any Credit Party or ERISA Affiliate to make when due required contributions to a Multiemployer Plan or Title IV Plan unless such failure is cured within thirty (30) days; (g) the termination of a Multiemployer Plan under Section 4041A of ERISA or the reorganization or insolvency of a Multiemployer Plan under Section 4241 or 4245 of ERISA or a determination that a Multiemployer Plan is in “endangered” or “critical” status under the meaning of Section 432 of the IRC or Section 304 of ERISA; (h) the loss of a Qualified Plan’s qualification or tax exempt status; (i) the termination of a Plan described in Section 4064 of ERISA; (j) any Foreign Benefit Event; ~~or~~ (k) the filing pursuant to Section 412(c) of the ~~Code~~IRC or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Title IV Plan; (l) a determination that any Title IV Plan is in “at risk” status (within the meaning of Section 430 of the ~~Code~~IRC or Section 303 of ERISA; (m) the incurrence by any Credit Party or any of its ERISA Affiliates of any liability under Title IV of ERISA (other than ~~non-delinquent~~non-delinquent premiums payable to the PBGC under Sections 4006 and 4007 of ERISA); (n) the imposition of liability on any Credit Party or any ERISA Affiliate due to the cessation of operations at a facility under the circumstances described in Section 4062(e) of ERISA; ~~and/or~~ (o) the occurrence of a ~~non-exempt~~non-exempt “prohibited transaction” with respect to which any Credit Party or any of the Subsidiaries is a “disqualified person” (within the meaning of Section 4975 of the ~~Code~~IRC) or a “party in interest” (within the meaning of Section 406 of ERISA) or with respect to which any Credit Party or any such Subsidiary could otherwise be liable.

“ERISA Lien” has the meaning specified in Section 6.11.

“E-Signature” means the process of attaching to, or logically associating with, an Electronic Transmission, an electronic symbol, encryption, digital signature or process (including the name or an abbreviation of the name of the party transmitting the Electronic Transmission) with the intent to sign, authenticate or accept such Electronic Transmission.

“E-System” means any electronic system approved by Agent, including Intralinks® and ClearPar® and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by Agent, any of its Related Persons or any other Person, providing for access to data protected by passcodes or other security system.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Euro” and “€” means the lawful single currency of the Participating Member States.

“Event of Default” has the meaning specified in Section 9.1.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Excluded Accounts” has the meaning specified in Annex A.

“Excluded Contributions” means, at any time the cash and Cash Equivalents received by Parent Borrower after the Restatement Date from:

(1) contributions to its common equity capital, and

(2) the sale (other than to a Subsidiary of Parent Borrower or to any Subsidiary management equity plan or stock option plan or any other management or employee benefit plan or agreement) of Capital Stock (other than Disqualified Capital Stock and Designated Preferred Stock) of Parent Borrower,

in each case designated as Excluded Contributions pursuant to an Officer’s Certificate (but excluding any Cure Amount or amounts distributed pursuant to Section 7.2(b)(ii)).

“Excluded Principal Property” means (a) any Principal Property, (b) any shares of capital stock or Indebtedness (as defined in the Existing Con-way Indenture) of any Restricted Subsidiary (as defined in the Existing Con-way Indenture) or (c) any other assets or property owned by Con-way or any Restricted Subsidiary (as defined in the Existing Con-way Indenture) to the extent, in the case of this clause (c), that the existence of liens on such assets or property in favor of the Lenders as security for the Obligations owing under this Agreement would result in the breach of, or require the equal and ratable securing of, all or any portion of the Con-way Existing Indebtedness; provided that the Borrower may, in its sole discretion, elect to designate any property which is an Excluded Principal Property as not being an Excluded Principal Property.

“Excluded Property” has the meaning assigned to such term in the U.S. Security Agreement or the Canadian Security Agreement, as applicable.

“Excluded Subsidiary” means:

(a) each Domestic Subsidiary that is prohibited from guaranteeing the Obligations hereunder by any requirement of law or that would require consent, approval, license or authorization of a ~~governmental authority~~Governmental Authority to guarantee the Obligations hereunder (unless such consent, approval, license or authorization has been received),

(b) each Domestic Subsidiary that is prohibited by any applicable contractual requirement from guaranteeing the Obligations hereunder on the Amendment No. 36 Effective Date or at the time such Subsidiary becomes a Subsidiary (to the extent not incurred in connection with becoming a Subsidiary and in each case for so long as such restriction or any replacement or renewal thereof is in effect),

- (c) any Domestic Subsidiary (i) that owns no material assets (directly or through its Subsidiaries) other than ~~equity interests~~ Equity Interests of one or more Foreign Subsidiaries or (ii) that is a direct or indirect Subsidiary of a Foreign Subsidiary,
- (d) any Foreign Subsidiary,
- (e) any Securitization Subsidiary,
- (f) any CFC,
- (g) any Unrestricted Subsidiary,
- (h) any non-Wholly Owned Subsidiary,
- (i) any Subsidiary that is a captive insurance company, and
- (j) any not-for profit Subsidiary;

provided that the Restricted Subsidiaries of Parent Borrower incorporated or otherwise organized in Canada or any province thereof shall not constitute Excluded Subsidiaries under, and for purposes of, clauses (d) and (f) in connection with guarantees and other credit support with respect to the obligations of the Canadian Borrowers,

provided, further, that any Restricted Subsidiary of Norbert and/or Con-way which is incorporated or otherwise organized in Canada or any province thereof shall constitute Excluded Subsidiaries under, and for purposes of, clauses (d) and (f) in connection with guarantees and other credit support with respect to the obligations of the Canadian Credit Parties, unless Parent Borrower determines, in its sole discretion that (and delivers a written notice to Agent that) such Subsidiaries shall no longer constitute Excluded Subsidiaries (it being understood that the assets of any such Restricted Subsidiary so excluded shall not contribute to the Borrowing Base until such time as it becomes a Credit Party hereunder);

provided, further, that, subject to the terms and conditions set forth in Section 6.13(b), Parent Borrower may cause any Domestic Subsidiary that qualifies as an Excluded Subsidiary under clause (c)(ii) above to become a Guarantor in accordance with the definition thereof and thereafter such Domestic Subsidiary shall not constitute an “Excluded Subsidiary” (unless and until Parent Borrower elects to designate such Domestic Subsidiary as an Excluded Subsidiary) (each such Excluded Subsidiary that becomes a Guarantor hereunder, a “Designated Guarantor”).

“Excluded Swap Obligation” means, with respect to any Credit Party, any Hedging Obligation if, and to the extent that, all or a portion of the Obligations of such Credit Party of, or the grant by such Credit Party of a security interest to secure, such Hedging Obligation (or any Obligations thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof). If a Hedging Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Hedging

Obligation that is attributable to swaps for which such Obligation or security interest is or becomes illegal.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient, or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, any U.S. federal withholding Tax imposed on amounts payable to or for the account of such Lender pursuant to any law in effect on the date such Lender becomes a party to this Agreement (other than as an assignee pursuant to a request by Borrower Representative under Section 2.14(d)) or designates a new lending office (unless such designation is at the request of Borrower Representative under Section 2.14(g)), (c) Taxes attributable to such Recipient’s failure to comply with Section 2.13(d) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Existing Con-way Indenture” means that certain Indenture, dated as of March 8, 2000, between CNF Transportation, Inc., as issuer, and Bank One Trust Company, National Association, as trustee, in the case of Con-way’s 6.70% Senior Debentures due 2034.

“Existing Credit Agreement” has the meaning assigned to such term in the recitals hereto.

“Extended Revolving Commitment” has the meaning specified in Section 2.16(c).

“Extending Lender” has the meaning specified in Section 2.16(c).

“Extension” has the meaning specified in Section 2.16(c).

“Fair Labor Standards Act” means the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*

“Fair Market Value” means, with respect to any asset or property, the price which could be negotiated in an arm’s-length transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction.

“FATCA” means Sections 1471 through 1474 of the IRC as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the IRC and any intergovernmental agreements implementing the foregoing.

“FCPA” means the Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1, *et seq.*), as amended, and the rules and regulations thereunder.

“Federal Funds Rate” means, for any day, a floating rate equal to (a) the weighted average of interest rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the next Business Day; or (b) if no such rate is published on the next Business Day, the weighted average of the

rates on overnight Federal funds transactions among members of the Federal Reserve System, as determined by Agent in its reasonable discretion, which determination shall be final, binding and conclusive (absent manifest error).

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System.

“Fee Letter” means that certain Fee Letter, dated as of October 27, 2015, between Agent, Parent Borrower and other parties party thereto with respect to certain Fees to be paid from time to time by Borrowers.

“Fees” means any and all fees and other amounts payable to Agent, any Co-Collateral Agent or any Lender pursuant to this Agreement or any of the other Loan Documents.

“Financial Officer” means, with respect to any of Parent Borrower or its Subsidiaries, the chief executive officer, the chief financial officer, the principal accounting officer, the treasurer, the assistant treasurer and the controller thereof.

“Financial Performance Covenant” has the meaning specified in Section 9.4(a).

“Financial Statements” means the consolidated income statements, statements of cash flows and balance sheets of Parent Borrower delivered in accordance with Section 4.4 and Section 5.1.

“Fiscal Month” means any of the monthly accounting periods of Borrowers.

“Fiscal Quarter” means any of the quarterly accounting periods of Borrowers, ending on March 31, June 30, September 30, and December 31 of each year.

“Fiscal Year” means any of the annual accounting periods of Borrowers ending on December 31 of each year.

“Fixed Charge Coverage Ratio” means for any period, the ratio of (a) Consolidated EBITDA for such period minus the sum of (i) Unfinanced Capital Expenditures plus (ii) the portion of taxes based on income actually paid in cash and provisions for cash income taxes to (b) ABL Fixed Charges for such period.

“Fixed Charges” means, with respect to any Person for any period, the sum, without duplication, of: (1) Consolidated Interest Expense (excluding amortization or write-off of deferred financing costs) of such Person for such period, and (2) all cash dividend payments (excluding items eliminated in consolidation) on any series of Preferred Stock or Disqualified Capital Stock of such Person and its Restricted Subsidiaries.

“Flood Insurance Laws” means the National Flood Insurance Reform Act of 1994 and related or successor legislation (including the regulations of the Board of Governors of the Federal Reserve System of the United States).

“Flood Hazard Property” has the meaning specified in Section 6.10(b)(iv).

“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the LIBOR Rate.

“Foreign Benefit Event” means, with respect to any Foreign Pension Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable law, or in excess of the amount that would be permitted absent a waiver from a Governmental Authority, (b) the failure to make the required contributions or payments, under any applicable law, on or before the due date for such contributions or payments, (c) the termination of any such Foreign Pension Plan or appointment of a trustee or similar official to administer any such Foreign Pension Plan, in each case, by a Governmental Authority, (d) the incurrence of any liability in excess of \$90,000,000 by any Credit Party or any Subsidiary under applicable law on account of the complete or partial termination of such Foreign Pension Plan or the complete or partial withdrawal of any participating employer therein, or (e) the occurrence of any transaction that is prohibited under any applicable law and that would reasonably be expected to result in the incurrence of any liability by any Credit Party or any of the Subsidiaries, or the imposition on any Credit Party or any of the Subsidiaries of any fine, excise tax or penalty resulting from any noncompliance with any applicable law, in each case in excess of \$90,000,000.

“Foreign Lender” has the meaning specified in Section 2.13(d).

“Foreign Pension Plan” means any pension or benefit plan that under applicable law other than the laws of the United States or any political subdivision thereof, is required to be funded through a trust or other funding vehicle other than a trust or funding vehicle maintained exclusively by a Governmental Authority.

“Foreign Subsidiary” means a Restricted Subsidiary that is not organized or established under the laws of the United States of America, any state thereof or the District of Columbia. For the avoidance of doubt, any Subsidiary incorporated or organized under the laws of a territory of the United States (including the Commonwealth of Puerto Rico) shall constitute a “Foreign Subsidiary” hereunder.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect on the Amendment No. 3 Effective Date (unless otherwise specified herein). For the purposes of this Agreement, the term “consolidated” with respect to any Person shall mean such Person consolidated with its Restricted Subsidiaries, and shall not include any Unrestricted Subsidiary, but the interest of such Person in an Unrestricted Subsidiary will be accounted for as an Investment.

“General Intangibles” has the meaning specified in the U.S. Security Agreement.

“Governmental Authority” any federal, state, provincial or other political subdivision thereof, and any agency, department or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.



“Granting Lender” has the meaning specified in Section 11.1(g).

“guarantee” means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations. The amount of any guarantee shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such person in good faith.

“Guarantee” means the guarantee of the Obligations by the Credit Parties in Article 13 hereunder or in a supplemental guarantee in accordance with Section 6.12 of this Agreement.

“Guaranteed Obligations” means as to any Person, any obligation of such Person guarantying or otherwise having the economic effect of guarantying any Indebtedness, lease, dividend, or other obligation (“primary obligation”) of any other Person (the “primary obligor”) in any manner, including any obligation or arrangement of such Person to (a) purchase or repurchase any such primary obligation, (b) advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet condition of the primary obligor, (c) purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (d) protect the beneficiary of such arrangement from loss (other than product warranties given in the ordinary course of business), or (e) indemnify the owner of such primary obligation against loss in respect thereof; provided, however, that the term Guaranteed Obligations shall not include endorsements of instruments for deposit or collection in the ordinary course of business or standard contractual indemnities. The amount of any Guaranteed Obligations at any time shall be deemed to be an amount equal to the lesser at such time of (x) the stated or determinable amount of the primary obligation in respect of which such Guaranteed Obligations is incurred, and (y) the maximum amount for which such Person may be liable pursuant to the terms of the instrument embodying such Guaranteed Obligations, or, if not stated or determinable, the maximum reasonably anticipated liability (assuming full performance) in respect thereof.

~~“Guarantee” means the guarantee of the Obligations by the Credit Parties in Article 13 hereunder or in a supplemental guarantee in accordance with Section 6.12 of this Agreement.~~

“Guaranties” means the U.S. Guaranty, the Canadian Guaranty and any other guaranty executed by any Guarantor in favor of Agent, for the benefit of the Secured Parties, in respect of the Obligations.

“Guarantor Payments” has the meaning specified in Section 13.7.

“Guarantors” means each Subsidiary Guarantor, Designated Guarantor and each other Person, if any, that executes a guaranty or other similar agreement in favor of Agent, for itself and the ratable benefit of the Secured Parties, in connection with the transactions contemplated by this Agreement and the other Loan Documents; provided, that, notwithstanding anything to

the contrary in this Agreement or in any other Loan Document (other than with respect to Designated Guarantors, to which this proviso shall not apply), in no event shall an Excluded Subsidiary be a Guarantor of or otherwise obligated in respect of any Obligation of a U.S. Borrower or any “United States person” as defined in section 7701(a)(30) of the IRC; provided, further that upon the release or discharge of such Person from its Guaranty in accordance with this Agreement, such Person shall cease to be a Guarantor.

“GXO Logistics” means GXO Logistics, Inc., a Delaware corporation formed by or on behalf of the Parent Borrower.

“Hazardous Material” means any substance, material or waste that is regulated as a hazardous waste, hazardous substance, hazardous material, pollutant, contaminant or words of similar import under any Environmental Law, including but not limited to any “Hazardous Waste” as defined by the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6901 et seq. (1976)), any “Hazardous Substance” as defined under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. § 9601 et seq. (1980)), any petroleum or any fraction thereof, asbestos, polychlorinated biphenyls, toxic mold, mycotoxins, toxic microbial matter (naturally occurring or otherwise), infectious waste and radioactive substances or any other substance that is regulated under Environmental Law due to its toxic, ignitable, reactive, corrosive, caustic or dangerous properties.

“Hedge Bank” means (a) any Person counterparty to a Swap Contract who is (or at the time such Swap Contract was entered into, was) a Lender, an Agent or an Affiliate of any thereof, (b) any Person counterparty to a Swap Contract who was, at the time such Swap Contract was entered into, a lender or agent or Affiliate of any thereof under and pursuant to the Existing Credit Agreement, and (c) any Person who is an Agent or a Lender (and any Affiliate thereof) as of the Restatement Date or Amendment No. 3 Effective Date but subsequently, whether before or after entering into a Swap Agreement, ceases to be an Agent or a Lender, as the case may be.

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

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

(2) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates or commodity prices.

“Immaterial Subsidiary” means, with respect to Sections 9.1(j) or (k) (events and/or circumstances described therein, each an “Insolvency Event”) as of any date, any Restricted Subsidiary of Parent Borrower (other than any Borrower) (a) whose total assets at the last day of the of the most recent fiscal period for which financial statements are required to be delivered pursuant to Section 5.1(b) or (c) were equal to or less than 5% of the consolidated total assets of Parent Borrower and its Restricted Subsidiaries at such date; provided that total assets of all Immaterial Subsidiaries subject to Insolvency Events on any date shall not exceed 5% of total

assets of Parent Borrower and its Restricted Subsidiaries at such date and (b) that does not contribute EBITDA in excess of 5% of the EBITDA of Parent Borrower and its Restricted Subsidiaries, in each case, for the most recently ended for the twelve month period ending on the last day of the most recent fiscal period for which financial statements have been delivered pursuant to Section 5.1(b) or (c); provided that, EBITDA (as so determined) of all Immaterial Subsidiaries subject to Insolvency Events on any date shall not exceed 5% of EBITDA of Parent Borrower and its Restricted Subsidiaries for the relevant period.

“Impacted Lender” means any Lender that fails to promptly provide any Borrower or Agent, upon such Person’s reasonable request, reasonably satisfactory evidence that such Lender will not become a Non-Funding Lender.

“Increased Amount” has the meaning specified in Section 7.7.

“Incremental Facility Revolving Loans” has the meaning specified in Section 2.16(a).

“Incremental Lender” has the meaning specified in Section 2.16(a).

“Incremental Revolving Loan Amendment” has the meaning specified in Section 2.16(a).

“Incremental Revolving Loans” has the meaning specified in Section 2.16(a).

“Incur” means issue, assume, guarantee, incur or otherwise become liable for; provided, however, that any Indebtedness or Capital Stock of a Person existing at the time such person becomes a Subsidiary (whether by merger, amalgamation, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Subsidiary. “Incurred” and “Incurrence” shall have like meanings.

“Initial Revolving Facility Loans” has the meaning specified in Section 2.16(a).

“Indebtedness” means, with respect to any Person:

(1) the principal of any indebtedness of such Person, whether or not contingent, (a) in respect of borrowed money, (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers’ acceptances (or, without duplication, reimbursement agreements in respect thereof), (c) representing the deferred and unpaid purchase price of any property (except any such balance that constitutes (i) a trade payable or similar obligation to a trade creditor Incurred in the ordinary course of business, (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and (iii) liabilities accrued in the ordinary course of business), which purchase price is due more than twelve months after the date of placing the property in service or taking delivery and title thereto, (d) in respect of Capitalized Lease Obligations, or (e) representing any Hedging Obligations, if and to the extent that any of the foregoing indebtedness would appear as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(2) to the extent not otherwise included, any obligation of such Person to be liable for, or to pay, as obligor, guarantor or otherwise, the obligations referred to in clause (1) of another Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business); and

(3) to the extent not otherwise included, Indebtedness of another Person secured by a Lien on any asset owned by such Person (whether or not such Indebtedness is assumed by such Person); provided, however, that the amount of such Indebtedness will be the lesser of: (a) the Fair Market Value (as determined in good faith by Parent Borrower) of such asset at such date of determination, and (b) the amount of such Indebtedness of such other Person;

provided, however, that, notwithstanding the foregoing, Indebtedness shall be deemed not to include (1) Contingent Obligations incurred in the ordinary course of business and not in respect of borrowed money; (2) deferred or prepaid revenues; (3) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; (4) obligations under or in respect of a Qualified Securitization Financing (including all obligations of any Securitization Subsidiary); (5) trade and other ordinary course payables, accrued expenses and intercompany liabilities arising in the ordinary course of business; (6) obligations in respect of cash management services; (7) in the case of Parent Borrower and the Restricted Subsidiaries (x) all intercompany Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business and (y) intercompany liabilities in connection with cash management, tax and accounting operations of Parent Borrower and the Restricted Subsidiaries; and (8) any obligations under Hedging Obligations; provided that such agreements are entered into for bona fide hedging purposes of Parent Borrower or the Restricted Subsidiaries (as determined in good faith by the ~~board of directors~~Board of Directors or senior management of Parent Borrower, whether or not accounted for as a hedge in accordance with GAAP) and, in the case of any foreign exchange contract, currency swap agreement, futures contract, option contract or other similar agreement, such agreements are related to business transactions of Parent Borrower or the Restricted Subsidiaries entered into in the ordinary course of business and, in the case of any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement, such agreements substantially correspond in terms of notional amount, duration and interest rates, as applicable, to Indebtedness of Parent Borrower or the Restricted Subsidiaries Incurred without violation of this Agreement.

Notwithstanding anything in this Agreement to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Statement of Financial Accounting Standards No. 133 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any such amounts that would have constituted Indebtedness under this Agreement but for the application of this sentence shall not be deemed an Incurrence of Indebtedness under this Agreement.

“Indemnified Liabilities” has the meaning specified in Section 2.11.

“Indemnified Person” has the meaning specified in Section 2.11.

“Indemnified Tax” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of a Credit Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Independent Financial Advisor” means an accounting, appraisal or investment banking firm or consultant, in each case of nationally recognized standing, that is, in the good faith determination of Parent Borrower, qualified to perform the task for which it has been engaged.

“Information” has the meaning specified in Section 12.8.

“Insolvency Laws” means any of the Bankruptcy Code, the BIA, the WRA or the CCAA, in each case, as now and hereafter in effect, any successors to any such statute and any other applicable insolvency or other similar law of any jurisdiction including, without limitation, any law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it.

“Intellectual Property” means any and all Patents, Copyrights and Trademarks.

“Intellectual Property Security Agreements” means, collectively, any and all Copyright Security Agreements, Patent Security Agreements and Trademark Security Agreements, made in favor of Agent, on behalf of itself and Lenders, by each Credit Party signatory thereto, as amended from time to time.

“Interchange System” means that certain rail interchange system governed by the AAR Rules.

“Interest Expense” means, with respect to any Person for any fiscal period, (i) interest expense of such Person determined in accordance with GAAP for the relevant period ended on such date minus (ii) cash interest income of such Person determined in accordance with GAAP for the relevant period ended on such date.

“Interest Payment Date” means (a) as to any Base Rate Loan, the last Business Day of each Fiscal Quarter to occur while such Loan is outstanding and the final maturity date of such Loan, and (b) as to any LIBOR Loan, the last day of the applicable LIBOR Period; provided, that in the case of any LIBOR Period greater than three months in duration, interest shall be payable at three-month intervals and on the last day of such LIBOR Period; and provided further that, in addition to the foregoing, each of (x) the date upon which all of the Commitments have been terminated and the Loans have been paid in full and (y) the Commitment Termination Date shall be deemed to be an Interest Payment Date with respect to any interest that has then accrued under this Agreement.

“Inventory” means all “inventory,” as such term is defined in the Code or the PPSA, as applicable, now owned or hereafter acquired by any Credit Party, wherever located.

“Investment Grade Securities” means:

(1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents),

(2) securities that have a rating equal to or higher than Baa3 (or equivalent) by Moody's and BBB- (or equivalent) by S&P, but excluding any debt securities or loans or advances between and among Parent Borrower and its Subsidiaries,

(3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2) which fund may also hold material amounts of cash pending investment and/or distribution, and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition.

"Investments" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit and advances to customers and commission, travel and similar advances to officers, employees and consultants made in the ordinary course of business and any assets or securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss and any prepayments and other credits to suppliers made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet of such Person in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. For purposes of the definition of "Unrestricted Subsidiary," Section 6.13 and Section 7.2:

(1) "Investments" shall include the portion (proportionate to Parent Borrower's equity interest in such Subsidiary) of the Fair Market Value (as determined in good faith by Parent Borrower) of the net assets of such Subsidiary at the time that such Subsidiary is designated an Unrestricted Subsidiary; provided, however, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, Parent Borrower shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary equal to an amount (if positive) equal to:

(a) its "Investment" in such Subsidiary at the time of such redesignation less

(b) the portion (proportionate to its equity interest in such Subsidiary) of the Fair Market Value (as determined in good faith by Parent Borrower) of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its Fair Market Value (as determined in good faith by Parent Borrower) at the time of such transfer, in each case as determined in good faith by the Board of Directors of Parent Borrower.

“IRC” means the Internal Revenue Code of 1986, as amended.

“IRS” means the Internal Revenue Service.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Joinder Agreement” means (a) with respect to the joinder of a Domestic Subsidiary pursuant to Section 6.12(a), a joinder agreement substantially in the form of Exhibit 2 to the U.S. Security Agreement and (b) with respect to the joinder of a Subsidiary organized under the laws of Canada (or and province or territory thereof) pursuant to Section 6.12(a), a joinder agreement substantially in the form of Exhibit 2 to the Canadian Security Agreement.

“Joint Venture” means any Person a portion (but not all) of the Capital Stock of which is owned directly or indirectly by a Borrower or a Subsidiary thereof but which is not a Wholly Owned Subsidiary and which is engaged in a business that is similar to or complementary with the business of Borrowers and their Subsidiaries as permitted under this Agreement.

~~“JPMorgan Chase” has the meaning specified in the preamble to this Agreement.~~

“Judgment Conversion Date” has the meaning specified in Section 12.20.

“Judgment Currency” has the meaning specified in Section 12.20.

“Latest Maturity Date” means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, including the latest maturity or expiration date of any Incremental Revolving Loan or any Extended Revolving Commitment, in each case as extended in accordance with this Agreement from time to time.

“L/C Issuer” means each of Morgan Stanley Bank, N.A., JPMorgan Chase Bank, N.A., Wells Fargo Bank, N.A., Deutsche Bank AG New York Branch, Citibank, N.A., Barclays Bank PLC, PNC Bank, N.A., U.S. Bank National Association or any of their respective Affiliates or branches, each in its capacity as issuer of any Letter of Credit, or such other bank or authorized Person as Borrower Representative may select (subject to Agent’s consent, not to be unreasonably withheld, delayed or conditioned, and the consent of such bank or authorized Person) as an L/C Issuer under this Agreement.

“L/C Issuer Fronting Sublimit Amount” means (a) as to each L/C Issuer party hereto as of the ~~Restatement~~Amendment No. 6 Effective Date, the fronting sublimit amount set forth opposite its name on Annex D (or, from and after, and subject to the occurrence of, the Separation Effective Date, Annex D to Amendment No. 6) and (b) as to each L/C Issuer that becomes an L/C Issuer hereunder after the date hereof, the fronting sublimit amount of such L/C Issuer set forth in the instrument under which such L/C Issuer becomes an L/C Issuer. The L/C Issuer Fronting Sublimit Amount of any L/C Issuer may be changed by written agreement

between Parent Borrower and such L/C Issuer, without the consent of any other party hereto (but with notice to Agent), it being understood that no such change shall impact the L/C Sublimit.

“L/C Sublimit” has the meaning specified in Section 2.2(a).

“Lead Arrangers” means each of Morgan Stanley Senior Funding, Inc., J.P. Morgan Securities LLC, Barclays Bank PLC, Citibank, N.A. and Deutsche Bank Securities Inc., in each case in its capacities as Joint Lead Arrangers and Joint Bookrunners.

“Lenders” means the Lenders named on the signature pages of this Agreement and all financial institutions and funds that make Incremental Revolving Loans hereunder; and, if any such Lender shall decide to assign (in accordance with Section 11.1) all or any portion of the Obligations, such term shall include any permitted assignee of such Lender.

“Letter of Credit Fee” has the meaning specified in Section 2.2(d).

“Letter of Credit Obligations” means all outstanding obligations incurred by Agent, L/C Issuers and Lenders at the request of Borrower Representative, whether direct or indirect, contingent or otherwise, due or not due, in connection with the issuance of, or payments made in respect of, Letters of Credit by the L/C Issuers or the purchase of a participation as set forth in Section 2.2 with respect to any Letter of Credit. The amount of such Letter of Credit Obligations shall equal the Dollar Equivalent of the maximum amount that may be payable (or that has been paid by the L/C Issuers and not reimbursed) at such time or at any time thereafter by L/C Issuers, Agent or Lenders thereupon or pursuant thereto.

“Letters of Credit” means standby letters of credit issued for the account of any Borrower by any L/C Issuer pursuant hereto (including as provided in Section 2.2 (j)), in form and substance satisfactory to such L/C Issuer.

“LIBOR Business Day” means a Business Day on which banks in the City of London are generally open for interbank or foreign exchange transactions and (i) if such day relates to any fundings, disbursements, settlements and payments in Euros, means a TARGET Day, and (ii) if such day relates to any fundings, disbursements, settlements and payments in an Alternative Currency approved pursuant to Section 1.4, any such day treated as a business day based on the customs and practices of the handling of such Alternative Currency.

“LIBOR Loan” means a Loan or any portion thereof bearing interest by reference to the (a) LIBOR Rate, with respect to Loans denominated in Dollars and (b) BA Rate, with respect to Loans denominated in Canadian Dollars.

“LIBOR Margin” means the per annum interest rate margin from time to time in effect and payable in addition to the (a) LIBOR Rate, with respect to LIBOR Loans and Letters of Credit denominated in Dollars, (b) BA Rate, with respect to LIBOR Loans and Letters of Credit denominated in Canadian Dollars, and (c) LIBOR Rate, with respect to Letters of Credit denominated in an Alternative Currency, in each case applicable to the Revolving Credit Advances, as determined in accordance with the definition of Applicable Margin.



“LIBOR Period” means, with respect to any LIBOR Loan, each period commencing on a LIBOR Business Day selected by Borrower Representative pursuant to this Agreement and ending one, three or six months (and if available to all Lenders, twelve months) thereafter, as selected by Borrower Representative’s irrevocable notice to Agent as set forth in Section 2.5(e); provided, that the foregoing provision relating to LIBOR Periods is subject to the following:

(a) if any LIBOR Period would otherwise end on a day that is not a LIBOR Business Day, such LIBOR Period shall be extended to the next succeeding LIBOR Business Day unless the result of such extension would be to carry such LIBOR Period into another calendar month, in which event such LIBOR Period shall end on the immediately preceding LIBOR Business Day;

(b) any LIBOR Period that would otherwise extend beyond the Commitment Termination Date shall end on such date;

(c) any LIBOR Period that begins on the last LIBOR Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such LIBOR Period) shall end on the last LIBOR Business Day of a calendar month; and

(d) Borrower Representative shall select LIBOR Periods so that there shall be no more than ten (10) separate LIBOR Loans in existence at any one time.

[It is understood that as of the Amendment No. 6 Effective Date, LIBOR Periods of six and 12 months are not available for Canadian Dollar-denominated LIBOR Loans.](#)

“LIBOR Rate” means for each LIBOR Period, a rate of interest determined by Agent equal to:

(a) the London interbank offered rate, for any LIBOR Period with respect to a LIBOR Loan, and displayed on the appropriate page of the Reuters screen (or on any successor page or any successor service, or any substitute page or substitute for such service, providing rate quotations comparable to those currently provided on Reuters screen, as determined by Agent from time to time for purposes of providing quotations of interest rates applicable to Dollar deposits in the London interbank market) (“LIBOR Screen Rate”) for deposits in Dollars or for the relevant Alternative Currency (for delivery on the first day of such LIBOR Period) with a term equivalent to such LIBOR Period two Business Days prior to the commencement of such LIBOR Period (but if more than one rate is specified on such page, the rate will be an arithmetic average of all such rates), or, if for any reason such rate is not available, the rate at which Dollar deposits for a maturity comparable to such LIBOR Period that would be offered to Agent by major banks in the London or other offshore interbank market for Dollars or the relevant Alternative Currency at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such LIBOR Period; divided by

(b) a number equal to 1.0 minus the aggregate (but without duplication) of the rates (expressed as a decimal fraction) of reserve requirements in effect on the day that is two (2) LIBOR Business Days prior to the beginning of such LIBOR Period (including basic, supplemental, marginal and emergency reserves under any regulations of the Federal Reserve

Board or other Governmental Authority having jurisdiction with respect thereto, as now and from time to time in effect) for Eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Federal Reserve Board) that are required to be maintained by a member bank of the Federal Reserve System.

In no event shall the LIBOR Rate be less than 0.0%

“LIBOR Screen Rate” has the meaning specified in the definition of “LIBOR Rate.”

~~“LIBOR Successor Amendment” has the meaning specified in Section 2.15.~~

~~“LIBOR Successor Rate” has the meaning specified in Section 2.15.~~

~~“LIBOR Successor Rate Conforming Changes” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of LIBOR Rate or LIBOR Period or provisions herein relating to the timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the reasonable discretion of Agent, to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as Agent reasonably determines in consultation with Borrower).~~

“Lien” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or similar encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement or any lease in the nature thereof); provided that in no event shall an operating lease or an agreement to sell be deemed to constitute a Lien.

“Litigation” has the meaning specified in Section 4.13.

“Loan Account” has the meaning specified in Section 2.10.

“Loan Documents” means this Agreement, the Guaranties, the ABL Intercreditor Agreement, the Notes, the Collateral Documents, the Fee Letter and all other agreements, instruments, and documents executed and delivered to, or in favor of, Agent, Co-Collateral Agent, or any Lenders pertaining to any Obligation and including all other pledges, powers of attorney, consents and assignments. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“Loans” means the Revolving Loans and the Swing Line Loans.

“Lock Boxes” has the meaning specified in Annex A.

“Majority Control” means with respect to any Person (the “parent”) at any date, (i) the ownership, control, or holding by parent of securities or other ownership interests representing 50% or more of the ordinary voting power or, in the case of a partnership, 50% or more of the general partnership interest of any other corporation, limited liability company, partnership, association or other entity (the “subject person”), (ii) occupation of 50% or more of the seats (other than vacant seats) on the board of directors of the subject person by Persons who were nominees, designees or Related Persons of parent, or (iii) any circumstances that could require the accounts of the subject Person to be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date. Terms such as “Majority Controlled” and “Majority Controlling” shall have corresponding meanings.

“Material Adverse Effect” means, a material adverse effect on (x) the business, financial condition, operations or properties of Borrowers and their respective Subsidiaries, taken as a whole, after giving effect to the Transactions, (y) the ability of Borrowers or the other Credit Parties to perform their payment obligations under the Loan Documents when due, and (z) the validity or enforceability of any of the Loan Documents or the rights and remedies of Agent and the Lenders under any of the Loan Documents.

“Material Real Property” means any owned Real Property located in the United States (excluding, for the avoidance of doubt, any territory thereof) that is owned in fee simple by a U.S. Credit Party and has an individual fair market value in excess of \$15,000,000, other than any Real Property which is an Excluded Principal Property or Excluded Property.

“Maximum Lawful Rate” has the meaning specified in Section 2.5(f).

“Memorandum of Security Agreement” means one or more Memorandum of Security Agreement, dated as of the Restatement Date (and after the Restatement Date with respect to any Railcars acquired after the Restatement Date), executed by the Credit Parties that own any Railcars, in each case, in favor of Agent and in form and substance reasonably satisfactory to Agent and in any event in customary form and including such documents, including any required transmittal letter, for recording such Memorandum of Security Agreement with Surface Transportation Board pursuant to the provisions of 49 USC §11301 and 49 CFR §1177.

“MNPI” means information that is (a) not publicly available with respect to Borrowers (or any Subsidiary of any Borrower, as the case may be) and (b) material with respect to Borrowers (or their Subsidiaries) or their securities for purpose of United States federal and state securities laws.

“Monthly Reporting Triggering Event” shall occur when Availability shall have been less than 75% of the aggregate Commitments for five (5) consecutive Business Days.

“Monthly Reporting Period” means any period (A) beginning on the date on which the Monthly Reporting Triggering Event has occurred and (B) ending on the date on which Availability shall have been equal to or greater than 75% of the aggregate Commitments for twenty (20) consecutive calendar days.

“Moody’s” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“Mortgage Policies” has the meaning specified in Section 6.10(b)(ii).

“Mortgages” means collectively, the deeds of trust, trust deeds, hypothecs and mortgages made by the Credit Parties in favor or for the benefit of Agent on behalf of the Lenders in form and substance which (i) is consistent with the terms and provisions of this Agreement, (ii) provides for automatic release to the extent the real property subject to the Mortgage is or becomes an Excluded Principal Property or Excluded Property, or if the Lien created thereby is of the type described in Section 6.10(c)(D), and (iii) is otherwise reasonably satisfactory to Agent executed and delivered pursuant to Section 6.10 or 6.14.

“MSSF” has the meaning specified in the preamble to this Agreement.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA, and to which any Credit Party or ERISA Affiliate is making, is obligated to make, or has made or been obligated to make, contributions on behalf of participants who are or were employed by any of them.

“Net Income” means, with respect to any Person, the net income (loss) of such Person and its Restricted Subsidiaries, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

“Net Orderly Liquidation Value” means, with respect to any category of Eligible Equipment or Eligible Rolling Stock, as applicable, the estimated net recovery value as set forth in the most recent appraisal report for such Eligible Equipment or Eligible Rolling Stock, as applicable performed by an appraiser reasonably acceptable to Agent, applying an approach to valuation which is consistent with the approach used in appraisals prepared for Agent’s use at the time such Eligible Equipment or Eligible Rolling Stock, as applicable is included in the Borrowing Base, which reflects the estimated net cash value expected by the appraiser to be derived from a sale or disposition at a liquidation or going-out-of-business sale of such Eligible Equipment or Eligible Rolling Stock, as applicable after deducting all reasonable costs, expenses and fees attributable to such sale or disposition, including, without limitation, all reasonable fees, costs and expenses of any liquidator engaged to conduct such sale or disposition, and all reasonable costs and expenses of removing and delivering the same to a purchaser.

“Non-Consenting Lender” has the meaning specified in Section 12.2(d).

“Non-Con-way Subsidiary” means any Subsidiary of Parent Borrower that is not a Con-way Subsidiary.

“Non-Funding Lender” means any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Agent and Borrower Representative in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Agent or any other

Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified Borrower Representative and Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by Agent or Borrower Representative, to confirm in writing to Agent and Borrower Representative that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Non-Funding Lender pursuant to this clause (c) upon receipt of such written confirmation by Agent and Borrower Representative), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Insolvency Law, (ii) had appointed for it a receiver, interim receiver, custodian, conservator, trustee, monitor, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state, federal or foreign regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Non-Funding Lender solely by virtue of the ownership or acquisition of any Capital Stock in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or Canada or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Agent that a Lender is a Non-Funding Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Non-Funding Lender as of the date established therefor by Agent in a written notice of such determination, which shall be delivered by Agent to Borrower Representative and each other Lender promptly following such determination.

"Norbert" means XPO Logistics Europe SA (formerly known as Norbert Dentressangle S.A.), a French public limited company (*société anonyme*).

~~"Norbert Acquisition" means the acquisition by the Parent Borrower, directly or indirectly, of up to 100% of the outstanding capital stock of Norbert pursuant to (a) the Norbert Private Sale and (b) the Norbert Offer and (c) market purchases or any other purchase of shares not sold in the Norbert Offer or the Norbert Private Sale.~~

~~"Norbert Acquisition Agreement" means that certain Share Purchase Agreement among Dentressangle Initiatives, Mr. Norbert Dentressangle, Mrs. Evelyne Dentressangle, Mr. Pierre-Henri Dentressangle, Ms. Marine Dentressangle and the Parent Borrower, dated as of April 28, 2015, together with all exhibits, annexes and schedules thereto.~~

"Norbert Bridge Credit Agreement" means that certain Senior Unsecured Bridge Term Loan Credit Agreement, dated as of April 28, 2015, by and among the Parent Borrower, certain subsidiaries of the Parent Borrower, MSSF, as administrative agent, and the other parties thereto, including all exhibits, annexes and schedules thereto.

~~“Norbert Offer” means the mandatory public takeover offer made or to be made by the Parent Borrower pursuant to the General Regulation of the French *Autorité des marchés financiers* and in accordance with the Norbert Offer Agreement.~~

~~“Norbert Offer Agreement” means the Tender Offer Agreement between the Parent Borrower and Norbert, dated as of April 28, 2015, together with all exhibits, annexes and schedules thereto.~~

~~“Norbert Private Sale” means the sale of 6,561,776 ordinary shares, nominal value €2, of Norbert acquired by the Parent Borrower pursuant to the Norbert Acquisition Agreement.~~

“Norbert Refinancing Indebtedness” means Indebtedness incurred at Norbert or any of its Subsidiaries and incurred to refund, refinance, replace, renew, extend or defease any Indebtedness of Norbert or any of its Subsidiaries, and any Indebtedness incurred at Norbert or any of its Subsidiaries issued to so refund, refinance, replace, renew, extend or defease such Indebtedness, in an amount not to exceed the principal amount of such Indebtedness plus additional Indebtedness incurred to pay make-wholes, premiums, accrued interest, defeasance costs and fees and related costs and expenses in connection therewith.

“Norbert Transactions” means (a) the consummation of the acquisition of Norbert ~~Acquisition (including the Norbert Private Sale and the Norbert Offer)~~ and transactions contemplated thereby and in connection therewith, (b) the execution, delivery and performance of the Norbert Bridge Credit Agreement, (c) the Parent Borrower’s or any of its Subsidiaries’ incurrence, replacement, redemption, repayment, defeasance, discharge or refinancing of indebtedness or liens in connection with the acquisition of Norbert ~~Acquisition~~, including the incurrence of any Norbert Refinancing Indebtedness, (d) the amendment of the Existing Credit Agreement pursuant to Amendment No. 2 thereto and (e) the payment of fees and expenses in connection with the foregoing.

“Notes” means, collectively, the Revolving Notes and the Swing Line Notes.

“Notice of Conversion/Continuation” has the meaning specified in Section 2.5(e).

“Notice of Revolving Credit Advance” has the meaning specified in Section 2.1(a)(i).

“NYFRB” means the Federal Reserve Bank of New York.

“NYFRB’s Website” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“Obligation Currency” has the meaning specified in Section 12.20.

“Obligations” means all loans, advances, debts, liabilities and obligations for the performance of covenants or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by any Credit Party to any Secured Party under any Loan Document, and all covenants and duties regarding such amounts, of any kind or nature, present or future, whether or not evidenced by any note, agreement, letter of credit agreement or other instrument, arising under this Agreement, any of the other Loan Documents, any Bank Product Documents or any Secured

Hedge Agreement (other than with respect to any Credit Party's obligations that constitute Excluded Swap Obligations solely with respect to such Credit Party). This term includes all principal, Letter of Credit Obligations, interest (including all interest that accrues after the commencement of any case or proceeding by or against any Credit Party in bankruptcy, whether or not allowed in such case or proceeding), Fees, Secured Hedging Obligations (other than with respect to any Credit Party's Secured Hedging Obligations that constitute Excluded Swap Obligations solely with respect to such Credit Party), expenses, attorneys' fees and any other sum chargeable to any Credit Party under this Agreement, any of the other Loan Documents, any Bank Product Documents or any Secured Hedge Agreements.

"OFAC" has the meaning specified in Section 4.23.

"Officer" means, with respect to any Person, the Chairman of the Board, Chief Executive Officer, Chief Financial Officer, President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of such Person.

"Officer's Certificate" means, with respect to any Person, a certificate signed on behalf of such Person by two Officers of such Person, one of whom must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of such Person, which meets the requirements set forth in this Agreement.

"Other Connection Taxes" means, with respect to a Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any other Loan Documents, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.14(d)).

"Overadvance" means, at any time, and without duplication, the sum of the U.S. Overadvance plus the Canadian Overadvance.

"Parent Borrower" has the meaning specified in the preamble to this Agreement.

"Participant Register" has the meaning specified in Section 11.1(c).

"Participating Member States" means each state so described in any EMU Legislation.

"Patents" has the meaning specified in the U.S. Security Agreement.

"Patriot Act" has the meaning specified in Section 4.24.

[“Payment” has the meaning specified in Section 10.8\(c\).](#)

[“Payment Notice” has the meaning specified in Section 10.8\(c\).](#)

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means a Plan described in Section 3(2) of ERISA.

“Permitted Discretion” means a reasonable determination made by Agent or any Co-Collateral Agent in good faith and in the exercise of reasonable commercial judgment (from the perspective of a secured asset-based revolving lender) and as it relates to the establishment of Reserves or the adjustment or imposition of exclusionary criteria shall require that, (x) such establishment, adjustment or imposition after the Amendment No. [36](#) Effective Date be based on (1) the analysis of facts or events relating to the Accounts, Inventory, Equipment, Rolling Stock or other components of the Borrowing Base first occurring or first discovered by Agent or any Co-Collateral Agent after the Amendment No. [36](#) Effective Date or that are materially different from facts or events occurring or known to Agent or such Co-Collateral Agent on the Amendment No. [36](#) Effective Date or (2) changes in applicable law after the Amendment No. [36](#) Effective Date which result in additional priority claims and liabilities being required to be satisfied in connection with the realization by the Agent upon the Borrowing Base Collateral, (y) the contributing factors to the imposition of any Reserve shall not duplicate any reserves deducted in computing book value and (z) the amount of any such Reserve so established or the effect of any adjustment or imposition of exclusionary criteria be a reasonable quantification of the incremental dilution of the Borrowing Base attributable to such contributing factors. If either Co-Collateral Agent exercises its Permitted Discretion, the other Co-Collateral Agent shall respond to such proposal within three Business Days, and the Co-Collateral Agent asserting the more conservative Permitted Discretion shall prevail.

“Permitted Holders” means Jacobs Private Equity, LLC and each of its Affiliates, Bradley Jacobs (“Jacobs”), any entity controlled by Jacobs, Jacobs’ wife, Jacobs’ children and other lineal descendants and trusts established for the benefit of any of the foregoing.

“Permitted Incremental FILO Loans” has the meaning specified in [Section 2.16\(a\)](#).

“Permitted Investments” means:

(1) any Investment in Parent Borrower or any Restricted Subsidiary; provided that (i) the aggregate amount of Investments by Credit Parties in Restricted Subsidiaries that are not Credit Parties in reliance on this Clause (1) shall not exceed (when combined with Investments made by Credit Parties in Subsidiaries that are not (or do not become in connection with such transaction) Credit Parties in reliance on Clauses (3), (21) and (22) of the definition of Permitted Investment) the greater of (x) \$320 million and (y) 20% of Consolidated EBITDA as of the date of such Investment and (ii) no Credit Party that is a Non-Con-way Subsidiary may make an Investment in a Con-way Subsidiary by transferring any Equity Interests or any Principal Property to such Con-way Subsidiary in reliance on this clause (1) if such Investment would cause such Equity Interests or Principal Property so invested to be Excluded Principal Property, unless Borrower agrees that such property will not constitute Excluded Principal Property;



(2) any Investment in Cash Equivalents or Investment Grade Securities;

(3) any Investment by Parent Borrower or any Restricted Subsidiary in a Person that is engaged in a Similar Business if as a result of such Investment (a) such Person becomes a Restricted Subsidiary, or (b) such Person, in one transaction or a series of related transactions, is merged, consolidated or amalgamated with or into, or transfers or conveys all or substantially all of its assets to, or is liquidated into, Parent Borrower or a Restricted Subsidiary; provided that (i) the aggregate amount of Investments by Credit Parties in Restricted Subsidiaries that are not Credit Parties (or do not merge into a Credit Party in connection with such transaction) in reliance on this Clause (3) shall not exceed (when combined with Investments made by Credit Parties in Subsidiaries that are not (or do not become in connection with such transaction) Credit Parties in reliance on Clauses (1), (21) and (22) of the definition of Permitted Investment) the greater of (x) \$320 million and (y) 20% of Consolidated EBITDA as of the date of such Investment and (ii) no Credit Party that is a Non-Con-way Subsidiary may make an Investment in a Con-way Subsidiary by transferring any Equity Interests or any Principal Property to such Con-way Subsidiary in reliance on this clause (3) if such Investment would cause such Equity Interests or Principal Property so invested to be Excluded Principal Property, unless Borrower agrees that such property will not constitute Excluded Principal Property;

(4) any Investment in securities or other assets not constituting Cash Equivalents and received in connection with any disposition of assets permitted by Section 7.4;

(5) any Investment existing on, or made pursuant to binding commitments existing on, the Amendment No. 36 Effective Date (including, for the avoidance of doubt, Investments of Con-way and any Restricted Subsidiary which is a Subsidiary thereof) or an Investment consisting of any extension, modification or renewal of any Investment existing on the Amendment No. 36 Effective Date; provided that the amount of any such Investment may be increased (x) as required by the terms of such Investment as in existence on the Amendment No. 36 Effective Date or (y) as otherwise permitted under this Agreement;

(6) loans and advances to officers, directors, employees or consultants of Parent Borrower or any of its Subsidiaries (i) in the ordinary course of business in an aggregate outstanding amount (valued at the time of the making thereof, and without giving effect to any write-downs or write-offs thereof) not to exceed \$100 million at the time of Incurrence, (ii) in respect of payroll payments and expenses in the ordinary course of business and (iii) in connection with such Person's purchase of Equity Interests of Parent Borrower or any direct or indirect parent of Parent Borrower solely to the extent that the amount of such loans and advances shall be contributed to Parent Borrower in cash as common equity;

(7) any Investment acquired by Parent Borrower or any Restricted Subsidiary (a) in exchange for any other Investment or accounts receivable held by Parent Borrower or such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts

receivable, or (b) as a result of a foreclosure by Parent Borrower or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default, or as a result of a Bail-In Action with respect to any contractual counterparty of Parent Borrower or any Restricted Subsidiary;

(8) Hedging Obligations permitted under Section 7.1(b)(x);

(9) [reserved];

(10) additional Investments by Parent Borrower or any Restricted Subsidiary having an aggregate Fair Market Value (as determined in good faith by Parent Borrower), taken together with all other Investments made pursuant to this clause (10) that are at that time outstanding, not to exceed the ~~sum of the~~ greater of \$~~160~~160820 million and ~~10~~1060% of Consolidated EBITDA as of the date of such Investment; provided, however, that if any Investment pursuant to this clause (10) is made in any Person that is not a Credit Party at the date of the making of such Investment and such Person becomes a Credit Party after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (10) for so long as such Person continues to be a Credit Party;

(11) loans and advances to officers, directors or employees for business-related travel expenses, moving expenses and other similar expenses, in each case Incurred in the ordinary course of business or consistent with past practice or to fund such Person's purchase of Equity Interests of Parent Borrower or any direct or indirect parent of Parent Borrower;

(12) Investments the payment for which consists of Equity Interests of Parent Borrower (other than Disqualified Capital Stock) or any direct or indirect parent of Parent Borrower, as applicable; provided, however, that such Equity Interests will not increase the amount available for Restricted Payments under 7.2(b)(viii);

(13) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 7.5(b) (except transactions described in clauses (ii), (iv), (vi), (viii)(B) and (xv) of Section 7.5(b));

(14) guarantees issued in accordance with Section 7.1 and Section 6.12 including, without limitation, any guarantee or other obligation issued or incurred under this Agreement, the Term Loan Credit Agreement or the Bilateral Credit Agreement (or any credit facility or facilities which amend, restate, refinance, replace, increase or otherwise modify this Agreement, the Term Loan Credit Agreement or the Bilateral Credit Agreement) in connection with any letter of credit issued for the account of Parent Borrower or any of its Subsidiaries (including with respect to the issuance of, or payments in respect of drawings under, such letters of credit);

(15) Investments consisting of or to finance purchases and acquisitions of inventory, supplies, materials, services or equipment or purchases of contract rights or licenses or leases of intellectual property;

(16) (A) any Investment by a Subsidiary that is not a Credit Party in a Securitization Subsidiary or any Investment by a Securitization Subsidiary in any other Person in connection with a Qualified Securitization Financing, including Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Securitization Financing or any related Indebtedness, and (B) any Investment in a Securitization Subsidiary or any Investment by a Securitization Subsidiary in any other Person in connection with a Qualified Securitization Financing, including Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Securitization Financing or any related Indebtedness; provided that the aggregate amount of outstanding Investments made pursuant to this clause (16)(B), taken together with all outstanding Investments made pursuant to clause (17)(B), shall not exceed \$100,000,000 at the time of such Investment;

(17) (A) any Investment by a Subsidiary that is not a Credit Party in an entity which is not a Restricted Subsidiary to which a Restricted Subsidiary sells Securitization Assets pursuant to a Securitization Financing, and (B) any Investment in an entity which is not a Restricted Subsidiary to which a Restricted Subsidiary sells Securitization Assets pursuant to a Securitization Financing; provided that the aggregate amount of outstanding Investments made pursuant to this clause (17)(B), taken together with all outstanding Investments made pursuant to clause (16)(B), shall not exceed \$100,000,000 at the time of such Investment;

(18) Investments of a Restricted Subsidiary acquired after the Amendment No. 36 Effective Date or of an entity merged into, amalgamated with, or consolidated with Parent Borrower or a Restricted Subsidiary in a transaction that is not prohibited by Section 7.8 after the Amendment No. 36 Effective Date to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(19) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers;

(20) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of Parent Borrower or the Restricted Subsidiaries;

(21) Investments in joint ventures or Unrestricted Subsidiaries having an aggregate Fair Market Value (as determined in good faith by Parent Borrower), taken together with all other Investments made pursuant to this clause (21) that are at that time outstanding, not to exceed the sum of (x) the greater of (A) \$160 million and (B) 10% of Consolidated EBITDA in the aggregate as of the date of such Investment, *plus* (y) an amount equal to any returns (including dividends, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) actually received in respect of any such Investment (with the Fair Market Value each Investment being

measured at the time made and without giving effect to subsequent changes in value); provided that the aggregate amount of Investments made in reliance on this Clause (21) shall not exceed (when combined with Investments made by Credit Parties in Subsidiaries that are not (or do not become in connection with such transaction) Credit Parties in reliance on Clauses (1), (3) and (22) of the definition of Permitted Investment) the greater of (x) \$320 million and (y) 20% of Consolidated EBITDA as of the date of such Investment; provided, however, that if any Investment pursuant to this clause (21) is made in any Person that is not a Credit Party at the date of the making of such Investment and such Person becomes a Credit Party after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (21) for so long as such Person continues to be a Credit Party;

(22) any Investment in any Subsidiary of Parent Borrower or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business; provided that the aggregate amount of Investments made by Credit Parties in Subsidiaries or joint ventures that are not Credit Parties in reliance on this Clause (22) shall not exceed (when combined with Investments made by Credit Parties in Subsidiaries that are not (or do not become in connection with such transaction) Credit Parties in reliance on Clauses (1), (3) and (21) of the definition of Permitted Investment) the greater of (x) \$320 million and (y) 20% of Consolidated EBITDA as of the date of such Investment; provided, however, that if any Investment pursuant to this clause (22) is made in any Person that is not a Credit Party at the date of the making of such Investment and such Person becomes a Credit Party after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (22) for so long as such Person continues to be a Credit Party;

(23) Guaranteed Obligations of any Credit Party or any Restricted Subsidiary of leases or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business;

(24) subject to Pro Forma Compliance with the Restricted Conditions, any other Investments; ~~and~~

(25) loans and advances to independent contractors, owner-operators, drivers and carriers in an amount not to exceed \$25 million at any time; ~~and~~

(26) Investments pursuant to the Spin Transactions.

“Permitted Liens” means, with respect to any Person:

(1) pledges, bonds or deposits and other Liens granted by such Person under workmen’s compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to

secure surety or appeal bonds, performance and return of money bonds, or deposits as security for contested Taxes or import duties or for the payment of rent, in each case Incurred in the ordinary course of business;

(2) Liens imposed by law, such as landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens securing obligations that are not overdue by more than 30 days or that are being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review;

(3) Liens for Taxes, assessments or other governmental charges not yet overdue by more than 30 days, or that are being contested in good faith by appropriate proceedings;

(4) Liens in favor of issuers of performance and surety bonds or bid bonds or with respect to other regulatory requirements or letters of credit, bankers' acceptances or similar obligations issued pursuant to the request of and for the account of such Person in the ordinary course of its business;

(5) minor survey exceptions, minor encumbrances, trackage rights, special assessments, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, servicing agreements, development agreements, site plan agreements and other similar encumbrances incurred in the ordinary course of business or zoning or other restrictions as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not Incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(6) (A) Liens on assets of a Subsidiary that is not a Credit Party securing Indebtedness of a Subsidiary that is not a Credit Party permitted to be Incurred pursuant to Section 7.1;

(B) Liens securing any Indebtedness permitted to be Incurred by this Agreement if, as of the date such Indebtedness was Incurred, and after giving *pro forma* effect thereto and the application of the net proceeds therefrom (but without netting the proceeds thereof), the Consolidated Secured Net Leverage Ratio of Parent Borrower does not exceed 3.00 to 1.00; provided that

(I) (x) any Lien on the ABL Priority Collateral or the Canadian Collateral in reliance on this clause (6)(B) shall be junior to the Liens on the ABL Priority Collateral or the Canadian Collateral, as applicable, securing the Obligations pursuant to the ABL Intercreditor Agreement and/or a junior lien intercreditor agreement or collateral trust agreement reasonably satisfactory to Agent reflecting the junior-lien status of the Liens securing such Indebtedness as it relates to the

ABL Priority Collateral and Canadian Collateral and (y) any Lien on the Term Priority Collateral in reliance on this clause 6(B) may be senior to, *pari passu* with or junior to the Liens on the Term Priority Collateral securing the Obligations pursuant to the ABL Intercreditor Agreement as it relates to the Term Loan Priority Collateral; provided that, any such Lien is an “Additional Term Loan Debt Lien” securing “Additional Term Loan Debt” under the terms of, and subject to, the ABL Intercreditor Agreement,

(II) the Indebtedness secured by such Liens shall not be secured by any property or assets of Parent Borrower or any Restricted Subsidiary other than Collateral, and

(III) none of the obligors or guarantors with respect to such Indebtedness shall be a Person that is not a Credit Party;

(C) Liens securing obligations in respect of Indebtedness permitted to be Incurred pursuant to clause (iv) or (xiv) (to the extent such guarantees are issued in respect of any Indebtedness) of Section 7.1(b); provided that, in the case of clause (xiv), any Lien on the ABL Priority Collateral or the Canadian Collateral in reliance on this clause (6)(C) shall be junior to the Liens on the ABL Priority Collateral and the Canadian Collateral securing the Obligations pursuant to the ABL Intercreditor Agreement and/or a junior lien intercreditor agreement or collateral trust agreement reasonably satisfactory to Agent reflecting the junior-lien status of the Liens securing such Indebtedness as it relates to ABL Priority Collateral and Canadian Collateral;

(D) Liens securing obligations in respect of Indebtedness permitted to be Incurred pursuant to clause (i) or (ii) of Section 7.1(b); and

(E) Liens created pursuant to the Collateral Documents or otherwise securing the Obligations;

(7) Liens existing on the Amendment No. 36 Effective Date (including, for the avoidance of doubt, Liens on assets of Con-way and any Restricted Subsidiary which is a Subsidiary thereof but excluding Liens in favor of the lenders under the Term Credit Agreement or the Bilateral Credit Agreement);

(8) Liens on assets, property or shares of stock of a Person at the time such Person becomes a Subsidiary; provided, however, that such Liens are not created or Incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; provided, further, however, that such Liens may not extend to any other property owned by Parent Borrower or any Restricted Subsidiary (other than pursuant to after-acquired property clauses in effect with respect to such Lien at the time of acquisition on property of the type that would have been subject to such Lien notwithstanding the occurrence of such acquisition);

(9) Liens on assets or property at the time Parent Borrower or a Restricted Subsidiary acquired the assets or property, including any acquisition by means of a merger, amalgamation or consolidation with or into Parent Borrower or any Restricted

Subsidiary; provided, however, that such Liens are not created or Incurred in connection with, or in contemplation of, such acquisition; provided, further, however, that the Liens may not extend to any other property owned by Parent Borrower or any Restricted Subsidiary (other than pursuant to after-acquired property clauses in effect with respect to such Lien at the time of acquisition on property of the type that would have been subject to such Lien notwithstanding the occurrence of such acquisition);

(10) [Reserved];

(11) Liens securing Hedging Obligations (and, for the avoidance of doubt, Swap Obligations) not incurred in violation of this Agreement;

(12) Liens on inventory or other goods and proceeds of any Person securing such Person's obligations in respect of documentary letters of credit, bank guarantees or bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(13) leases, subleases, licenses and sublicenses of real property which do not materially interfere with the ordinary conduct of the business of Parent Borrower or any of the Restricted Subsidiaries;

(14) Liens arising from Uniform Commercial Code financing statement filings (or equivalent filings including under the PPSA) regarding operating leases or other obligations not constituting Indebtedness;

(15) Liens in favor of Parent Borrower or any Credit Party;

(16) Liens on assets of the type specified in the definition of "Securitization Financing" Incurred in connection with a Qualified Securitization Financing;

(17) pledges and deposits and other Liens made in the ordinary course of business to secure liability to insurance carriers;

(18) Liens on the Equity Interests of Unrestricted Subsidiaries;

(19) leases or subleases, and licenses or sublicenses (including with respect to intellectual property) granted to others in the ordinary course of business, and Liens on real property which is not owned but is leased or subleased by Parent Borrower or any Restricted Subsidiary;

(20) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in clauses (6), (7), (8), (9), (11), (15)~~and~~, (25) and (38) of this definition; provided, however, that (x) such new Lien shall be limited to all or part of the same property (including any after acquired property to the extent it would have been subject to the original Lien) that secured the original Lien (plus improvements on and accessions to such property, proceeds and products thereof, customary security deposits and any other

assets pursuant to the after-acquired property clauses to the extent such assets secured (or would have secured) the Indebtedness being refinanced, refunded, extended, renewed or replaced), and (y) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount (or accreted value, if applicable) or, if greater, committed amount of the applicable Indebtedness described under clauses (6), (7), (8), (9), ~~(10), (11)~~, (15) ~~and~~, (25) and (38) at the time the original Lien became a Permitted Lien under this Agreement, (B) unpaid accrued interest and premiums (including tender premiums), and (C) an amount necessary to pay any underwriting discounts, defeasance costs, commissions, fees and expenses related to such refinancing, refunding, extension, renewal or replacement; provided, further, however, that (X) in the case of any Liens to secure any refinancing, refunding, extension or renewal of Indebtedness secured by a Lien referred to in clause (6)(B), (6)(C) or (25), the principal amount of any Indebtedness Incurred for such refinancing, refunding, extension or renewal shall be deemed secured by a Lien under clause (6)(B), (6)(C) or (25) and not this clause (20) for purposes of determining the principal amount of Indebtedness outstanding under clause (6)(B) or (6)(C) or (25) and (Y) in the case of Liens to secure any refinancing, refunding, extension or renewal of Indebtedness secured by a Lien referred to in clause (6)(B), (8), (9), (15) or (25), such new Lien shall have priority equal to or more junior than the Lien securing such refinanced, refunded, extended or renewed Indebtedness;

(21) except to the extent the applicable equipment constitutes Borrowing Base Collateral, Liens on equipment of Parent Borrower or any Restricted Subsidiary granted in the ordinary course of business to Parent Borrower's or such Restricted Subsidiary's client at which such equipment is located;

(22) judgment and attachment Liens not giving rise to an Event of Default and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(23) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale or purchase of goods entered into in the ordinary course of business;

(24) Liens incurred to secure cash management services or to implement cash pooling arrangements in the ordinary course of business;

(25) other Liens securing obligations the outstanding principal amount of which does not, taken together with the principal amount of all other obligations secured by Liens incurred under this clause (25) that are at that time outstanding, exceed the greater of \$480 million and 30% of Consolidated EBITDA at the time of incurrence, provided that (x) any Lien on the Term Priority Collateral in reliance on this clause (25)(x) may be senior to, *pari passu* with or junior to the Liens on the Term Priority Collateral securing the Obligations pursuant to the ABL Intercreditor Agreement as it relates to the Term Loan Priority Collateral (provided that, any such Lien is an "Additional Term Loan Debt Lien" securing "Additional Term Loan Debt" under the terms of, and subject to, the ABL Intercreditor Agreement), except to the extent such



Liens secure any Capitalized Lease Obligation or any purchase money Indebtedness, in which case such Liens may be prior to the Liens securing the Obligations, but only as to the applicable assets securing the Capitalized Lease Obligation or purchase money Indebtedness and (y) any Lien on the ABL Priority Collateral and the Canadian Collateral in reliance on this clause (25) shall be junior to the Liens on the ABL Priority Collateral or the Canadian Collateral securing the Obligations pursuant to the ABL Intercreditor Agreement and/or a junior lien intercreditor agreement or collateral trust agreement reasonably satisfactory to Agent reflecting the junior-lien status securing such Indebtedness as it relates to the ABL Priority Collateral and Canadian Collateral.

(26) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any joint venture or similar arrangement securing obligations of such joint venture or pursuant to any joint venture or similar agreement;

(27) any amounts held by a trustee in the funds and accounts under any indenture issued in escrow pursuant to customary escrow arrangements pending the release thereof, or under any indenture pursuant to customary discharge, redemption or defeasance provisions;

(28) Liens (i) arising by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depository or financial institution, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business or (iii) encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(29) Liens (i) in favor of credit card companies pursuant to agreements therewith and (ii) in favor of customers;

(30) Liens disclosed by the title commitments or title insurance policies delivered pursuant to this Agreement [or the Bilateral Credit Agreement](#) and any replacement, extension or renewal of any such Lien; provided that such replacement, extension or renewal Lien shall not cover any property other than the property that was subject to such Lien prior to such replacement, extension or renewal; provided, further, that the Indebtedness and other obligations secured by such replacement, extension or renewal Lien are permitted under this Agreement;

(31) Liens that are contractual rights of set-off relating to purchase orders and other agreements entered into with customers, suppliers or service providers of Parent Borrower or any Restricted Subsidiary in the ordinary course of business;

(32) in the case of real property that constitutes a leasehold or subleasehold interest, (x) any Lien to which the fee simple interest (or any superior leasehold interest) is [subject](#) or may become subject and any subordination of such leasehold or subleasehold interest to any such Lien in accordance with the terms and provisions of the

applicable leasehold or subleasehold documents, and (y) any right of first refusal, right of first negotiation or right of first offer which is granted to the lessor or sublessor;

(33) agreements to subordinate any interest of Parent Borrower or any Restricted Subsidiary in any accounts receivable or other prices arising from inventory consigned by Parent Borrower or any such Restricted Subsidiary pursuant to an agreement entered into in the ordinary course of business;

(34) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (4) of the definition thereof;

(35) ~~Reserved~~ [Liens created pursuant to or arising in connection with the consummation of the Spin Transactions](#);

(36) Liens securing insurance premium financing arrangements; provided that such Liens are limited to the applicable unearned insurance premiums;

(37) Liens granted in the ordinary course of business consistent with past practice to lessors of Railcars, Chassis, trucks, trailers or tractors, leased by Parent Borrower or any Restricted Subsidiary thereof pursuant to arrangements which are intended to be true leases;

(38) ~~Reserved~~ [Liens securing the Bilateral Credit Facility](#);

(39) if and for so long as any Capital Stock of Con-way constitutes “margin stock” within the meaning of Regulation U, Liens on such Capital Stock to the extent the value of such Capital Stock, together with the value of all other margin stock held by Parent Borrower and its Subsidiaries, exceeds 25% of the total value of all their assets subject to [Section 7.7](#); and

(40) Liens arising from the cash-collateralization of letters of credit and other obligations of Con-way and its Subsidiaries, in each case to the extent such letters of credit or other obligations are in existence on the Amendment No. [36](#) Effective Date.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“Plan” means, at any time, an “employee benefit plan”, as defined in Section 3(3) of ERISA (other than a Multiemployer Plan), that any Credit Party or ERISA Affiliate maintains, contributes to or has an obligation to contribute to or has maintained, contributed to or had an obligation to contribute to at any time within the past seven (7) years on behalf of participants who are or were employed by any Credit Party or ERISA Affiliate.

“Pounds Sterling” and “£” means the lawful currency of the United Kingdom.

“PPSA” means the Personal Property Security Act (Ontario) (or any successor statute) or similar legislation (including the Civil Code of Quebec) of any other Canadian jurisdiction the

laws of which are required by such legislation to be applied in connection with the issue, perfection, effect of perfection, enforcement, enforceability, opposability, validity or effect of security interests or other applicable lien.

“Preferred Stock” means any Equity Interest with preferential right of payment of dividends or upon liquidation, dissolution, or winding up.

“Prime Rate” has the meaning specified in the definition of “Base Rate.”

“Principal Property” means any “Principal Property” (as defined in the Existing Con-way Indenture) owned by Con-way or any of its Restricted Subsidiaries (as defined in the Existing Con-way Indenture).

“Pro Forma Compliance” means, with respect to any determination for any period and any transaction, that such determination shall be made by giving pro forma effect to each such transaction, as if each such transaction had been consummated on the first day of such period, based on, in the case of determinations made in reliance on pro-forma financial statement calculations only, historical results accounted for in accordance with GAAP and, to the extent applicable, reasonable assumptions that are specified in detail in the relevant compliance certificate, financial statement or other document provided to Agent or any Lender in connection herewith (which shall be prepared by Parent Borrower in good faith (subject to the approval of Agent, not to be unreasonably withheld)) and for such purposes historical financial statements shall be recalculated as if such transaction had been consummated at the beginning of the applicable period, and any Indebtedness or other liabilities to be incurred, assumed or repaid had been incurred, assumed or repaid at the beginning of such period (and assuming that such Indebtedness to be incurred bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the weighted average of the interest rates applicable to such Indebtedness incurred during such period) and, to the extent pro forma financial statements are required to be prepared by Parent Borrower under Regulation S-X of the Securities Act of 1933 (“Reg. S-X”) reflecting such transaction for any period, all pro forma calculations made hereunder with respect to such transaction and for such period shall be in conformity with Reg. S-X at all times after such pro-forma financial statements reflecting such transactions are required to be filed by Parent Borrower under Reg. S-X.

“Pro Rata Extension Offers” has the meaning specified in Section 2.16(c).

“Pro Rata Share” means with respect to all matters relating to any Lender, (i) with respect to the Revolving Loans, the percentage obtained by dividing (A) the Commitment of that Lender by (B) the aggregate Commitments of all Lenders, as any such percentages may be adjusted by increases or decreases in Commitments pursuant to the terms and conditions hereof or by assignments permitted pursuant to Section 11.1, (ii) with respect to all Loans, the percentage obtained by dividing (A) the aggregate Commitments of that Lender by (B) the aggregate Commitments of all Lenders, and (iii) with respect to all Loans on and after the Commitment Termination Date, the percentage obtained by dividing (A) the aggregate outstanding principal balance of the Loans held by that Lender, by (B) the outstanding principal balance of the Loans held by all Lenders. For purposes of Canadian Loans and Canadian Letter of Credit Obligations,

each use of the term “Commitment” above shall be deemed to refer to the Canadian Commitments.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lender” has the meaning specified in Section 10.13(a).

“QFC” has the meaning specified in Section 13.13(b).

“QFC Credit Support” has the meaning specified in Section 13.13.

“Qualified Capital Stock” means any Capital Stock other than Disqualified Capital Stock.

“Qualified Plan” means a Pension Plan that is intended to be tax-qualified under Section 401(a) of the IRC.

“Qualified Securitization Financing” means any Securitization Financing that meets the following conditions:

(1) the Parent Borrower shall have determined in good faith that such Qualified Securitization Financing (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to Parent Borrower or the applicable Subsidiary, as the case may be;

(2) all sales of Securitization Assets and related assets by Parent Borrower or the applicable Subsidiary (other than a Securitization Subsidiary) either to the applicable Securitization Subsidiary or directly to the applicable third-party financing providers (as the case may be) are made at Fair Market Value (as determined in good faith by Parent Borrower); and

(3) the financing terms, covenants, termination events and other provisions thereof shall be market terms (as determined in good faith by Parent Borrower) and may include Standard Securitization Undertakings.

For the avoidance of doubt, Indebtedness under the Term Credit Agreement, Indebtedness under the Bilateral Credit Agreement, Indebtedness in respect of the ~~2022 Notes~~, 2023 Notes, 2024 Notes, 2025 Notes, Indebtedness hereunder or any Refinancing Indebtedness with respect to the foregoing (in each case, to the extent not constituting a Securitization Financing) shall not be deemed a Qualified Securitization Financing.

“Quarterly Average Availability Percentage” means, at any time, the Average Availability Percentage for the three (3) most recently ended months or the most recently ended Fiscal Quarter, for which a Borrowing Base Certificate was delivered.

“Quarterly Average Unused Revolving Facility Balance” means, at any time, the Average Unused Revolving Facility Balance for the three (3) most recently ended months or the most recently ended Fiscal Quarter for which a Borrowing Base Certificate was delivered.

“Railcar Receivables” means an Account owing to a U.S. Borrower that arises in the ordinary course of business under or in connection with agreements associated with car hire settlements managed by the Railroad Clearinghouse, an entity of the AAR, or any successor thereto.

“Railcars” means the railroad cars, locomotives or other rolling stock (including stacktrain), or accessories used on such railroad cars, locomotives or other rolling stock (including superstructures and racks) owned by Parent Borrower or any Restricted Subsidiary and employed in the conduct of such Person’s business.

“Ratio Liens Indebtedness” means any Indebtedness secured by a Lien in reliance on clause 6(B) of the definition of “Permitted Liens” that matures before the Stated Termination Date.

“Real Property” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee or leased by any Credit Party, whether by lease, license, or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“Recipient” means (a) Agent and (b) any Lender, as applicable.

“Reference Time” with respect to any setting of the then-current Benchmark means 11:00 A.M. (London time) on the day that is two London banking days preceding the date of such setting.

“Refinancing Indebtedness” has the meaning specified in Section 7.1.

“Refinancing Transactions” means (A) the issuance and sale of the 2023 Notes, (B) the ~~incurrence of indebtedness on or prior to the Amendment No. 3 Effective Date pursuant to the Term Credit Agreement and/or the repricing, refinancing, amendment, restatement or supplement, in whole or in part, of the Term Credit Agreement, (C) the redemption (including any satisfaction and discharge in connection therewith) of all of Parent Borrower’s then outstanding 7.875% Senior Notes due 2019 and 5.75% Senior Notes due 2021, (D) the~~ issuance and sale of the 2024 Notes and the entry into, incurrence of indebtedness pursuant to and prepayment of all amounts outstanding under the Bridge Credit Agreement, ~~(E) the issuance and sale of the 2025 Notes, (D) the~~ entry into and incurrence of indebtedness pursuant to this Agreement and any repricing, refinancing, amendment, restatement or supplement, in whole or in part, of this Agreement, including Amendment No. ~~3 and (F), (E) the~~ entry into and incurrence of indebtedness pursuant to the Term Credit Agreement and/or any repricing, refinancing, amendment, restatement or supplement, in whole or in part, of the Term Credit Agreement, (E) the redemption (including any satisfaction and discharge in connection therewith) of all of the Parent Borrower’s then outstanding 7.875% Senior Notes due 2019, 5.75% Senior Notes due 2021 and 6.50% Senior Notes due 2022 and (G) the payment of fees and expenses in connection with the foregoing.

“Refunded Swing Line Loan” has the meaning specified in Section 2.1(b)(iii).

“Refunding Capital Stock” has the meaning specified in Section 7.2.

“Register” has the meaning specified in Section 11.1(a)(i).

“Regulation U” has the meaning specified in Section 4.10.

“Related Persons” means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates.

“Relationship Bank” has the meaning specified in Annex A.

“Release” means any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material in the environment, including the migration of Hazardous Material through or in the air, soil, surface water, ground water or property.

“Relevant Governmental Body” means the Federal Reserve Board or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board or the NYFRB, or any successor thereto.

“Rent Reserve” means, with respect to any store, warehouse distribution center, regional distribution center or depot where any Eligible Equipment subject to Liens arising by operation of law is located (other than any Eligible Equipment with respect to which Agent has determined that such Liens have been waived or subordinated to Agent’s reasonable satisfaction pursuant to a landlord waiver, bailee letter or comparable agreement), a rent reserve not in excess of three (3) months’ rent (or for such longer time period that is determined by Agent in its Permitted Discretion as reasonably necessary to protect and/or realize upon the Collateral located at any) at such store, warehouse distribution center, regional distribution center or depot.

“Replacement Lender” has the meaning specified in Section 2.14(d).

“Requisite Lenders” means Lenders having (a) more than 50% of the Commitments of all Lenders, or (b) if the Commitments have been terminated, more than 50% of the aggregate outstanding amount of the Loans, in each case, excluding Non-Funding Lenders.

“Reserves” means reserves against the Borrowing Base, including, without limitation, the Dilution Reserve, the Discretionary FILO Dilution Reserve, if applicable, the Rent Reserve, the Canadian Priority Payables Reserve and such additional other reserves as Co-Collateral Agents may establish from time to time in their Permitted Discretion as provided in Section 2.18 hereof, including related to any material downward trend in monthly Railcar Receivables (if included in the Borrowing Base at the time).

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Restatement Date” means October 30, 2015.

“Restricted Cash” means cash and Cash Equivalents held by Parent Borrower and the Restricted Subsidiaries that would appear as “restricted” on a consolidated balance sheet of Parent Borrower or any of the Restricted Subsidiaries.

“Restricted Conditions” means (a) there is no Default or Event of Default existing immediately before or after such transaction, (b) (i) the 30 Day Availability immediately preceding the proposed transaction and (ii) Availability on the date of the proposed transaction (in each case, calculated on a pro forma basis for such transaction and/or any Advance) is equal to or greater than the greater of (x) 10.0% of Available Credit and (y) ~~\$75,000,000~~ 70,000,000, (c) the Fixed Charge Coverage Ratio is at least 1.00 to 1.00 determined as of the end of the most recent Fiscal Quarter for which financial statements were required to have been delivered to Agent for the twelve-month period then ended; provided that, if each of 30 Day Availability and Availability on the date of the proposed transaction (in each case, calculated on a pro forma basis for such transaction and/or any Advance) is greater than the greater of (x) 15.0% of Available Credit and (y) ~~\$95,000,000~~ 90,000,000 at such time, clause (c) shall not apply and (d) for transactions which are consummated in reliance on the Restricted Conditions in an amount in excess of \$100,000,000 only, Parent Borrower shall have delivered a customary Officer’s Certificate to Agent certifying as to compliance with the requirements of clauses (a) through (c) (if applicable).

“Restricted Investment” means an Investment other than a Permitted Investment.

“Restricted Payments” has the meaning specified in Section 7.2.

“Restricted Subsidiary” means, with respect to any Person, any Subsidiary of such Person other than an Unrestricted Subsidiary of such Person. Unless the context otherwise requires, the term “Restricted Subsidiary” shall mean a Restricted Subsidiary of Parent Borrower. Each Credit Party shall constitute a Restricted Subsidiary.

“Retired Capital Stock” has the meaning specified in Section 7.2(b)(ii)(A).

“Retiree Welfare Plan” means, at any time, a welfare plan (within the meaning of Section 3(1) of ERISA) that provides for continuing coverage or benefits for any participant or any beneficiary of a participant after such participant’s termination of employment, other than continuation coverage provided pursuant to Section 4980B of the IRC or other similar state law and at the sole expense of the participant or the beneficiary of the participant.

“Revaluation Date” means (a) with respect to any Loan made to a Canadian Borrower, each of the following: (i) each date of an Advance to a Canadian Borrower and (ii) each date of a continuation of a Loan made to a Canadian Borrower and (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit for or on behalf of a Canadian Borrower or for or on behalf of a U.S. Borrower if such Letter of Credit is denominated in an Alternative Currency, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof and (iii) the latest to occur of (1) each date of any payment by any L/C Issuer under any Letter of Credit denominated in Canadian Dollars or an Alternative Currency, (2) each date of reimbursement payment made by a

Borrower to any L/C Issuer under any Letter of Credit denominated in Canadian Dollars or an Alternative Currency, or (3) payment over to any L/C Issuer under any Letter of Credit denominated in Canadian Dollars or an Alternative Currency by a Lender of its Pro Rata Share of a participation interest or a Revolving Loan advanced as reimbursement.

“Revolving Credit Advance” has the meaning specified in Section 2.1(a)(i).

“Revolving Loan” means, at any time, the sum of (a) the aggregate amount of Revolving Credit Advances outstanding to Borrowers plus (b) the aggregate Letter of Credit Obligations incurred on behalf of Borrowers. Unless the context otherwise requires, references to the outstanding principal balance of the Revolving Loan shall include the outstanding balance of Letter of Credit Obligations.

“Revolving Note” and “Revolving Notes” have the meaning specified in Section 2.1(a)(ii).

“Rolling Stock” means all Railcars, Chassis, trucks, trailers, tractors, wherever located, except for automobiles used by the Credit Parties’ employees.

“Rolling Stock Collateral” means all Rolling Stock constituting Collateral that is included in the U.S. Borrowing Base.

“S&P” means Standard & Poor’s Ratings Group or any successor to the rating agency business thereof.

“Sale/Leaseback Transaction” means an arrangement relating to property now owned or hereafter acquired by Parent Borrower or a Restricted Subsidiary whereby Parent Borrower or such Restricted Subsidiary transfers such property to a Person and Parent Borrower or such Restricted Subsidiary leases it from such Person, other than leases between any of Parent Borrower and a Restricted Subsidiary or between Restricted Subsidiaries.

“Scheduled Unavailability Date” has the meaning specified in Section 2.15.

“Schedules” means the Schedules prepared by Borrowers and attached to this Agreement.

“SEC” means the United States Securities and Exchange Commission.

“Secured Hedge Agreement” means any Swap Contract by and between any Credit Party and any Hedge Bank.

“Secured Hedging Obligations” means the obligations of any Credit Party arising under any Secured Hedge Agreement.

“Secured Indebtedness” means any Consolidated Total Indebtedness secured by a Lien.

“Secured Parties” means, collectively, with respect to the Obligations, Agent, Co-Collateral Agents, the Lenders, the L/C Issuers, the Swing Line Lender, any Lender or Agent (or



any Affiliate of a Lender or Agent) that is a party to the Bank Product Documents and any Lender, Agent or any Hedge Bank that is a party to a Secured Hedge Agreement.

“Securitization Assets” means any of the following assets (or interests therein) from time to time originated, acquired or otherwise owned by Parent Borrower or any Restricted Subsidiary or in which Parent Borrower or any Restricted Subsidiary has any rights or interests, in each case, without regard to where such assets or interests are located: (1) receivables, payment obligations, installment contracts, and similar rights, whether currently existing or arising or estimated to arise in the future, and whether in the form of accounts, chattel paper, general intangibles, instruments or otherwise (including any drafts, bills of exchange or similar notes and instruments), (2) royalty and other similar payments made related to the use of trade names and other intellectual property, business support, training and other services, including, without limitation, licensing fees, lease payments and similar revenue streams, (3) revenues related to distribution and merchandising of the products of Parent Borrower and its Restricted Subsidiaries, (4) intellectual property rights relating to the generation of any of the foregoing types of assets, (5) parcels of or interests in real property, together with all easements, hereditaments and appurtenances thereto, all improvements and appurtenant fixtures and equipment, incidental to the ownership, lease or operation thereof, and (6) any other assets and property to the extent customarily included in securitization transactions or factoring transactions of the relevant type in the applicable jurisdictions (as determined by Parent Borrower in good faith).

“Securitization Fees” means distributions or payments made directly or by means of discounts with respect to any participation interests issued or sold in connection with, and all other fees paid to a Person that is not a Restricted Subsidiary in connection with, any Securitization Financing.

“Securitization Financing” means any transaction or series of transactions that may be entered into by Parent Borrower or any of its Subsidiaries pursuant to which Parent Borrower or any of its Subsidiaries may sell, assign, convey or otherwise transfer (including, for the avoidance of doubt, any conveyance or transfer effected by means of declaration of a trust over the relevant assets) to any other Person, or may grant a security interest in, any Securitization Assets (whether now existing or arising in the future) of Parent Borrower or any of its Subsidiaries, and any assets related thereto including, without limitation, all collateral securing such Securitization Assets, all contracts and all guarantees or other obligations in respect of such Securitization Assets, proceeds of such Securitization Assets and other assets which are customarily sold, assigned, conveyed, or transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions or factoring transactions involving Securitization Assets and any Hedging Obligations entered into by Parent Borrower or any such Subsidiary in connection with such Securitization Assets.

“Securitization Repurchase Obligation” means any obligation of a seller of Securitization Assets in a Qualified Securitization Financing to repurchase Securitization Assets arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a Securitization Asset or portion thereof becoming subject to any asserted defense, dispute, dilution, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

“Securitization Subsidiary” means a Wholly Owned Restricted Subsidiary (or another Person formed for the purposes of engaging in a Qualified Securitization Financing with Parent Borrower or any of its Subsidiaries in which Parent Borrower or any of its Subsidiaries makes an Investment and Parent Borrower or any of its Subsidiaries transfers Securitization Assets and related assets) which engages in no activities other than in connection with the financing of Securitization Assets of one or more Subsidiaries that are not Credit Parties, all proceeds thereof and all rights (contractual or other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Parent Borrower as a Securitization Subsidiary and:

(a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by Parent Borrower or any other Restricted Subsidiary (excluding guarantees of obligations (other than the principal of and interest on, Indebtedness) pursuant to Standard Securitization Undertakings), (ii) is recourse to or obligates Parent Borrower or any other Restricted Subsidiary in any way other than pursuant to Standard Securitization Undertakings, or (iii) subjects any property or asset of Parent Borrower or any other Restricted Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;

(b) with which neither Parent Borrower nor any Restricted Subsidiary has any material contract, agreement, arrangement or understanding other than on terms which Parent Borrower reasonably believes to be no less favorable to Parent Borrower or such Restricted Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of Parent Borrower (other than pursuant to Standard Securitization Undertakings); and

(c) to which neither Parent Borrower nor any Restricted Subsidiary has any obligation to maintain or preserve such entity’s financial condition or cause such entity to achieve certain levels of operating results (other than pursuant to Standard Securitization Undertakings).

“Senior Representative” means, with respect to any Indebtedness, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“Separation” means each of the Contribution, the Distribution and each of the other transactions ancillary to the foregoing, including but not limited to any distributions or other transfers of cash and/or other property or liabilities by GXO Logistics or its Subsidiaries to Parent Borrower or its Subsidiaries in connection with the Contribution and, as and to the extent determined by the Parent Borrower to be necessary or desirable in connection with the foregoing, the assumption by GXO Logistics or any of its Subsidiaries of any liabilities of Parent Borrower.

“Separation Effective Date” has the meaning specified in Amendment No. 6.

“Settlement Date” has the meaning specified in Section 10.8(a)(ii).

“Significant Subsidiary” means any Restricted Subsidiary that would be a “Significant Subsidiary” within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC (or any successor provisions).

“Similar Business” has the meaning specified in Section 7.6.

“Singapore Dollars” means the lawful currency of Singapore.

“SOFR” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“SOFR Administrator” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the NYFRB’s Website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“Solvent” means, with respect to any Person organized under the laws of the United States or any state thereof, on a particular date, that on such date (a) the fair value of the assets of such Person, at a fair valuation, will exceed the debts and liabilities, direct, subordinated, contingent or otherwise, of such Person; (b) the present fair saleable value of the property of such Person will be greater than the amount that will be required to pay the probable liability of such Person on its debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) such Person will be able to pay its debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) such Person will not have unreasonably small capital with which to conduct the businesses in which it is engaged as such businesses are conducted on such date and are proposed to be conducted after such date.

“SPC” has the meaning specified in Section 11.1(g).

“Specified Entity” means an entity (i) treated as a partnership or disregarded entity for U.S. Federal income tax purposes and (ii) the equity interests of which are not treated as held, directly or indirectly, by a CFC for purposes of section 956 of the IRC.

“Specified Equity Contribution” has the meaning specified in Section 9.4.

“Spin Documents” has the meaning specified in the definition of “Spin Transactions”.

“Spin Transactions” means (a) the Incurrence of Indebtedness by GXO Logistics, (b) any distributions paid by or on behalf of GXO Logistics to the Parent Borrower in connection with the Separation, (c) the consummation of each of the Contribution, Distribution and Separation and the other transactions related thereto or to facilitate the Contribution, Distribution or Separation, as applicable, as determined in good faith by the Parent Borrower, which determination shall be conclusive, (d) the execution and performance of all agreements (along with schedules and exhibits thereto) entered into by or between Parent Borrower or any of its Subsidiaries, on the one hand, and GXO Logistics or any of its Subsidiaries, on the other hand, relating to or in connection with the Contribution, the Separation, the Distribution or any other transactions necessary to complete the Contribution, the Separation or the Distribution, including but not limited to, the separation and distribution agreement, the transition services agreement,

[the tax matters agreement, the employee matters agreement, the intellectual property license agreement and the transfer documents \(the items in this clause \(d\), collectively, the “Spin Documents”\) and \(e\) the payment of fees and expenses related to the foregoing.](#)

“Spot Rate” means, on any day, the rate quoted or published by Agent (or a designated Affiliate of Agent) at which Canadian Dollars or any Alternative Currency may be exchanged into Dollars. The applicable L/C Issuer may use such Spot Rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

“Standard Securitization Undertakings” means representations, warranties, covenants, indemnities, reimbursement obligations, performance undertakings, guarantees of performance, and other customary payment obligations entered into by Parent Borrower or any of its Subsidiaries, whether joint and several or otherwise, which Parent Borrower has determined in good faith to be customary in a Securitization Financing including, without limitation, those relating to the servicing of the assets of a Securitization Subsidiary, it being understood that any Securitization Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

“Stated Termination Date” means April 30, 2024.

“Subordinated Indebtedness” means (a) with respect to any Borrower, any Indebtedness of such Borrower which is by its terms subordinated in right of payment to the Loans on which it is obligated, and (b) with respect to any Credit Party, any Indebtedness of such Credit Party which is by its terms subordinated in right of payment to its guarantee of Indebtedness under this Agreement.

“Subsidiary” means, with respect to any Person, (1) any corporation, association or other business entity (other than a partnership, joint venture or limited liability company) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, and (2) any partnership, joint venture or limited liability company of which (x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, and (y) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity. Unless the context otherwise requires, the term “Subsidiary” shall mean a Subsidiary of Parent Borrower.

“Subsidiary Guarantors” means each Subsidiary of Parent Borrower, other than Excluded Subsidiaries and Designated Guarantors. As of the Restatement Date, the Subsidiary Guarantors are listed on Schedule (A-1).

“Supermajority Lenders” means Lenders having (a) 66.67% or more of the Commitments of all Lenders, or (b) if the Commitments have been terminated, 66.67% or more of the aggregate outstanding amount of the Revolving Credit Advances.

“Supported QFC” has the meaning specified in [Section 13.13](#).

“Surface Transportation Board” means the Surface Transportation Board, an agency of the Federal Government of the United States, and any successor agency thereof.

“Swap Contract” means (a) any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, cross-currency hedges, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Borrowers or any of their respective Subsidiaries shall be a “Swap Agreement” and (b) any agreement with respect to any transactions (together with any related confirmations) which are subject to the terms and conditions of, or are governed by, any master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other similar master agreement.

“Swap Obligation” means, with respect to any Credit Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1(a)(47) of the Commodity Exchange Act.

“Swing Line Advance” has the meaning specified in [Section 2.1\(b\)\(i\)](#).

“Swing Line Availability” has the meaning specified in [Section 2.1\(b\)\(i\)](#).

“Swing Line Commitment” means, as to Swing Line Lender, the commitment of Swing Line Lender to make Swing Line Advances as set forth on [Annex C \(or, from and after, and subject to the occurrence of, the Separation Effective Date, Annex C to Amendment No. 6\)](#), which commitment constitutes a subfacility of the Commitment of Swing Line Lender. The aggregate Swing Line Commitment on the Amendment No. [36](#) Effective Date is fifty million Dollars (\$50,000,000), which commitment constitutes a subfacility of the aggregate Commitments.

“Swing Line Lender” means MSSF.

“Swing Line Loan” means, as the context may require, at any time, the aggregate amount of Swing Line Advances outstanding to any Borrower or to all Borrowers.

“Swing Line Note” and “Swing Line Notes” have the meanings specified in [Section 2.1\(b\)\(ii\)](#).

“TARGET Day” means any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) payment system (or, if such payment system

ceases to be operative, such other payment system (if any) reasonably determined by Agent to be a suitable replacement) is open for the settlement of payments in Euro.

“Tax Compliance Certificate” has the meaning specified in Section 2.13(d).

“Tax Distributions” means any distributions described in Section 7.2(b)(xi).

“Tax Group” has the meaning specified in Section 7.2.

“Tax Structure” has the meaning specified in Section 12.8.

“Taxes” means present and future taxes (including, but not limited to, income, corporate, capital, excise, property, ad valorem, sales, use, payroll, value added and franchise taxes, deductions, withholdings and custom duties), charges, fees, imposts, levies, deductions or withholdings (including backup withholding) and all liabilities (including interest, additions to tax and penalties) with respect thereto, imposed by any Governmental Authority.

“Temporary U.S. Borrowing Base Adjustment” has the meaning specified in Section 6.13(b).

“Term Administrative Agent” means MSSF, in its capacity as administrative agent and collateral agent under the Term Credit Agreement.

“Term Collateral Account” has the meaning specified in Annex A.

“Term Credit Agreement” means the Senior Secured Term Loan Credit Agreement, dated as of October 30, 2015, by and among Parent Borrower, certain subsidiaries of Parent Borrower, MSSF, as administrative agent and collateral agent, and the other parties thereto, including all exhibits, annexes and schedules thereto, as such agreement may be amended, restated, amended and restated, supplemented or otherwise modified by the Incremental and Refinancing Amendment (Amendment No. 1 to Credit Agreement), dated as of August 25, 2016, the Refinancing Amendment (Amendment No. 2 to Credit Agreement), dated as of March 10, 2017, the Refinancing Amendment (Amendment No. 3 to Credit Agreement), dated as of February 23, 2018, the Amendment No. 4 to Credit Agreement, dated as of March 7, 2019, and the Incremental Amendment (Amendment No. 5 to Credit Agreement), dated as of March 18, 2019.

“Term Priority Collateral” has the meaning specified in the ABL Intercreditor Agreement.

“Term SOFR” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Term SOFR Notice” means a notification by the Agent to the Lenders and Borrower of the occurrence of a Term SOFR Transition Event.

“Term SOFR Transition Event” means the determination by the Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the

administration of Term SOFR is administratively feasible for the Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in a Benchmark Replacement in accordance with Section 2.15 that is not Term SOFR.

“Termination Date” means the date on which (a) the Loans have been repaid in full in cash, (b) all other Obligations under this Agreement and the other Loan Documents have been completely discharged or paid (other than contingent indemnification obligations for which no claim has been asserted, Bank Products Obligations and Secured Hedging Obligations), (c) all Letter of Credit Obligations have been cash collateralized, canceled or backed by standby letters of credit in accordance with Section 2.2, and (d) none of Borrowers shall have any further right to borrow any monies under this Agreement.

“Title IV Plan” means a Pension Plan (other than a Multiemployer Plan) that is covered by Title IV of ERISA or Section 412 of the IRC, and that any Credit Party or ERISA Affiliate maintains, contributes to or has an obligation to contribute to on behalf of participants who are or were employed by any of them.

“Trademarks” has the meaning to it in the U.S. Security Agreement.

“Transactions” means (a) the consummation of the Con-way Acquisition and transactions contemplated thereby and in connection therewith, (b) the execution, delivery and performance of this Agreement, the Term Credit Agreement, the Bridge Credit Agreement and any documentation relating to Indebtedness incurred in lieu thereof or to refinance the foregoing, and the incurrence of Indebtedness thereunder and Liens in connection therewith, (c) Parent Borrower’s or any of its Subsidiaries’ incurrence, replacement, redemption, repayment, defeasance, discharge or refinancing of indebtedness or liens in connection with the Con-way Acquisition, including the assumption of the Con-way Existing Indebtedness and other existing Indebtedness of Con-way and its Subsidiaries, (d) the entry by Parent Borrower into this Agreement and the borrowing of loans hereunder in connection with the Con-way Acquisition and (e) the payment of fees and expenses in connection the foregoing.

“UIIA” means that Uniform Intermodal Interchange and Facilities Access Agreement, effective as of April 20, 2009, administered by The Intermodal Association of North America, together with each addendum thereto executed by Pacer Stacktrain, Inc. or Union Pacific Railroad Company and each Motor Carrier (as defined in the UIIA) party thereto, each in the form delivered to Agent prior to April 1, 2014, pursuant to which Pacer Stacktrain, Inc. or Union Pacific Railroad Company and each Motor Carrier have agreed additional terms and conditions applicable to the interchange of Chassis to such Motor Carrier by Pacer Stacktrain, Inc. or Union Pacific Railroad Company.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Unfinanced Capital Expenditures” means for any period, Capital Expenditures of Parent Borrower and its Restricted Subsidiaries made in cash during such period, except to the extent financed with the proceeds of Capitalized Lease Obligations or other Indebtedness (other than Loans incurred hereunder), common Capital Stock or Qualified Capital Stock, casualty proceeds, condemnation proceeds or other proceeds that would not be included in EBITDA, less cash received from the sale of any fixed assets of Parent Borrower and its Restricted Subsidiaries (including, without limitation, assets of the type that may constitute Equipment hereunder) during such period; provided that the aggregate amount of Unfinanced Capital Expenditures during such period may not be less than zero.

“Unfunded Pension Liability” means, at any time, the aggregate amount, if any, of the sum of the amount by which the present value of all accrued benefits under each Title IV Plan exceeds the fair market value of all assets of such Title IV Plan, allocable to such benefits in accordance with Title IV of ERISA, all determined as of the most recent valuation date for each such Title IV Plan using the actuarial assumptions for funding purposes in effect under such Title IV Plan.

“United States” and “U.S.” mean the United States of America.

“Unrestricted Subsidiary” means:

- (1) any Subsidiary of Parent Borrower that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors of Parent Borrower in the manner provided below; and
- (2) any Subsidiary of an Unrestricted Subsidiary.

Parent Borrower may designate any Subsidiary of Parent Borrower (including any newly acquired or newly formed Subsidiary of Parent Borrower) to be an Unrestricted Subsidiary unless at the time of such designation such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on any property of, Parent Borrower or any other Restricted Subsidiary that is not a Subsidiary of the Subsidiary to be so designated, in each case at the time of such designation; provided, however, that the Subsidiary to be so designated and its Subsidiaries do not at the time of designation have and do not thereafter Incur any Indebtedness pursuant to which the lender has recourse to any of the assets of Parent Borrower or any of the Restricted Subsidiaries unless otherwise permitted under Section 7.2; provided, further, however, that either:

- (a) the Subsidiary to be so designated has total consolidated assets of \$1,000 or less; or



(b) if such Subsidiary has consolidated assets greater than \$1,000, then such designation would be permitted under Section 7.2.

Parent Borrower may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided, however, that immediately after giving effect to such designation, Borrowers are in Pro Forma Compliance with the Restricted Conditions.

In no event may Parent Borrower be an Unrestricted Subsidiary. Notwithstanding anything to the contrary herein, on the Amendment No. 36 Effective Date, XPO Escrow Sub, LLC and GXO Logistics, Inc. (and any Subsidiary thereof) shall be automatically deemed an Unrestricted Subsidiary.

As of the Restatement Date, each entity listed on Schedule 6.13 is an Unrestricted Subsidiary.

“U.S. ABL Priority Collateral” means all U.S. Collateral that is ABL Priority Collateral.

“U.S. Availability” means, as of any date of determination, the amount (if any) by which (a) U.S. Available Credit, exceeds (b) the sum of (i) Revolving Credit Advances plus (ii) Letter of Credit Obligations (other than Letter of Credit Obligations cash collateralized in accordance with the terms of the Loan Documents) plus (iii) Swing Line Loans.

“U.S. Available Credit” means, as of any date of determination, the lesser of (a) the Commitment and (b) the U.S. Borrowing Base as most recently reported by the Credit Parties on or prior to such date of determination.

“U.S. Borrower” and “U.S. Borrowers” have the meanings specified in the preamble to this Agreement.

“U.S. Borrowing Base” means, as of any date of determination, from time to time, as to the U.S. Credit Parties, an amount equal to the sum at such time of:

(a) the product of (i) 85% multiplied by (ii) the U.S. Credit Parties’ Eligible Accounts; plus

(b) the product of (i) 20% multiplied by (ii) the U.S. Credit Parties’ Eligible 90-Day Accounts; provided that the amount contributed to the U.S. Borrowing Base at any time pursuant to this clause (b), taken together with the amount contributed to the Canadian Borrowing Base at such time pursuant to sub-clause (C) of clause (i) of the definition of “Canadian Borrowing Base”, shall not in any event exceed the Eligible 90-Day Accounts Cap (it being understood that, unless otherwise elected by Parent Borrower in its sole discretion from time-to-time (which election shall be revocable in its sole discretion), Eligible 90-Day Accounts shall be applied to the Eligible 90-Day Accounts Cap first for the benefit of the U.S. Borrowing Base, and thereafter for the benefit of the Canadian Borrowing Base); plus

(c) the lesser of:

(i) the product of (A) 65% multiplied by (B) the cost of the U.S. Credit Parties’ Eligible Equipment (but net of delivery charges, sales tax and other costs incidental to

the purchase thereof); and

(ii) the product of (A) 85% multiplied by (B) the cost of the U.S. Credit Parties' Eligible Equipment (but net of delivery charges, sales tax and other costs incidental to the purchase thereof) multiplied by the Net Orderly Liquidation Value percentage identified in the most recent Equipment appraisal obtained by Agent, at such time; plus

(d) the Temporary U.S. Borrowing Base Adjustment; plus

(e) the lesser of

(i) 85% of the net book value of aggregate Eligible Rolling Stock; and

(ii) the product of (A) 75% multiplied by (B) the Net Orderly Liquidation Value of the U.S. Credit Parties' Eligible Rolling Stock; minus

(f) the Dilution Reserve, the Discretionary FILO Dilution Reserve, if applicable, the Rent Reserve, the Canadian Priority Payables Reserve and such other Reserves established by Co-Collateral Agents in their Permitted Discretion in conformity with Section 2.18;

provided that a maximum of 25% of the U.S. Borrowing Base shall be attributable to the U.S. Credit Parties' Eligible Equipment and the U.S. Credit Parties' Eligible Rolling Stock in the aggregate.

The U.S. Borrowing Base shall at any time be determined by reference to the most recent Borrowing Base Certificate delivered to Co-Collateral Agents pursuant to Section 5.2. Notwithstanding anything to the contrary contained herein, determinations as to Reserves, adjustments and similar matters related to the U.S. Borrowing Base shall be made by Co-Collateral Agents in their Permitted Discretion in accordance with Section 2.18.

“U.S. Collateral” means the Collateral owned by (or, in the event such Collateral has been foreclosed upon, immediately prior to such foreclosure that was owned by) a U.S. Credit Party.

“U.S. Credit Party” means each U.S. Borrower and each U.S. Guarantor.

“U.S. Guarantor” means each Guarantor that is a Domestic Subsidiary.

“U.S. Guaranty” means the guarantee of the Obligations of each Credit Party hereunder by the U.S. Credit Parties in Article 13 hereunder or in a supplemental guarantee in accordance with Section 6.12 of this Agreement.

“U.S. Loans” means, at any time, the sum of (a) the aggregate amount of Revolving Credit Advances and Swing Line Loans outstanding to the U.S. Borrowers plus (b) the aggregate Dollar Equivalent of the U.S. Borrowers' Letter of Credit Obligations. Unless the context otherwise requires, references to the outstanding principal balance of the U.S. Loans shall include the aggregate Dollar Equivalent of the outstanding balance of the U.S. Borrowers' Letter of Credit Obligations.

“U.S. Overadvance” means, as of any date of determination, the sum of (i) Loans then outstanding less (ii) the Available Credit.

“U.S. Security Agreement” means that certain Second Amended and Restated Security Agreement, dated as of the Restatement Date, made by the Credit Parties party thereto in favor of Agent, on behalf of Agent, Co-Collateral Agents and Lenders, as amended, restated, supplemented or otherwise modified from time to time.

“U.S. Special Resolution Regimes” has the meaning specified in Section 13.13.

“U.S. Term Priority Collateral” means all U.S. Collateral that is Term Priority Collateral.

“Value” means, with respect to Eligible Rolling Stock, net book value as reported by Borrowers to Co-Collateral Agents in accordance with GAAP; provided that for purposes of the calculation of the U.S. Borrowing Base, the Value of the Eligible Rolling Stock shall not include (a) the portion of the value Eligible Rolling Stock equal to the profit earned by any Affiliate of Parent Borrower on the sale thereof to any Borrower or (b) write-ups or write-downs in value with respect to currency exchange rates.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness or Disqualified Capital Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing (1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Capital Stock or Preferred Stock multiplied by the amount of such payment, by (2) the sum of all such payments.

“Wholly Owned Restricted Subsidiary” means any Wholly Owned Subsidiary that is a Restricted Subsidiary.

“Wholly Owned Subsidiary” of any Person means a Subsidiary of such Person 100% of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares or shares required pursuant to applicable law) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

“Withholding Agent” means any Credit Party and Agent.

“WRA” means the Winding-Up and Restructuring Act (Canada).

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised

under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

“XPO Intermodal” means XPO Intermodal, Inc. (f/k/a Pacer International, Inc.), a Tennessee corporation.

1.2 Rules of Construction. All other undefined terms contained in any of the Loan Documents shall, unless the context indicates otherwise, have the meanings provided for by the Code to the extent the same are used or defined therein; in the event that any term is defined differently in different Articles or Divisions of the Code, the definition in Article or Division 9 shall control. Unless otherwise specified, references in this Agreement or any of the Appendices to a Section, subsection or clause refer to such Section, subsection or clause as contained in this Agreement. The words “herein”, “hereof” and “hereunder”, and other words of similar import refer to this Agreement as a whole, including all Annexes, Exhibits and Schedules, as the same may from time to time be amended, restated, modified or supplemented, and not to any particular section, subsection or clause contained in this Agreement or any such Annex, Exhibit or Schedule.

1.3 Interpretive Matters. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders. The words “including”, “includes” and “include” shall be deemed to be followed by the words “without limitation”; the word “or” is not exclusive; references to Persons include their respective successors and assigns (to the extent and only to the extent permitted by the Loan Documents) or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons; and all references to agreements and instruments, statutes and related regulations shall include any amendments of the same and any successor statutes and regulations. Whenever any provision in any Loan Document refers to the knowledge (or an analogous phrase) of any Credit Party, such words are intended to signify that such Credit Party has actual knowledge or awareness of a particular fact or circumstance or that such Credit Party, if it had exercised reasonable diligence, would have known or been aware of such fact or circumstance. In addition, for purposes hereof, (a) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP; (b) unsecured Indebtedness shall not be deemed to be subordinate or junior to secured Indebtedness merely by virtue of its nature as unsecured Indebtedness; (c) the principal amount of any non-interest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of a Person dated such date prepared in accordance with GAAP; (d) the principal amount of any Preferred Stock shall be (i) the maximum liquidation value of such Preferred Stock or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock, whichever is greater; and (e) unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP; provided, that, if Borrower Representative notifies Agent that Borrower Representative requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Amendment No. 3 Effective Date in GAAP or in the application thereof on the operation of such provision (or if Agent notifies Borrower Representative that the Requisite Lenders request an amendment to any provision hereof for such purpose), regardless of whether

any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

#### 1.4 Additional Alternative Currencies.

(a) Parent Borrower may from time to time request that Letters of Credit be issued in a currency other than Dollars or those specifically listed in the definition of "Alternative Currency" for the account of a U.S. Borrower; provided that such requested currency is a lawful currency that is freely transferable and readily convertible into Dollars in the London interbank market. Such request shall be subject to the approval of Agent and the applicable L/C Issuer(s).

(b) Any such request shall be made to Agent not later than 11:00 a.m. (New York, New York time), ten Business Days prior to the date of the desired issuance of a Letter of Credit in such other currency (or such other time or date as may be agreed by Agent and the applicable L/C Issuer, in its or their sole discretion). In the case of any such request, Agent shall also promptly notify the applicable L/C Issuer thereof. The applicable L/C Issuer shall notify Agent, not later than 11:00 a.m. (New York, New York time), five Business Days after receipt of such request whether it consents, in its sole discretion, to the issuance of Letters of Credit in such requested currency.

(c) Any failure by an L/C Issuer to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such L/C Issuer to issue a Letters of Credit in such requested currency. If Agent and the applicable L/C Issuer consent to the issuance of Letters of Credit in such requested currency, Agent shall so notify Parent Borrower and such currency shall thereupon be deemed for all purposes herein to be an Alternative Currency hereunder. If Agent shall fail to obtain consent to any request for an additional currency under this Section 1.4, Agent shall promptly so notify Parent Borrower.

(d) As of the Amendment No. ~~36~~ Effective Date, each L/C Issuer has agreed to issue Letters of Credit in the currencies specified on Exhibit B to Amendment No. 3.

1.5 Timing of Payment or Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of LIBOR Period) or performance shall extend to the immediately succeeding Business Day.

1.6 Quebec Matters. For purposes of any assets, liabilities or entities located in the Province of Quebec and for all other purposes pursuant to which the interpretation or construction of this Agreement or any other Loan Document may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Quebec, (a) "personal property" shall include "movable property"; (b) "real property" or "real estate" shall include "immovable property"; (c) "tangible property" shall include "corporeal property"; (d)

“intangible property” shall include “incorporeal property”; (e) “security interest”, “mortgage” and “lien” shall include a “hypothec”, “right of retention”, “prior claim” and a resolutive clause; (f) all references to filing, perfection, priority, remedies, registering or recording under the Code or a PPSA shall include publication under the Civil Code of Quebec; (g) all references to “perfection” of or “perfected” liens or security interest shall include a reference to an “opposable” or “set up” hypothec, lien or security interest as against third parties; (h) any “right of offset”, “right of setoff” or similar expression shall include a “right of compensation”; (i) “goods” shall include “corporeal movable property” other than chattel paper, documents of title, instruments, money and securities; (j) an “agent” shall include a “mandatary”; (k) “construction liens” shall include “legal hypothecs”; (l) “joint and several” shall include “solidary”; (m) “gross negligence or willful misconduct” shall be deemed to be “intentional or gross fault”; (n) “beneficial ownership” shall include “ownership on behalf of another as mandatary”; (o) “easement” shall include “servitude”; (p) “priority” shall include “prior claim”; (q) “survey” shall include “certificate of location and plan”; (r) “state” shall include “province”; (s) “fee simple title” shall include “absolute ownership”; (t) “accounts” shall include “claims”. The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en langue anglaise seulement.

1.7 Borrowers. Notwithstanding anything herein or in any Loan Document to the contrary, including any generic use of the term “Borrowers” as being liable for any payment or obligation, in no event shall any Canadian Borrower or Canadian Guarantor be liable for any Obligation of a U.S. Borrower or U.S. Guarantor.

1.8 Quebec Security. For greater certainty, and without limiting the powers of Agent, each of the Secured Parties hereby irrevocably appoints Agent as hypothecary representative of the Secured Parties as contemplated under Article 2692 of the Civil Code of Quebec in order to hold hypothecs and security granted by any Credit Party on property pursuant to the laws of the Province of Quebec and to exercise such powers and duties which are conferred upon the Secured Parties thereunder. The execution by Agent as hypothecary representative prior to the Credit Agreement of any deeds of hypothec or other security documents is hereby ratified and confirmed. The appointment of Agent as hypothecary representative shall be deemed to have been ratified and confirmed by each Person accepting an assignment of, a participation in or an arrangement in respect of, all or any portion of any Secured Parties’ rights and obligations under the Credit Agreement by the execution of an assignment, including an Assignment Agreement or a joinder or other agreement pursuant to which it becomes such assignee or participant, and by each successor Agent by the execution of an Assignment Agreement or other agreement, or by the compliance with other formalities, as the case may be, pursuant to which it becomes a successor Agent under the Credit Agreement.

1.9 Permitted Liens. Any references in this Agreement or any other Loan Document to “Permitted Liens” is not intended to subordinate or postpone, and shall not be interpreted as

subordination or postponing, or as any agreement to subordinate or postpone, any Lien created by any of the Loan Documents to any Permitted Lien.

1.10 Interest Act (Canada). For the purposes of the Interest Act (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith by a Canadian Borrower is to be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

1.11 Criminal Code (Canada). If any provision of this Agreement would oblige a Canadian Borrower to make any payment of interest or other amount payable to any Secured Party in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by that Secured Party of “interest” at a “criminal rate” (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by that Secured Party of “interest” at a “criminal rate”, such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:

(a) first, by reducing the amount or rate of interest; and

(b) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid which would constitute interest for purposes of section 347 of the Criminal Code (Canada).

1.12 Anti-Money Laundering (Canada). The Canadian Borrowers acknowledge that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” laws, whether within Canada or elsewhere (collectively, including any guidelines or orders thereunder, “AML Legislation”), the Canadian Lenders and Agent may be required to obtain, verify and record information regarding the Canadian Borrowers, their directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Canadian Borrowers, and the transactions contemplated hereby. Canadian Borrowers shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Canadian Lender or Agent, or any prospective assign or participant of a Canadian Lender or Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence. Notwithstanding the foregoing and except as may otherwise be agreed in writing, each of the Canadian Lenders agrees that Agent has no obligation to ascertain the identity of any Canadian Borrower or any authorized signatories of any Canadian Borrower on behalf of any Canadian Lender, or to confirm the completeness or accuracy of any information it obtains from a Canadian Borrower or any such authorized signatory in doing so.

1.13 Spin Transactions. Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document, no provision of this Agreement or any Loan Document shall prevent the consummation of any of the Spin Transactions, nor shall the Spin Transactions give rise to any default or constitute a utilization of any basket or ratio under this Agreement or any Loan Document.

## 2. ~~AMOUNT AND TERMS OF CREDIT~~ AMOUNT AND TERMS OF CREDIT

### 2.1 Credit Facilities.

#### (a) Revolving Credit Facility.

(i) Subject to the terms and conditions hereof, each Lender severally agrees to make available to Borrowers from time to time until the Commitment Termination Date its Pro Rata Share of advances (each, a "Revolving Credit Advance"). The Pro Rata Share of any Lender of (A) the Aggregate Revolving Credit Exposure shall not at any time exceed its separate Commitment at such time and (B) the Canadian Loans shall not at any time exceed its separate Canadian Commitment at such time. The obligations of each Lender hereunder shall be several and not joint. Until the Commitment Termination Date, Borrowers may borrow, repay and reborrow under this Section 2.1(a); provided, that (x) the Aggregate Revolving Credit Exposure at any time shall not exceed Availability at such time, (y) the amount of U.S. Loans at any time shall not exceed the U.S. Availability at such time and (z) the Canadian Loans at any time shall not exceed the Canadian Availability at such time. Each Revolving Credit Advance shall be made on notice by Borrower Representative to one of the representatives of Agent identified in Schedule 2.1 at the address specified therein. Any such notice must be given no later than (1) 12 noon (New York, New York time) on the date of the proposed Revolving Credit Advance, in the case of a Base Rate Loan, or (2) 12 noon (New York, New York time) on the date which is three (3) Business Days prior to the proposed Revolving Credit Advance, in the case of a LIBOR Loan. Each such notice (a "Notice of Revolving Credit Advance") may be given verbally by telephone but must be immediately confirmed in writing (by fax, electronic mail or overnight courier) substantially in the form of Exhibit 2.1(a)(i), and shall include the information required in such Exhibit. If any Borrower desires to have the Revolving Credit Advances bear interest by reference to a LIBOR Rate, with respect to LIBOR Loans denominated in Dollars, and BA Rate, with respect to LIBOR Loans denominated in Canadian Dollars, Borrower Representative must comply with Section 2.5(e). All Revolving Credit Advances (x) made to a U.S. Borrower shall be denominated in Dollars and (y) made to a Canadian Borrower shall be denominated in Dollars or Canadian Dollars but shall be deemed to have been made (in the case of Canadian Dollar Revolving Credit Advances) in the Dollar Equivalent of such Revolving Credit Advance.

(ii) Except as provided in Section 2.10, if requested by Lenders, (x) the U.S. Borrowers, jointly and severally, shall execute and deliver to each Lender a note to evidence the Commitment of that Lender and (y) the Canadian Borrowers, jointly and severally, shall execute and deliver to each Lender a note to evidence the Canadian Commitment of that Lender. Each note shall be in the principal amount of the Commitment (or the Canadian Commitment) of the applicable Lender, and substantially in the form of



Exhibit 2.1(a)(ii) (each a “Revolving Note” and, collectively, the “Revolving Notes”). Each Revolving Note (or, if a Revolving Note is not requested, this Agreement) shall represent the joint and several obligation of the appropriate Borrowers to pay the amount of the applicable Lender’s Pro Rata Share of the aggregate unpaid principal amount of all Revolving Loans to such Borrower together with interest thereon as prescribed in Section 2.5. The entire unpaid balance of the aggregate Loan and all other non-contingent Obligations shall be immediately due and payable in full in immediately available funds on the Commitment Termination Date (and the Commitment, for purposes of this Agreement, shall thereafter be zero).

(b) Swing Line Facility.

(i) Agent shall notify Swing Line Lender upon Agent’s receipt of any Notice of Revolving Credit Advance from a U.S. Borrower which requests Base Rate Loans. Subject to the terms and conditions hereof, Swing Line Lender may, in its discretion, make available from time to time until the Commitment Termination Date advances to a U.S. Borrower (each, a “Swing Line Advance”) in accordance with any such notice. The provisions of this Section 2.1(b) shall not relieve Lenders of their obligations to make Revolving Credit Advances under Section 2.1(a); provided, that if Swing Line Lender makes a Swing Line Advance pursuant to any such notice, such Swing Line Advance shall be in lieu of any Revolving Credit Advance that otherwise may be made by Lenders pursuant to such notice. The aggregate amount of Swing Line Advances outstanding shall not exceed at any time the lesser of (A) the Swing Line Commitment and (B) U.S. Available Credit, in each case, less the outstanding balance of the U.S. Revolving Loans at such time (“Swing Line Availability”). Only the U.S. Borrowers may receive a Swing Line Advance. Until the Commitment Termination Date, the U.S. Borrowers may from time to time borrow, repay and reborrow under this Section 2.1(b). Each Swing Line Advance shall be made pursuant to a Notice of Revolving Credit Advance delivered to Agent by Borrower Representative in accordance with Section 2.1(a)(i). Any such notice must be given no later than 2:00 p.m. (New York time) on the Business Day of the proposed Swing Line Advance. Unless Swing Line Lender has received at least one Business Day’s prior written notice from Requisite Lenders instructing it not to make any Swing Line Advance, Swing Line Lender shall, notwithstanding the failure of any condition precedent set forth in Section 3.2, be entitled to fund any requested Swing Line Advance, and to have each Lender make Revolving Credit Advances in accordance with Section 2.1(b)(iii) or purchase participating interests in accordance with Section 2.1(b)(iv). Notwithstanding any other provision of this Agreement or the other Loan Documents, the Swing Line Loan shall constitute a Base Rate Loan and shall be denominated in Dollars. The U.S. Borrowers shall repay the Swing Line Loan upon written demand therefor by Agent.

(ii) Upon request by Swing Line Lender, the U.S. Borrowers shall execute and deliver to Swing Line Lender a promissory note to evidence the Swing Line Commitment. Such note shall be in the principal amount of the Swing Line Commitment of Swing Line Lender and substantially in the form of Exhibit 2.1(b)(ii) (each a “Swing Line Note” and, collectively, the “Swing Line Notes”). Each Swing Line Note (or, if Swing Line Notes are not requested, this Agreement) shall represent the obligation of each U.S. Borrower to pay the amount of the aggregate unpaid principal amount of all Swing Line Advances made to such Borrower together with interest thereon as prescribed in Section 2.5.

The entire unpaid balance of the Swing Line Loan and all other non-contingent Obligations shall be immediately due and payable in full in immediately available funds on the Commitment Termination Date, if not sooner paid in full.

(iii) The Swing Line Lender, at any time, and from time to time in its sole and absolute discretion, but not less frequently than weekly, shall on behalf of the U.S. Borrowers (and each U.S. Borrower hereby irrevocably authorizes the Swing Line Lender to so act on its behalf) request each Lender (including the Swing Line Lender) to make a Revolving Credit Advance for the account of the U.S. Borrowers (which shall be a Base Rate Loan) in an amount equal to that Lender's Pro Rata Share of the principal amount of the U.S. Borrowers' Swing Line Loan (the "Refunded Swing Line Loan") outstanding on the date such notice is given. If any Lender is a Non-Funding Lender, and the conditions precedent set forth in Section 3.2 are satisfied at such time, that Non-Funding Lender's reimbursement obligations with respect to the Swing Line Loans shall be reallocated to and assumed by the other Lenders in accordance with their Pro Rata Share of the Revolving Loans (calculated as if the Non-Funding Lender's Pro Rata Share was reduced to zero and each other Lender's Pro Rata Share had been increased proportionately); provided that no Lender shall be reallocated any such reimbursement obligations to the extent such reallocation shall cause its Pro Rata Share of the Aggregate Revolving Credit Exposure to exceed its Commitment. If any Lender is a Non-Funding Lender, upon receipt of the demand described above, each Lender that is not a Non-Funding Lender will be obligated to pay to Agent for the account of the Swing Line Lender its Pro Rata Share of the outstanding Swing Line Loans (increased as described above); provided that no Lender shall be required to fund any amount to the extent such funding shall cause its Pro Rata Share of the Aggregate Revolving Credit Exposure to exceed its Commitment. Unless any of the events described in Sections 9.1(j) or (k) has occurred (in which event the procedures of Section 2.1(b)(iv) shall apply), and regardless of whether the conditions precedent set forth in this Agreement to the making of a Revolving Credit Advance are then satisfied, each Lender shall disburse directly to Agent, its Pro Rata Share of a Revolving Credit Advance on behalf of the Swing Line Lender prior to 3:00 p.m. (New York time) in immediately available funds on the Business Day next succeeding the date that notice is given. The proceeds of those Revolving Credit Advances shall be immediately paid to the Swing Line Lender and applied to repay the Refunded Swing Line Loan of the U.S. Borrowers.

(iv) If, prior to refunding a Swing Line Loan with a Revolving Credit Advance pursuant to Section 2.1(b)(iii), one of the events described in Sections 9.1(j) or 9.1(k) has occurred, then, subject to the provisions of Section 2.1(b)(v) below, each Lender shall, on the date such Revolving Credit Advance was to have been made, purchase, or be deemed to have purchased, from the Swing Line Lender an undivided participation interest in the Swing Line Loan in an amount equal to its Pro Rata Share of such Swing Line Loan. Upon request, each Lender shall promptly transfer to the Swing Line Lender, in immediately available funds, the amount of its participation interest.

(v) Each Lender's obligation to make Revolving Credit Advances in accordance with Section 2.1(b)(iii) and to purchase participation interests in accordance with Section 2.1(b)(iv) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or

other right that such Lender may have against Swing Line Lender, any U.S. Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of any Default or Event of Default; (C) any inability of any Borrower to satisfy the conditions precedent to borrowing set forth in this Agreement at any time; or (D) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. If any Lender does not make available to Agent or Swing Line Lender, as applicable, the amount required pursuant to Sections 2.1(b)(iii) or 2.1(b)(iv), as the case may be, Swing Line Lender shall be entitled to recover such amount on demand from such Lender, together with interest thereon for each day from the date of non-payment until such amount is paid in full at the Federal Funds Rate for the first two Business Days and at the Base Rate thereafter.

(c) Reliance on Notices; Appointment of Borrower Representative. Agent shall be entitled to rely upon, and shall be fully protected in relying upon, any Notice of Revolving Credit Advance, Notice of Conversion/Continuation, or similar notice reasonably believed by Agent to be genuine. Agent may assume that each Person executing and delivering any notice in accordance herewith was duly authorized, unless the responsible individual acting thereon for Agent has actual knowledge to the contrary. Each Borrower hereby designates Parent Borrower or any of its authorized representatives as its representative and agent on its behalf for the purposes of issuing Notices of Revolving Credit Advances and Notices of Conversion/Continuation, giving instructions with respect to the disbursement of the proceeds of the Loans, selecting interest rate options, requesting Letters of Credit, giving and receiving all other notices and consents hereunder or under any of the other Loan Documents, and taking all other actions (including in respect of providing notices in respect of compliance with covenants) on behalf of any Borrower or Borrowers under the Loan Documents. Borrower Representative hereby accepts such appointment. Agent and each Lender may regard any notice or other communication pursuant to any Loan Document from Borrower Representative as a notice or communication from all U.S. Borrowers or Canadian Borrowers, as the case may be, and may give any notice or communication required or permitted to be given to any Borrower or Borrowers hereunder to Borrower Representative on behalf of such Borrower or Borrowers. Each Borrower agrees that each notice, election, representation and warranty, covenant, agreement, and undertaking made on its behalf by Borrower Representative shall be deemed for all purposes to have been made by such Borrower, and shall be binding upon and enforceable against such Borrower to the same extent as if the same had been made directly by such Borrower.

## 2.2 Letters of Credit.

(a) Issuance. Subject to the terms and conditions of this Agreement, Lenders agree to incur, from time to time prior to the Commitment Termination Date, upon the request of Borrower Representative on behalf of the U.S. Borrowers or the Canadian Borrowers, as the case may be, and for such Borrowers' account (or, in the case of a U.S. Borrower, for the account of any of such U.S. Borrower's Restricted Subsidiaries designated thereby, *provided* that such U.S. Borrower shall be liable hereunder for all Letter of Credit Obligations incurred by its Restricted Subsidiaries), Letter of Credit Obligations with respect to Letters of Credit to be issued by an L/C Issuer for such Borrowers' account (or, in the case of a U.S. Borrower, for the account of any of such U.S. Borrower's Restricted Subsidiaries, *provided* that such U.S. Borrower shall be liable hereunder for all Letter of Credit

Obligations incurred by its Restricted Subsidiaries). For the avoidance of doubt, no Letter of Credit shall be issued for the account of any Unrestricted Subsidiary. Each Lender shall, subject to the terms and conditions hereinafter set forth, purchase (or be deemed to have purchased) risk participations in all such Letters of Credit as more fully described in Section 2.2(b)(ii). The Parent Borrower shall be a co-obligor on any Letter of Credit issued on account of any U.S. Borrower. The aggregate amount of all such Letter of Credit Obligations shall, subject to Section 2.3(b)(ii) and Section 2.3(b)(iii), as applicable, not at any time exceed the Dollar Equivalent of \$350,000,000 (the "L/C Sublimit"). No such Letter of Credit shall have an expiry date that is more than one year following the date of issuance thereof, but may contain provisions for automatic renewal thereof for periods not in excess of one (1) year, unless otherwise reasonably determined by Agent and the applicable L/C Issuer, in their respective sole discretion, and no Lender shall be under any obligation to incur Letter of Credit Obligations in respect of, or purchase risk participations in, any Letter of Credit having an expiry date that is later than the fifth (5th) Business Day prior to the Stated Termination Date; provided, further that a Letter of Credit may, upon the request of the applicable Borrower, be issued or renewed for a period beyond the date that is five (5) Business Days prior to the maturity date thereof if such Letter of Credit becomes subject to cash collateralization on such fifth (5th) Business Day prior to the Stated Termination Date (at 103% of the face value of such Letter of Credit) or other arrangements, in each case reasonably satisfactory to Agent and the applicable L/C Issuer, have been provided, and the applicable L/C Issuer has released the Lenders in writing from their participation obligations with respect to such Letter of Credit on the Stated Termination Date. Notwithstanding anything to the contrary contained herein, any L/C Issuer may only issue Letters of Credit to the extent permitted by applicable law. If (i) any Lender is a Non-Funding Lender or Agent determines that any of the Lenders is an Impacted Lender, and (ii) the reallocation of that Non-Funding Lender's or Impacted Lender's Letter of Credit Obligations to the other Lenders would reasonably be expected to cause the Letter of Credit Obligations and Loans of any Lender to exceed its Commitment (an "Affected L/C Issuer"), taking into account the amount of outstanding Aggregate Revolving Credit Exposure, then no Affected L/C Issuer shall be obligated to issue or renew any Letters of Credit unless the Non-Funding Lender or Impacted Lender has been replaced, the Letter of Credit Obligations have been cash collateralized to the extent of any shortfall in Commitments, or the Commitment of the other Lenders has been increased in accordance with Section 12.2(c) by an amount sufficient to satisfy Agent that all additional Letter of Credit Obligations will be covered by all Lenders who are not Non-Funding Lenders or Impacted Lenders. Notwithstanding anything to the contrary contained herein, no L/C Issuer shall be obligated to issue or renew any Letter of Credit if, after giving effect to the issuance or renewal thereof, the aggregate amount of all Letter of Credit Obligations in respect of Letters of Credit issued by such L/C Issuer would exceed the Dollar Equivalent of such L/C Issuer's L/C Issuer Fronting Sublimit Amount. Each Letter of Credit will be denominated in Dollars, Canadian Dollars, or (in the case of a Letter of Credit requested for the account of a U.S. Borrower or any of its Restricted Subsidiaries) any Alternative Currency, as specified by the Borrower Representative.

(b) Advances Automatic; Participations.

(i) If no Lender is a Non-Funding Lender, in the event that any L/C Issuer shall make any payment on or pursuant to any Letter of Credit Obligation, such

payment shall then be deemed automatically to constitute a Revolving Loan under Section 2.1(a) regardless of whether a Default or Event of Default has occurred and is continuing, and notwithstanding any Borrowers' failure to satisfy the conditions precedent set forth in Section 3.2, and, if no Lender is a Non-Funding Lender (or if the only Non-Funding Lender is the L/C Issuer that issued such Letter of Credit), each Lender shall be obligated to pay its Pro Rata Share of the Dollar Equivalent thereof in accordance with this Agreement. If any Lender is a Non-Funding Lender, in the event that any L/C Issuer shall make any payment on or pursuant to any Letter of Credit Obligation and the conditions precedent set forth in Section 3.2 are satisfied at such time, such payment shall then be deemed automatically to constitute a Revolving Loan and that Non-Funding Lender's Letter of Credit Obligations shall be reallocated to and assumed by the other Lenders pro rata in accordance with their Pro Rata Share of the Dollar Equivalent of the Revolving Loan (calculated as if the Non-Funding Lender's Pro Rata Share was reduced to zero and each other Lender's Pro Rata Share had been increased proportionately); provided that no Lender shall be reallocated any Letter of Credit Obligations to the extent such reallocation shall cause its Pro Rata Share of the Dollar Equivalent of the Aggregate Revolving Credit Exposure to exceed its Commitment. If any Lender is a Non-Funding Lender, each Lender that is not a Non-Funding Lender shall pay to Agent for the account of such L/C Issuer its Pro Rata Share (increased as described above) of the Dollar Equivalent of the Letter of Credit Obligations that from time to time remain outstanding; provided that no Lender shall be required to fund any amount to the extent such funding shall cause its Pro Rata Share of the Aggregate Revolving Credit Exposure to exceed its Commitment. The failure of any Lender to make available to Agent for the applicable L/C Issuer's account its Pro Rata Share of the Dollar Equivalent of any such Revolving Loan or payment by Agent to the applicable L/C Issuer shall not relieve any other Lender of its obligation hereunder to make available to Agent its Pro Rata Share thereof.

(ii) If it shall be illegal or unlawful for Borrowers to incur Revolving Loans as contemplated by Section 2.2(b)(i) above, or if it shall be illegal or unlawful for any Lender to be deemed to have assumed a ratable share of the reimbursement obligations owed to any L/C Issuer, then (A) immediately and without further action whatsoever, each Lender shall be deemed to have irrevocably and unconditionally purchased from such L/C Issuer an undivided interest and participation equal to such Lender's Pro Rata Share (based on its Commitment) of the Dollar Equivalent of the Letter of Credit Obligations in respect of all Letters of Credit then outstanding, and (B) thereafter, immediately upon issuance of any Letter of Credit, each Lender shall be deemed to have irrevocably and unconditionally purchased from such L/C Issuer an undivided interest and participation in such Lender's Pro Rata Share (based on its Commitment) of the Dollar Equivalent of the Letter of Credit Obligations with respect to such Letter of Credit on the date of such issuance. Each Lender shall fund its participation in all payments or disbursements made under the Letters of Credit in the same manner as provided in this Agreement with respect to Revolving Loans, it being understood that each Lender's obligation to fund its participation in all payments or disbursements made under Letters of Credit denominated in an Alternative Currency shall be funded in Dollars as provided in Section 2.2(b)(i) above.

(iii) In determining whether to pay under any Letter of Credit, no L/C Issuer shall have any obligation relative to the other Lenders other than to confirm that any documents required to be delivered under such Letter of Credit appear to have been

delivered and that they appear to substantially comply on their face with the requirements of such Letter of Credit. Any action taken or omitted to be taken by an L/C Issuer under or in connection with any Letter of Credit issued by it shall not create for such L/C Issuer any resulting liability to Borrowers, any other Credit Party, any Lender or any other Person unless such action is taken or omitted to be taken with gross negligence, or willful misconduct on the part of such L/C Issuer (as determined by a court of competent jurisdiction in a final and non-appealable decision).

(c) Cash Collateral.

(i) If Borrowers are required to provide cash collateral for any Letter of Credit Obligations pursuant to this Agreement prior to the Stated Termination Date, Parent Borrower will pay to Agent for the ratable benefit of itself, the L/C Issuers and applicable Lenders cash or Cash Equivalents ("Cash Collateral") in an amount in Dollars equal to 103% of the maximum amount then available to be drawn under each applicable Letter of Credit outstanding in the applicable currency of the Letter of Credit. Such funds or Cash Equivalents shall be held by Agent in a cash collateral account (the "Cash Collateral Account") maintained at a bank or financial institution acceptable to Agent, and Agent shall use its commercially reasonable efforts to make such Cash Collateral Account an interest bearing account. The Cash Collateral Account shall be in the name of Parent Borrower and shall be pledged to, and subject to the control of, Agent, for the benefit of Agent, Co-Collateral Agents, applicable Lenders and applicable L/C Issuers, in a manner satisfactory to Agent. Parent Borrower hereby pledges and grants to Agent, on behalf of itself and Lenders, a security interest in all such funds and Cash Equivalents held in the Cash Collateral Account from time to time and all proceeds thereof, as security for the payment of all amounts due in respect of the Letter of Credit Obligations and other Obligations, whether or not then due. This Agreement shall constitute a security agreement under applicable law.

(ii) If any Letter of Credit Obligations, whether or not then due and payable, shall for any reason be outstanding on the Commitment Termination Date, Credit Parties shall either (A) provide Cash Collateral therefor in the manner described above, or (B) cause all such Letters of Credit to be canceled and returned, or (C) deliver a stand-by letter (or letters) of credit in guaranty of such Letter of Credit Obligations, which stand-by letter (or letters) of credit shall be of like tenor and duration and currency (plus thirty (30) additional days) as, and in an amount equal to 103% of, the aggregate maximum amount then available to be drawn under, the Letters of Credit to which such outstanding Letter of Credit Obligations relate, and in any case shall be issued by a banking institution, and shall be subject to such terms and conditions, as are reasonably satisfactory to Agent and the applicable L/C Issuer in its reasonable sole discretion.

(iii) From time to time after funds are deposited in the Cash Collateral Account by Parent Borrower, whether before or after the Commitment Termination Date, Agent may apply such funds or Cash Equivalents then held in the Cash Collateral Account to the payment of any amounts, and in such order as Agent may elect, as shall be or shall become due and payable by any Borrowers to Agent, L/C Issuers and Lenders with respect to such Letter of Credit Obligations, and, upon the satisfaction in full of

all Letter of Credit Obligations, and after the Commitment Termination Date, to any other Obligations of any Borrower then due and payable.

(iv) No Borrower nor any Person claiming on behalf of or through any Borrower shall have any right to withdraw any of the funds or Cash Equivalents held in the Cash Collateral Account, except that upon the termination of all Letter of Credit Obligations and the payment of all amounts payable by Credit Parties to Agent, L/C Issuers and Lenders in respect thereof, any funds remaining in the Cash Collateral Account shall be applied to other Obligations then due and owing and upon payment in full of such Obligations, any remaining amount shall be paid to Parent Borrower or as otherwise required by law. Interest, if any, earned on deposits in the Cash Collateral Account shall be held as additional collateral.

(d) Fees and Expenses. Borrowers agree to pay to Agent for the benefit of applicable Lenders and L/C Issuers, as compensation to such Lenders and L/C Issuers for Letter of Credit Obligations incurred hereunder, (i) all reasonable documented out-of-pocket costs and expenses incurred by Agent, any L/C Issuer or any Lender on account of such Letter of Credit Obligations, and (ii) to each applicable Lender, for each Fiscal Quarter during which any Letter of Credit Obligation shall remain outstanding, a fee (the "Letter of Credit Fee") in an amount equal to LIBOR Margin then in effect multiplied by the Dollar Equivalent of the aggregate face amount of each outstanding Letter of Credit, calculated on the basis of a 360-day year and for the actual number of days such Letter of Credit Obligations was outstanding during such Fiscal Quarter. Such Letter of Credit Fee shall be paid to Agent for the benefit of the Lenders in arrears, on the last Business Day of each Fiscal Quarter and on the Commitment Termination Date. In addition, Borrowers shall pay in Dollars to each L/C Issuer, (i) for each Fiscal Quarter during which any Letter of Credit shall remain outstanding, a fee in an amount equal to 0.125% multiplied by the Dollar Equivalent of the aggregate face amount of each such outstanding Letter of Credit issued by such L/C Issuer, calculated on the basis of a 360-day year and for the actual number of days such Letter of Credit was outstanding during such Fiscal Quarter, and (ii) on demand, such reasonable fees, reasonable documented out-of-pocket charges and expenses of each L/C Issuer in respect of the issuance, negotiation, acceptance, amendment, transfer and payment of any Letter of Credit issued by such L/C Issuer or otherwise payable pursuant to the application and related documentation under which such Letter of Credit is issued; provided, that any such fees, charges or expenses payable in respect of Letters of Credit denominated in an Alternative Currency may be paid in the applicable Alternative Currency if the Parent Borrower and the applicable L/C Issuer so agree (in each case, in its respective sole discretion). The Obligations of the Canadian Borrowers hereunder are subject to the provisions of Section 13.9.

(e) Request for Incurrence of Letter of Credit Obligations. Borrower Representative shall give Agent and the applicable L/C Issuer at least five (5) Business Days' prior written notice requesting the incurrence of any Letter of Credit Obligation and identifying whether such Letter of Credit is to be issued on behalf of the U.S. Borrowers (or for the account of any Restricted Subsidiary of any U.S. Borrower) or the Canadian Borrowers. Each such request for a Letter of Credit, and any Letter of Credit issued pursuant thereto, shall be on the applicable L/C Issuer's standard form documents. Notwithstanding

anything contained herein to the contrary, Letter of Credit applications by Borrower Representative and approvals by Agent and the applicable L/C Issuer may be made and transmitted pursuant to communication methods mutually agreed upon and established by and among Borrower Representative, Agent and the applicable L/C Issuer.

(f) Obligation Absolute. The joint and several obligations of Borrowers to reimburse Agent, L/C Issuers and Lenders for payments made with respect to any Letter of Credit Obligation shall be absolute, unconditional and irrevocable, without necessity of presentment, demand, protest, or other formalities, and the obligations of each Lender to make payments to Agent and L/C Issuers with respect to Letters of Credit shall be unconditional and irrevocable. Such obligations of Borrowers and Lenders shall be paid strictly in accordance with the terms hereof under all circumstances including the following:

(i) any lack of validity or enforceability of any Letter of Credit or this Agreement or the other Loan Documents or any other agreement;

(ii) the existence of any claim, setoff, defense, or other right that any Borrower or any of their respective Affiliates or any Lender may at any time have against a beneficiary or any transferee of any Letter of Credit (or any Persons or entities for whom any such transferee may be acting), Agent, any Lender, any L/C Issuer or any other Person, whether in connection with this Agreement, the Letter of Credit, the transactions contemplated herein or therein or any unrelated transaction (including any underlying transaction between any Borrower or any of their respective Affiliates and the beneficiary for which the Letter of Credit was procured);

(iii) any draft, demand, certificate, or any other document presented under any Letter of Credit proving to be forged, fraudulent, invalid, or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(iv) payment by Agent (except as otherwise expressly provided in Section 2.2(g)(ii)(C) below) or the applicable L/C Issuer under any Letter of Credit against presentation of a demand, draft, or certificate or other document that does not comply with the terms of such Letter of Credit;

(v) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to Borrowers or any Restricted Subsidiary or in the relevant currency markets generally;

(vi) any other circumstance or event whatsoever, that is similar to any of the foregoing; or

(vii) the fact that a Default or an Event of Default has occurred and is continuing;

provided that, the Canadian Borrowers shall be liable only for Letter of Credit Obligations under Letters of Credit (x) for which a Canadian Borrower is the co-applicant of such Letter of Credit, (y) that are issued for the account of such the Canadian Borrower or any of its Subsidiaries or (z) issued on account of the Canadian Commitment ("Canadian Letters of Credit").



Neither Agent, the Lenders nor the L/C Issuers, nor any of their Related Person, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the applicable L/C Issuer; provided that the foregoing shall not be construed to excuse any L/C Issuer from liability to Borrowers to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by Borrowers to the extent permitted by applicable law) suffered by Borrowers that are caused by such L/C Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct, or breach of its obligations hereunder, on the part of any L/C Issuer (as finally determined by a court of competent jurisdiction), such L/C Issuer shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the applicable L/C Issuer may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Indemnification; Nature of Lenders' Duties.

(i) In addition to amounts payable as elsewhere provided in this Agreement, the U.S. Borrowers or the Canadian Borrowers, as the case may be, jointly and severally, hereby agree to pay and to protect, indemnify, and save harmless Agent, each Co-Collateral Agent, each L/C Issuer and each Lender from and against any and all claims, demands, liabilities, damages, losses, costs, charges, and expenses (including reasonable documented attorneys' fees of one counsel in each relevant jurisdiction) that Agent, any Collateral Agent, any L/C Issuer or any Lender may incur or be subject to as a consequence, direct or indirect, of (A) the issuance of any Letter of Credit (or, the case of the Canadian Borrowers, Canadian Letters of Credit), or (B) the failure of Agent, any Co-Collateral Agent, any L/C Issuer or any Lender seeking indemnification or of any L/C Issuer to honor a demand for payment under any Letter of Credit (or, the case of the Canadian Borrowers, Canadian Letters of Credit) as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority, in each case other than to the extent such failure is a result of the gross negligence, bad faith, or willful misconduct of Agent, such Co-Collateral Agent, such L/C Issuer or such Lender (as finally determined by a court of competent jurisdiction). The Obligations of the Canadian Borrowers hereunder are subject to the provisions of Section 13.9.

(ii) As between Agent, any L/C Issuer and any Lender and Borrowers, Borrowers assume all risks of the acts and omissions of, or misuse of, any Letter of Credit by beneficiaries, of any Letter of Credit. In furtherance and not in limitation of the

foregoing, to the fullest extent permitted by law, neither Agent nor any L/C Issuer or Lender shall be responsible for: (A) the form, validity, sufficiency, accuracy, genuineness, or legal effect of any document issued by any party in connection with the application for and issuance of any Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent, or forged; (B) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason; (C) failure of the beneficiary of any Letter of Credit to comply fully with conditions required in order to demand payment under such Letter of Credit; provided, that in the case of clause (A), (B), or (C) of this Section 2.2(g)(ii), in the case of any payment by any L/C Issuer under any Letter of Credit, such L/C Issuer shall be liable to the extent such payment was made solely as a result of its gross negligence, bad faith, or willful misconduct (as finally determined by a court of competent jurisdiction) in determining that the demand for payment under such Letter of Credit complies on its face with any applicable requirements for a demand for payment under such Letter of Credit; (D) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, or otherwise, whether or not they may be in cipher; (E) errors in interpretation of technical terms; (F) any loss or delay in the transmission or otherwise of any document required in order to make a payment under any Letter of Credit or of the proceeds thereof; (G) the credit of the proceeds of any drawing under any Letter of Credit; and (H) any consequences arising from causes beyond the control of Agent, any L/C Issuer or any Lender. None of the above shall affect, impair, or prevent the vesting of any of Agent's, any L/C Issuer's or any Lender's rights or powers hereunder or under this Agreement.

(iii) In the event of any conflict between the terms of this Agreement and the terms of any letter of credit application, reimbursement agreement, or similar document, instrument or agreement between or among Borrowers and any L/C Issuer, the terms of this Agreement shall control.

(h) Reporting Obligations of L/C Issuers. Each L/C Issuer agrees to provide Agent, in form and substance satisfactory to Agent, each of the following on the following dates: (i) (A) on or prior to any issuance of any Letter of Credit by such L/C Issuer, (B) immediately after any drawing under any such Letter of Credit or (C) immediately after payment (or failure to pay when due) by Borrowers of any related Letter of Credit Obligation, notice thereof, which shall contain a reasonably detailed description of such issuance, drawing or payment, and Agent shall provide copies of such notices to each Lender reasonably promptly after receipt thereof; (ii) upon the request of Agent (or any Lender through Agent), copies of any Letter of Credit issued by such L/C Issuer and any related Letter of Credit reimbursement agreement and such other documents and information as may be reasonably requested by Agent; and (iii) on the first Business Day of each calendar month, a schedule of the Letters of Credit issued by such L/C Issuer, in form and substance reasonably satisfactory to Agent, setting forth the Letter of Credit Obligations for such Letters of Credit outstanding on the last Business Day of the previous calendar month.

(i) Replacement of L/C Issuer. Any L/C Issuer may be replaced with another Lender (or an Affiliate of a Lender) at any time by written agreement among Borrower Representative, Agent, the Requisite Lenders, and the successor L/C Issuer. Agent

shall notify the Lenders of any such replacement of such L/C Issuer. At the time any such replacement shall become effective, Borrowers shall pay all unpaid fees accrued for the account of the replaced L/C Issuer. From and after the effective date of any such replacement, (i) the successor L/C Issuer shall have all the rights and obligations of the applicable L/C Issuer under this Agreement with respect to Letters of Credit to be issued thereafter, and (ii) references herein to the term "L/C Issuer" shall be deemed to refer to such successor or to any previous L/C Issuer, or to such successor L/C Issuer and all previous L/C Issuers, as the context shall require. After the replacement of an L/C Issuer hereunder, the replaced L/C Issuer shall remain a party hereto and shall continue to have all the rights and obligations of an L/C Issuer under this Agreement with respect to Letters of Credit issued by it prior to such replacement but shall not be required to issue additional Letters of Credit.

(j) Existing Letters of Credit. On the Restatement Date, each letter of credit listed on Schedule 2.2, to the extent outstanding, shall be automatically and without further action by the parties thereto (and without payment of any fees otherwise due upon the issuance of a Letter of Credit) deemed converted into Letters of Credit issued pursuant to this Section 2.2 and subject to the provisions hereof.

### 2.3 Prepayments.

(a) Voluntary Prepayments; Reductions in Commitments. Borrowers may prepay the Loans at any time and from time to time without prior notice, and Borrowers may at any time on at least three (3) Business Days' prior written notice by Borrower Representative to Agent permanently reduce or terminate the Commitment (or the Canadian Commitment); provided that (i) any such prepayments or reductions (not providing for the repayment of the Revolving Loans in full) shall be in a minimum principal amount of \$1,000,000 or C\$1,000,000, as applicable, or a whole multiple thereof, (ii) the Commitment shall not be reduced to an amount that is less than the amount of the Aggregate Revolving Credit Exposure then outstanding unless such Commitment reduction is accompanied by a prepayment of Loans (and, to the extent necessary, the cash collateralization of Letters of Credit outstanding) necessary to ensure that the Aggregate Revolving Credit Exposure does not exceed the Commitment (as so reduced), (iii) the Canadian Commitment shall not be reduced to an amount that is less than the amount of Canadian Loans then outstanding unless such Canadian Commitment reduction is accompanied by a prepayment of Canadian Loans (and, to the extent necessary, the cash collateralization of Letter of Credit Obligations with respect to Canadian Letters of Credit) necessary to ensure that the Canadian Loans do not exceed the Canadian Commitment (as so reduced), and (iv) after giving effect to such reductions, Borrowers shall comply with Section 2.3(b)(i). In addition, if Borrowers terminate the Commitment, all Loans and other Obligations shall be immediately due and payable in full and all Letter of Credit Obligations shall be cash collateralized or otherwise satisfied in accordance with Section 2.2 hereto upon the effectiveness of such termination. Any voluntary prepayments applied to a particular Loan shall be applied ratably to the portion thereof held by each Lender as determined by its Pro Rata Share. Any voluntary prepayment and any reduction or termination of the Commitment must be accompanied by the payment of any LIBOR funding breakage costs in accordance with Section 2.11(b). Upon any such reduction or termination of the Commitment, each Borrower's right to request Revolving Credit Advances, or request that Letter of Credit Obligations be incurred on its

behalf or request Swing Line Advances, shall simultaneously be permanently reduced or terminated, as the case may be. Each notice of partial prepayment shall designate the Loans or other Obligations to which such prepayment is to be applied, and any notice delivered pursuant to this Section 2.3(a) may be conditioned on the occurrence of one or more events described in the applicable notice.

(b) Mandatory Prepayments.

(i) If at any time the outstanding amount of the Aggregate Revolving Credit Exposure exceeds the Available Credit, subject to Section 13.9, Borrowers shall immediately repay outstanding Loans to the extent required to eliminate such excess. If any such excess remains after repayment in full of all outstanding Revolving Credit Advances, subject to Section 13.9, Borrowers shall provide cash collateral for the Letter of Credit Obligations in the manner set forth in Section 2.2 to the extent required to eliminate such excess.

(ii) If at any time the outstanding amount of the U.S. Loans exceeds the U.S. Available Credit, U.S. Borrowers shall immediately repay outstanding Revolving Credit Advances and Swing Line Loans made to the U.S. Borrowers to the extent required to eliminate such excess. If any such excess remains after repayment in full of all outstanding Revolving Credit Advances and Swing Line Loans made to the U.S. Borrowers, U.S. Borrowers shall provide cash collateral for the Letter of Credit Obligations in the manner set forth in Section 2.2 to the extent required to eliminate such excess.

(iii) If any time the outstanding amount of the Canadian Loans exceeds the Canadian Available Credit, Borrowers shall immediately repay outstanding Revolving Credit Advances made to the Canadian Borrowers to the extent required to eliminate such excess. If any such excess remains after repayment in full of all outstanding Revolving Credit Advances made to the Canadian Borrowers, Borrower shall provide cash collateral for the Canadian Borrowers' Letter of Credit Obligations in the manner set forth in Section 2.2 to the extent required to eliminate such excess.

(iv) Upon the occurrence of a Cash Dominion Period, and on each Business Day (or on such other dates and with such frequency as Agent and the related Relationship Bank may agree in the related deposit account control agreement between them) during the continuation of a Cash Dominion Period, all amounts on deposit in any Blocked Account shall be delivered to Agent to prepay the outstanding Loans and to cash collateralize all Letters of Credit in an amount equal to all such amounts on deposit.

(c) Application of Certain Mandatory Prepayments. Any prepayments made by any Borrower pursuant to Section 2.3(b) above shall be applied as follows: first, to reasonable fees and reimbursable expenses of Agent and Co-Collateral Agents then due and payable pursuant to any of the Loan Documents; second, to prepayment of the Swing Line Advances until paid in full; third, to prepayment of the Revolving Credit Advances until paid in full; fourth, if any Event of Default has occurred and is continuing, at Agent's election, to cash collateralize outstanding Letter of Credit Obligations pursuant to Section 2.2(c); and fifth, if no Event of Default has occurred and is continuing, as Borrower Representative may

direct. The Commitment and the Swing Line Commitment shall not be permanently reduced by the amount of any prepayments made by Borrowers to the extent applied pursuant to clauses second or third above. The application of any such prepayment to the Revolving Credit Advances shall be made, first, to Base Rate Loans and, second, to LIBOR Loans. Each prepayment of Loans under Section 2.3(b)(iv) when an Event of Default has occurred and is continuing shall be accompanied by accrued and unpaid interest to the date of such prepayment on the amount prepaid.

(d) No Implied Consent. Nothing in this Section 2.3 shall be construed to constitute Agent's or any Lender's consent to any transaction that is not permitted by other provisions of this Agreement or the other Loan Documents.

(e) L/C Reimbursement. If any L/C Issuer shall make any payments made in respect of a Letter of Credit, Borrowers shall reimburse such payments by paying to Agent an amount equal to such payment not later than 2:00 p.m., New York City time, on the date that such payment is made, if Parent Borrower shall have received notice of such payment prior to 10:00 a.m., New York City time, on such date, or, if such notice has not been received by Parent Borrower prior to such time on such date, then not later than 2:00 p.m., New York City time, on the Business Day immediately following the day that Parent Borrower receives such notice. If Parent Borrower fails to make such payment when due, Agent shall notify each Lender of the applicable payment, the payment then due from Borrowers in respect thereof and such Lender's Pro Rata Share thereof. Promptly following receipt of such notice, each Lender shall pay to Agent its Pro Rata Share of the payment then due from Borrowers, in the same manner as provided in Section 10.8 with respect to Loans made by such Lender (and Section 10.8 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and Agent shall promptly pay to the applicable L/C Issuer the amounts so received by it from the Lenders. Promptly following receipt by Agent of any payment from Borrowers pursuant to this paragraph, Agent shall distribute such payment to the applicable L/C Issuer or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse the applicable L/C Issuer, then to such Lenders and the applicable L/C Issuer as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse the applicable L/C Issuer for any payments made in respect of a Letter of Credit shall not constitute a Loan and shall not relieve Borrowers of their obligation to reimburse such payment.

2.4 Use of Proceeds. Borrowers shall utilize the proceeds of the Loans (a) to provide working capital from time to time for Borrowers and their respective Subsidiaries, and (b) for other general corporate purposes, including investments and acquisitions not prohibited hereunder.

2.5 Interest; Applicable Margins.

(a) Borrowers shall pay interest to Agent, for the ratable benefit of Lenders, in arrears on each applicable Interest Payment Date, at the following rates of interest on the unpaid principal amount of each:

(i) Base Rate Loan made to Borrowers at the (x) Base Rate, with respect to Base Rate Loans made in Dollars, plus the Base Rate Margin and (y) Canadian Base Rate, with respect to Canadian Base Rate Loans made in Canadian Dollars, plus the Base Rate Margin.

(ii) LIBOR Loans at the (x) LIBOR Rate, with respect to LIBOR Loans denominated in Dollars, plus the LIBOR Margin and (y) BA Rate, with respect to LIBOR Loans denominated in Canadian Dollars, plus the LIBOR Margin.

(b) If any payment on any Loan becomes due and payable on a day other than a Business Day, the maturity thereof will be extended to the next succeeding Business Day (except as set forth in the definition of LIBOR Period), and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension.

(c) All computations of Fees are calculated on a per annum basis and interest shall be made by Agent on the basis of a 360-day year, in each case for the actual number of days occurring in the period for which such interest and Fees are payable, except that with respect to Base Rate Loans and LIBOR Loans made at the BA Rate based on the prime or base commercial lending rate the interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The (a) Base Rate, with respect to Base Rate Loans made in Dollars, and (b) Canadian Base Rate, with respect to Canadian Base Rate Loans made in Canadian Dollars, is a floating rate determined for each day. Each determination by Agent of an interest rate and Fees hereunder shall be presumptive evidence of the correctness of such rates and Fees.

(d) All overdue amounts not paid when due hereunder shall bear interest in an amount equal to two percentage points (2.00%) per annum above the rates of interest or the rate of such Fees otherwise applicable hereunder unless Agent and Requisite Lenders elect to impose a smaller increase (the "Default Rate"), accruing from the initial date of such non-payment until such payment is made and shall be payable upon demand.

(e) Borrower Representative shall have the option to (i) request that any Revolving Credit Advance be made as a LIBOR Loan or a Base Rate Loan, (ii) convert at any time all or any part of outstanding Loans (other than the Swing Line Loan) from Base Rate Loans to LIBOR Loans, (iii) convert any LIBOR Loan to a Base Rate Loan and subject to payment of LIBOR breakage costs in accordance with Section 2.11(b) if such conversion is made prior to the expiration of the LIBOR Period applicable thereto, or (iv) continue all or any portion of any Loan (other than the Swing Line Loan) as a LIBOR Loan upon the expiration of the applicable LIBOR Period and the succeeding LIBOR Period of that continued Loan shall commence on the first day after the last day of the LIBOR Period of the Loan to be continued; provided, however, that no Revolving Credit Advance shall be converted to, or continued at the end of the LIBOR Period applicable thereto as a LIBOR Loan for a LIBOR Period of longer than one (1) month if any Event of Default has occurred and is continuing. Any Loan or group of Loans having the same proposed LIBOR Period to be made or continued as, or converted into, a LIBOR Loan must be in a minimum amount (i) with respect to LIBOR Loans denominated in Dollars, of \$5,000,000 and integral multiples of \$1,000,000 in excess of such amount and (ii) with respect to LIBOR Loans denominated

in Canadian Dollars, of C\$5,000,000 and integral multiples of C\$1,000,000 in excess of such amount. Any such election must be made by 11:00 a.m. (New York time) on the third Business Day prior to (1) the date of any proposed Advance which is to bear interest at the (x) LIBOR Rate, with respect to LIBOR Loans denominated in Dollars and (y) BA Rate, with respect to LIBOR Loans denominated in Canadian Dollars, (2) the end of each LIBOR Period with respect to any LIBOR Loans to be continued as such, or (3) the date on which Borrower Representative wishes to convert any Base Rate Loan to a LIBOR Loan for a LIBOR Period designated by Borrower Representative in such election. If no election is received with respect to a LIBOR Loan by 11:00 a.m. (New York time) on the third Business Day prior to the end of the LIBOR Period with respect thereto (or if an Event of Default has occurred and is continuing), that LIBOR Loan shall be converted to a LIBOR Loan with a LIBOR Period of one (1) month at the end of its LIBOR Period. Borrower Representative must make such election by notice to Agent in writing, by fax or overnight courier. In the case of any conversion or continuation, such election must be made pursuant to a written notice (a "Notice of Conversion/Continuation") in the form of Exhibit 2.5(e).

(f) Anything herein to the contrary notwithstanding, the obligations of Borrowers hereunder shall be subject to the limitation that payments of interest shall not be required, for any period for which interest is computed hereunder, to the extent (but only to the extent) that contracting for or receiving such payment by the respective Lender would be contrary to the provisions of any law applicable to such Lender (including, without limitation, Criminal Code (Canada)) limiting the highest rate of interest which may be lawfully contracted for, charged or received by such Lender, and in such event Borrowers shall pay such Lender interest at the highest rate permitted by applicable law (the "Maximum Lawful Rate"); provided, however, that if at any time thereafter the rate of interest payable hereunder is less than the Maximum Lawful Rate, Borrowers shall continue to pay interest hereunder at the Maximum Lawful Rate until such time as the total interest received by Agent, on behalf of Lenders, is equal to the total interest that would have been received had the interest rate payable hereunder been (but for the operation of this paragraph) the interest rate payable since the Amendment No. 36 Effective Date as otherwise provided in this Agreement. Thereafter, interest hereunder shall be paid at the rate(s) of interest and in the manner provided in Sections 2.5(a) through (e), unless and until the rate of interest again exceeds the Maximum Lawful Rate, and at that time this paragraph shall again apply. In no event shall the total interest received by any Lender pursuant to the terms hereof exceed the amount that such Lender could lawfully have received had the interest due hereunder been calculated for the full term hereof at the Maximum Lawful Rate. If the Maximum Lawful Rate is calculated pursuant to this paragraph, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate divided by the number of days in the year in which such calculation is made. If, notwithstanding the provisions of this Section 2.5(f), a court of competent jurisdiction shall finally determine that a Lender has received interest hereunder in excess of the Maximum Lawful Rate, Agent shall, to the extent permitted by applicable law, promptly apply such excess in the order specified in Section 2.9 and thereafter shall refund any excess to Borrowers or as a court of competent jurisdiction may otherwise order.

2.6 Cash Management Systems. On or prior to the date set forth in Annex A, Borrowers will establish and will maintain until the Termination Date, the cash management systems described in Annex A (the "Cash Management Systems").

## 2.7 Fees.

(a) Parent Borrower shall pay the Fees specified in the Fee Letter at the times specified for payment therein.

(b) As additional compensation for the Lenders, Borrowers shall pay to Agent, for the ratable benefit of such Lenders, in arrears, on the last Business Day of each Fiscal Quarter, on the date of any permanent reduction of the Commitment in accordance with Section 2.3(a) and on the Commitment Termination Date, a Fee (the "Commitment Fee") for Borrowers' non-use of available funds in an amount equal to the Applicable Commitment Fee Percentage per annum multiplied by the difference between (A) the average for the period of the daily closing balances of the Commitment and (B) the average for the period of the daily closing balances of the aggregate Revolving Credit Advances and Letter of Credit Obligations allocable to the Lenders outstanding during the period for which such Commitment Fee is due; provided that the obligations of the Canadian Borrowers hereunder are subject to the provisions of Section 13.9.

(c) Borrowers shall pay to Agent, for the ratable benefit of Lenders, the Letter of Credit Fee as provided in Section 2.2.

(d) Each Borrower shall pay to the applicable Lead Arranger, Bookrunner or Lender any other fees that have been separately agreed to between such Borrower and any applicable Lead Arranger, Bookrunner or Lender.

2.8 Receipt of Payments. Borrowers shall make each payment under this Agreement not later than 3:00 p.m. (New York, New York time) on the day when due in immediately available funds in Dollars to the Collection Account. For purposes of computing interest and Fees and determining Availability as of any date, all payments shall be deemed received on the Business Day on which immediately available funds are received in the Collection Account prior to 3:00 p.m. (New York time). Payments received after 3:00 p.m. (New York time) on any Business Day, or on a day that is not a Business Day, shall be deemed to have been received on the following Business Day. Unless stated otherwise, all calculations, comparisons, measurements, or determinations under this Agreement shall be made in Dollars. If Agent receives any payment from or on behalf of any Credit Party in a currency other than Dollars (or, with respect to amounts received in respect of Canadian Revolving Loans made in Canadian Dollars, Canadian Dollars), Agent may convert the payment (including the monetary proceeds of realization upon any Collateral and any funds then held in a cash collateral account) into Dollars at the Dollar Equivalent thereof or at the exchange rate that Agent would be prepared to sell Dollars against the currency received on the Business Day immediately preceding the date of actual payment. The Obligations shall be satisfied only to the extent of the amount actually received by Agent upon such conversion. Agent shall distribute such payments to Lender or other applicable Persons in like funds as received.

## 2.9 Application and Allocation of Payments.

(a) So long as no Event of Default has occurred and is continuing, (i) payments of regularly scheduled payments then due shall be applied to those scheduled



payments, (ii) voluntary prepayments shall be applied in accordance with the provisions of Section 2.3(a), and (iii) mandatory prepayments shall be applied as set forth in Section 2.3(c). All payments and prepayments applied to a particular Loan shall be applied ratably to the portion thereof held by each Lender as determined by its Pro Rata Share. As to all payments made when an Event of Default has occurred and is continuing or following the Commitment Termination Date, each Borrower hereby irrevocably waives the right to direct the application of any and all payments received from or on behalf of such Borrower. All voluntary prepayments shall be applied as directed by Borrower Representative. In all circumstances after an Event of Default, subject to the ABL Intercreditor Agreement, all payments and proceeds of Collateral shall be applied to amounts then due and payable in the following order: (1) to Fees and Agent's and Co-Collateral Agents' expenses reimbursable hereunder and to all obligations owing to Agent, any Co-Collateral Agent, Swing Line Lender, any L/C Issuer or any other Lender by any Non-Funding Lender under the Loan Documents; (2) to interest on the Swing Line Loans; (3) to principal payments on the Swing Line Loans; (4) to interest on the other Loans, ratably in proportion to the interest accrued as to each Loan; (5) to principal payments on the other Loans (or cash collateral with respect to the Letter of Credit Obligations), ratably in proportion to the principal balance of such Loan and the Letter of Credit Obligations; (6) to the payment of the Bank Products Obligations then due and payable; and (7) to all other Obligations, including expenses of Lenders to the extent reimbursable under Section 12.3.

(b) Agent is authorized to, and at its sole election may, upon prior notice to Borrower Representative charge to the Revolving Loan balance on behalf of each U.S. Borrower or Canadian Borrower, as the case may be, and cause to be paid all Fees, expenses, costs (including, insurance premiums in accordance with Section 6.4(a)) and interest and principal, other than principal of the Revolving Loan, owing by such Borrowers under this Agreement or any of the other Loan Documents, if and to the extent such Borrowers fail to pay promptly any such amounts as and when due, even if the amount of such charges would exceed Availability at such time or would cause the balance of the Revolving Loan and the Swing Line Loan to exceed the Borrowing Base after giving effect to such charges (provided, any such Overadvance shall be subject to the cure period with respect to fees as set forth in Section 9.1(a)(ii)). At Agent's option, and to the extent permitted by law, any charges so made shall constitute part of the Revolving Loan hereunder.

(c) This Section 2.9 is subject in its entirety to the provisions of Section 13.9 hereof.

2.10 Loan Account and Accounting. Agent, as Borrowers' agent, shall maintain a loan account (the "Loan Account") on its books and records: all Advances, Letters of Credit, all payments made by Borrowers, and all other debits and credits as provided in this Agreement with respect to the Loans or any other Obligations. All entries in the Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balances in the Loan Account, as recorded on Agent's most recent printout or other written statement, shall, absent manifest error, be presumptive evidence of the amounts due and owing to Agent and Lenders by each appropriate Borrower; provided that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay the Obligations owed by such Borrower. Agent shall render to Borrower Representative a monthly

accounting of transactions with respect to the Loans setting forth the balance of the Loan Account as to each Borrower for the immediately preceding month. Unless Borrower Representative notifies Agent in writing of any objection to any such accounting (specifically describing the basis for such objection), within sixty (60) days after the date thereof, each and every such accounting shall be deemed presumptive evidence of all matters reflected therein. Only those items expressly objected to in such notice shall be deemed to be disputed by the applicable Borrowers. Notwithstanding any provision herein contained to the contrary, any Lender may elect (which election may be revoked) to dispense with the issuance of Notes to that Lender and may rely on the Loan Account as evidence of the amount of Obligations from time to time owing to it.

## 2.11 Indemnity.

(a) Each Credit Party that is a signatory hereto shall jointly and severally indemnify and hold harmless each of Agent, Co-Collateral Agents, Lead Arrangers, L/C Issuers, the Lenders, and their respective Affiliates, and each such Person's respective officers, directors, employees, attorneys, agents, advisors and representatives (each, an "Indemnified Person"), from and against any and all suits, actions, proceedings, claims, damages, actual losses, liabilities, and out-of-pocket expenses (including reasonable attorneys' fees and disbursements and other reasonable documented out-of-pocket costs of investigation or defense, including those incurred upon any appeal) that may be instituted or asserted against or incurred by any such Indemnified Person as the result of credit having been extended, suspended or terminated under this Agreement and the other Loan Documents and the administration of such credit, and in connection with or arising out of the transactions contemplated hereunder and thereunder (including the syndication of the Commitments) and any actions or failures to act in connection therewith, including any and all Environmental Liabilities and reasonable, out-of-pocket legal costs and expenses arising out of or incurred in connection with disputes between or among any parties to any of the Loan Documents (collectively, "Indemnified Liabilities"); provided that no such Credit Party shall be liable for any indemnification to an Indemnified Person to the extent that any such suit, action, proceeding, claim, damage, actual loss, liability, or expense results from that Indemnified Person's (or such Indemnified Person's Related Persons) gross negligence, bad faith, willful misconduct or material breach of any of its obligations under any Loan Document as determined by a court of competent jurisdiction in a final and non-appealable judgment; provided, further, that no Indemnified Person will be indemnified for any such cost, expense or liability to the extent of any dispute solely among Indemnified Persons (other than any claims against Agent or Co-Collateral Agents or Lead Arrangers acting in its capacity as such) that does not involve actions or omissions of any Credit Party or any of its Affiliates; provided, further, that none of the Canadian Borrowers shall have any obligation to make any payment with respect to any of the U.S. Borrowers' Obligations under this Agreement or any other Loan Document. In the absence of an actual or potential conflict of interest, Borrowers and their Subsidiaries will not be responsible for the fees and expenses of more than one legal counsel for all Indemnified Persons and appropriate local legal counsel; provided that in the case of an actual conflict of interest, or the written opinion of counsel that a potential conflict of interest exists, Borrowers and their Subsidiaries shall be responsible for one additional counsel in each applicable jurisdiction for the affected Indemnified Persons, taken as a whole. To the extent permitted by applicable law, no party

hereto shall be responsible or liable to any other Person party to any Loan Document, any successor, assignee, or third party beneficiary of such person or any other person asserting claims derivatively through such party, for indirect, punitive, exemplary or consequential damages which may be alleged as a result of credit having been extended, suspended, or terminated under any Loan Document or as a result of any other transaction contemplated hereunder or thereunder; provided that nothing hereunder in this sentence shall limit any Credit Party's indemnity and reimbursement obligations to the extent set forth herein. No Indemnified Person referred to in this clause (a) shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(b) To induce Lenders to provide the LIBOR Rate or the BA Rate, as applicable, option on the terms provided herein, if (i) any LIBOR Loans are repaid in whole or in part prior to the last day of any applicable LIBOR Period (whether that repayment is made pursuant to any provision of this Agreement or any other Loan Document or occurs as a result of acceleration, by operation of law or otherwise); (ii) any Borrower shall default in payment when due of the principal amount of or interest on any LIBOR Loan; (iii) any Borrower shall refuse to accept any borrowing of, or shall request a termination of, any borrowing of, conversion into or continuation of, LIBOR Loans after Borrower Representative has given notice requesting the same in accordance herewith; (iv) any Borrower shall fail to make any prepayment of a LIBOR Loan after Borrower Representative has given a notice thereof in accordance herewith; or (v) an assignment of LIBOR Loans is mandated pursuant to Sections 2.14(d) or 12.2(d), then Borrowers shall jointly and severally indemnify and hold harmless each Lender from and against all actual losses, costs and reasonable documented out-of-pocket expenses resulting from or arising from any of the foregoing (provided, that the Canadian Borrowers shall not be required to pay any such amounts with respect to LIBOR Loans of the U.S. Borrowers). Such indemnification shall include any actual and documented out-of-pocket loss or expense (other than loss of anticipated profits), if any, arising from the reemployment of funds obtained by it or from fees payable to terminate deposits from which such funds were obtained. For the purpose of calculating amounts payable to a Lender under this Section 2.11(b), each Lender shall be deemed to have actually funded its relevant LIBOR Loan through the purchase of a deposit bearing interest at the (x) LIBOR Rate, with respect to LIBOR Loans denominated in Dollars and (y) BA Rate, with respect to LIBOR Loans denominated in Canadian Dollars, in an amount equal to the amount of that LIBOR Loan and having a maturity comparable to the relevant LIBOR Period; provided that each Lender may fund each of its LIBOR Loans in any manner it sees fit, and the foregoing assumption shall be utilized only for the calculation of amounts payable under this Section 2.11(b). This covenant shall survive the termination of this Agreement and the payment of the Obligations and all other amounts payable hereunder. As promptly as practicable under the circumstances, each Lender shall provide Borrower Representative with its written and detailed calculation of all amounts payable pursuant to this Section 2.11(b), and such calculation shall be binding on the parties hereto absent manifest error, in which case Borrower Representative shall object in writing within ten (10) Business Days of receipt thereof, specifying the basis for such objection in detail.

(c) This Section 2.11 is subject in its entirety to the provisions of Section 13.9 hereof.

2.12 Access. Each Credit Party shall, during normal business hours, from time to time upon reasonable notice as frequently as Agent reasonably determines to be appropriate: (a) provide Agent, Co-Collateral Agents (coordinated through Agent), Lenders (coordinated through Agent) and any of their representatives and designees access to its properties, facilities, advisors, officers and employees, (b) permit Agent, Co-Collateral Agents, Lenders and any of their officers, employees and agents, to inspect, audit and make extracts from any Credit Party's books and records, and (c) permit Agent, Co-Collateral Agents, Lenders and their representatives and other designees, to inspect, review, evaluate and make test verifications and counts of the Accounts, Equipment and other Collateral of any Credit Party; provided, that to the extent that no Event of Default has occurred and is continuing, Borrowers shall only be responsible for the costs of such activities as set forth in Section 5.2. Furthermore, so long as any Event of Default has occurred and is continuing or at any time after all or any portion of the Obligations have been declared due and payable pursuant to Section 9.2(b), Borrowers shall provide reasonable assistance to Agent to obtain access, which access shall be coordinated in scope and substance in consultation with Borrowers, to their suppliers and customers.

2.13 Taxes.

(a) All payments by or on account of any obligation of any Credit Party hereunder or under any other Loan Document shall be made, in accordance with this Section 2.13, free and clear of and without withholding or deduction for any Taxes, except as required by applicable law. If any Withholding Agent shall be required by law to withhold or deduct any Taxes from or in respect of any sum payable hereunder (including any payments made pursuant to this Section 2.13) or under any other Loan Document, (i) if such Tax is an Indemnified Tax, the sum payable by the applicable Credit Party shall be increased, without duplication, as much as shall be necessary so that, after making all required withholdings and deductions (including withholdings and deductions applicable to additional sums payable under this Section 2.13), Agent, Co-Collateral Agents or Lenders, as applicable, receive an amount equal to the sum they would have received had no such withholdings and deductions been made, (ii) the relevant Withholding Agent shall make such withholdings and deductions, and (iii) such Withholding Agent shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law. Each Lender agrees that, as promptly as reasonably practicable after it becomes aware of any circumstances referred to above which would result in additional payments under this Section 2.13, it shall notify Borrowers thereof.

(b) Without duplication of any obligation set forth in subsection (a), each Credit Party shall timely pay any Other Taxes to the relevant Governmental Authority (or, at the option of Agent, to Agent as reimbursement for Agent's payment thereof).

(c) Each Credit Party shall, without duplication of any obligation set forth in subsection (a), jointly and severally indemnify and, within ten (10) days of demand therefor, pay Agent, each Co-Collateral Agent and each Lender for the full amount of Indemnified Taxes (including, any Indemnified Taxes imposed by any jurisdiction on amounts payable

under this Section 2.13) paid by (or on behalf of) Agent, such Co-Collateral Agent or such Lender as a result of payments made pursuant to this Agreement or any other Loan Document, as appropriate, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally asserted by the relevant Governmental Authority. A certificate as to the amount of such Taxes and evidence of payment thereof submitted to the Credit Parties shall be conclusive evidence, absent manifest error, of the amount due from the Credit Parties to Agent, such Co-Collateral Agent or such Lenders. Upon actually learning of the imposition of any such Taxes, Agent, such Co-Collateral Agent or such Lender, as the case may be, shall act in good faith to notify Borrower Representative of the imposition of such Taxes arising hereunder.

(d) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under this Agreement or any other Loan Documents shall deliver to Borrower Representative (with a copy to Agent), at the time or times reasonably requested by Borrower Representative or Agent, such properly completed and executed documentation reasonably requested by Borrower Representative or Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. Without limiting the generality of the foregoing, each Lender and the successors and assignees of such Lender, that is a “United States person” within the meaning of section 7701(a)(30) of the IRC shall deliver to Borrower Representative (with a copy to Agent) a properly completed and executed IRS Form W-9 and such other documentation or information prescribed by applicable law or reasonably requested by Agent or Borrower Representative to (i) determine whether such Lender is subject to backup withholding or information reporting requirements and (ii) for Borrowers to comply with their obligations under FATCA. Each Lender, and the successors and assignees of such Lender, that is not a “United States person” as defined in section 7701(a)(30) of the IRC (“Foreign Lender”) to whom payments to be made under this Agreement or under the Notes may be exempt from, or eligible for a reduced rate of, United States withholding tax (as applicable) shall, at the time or times prescribed by applicable law, provide to Borrower Representative (with a copy to Agent) a properly completed and executed IRS Form W-8ECI, Form W-8BEN, Form W-8BEN-E, Form W-8IMY or other applicable form, certificate (including, but not limited to, certification, if applicable, that such Foreign Lender is not a “bank,” a “10 percent shareholder,” or a “controlled foreign corporation” for purposes of the portfolio interest exemption of section 881(c) of the IRC (a “Tax Compliance Certificate”)) or document prescribed by the IRS or the United States. Each Lender shall deliver to Borrowers and Agent (in such number of copies as shall be requested by such Borrower or Agent) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of a Borrower or Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Parent Borrower or Agent, as applicable, to determine the withholding or deduction required to be made. Notwithstanding anything to the contrary in this paragraph, the completion, execution, and submission of such documentation (other than (A) IRS Form W-9, (B) applicable IRS Form W-8, (C) a Tax Compliance Certificate, if applicable, and (D) any information or documentation reasonably requested by Parent Borrower or Agent in connection with FATCA (which, for this purpose shall include any amendments made to FATCA after the

date hereof)) shall not be required if in the Lender's reasonable judgment such completion, execution, or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Parent Borrower and Agent in writing of its legal inability to do so.

(e) If Agent, any Co-Collateral Agent or any Lender, as applicable, determines, in its sole discretion, exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Credit Party or with respect to which any Credit Party has paid additional amounts pursuant to this Section 2.13, it shall pay over such refund to such Credit Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Credit Party under this Section 2.13 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of Agent, such Co-Collateral Agent or Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such Credit Party, upon the request of Agent, such Co-Collateral Agent or Lender, shall repay to Agent, such Co-Collateral Agent or Lender the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that Agent, such Co-Collateral Agent or Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will Agent, a Co-Collateral Agent or Lender be required to pay any amount to a Credit Party pursuant to this paragraph (e) the payment of which would place Agent, such Co-Collateral Agent or Lender in a less favorable net after-Tax position than Agent, such Co-Collateral Agent or Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require Agent, any Co-Collateral Agent or Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to a Credit Party or any other Person.

(f) Each Lender shall severally indemnify Agent and each Co-Collateral Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that a Credit Party has not already indemnified Agent or such Co-Collateral Agent for such Indemnified Taxes and without limiting the obligation of any Credit Party to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.1(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Agent or such Co-Collateral Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Agent or such Co-Collateral Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Agent to the Lender from any other source against any amount due to Agent under this paragraph (f).

(g) The provisions of this Section 2.13 shall survive the termination of this Agreement and repayment of all Obligations. Each L/C Issuer shall be deemed to be a Lender for purposes of this Section 2.13.

#### 2.14 Capital Adequacy; Increased Costs; Illegality.

(a) If any Lender shall have determined that any law, treaty, governmental (or quasi-governmental) rule, regulation, guideline or order regarding capital adequacy, liquidity, reserve requirements or similar requirements or compliance by any Lender with any request or directive regarding capital adequacy, liquidity, reserve requirements or similar requirements (whether or not having the force of law), in each case, adopted after the Amendment No. 36 Effective Date, from any central bank or other Governmental Authority increases or would have the effect of increasing the amount of capital, reserves or other funds required to be maintained by such Lender and thereby reducing the rate of return on such Lender's capital as a consequence of its obligations hereunder, then the U.S. Borrowers or the Canadian Borrowers, as the case may be, shall from time to time upon demand by such Lender (with a copy of such demand to Agent) pay to Agent, for the account of such Lender, additional amounts sufficient to compensate such Lender for such reduction. A certificate as to the amount of that reduction and setting forth in reasonable detail the basis of the computation thereof submitted by such Lender to Borrower Representative and to Agent shall, absent manifest error, be final, conclusive and binding for all purposes.

(b) If, due to either (i) the introduction of or any change in any law or regulation (or any change in the interpretation thereof) or (ii) the compliance with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law), in each case adopted after the Amendment No. 36 Effective Date, there shall be any increase in the cost to any Lender of agreeing to make or making, funding or maintaining, continuing, converting to any LIBOR Loan, or there shall be a Tax (other than Indemnified Taxes or Excluded Taxes) on any Recipient on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, or other liabilities, or capital attributable thereto, then the U.S. Borrowers or the Canadian Borrowers, as the case may be, shall from time to time, upon demand by such Lender (with a copy of such demand to Agent), pay to Agent for the account of such Lender additional amounts sufficient to compensate such Lender for such increased cost. A certificate setting forth in reasonable detail the amount of such increased cost and the basis of the calculation thereof, submitted to Borrower Representative and to Agent by such Lender, shall, absent manifest error, be final, conclusive and binding for all purposes. Each Lender agrees that, as promptly as practicable after it becomes aware of any circumstances referred to above which would result in any such increased cost, the affected Lender shall, to the extent not inconsistent with such Lender's internal policies of general application, use reasonable commercial efforts to minimize costs and expenses incurred by it and payable to it by Borrowers pursuant to this Section 2.14(b).

(c) Notwithstanding anything to the contrary contained herein, if the introduction of or any change in any law or regulation (or any change in the interpretation thereof) shall make it unlawful, or any central bank or other Governmental Authority shall assert that it is unlawful, for any Lender to agree to make or to make or to continue to fund or

maintain any LIBOR Loan, as contemplated by this Agreement, then, unless that Lender is able to make or to continue to fund or to maintain such LIBOR Loan at another branch or office of that Lender without, in that Lender's reasonable opinion, materially adversely affecting it or its Loans or the income obtained therefrom, on notice thereof and demand therefor by such Lender to Borrower Representative through Agent, (i) the obligation of such Lender to agree to make or to make or to continue to fund or maintain such LIBOR Loans, as the case may be, shall terminate and (ii) each U.S. Borrower or Canadian Borrower, as the case may be, shall forthwith prepay in full all outstanding LIBOR Loans owing by such Borrower to such Lender, together with interest accrued thereon, unless such Lender may maintain such LIBOR Loans through the end of such LIBOR Period under applicable law or unless Borrower Representative on behalf of such Borrower, within five (5) Business Days after the delivery of such notice and demand, converts all LIBOR Loans into Base Rate Loans. Notwithstanding the foregoing, if Borrower provides Agent and the Affected Lender notice that it seeks to replace such Affected Lender in accordance with Section 2.14(d), Borrower's obligation to prepay Loans pursuant to this Section 2.14(c) shall be suspended; provided that if no Replacement Lender is found within the time provided for in Section 2.14(d), Borrower shall have five Business Days to prepay such Affected Lender's LIBOR Loans. In the event Borrower relies on this provision to suspend its obligation to prepay LIBOR Loans, such LIBOR Loans shall be converted to Base Rate Loans at the end of the applicable LIBOR Period.

(d) Within thirty (30) days after receipt by Borrower Representative of written notice and demand from any Lender (an "Affected Lender") for payment of additional amounts or increased costs as provided in Sections 2.13(a), 2.14(a) or 2.14(b), or notice and demand that Borrower prepay Loans pursuant to Section 2.14(c), Borrower Representative may, at its option, notify Agent and such Affected Lender of its intention to replace the Affected Lender. So long as no Event of Default has occurred and is continuing, Borrower Representative, with the consent of Agent, may obtain, at Borrowers' expense, a replacement Lender ("Replacement Lender") for the Affected Lender, which Replacement Lender must be reasonably satisfactory to Agent. If Borrowers obtain a Replacement Lender within ninety (90) days following notice of their intention to do so, the Affected Lender must sell and assign its Loans and Commitments to such Replacement Lender for an amount equal to the principal balance of all Loans held by the Affected Lender and all accrued interest and Fees with respect thereto through the date of such sale and such assignment shall not require the payment of an assignment fee to Agent; provided, that Borrowers shall have reimbursed such Affected Lender for the additional amounts or increased costs that it is entitled to receive under this Agreement through the date of such sale and assignment. Notwithstanding the foregoing, Borrowers shall not have the right to obtain a Replacement Lender if the Affected Lender rescinds its demand for increased costs or additional amounts within 15 days following its receipt of Borrowers' notice of intention to replace such Affected Lender. Furthermore, if Borrowers give a notice of intention to replace and do not so replace such Affected Lender within ninety (90) days thereafter, Borrowers' rights under this Section 2.14(d) shall terminate with respect to such Affected Lender for such request for additional amounts or increased costs and Borrowers shall promptly pay all increased costs or additional amounts demanded by such Affected Lender pursuant to Sections 2.13(a), 2.14(a) and 2.14(b). An exercise of Borrowers' option under this Section 2.14(d) shall not suspend Borrowers' obligation to pay such increased costs or additional amounts demanded by such



Affected Lender pursuant to Sections 2.13(a), 2.14(a) and 2.14(b) until such Affected Lender is replaced.

(e) It is understood and agreed that (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, guidelines or directives in connection therewith (collectively, the “Dodd-Frank Act”) are deemed to have been adopted and gone into effect after the date of this Agreement to the extent necessary to provide Lenders with the benefit of this Section 2.14 with respect to any “change in law or regulation” resulting from the Dodd-Frank Act and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall, for the purposes of this Agreement, be deemed to have been adopted and gone into effect after the date of this Agreement to the extent necessary to provide Lenders with the benefit of this Section 2.14 with respect to any “change in law or regulation” resulting from Basel III.

(f) No Lender shall request compensation under Section 2.14(a) or (b) hereof unless such Lender is generally requesting similar compensation from its borrowers with similar provisions in their loan or credit documents. No Borrower shall be required to compensate a Lender for any increased costs incurred or reduced rate of return suffered more than six months prior to the date that the Lender notifies Borrower Representative of the change in law giving rise to such increased costs or reduced return and of such Lender’s intention to claim compensation therefor; provided that to the extent the change in law is retroactive to a date that is prior to the date such change in law is enacted, such six months period shall commence on the date of enactment of such change in law.

(g) Within thirty (30) days after receipt by Borrower Representative of written notice and demand from any Affected Lender for payment of additional amounts or increased costs as provided in Sections 2.13(a), 2.14(a) or 2.14(b), then such Lender shall (at Borrower Representative’s request) use reasonable efforts to designate a different lending office for funding or booking its Loans or to assign its rights and obligations hereunder to another of its offices, branches, or affiliates, if, in the good-faith judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.13(a), 2.13(b), 2.14(a), or 2.14(b), as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrowers shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

2.15 ~~Inability to Determine Rates~~ Interest Rate Determination-

. With respect to Loans and other Obligations denominated in Canadian Dollars, the following Sections 2.15(a) through (c) shall be applicable:

(a) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if Agent determines (which determination shall be conclusive absent manifest error and made by notice to Parent Borrower), or Parent Borrower or Requisite

Lenders notify Agent (with, in the case of the Requisite Lenders, a copy to Parent Borrower) that Parent Borrower or Requisite Lenders (as applicable) have determined, that:

(i) (A) deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and LIBOR Period of any requested LIBOR Loan denominated in Canadian Dollars or (B) adequate and reasonable means do not exist for ascertaining the LIBORBA Rate for any requested LIBOR Period of any requested LIBOR Loan denominated in Canadian Dollars, including, without limitation, because the LIBORCDOR Screen Rate is not available or published on a current basis, and in each case such circumstances are unlikely to be temporary, or

(ii) the administrator of the LIBORCDOR Screen Rate or a Governmental Authority having jurisdiction over Agent has made a public statement identifying a specific date after which the LIBORBA Rate or the LIBORCDOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans denominated in Canadian Dollars (such specific date, the “Scheduled Unavailability Date”), or

(iii) syndicated credit facilities in the U.S. market providing for credit facilities denominated in Canadian Dollars currently being executed, or that include language similar to that contained in this Section, are generally being executed or amended (as applicable) to incorporate or adopt (as applicable) a new benchmark interest rate to replace the LIBORBA Rate,

then, reasonably promptly after such determination by Agent or receipt by Agent of such notice, as applicable, Agent and Parent Borrower may amend this Agreement (a “LIBORCDOR Successor Amendment”) to replace the LIBORBA Rate with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any evolving or then existing convention for similar U.S. dollar Canadian Dollar denominated syndicated credit facilities for such alternative benchmarks (any such proposed rate, a “LIBORCDOR Successor Rate”), together with any proposed LIBORCDOR Successor Rate Conforming Changes and any such amendment shall become effective at 5:00 p.m. (New York time) on the fifth Business Day after Agent shall have posted such proposed amendment to all Lenders and Parent Borrower unless, prior to such time, Lenders comprising the Requisite Lenders have delivered to Agent written notice that such Requisite Lenders do not accept such amendment.

(b) If no LIBORCDOR Successor Rate has been determined and the circumstances under clause (a)(i) above exist or the Scheduled Unavailability Date has occurred (as applicable), Agent will promptly so notify Parent Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBOR Loans denominated in Canadian Dollars shall be suspended (to the extent of the affected LIBOR Loans or LIBOR Periods), and (y) the LIBORBA Rate component shall no longer be utilized in determining the Canadian Base Rate. Upon receipt of such notice, the Borrowers may revoke any pending request for an Advance of, conversion to or continuation of LIBOR Loans denominated in Canadian Dollars (to the extent of the affected LIBOR Loans or LIBOR Periods) or, failing that, will be deemed to have converted such request into a request

for an Advance of Canadian Base Rate Loans (subject to the foregoing clause (y)) at on the date and in the amount specified therein.

(c) Notwithstanding anything else herein, any definition of ~~LIBOR~~CDOR Successor Rate shall provide that in no event shall such ~~LIBOR~~CDOR Successor Rate be less than zero for purposes of this Agreement.

With respect to Loans and other Obligations denominated in Dollars or any Alternative Currency, the following Sections 2.15(d) through (j) shall apply:

(d) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 P.M. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Requisite Lenders.

Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the provisos below in this paragraph, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that, this clause (d) shall not be effective unless the Agent has delivered to the Lenders and Parent Borrower a Term SOFR Notice.

(e) In connection with the implementation of a Benchmark Replacement, the Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(f) The Agent will promptly notify Parent Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and (if known at such time) the related Benchmark Replacement, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (h) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.15, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.15.

(g) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or the LIBOR Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Agent may modify the definition of "LIBOR Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Agent may modify the definition of "LIBOR Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(h) (i) Upon Parent Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period or (ii) if a Benchmark Unavailability Period has not commenced and Agent determines (which determination shall be conclusive absent manifest error and made by notice to Parent Borrower), or Parent Borrower or Requisite Lenders notify Agent (with, in the case of the Requisite Lenders, a copy to Parent Borrower) that Parent Borrower or Requisite Lenders (as applicable) have determined, that (A) deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and LIBOR Period of any requested LIBOR Loan denominated in Dollars or (B) adequate and reasonable means do not exist for ascertaining the LIBOR Rate for any requested LIBOR Period of any requested LIBOR Loan denominated in Dollars, including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis, and in each case such circumstances are unlikely to be temporary, in each case Parent Borrower may revoke any request for a conversion to or continuation of LIBOR Loans to be made, converted or continued during any Benchmark Unavailability Period or any other such period described in clause (ii) above and, failing that, all Borrowers will be deemed to have converted any such request into a request for a conversion to Base Rate Loans. During any Benchmark

Unavailability Period, any other such period described in clause (ii) above or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate. Furthermore, if any LIBOR Loan is outstanding on the date of Parent Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period or any notice described in clause (ii) above, then on the last day of the LIBOR Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be converted by the Agent to, and shall constitute, a Base Rate Loan on such day.

(i) If Parent Borrower shall fail to select the duration of any LIBOR Period for any LIBOR Loans in accordance with the provisions contained in the definition of "LIBOR Period" in Section 1.1, the Agent will forthwith so notify Parent Borrower and Lenders and such Loans will automatically, on the last day of the then existing LIBOR Period therefor convert into Base Rate Loans.

(j) Upon the occurrence and during the continuance of any Event of Default under Section 9.1(a), (x) each LIBOR Loan will automatically, on the last day of the then existing LIBOR Period therefor, be Converted into Base Rate Loans and (y) the obligation of the Lenders to make, or to convert Loans into, LIBOR Loans shall be suspended.

#### 2.16 Incremental Revolving Loans; Extensions.

(a) Borrowers may on any date after the Amendment No. ~~36~~ Effective Date, by notice to Agent (whereupon Agent shall promptly deliver a copy to each of the Lenders), increase the Commitment hereunder with incremental revolving or term loan commitments (the "Incremental Revolving Loans") in an amount not to exceed \$500,000,000 in the aggregate (with minimum amounts of not less than \$25,000,000 per increase) which Incremental Revolving Loans may take the form of (x) commitments to make additional Revolving Loans (such additional Revolving Loans, the "Incremental Facility Revolving Loans") on the same terms and conditions applicable to the Loans made pursuant to the Commitments in effect on the Amendment No. ~~56~~ Effective Date (~~the~~ "or, from and after, and subject to the occurrence of, the Separation Effective Date, on the the Separation Effective Date) (the "Initial Revolving Facility Loans") or (y) subject to compliance with the Permitted FILO Tranche Conditions, commitments to make revolving or term loans which are expressly subordinated in right of payment to the Initial Revolving Facility Loans and other Incremental Facility Revolving Loans, which, for the avoidance of doubt, shall be implemented as a separate class of loans hereunder (such loans, the "Permitted Incremental FILO Loans"); provided that at the time of the effectiveness of any Incremental Revolving Loan Amendment referred to below, (a) no Default or Event of Default shall have occurred and be continuing on such date or after giving effect to extensions of credit to be made on such date, (b) each of the representations and warranties made by any Credit Party in or pursuant to the Loan Documents shall be true and correct in all material respects on and as of such date as if made on and as of such date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (or, in all respects, if qualified by materiality) as of such earlier date) and (c) Agent shall have received a

certificate to that effect dated such date and executed by a Financial Officer of Borrower Representative. Incremental Revolving Loans may be made by any existing Lender or by any other financial institution or any fund that regularly invests in bank loans selected by Borrower Representative (any such other financial institution or fund being called an “Incremental Lender”); provided that (i)(A) Agent and (B) (except in the case of Permitted Incremental FILO Loans) each L/C Issuer and the Swing Line Lender shall have consented (such consent not to be unreasonably withheld) to such Lender’s or Incremental Lender’s making such Incremental Revolving Loans if such consent would be required under Section 11.1 for an assignment of Loans to such Lender or Incremental Lender, and (ii) Borrowers shall not be permitted to increase the Commitment pursuant to this Section more than three (3) times during the term of this Agreement. No consent of the Lenders shall be required (other than the Lenders providing such Incremental Revolving Loans) to an Incremental Revolving Loan Amendment. Commitments in respect of Incremental Revolving Loans shall be delivered to Borrower Representative within 10 days of a Borrower’s request therefor, and shall be effected pursuant to an amendment (an “Incremental Revolving Loan Amendment”) to this Agreement and, as appropriate, the other Loan Documents, executed by Borrowers, each Lender agreeing to provide such Incremental Revolving Loans, if any, each Incremental Lender providing such Incremental Revolving Loans, if any, Co-Collateral Agents and Agent; provided, such documentation shall only contain amendments to this Agreement and the other Loan Documents that are necessary to implement the increase to the Commitment (for the avoidance of doubt, including, in the case of Permitted Incremental FILO Loans, amendments to Sections 2.3 and 2.9 that are necessary or appropriate to reflect the “last out” nature of such Permitted Incremental FILO Loans, which may be effected with the consent of Agent, Co-Collateral Agents and each Incremental Lender providing such Permitted Incremental FILO Loans pursuant to an Incremental Revolving Loan Amendment, but without the consent of any other Lender); provided, further, the Incremental Facility Revolving Loans shall not require any scheduled amortization or mandatory commitment reduction prior to the Stated Termination Date and the maturity date of all Incremental Revolving Loans shall be the Commitment Termination Date. Any upfront fees paid to the Incremental Lenders shall be determined, and agreed upon, between Borrowers and such Incremental Lenders. Any Incremental Revolving Loans made hereunder shall be deemed “Loans” hereunder and shall be subject to the same terms and conditions applicable to the existing Loans, except that Permitted Incremental FILO Loans (x) may, notwithstanding anything herein to the contrary, be structured as term loans or revolving loans, and may have pricing terms, a final maturity date (subject to the immediately succeeding proviso), upfront or similar fees and priority which are different from those applicable to the Initial Revolving Facility Loans and other Incremental Facility Revolving Loans; provided that the final maturity date of any Permitted Incremental FILO Loans shall be no earlier than (and there shall be no mandatory commitment reductions with respect thereto prior to) the Commitment Termination Date with respect to the Initial Revolving Facility Loans; provided, further, for the avoidance of doubt, nothing in this Section 2.16 shall obligate any existing Lender to participate in any class of Permitted Incremental FILO Loans, regardless of whether the maturity date with respect to such Permitted Incremental FILO Loans is the Commitment Termination Date with respect to the Initial Revolving Facility Loans or otherwise, (y) for purposes of determining availability under any applicable borrowing base, may have advance rates with respect to the amount of Eligible Billed Accounts, Eligible Unbilled Accounts

and/or Eligible Rolling Stock, as applicable, in amounts as agreed upon between Parent Borrower and the Incremental Lenders providing such Permitted Incremental FILO Loans; provided that in no case shall such advance rates with respect to Eligible Billed Accounts, Eligible Unbilled Accounts and Eligible Rolling Stock exceed 10%, 5% and 5%, respectively, above the respective advance rates herein; provided, further, such advance rate for Permitted Incremental FILO Loans with respect to Eligible Rolling Stock may be decreased from time to time in the discretion of Co-Collateral Agents (and, for the avoidance of doubt, a maximum of 25% of the borrowing base applicable to any Permitted Incremental FILO Loans shall be attributable to Eligible Equipment, if applicable, and Eligible Rolling Stock in the aggregate) and (z) shall, once borrowed, not be permitted to be repaid so long as any Loans (other than other Loans incurred as Permitted Incremental FILO Loans) are outstanding, subject to customary exclusions to the requirement in this clause (z) as reasonably agreed upon by Agent, Parent Borrower and the Incremental Lenders providing such Permitted Incremental FILO Loans, including customary scheduled amortization payments not to exceed amounts as agreed upon by Agent, Parent Borrower and such Incremental Lenders (the conditions set forth in this sentence applicable to Permitted Incremental FILO Loans, the “Permitted FILO Tranche Conditions”). On the date of any borrowing of Incremental Revolving Loans (other than Permitted Incremental FILO Loans), Borrowers shall be deemed to have repaid and reborrowed all outstanding Loans as of such date (with such reborrowing to consist of the types of Loans, with related LIBOR Periods, if applicable, specified in a notice to Agent (which notice must be received by Agent in accordance with the terms of this Agreement)). The deemed payments made pursuant to the immediately preceding sentence in respect of each LIBOR Loan shall be subject to indemnification by Borrowers pursuant to the provisions of Section 2.14 if the deemed payment occurs other than on the last day of the related LIBOR Periods.

(b) In connection with any Incremental Revolving Loans, Parent Borrower, Agent and each applicable Incremental Lender and existing Lender making such Incremental Revolving Loans shall deliver to Agent the Incremental Revolving Loan Amendment and such other documentation as Agent shall reasonably specify to evidence the Incremental Revolving Loans of each applicable Incremental Lender and existing Lender making such Incremental Revolving Loans. Agent shall promptly notify each Lender as to the effectiveness of each Incremental Revolving Loan Amendment. Any Incremental Revolving Loan Amendment may, without consent of any other Lender, effect such amendments to this Agreement (including, for the avoidance of doubt and notwithstanding anything herein to the contrary, amendments to Sections 2.3 and 2.9 that are necessary or appropriate to reflect the “last out” nature of any Permitted Incremental FILO Loans, which may be effected with the consent of Agent, Co-Collateral Agents and each Incremental Lender providing such Permitted Incremental FILO Loans pursuant to an Incremental Revolving Loan Amendment, but without the consent of any other Lender) and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of Agent and Parent Borrower, to effect the provisions of this Section 2.16. No existing Lender shall be obligated to provide Commitments in respect of Incremental Revolving Loans.

(c) Pursuant to one or more offers made from time to time by Borrowers to all Lenders of the U.S. Loans and/or the Canadian Loans, as applicable, on a pro rata basis (based on the aggregate outstanding Canadian Commitments or the Commitments, as

applicable) and on the same terms (“Pro Rata Extension Offers”), Borrowers are hereby permitted to consummate transactions with individual Lenders from time to time to extend the maturity date of such Lender’s Commitments of U.S. Loans and/or the Canadian Loans. Any such extension (an “Extension”) agreed to between Borrowers and any such Lender (an “Extending Lender”) will be established under this Agreement (such extended Canadian Commitments or the Commitments, as applicable, an “Extended Revolving Commitment”). Each Pro Rata Extension Offer shall specify the date on which Borrowers propose that the Extended Revolving Commitment shall be extended, which shall be a date not earlier than ten Business Days after the date on which notice is delivered to Agent (or such shorter period agreed to by Agent in its reasonable discretion).

(d) The applicable Borrowers and each Extending Lender shall execute and deliver to Agent such documentation as Agent shall reasonably specify to evidence the Extended Revolving Commitments of such Extending Lender. Each such document shall specify the terms of the applicable Extended Revolving Commitments; provided, that (i) except as to interest rates, fees and final maturity (which interest rates, fees and final maturity shall be determined by Borrowers and set forth in the Pro Rata Extension Offer), any Extended Revolving Commitment shall have the same terms as the existing U.S. Loans or the Canadian Loans, as applicable, and (ii) any Extended Revolving Commitments may participate on a pro rata basis or a less than pro rata basis (but not greater than a pro rata basis) in any voluntary or mandatory repayments or prepayments hereunder. Upon the effectiveness of any such Extended Revolving Commitment, this Agreement shall be amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Extended Revolving Commitments evidenced thereby. With respect to any Extended Revolving Commitments, and with the consent of the Swing Line Lender and each L/C Issuer, participations in Swing Line Loans and Letters of Credit shall be reallocated to lenders holding such Extended Revolving Commitments upon effectiveness of such Extended Revolving Commitment.

(e) Upon the effectiveness of any such Extension, the applicable Extending Lender’s Canadian Commitment or Commitment, as applicable, will be automatically designated an Extended Revolving Commitment.

(f) All Extended Revolving Commitments and all obligations in respect thereof shall be Obligations of the relevant Credit Parties under this Agreement and the other Loan Documents that are secured by the Collateral on a *pari passu* basis with all other Obligations of the relevant Credit Parties under this Agreement and the other Loan Documents and no L/C Issuer or Swing Line Lender shall be obligated to provide Swing Line Loans or issue Letters of Credit under such Extended Revolving Commitments unless it shall have consented thereto.

2.17 Bank Products. Any Credit Party may request and any Lender or Agent may, in its sole and absolute discretion, arrange for such Credit Party to obtain from such Lender or any Affiliate of such Lender or Agent, as applicable, Bank Products although no Credit Party is required to do so. The Credit Parties acknowledge and agree that the obtaining of Bank Products from any Lender or Agent or their respective Affiliates (a) is in the sole and absolute discretion



of such Lender or Agent or their respective Affiliates, and (b) is subject to all rules and regulations of such Lender or Agent or their respective Affiliates.

2.18 Reserves Generally. Notwithstanding anything contained in this Agreement to the contrary, Co-Collateral Agents may establish or change Reserves, in the exercise of their Permitted Discretion, but only upon not less than five (5) Business Days' notice to Borrower Representative (unless an Event of Default exists in which case prior notice shall not be required prior to the establishment or change in any Reserve). Co-Collateral Agents will be available during such period to discuss any such proposed Reserve (or change thereto) with Borrower Representative and, without limiting the right of Co-Collateral Agents to establish or change such Reserves in Co-Collateral Agents' Permitted Discretion, Borrowers may take such action as it may elect so that the event, condition or matter that gave rise to such Reserve no longer exists, in which event Co-Collateral Agents shall reduce or remove such Reserve in a manner that they determine appropriate in the exercise of their Permitted Discretion. The amount of Reserves established by Co-Collateral Agents pursuant to the first sentence of this Section 2.18 shall have a reasonable relationship as determined by Co-Collateral Agents in their Permitted Discretion to the event, condition or other matter that is the basis for the Reserves and shall relate to the Eligible Accounts, Eligible 90-Day Accounts or Eligible Equipment or Eligible Rolling Stock (collectively, the "Borrowing Base Collateral").

### 3. ~~CONDITIONS PRECEDENT~~ CONDITIONS PRECEDENT

3.1 Conditions to Restatement Date and the Initial Loans. The Restatement Date shall not occur, and no Lender shall be obligated to make any Loan and no Lender or L/C Issuer shall be obligated to incur any Letter of Credit Obligations on the Restatement Date until the following conditions have been satisfied or provided for in a manner reasonably satisfactory to Agent, each Co-Collateral Agent, each Lead Arranger and each Lender, or waived in writing by Agent, Co-Collateral Agents, each Lead Arranger and each Lender:

(a) Credit Agreement; Loan Documents. The following documents shall have been duly executed by each Borrower, each other Credit Party, Agent, Co-Collateral Agents and the Lenders party thereto; and Agent shall have received such documents, instruments and agreements, each in form and substance reasonably satisfactory to Agent, each Lead Arranger and each Lender:

(i) Credit Agreement. Duly executed originals of this Agreement, dated the Restatement Date, and all annexes, exhibits and schedules hereto.

(ii) Revolving Notes and Swing Line Notes. If requested by any Lender, duly executed originals of the Revolving Notes and Swing Line Notes for each applicable Lender, dated the Restatement Date.

(iii) U.S. Security Agreement. Duly executed originals of the U.S. Security Agreement, dated the Restatement Date, and all annexes, exhibits and schedules thereto.

(iv) Canadian Security Agreement. Duly executed originals of the Canadian Security Agreements, dated the Restatement Date.

(v) Intellectual Property Security Agreements. Duly executed originals of Intellectual Property Security Agreements, dated the Restatement Date in form and substance reasonably satisfactory to Agent (it being understood that the forms attached to the U.S. Security Agreement are reasonably satisfactory to Agent).

(vi) ABL Intercreditor Agreement. Duly executed originals of the ABL Intercreditor Agreement, dated the Restatement Date.

(vii) Lien, Tax, and Judgment Searches. Agent shall have received the result of recent lien, Tax and judgment searches in each of the jurisdictions reasonably requested by it and such lien searches shall reveal no Liens on any of the assets of the Credit Parties, other than Permitted Liens.

(viii) Repayment of the Existing Credit Agreement. All principal on Loans under (and as defined in) the Existing Credit Agreement, and all accrued and unpaid interest, fees and other amounts owing under the Existing Credit Agreement (except to the extent Letters of Credit (as defined in the Existing Credit Agreement) thereunder are converted to Letters of Credit hereunder in accordance with Section 2.2(j)) shall have been repaid.

(ix) Filings, Registrations, and Recordings. Agent shall have received each document (including, without limitation, any financing statement authorized for filing under the Code or the PPSA, as applicable) reasonably requested by Agent to be filed, registered or recorded in order to create in favor of Agent, for the benefit of the Lenders and other Secured Parties, a (x) first priority perfected Lien on the U.S. ABL Priority Collateral and the Canadian Collateral (subject to Permitted Liens) and (y) a second priority perfected Lien on the U.S. Term Priority Collateral (subject to Permitted Liens), in either case, which can be perfected by the filing of such document and authorization for filing, registering or recording each such document (including, without limitation, any financing statement authorized for filing under the Code or the PPSA, as applicable) and (y) Memorandum of Security Agreements dated the Restatement Date shall have been delivered for recording with the Surface Transportation Board.

(x) [reserved].

(xi) Borrowing Base Certificate. Agent shall have received duly executed originals of a Borrowing Base Certificate for Borrowers, dated the Restatement Date, reflecting information concerning calculation of the Borrowing Base as of the last day of the most recent calendar month ended at least 20 days prior to the Restatement Date.

(xii) Formation and Good Standing. For each Credit Party, such Person's (a) articles of incorporation or certificate of formation, as applicable, and all amendments thereto, each certified as of the Restatement Date by such Person's corporate secretary or an assistant secretary, managing member, manager or equivalent senior officer, as applicable, as being in full force and effect without any further modification or amendment (b) for each Borrower only, a good standing certificate (including verification of Tax status) or like certificate in its jurisdiction of incorporation or formation, as applicable,

and (c) for each Credit Party other than a Borrower, a “bring down” certificate of good standing or like certificate in its jurisdiction of incorporation or formation, as applicable.

(xiii) Bylaws and Resolutions. For each Credit Party, (a) such Person’s bylaws, operating agreement, limited liability company agreement or limited partnership agreement, as applicable, together with all amendments thereto and (b) resolutions of such Person’s members or board of directors, as the case may be, and, to the extent required under applicable law, stockholders, approving and authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and the transactions to be consummated in connection therewith, each certified as of the Restatement Date by such Person’s corporate secretary or an assistant secretary, managing member, manager or equivalent senior officer, as applicable, as being in full force and effect without any modification or amendment.

(xiv) Incumbency Certificates. For each Credit Party, signature and incumbency certificates of the officers of each such Person executing any of the Loan Documents, certified as of the Restatement Date by such Person’s corporate secretary or an assistant secretary, managing member, manager or equivalent senior officer, as applicable, as being true, accurate, correct and complete.

(xv) Opinions of Counsel. Duly executed originals of legal opinions of (i) Wachtell, Lipton, Rosen & Katz, U.S. special counsel to the Credit Parties, (ii) Gowling LaFleur Henderson LLP, Canadian special counsel to the Credit Parties, (iii) Spencer Fane LLP, Missouri special counsel to the Credit Parties and (iv) Louis E. Gittomer, U.S. special railroad counsel to the Credit Parties, each in form and substance reasonably satisfactory to Agent and its counsel, dated the Restatement Date.

(xvi) Officer’s Certificate. Agent shall have received duly executed originals of a certificate of a Financial Officer of Borrower Representative, dated the Restatement Date, stating that:

(A) the Con-way Merger has been consummated on the Restatement Date substantially simultaneously with the closing of the Facility on the terms described in the Con-way Acquisition Agreement, without giving effect to any amendment, modification or waiver thereof by Parent Borrower or any consent thereunder (including, for the avoidance of doubt, with respect to the conditions to the Offer set forth in the Con-way Acquisition Agreement) by Parent Borrower which is materially adverse to the Lenders or the Lead Arrangers without the prior written consent of each Lead Arranger who, together with its affiliates, holds 20% or more of the Commitments under the Facility (it being understood and agreed that any (a) decrease in the price paid per share in connection with the Con-way Acquisition of (x) more than 10% or (y) less than 10% if such decrease is not allocated to reduce the aggregate amount of the Facility, (b) increase in the price paid in connection with the Con-way Acquisition that is not funded with the proceeds of a substantially concurrent issuance of equity or (c) any waiver or modification of the

Minimum Condition (as defined in the Con-way Acquisition Agreement as in effect on September 9, 2015) shall, in each case, be deemed to be a modification that is materially adverse to the Lenders);

(B) since December 31, 2014, no Material Adverse Effect shall have occurred and be continuing; and

(C) the conditions set forth in clauses (a) and (b) of Section 3.2 are satisfied.

(xvii) Solvency Certificate. Agent shall have received a duly completed solvency certificate substantially in the form of Exhibit 3.1 hereto.

(xviii) Notice of Revolving Credit Advance. Duly executed originals of a Notice of Revolving Credit Advance, dated the Restatement Date, with respect to the initial Revolving Credit Advance(s), if any, to be requested by Borrower Representative on the Restatement Date.

(xix) Financial Statements. Parent Borrower shall have caused Agent to have received (and Agent hereby acknowledges receipt of, in the case of the 2012, 2013 and 2014 fiscal year financial statements described in clause (a) and, as to the Fiscal Quarters ending on March 31, 2015 and June 30, 2015, clause (b)) (a) audited consolidated balance sheets and related consolidated statements of income, stockholders' equity and cash flows of Parent Borrower and Con-way for the 2012, 2013 and 2014 fiscal years (or, if the Restatement Date occurs 90 days or more after December 31, 2015, audited consolidated balance sheets and related consolidated statements of income, stockholders' equity and cash flows of Parent Borrower and Con-way for the 2013, 2014 and 2015 fiscal years) and (b) unaudited consolidated balance sheets and related consolidated statements of income, stockholders' equity and cash flows of Parent Borrower and Con-way for each subsequent Fiscal Quarter (other than a quarter that is also a fiscal year-end) ended at least 45 days before the Restatement Date.

(b) Repayment of Indebtedness and Release of Collateral. On the Restatement Date, Agent shall have received satisfactory evidence that all existing Indebtedness, other than Indebtedness permitted pursuant to Section 7.1, of or related to Borrowers and their Subsidiaries shall have been repaid or cancelled and all documentation representing such indebtedness shall have been terminated and all guarantees, liens and security interests associated therewith have been released, or that adequate measures shall have been taken to terminate such documentation and release such guarantees, liens and security interests, except as otherwise agreed by Agent.

(c) Payment of Fees. Parent Borrower shall have paid (or caused to be paid) to Agent, Co-Collateral Agents and Lead Arrangers and the Lenders all Fees required to be paid on or before the Restatement Date in the respective amounts specified in Section 2.7 (including, the Fees specified in the Fee Letter), and shall have reimbursed Agent for all reasonable fees, costs and expenses, including due diligence expenses, syndication expenses, the fees and expenses of the appraisers and auditors performing collateral field examinations

and appraisals, travel expenses and reasonable fees, disbursements and other charges of counsel presented at least three (3) Business Days prior to the Restatement Date.

(d) Material Adverse Effect. There shall not have been, since December 31, 2014, a Material Adverse Effect.

(e) Patriot Act. Agent and the Lenders shall have received, at least three business days prior to the Restatement Date, from the Credit Parties prior to the Restatement Date all documentation and other information required by Governmental Authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, in each case to the extent requested by Agent from Parent Borrower in writing at least 10 business days prior to the Restatement Date.

(f) Perfection Certificate. Agent shall have received a completed perfection certificate dated the Restatement Date and signed by a Responsible Officer of each Credit Party, together with all attachments contemplated thereby.

(g) Phase 1 Field Audit and Appraisals; Minimum Availability. (a) Agent shall have received a Phase 1 field audit and appraisals with respect to the assets of Con-way and its subsidiaries to be included in the Borrowing Base as of the Restatement Date, which Phase 1 field audit and appraisals shall be reasonably satisfactory to Agent and Co-Collateral Agents and (b) after giving effect to the Transactions and the Revolving Credit Advances and issuances of Letters of Credit under this Agreement, the sum of Availability plus unrestricted cash and Cash Equivalents (but excluding the proceeds of any Advance), in each case on the Restatement Date, shall not be less than \$250,000,000.

3.2 Further Conditions to Each Loan, Each Letter of Credit Obligation. No Lender shall be obligated to fund any Advance (which conditions shall not apply to conversions or continuations of Advances made pursuant to Section 2.5(e)) and no Lender or L/C Issuer shall be obligated to incur any Letter of Credit Obligation, if, as of the date thereof:

(a) any representation or warranty by any Credit Party contained herein or in any other Loan Document is untrue or incorrect in any material respect (with respect to any representation or warranty that is not otherwise qualified as to materiality) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date and except for changes therein expressly permitted or expressly contemplated by this Agreement;

(b) any Default or Event of Default has occurred and is continuing; or

(c) after giving effect to such Advance (or the incurrence of any Letter of Credit Obligations), (i) the Aggregate Revolving Credit Exposure would exceed the Available Credit, (ii) the Canadian Loans would exceed the Canadian Available Credit or (iii) the U.S. Loans would exceed the U.S. Available Credit.

The request and acceptance by any Borrower of the proceeds of any Advance or the incurrence of any Letter of Credit Obligations shall be deemed to constitute, as of the date thereof, a

representation and warranty by Borrowers that the conditions in this Section 3.2 have been satisfied.

Notwithstanding the failure to satisfy the conditions precedent set forth in paragraphs (a) or (b) of this Section 3.2, unless otherwise directed by the Requisite Lenders, Agent may, but shall have no obligation to, continue to make Loans and an L/C Issuer may, but shall have no obligation to, issue, amend, renew or extend, or cause to be issued, amended, renewed or extended, any Letter of Credit for the ratable account and risk of Lenders from time to time if Agent believes that making such Loans or issuing, amending, renewing or extending, or causing the issuance, amendment, renewal or extension of, any such Letter of Credit is in the best interests of the Lenders.

#### 4. ~~REPRESENTATIONS AND WARRANTIES~~REPRESENTATIONS AND WARRANTIES

To induce Lenders to make the Loans and Lenders and L/C Issuers to incur Letter of Credit Obligations, the Credit Parties executing this Agreement make the following representations and warranties to Agent, each L/C Issuer and each Lender with respect to itself and its Restricted Subsidiaries, each and all of which shall survive the execution and delivery of this Agreement.

4.1 Corporate Existence; Compliance with Law. Each Credit Party (a) is a corporation, limited liability company, limited partnership or other entity duly organized or incorporated, as applicable, validly existing and is in good standing (to the extent such concept is applicable in the relevant jurisdiction) under the laws of its respective jurisdiction of incorporation or organization; (b) is duly qualified to conduct business and is in good standing (to the extent such concept is applicable in the relevant jurisdiction) in each other jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect; (c) has the requisite power and authority, and the legal right to own and operate in all material respects its properties, to lease the property it operates under lease and to conduct its business in all material respects as now, heretofore and proposed to be conducted and has the requisite power and authority and the legal right to pledge, mortgage, hypothecate or otherwise encumber all material Collateral; (d) has all material licenses, permits, consents or approvals from or by, and has made all material filings with, and has given all material notices to, all Governmental Authorities having jurisdiction over such Credit Party, to the extent required for such ownership, operation and conduct or other organizational documents; and (e) is in compliance in material respects with all applicable provisions of law except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect.

4.2 Chief Executive Offices; Collateral Locations; FEIN. As of the Restatement Date, each Credit Party's name as it appears in official filings in its jurisdiction of incorporation or organization, organizational identification number, if any, issued by its jurisdiction of incorporation or organization and the location of each Credit Party's chief executive office, principal place of business or registered office are set forth in Schedule 4.2, and except as set forth on such schedule each Credit Party has only one jurisdiction of incorporation or organization.

4.3 Corporate Power; Authorization; Enforceable Obligations; No Conflict. The execution, delivery and performance by each Credit Party of the Loan Documents to which it is a party: (a) are within such Person's power; (b) have been duly authorized by all necessary corporate, limited liability company or limited partnership action; (c) do not contravene any provision of such Person's charter, bylaws or partnership or operating agreements or other organizational documents, as applicable; (d) do not violate any material provision of any law or regulation, or any material provision of any order or decree of any court or Governmental Authority; (e) do not conflict with or result in the breach or termination of, constitute a default under or accelerate or permit the acceleration of any performance required by, any material indenture, mortgage, deed of trust, lease, loan agreement or other material instrument to which such Person is a party or by which such Person or any of its property is bound; (f) do not result in the creation or imposition of any Lien upon any of the property or assets of such Person other than (i) those in favor of Agent, on behalf of itself and Lenders, pursuant to the Loan Documents and (ii) the filings referred to in Section 4.21; and (g) do not require the consent or approval of any Governmental Authority or any other Person, other than those which will have been duly obtained, made or complied with prior to the Restatement Date. Each of the Loan Documents have been duly executed and delivered by each Credit Party that is a party thereto and, each such Loan Document constitutes a legal, valid and binding obligation of such Credit Party enforceable against it in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

4.4 Financial Statements. All Financial Statements concerning Parent Borrower and its consolidated Subsidiaries that are referred to in clause (a) below have been prepared in accordance with GAAP (as in effect at the time delivered) consistently applied throughout the periods covered (except as disclosed therein and except, with respect to unaudited Financial Statements, for the absence of footnotes and normal year-end audit adjustments) and fairly present, in all material respects, the financial position of the Persons covered thereby as at the dates thereof and the results of their operations and cash flows for the periods then ended.

(a) Financial Statements. The audited consolidated balance sheet at December 31, 2018 and the related statement of income and cash flows of Parent Borrower and its consolidated Subsidiaries certified by KPMG LLP for the Fiscal Year then ended and audited consolidated balance sheet at December 31, 2016, December 31, 2017 and December 31, 2018 have been delivered to Agent on or prior to the Amendment No. 3 Effective Date.

(b) [Reserved].

(c) [Reserved].

(d) Undisclosed Liabilities; Burdensome Restrictions. None of Borrowers or the Restricted Subsidiaries has any material Guaranteed Obligations, or any long-term leases or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are required by GAAP to be reflected or reserved against on a balance sheet of Borrowers and the Restricted Subsidiaries other than (i) as are reflected in the financial statements described in clause (a)

hereof (including the footnotes thereto) and (ii) as otherwise permitted hereunder. No Credit Party is a party or is subject to any contract, agreement or charter restriction that would reasonably be expected to have a Material Adverse Effect.

4.5 Material Adverse Effect. Since December 31, 2018, no event has occurred, that alone or together with other events, has had a Material Adverse Effect.

4.6 Ownership of Property; Liens. As of the Restatement Date, the Real Property listed in Schedule 4.6 constitutes all of the real property owned, leased or subleased by any Credit Party. Each Credit Party owns fee simple title to all of its owned material Real Property and valid leasehold interests in all of its leased material Real Property, subject in each case to Agent's Liens and Permitted Liens. Each Credit Party is the sole legal and beneficial owner of and has good and marketable title (subject to Agent's Liens and Permitted Liens) to each component of the Collateral. Each Credit Party also has title to, or valid leasehold interests in, all of its other personal property and assets, in each case, material in the ordinary course of their respective businesses or where failure to so own or possess would not reasonably be expected to have a Material Adverse Effect. As of the Restatement Date, none of the Real Property and assets of any Credit Party are subject to any Liens other than Permitted Liens.

4.7 Labor Matters. Except as set forth on Schedule 4.7 or as would not reasonably be expected to result in a Material Adverse Effect, to the knowledge of each Credit Party (a) no strikes or other labor disputes against any Credit Party or any Restricted Subsidiary of any Credit Party are pending or, to the knowledge of any Credit Party, threatened; (b) hours worked by and payment made to employees of each Credit Party and each Restricted Subsidiary of any Credit Party comply with the Fair Labor Standards Act and each other federal, state, local or foreign law applicable to such matters; (c) all payments due from any Credit Party or any Restricted Subsidiary of any Credit Party for employee health and welfare insurance have been paid or accrued as a liability on the books of such Credit Party or such Restricted Subsidiary; (d) there is no organizing activity involving any Credit Party or any Restricted Subsidiary of any Credit Party pending or threatened by any labor union or group of employees; (e) there are no representation proceedings pending or, to the knowledge of any Credit Party, threatened with the National Labor Relations Board or any other applicable labor relations board, and no labor organization or group of employees of any Credit Party or any Restricted Subsidiary of any Credit Party has made a pending demand for recognition; and (f) there are no material complaints or charges against any Credit Party or any Restricted Subsidiary of any Credit Party pending or, to the knowledge of any Credit Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment by any Credit Party or any Restricted Subsidiary of any Credit Party of any individual.

4.8 Subsidiaries and Joint Ventures. As of the Restatement Date, (a) Schedule 4.8 sets forth the name and jurisdiction of incorporation of each direct Subsidiary and Joint Venture of each Credit Party and, as to each such direct Subsidiary and Joint Venture, the percentage of each class of Capital Stock owned by any Credit Party and (b) there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to any Capital Stock of any Borrower or any of their respective Subsidiaries.



4.9 Investment Company Act. No Credit Party is an “investment company” or a company controlled by an “investment company,” as such terms are defined in the Investment Company Act of 1940 as amended.

4.10 Margin Regulations. Neither the making of any Loan hereunder nor the use of the proceeds thereof will violate the provisions of Regulation T, Regulation U (“Regulation U”) or Regulation X of the Federal Reserve Board.

4.11 Taxes/Other. Except as would not reasonably be expected to result in a Material Adverse Effect: (i) all income and other Tax returns, reports, and statements, including information returns, required by any Governmental Authority to have been filed by any Credit Party or any Restricted Subsidiary have been filed (after giving effect to any extensions) with the appropriate Governmental Authority, and (ii) all Taxes have been paid on or prior to the due date therefor, excluding Taxes or other amounts being contested in accordance with Section 6.2(b).

4.12 ERISA.

(a) Borrowers have previously delivered or made available to Agent all Pension Plans (including Title IV Plans and Multiemployer Plans) and all Retiree Welfare Plans, as now in effect. Except with respect to Multiemployer Plans, and except as would not reasonably be expected to have a Material Adverse Effect, each Qualified Plan has either received a favorable determination letter from the IRS or may rely on a favorable opinion letter issued by the IRS, and to the knowledge of any Credit Party nothing has occurred that would be reasonably expected to cause the loss of such qualification or tax-exempt status. Each Pension Plan, to the knowledge of any Borrower, is in compliance in all respects with the applicable provisions of ERISA, the IRC and its terms, including the timely filing of all reports required under the IRC or ERISA except where the failure to comply would not reasonably be expected to have a Material Adverse Effect. Except as has not resulted, or would not reasonably be expected to result, in an ERISA Lien (whether or not perfected), neither any Credit Party nor ERISA Affiliate has failed to make any material contribution or pay any material amount due as required by either Section 412 of the IRC or Section 302 of ERISA or the terms of any such Pension Plan. No “prohibited transaction,” as defined in Section 406 of ERISA and Section 4975 of the IRC, has occurred with respect to any Pension Plan that would subject any Credit Party to a material tax on prohibited transactions imposed by Section 502(i) of ERISA or Section 4975 of the IRC.

(b) Except as would not reasonably be expected to have a Material Adverse Effect: (i) no Title IV Plan is or is reasonably expected to be in “at risk” status (within the meaning of Section 430 of the IRC or Section 303 of ERISA); (ii) no ERISA Event has occurred or to the knowledge of any Credit Party is reasonably expected to occur; (iii) there are no pending, or to the knowledge of any Credit Party, threatened material claims (other than claims for benefits in the normal course), sanctions, actions or lawsuits, asserted or instituted against any Plan or any Person as fiduciary or sponsor of any Plan; (iv) no Credit Party or ERISA Affiliate has incurred or reasonably expects to incur any liability as a result of a complete or partial withdrawal from a Multiemployer Plan; and (v) within the last five years no Title IV Plan of any Credit Party or ERISA Affiliate has been terminated, whether or not in a “standard termination” as that term is used in Section 4041 of ERISA, nor has any

Title IV Plan of any Credit Party or any ERISA Affiliate (determined at any time within the last five years) with Unfunded Pension Liabilities been transferred outside of the “controlled group” (within the meaning of Section 4001(a)(14) of ERISA) of any Credit Party or ERISA Affiliate (determined at such time).

(c) Except as would not reasonably be expected to result in a Material Adverse Effect, each Foreign Pension Plan is in compliance with all requirements of law applicable thereto and the respective requirements of the governing documents for such plan. With respect to each Foreign Pension Plan, neither any Credit Party nor any Subsidiaries or any of their respective directors, officers, employees or agents has engaged in a transaction which would subject any Credit Party or any Subsidiary, directly or indirectly, to a tax or civil penalty which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. With respect to each Foreign Pension Plan, except as would not reasonably be expected to result in a Material Adverse Effect, reserves have been established in the financial statements furnished to Lenders in respect of any unfunded liabilities in accordance with applicable law and prudent business practice or, where required, in accordance with ordinary accounting practices in the jurisdiction in which such Foreign Pension Plan is maintained. The aggregate unfunded liabilities with respect to such Foreign Pension Plans would not reasonably be expected to result individually or in the aggregate in a Material Adverse Effect.

4.13 No Litigation. Except as set forth on Schedule 4.13, no action, claim, lawsuit, demand, or proceeding is now pending or, to the knowledge of any Credit Party, threatened in writing against any Credit Party or any Restricted Subsidiary of any Credit Party, before any Governmental Authority or before any arbitrator or panel of arbitrators (collectively, “Litigation”), (a) on the Restatement Date that challenges such Credit Party’s right or power to enter into or perform any of its obligations under the Loan Documents to which it is a party, or the validity or enforceability of any Loan Document or any action taken thereunder, or (b) that would reasonably be expected to result in a Material Adverse Effect. Except as set forth on Schedule 4.13, as of the Restatement Date there is no Litigation pending or threatened in writing, that would reasonably be expected to have a Material Adverse Effect.

4.14 Brokers. Except as set forth on Schedule 4.14, no Credit Party or Affiliate thereof has any obligation to any Person in respect of any finder’s or brokerage fees in connection with the making of the Loans or the Transactions which will be unpaid after the Restatement Date.

4.15 Intellectual Property. As of the Restatement Date, each Credit Party owns or has rights to use all Intellectual Property necessary to continue to conduct its business as now conducted by it and material to such Credit Party’s business, taken as a whole. Each issued or applied for Patent, registered or applied for Trademark, and registered or applied for Copyright owned by any Credit Party on the Restatement Date is listed, together with application or registration numbers, as applicable, on Schedule 4.15. To each Borrowers’ knowledge, as of the Restatement Date, each Credit Party conducts its business and affairs without infringement of any Intellectual Property of any other Person that would reasonably be expected to result in a Material Adverse Effect. Except as set forth in Schedule 4.15, on the Restatement Date no Credit Party is aware of any material infringement claim by any other Person that is pending or

threatened in writing against any Credit Party with respect to any material Intellectual Property owned by such Credit Party on the Restatement Date.

4.16 Full Disclosure. No information contained in this Agreement, any of the other Loan Documents or Financial Statements or other written reports from time to time prepared by any Credit Party (other than the projections referred to below, forward-looking information and information of a general economic or industry nature) and delivered hereunder or under any other Loan Document (in each as modified or supplemented by other information so furnished and taken as a whole) by or on behalf of any Credit Party to Agent or any Lender pursuant to the terms of this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not materially misleading in light of the circumstances under which they were made (after giving effect to all supplements and updates thereto).

4.17 Environmental Matters.

(a) Except as set forth in Schedule 4.17 or would not reasonably be expected to have a Material Adverse Effect, as of the Restatement Date: (i) the Real Property of each Credit Party and each of their Restricted Subsidiaries is free of contamination from any Hazardous Material; (ii) no Credit Party nor any Restricted Subsidiary of any Credit Party has caused or knowingly allowed to occur any Release of Hazardous Materials on, at, in, under, above, to, from or about any of its Real Property; (iii) the Credit Parties and each of their Restricted Subsidiaries are and, except for matters which have been fully resolved, have, for the past three (3) years, been in compliance with all Environmental Laws; (iv) the Credit Parties and each of their Restricted Subsidiaries (A) have obtained, (B) possess as valid, uncontested and in good standing, and (C) are in compliance with all Environmental Permits required by Environmental Laws for the operation of their respective businesses as presently conducted; (v) there is no Litigation by a Governmental Authority arising under or related to any Environmental Laws, Environmental Permits or Hazardous Material that seeks damages, penalties, fines, costs or expenses from, or that alleges criminal misconduct by, any Credit Party or any Restricted Subsidiary of any Credit Party; (vi) except for matters which have been fully resolved, no written notice has been received by any Credit Party or any Restricted Subsidiary of any Credit Party identifying it as a “potentially responsible party” or requesting information under CERCLA or analogous state statutes; and (vii) the Credit Parties and each of their Restricted Subsidiaries have provided to Agent copies of existing material environmental reports, reviews and audits relating to actual or potential material Environmental Liabilities and relating to any Credit Party or any Restricted Subsidiary of any Credit Party.

(b) Each Credit Party hereby acknowledges and agrees that none of Agent or any of its officers, directors, employees, attorneys, agents and representatives (i) is now, or has ever been, in control of any of the Real Property or any Credit Party’s or any Restricted Subsidiary of any Credit Party’s affairs, and (ii) has the capacity or the authority through the provisions of the Loan Documents or otherwise to direct or influence any (A) Credit Party’s or any Restricted Subsidiary of any Credit Party’s conduct with respect to the ownership, operation or management of any of its Real Property, (B) undertaking, work or task performed by any employee, agent or contractor of any Credit Party or any Restricted

Subsidiary of any Credit Party or the manner in which such undertaking, work or task may be carried out or performed, or (C) compliance of any Credit Party or any Restricted Subsidiary of any Credit Party with Environmental Laws or Environmental Permits.

4.18 Insurance. Borrowers have previously delivered or made available to Agent lists of all material insurance policies of any nature maintained, as of the Restatement Date, for current occurrences by each Credit Party and each Restricted Subsidiary.

4.19 Deposit and Disbursement Accounts. Schedule 4.19 lists all banks and other financial institutions at which any Credit Party maintains deposit or other accounts as of the Restatement Date, including any Disbursement Accounts, and such Schedule correctly identifies the name of each depository, the name in which the account is held, a description of the purpose of the account, and the complete account number therefor.

4.20 No Default. No Default or Event of Default has occurred and is continuing.

4.21 Creation and Perfection (and Publication of Security Interests (and Hypothecs)). Once executed and delivered (and, in the case of the Province of Quebec, registered), each of the U.S. Security Agreement and the Canadian Security Agreement will create a valid and enforceable security interest in the Collateral described therein, subject to any exceptions contained therein. In the case of the portion of the pledged Collateral consisting of the certificated securities represented by the certificates described in the U.S. Security Agreement or the Canadian Security Agreement, as applicable, when stock certificates representing such pledged Collateral are delivered to Agent (or to the Term Administrative Agent or another agent pursuant to the terms of the ABL Intercreditor Agreement) and such stock certificates are held in New York, and in the case of the other Collateral described in the U.S. Security Agreement or the Canadian Security Agreement, as applicable, when UCC or PPSA (or, in the case of the Province of Quebec, RPMRR forms) financing statements in appropriate form are filed in the appropriate UCC or PPSA or RPMRR filing offices in the relevant jurisdictions, the Liens created under the U.S. Security Agreement or the Canadian Security Agreement, as applicable, shall be perfected under the Code or the PPSA or the Civil Code of Quebec, as applicable (to the extent a Lien on such Collateral can be perfected by such possession or filings), in respect of all right, title and interest of the Credit Parties signatory to the U.S. Security Agreement or the Canadian Security Agreement, as applicable, in such pledged Collateral and other Collateral, as security for the Obligations.

4.22 Solvency. Immediately after giving effect to (a) the Loans and Letter of Credit Obligations to be made or incurred on the Amendment No. 3 Effective Date, (b) the disbursement of proceeds of such Loans (if any) pursuant to the instructions of Borrower Representative, and (c) the payment and accrual of all transaction costs in connection with the foregoing, Parent Borrower and its Subsidiaries, taken as a whole on a consolidated basis, are Solvent.

4.23 Economic Sanctions and Anti-Money Laundering. Each Credit Party and each Subsidiary of each Credit Party is in compliance in all material respects with all United States economic sanctions, laws, executive orders, and implementing regulations as promulgated by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"), and all

applicable anti-money laundering and counter-terrorism financing provisions of the Bank Secrecy Act and all regulations issued pursuant to it. No Credit Party and no Subsidiary of a Credit Party (a) is a Person designated by the United States government on the list of the Specially Designated Nationals and Blocked Persons (the “SDN List”) with which a United States Person cannot deal with or otherwise engage in business transactions, (b) is a Person who is otherwise the target of United States economic sanctions laws such that a United States Person cannot deal or otherwise engage in business transactions with such Person or (c) is controlled by (including, without limitation, by virtue of such Person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any Person on the SDN List or a foreign government that is the target of United States economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under United States law.

4.24 Economic Sanctions, FCPA, Patriot Act: Use of Proceeds. Each Credit Party, and each of its Subsidiaries is in compliance with (a) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (b) the USA PATRIOT ACT (Title 111 of Pub. L. 107-56 (signed into law October 26, 2001)) (as amended, the “Patriot Act”), and (c) other federal or state laws relating to anti-money laundering rules and regulations. Borrowers shall use the proceeds of the Loans only as provided in Section 2.4. No part of the proceeds of any Loan or any Letter of Credit will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the FCPA. Borrowers will not, directly or, to the knowledge of Borrowers, indirectly, use the proceeds of any Loan or Letter of Credit to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the target of United States economic sanctions laws.

4.25 [Reserved].

4.26 Status as Senior Debt. The Obligations in respect of the Loans are “senior debt” or “designated senior debt” (or any comparable term) under, and as may be defined in, any indenture or document governing any applicable Indebtedness that is subordinated in right of payment to the Loans.

4.27 FCPA and Related. No Credit Party nor any of its Subsidiaries nor any director, officer or, to the knowledge of such Credit Party, agent or employee of such Credit Party or Subsidiary, is aware of or has taken any action, directly or indirectly, that would result in a material violation by such persons of the FCPA, including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization or approval of the payment of any money, or other property, gift, promise to give or authorization of the giving of anything of value, directly or indirectly, to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office in contravention of the FCPA. Each Credit Party, and its Subsidiaries have conducted their businesses in compliance with, in all material respects, the FCPA and have established, and maintain, and will

continue to maintain, policies and procedures designed to promote and achieve compliance with such laws and with the representation and warranty contained herein. No Credit Party or any of its employees, officers, directors, agents, independent contractors, consultants, joint venture partners or representatives, in carrying out or representing its business anywhere in the world, has violated the *Corruption of Foreign Public Officials Act (Canada)* (or any successor statute thereto).

4.28 Borrowing Base Certificates. The information set forth in each Borrowing Base Certificate is true and correct in all material respects.

4.29 Drivers.

(a) Neither Parent Borrower nor any of its Subsidiaries,

(i) is party to a Driver Contract under which Drivers would have claims with priority over Agent, or

(ii) holds or is required to hold any portion of its Accounts collected from an Account Debtor which Borrowers have reported as Eligible Accounts in respect of a Driver's services in trust for such Driver.

(b) No Driver, whether pursuant to any Driver Contract or otherwise, at any time controls the method of collection of Parent Borrower's and its Subsidiaries' Accounts or restricts the use of the proceeds thereof after receipt by Parent Borrower or any of its Subsidiaries.

(c) No Driver, whether pursuant to any Driver Contract or otherwise, at any time has the right to seek payment from, or otherwise has recourse to, any Account Debtor for Driver Payables by Parent Borrower or any of its Subsidiaries to such Driver with respect to Accounts that constitute Eligible Accounts.

(d) All payments by Parent Borrower and its Subsidiaries in respect of payables to Drivers, whether pursuant to any Driver Contract or otherwise, are made from Parent Borrower's and its Subsidiaries' general funds in the normal course of business.

5. ~~FINANCIAL STATEMENTS AND INFORMATION~~ FINANCIAL STATEMENTS AND INFORMATION

5.1 Financial Reports and Notices. Each Credit Party executing this Agreement hereby agrees that from and after the Amendment No. 36 Effective Date and until the Termination Date, it shall deliver to Agent or to Agent for distribution to Lenders, as required, the following Financial Statements, notices, Business Plans and other information at the times, to the Persons and in the manner set forth below:

(a) Monthly Financials. At such time in which Cash Dominion Period exists, to Agent and Lenders, within thirty (30) days after the end of each Fiscal Month, financial information regarding Parent Borrower and its consolidated Restricted Subsidiaries, certified by a Financial Officer of Parent Borrower, consisting of consolidated (i) unaudited

balance sheets as of the close of such Fiscal Month and the related statements of income for that portion of the Fiscal Year ending as of the close of such Fiscal Month and (ii) unaudited statements of income for such Fiscal Month, setting forth in comparative form the figures for the corresponding period in the prior year. Such financial information shall be accompanied by the certification of a Financial Officer of Parent Borrower that such financial information and any other information presented is true, correct and complete in all material respects and that no Default or Event of Default has occurred and is continuing as of such time or, if a Default or Event of Default has occurred and is continuing, describing the nature thereof and all efforts undertaken to cure such Default or Event of Default.

(b) Quarterly Financials. To Agent, within forty-five (45) days after the end of the first three Fiscal Quarters of each Fiscal Year, consolidated financial information regarding Parent Borrower and its consolidated Restricted Subsidiaries, certified by a Financial Officer of Parent Borrower, including (i) unaudited balance sheets as of the close of such Fiscal Quarter and (ii) unaudited statements of income and cash flows for such Fiscal Quarter, in each case setting forth in comparative form the figures for the corresponding period in the prior year and the related statements of income and cash flow for that portion of the Fiscal Year ending as of the close of such Fiscal Quarter, all prepared in accordance with GAAP (subject to absence of footnotes and normal year-end adjustments). Such financial information shall be accompanied by (A) a statement in reasonable detail (each, a “Compliance Certificate”) showing the calculations used in determining compliance with the financial covenant set forth in Section 7.12, if applicable, and (B) including the certification of a Financial Officer of Parent Borrower (which certification may be included in the applicable Compliance Certificate) that (i) such financial information fairly presents, in all material respects in accordance with GAAP (except as approved by accountants or officers, as the case may be, and disclosed in reasonable detail therein, including the economic impact of such exception, and subject to normal year-end adjustments and the absence of footnote disclosure), the financial position, results of operations and statements of cash flows of Parent Borrower and its consolidated Restricted Subsidiaries, on a consolidated basis, as at the end of such Fiscal Quarter and for that portion of the Fiscal Year then ended, and (ii) that no Default or Event of Default has occurred and is continuing as of such time or, if a Default or Event of Default has occurred and is continuing, describing the nature thereof and all efforts undertaken to cure such Default or Event of Default. In addition, Borrowers shall deliver to Agent and Lenders, within forty-five (45) days after the end of each of the first three Fiscal Quarters of each Fiscal Year, a management discussion and analysis that includes a comparison of performance for that Fiscal Quarter to the corresponding period in the prior year.

(c) Annual Audited Financials. To Agent, within ninety (90) days after the end of each Fiscal Year, audited Financial Statements for Parent Borrower and its consolidated Restricted Subsidiaries on a consolidated basis, consisting of balance sheets and statements of income and retained earnings and cash flows, setting forth in comparative form in each case the figures for the previous Fiscal Year, which Financial Statements shall be prepared in accordance with GAAP (except as approved by accountants or officers), as the case may be, and disclosed in reasonable detail therein, including the economic impact of such exception, and certified without qualification as to going-concern or qualification arising out of the scope of the audit, by KPMG LLP, another independent certified public

accounting firm of national standing or a firm otherwise reasonably acceptable to Agent. Such Financial Statements shall be accompanied by (i) a Compliance Certificate showing the calculations used in determining compliance with the financial covenant set forth in Section 7.12, if applicable, and (ii) a certification of a Financial Officer of Borrower Representative (which certification may be included in the applicable Compliance Certificate) that no Default or Event of Default has occurred and is continuing as of such time or, if a Default or Event of Default has occurred and is continuing, describing the nature thereof and all efforts undertaken to cure such Default or Event of Default. In addition, Borrower shall deliver to Agent and Lenders, together with such audited Financial Statements delivered pursuant to this clause, a management discussion and analysis that includes a comparison of performance for that Fiscal Year to the corresponding period in the prior year.

(d) Simultaneously with the delivery of each set of consolidated financial statements referred to in clauses (b) and (c) above, to the extent that the Unrestricted Subsidiaries of the Parent Borrower, as of the last day of the applicable fiscal period, taken in the aggregate, constituted a Significant Subsidiary, the related consolidating financial statements reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements.

(e) Business Plan. To Agent, as soon as available, but not later than ninety (90) days after the end of each Fiscal Year, an annual business plan for Borrowers, on a consolidated basis, for the then current Fiscal Year, which (i) includes a statement of all of the material assumptions on which such plan is based, (ii) includes projected quarterly balance sheets, income statements and statements of cash flows for the following year and (iii) integrates sales, gross profits, operating expenses, operating profit, cash flow projections, all prepared on the same basis and in similar detail as that on which operating results are reported (in each case, representing management's good faith estimates of future financial performance based on historical performance), and including plans for personnel, Capital Expenditures and facilities. The projections and pro forma financial information contained in the materials referenced above will be based upon good faith estimates and assumptions believed by management of Parent Borrower to be reasonable at the time made, it being acknowledged and agreed by the Lenders that (a) such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount, (b) the financial and business projections furnished to Agent or the Lenders are subject to significant uncertainties and contingencies, which may be beyond the control of Parent Borrower and its Subsidiaries and (c) no assurances are given by any of Parent Borrower or its Subsidiaries that the results forecasted in the projections will be realized.

(f) Information required to be delivered pursuant to this Section 5.1 may be delivered by electronic communication pursuant to procedures approved hereunder.

(g) Default Notices. To Agent and Lenders, as soon as practicable, and in any event within five (5) Business Days after a Financial Officer of any Borrower has actual knowledge of the existence of any Default, or Event of Default, telephonic or fax or electronic notice specifying the nature of such Default or Event of Default, including the anticipated



effect thereof, which notice, if given telephonically, shall be promptly confirmed in writing on the next Business Day.

(h) [reserved].

(i) Litigation. To Agent in writing, promptly upon learning thereof, notice of any Litigation commenced or threatened in writing against any Credit Party that (i) would reasonably be expected to result in damages in excess of \$90,000,000 (net of insurance coverages for such damages), (ii) seeks injunctive relief which, if granted, would reasonably be expected to have a Material Adverse Effect or (iii) would otherwise reasonably be expected to have a Material Adverse Effect.

(j) Insurance Notices. To Agent, disclosure of losses or casualties of Borrowing Base Collateral with a value in excess of \$25,000,000 covered by insurance.

(k) Other Documents. To Agent for distribution to Lenders, such other financial and other information respecting any Credit Party's or any Subsidiary of any Credit Party's business or financial condition as Agent shall from time to time reasonably request.

(l) Lender Calls. Upon request of Agent (but no more frequently than annually), at a time mutually agreed with Agent and Parent Borrower that is promptly after the delivery of the information required pursuant to clause (c) above, unless otherwise agreed by the Requisite Lenders, participate in a conference call for Lenders to discuss the financial condition and results of operations of Borrowers and their Subsidiaries for the most recently-ended Fiscal Year for which financial statements have been delivered.

(m) Environmental Matters. To Agent, notice of any matter under any Environmental Law that has resulted or is reasonably expected to result in a Material Adverse Effect, including arising out of or resulting from the commencement of, or any material adverse development in, any litigation or proceeding affecting any Credit Party or any Restricted Subsidiary and arising under any Environmental Law.

(n) ERISA/Pension Matters. To Agent, notice of the occurrence of any ERISA Event that has resulted or would reasonably be expected to result in a liability of any Credit Party and the Restricted Subsidiaries in an aggregate amount exceeding \$90,000,000 and a statement of a Financial Officer of Borrower setting forth details as to such ERISA Event and the action, if any, that Borrower proposes to take with respect thereto and, upon Agent's request, copies of each Schedule SB (Actuarial Information) to the Annual Report (Form 5500 Series) with respect to each Title IV Plan.

(o) Lease Default Notices. To Agent, within five (5) Business Days after receipt thereof, copies of any and all default notices received under or with respect to any leased location or warehouse where Eligible Equipment Collateral is located.

(p) Change of Name; etc. Parent Borrower agrees to notify Agent in writing, promptly, but in any event within 15 Business Days (or such longer period as Agent may agree in its discretion) after any change in (i) the legal name of any Credit Party, (ii) the

identity or type of organization or corporate structure of such Credit Party, or (iii) the jurisdiction of organization of such Credit Party.

5.2 Collateral Reporting. Each Credit Party executing this Agreement hereby agrees that, from and after the Amendment No. 36 Effective Date and until the Termination Date, it shall deliver (or cause to be delivered) ~~to Agent~~, as required, the following documents and reports (including Borrowing Base Certificates in the form of Exhibit 5.2) at the times, to the Persons and in the manner set forth below:

(a) To Agent (a copy of which the Agent shall provide to the Co-Collateral Agents), and in any event no less frequently than on the twentieth day of the first month of each Fiscal ~~Month~~Quarter, commencing with the ~~first full Fiscal Month during the term of this Agreement~~Fiscal Quarter ending September 30, 2021, each of the following reports, each of which shall be prepared by the Credit Parties as of the last day of the immediately preceding month; ~~provided, however that, during the time of a Monthly Reporting Period (or if Parent Borrower elects), such reports shall be provided no less frequently than on the twentieth day of each Fiscal Month;~~ provided, further, that if a Cash Dominion Period has occurred and is continuing (or if Parent Borrower elects, so long as the frequency of delivery is maintained by Parent Borrower for the immediately following twenty (20) calendar day period after the delivery of the first Borrowing Base Certificate so delivered), then the following shall be delivered no less frequently than 12:00 p.m. (New York time) on the third Business Day of each week:

(i) a Borrowing Base Certificate accompanied by such supporting detail and documentation as shall be reasonably requested by Agent, in its Permitted Discretion; and

(ii) on the date of the delivery of monthly Borrowing Base Certificates only a monthly trial balance showing Accounts outstanding aged from due date as follows: 1 to 90 days, 91 to 120 days and 121 days or more, accompanied by such supporting detail (including invoice date) and documentation as shall be reasonably requested by Agent in its Permitted Discretion;

(b) [Reserved];

(c) To Agent, at the time of delivery of each of the Financial Statements delivered pursuant to Section 5.1, an aging of accounts payable, accompanied by such supporting detail and documentation as shall be reasonably requested by Agent in its Permitted Discretion.

(d) To Agent, at the time of delivery of each of the quarterly or annual Financial Statements delivered pursuant to Section 5.1, a list of any application for the registration of any Patent, Trademark or Copyright filed by any Credit Party with the United States Patent and Trademark Office, or United States Copyright Office, respectively, or any successor office or agency in the prior Fiscal Quarter;

(e) Parent Borrower shall pay (or cause to be paid) all reasonable fees incurred by Agent and Co-Collateral Agents in connection with (i) one (1) appraisal of

Equipment and Rolling Stock (which, with respect to Railcars will be in the nature of limited inspections consistent with past practices) that is part of the Borrowing Base per calendar year and (ii) one (1) field examination per calendar year; provided, that at any time after the date on which Availability has been less than the greater of 15.0% of the Available Credit and ~~\$100,000,000~~ \$80,000,000, for five consecutive Business Days during such calendar year, one (1) additional field exam and one (1) additional appraisal of Equipment and Rolling Stock that is part of the Borrowing Base will be permitted in such calendar year (each at the expense of Borrowers) and at any time during the continuation of an Event of Default, field examinations and appraisals of Equipment and Rolling Stock that is part of the Borrowing Base may be conducted (each at the expense of Borrowers) as frequently as determined by Agent and Co-Collateral Agents in their reasonable discretion; provided, further, that notwithstanding anything to the contrary Agent and Co-Collateral Agents may conduct additional appraisals and field examinations in the exercise of their Permitted Discretion at each of their own cost and expense;

(f) [reserved]; and

(g) Such other reports, statements and reconciliations (including reconciliations of Accounts, Equipment and Rolling Stock from general ledger to financial statements to Borrowing Base) with respect to the Borrowing Base, Collateral or Obligations of any or all Credit Parties as Agent or any Co-Collateral Agent shall from time to time reasonably request.

(h) Notwithstanding anything to the contrary contained herein, upon written notice to Agent by Parent Borrower, any Borrowing Base assets identified by Parent Borrower in such notice shall be excluded from the Borrowing Base until such notice is withdrawn.

## 6. ~~AFFIRMATIVE COVENANTS~~ AFFIRMATIVE COVENANTS

Each Credit Party executing this Agreement agrees as to itself and its Restricted Subsidiaries that from and after the Amendment No. 36 Effective Date and until the Termination Date:

6.1 Maintenance of Existence and Conduct of Business. Except as otherwise permitted under Section 7.8, each Credit Party shall, and shall cause each Restricted Subsidiary to, do or cause to be done all things necessary to (a) preserve and keep in full force and effect (i) its corporate existence (except, as to Persons other than Credit Parties, where the failure to do so would not reasonably be expected to result in a Material Adverse Effect) and (ii) its material rights and franchises; (b) continue to conduct its business substantially as now conducted or as otherwise permitted hereunder; and (c) at all times maintain, preserve and protect all of its assets and properties used or useful in the conduct of its business and keep the same in good repair, working order and condition in all material respects (taking into consideration ordinary wear and tear and except for casualties and condemnations) and from time to time make, or cause to be made, all necessary or appropriate repairs, replacements and improvements thereto consistent with industry practices, except, in each case, referred to in this Section 6.1(a)(ii), (b) and (c) where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

## 6.2 Payment of Charges and Taxes.

(a) Subject to Section 6.2(b), each Credit Party shall pay and discharge or cause to be paid and discharged promptly all material Charges, Taxes and claims payable by it, including: (i) material Charges and Taxes imposed upon it, its income and profits, or any of its property (real, personal or mixed) and all material Charges with respect to Tax, social security, employer contributions and unemployment withholding with respect to its employees; (ii) lawful material claims for labor, materials, supplies and services or otherwise, in each case, before any thereof shall become past due and (iii) all material storage or rental charges payable to warehousemen or bailees at which Eligible Equipment is located, in each case, where the non-payment of such Charge, Tax or claim could give rise to a material Lien (other than Permitted Liens) or a Material Adverse Effect.

(b) Each Credit Party may in good faith contest, by appropriate proceedings, the validity or amount of any Charges, Taxes or claims described in Section 6.2(a) and not pay or discharge such Charges, Taxes or claims while so contested; provided, that (i) adequate reserves with respect to such contest are maintained on the books of such Credit Party, in accordance with GAAP and (ii) the failure to make such payment would not reasonably be expected to result in a Material Adverse Effect.

6.3 Books and Records. Each Credit Party shall keep adequate books and records with respect to its business activities in which proper entries, reflecting all material financial transactions, are made in accordance with GAAP and on a basis consistent with the Financial Statements delivered pursuant to Section 4.4.

## 6.4 Insurance; Damage to or Destruction of Collateral.

(a) Borrowers will, and will cause each Restricted Subsidiary to, maintain, with financially sound and reputable insurance companies insurance in such amounts and against such risks, as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations (after giving effect to any self-insurance reasonable and customary for similarly situated companies). Borrowers will furnish to Agent, upon written request, information in reasonable detail as to the insurance so maintained. It is understood and agreed that Borrowers shall be deemed to be in compliance with this Section 6.4(a) so long as Borrowers and their Restricted Subsidiaries shall maintain all insurance in effect as of the date hereof.

(b) All insurance policies insuring the Collateral, or certificates (or certified copies thereof) with respect to such insurance, (i) shall be endorsed to Agent's reasonable satisfaction for the benefit of Agent (including, without limitation, by naming Agent as loss payee and/or additional insured) and (ii) shall state that such insurance policies shall not be canceled without at least thirty (30) days' prior written notice thereof by the respective insurer to Agent (or at least ten (10) days' prior written notice in the case of non-payment of premium); provided that Parent Borrower shall have 15 Business Days following the Restatement Date (or such later date as may be agreed by Agent in its Permitted Discretion) to comply with this Section 6.4(b) in respect of insurance in effect as of the Restatement Date.

(c) If Borrowers or any Credit Party shall fail to maintain insurance in accordance with this Section 6.4, Agent shall have the right, upon ten (10) days' prior notice to Borrowers (but shall be under no obligation), to procure such insurance and Borrowers agree to reimburse Agent for all reasonable costs and reasonable out-of-pocket expenses of procuring and maintaining such insurance.

(d) Sections 6.4(b) and (c) shall only apply to insurance in respect of assets included in the Collateral; provided, however, Sections 6.4(b) and (c) shall not apply to credit insurance.

6.5 Compliance with Laws. Each Credit Party shall, and shall cause each Restricted Subsidiary to, comply in all material respects with all applicable provisions of law of any Governmental Authority, unless such failure of compliance would not reasonably be expected to result in a Material Adverse Effect or a material adverse effect on the specific property affected by such non-compliance.

6.6 ~~PATRIOT~~Patriot Act. No Credit Party or any Subsidiary thereof is in breach of or is the subject of any action or investigation under the ~~PATRIOT~~Patriot Act.

6.7 Intellectual Property. Each Credit Party shall, and shall cause each Restricted Subsidiary to, (a) conduct its business without knowingly infringing any Intellectual Property of any other Person which infringement would reasonably be expected to result in a Material Adverse Effect, and (b) comply in all material respects with the obligations under its material Intellectual Property licenses.

6.8 Environmental Matters. Except where the failure to do so would not result in a Material Adverse Effect, each Credit Party shall, and shall cause the Restricted Subsidiaries to:

(a) comply in all material respects with, and use commercially reasonable efforts to ensure compliance in all material respects by all tenants and subtenants, if any, with, all applicable Environmental Laws, and obtain and comply in all material respects with and maintain, and use commercially reasonable efforts to ensure that all tenants and subtenants obtain and comply in all material respects with and maintain, any and all Environmental Permits, except in each case, where the failure to do so would not reasonably be expected to have a Material Adverse Effect, and

(b) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws.

6.9 [Reserved].

6.10 Further Assurances.

(a) Each Credit Party executing this Agreement agrees that it shall and shall cause each applicable Subsidiary to, at such Credit Party's reasonable expense and upon the reasonable request of Agent, duly execute and deliver, or cause to be duly executed and

delivered, to Agent such further instruments and take all such further actions (including the authorization of filing and recording of Code and PPSA financing statements, fixture filings, and other documents, in each case to the extent reasonably requested by Agent), which may be required under any applicable law, or which Agent may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created by the Collateral Documents or the validity or priority of any such Liens (subject to Permitted Liens), all at the reasonable expense of the Credit Parties and to the extent required by the Loan Documents. With respect to any Acquisition of assets, if any asset acquired therein or thereby is requested to be included in the Borrowing Base, Agent and Co-Collateral Agents shall have completed its review of such assets, including, without limitation, field examinations, audits, appraisals and other due diligence as Agent and Co-Collateral Agents shall in their Permitted Discretion require; it being acknowledged and agreed that, (1) such additional assets, if any, to be included in the Borrowing Base may be subject to Reserves with respect thereto in the Co-Collateral Agents' Permitted Discretion, and (2) prior to the inclusion of any additional assets in the Borrowing Base, all actions shall have been taken to ensure that Agent has a perfected and continuing first-priority security interest in and Lien on such assets (subject to a Permitted Lien which does not have priority over the Lien in favor of Agent (other than with respect to Equipment and Rolling Stock, Liens in favor of any bailee, landlord, warehouseman, mechanic or other non-consensual Lien arising by operation of law) (provided that either (x) the holder of such Permitted Lien has waived or subordinated such Permitted Lien to Agent's reasonable satisfaction pursuant to a landlord waiver, bailee letter or comparable agreement or (y) a rent or other reserve has been established by the Co-Collateral Agents in the exercise of their Permitted Discretion, which reserve, with respect to landlord Liens shall not be in excess of three (3) months' rent (or for such longer time period that is determined by the Co-Collateral Agents in their Permitted Discretion as reasonably necessary to protect and/or realize upon the Collateral)).

(b) In the case of any Material Real Property, each applicable U.S. Credit Party shall provide Agent with Mortgages with respect to such Material Real Property within 90 days (or such longer period as may be reasonably required with diligence and dispatch for the applicable Credit Party to secure compliance with the provisions of subdivisions (ii), (iii) and/or (iv) below not to exceed an additional 45 days in the aggregate, unless further extended by Agent as Agent may agree in its sole discretion) of (x) the date hereof with respect to all Material Real Property on Schedule 6.10(b) which lists completely and correctly each Material Real Property owned by Borrower or Guarantor on the date hereof, and (y) the acquisition of Material Real Property which is acquired after the date hereof, in each case together with:

(i) evidence that counterparts of the Mortgages have been duly executed, acknowledged and delivered and are in form suitable for filing or recording in all filing or recording offices that Agent may deem reasonably necessary or desirable in order to create a valid and subsisting perfected Lien on the property and/or rights described therein in favor of Agent for the benefit of the Secured Parties and that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to Agent;

(ii) fully paid American Land Title Association Lender's Extended Coverage title insurance policies or the equivalent or other form available in each

applicable jurisdiction (the “Mortgage Policies”) in form and substance, with endorsements available in the applicable jurisdiction and in amount, reasonably acceptable to Agent (not to exceed the value of the real properties covered thereby), issued, coinsured and reinsured by title insurers reasonably acceptable to Agent, insuring the Mortgages to be valid subsisting Liens on the property described therein, subject only to Permitted Liens, and providing for such other affirmative insurance (including endorsements for future advances under the Loan Documents) and such coinsurance and direct access reinsurance as Agent may reasonably request and is available in the applicable jurisdiction; provided, however, that zoning reports from a nationally recognized provider may be substituted for any zoning endorsement;

(iii) (A) American Land Title Association/American Congress on Surveying and Mapping form surveys for which all necessary fees have been paid, dated no more than 90 days before the date of acquisition of the property by the applicable Credit Party, certified to Agent and the issuer of the Mortgage Policies in a manner reasonably satisfactory to Agent by a land surveyor duly registered and licensed in the states in which the property described in such surveys is located and reasonably acceptable to Agent, showing all buildings and other improvements, any off-site improvements, the location of any easements, parking spaces, rights of way, building set-back lines and other dimensional regulations and the absence of encroachments, either by such improvements or on to such property, and other defects, other than encroachments and other defects reasonably acceptable to Agent, or (B) existing surveys in lieu thereof so long as each such survey is accompanied by an affidavit of no material change, reasonably satisfactory to Agent and sufficient for the applicable title insurer to eliminate all standard survey-related exceptions to the applicable Mortgage Policy;

(iv) (A) evidence as to whether each Material Real Property that is subject to a Mortgage (a “Mortgaged Property”) is in an area designated by the Federal Emergency Management Agency as having special flood hazard (a “Flood Hazard Property”) pursuant to a standard “life-of-loan” flood hazard determination form ordered and received by Agent (together with a notice about special flood hazard area status and flood disaster assistance duly executed by Parent Borrower and each Credit Party relating thereto), and (B) if such Mortgaged Property is a Flood Hazard Property, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance satisfactory to Agent, in each case sufficient to comply with the Flood Insurance Laws;

(v) opinions of local counsel for the Credit Parties in states in which the real properties are located, with respect to the enforceability and perfection of the Mortgages and any related fixture filings in form and substance reasonably satisfactory to Agent; and

(vi) such other reasonably satisfactory evidence that all other actions that Agent may reasonably deem necessary or desirable in order to create valid and subsisting Liens on the property described in the Mortgages has been taken.

(c) Notwithstanding anything to the contrary contained herein, neither Parent Borrower nor any Subsidiary of Parent Borrower shall be required to execute and deliver any joinder agreement, Collateral Document or any other document or grant a Lien in

any Capital Stock or other property held by it if such action (A) is restricted or prohibited by general statutory limitations, financial assistance, corporate benefit, fraudulent preference, “thin capitalization” rules or similar principles, (B) is not within the legal capacity of Parent Borrower or such Subsidiary or would conflict with the fiduciary duties of its directors or contravene any legal prohibition or result in personal or criminal liability on the part of any officer, (C) for reasons of cost, legal limitations or other matters is unreasonably burdensome in relation to the benefits to the Lenders of Parent Borrower’s or such Subsidiary’s guaranty or security or (D) in the case of Con-way or any Subsidiary of Con-way, if the Con-way Existing Indebtedness is outstanding, would result in the breach of, or require the equal and ratable securing of, such outstanding Con-way Existing Indebtedness or the documents governing such Con-way Existing Indebtedness (as in effect on the Amendment No. 36 Effective Date).

(d) In each jurisdiction in which there is a mortgage recording tax, intangible tax or other tax, levy, charge or assessment imposed with respect to the delivery or recordation of any Mortgage based upon the amount secured thereby, each such Mortgage shall not secure the amount of Indebtedness under this Agreement, but shall expressly state that the maximum amount secured thereby shall be an amount equal to the fair market value of the respective Material Real Property as determined hereunder.

(e) Notwithstanding anything to the contrary herein or in any other Loan Document, no Credit Party shall be required to amend, modify, or otherwise revise the Mortgage relating to the property owned thereby and located at 2220 Claremont Court, Hayward, CA, to update title or obtain any title policy endorsement, or to take any other step with respect to such property described in Section 6.10(b) above or otherwise, to the extent that Parent Borrower reasonably concludes that any such amendment, modification, revision or other step described herein cannot be obtained or completed in spite of Parent Borrower’s commercially reasonable efforts, and Agent and Lenders hereby acknowledge that, as of the Amendment No. 36 Effective Date, Parent Borrower has made such determination. In addition, no Credit Party shall be deemed to be in breach of any representation, warranty, covenant, or other provision of this Agreement or any other Loan Document by virtue of any failure to grant or maintain a perfected lien on such property.

6.11 ERISA Matters. Each Credit Party executing this Agreement agrees that it shall and shall cause each other Credit Party and each Restricted Subsidiary to timely make all contributions, pay all amounts due, and otherwise perform such actions necessary to prevent the imposition of any Liens under ERISA or Section 412 of the IRC (each an “ERISA Lien”).

6.12 New Subsidiaries.

(a) Within thirty (30) Business Days of the formation of any Restricted Subsidiary, acquisition of a Restricted Subsidiary, the designation of a Designated Guarantor or at any time a Subsidiary becomes a Restricted Subsidiary, Borrowers shall notify Agent of such event and, promptly thereafter (and in any event within 30 days or such longer period as Agent may agree) (i) cause each such new Restricted Subsidiary that is not an Excluded Subsidiary to deliver to Agent (A) a Joinder Agreement (which Joinder Agreement will specify whether such new Credit Party will be a “Borrower” hereunder) and (B) a supplemental Guaranty in the form attached hereto as Exhibit 1.1(a), and to deliver to Agent



such security documents related to personalty, together with appropriate financing statements, reasonably requested by Agent, all in form and substance reasonably satisfactory to Agent, (ii) with respect to all new Restricted Subsidiaries that are directly owned in whole or in part by a U.S. Credit Party or a Canadian Credit Party, cause such Credit Party to provide to Agent a supplement to the U.S. Security Agreement or the Canadian Security Agreement, as applicable, providing for the pledge of the Capital Stock in such new Restricted Subsidiary owned by it (or, in the case of a Foreign Subsidiary (other than a Foreign Subsidiary of a Credit Party organized under the laws of Canada (or any province or territory thereof) that is not a Specified Entity), sixty-five percent (65%) of the total combined voting power of all classes of the voting Capital Stock of such Foreign Subsidiary and one-hundred percent (100%) of the non-voting Capital Stock of such Foreign Subsidiary, in each case to the extent that such Capital Stock does not constitute Excluded Property or Excluded Principal Property), as shall be requested by Agent together with appropriate certificates and powers or financing statements under the Code or the PPSA, as applicable, or other applicable personal property or moveable property registries or other documents necessary to perfect such pledge, in form and substance reasonably satisfactory to Agent, and (iii) provide or cause to be provided to Agent all other customary and reasonable documentation requested thereby, including, to the extent requested by Agent, one or more opinions of counsel reasonably satisfactory to Agent, which in its opinion is appropriate and customary with respect to such execution and delivery of the applicable documentation referred to above. Upon execution and delivery of the Joinder Agreement by each such new Restricted Subsidiary, such Restricted Subsidiary shall become a Credit Party hereunder with the same force and effect as if originally named as a Credit Party herein. The execution and delivery of the Joinder Agreement shall not require the consent of any Credit Party or Lender hereunder. The rights and obligations of each Credit Party hereunder shall remain in full force and effect notwithstanding the addition of any Credit Party hereunder. For the avoidance of doubt and notwithstanding anything herein or in any other Loan Document to the contrary, no Excluded Subsidiary (other than a Designated Guarantor) shall execute a Guaranty or any Collateral Document in respect of, or otherwise guaranty or grant any Lien to secure, any Obligation of a U.S. Borrower or other U.S. Credit Party or of any “United States person” as defined in section 7701(a)(30) of the IRC.

(b) Notwithstanding anything to the contrary contained herein, neither Borrower nor any Subsidiary of any Borrower shall be required to execute and deliver any joinder agreement, Guaranty, Collateral Document or any other document or grant a Lien in any Capital Stock or other property held by it if such action (A) is restricted or prohibited by general statutory limitations, financial assistance, corporate benefit, fraudulent preference, “thin capitalization” rules or similar principles, (B) is not within the legal capacity of Borrowers or such Subsidiary or would conflict with the fiduciary duties of its directors or contravene any legal prohibition or result in personal or criminal liability on the part of any officer, (C) for reasons of cost, legal limitations or other matters is unreasonably burdensome in relation to the benefits to the Lenders of such Borrower’s or such Subsidiary’s guaranty or security as reasonably determined by Parent Borrower and Agent or (D) is Excluded Property or Excluded Principal Property or otherwise would not be required with respect to the Collateral owned by a Credit Party pursuant to the terms of the Collateral Documents.

#### 6.13 Designation of Subsidiaries and Designated Guarantors.

(a) A Financial Officer of Borrower Representative may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary in accordance with the definition of “Unrestricted Subsidiary”. With respect to the assets of Unrestricted Subsidiaries and Restricted Subsidiaries that are Credit Parties being included in the calculation of the Borrowing Base, (a) if a Restricted Subsidiary is designated by Borrowers as an Unrestricted Subsidiary, the assets of such Subsidiary shall immediately be excluded from the Borrowing Base, and (b) if an Unrestricted Subsidiary is designated by Borrowers as a Restricted Subsidiary after the Amendment No. ~~36~~ Effective Date, then the assets of such Subsidiary shall not be included in the calculation of the Borrowing Base until (i) Agent consents (such consent not to be unreasonably withheld) to such inclusion (except to the extent such Subsidiary’s assets were previously included in the Borrowing Base) and (ii) Agent has received satisfactory appraisals and field exams with respect to the assets of such Subsidiary, if applicable, as reasonably required by Agent and (iii) the Credit Parties have complied with Section 6.12(a) with respect to such Subsidiary. As of the Restatement Date, the Unrestricted Subsidiaries of Borrowers are set forth on Schedule 6.13.

(b) If an Excluded Subsidiary is designated by Parent Borrower as a Designated Guarantor in accordance with the definition of “Excluded Subsidiary”, then the assets of such Subsidiary shall be included in the calculation of the Borrowing Base upon satisfaction of the following conditions: (i) Agent and Co-Collateral Agents shall have consented (such consent not to be unreasonably withheld or delayed) to such inclusion (except to the extent such Subsidiary’s assets were previously included in such Borrowing Base), (ii) Agent and Co-Collateral Agents shall have received satisfactory appraisals and field exams with respect to the assets of such Subsidiary, if applicable, as reasonably required by Agent and Co-Collateral Agents, and (iii) the Credit Parties shall have complied with Section 6.12(a) with respect to such Subsidiary. As of the Amendment No. 5 Effective Date, the Designated Guarantors are Jacobson Transportation Company, Inc., an Iowa corporation, Jacobson Warehouse Company, Inc., an Iowa corporation, Jacobson Logistics Company, L.C., an Iowa limited liability company, and Jacobson Packing Company, L.C., an Iowa limited liability company. Notwithstanding the foregoing, upon satisfaction of the requirements in respect of the foregoing Designated Guarantors set forth in Section 6.12(a), the U.S. Borrowing Base shall be increased by an amount equal to the sum of (I) the product of (A) 75% multiplied by (B) the Eligible Billed Accounts of such Designated Guarantors plus (II) the product of (A) 70% multiplied by (B) the Eligible Unbilled Accounts of such Designated Guarantors, in each case, calculated as of the Amendment No. 5 Effective Date (the “Temporary U.S. Borrowing Base Adjustment”), until the earliest of (x) 90 days after the Amendment No. 5 Effective Date, (y) Agent and Co-Collateral Agents having received satisfactory appraisals and field exams with respect to the assets of such Subsidiary, if applicable, as reasonably required by Agent and Co-Collateral Agents, and (z) any such Designated Guarantor ceasing to be a Guarantor hereunder.

6.14 Post-Closing Matters. Execute and deliver the documents and complete the tasks set forth on Schedule 6.14, in each case within the time limits specified on such schedule, as such time limits may be extended from time to time by Agent in its reasonable discretion.

6.15 Use of Proceeds. All proceeds of the Loans shall be used as provided in Section 2.4.

6.16 Driver Payables. Pay before the same become delinquent all Driver Payables, except to the extent that the non-payment thereof would not reasonably be expected to give rise to a Lien in an aggregate amount in excess of \$20,000,000 (it being understood that Agent may establish a Reserve for any such delinquent Driver Payables which would result in a Lien in an aggregate amount in excess of \$10,000,000).

6.17 Rolling Stock.

(a) Each U.S. Credit Party shall at all times maintain records with respect to Rolling Stock Collateral reasonably satisfactory to Agent, keeping correct, detailed and accurate records describing the Rolling Stock Collateral and such U.S. Credit Party's cost therefor. With respect to each Railcar, U.S. Credit Parties shall maintain (i) the documents and other written information originally furnished by the manufacturer and/or seller thereof, (ii) the documents or other data maintained (or required to be maintained) pursuant to the terms of the lease thereof and (iii) the documents or other data maintained (or required to be maintained) pursuant to the terms of applicable laws.

(b) Prior to the date that any Rolling Stock Collateral is included in the U.S. Borrowing Base, with respect to the Rolling Stock Collateral subject to certificates of title, the U.S. Credit Parties shall have submitted applications to the relevant state agencies for lien notations in Agent's name with respect to such certificates of title of such Rolling Stock Collateral and delivered, promptly after its receipt of certificates of title noting Agent's interest, all such certificates of title to Agent, unless Agent consents that a third-party administrator acceptable to Agent may retain such certificates of title after having entered into a required custody agreement in favor of Agent; provided that, in those states where submitting an application to have a Lien noted on a certificate of title for any Rolling Stock Collateral is not sufficient to perfect such Lien under the applicable state law, then in addition, Agent shall have received evidence that Agent's Lien with respect to such Rolling Stock Collateral has been noted on the certificate of title, except as Agent may otherwise agree.

(c) Unless and until Agent may direct otherwise, the following items of Rolling Stock Collateral shall be located only at any office or facility of Parent Borrower or any of its Subsidiaries or such other location that is reasonably acceptable to Agent: (i) any manufacturers' statements of origin or manufacturers' certificates of origin and other certificates, statements, bills of sale or other evidence of the transfer to or ownership of any U.S. Credit Party of any of the Rolling Stock Collateral; and (ii) any certificates of title at any time issued under the laws of any State or other jurisdiction with respect to any of the Rolling Stock Collateral. In addition, and not in limitation of the rights of Agent hereunder, promptly upon Agent's request, Agent may require delivery of the documents identified in the prior sentence to it or to such third party as Agent may specify.

(d) Each U.S. Credit Party will keep the Rolling Stock Collateral of such Credit Party only at the locations reasonably acceptable to Agent (except for, in each case:

(i) Rolling Stock out for repair; (ii) Rolling Stock in transit between locations; (iii) Rolling Stock Collateral in “over the road use” or “over the rail use” retained for the purpose of loading or unloading, fueling, driver scheduling and compliance with hours of service, and other customary trucking or rail use and (iv) Railcars placed in the Interchange System).

(e) The U.S. Credit Parties shall not allow the name of any Person (other than the name “BRAN”) to be placed on any Railcar or Chassis as a designation that might be interpreted as a claim of ownership without the consent of Agent, which consent shall not be unreasonably withheld.

(f) In the event a U.S. Credit Party acquires a Railcar from a seller other than the relevant manufacturer thereof and other than from a lessor of such Railcar under a sale-leaseback with such Credit Party upon the termination of the related lease, deliver to Agent a physical inspection report of an independent inspector, which report shall set forth, among other things, any material unrepaired damage or maintenance deficiencies and the total number of hours and miles with respect to such Railcar.

## 7. ~~NEGATIVE COVENANTS~~NEGATIVE COVENANTS

Each Credit Party executing this Agreement agrees as to itself and all of its Restricted Subsidiaries that from and after the Amendment No. ~~36~~ Effective Date until the Termination Date:

### 7.1 Indebtedness.

(a) (i) Parent Borrower shall not, and shall not permit any of the Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Capital Stock; and (ii) Parent Borrower shall not permit any of the Restricted Subsidiaries (other than any Credit Party) to issue any shares of Preferred Stock;

(b) The limitations set forth in Section 7.1(a) shall not apply to:

(i) the Incurrence by Parent Borrower or any Restricted Subsidiary of Indebtedness pursuant to any Loan Document or the Bilateral Credit Agreement (including any guarantees thereof);

(ii) the Incurrence by Parent Borrower and the other Credit Parties of Indebtedness under the Term Credit Agreement (including any guarantees thereof) in an aggregate principal amount of \$2,045,000,000;

(iii) Indebtedness, Preferred Stock and Disqualified Capital Stock of Parent Borrower, the Credit Parties and their Restricted Subsidiaries (including, for the avoidance of doubt, Con-way and any Restricted Subsidiary which is a Subsidiary thereof) existing on the Amendment No. ~~36~~ Effective Date (other than Indebtedness described in clauses (i) and (ii) of this Section 7.1(b)) and, if such Indebtedness is for borrowed money and is in excess of \$100,000,000, listed on Schedule 7.1 hereto;

(iv) Indebtedness (including Capitalized Lease Obligations) Incurred by Parent Borrower or any Restricted Subsidiary, Disqualified Capital Stock issued by Parent Borrower or any Restricted Subsidiary and Preferred Stock issued by any Restricted Subsidiary to finance (whether prior to or within 270 days after) the acquisition, lease, construction, repair, replacement or improvement of property (real or personal) or equipment (whether through the direct purchase of assets or the Capital Stock of any Person owning such assets) that, when aggregated with the principal amount or liquidation preference of all other Indebtedness, Disqualified Capital Stock or Preferred Stock then outstanding and Incurred pursuant to this clause (iv), together with any Refinancing Indebtedness in respect thereof Incurred pursuant to clause (xv) below, does not exceed at any one time outstanding the greater of \$800 million and 50% of Consolidated EBITDA as of the date such Indebtedness is Incurred (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount);

(v) Indebtedness Incurred by Parent Borrower or any Restricted Subsidiary constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including without limitation letters of credit in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance, and letters of credit in connection with the maintenance of, or pursuant to the requirements of, environmental law or permits or licenses from governmental authorities, or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims;

(vi) Indebtedness arising from agreements of Parent Borrower or any Restricted Subsidiary providing for indemnification, adjustment of acquisition or purchase price or similar obligations (including earn-outs), in each case, Incurred or assumed in connection with the Transactions, any Investments or any acquisition or disposition of any business, assets or a Subsidiary not prohibited by this Agreement, other than guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition;

(vii) Indebtedness of Parent Borrower to a Restricted Subsidiary, provided that (except in respect of intercompany current liabilities incurred in the ordinary course of business in connection with the cash management, tax and accounting operations of Parent Borrower and its Subsidiaries) any such Indebtedness owed to a Restricted Subsidiary that is not a Credit Party is subordinated in right of payment to the Obligations; provided, further, that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except any pledge of such Indebtedness constituting a Permitted Lien but not the transfer thereof upon foreclosure) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (vii);

(viii) shares of Preferred Stock of a Restricted Subsidiary issued to Parent Borrower or another Restricted Subsidiary; provided that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Restricted Subsidiary that holds such shares of Preferred Stock of another Restricted Subsidiary ceasing to be a

Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to Parent Borrower or another Restricted Subsidiary) shall be deemed, in each case, to be an issuance of shares of Preferred Stock not permitted by this clause (viii);

(ix) Indebtedness of a Restricted Subsidiary to Parent Borrower or another Restricted Subsidiary; provided that if a Credit Party incurs such Indebtedness to a Restricted Subsidiary that is not a Credit Party (except in respect of intercompany current liabilities incurred in the ordinary course of business in connection with the cash management, tax and accounting operations of Parent Borrower and its Subsidiaries), such Indebtedness is subordinated in right of payment to the Obligations; provided, further, that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Restricted Subsidiary holding such Indebtedness ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to Parent Borrower or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien but not the transfer thereof upon foreclosure) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (ix);

(x) Hedging Obligations that are not incurred for speculative purposes but (A) for the purpose of fixing or hedging interest rate risk with respect to any Indebtedness that is permitted by the terms of this Agreement to be outstanding; (B) for the purpose of fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (C) for the purpose of fixing or hedging commodity price risk with respect to any commodity purchases or sales and, in each case, extensions or replacements thereof;

(xi) obligations (including reimbursement obligations with respect to letters of credit, bank guarantees, warehouse receipts and similar instruments) in respect of performance, bid, appeal and surety bonds, completion guarantees and similar obligations provided by Parent Borrower or any Restricted Subsidiary in the ordinary course of business or consistent with past practice or industry practice;

(xii) Indebtedness or Disqualified Capital Stock of Parent Borrower or Indebtedness, Disqualified Capital Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference, which when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Capital Stock and Preferred Stock then outstanding and Incurred pursuant to this clause (xii), together with any Refinancing Indebtedness in respect thereof incurred pursuant to clause (xv) below, does not exceed at any one time outstanding the greater of \$~~160~~820 million and ~~10~~60% of Consolidated EBITDA as of the date such Indebtedness is Incurred (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount);

(xiii) [reserved];

(xiv) any guarantee by Parent Borrower or any Restricted Subsidiary of Indebtedness or other obligations of Parent Borrower or any Restricted Subsidiary so long as the Incurrence of such Indebtedness Incurred by Parent Borrower or such Restricted Subsidiary is permitted under the terms of this Agreement; provided that (A) if such Indebtedness is by its express terms subordinated in right of payment to the

Obligations by such Restricted Subsidiary, as applicable, any such guarantee with respect to such Indebtedness shall be subordinated in right of payment to the Obligations, substantially to the same extent as such Indebtedness is subordinated to the Obligations, (B) if such guarantee is of Indebtedness of Parent Borrower, such guarantee is Incurred in accordance with, or not in contravention of, Section 6.12 solely to the extent Section 6.12 is applicable and (C) the aggregate principal amount of Indebtedness or other obligations of a Subsidiary that is not a Credit Party guaranteed by a Credit Party in reliance on this clause (xiv) shall not exceed (when combined with the aggregate principal amount of Indebtedness incurred by Restricted Subsidiaries that are not Credit Parties in reliance on Section 7.1(b)(xvi)) the greater of (x) \$~~480~~820 million and (y) ~~30~~60% of Consolidated EBITDA as of the date of such Incurrence, at any time outstanding;

(xv) the Incurrence by Parent Borrower or any of the Restricted Subsidiaries of Indebtedness or Disqualified Capital Stock, or by any Restricted Subsidiary of Preferred Stock of a Restricted Subsidiary, that serves to refund, refinance or defease any Indebtedness Incurred or Disqualified Capital Stock or Preferred Stock issued as permitted under clauses (i), (ii), (iii), (iv), (xii), (xv), (xvi), (xxiv) and (xxviii) of this Section 7.1(b), up to the outstanding principal amount (or, if applicable, the liquidation preference, face amount, or the like) or, if greater, committed amount (only to the extent the committed amount could have been Incurred on the date of initial Incurrence and was deemed Incurred at such time for the purposes of this Section 7.1) of such Indebtedness or Disqualified Capital Stock or Preferred Stock, in each case at the time such Indebtedness was Incurred or Disqualified Capital Stock or Preferred Stock was issued pursuant to clauses (i), (ii), (iii), (iv), (xii), (xv), (xvi), (xxiv) and (xxviii) of this Section 7.1(b), or any Indebtedness, Disqualified Capital Stock or Preferred Stock Incurred to so refund or refinance such Indebtedness, Disqualified Capital Stock or Preferred Stock, plus any additional Indebtedness, Disqualified Capital Stock or Preferred Stock Incurred to pay premiums (including tender premiums), accrued and unpaid interest, expenses, defeasance costs and fees in connection therewith (subject to the following proviso, "Refinancing Indebtedness") prior to its respective maturity; provided, however, that such Refinancing Indebtedness:

(A) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is Incurred which is not less than the shorter of (x) the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Capital Stock or Preferred Stock being refunded, refinanced or defeased and (y) the Weighted Average Life to Maturity that would result if all payments of principal on the Indebtedness, Disqualified Capital Stock and Preferred Stock being refunded or refinanced that were due on or after the date that is one year following the Latest Maturity Date were instead due on such date;

(B) to the extent such Refinancing Indebtedness refinances (a) Indebtedness junior in right of payment to the Obligations, such Refinancing Indebtedness is junior in right of payment to the Obligations, (b) Disqualified Capital Stock or Preferred Stock, such Refinancing Indebtedness is Disqualified Capital Stock or Preferred Stock, (c) Indebtedness secured by a Lien on the Collateral that is *pari passu* or junior to the Lien on the Collateral securing the Obligations, such Refinancing Indebtedness is secured by a Lien on the Collateral that is *pari passu* with or junior to the Lien on the Collateral securing the Obligations to the same extent as such Indebtedness, and a Senior Representative of such

Refinancing Indebtedness acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of ABL Intercreditor Agreement and (d) obligations under the Term Credit Agreement, the Lien on the Collateral securing such Indebtedness shall have the priorities contemplated by the ABL Intercreditor Agreement (or priorities junior thereto), and a Senior Representative of such Refinancing Indebtedness acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of the ABL Intercreditor Agreement; and

(C) shall not include (x) Indebtedness of a Restricted Subsidiary that is not a Credit Party that refinances Indebtedness of Parent Borrower or a Credit Party, or (y) Indebtedness of Parent Borrower or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary;

(xvi) Indebtedness, Disqualified Capital Stock or Preferred Stock of (A) Parent Borrower or any Restricted Subsidiary incurred to finance an acquisition or (B) Persons that are acquired by Parent Borrower or any Restricted Subsidiary or are merged, consolidated or amalgamated with or into Parent Borrower or any Restricted Subsidiary in accordance with the terms of this Agreement (so long as such Indebtedness is not incurred in contemplation of such acquisition, merger, consolidation or amalgamation); provided that (A) after giving effect to the Incurrence of any such Indebtedness, Borrowers shall be in Pro Forma Compliance with the Restricted Conditions and (B) the aggregate principal amount of Indebtedness Incurred by Restricted Subsidiaries in reliance on this clause (xvi) that are not Credit Parties shall not exceed (when combined with the aggregate principal amount of Indebtedness or other obligations of Restricted Subsidiaries that are not Credit Parties guaranteed by Credit Parties in reliance on Section 7.1(b)(xiv)) the greater of (x) \$~~490~~820 million and (y) ~~30~~60% of Consolidated EBITDA as of the date of such Incurrence, at any time outstanding;

(xvii) [Reserved];

(xviii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; provided that such Indebtedness is extinguished within five Business Days of its Incurrence;

(xix) Indebtedness of Parent Borrower or any Restricted Subsidiary supported by a Letter of Credit, in a principal amount not in excess of the stated amount of such Letter of Credit;

(xx) [Reserved];

(xxi) Indebtedness of Parent Borrower or any Restricted Subsidiary consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(xxii) Indebtedness consisting of Indebtedness of Parent Borrower or a Restricted Subsidiary to current or former officers, directors and employees thereof or



any direct or indirect parent thereof, their respective estates, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of Parent Borrower or any direct or indirect parent of Parent Borrower to the extent described in Section 7.2(b)(iv);

(xxiii) Indebtedness in respect of Obligations of Parent Borrower or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money or any Hedging Obligations;

(xxiv) Indebtedness under asset-level financings, Capitalized Lease Obligations and purchase money indebtedness incurred by (1) Norbert or any of its Subsidiaries or (2) any Foreign Subsidiary of Parent Borrower, in each case in the ordinary course of business consistent with past practice; provided that the amount of Indebtedness outstanding under this Section 7.1(b)(xxiv), together with any Refinancing Indebtedness in respect thereof incurred pursuant to Section 7.1(b)(xv) shall not exceed, in the aggregate, the greater of \$1,200 million and 75% of Consolidated EBITDA (plus, in the case of any Refinancing Indebtedness, the Additional Refinancing Amount);

(xxv) [Reserved];

(xxvi) [Reserved];

(xxvii) Capitalized Lease Obligations and purchase money Indebtedness; provided that after giving effect to the incurrence of such Indebtedness in each case, the Borrowers shall be in Pro Forma Compliance with the Restricted Conditions, and Refinancing Indebtedness in respect in respect thereof; ~~and~~

(xxviii) any Indebtedness of Parent Borrower or its Restricted Subsidiaries; provided that after giving effect to the incurrence of such Indebtedness in each case, Borrowers shall be in Pro Forma Compliance with the Restricted Conditions; ~~and~~

(xxix) Indebtedness of GXO Logistics incurred in connection with the Spin Transactions, provided that such Indebtedness is not of recourse to the Parent Borrower or any Subsidiary of the Parent Borrower, other than GXO Logistics and its Subsidiaries.

(c) For purposes of determining compliance with this Section 7.1 at the time of incurrence, the Parent Borrower will be entitled to divide and classify an item of Indebtedness in more than one of the categories of Indebtedness described (i) through (xxviii) of Section 7.1(b) (or any portion thereof) without giving pro forma effect to the Indebtedness Incurred pursuant to any other clause or paragraph of Section 7.1(a) (or any portion thereof) when calculating the amount of Indebtedness that may be Incurred pursuant to any such clause or paragraph (or any portion thereof).

Accrual of interest, the accretion of accreted value, the payment of interest or dividends in the form of additional Indebtedness, Disqualified Capital Stock or Preferred Stock, as applicable,

amortization of original issue discount, the accretion of liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an Incurrence of Indebtedness, Disqualified Capital Stock or Preferred Stock for purposes of this Section 7.1. In addition, Guaranties of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included in the determination of such amount of Indebtedness; provided that the Incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was in compliance with this Section 7.1.

For purposes of determining compliance with any Dollar-denominated restriction on the Incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term debt, or first committed or first Incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt. However, if the Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency, and the refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of the refinancing, the Dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of the refinancing Indebtedness does not exceed the principal amount of the Indebtedness being refinanced.

Notwithstanding any other provision of this Section 7.1, the maximum amount of Indebtedness that Parent Borrower and the Restricted Subsidiaries may Incur pursuant to this Section 7.1 shall not be deemed to be exceeded, with respect to any outstanding Indebtedness, solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which the respective Indebtedness is denominated that is in effect on the date of the refinancing.

## 7.2 Limitation on Restricted Payments.

(a) Parent Borrower shall not, and shall not permit any of the Restricted Subsidiaries to, directly or indirectly:

(i) declare or pay any dividend or make any distribution on account of any of Parent Borrower's or any of the Restricted Subsidiaries' Equity Interests, including any payment made in connection with any merger, amalgamation or consolidation involving Parent Borrower (other than (A) dividends or distributions payable solely in Equity Interests (other than Disqualified Capital Stock) of Parent Borrower; or (B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary, Parent Borrower or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(ii) purchase or otherwise acquire or retire for value any Equity Interests of Parent Borrower or any direct or indirect parent of Parent Borrower;

(iii) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment or scheduled maturity, any Subordinated Indebtedness of Parent Borrower, or any Credit Party (other than the payment, redemption, repurchase, defeasance, acquisition or retirement of (A) Subordinated Indebtedness in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement and (B) Indebtedness permitted under clauses (vii) and (ix) of Section 7.1(b)); or

(iv) make any Restricted Investment

(all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as “Restricted Payments”).

(b) The provisions of Section 7.2(a) shall not prohibit:

(i) the payment of any dividend or distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration thereof, if at the date of declaration or the giving of notice of such irrevocable redemption, as applicable, such payment would have complied with the provisions of this Agreement; provided that if such dividend, distribution or redemption is being made pursuant to Section 7.2(b)(xix), a Reserve shall be established by Agent in an amount equal to the Restricted Payment so declared;

(ii) ~~(a)~~ the redemption, repurchase, retirement or other acquisition of any Equity Interests (“Retired Capital Stock”) or Subordinated Indebtedness of Parent Borrower, any direct or indirect parent of Parent Borrower or any Credit Party in exchange for, or out of the proceeds of, the substantially concurrent sale of, Equity Interests of Parent Borrower or any direct or indirect parent of Parent Borrower or contributions to the equity capital of Parent Borrower (other than any Disqualified Capital Stock or any Equity Interests sold to a Subsidiary of Parent Borrower) (collectively, including any such contributions, “Refunding Capital Stock”);

(A) the declaration and payment of dividends on the Retired Capital Stock out of the proceeds of the substantially concurrent sale (other than to a Subsidiary of Parent Borrower) of Refunding Capital Stock; and

(B) if immediately prior to the retirement of Retired Capital Stock, the declaration and payment of dividends thereon was permitted under clause (vi) of this Section 7.2(b) and not made pursuant to clause (ii)(B), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any direct or indirect parent of Parent Borrower) in an aggregate amount per year no greater than the aggregate amount of dividends per annum that were declarable and payable on such Retired Capital Stock immediately prior to such retirement;

(iii) the redemption, repurchase, defeasance, or other acquisition or retirement of Subordinated Indebtedness of Parent Borrower or any Credit Party made by exchange for, or out of the proceeds of the substantially concurrent sale of, new Indebtedness of Parent Borrower or a Credit Party, which is Incurred in accordance with Section 7.1 so long as:

(A) the principal amount (or accreted value, if applicable) of such new Indebtedness does not exceed the principal amount (or accreted value, if applicable), *plus* any accrued and unpaid interest, of the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired for value (*plus* the amount of any premium required to be paid under the terms of the instrument governing the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired, *plus* any tender premiums, *plus* any defeasance costs, fees and expenses incurred in connection therewith);

(B) such Indebtedness is subordinated to the Loans or the related Guarantee of such Credit Party, as the case may be, at least to the same extent as such Subordinated Indebtedness so purchased, exchanged, redeemed, repurchased, defeased, acquired or retired for value;

(C) such Indebtedness has a final scheduled maturity date equal to or later than the earlier of (x) the final scheduled maturity date of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired and (y) 91 days following the Latest Maturity Date; and

(D) such Indebtedness has a Weighted Average Life to Maturity at the time Incurred which is not less than the shorter of (x) the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired and (y) the Weighted Average Life to Maturity that would result if all payments of principal on the Subordinated Indebtedness being redeemed, repurchased, defeased, acquired or retired that were due on or after the date that is one year following the Latest Maturity Date;

(iv) so long as no Cash Dominion Period is continuing immediately before or after the making of such Restricted Payment, a Restricted Payment to pay for the repurchase, retirement or other acquisition for value of Equity Interests of Parent Borrower or any direct or indirect parent of Parent Borrower held by any future, present or former employee, director, officer or consultant of Parent Borrower or any Subsidiary of Parent Borrower or any direct or indirect parent of Parent Borrower pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement; provided, however, that the aggregate Restricted Payments made under this clause (iv) do not exceed \$45 million in any calendar year, with unused amounts in any calendar year being permitted to be carried over to succeeding calendar years up to a maximum of \$60 million in any calendar year; provided, further, however, that such amount in any calendar year may be increased by an amount not to exceed:

(A) the cash proceeds received by Parent Borrower or any of the Restricted Subsidiaries from the sale of Equity Interests (other than Disqualified Capital Stock) of Parent Borrower or any direct or indirect parent of Parent Borrower (to the extent contributed to Parent Borrower) to employees, directors, officers or consultants of Parent Borrower and the Restricted Subsidiaries or any direct or indirect parent of Parent Borrower that occurs after the Restatement Date (provided that the amount of such cash proceeds utilized for any such repurchase, retirement, other acquisition or dividend will not increase the amount available for Restricted Payments under Section 7.2(b)(viii)), *plus*

(B) the cash proceeds of key man life insurance policies received by Parent Borrower or any direct or indirect parent of Parent Borrower (to the extent contributed to Parent Borrower) or the Restricted Subsidiaries after the Restatement Date;

provided that Parent Borrower may elect to apply all or any portion of the aggregate increase contemplated by clauses (A) and (B) above in any calendar year; and provided, further, that cancellation of Indebtedness owing to Parent Borrower or any Restricted Subsidiary from any present or former employees, directors, officers or consultants of Parent Borrower, any Restricted Subsidiary or the direct or indirect parents of Parent Borrower in connection with a repurchase of Equity Interests of Parent Borrower or any of its direct or indirect parents will not be deemed to constitute a Restricted Payment for purposes of this Section 7.2 or any other provision of this Agreement;

(v) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Capital Stock of Parent Borrower or any Restricted Subsidiary issued or incurred in accordance with Section 7.1;

(vi) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock (other than Disqualified Capital Stock) issued after the Restatement Date;

(vii) [reserved];

(viii) so long as no Cash Dominion Period is continuing immediately before or after the making of such Restricted Payment, Restricted Payments that are made with (or in an aggregate amount that does not exceed the aggregate amount of) Excluded Contributions;

(ix) other Restricted Payments in any calendar year not to exceed \$150 million (it being understood that amounts under this clause (ix) are counted as of the date such Restricted Payment is made) in any calendar year so long as no Default or Event of Default has occurred and is continuing or would result therefrom and no Cash Dominion Period exists, in each case, after giving pro forma effect to such Restricted Payment;

(x) the distribution, as a dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to Parent Borrower or a Restricted Subsidiary by, Unrestricted Subsidiaries;

(xi) with respect to any taxable period for which Parent Borrower and/or any of its Subsidiaries are members of a consolidated, combined, affiliated, unitary or similar income tax group for U.S. federal and/or applicable state or local income tax purposes of which a direct or indirect parent of Parent Borrower is the common parent (a “Tax Group”), distributions (“Tax Distributions”) to any direct or indirect parent of Parent Borrower to pay the portion of the taxes of such Tax Group attributable to the income of Parent Borrower and/or its applicable Subsidiaries in an amount not to exceed the amount of any U.S. federal, state and/or local income taxes (as applicable) that Parent Borrower and/or its applicable Subsidiaries would have paid for such taxable period had Parent Borrower and/or its applicable Subsidiaries been a stand-alone corporate taxpayer or a stand-alone corporate group with respect to such taxes; provided that distributions attributable to the income of any Unrestricted Subsidiary shall be permitted only to the extent that such Unrestricted Subsidiary made distributions to Parent Borrower or any Restricted Subsidiary for such purpose;

(xii) any Restricted Payment, if applicable:

(A) in amounts required for any direct or indirect parent of Parent Borrower to pay fees and expenses (including franchise or similar Taxes) required to maintain its corporate existence, customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers and employees of any direct or indirect parent of Parent Borrower and general corporate operating and overhead expenses of any direct or indirect parent of Parent Borrower, in each case, to the extent such fees and expenses are attributable to the ownership or operation of Borrower, if applicable, and its Subsidiaries;

(B) [reserved]; and

(C) in amounts required for any direct or indirect parent of Parent Borrower to pay fees and expenses related to any equity or debt offering of such parent (whether or not successful);

(xiii) repurchases of Equity Interests that occur or are deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(xiv) purchases of Securitization Assets pursuant to a Securitization Repurchase Obligation in connection with a Qualified Securitization Financing and the payment or distribution of Securitization Fees;

(xv) Restricted Payments by Parent Borrower or any Restricted Subsidiary to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Capital Stock of any such Person;

(xvi) [reserved];

(xvii) payments or distributions to dissenting stockholders pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or

transfer of all or substantially all of the assets of Parent Borrower and the Restricted Subsidiaries, taken as a whole, that complies with [Section 7.8](#); provided that if such consolidation, amalgamation, merger or transfer of assets constitutes a Change of Control, all Obligations shall have been repaid in full (or the Event of Default specified in Section 9.1(i) shall have been waived);

(xviii) [Reserved]; and

(xix) any Credit Party or their Restricted Subsidiaries may make Restricted Payments so long as Borrowers are in Pro Forma Compliance with the Restricted Conditions; [and](#)

[\(xx\) the Distribution, and any other Restricted Payment pursuant to or in connection with the Spin Transactions;](#)

provided, however, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (ix), and (x) of this [Section 7.2\(b\)](#), no Default shall have occurred and be continuing or would occur as a consequence thereof (provided, however, that Borrower may make regularly-scheduled dividend payments on its existing Series A Preferred Stock in accordance with the terms thereof pursuant to [Section 7.2\(b\)\(ix\)](#), regardless of whether any Default has occurred or is continuing or would occur as a consequence thereof); provided, further, that any Restricted Payments made with property other than cash shall be calculated using the Fair Market Value (as determined in good faith by Parent Borrower) of such property.

(c) As of the Amendment No. [36](#) Effective Date, all of the Subsidiaries of Parent Borrower other than XPO Escrow Sub, LLC [and GXO Logistics, Inc. \(and any Subsidiary thereof\)](#) will be Restricted Subsidiaries. For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by Parent Borrower and the Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated will be deemed to be Restricted Payments in an amount determined as set forth in the last sentence of the definition of "Investments." Such designation will only be permitted if a Restricted Payment or Permitted Investment in such amount would be permitted at such time and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary.

7.3 Limitation of Restrictions Affecting Subsidiaries. No Credit Party shall, or shall permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist any consensual encumbrance or consensual restriction which prohibits or limits the ability of any Credit Party or Restricted Subsidiary to:

(a) pay dividends or make any other distributions to Parent Borrower or any Restricted Subsidiary (1) on its Capital Stock; or (2) with respect to any other interest or participation in, or measured by, its profits; or

(b) make loans or advances to Parent Borrower or any Restricted Subsidiary that is a direct or indirect parent of such Restricted Subsidiary;

except in each case for such encumbrances or restrictions existing under or by reason of:

(i) (1) contractual encumbrances or restrictions in effect on the Amendment No. [36](#) Effective Date (including encumbrances or restrictions imposed on Con-

way and any Subsidiary thereof which is a Restricted Subsidiary) and (2) contractual encumbrances or restrictions pursuant to this Agreement, the other Loan Documents, the Term Credit Agreement (and all guarantee, security and other documents relating thereto), [the Bilateral Credit Agreement](#) and, in each case, similar contractual encumbrances effected by any amendments, modifications, restatements, renewals, supplements, refundings, replacements or refinancings of such agreements or instruments;

(ii) (x) ~~the 2022 Notes Indenture, the 2022 Notes or the guarantees thereunder, (y)~~ the 2023 Notes Indenture, the 2023 Notes or the guarantees thereunder ~~or~~, (zy) the 2024 Notes Indenture, the 2024 Notes or the guarantees thereunder or (z) the 2025 Notes Indenture, the 2025 Notes or the guarantees thereunder;

(iii) applicable law or any applicable rule, regulation or order;

(iv) any agreement or other instrument of a Person acquired by Parent Borrower or any Restricted Subsidiary which was in existence at the time of such acquisition (but not created in contemplation thereof or to provide all or any portion of the funds or credit support utilized to consummate such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired;

(v) contracts or agreements for the sale of assets, including any restriction with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Capital Stock or assets of such Restricted Subsidiary;

(vi) Secured Indebtedness otherwise permitted to be Incurred pursuant to [Section 7.1](#) and [Section 7.7](#) that limits the right of the debtor to dispose of the assets securing such Indebtedness;

(vii) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(viii) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business;

(ix) purchase money obligations for property acquired and Capitalized Lease Obligations in the ordinary course of business;

(x) customary provisions contained in leases, licenses and other similar agreements entered into in the ordinary course of business;

(xi) any encumbrance or restriction that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license or similar contract, or the assignment or transfer of any such lease, license (including without limitation, licenses of intellectual property) or other contracts;



(xii) any encumbrance or restriction of a Securitization Subsidiary effected in connection with a Qualified Securitization Financing; provided, however, that such restrictions apply only to such Securitization Subsidiary;

(xiii) other Indebtedness, Disqualified Capital Stock or Preferred Stock (a) of Parent Borrower or any Restricted Subsidiary that is a Credit Party or a Foreign Subsidiary or (b) of any Restricted Subsidiary that is not a Credit Party or a Foreign Subsidiary so long as such encumbrances and restrictions contained in any agreement or instrument will not materially affect Parent Borrower's or any Credit Party's ability to make anticipated principal or interest payments on the Loans (as determined in good faith by Parent Borrower), provided that in the case of each of clauses (a) and (b), such Indebtedness, Disqualified Capital Stock or Preferred Stock is permitted to be Incurred subsequent to the Amendment No. ~~36~~ Effective Date pursuant to Section 7.1;

(xiv) any Restricted Investment not prohibited by Section 7.2 and any Permitted Investment; ~~or~~

(xv) any encumbrances or restrictions of the type referred to in Section 7.3(a) or (b) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (xiv) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of Parent Borrower, no more restrictive with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; ~~or~~

(xvi) the Spin Transactions.

For purposes of determining compliance with this Section 7.3, (i) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to make distributions on Capital Stock and (ii) the subordination of loans or advances made to Parent Borrower or a Restricted Subsidiary to other Indebtedness Incurred by Parent Borrower or any such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

7.4 Sale of Capital Stock and Assets. Except as set forth herein, no Credit Party shall, or shall permit any of its Restricted Subsidiaries to, sell, transfer, convey, assign or otherwise Dispose of any of its properties or other assets, including the Capital Stock of any of its Subsidiaries (whether in a public or a private offering or otherwise), other than:

(a) the Disposition (including the abandonment of any Copyright, Patent, Trademark or other intellectual property or surrender or transfer for no consideration) of obsolete, no longer used or useful, surplus, uneconomic, negligible or worn out property in the ordinary course of business or otherwise as may be required pursuant to the terms of any lease, sublease, license or sublicense;

(b) the sale of inventory or other assets in the ordinary course of business;

(c) Dispositions permitted by Sections 7.2, 7.7 and 7.8;

(d) (i) the sale or issuance of any Subsidiary's Capital Stock to Parent Borrower or any Restricted Subsidiary and (ii) the sale or issuance of Capital Stock of Parent Borrower to any employee (and, where required by law, to any officer or director) under any employment or compensation plans or to qualify such officers and directors;

(e) the sale of assets that do not constitute Borrowing Base assets subsequent to the Amendment No. 36 Effective Date, so long as (i) no Default or Event of Default then exists or would result therefrom, (ii) each such sale or other disposition is in an arm's-length transaction and the respective Borrower or Subsidiary receives at least fair market value, and (iii) the consideration received by such Borrower or such Subsidiary consists of at least 75% cash and is paid at the time of the closing of such sale; provided, however, that the following shall be deemed to be cash in respect of assets that are not ABL Priority Collateral: (A) the assumption by the transferee of Indebtedness or other liabilities contingent or otherwise of Parent Borrower or any of its Restricted Subsidiaries (other than Subordinated Indebtedness) and the valid release of Parent Borrower or such Restricted Subsidiary, by all applicable creditors in writing, from all liability on such Indebtedness or other liability in connection with such Disposition, (B) Indebtedness (other than Subordinated Indebtedness) of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Disposition, to the extent that Parent Borrower and each other Restricted Subsidiary are released from any guarantee of payment of such Indebtedness in connection with such Disposition and (C) any Designated Non-cash Consideration received by Parent Borrower or any Restricted Subsidiary in such asset sale having an aggregate Fair Market Value (as determined in good faith by Parent Borrower), taken together with all other Designated Non-cash Consideration received pursuant to this Section 7.4(e) that is at that time outstanding, not to exceed the greater of \$400 million and 25% of Consolidated EBITDA at the time of the receipt of such Designated Non-cash Consideration (with the Fair Market Value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value);

(f) subject to compliance with Applicable Conditions, the sale of assets that constitute Borrowing Base assets subsequent to the Amendment No. 36 Effective Date, so long as (i) no Default or Event of Default then exists or would result therefrom, (ii) each such sale or other disposition is in an arm's-length transaction and the respective Borrower or Subsidiary receives at least fair market value and (iii) the consideration received by such Borrower or such Subsidiary consists of at least 75% cash and is paid at the time of the closing of such sale;

(g) Dispositions of cash and Cash Equivalents;

(h) Dispositions of Accounts in connection with compromise, write down or collection thereof in the ordinary course of business and consistent with past practice;

(i) leases, subleases, licenses or sublicenses of property in the ordinary course of business and which do not materially interfere with the business of Borrowers and their Restricted Subsidiaries;

(j) Dispositions of Capital Stock to directors where required by applicable law or to satisfy other requirements of applicable law with respect to the ownership of Capital Stock of Foreign Subsidiaries;

(k) Dispositions of the Capital Stock of any Joint Venture to the extent required by the terms of customary buy/sell type arrangements entered into in connection with the formation of such Joint Venture;

(l) transfer or disposition of property subject to or as a result of a casualty or condemnation (or agreement in lieu of condemnation) (i) upon receipt of net cash proceeds of such casualty or (ii) to a Governmental Authority as a result of condemnation (or agreement in lieu of condemnation);

(m) Dispositions of property in connection with (i) Sale/Leaseback Transactions for fair value (as determined at the time of the consummation thereof in good faith by the applicable Credit Party or Restricted Subsidiary) so long as (x) 75% of the consideration received by such Credit Party or Restricted Subsidiary from such Sale/Leaseback Transaction is in the form of cash and (y) if such Sale/Leaseback Transaction involves Borrowing Base Collateral with a Fair Market Value in excess of \$20,000,000, Parent Borrower shall have delivered to Agent on updated Borrowing Base Certificate giving pro forma effect to such Disposition, (ii) other Sale/Leaseback Transactions for fair value (as determined at the time of the consummation thereof in good faith by the applicable Credit Party or Restricted Subsidiary) consummated with respect to Railcars that such Credit Party or Restricted Subsidiary acquires from the original lessor thereof in connection with the termination of the related lease and with the intent of refinancing such Railcars under a new Sale/Leaseback Transactions and (A) such Sale/Leaseback Transactions is consummated within 60 days of acquisition of such Railcars, (B) the consideration received is not less than the consideration paid for such Railcars and (C) the cash consideration received for such Railcars is not less than the cash consideration actually paid by any such Borrower or its Restricted Subsidiary and (iii) Sale/Leaseback Transactions between Excluded Subsidiaries;

(n) (i) any Credit Party may Dispose of its property to another Credit Party, (ii) any Restricted Subsidiary that is not a Credit Party may Dispose of its property to another Restricted Subsidiary that is not a Credit Party and (iii) asset Dispositions among Credit Parties and their Restricted Subsidiaries in the ordinary course of business; provided that, in the case of clauses (i) and (ii), no Credit Party that is a Non-Con-way Subsidiary may Dispose of its property to a Con-way Subsidiary if such Disposition would cause Collateral to be Excluded Property.

(o) Dispositions of any property to the extent that (i) (x) such property is exchanged for credit against the purchase price of similar replacement property or (y) such Disposition represents an exchange of assets (including a combination of Cash Equivalents and assets) for assets related to a Similar Business of comparable or greater market value or

usefulness to the business of Parent Borrower and the Restricted Subsidiaries as a whole, as determined in good faith by Parent Borrower or (z) such Disposition represents a swap of assets or lease, assignment or sublease of any real or personal property in exchange for services (including in connection with any outsourcing arrangements) or comparable or greater value or usefulness to the business of Parent Borrower and its Restricted Subsidiaries as a whole, as determined in good faith by Parent Borrower, or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property; provided that, in the case of both clauses (i) and (ii), if such Disposition involves Borrowing Base Collateral with a Fair Market Value in excess of \$20,000,000, Parent Borrower shall deliver to Agent an updated Borrowing Base Certificate giving pro forma effect to such Disposition;

(p) Dispositions of assets which constitute Investments permitted under Section 7.2;

(q) making Chassis, containers and Railcars available, on a non-exclusive basis, to third parties in accordance with the UIIA and the Interchange System, as the case may be, in the ordinary course of business consistent with past practices and undertaken in good faith;

(r) (1) Dispositions of assets by a Restricted Subsidiary that is not a Credit Party of the type specified in the definition of "Securitization Financing" (or a fractional undivided interest therein), including by a Securitization Subsidiary in a Qualified Securitization Financing and (2) Dispositions of assets by a Credit Party in connection with Securitization Financings; provided that the aggregate outstanding balance of accounts receivable and other similar assets disposed of pursuant to this Section 7.4(r)(2) shall not exceed \$200,000,000 at any one time outstanding (provided that, for the avoidance of doubt, accounts receivable and other similar assets so disposed of will no longer be considered outstanding for purposes of this clause (2) to the extent that the applicable obligor of such receivable or asset has made payment thereof, or to the extent such receivable has been repurchased by a Credit Party);

(s) Dispositions of assets or issuances of Parent Borrower or any Restricted Subsidiary or sale of Capital Stock of Parent Borrower or any Restricted Subsidiary which assets or Capital Stock so Disposed or issued, in any single transaction or related series of transactions, have a fair market value (as determined in good faith by Parent Borrower) of less than \$55,000,000; provided that if such Disposition involves Borrowing Base Collateral with a Fair Market Value in excess of \$25,000,000, Parent Borrower shall deliver to Agent an updated Borrowing Base Certificate giving pro forma effect to such Disposition;

(t) foreclosure or any similar action with respect to any property or other asset of Parent Borrower or any of its Subsidiaries;

(u) any Disposition of Capital Stock in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(v) any Disposition of Capital Stock of a Restricted Subsidiary pursuant to an agreement or other obligation with or to a Person (other than Parent Borrower or a Restricted Subsidiary) from whom such Restricted Subsidiary was acquired or from whom such Restricted Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition;

(w) Dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;

(x) any surrender, expiration or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind;

(y) Dispositions of real property for the purpose of (x) resolving minor title disputes or defects, including encroachments and lot line adjustments or, or (y) granting easements, rights of way or access and egress agreements, or (z) to any Governmental Authority in consideration of the grant, issuance, consent or approval of or to any development agreement, change of zoning or zoning variance, permit or authorization in connection with the conduct of any Credit Party's business, in each case which does not materially interfere with the business conducted on such real property; ~~and~~

(z) Dispositions of assets that do not constitute Borrowing Base Collateral with an individual value of less than \$100,000,000; ~~and~~

(aa) The Distribution and any other Dispositions pursuant to the Spin Transactions.

Notwithstanding the foregoing, if and for so long as ~~the~~Parent Borrower or any of its Subsidiaries holds Capital Stock ~~of~~ ~~Con-way~~that constitutes "margin stock" within the meaning of Regulation U, this Section 7.4 shall not apply to and shall not restrict Parent Borrower or any of its Subsidiaries' ability to dispose of such Capital Stock to the extent that the value of such Capital Stock, together with the value of all other margin stock held by Parent Borrower and its Subsidiaries, exceeds 25% of the total value of their assets subject to this Section 7.4.

#### 7.5 Affiliate Transactions

(a) Parent Borrower shall not, and shall not permit any of the Restricted Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of Parent Borrower (each of the foregoing, an "Affiliate Transaction") involving aggregate consideration in excess of \$80 million, unless:

(i) such Affiliate Transaction is on terms that are not materially less favorable to Parent Borrower or the relevant Restricted Subsidiary than those that could

have been obtained in a comparable transaction by Parent Borrower or such Restricted Subsidiary with an unrelated Person; and

(ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$112.5 million, Parent Borrower delivers to Agent a resolution adopted in good faith by the majority of the Board of Directors of Parent Borrower, approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (i) above.

(b) The provisions of Section 7.5(a) shall not apply to the following:

(i) transactions between or among Parent Borrower and/or any of the Restricted Subsidiaries (or an entity that becomes a Restricted Subsidiary as a result of such transaction) and any merger, consolidation or amalgamation of Parent Borrower and any direct parent of Parent Borrower; provided that such parent shall have no material liabilities and no material assets other than cash, Cash Equivalents and the Capital Stock of Parent Borrower and such merger, consolidation or amalgamation is otherwise in compliance with the terms of this Agreement and effected for a bona fide business purpose;

(ii) Restricted Payments permitted by Section 7.2 and Permitted Investments;

(iii) the payment of reasonable and customary fees and reimbursement of expenses paid to, and indemnity provided on behalf of, officers, directors, employees or consultants of Parent Borrower, any Restricted Subsidiary, or any direct or indirect parent of Parent Borrower;

(iv) transactions in which Parent Borrower or any Restricted Subsidiary, as the case may be, delivers to Agent a letter from an Independent Financial Advisor stating that such transaction is fair to Parent Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (i) of Section 7.5(a);

(v) payments or loans (or cancellation of loans) to officers, directors, employees or consultants which are approved by a majority of the Board of Directors of Parent Borrower in good faith;

(vi) any agreement as in effect as of the Amendment No. 36 Effective Date or any amendment thereto (so long as any such agreement together with all amendments thereto, taken as a whole, is not more disadvantageous to the Lenders in any material respect than the original agreement as in effect on the Amendment No. 36 Effective Date) or any transaction contemplated thereby as determined in good faith by Parent Borrower;

(vii) the existence of, or the performance by Parent Borrower or any Restricted Subsidiary of its obligations under the terms of any stockholders or limited liability Parent Borrower agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Amendment No. 36 Effective Date, any transaction, agreement or arrangement described in the ~~2022~~2025 Notes Offering

~~Memorandum~~Memoranda and, in each case, any amendment thereto or similar transactions, agreements or arrangements which it may enter into thereafter; provided, however, that the existence of, or the performance by Parent Borrower or any Restricted Subsidiary of its obligations under, any future amendment to any such existing transaction, agreement or arrangement or under any similar transaction, agreement or arrangement entered into after the Amendment No. 36 Effective Date shall only be permitted by this clause (vii) to the extent that the terms of any such existing transaction, agreement or arrangement together with all amendments thereto, taken as a whole, or new transaction, agreement or arrangement are not otherwise more disadvantageous to the Lenders in any material respect than the original transaction, agreement or arrangement as in effect on the Amendment No. 36 Effective Date;

(viii) (A) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Agreement, which are fair to Parent Borrower and the Restricted Subsidiaries in the reasonable determination of the Board of Directors or the senior management of Parent Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party or (B) transactions with joint ventures or Unrestricted Subsidiaries entered into in the ordinary course of business and consistent with past practice or industry norm;

(ix) any transaction effected as part of a Qualified Securitization Financing;

(x) the issuance of Equity Interests (other than Disqualified Capital Stock) of Parent Borrower to any Person;

(xi) the issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, management equity plans, stock option and stock ownership plans or similar employee benefit plans approved by the Board of Directors of Parent Borrower or the Board of Directors of any direct or indirect parent of Parent Borrower, or the Board of Directors of a Restricted Subsidiary, as applicable, in good faith;

(xii) the entering into of any tax sharing agreement or arrangement that complies with Sections 7.2(b)(x) and 7.2(b)(xi) and the performance under any such agreement or arrangement;

(xiii) any contribution to the capital of Parent Borrower;

(xiv) transactions permitted by, and complying with, Section 7.8;

(xv) transactions between Parent Borrower or any Restricted Subsidiary and any Person, a director of which is also a director of Parent Borrower or any direct or indirect parent of Parent Borrower; provided, however, that such director abstains from voting as a director of Parent Borrower or such direct or indirect parent of Parent Borrower, as the case may be, on any matter involving such other Person;

(xvi) pledges of Equity Interests of Unrestricted Subsidiaries;

(xvii) the formation and maintenance of any consolidated group or subgroup for tax, accounting or cash pooling or management purposes in the ordinary course of business;

(xviii) any employment agreements entered into by Parent Borrower or any Restricted Subsidiary and their respective officers and employees in the ordinary course of business;

(xix) transactions undertaken in good faith (as ~~certified~~determined by a responsible financial or accounting officer of Parent Borrower ~~in an Officer's Certificate~~) for the purpose of improving the consolidated tax efficiency of Parent Borrower and its Subsidiaries and not for the purpose of circumventing any covenant set forth in this Agreement; ~~and~~

(xx) non-exclusive licenses of Intellectual Property to or among Borrowers, their respective Restricted Subsidiaries and their Affiliates; ~~and~~

(xxi) the Spin Transactions, including the execution, delivery and performance of any Spin Documents.

7.6 Amendment of Certain Documents; Line of Business. No Credit Party shall amend its charter, bylaws or other organizational documents in any manner materially adverse to the interest of the Lenders or such Credit Party's duty or ability to repay the Obligations. No Credit Party shall engage in any business other than the businesses currently engaged in by it on the Amendment No. 36 Effective Date or businesses that are similar, reasonably related, incidental or ancillary thereto or is a reasonable extension, development or expansion thereof (a "Similar Business").

7.7 Liens. Parent Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur or suffer to exist any Lien securing Indebtedness of the Parent Borrower or any Restricted Subsidiary, other than Permitted Liens, on any asset or property of Borrower or such Restricted Subsidiary.

(a) Notwithstanding anything herein to the contrary, Borrower shall not, and shall not permit any of the Restricted Subsidiaries to, directly or indirectly, create, incur or suffer to exist any Lien securing Indebtedness for borrowed money in excess of \$100,000,000 on any Excluded Principal Property owned by any Credit Party without effectively providing that the Obligations (together with, if Borrower shall so determine, any other Indebtedness for borrowed money of Borrower or such Restricted Subsidiary existing at such time or thereafter created that is not subordinate to the Loans) shall be secured by Liens on such Excluded Principal Property (as and to the extent such assets would otherwise constitute Collateral were they not an Excluded Principal Property) (i) to the extent such Excluded Principal Property is Term Priority Collateral, on a *pari passu* basis with, or on a senior or junior basis to, such secured Indebtedness for borrowed money and (ii) to the extent such Excluded Principal Property is ABL Priority Collateral, on a senior basis to, such secured Indebtedness for borrowed money, in each case so long as such secured Indebtedness



for borrowed money shall be so secured (and, for the avoidance of doubt, the Loans shall no longer be required to be secured by Liens on any such Excluded Principal Property at any time that such Excluded Principal Property ceases to be subject to Liens securing Indebtedness for borrowed money in excess of \$100,000,000).

(b) [reserved].

(c) With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the Incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The “Increased Amount” of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms or in the form of common stock of Parent Borrower, the payment of dividends on Preferred Stock in the form of additional shares of Preferred Stock of the same class, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness described in clause (3) of the definition of “Indebtedness.”

7.8 Mergers, Fundamental Changes, Etc. No Credit Party shall, or shall permit any of its Restricted Subsidiaries to, directly or indirectly, by operation of law or otherwise, enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its property or business (in each case other than in connection with the Spin Transactions), except that:

(a) any Borrower may be merged, amalgamated or consolidated with or into another Borrower; provided that in all mergers, amalgamations or consolidations involving Parent Borrower, Parent Borrower shall be the continuing or surviving entity;

(b) any Restricted Subsidiary of a Borrower may be merged, amalgamated or consolidated with or into a Borrower (provided that such Borrower shall be the continuing or surviving entity) or with or into any Subsidiary Guarantor (provided that such Subsidiary Guarantor shall be the continuing or surviving entity);

(c) any Subsidiary of a Borrower that is not a Subsidiary Guarantor (other than a Designated Guarantor for so long as such Subsidiary is designated as such) may be merged, amalgamated or consolidated with or into any other Subsidiary of a Borrower that is not a Subsidiary Guarantor; provided that if one Subsidiary to such merger, amalgamation or consolidation is a Wholly Owned Subsidiary, the Wholly Owned Subsidiary shall be the continuing or surviving entity;

(d) any U.S. Borrower may Dispose of any or all of its assets to another U.S. Borrower, any Canadian Borrower may Dispose of any or all of its assets to another Borrower and any Subsidiary of a Borrower may Dispose of any or all of its assets to, or enter into any merger, amalgamation or consolidation with, (i) a Borrower or any Subsidiary Guarantor (upon voluntary liquidation or otherwise), (ii) a Subsidiary that is not a Subsidiary Guarantor if the Subsidiary making the Disposition is not a Subsidiary Guarantor or a

Designated Guarantor; provided that any such Disposition by a Wholly Owned Subsidiary must be to a Wholly Owned Subsidiary, or (iii) pursuant to a Disposition otherwise permitted by Section 7.4;

(e) any Investment expressly permitted by Section 7.2 may be structured as a merger, consolidation or amalgamation;

(f) any Subsidiary may be dissolved or liquidated so long as any Dispositions of assets of such Person in connection with such liquidation or dissolution would be to Persons entitled to receive such assets;

(g) any Designated Guarantor may be merged, amalgamated or consolidated with or into any other Designated Guarantor;

(h) any Subsidiary of a Borrower that is not a Subsidiary Guarantor (other than a Designated Guarantor for so long as such Subsidiary is designated as such) may be merged, amalgamated or consolidated with or into any Designated Guarantor; and

(i) any Subsidiary may enter into any merger, amalgamation or consolidation in connection with a Disposition otherwise permitted by Section 7.4.

Notwithstanding the foregoing, in no event shall any Credit Party that is a Non-Con-way Subsidiary be merged, amalgamated or consolidated with or into, or transfer all or substantially all of its property or business to, a Con-way Subsidiary if such transaction would cause Equity Interests or any Principal Property owned by a Non-Con-way Subsidiary to become Excluded Principal Property, unless Parent Borrower agrees that such property will not constitute Excluded Property.

7.9 OFAC and Patriot Act Use of Proceeds. No Credit Party shall, and no Credit Party shall permit any of its Subsidiaries to, fail to comply in all material respects with the laws, regulations and executive orders referred to in Section 4.23 and Section 4.24.

7.10 Change of Jurisdiction of Incorporation; Change of Fiscal Year. No Credit Party shall change its jurisdiction of incorporation or organization to a jurisdiction outside of the country in which it is currently incorporated or organized. Parent Borrower shall not change its Fiscal Year.

7.11 ERISA, Etc.. No Credit Party shall, or shall cause or permit any ERISA Affiliate to, cause or permit to occur (i) an event that could result in the imposition of an ERISA Lien or (ii) an ERISA Event, to the extent such ERISA Lien or ERISA Event either alone or together with all such other ERISA Events would reasonably be expected to have a Material Adverse Effect.

7.12 Financial Covenants. If a Covenant Trigger Period exists, the Credit Parties and their Restricted Subsidiaries, on a consolidated basis, shall not permit the Fixed Charge Coverage Ratio, determined as of the last day of the most recent Fiscal Quarter immediately preceding the commencement of a Covenant Trigger Period and as of the last day of each Fiscal Quarter ending prior to the expiration of such Covenant Trigger Period and, in each case,

calculated for the 12 month period then ended (taken as a single accounting period) to be less than 1.00 to 1.00.

7.13 Hazardous Materials. No Credit Party shall, or shall authorize any of the Restricted Subsidiaries to, cause or permit a Release of any Hazardous Material on, at, in, under, above, to, from or about any of the real estate where such Release would violate in any respect, or form the basis for any Environmental Liabilities under, any Environmental Laws or Environmental Permits other than such Releases, violations or Environmental Liabilities that could not reasonably be expected to have a Material Adverse Effect.

## 8. ~~TERM~~TERM

8.1 Termination. The financing arrangements contemplated hereby shall be in effect until the Commitment Termination Date, and the Loans and all other Obligations shall be automatically due and payable in full on such date.

8.2 Survival of Obligations Upon Termination of Financing Arrangements. Except as otherwise expressly provided for in the Loan Documents, no termination or cancellation (regardless of cause or procedure) of any financing arrangement under this Agreement shall in any way affect or impair the obligations, duties and liabilities of the Credit Parties or the rights of Agent, Co-Collateral Agents, L/C Issuers and Lenders relating to any unpaid portion of the Loans or any other Obligations, due or not due, liquidated, contingent or unliquidated, or any transaction or event occurring prior to such termination, or any transaction or event, the performance of which is required after the Commitment Termination Date. Except as otherwise expressly provided herein or in any other Loan Document, all undertakings, agreements, covenants, warranties and representations of or binding upon the Credit Parties, and all rights of Agent, each Co-Collateral Agent, L/C Issuers and each Lender, all as contained in the Loan Documents, shall not terminate or expire, but rather shall survive any such termination or cancellation and shall continue in full force and effect until the Termination Date; provided, that the payment obligations under Sections 2.13 and 2.14, and the indemnities contained in the Loan Documents shall survive the Termination Date.

## 9. ~~EVENTS OF DEFAULT; RIGHTS AND REMEDIES~~EVENTS OF DEFAULT; RIGHTS AND REMEDIES

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an “Event of Default” hereunder:

(a) Any Borrower (i) fails to make any payment of principal of the Loans when due and payable hereunder, (ii) fails to pay any interest or Fees owing in respect of the Loans within three (3) Business Days after the same becomes due and payable, or (iii) fails to pay or reimburse Agent, Co-Collateral Agents or Lenders for any other Obligations hereunder or under any other Loan Document within ten (10) days after the same becomes due and payable.

(b) Any Credit Party fails or neglects to perform, keep or observe any of the provisions of Sections 2.4, 2.6, 6.1 (with respect to Borrowers’ existence), 6.14 or Z, or any of the provisions set forth in Annex A, respectively.

(c) Any Credit Party fails or neglects to perform, keep or observe any of the provisions of Section 5.1 or Section 5.2, respectively, and the same shall remain unremedied for five (5) Business Days or more.

(d) Any Credit Party fails or neglects to perform, keep or observe any other provision of this Agreement or of any of the other Loan Documents (other than any provision embodied in or covered by any other clause of this Section 9.1) and the same shall remain unremedied for thirty (30) days or more after written notice to Borrower Representative from Agent or any Lender to Borrower Representative.

(e) a default or breach occurs under any other agreement, document or instrument to which any Credit Party or any Restricted Subsidiary is a party that is not cured within any applicable grace period therefor, and such default or breach (i) involves the failure to make any payment when due in respect of any Indebtedness (other than the Obligations) of any Credit Party or any Restricted Subsidiary in an aggregate amount of not less than \$140,000,000, or (ii) causes or permits any holder of such Indebtedness or a trustee, with the giving of notice, if required, to cause Indebtedness or a portion thereof in excess of \$140,000,000 in the aggregate outstanding principal amount to become due prior to its stated maturity or prior to its regularly scheduled dates of payment, or cash collateral in respect thereof (in excess of \$140,000,000) is demanded as a result of any such breach or default, in each case, regardless of whether such right is exercised, by such holder or trustee; provided that this clause (e)(ii) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness.

(f) Any information contained in any Borrowing Base Certificate is untrue or incorrect in any material respect or any representation or warranty herein or in any Loan Document or in any written statement, report, financial statement or certificate (other than a Borrowing Base Certificate) made or delivered to Agent or any Lender by any Credit Party is untrue or incorrect in any material respect as of the date when made or deemed made; provided, that, if any inadvertent errors with respect to the Borrowing Base Certificate shall have been made by Borrowers, such inadvertent errors shall not constitute an Event of Default hereunder so long as (i) Borrowers provide a corrected Borrowing Base Certificate to Agent promptly upon Borrowers' obtaining knowledge of the errors therein, and in any event no later than two (2) days after first knowledge thereof, and (ii) as a result of the error, no Overadvance shall have occurred. In the event an Overadvance shall have occurred as a result of the error, Borrowers shall repay all advanced amounts within one (1) Business Day from the date of notice from Agent of such Overadvance.

(g) A final judgment or judgments for the payment of money in excess of \$140,000,000 in the aggregate at any time are outstanding against one or more of the Credit Parties or Restricted Subsidiaries (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment and does not deny coverage or third party indemnity), and the same are not, within sixty (60) days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay.

(h) Any material provision of any Loan Document for any reason (other than due to (i) Agent's failure to take or refrain from taking any action under its sole control or (ii) Agent's loss of possessory Collateral that was in their possession) ceases to be in full force and effect (or any Credit Party shall challenge the enforceability of any Loan Document or shall assert in writing that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms), or any Loan Document ceases to create a valid and perfected security interest in any material portion of the Collateral purported to be covered thereby (subject to Permitted Liens and qualifications with respect to perfection set forth in this Agreement), except to the extent that any such loss of perfection or priority results from the failure of Agent to maintain possession of certificates actually delivered to them representing securities pledged under the Collateral Documents or to file Code or PPSA financing statements or continuation statements or other equivalent filings.

(i) Any Change of Control occurs.

(j) An involuntary case or application or proceeding is commenced against any Credit Party or any Restricted Subsidiary (other than an Immaterial Subsidiary) seeking a decree or order in respect of such Credit Party or such Restricted Subsidiary (other than an Immaterial Subsidiary) (i) under any Insolvency Law or any other applicable federal, state or foreign bankruptcy or other similar law or any incorporation law, (ii) appointing a custodian, receiver, interim receiver, receiver and manager, custodian, liquidator, assignee, trustee or sequestrator (or similar official) for such Credit Party or such Restricted Subsidiary (other than an Immaterial Subsidiary) or for any substantial part of any such Credit Party's or such Restricted Subsidiary's (other than an Immaterial Subsidiary) assets, or (iii) ordering the winding up, dissolution, insolvency suspension of general operations or liquidation of the affairs of such Credit Party or such Restricted Subsidiary (other than an Immaterial Subsidiary) or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief under any federal, provincial or foreign law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors of any Canadian Credit Party (other than an Immaterial Subsidiary), and such case or proceeding shall remain undismissed or unstayed for sixty (60) days or more or a decree or order granting the relief sought in such case or proceeding shall be entered by a court of competent jurisdiction.

(k) Any Credit Party or any Restricted Subsidiary (other than an Immaterial Subsidiary) (i) files a petition seeking relief under any Insolvency Law, or any other applicable federal, state or foreign bankruptcy or other similar law, (ii) consents to the institution of proceedings referred to in Section 9.1(j) thereunder or the filing of any such petition or the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) for such Credit Party or such Restricted Subsidiary (other than an Immaterial Subsidiary) or for any substantial part of any such Credit Party's or such Restricted Subsidiary's (other than an Immaterial Subsidiary) assets, (iii) makes an assignment for the benefit of creditors, or (iv) institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up,

reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any federal, provincial or foreign law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors.

(l) (i) an ERISA Event shall have occurred that, when taken either alone or together with all other such ERISA Events then outstanding, would reasonably be expected to have a Material Adverse Effect.

## 9.2 Remedies.

(a) To the extent permitted under Section 2.5(d), the rate of interest applicable to the Loans and the Letter of Credit Fees shall increase to the Default Rate. In addition, with the consent of Requisite Lenders, Agent may, or at the request of the Requisite Lenders, Agent shall, suspend the Commitments with respect to additional Advances and/or the incurrence of additional Letter of Credit Obligations, whereupon any additional Advances and additional Letter of Credit Obligations shall be made or incurred in the sole discretion of the Requisite Lenders so long as such Event of Default is continuing.

(b) If any Event of Default has occurred and is continuing, Agent may, and at the written request of the Requisite Lenders shall, take any or all of the following actions: (i) terminate the obligations of the Secured Parties under this Agreement with respect to further Advances or the incurrence of further Letter of Credit Obligations; (ii) reduce the Commitments from time to time; (iii) declare all or any portion of the Obligations (other than Bank Products Obligations and Secured Hedging Obligations), including all or any portion of any Loan to be forthwith due and payable, and require that the Letter of Credit Obligations be cash collateralized in the manner set forth in Section 2.2, all without presentment, demand, protest or further notice of any kind, all of which are expressly waived by Borrowers and each other Credit Party; or (iv) exercise any rights and remedies provided to Agent under the Loan Documents or at law or equity, including all remedies provided under the Code or the PPSA, as applicable, and any other applicable law of any jurisdiction; provided, that upon the occurrence of an Event of Default specified in Section 9.1(j) or Section 9.1(k), all Commitments shall be terminated and all of the Obligations (other than Bank Products Obligations and Secured Hedging Obligations) shall become immediately due and payable without declaration, notice or demand by any Person. Agent shall, as soon as reasonably practicable, provide to Borrower Representative notice of any action taken pursuant to this Section 9.2(b) (but failure to provide such notice shall not impair the rights of Agent, Co-Collateral Agents or the Lenders hereunder and shall not impose any liability upon Agent or the Lenders for not providing such notice).

9.3 Waivers by Credit Parties. Except as otherwise provided for in this Agreement or by applicable law, each Credit Party waives, to the fullest extent permitted by law (including for purposes of Article 13): (a) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held

by Agent as Collateral on which any Credit Party may in any way be liable, and hereby ratifies and confirms whatever Agent may do in this regard, (b) all rights to notice and a hearing prior to Agent's taking possession or control of, or to Agent's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing Agent to exercise any of its remedies, and (c) the benefit of all valuation, appraisal, marshaling and exemption laws. Each Credit Party acknowledges that in the event such Credit Party fails to perform, observe or discharge any of its obligations or liabilities under this Agreement or any other Loan Document, any remedy of law may prove to be inadequate relief to Agent, Co-Collateral Agents and the Lenders; therefore, such Credit Party agrees, except as otherwise provided in this Agreement or by applicable law, that Agent, Co-Collateral Agents and the Lenders shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

9.4 Cure Right. (a) Notwithstanding anything to the contrary contained in Section 9.1, in the event that the Credit Parties fail to comply with the covenant contained in Section 7.12 (the "Financial Performance Covenant") with respect to any Fiscal Quarter, after the end of such Fiscal Quarter until the expiration of the 10th day subsequent to the date on which financial statements with respect to the Fiscal Quarter for which Financial Performance Covenant is being measured are required to be delivered pursuant to Section 5.1(b) or (c), one or more investors shall have the right to make a Specified Equity Contribution to Parent Borrower (collectively, the "Cure Right"), and upon the receipt by Parent Borrower of cash (the "Cure Amount") pursuant to the exercise by one or more investors of such Cure Right (and so long as such Cure Amount is actually received by Parent Borrower no later than 10 days after the date on which financial statements with respect to the Fiscal Quarter for which the Financial Performance Covenant is being measured are required to be delivered pursuant to Section 5.1(b), and (c) upon notice from Parent Borrower to Agent as to the Fiscal Quarter with respect to which such Cure Amount is made), then the Financial Performance Covenant shall be recalculated giving effect to the following pro forma adjustments (but without regard to any reduction in Indebtedness made with all or any portion of such Cure Amount or any portion of the Cure Amount on the balance sheet of Parent Borrower and its Restricted Subsidiaries):

(i) EBITDA shall be increased, solely for the purpose of measuring the Financial Performance Covenant and determining the existence of an Event of Default set forth in Section 9.1 resulting from a breach of the Financial Performance Covenant and not for any other purpose under this Agreement, by an amount equal to the Cure Amount for such Fiscal Quarter and any four Fiscal Quarter period that contains such Fiscal Quarter; and

(ii) if, after giving effect to the foregoing recalculations, the Credit Parties shall then be in compliance with the requirements of the Financial Performance Covenant, the Credit Parties shall be deemed to have satisfied the requirements of the Financial Performance Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and no breach or default of the Financial Performance Covenant shall have been deemed to have occurred for purposes of this Agreement.

Notwithstanding anything herein to the contrary, (i) in each four consecutive Fiscal Quarter period there shall be at least two Fiscal Quarters in which the Cure Right is not exercised, (ii) the Cure Amount shall be no greater than 100% of the amount required for purposes of complying with the Financial Performance Covenant, (iii) the Cure Right shall not be exercised more than four times during the term of this Agreement and (iv) no Specified Equity Contribution nor the proceeds thereof may be relied on for purposes of calculating any financial ratios (other than as applicable to the Financial Performance Covenant for purposes of increasing EBITDA as provided in clause (a) of this Section 9.4) or any available basket or thresholds under this Agreement and shall not result in any adjustment to any amounts or calculations other than the amount of the EBITDA to the extent provided in clause (a) of this Section 9.4. During the period, Borrowers elect to exercise the Cure right, Lender shall be under no obligation to make any Loans or advances hereunder.

As used herein, “Specified Equity Contribution” means any cash contribution to the common Capital Stock or preferred equity that is Qualified Capital Stock of Parent Borrower.

## 10. ~~APPOINTMENT OF AGENT~~ APPOINTMENT OF AGENT

10.1 Appointment of Agents. MSSF, as Agent, is hereby appointed to act on behalf of all Lenders with respect to the administration of the Loans and the Commitments made to Borrowers and to act as agent on behalf of all Lenders with respect to Collateral of the Credit Parties under this Agreement and the other Loan Documents. The provisions of this Section 10.1 are solely for the benefit of Agent, Co-Collateral Agents and Lenders and no Credit Party nor any other Person shall have any rights as a third party beneficiary of any of the provisions hereof (other than Sections 10.6 and 10.11). In performing its functions and duties under this Agreement and the other Loan Documents, Agent shall act solely as an agent of Lenders and does not assume or shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Credit Party or any other Person. Agent shall not have any duties or responsibilities except for those expressly set forth in this Agreement and the other Loan Documents. The duties of Agent shall be mechanical and administrative in nature and no Agent shall have, or be deemed to have, by reason of this Agreement, any other Loan Document or otherwise a fiduciary relationship in respect of any Lender. Except as expressly set forth in this Agreement and the other Loan Documents, Agent and Co-Collateral Agents shall not have any duty to disclose, nor shall they be liable for failure to disclose, any information relating to any Credit Party or any of their respective Subsidiaries or any Account Debtor that is communicated to or obtained by Agent or any of its Affiliates in any capacity. Neither Agent or any Co-Collateral Agent nor any of their respective Affiliates nor any of their respective officers, directors, employees, agents or representatives shall be liable to any Lender for any action taken or omitted to be taken by it hereunder or under any other Loan Document, or in connection herewith or therewith, except for damages caused by its or their own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment.

If Agent shall request instructions from Requisite Lenders, Supermajority Lenders or all affected Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any other Loan Document, then Agent shall be entitled to refrain from such act or taking such action unless and until Agent shall have received instructions from Requisite



Lenders, Supermajority Lenders or all affected Lenders, as the case may be, and Agent shall not incur liability to any Person by reason of so refraining. Agent shall be fully justified in failing or refusing to take any action hereunder or under any other Loan Document (a) if such action would, in the opinion of Agent be contrary to law or the terms of this Agreement or any other Loan Document, (b) if such action would, in the reasonable opinion of Agent expose Agent to Environmental Liabilities, or (c) if Agent shall not first be indemnified to its satisfaction against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of Requisite Lenders, Supermajority Lenders or all affected Lenders, as applicable.

10.2 Agents' Reliance, Etc. Neither any of Agent or any Co-Collateral Agent nor any of its Affiliates nor any of their respective directors, officers, agents or employees shall be liable for any action taken or not taken by it or them under or in connection with this Agreement or the other Loan Documents, except for damages caused by its or their own gross negligence or willful misconduct or that of its Affiliates or their respective directors, officers, agents or employees as determined by a court of competent jurisdiction in a final and non-appealable judgment. Without limiting the generality of the foregoing, each of Agent and each Co-Collateral Agent: (a) may treat the payee of any Note as the holder thereof until Agent receives written notice of the assignment or transfer thereof signed by such payee and in form reasonably satisfactory to Agent; (b) may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts; (c) makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations made in or in connection with this Agreement or the other Loan Documents; (d) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Loan Documents on the part of any Credit Party or to inspect the Collateral (including the books and records) of any Credit Party; (e) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; (f) shall incur no liability under or in respect of this Agreement or the other Loan Documents by acting upon any notice, consent, certificate or other instrument or writing (which may be by fax, telegram, cable or telex) believed by it to be genuine and signed or sent by the proper party or parties; and (g) shall be entitled to delegate any of its duties hereunder to one or more sub-agents.

Except for action requiring the approval of Requisite Lenders, Supermajority Lenders or all Lenders, as the case may be, Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights which may be vested in it by, and with respect to taking or refraining from taking any action or actions which it may be able to take under or in respect of, this Agreement, unless Agent shall have been instructed by Requisite Lenders, Supermajority Lenders or all Lenders, as the case may be, to exercise or refrain from exercising such rights or to take or refrain from taking such action. No Agent shall incur any liability to the Lenders under or in respect of this Agreement with respect to anything which it may do or refrain from doing in the reasonable exercise of its judgment or which may seem to it to be necessary or desirable in the circumstances, except for its own gross negligence, bad faith,

material breach or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment. No Agent shall be liable to any Lender in acting or refraining from acting under this Agreement in accordance with the instructions of Requisite Lenders, Supermajority Lenders or all Lenders, as the case may be, and any action taken or failure to act pursuant to such instructions shall be binding on all Lenders.

10.3 MSSF, ~~JPMorgan Chase~~Citibank and Affiliates. With respect to its Commitments hereunder, each of MSSF and ~~JPMorgan Chase~~Citibank shall have the same rights and powers under this Agreement and the other Loan Documents as any other Lender and may exercise the same as though it were not an Agent; and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated, include MSSF in its individual capacity. Each of MSSF and ~~JPMorgan Chase~~Citibank and each of their Affiliates may lend money to, invest in, and generally engage in any kind of business with, any Credit Party, any of their Affiliates and any Person who may do business with or own securities of any Credit Party or any such Affiliate, all as if MSSF and/or ~~JPMorgan Chase~~Citibank, as applicable, were not an Agent and without any duty to account therefor to Lenders. Each of MSSF and ~~JPMorgan Chase~~Citibank and each of their Affiliates may accept fees and other consideration from any Credit Party for services in connection with this Agreement or otherwise without having to account for the same to Lenders.

10.4 Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender and based on the Financial Statements referred to in Section 4.4(a) and such other documents and information as it has deemed appropriate, made its own credit and financial analysis of the Credit Parties and its own decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement. Each Lender acknowledges the potential conflict of interest of each other Lender as a result of Lenders holding disproportionate interests in the Loans, and expressly consents to, and waives any claim based upon, such conflict of interest. Each Lender acknowledges the potential conflict of interest between MSSF, as a Lender, holding disproportionate interests in the Loans, and MSSF, as an Agent.

10.5 Indemnification. Each Lender severally agrees to indemnify Agent, each Co-Collateral Agent and each L/C Issuer (to the extent not reimbursed by Credit Parties and without limiting the obligations of Credit Parties hereunder), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against Agent, any Co-Collateral Agent or any L/C Issuer in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by Agent, any Co-Collateral Agent or any L/C Issuer in connection therewith in accordance with its Pro Rata Share; provided, that no Lender shall be liable to Agent, any Co-Collateral Agent or any L/C Issuer for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from gross negligence or willful misconduct of Agent or such Co-Collateral Agent or L/C Issuer, as applicable, as determined by a court of competent jurisdiction in a final and non-appealable judgment. Without limiting the foregoing, each Lender severally agrees to reimburse Agent, each Co-Collateral Agent and each L/C Issuer promptly upon demand for its Pro Rata Share of any out-of-pocket expenses

(including reasonable counsel fees) incurred by Agent, any Co-Collateral Agent or any L/C Issuer in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement and each other Loan Document, to the extent that Agent or such Co-Collateral Agent or L/C Issuer is not reimbursed for such expenses by Credit Parties.

#### 10.6 Successor Agent and Successor Co-Collaterals.

(a) Agent may resign at any time by giving not less than thirty (30) days' prior written notice thereof to Lenders and Borrower Representative. Upon any such resignation, the Requisite Lenders (in consultation with Borrower Representative) shall have the right to appoint a successor Agent. If no successor Agent shall have been so appointed by the Requisite Lenders and shall have accepted such appointment within thirty (30) days after the resigning Agent's giving notice of resignation, then the resigning Agent may, on behalf of Lenders, appoint a successor Agent, which shall be a Lender, if a Lender is willing to accept such appointment, or otherwise shall be a commercial bank, financial institution or trust company. If no successor Agent has been appointed pursuant to the foregoing, within thirty (30) days after the date such notice of resignation was given by the resigning Agent, such resignation shall become effective and the Requisite Lenders shall thereafter perform all the duties of Agent hereunder, in each case, until such time, if any, as the Requisite Lenders appoint a successor Agent as provided above. Any successor Agent appointed by Requisite Lenders hereunder shall be subject to the approval of Borrower Representative, such approval not to be unreasonably withheld or delayed; provided that such approval shall not be required if an Event of Default has occurred and is continuing. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the resigning Agent. Upon the earlier of the acceptance of any appointment as Agent hereunder by a successor Agent or the effective date of the resigning Agent's resignation, the resigning Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents, except that any indemnity rights or other rights in favor of such resigning Agent shall continue. After any resigning Agent's resignation hereunder, the provisions of this Section 10 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was acting as Agent under this Agreement and the other Loan Documents.

(b) Any Co-Collateral Agent may resign at any time by giving not less than thirty (30) days' prior written notice thereof to Agent, Lenders and Borrower Representative. Upon any such resignation, the Requisite Lenders (in consultation with Borrower Representative) shall have the right to appoint a successor Co-Collateral Agent. If no successor Co-Collateral Agent has been appointed pursuant to the foregoing, within thirty (30) days after the date such notice of resignation was given by the resigning Co-Collateral Agent, such resignation shall become effective and, if both Co-Collateral Agents have resigned without being replaced, the Requisite Lenders shall thereafter perform all the duties of Co-Collateral Agent hereunder, in each case, until such time, if any, as the Requisite Lenders appoint a successor Co-Collateral Agent as provided above. Any successor Co-Collateral Agent appointed by Requisite Lenders hereunder shall be subject to the approval of Borrower Representative, such approval not to be unreasonably withheld or delayed;

provided that such approval shall not be required if an Event of Default has occurred and is continuing. Upon the acceptance of any appointment as Co-Collateral Agent hereunder by a successor Co-Collateral Agent, such successor Co-Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the resigning Co-Collateral Agent. Upon the earlier of the acceptance of any appointment as Co-Collateral Agent hereunder by a successor Co-Collateral Agent or the effective date of the resigning Co-Collateral Agent's resignation, the resigning Co-Collateral Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents, except that any indemnity rights or other rights in favor of such resigning Co-Collateral Agent shall continue. After any resigning Co-Collateral Agent's resignation hereunder, the provisions of this Section 10 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was acting as Co-Collateral Agent under this Agreement and the other Loan Documents.

10.7 Setoff and Sharing of Payments. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, each Lender and L/C Issuer is hereby authorized at any time or from time to time, without prior notice to any Credit Party or to any Person other than Agent, any such notice being hereby expressly waived, to offset and to appropriate and to apply any and all balances held by it at any of its offices for the account (other than Excluded Accounts (as defined in the U.S. Security Agreement)) of a Credit Party (regardless of whether such balances are then due to such Credit Party) and any other Indebtedness at any time held or owing by that Lender or that holder to or for the credit or for the account of a Credit Party against and on account of any of the Obligations that are not paid when due; provided that the Lender exercising such offset rights shall give notice thereof to the affected Credit Party promptly after exercising such rights and provided, further that the Lender may not offset or appropriate and apply any balances held by it for the account of any Canadian Borrower or any Canadian Guarantor or any other Indebtedness held or owing by that Lender to or for the credit or for the account of any Canadian Borrower or any Canadian Guarantor against or on account of any Obligations of a U.S. Borrower or U.S. Guarantor. Any Lender exercising a right of setoff or otherwise receiving any payment on account of the Obligations in excess of its Pro Rata Share thereof shall purchase for cash (and the other Lenders or holders shall sell) such participations in each such other Lender's or holder's Pro Rata Share of the Obligations as would be necessary to cause such Lender to share the amount so offset or otherwise received with each other Lender or holder in accordance with their respective Pro Rata Shares (other than offset rights exercised by any Lender with respect to Sections 2.11, 2.13 or 2.14). Each Lender's obligation under this Section 10.7 shall be in addition to and not in limitation of its obligations to purchase a participation in an amount equal to its Pro Rata Share of the Swing Line Loans under Section 2.1 and Letter of Credit Obligations under Section 2.2. Each Credit Party agrees, to the fullest extent permitted by law and subject to the limitations set forth herein, that any Lender may exercise its right to offset with respect to amounts in excess of its Pro Rata Share of the Obligations owed to it and may sell participations in such amounts so offset to other Lenders and holders. Notwithstanding the foregoing, if all or any portion of the offset amount or payment otherwise received is thereafter recovered from the Lender that has exercised the right of offset, the purchase of participations by that Lender shall be rescinded and the purchase price restored without interest. If a Non-Funding Lender or Impacted Lender receives any such payment as described in this Section 10.7, such Lender shall turn over such payments to Agent in an amount

that would satisfy the cash collateral requirements set forth in Section 10.8(a). Notwithstanding anything in this Section 10.7, amounts in accounts of the Canadian Borrowers shall not be used to set off the Obligations of the U.S. Borrowers.

10.8 Advances; Payments; Availability of Lender's Pro Rata Share; Return of Payments; Non-Funding Lenders; Dissemination of Information; Actions in Concert.

(a) Advances; Payments.

(i) Lenders shall refund or participate in the Swing Line Loan in accordance with clause (iii) of Section 2.1(b). If Swing Line Lender declines to make a Swing Line Loan or if Swing Line Availability is zero, Agent shall notify Lenders, promptly after receipt of a Notice of Revolving Credit Advance and in any event prior to 1:00 p.m. (New York time) on the date such Notice of Revolving Credit Advance is received, by fax, telephone or other similar form of transmission. Each Lender shall make the amount of such Lender's Pro Rata Share of such Revolving Credit Advance available to Agent in same day funds by wire transfer to Agent's account as set forth in Annex B not later than 3:00 p.m. (New York time) on the requested funding date, in the case of a Base Rate Loan, and not later than 11:00 a.m. (New York time) on the requested funding date, in the case of a LIBOR Loan. After receipt of such wire transfers (or, in Agent's sole discretion, before receipt of such wire transfers), subject to the terms hereof, Agent shall make the requested Revolving Credit Advance to the applicable Borrower designated by Borrower Representative in the Notice of Revolving Credit Advance. All payments by each Lender shall be made without setoff, counterclaim or deduction of any kind.

(ii) Not less than once during each calendar week or more frequently at Agent's election (each, a "Settlement Date"), Agent shall advise each Lender by telephone (confirmed promptly thereafter in writing), fax, or similar form of transmission, of the amount of such Lender's Pro Rata Share of principal, interest and Fees paid for the benefit of Lenders with respect to each applicable Loan. Provided that each Lender has funded all payments or Advances required to be made by it and has purchased all participations required to be purchased by it under this Agreement and the other Loan Documents as of such Settlement Date, Agent shall pay to each Lender such Lender's Pro Rata Share of principal, interest and Fees paid by Borrowers since the previous Settlement Date for the benefit of such Lender on the Loans held by it. Agent shall be entitled to set off the funding short-fall against any Non-Funding Lender's Pro Rata Share of all payments received from Borrowers and hold, in a non-interest bearing account, all payments received by Agent for the benefit of any Non-Funding Lender pursuant to this Agreement as cash collateral for any unfunded reimbursement obligations of such Non-Funding Lender until the Obligations are paid in full in cash, all Letter of Credit Obligations have been discharged or cash collateralized and all Commitments have been terminated, and upon such unfunded obligations owing by a Non-Funding Lender becoming due and payable, Agent shall be authorized to use such cash collateral to make such payment on behalf of such Non-Funding Lender. Any amounts owing by a Non-Funding Lender to Agent which are not paid when due shall accrue interest at the interest rate applicable during such period to Revolving Loans that are Base Rate Loans. Such payments shall be made by wire transfer to such Lender's

account (as specified in writing by such Lender to Agent) not later than 2:00 p.m. (New York time) on the next Business Day following each Settlement Date.

(b) Availability of Lender's Pro Rata Share. Agent may assume that each Lender will make its Pro Rata Share of each Revolving Credit Advance available to Agent on each funding date unless Agent has received prior written notice from such Lender that it does not intend to make its Pro Rata Share of a Loan because all or any of the conditions set forth in Section 3.2 have not been satisfied. If such Pro Rata Share is not, in fact, paid to Agent by such Lender when due, Agent will be entitled to recover such amount on demand from such Lender without setoff, counterclaim or deduction of any kind. If any Lender fails to pay the amount of its Pro Rata Share forthwith upon Agent's demand, Agent shall promptly notify Borrower Representative and Borrowers shall repay such amount to Agent within three (3) Business Days of such demand. Nothing in this Section 10.8(b) or elsewhere in this Agreement or the other Loan Documents shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that Borrowers may have against any Lender as a result of any default by such Lender hereunder. Unless Agent has received prior written notice from a Lender that it does not intend to make its Pro Rata Share of each Loan available to Agent because all or any of the conditions set forth in Section 3.2 have not been satisfied to the extent that Agent advances funds to any Borrower on behalf of any Lender and is not reimbursed therefor on the same Business Day as such Advance is made, Agent shall be entitled to retain for its account all interest accrued on such Advance until reimbursed by such Lender.

(c) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from Borrowers and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any Insolvency Law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Loan Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(iii) Each Lender hereby agrees that (x) if the Agent notifies such Lender that the Agent has determined in its sole discretion that any funds received by such Lender from the Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Lender by the Agent or any of its Affiliates (whether or not known to such Lender), upon demand of the return of such Payment (or a

portion thereof) from such Agent, such Lender shall promptly, but in no event later than one Business Day thereafter, return to the Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds and in the currency so received, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to such Agent at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Payments received, including without limitation any defense based on “discharge for value” or any similar doctrine. A notice of the Agent to any Lender under this paragraph shall be conclusive, absent manifest error.

(iv) Each Lender hereby further agrees that if it receives a Payment from the Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates) with respect to such Payment (a “Payment Notice”) or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Agent of such occurrence and, upon demand from the Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds and in the currency so received, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Agent at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(v) Each party hereby agrees that (x) in the event an erroneous Payment (or portion thereof) are not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Parent Borrower or any other Credit Party, except, in each case, to the extent such erroneous Payment is, and solely with respect to the amount of such erroneous Payment that is, comprised of funds of the Parent Borrower or any other Credit Party or Subsidiary thereof for the purpose of making a payment on the Obligations.

(vi) Each party’s obligations under the preceding three paragraphs shall survive the resignation or replacement of the Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

(d) Non-Funding Lenders. The failure of any Non-Funding Lender to make any Advance, reimbursement of any Letter of Credit Obligation or any payment required by

it hereunder or to purchase any participation in any Swing Line Loan to be made or purchased by it on the date specified therefor shall not relieve any other Lender (each such other Lender, an “Other Lender”) of its obligations to make such Advance or purchase such participation on such date, but neither any Other Lender nor Agent shall be responsible for the failure of any Non-Funding Lender to make an Advance, purchase a participation or make any other payment required hereunder subject to the reallocation provisions in Sections 2.2(b)(i) and 2.1(b)(iii). Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Loan Document or constitute a “Lender” (or be, or have its Loans and Commitments, included in the determination of “Requisite Lenders”, “Supermajority Lenders” or “Lenders directly affected” hereunder) for any voting or consent rights under or with respect to any Loan Document except with respect to any amendment, modification or consent described in Section 12.2(c)(i)-(iv) that directly affects such Non-Funding Lender. Moreover, for the purposes of determining Requisite Lenders and Supermajority Lenders, the Loans and Commitments held by any Non-Funding Lender shall be excluded from the total Loans and Commitments outstanding. At Borrower Representative’s request, Agent or a Person reasonably acceptable to Agent shall have the right with Agent’s reasonable consent and in Agent’s sole discretion (but shall have no obligation) to purchase from any Non-Funding Lender, and each Non-Funding Lender agrees that it shall, at Agent’s request, sell and assign to Agent or such Person, all of the Commitments of that Non-Funding Lender for an amount equal to the principal balance of all Loans held by such Non-Funding Lender and all accrued interest and fees with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed Assignment Agreement. In the event that a Non-Funding Lender does not execute an Assignment Agreement pursuant to Section 11.1 within five (5) Business Days after receipt by such Non-Funding Lender of notice of replacement pursuant to this Section 10.8(d) and presentation to such Non-Funding Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 10.8(d), Agent shall be entitled (but not obligated) to execute such an Assignment Agreement on behalf of such Non-Funding Lender, and any such Assignment Agreement so executed by the replacement Lender and Agent, shall be effective for purposes of this Section 10.8(d) and Section 11.1.

(e) Dissemination of Information. Agent shall not be required to deliver to any Lender originals or copies of any documents, instruments, notices, communications or other information received by Agent from any Credit Party, any Subsidiary, any Lender or any other Person under or in connection with this Agreement or any other Loan Document except (i) as specifically provided for in this Agreement or any other Loan Document, and (ii) as specifically requested from time to time in writing by any Lender with respect to a specific document, instrument, notice or other written communication received by and in the possession of Agent at the time of receipt of such request and then only in accordance with such specific request.

10.9 Actions in Concert. Anything in this Agreement to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or the Notes (other than exercising any rights of setoff) without first obtaining the prior written consent of Agent and Requisite Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement



and the Notes shall be taken in concert and at the direction or with the consent of Agent or Requisite Lenders; provided, however, that (i) each Lender shall be entitled to file a proof of claim in any proceeding under any Insolvency Law to the extent that such Lender disagrees with Agent's composite proof of claim filed on behalf of all Lenders, (ii) each Lender shall be entitled to vote its claim with respect to any plan of reorganization in any proceeding under any Insolvency Law and, (iii) each Lender shall be entitled to pursue its deficiency claim after liquidation of all or substantially all of the Collateral and application of the proceeds therefrom.

10.10 Procedures. Agent is hereby authorized by each Credit Party and each other Person to whom any Obligations are owed to establish procedures (and to amend such procedures from time to time) to facilitate administration and servicing of the Loans and other matters incidental thereto. Without limiting the generality of the foregoing, Agent is hereby authorized to establish procedures to make available or deliver, or to accept, notices, documents and similar items on, by posting to or submitting and/or completion on, E-Systems. The posting, completion and/or submission by any Credit Party of any communication pursuant to an E-System shall constitute a representation and warranty by the Credit Parties that any representation, warranty, certification or other similar statement required by the Loan Documents to be provided, given or made by a Credit Party in connection with any such communication is true, correct and complete in all material respects except as expressly noted in such communication or otherwise on such E-System.

#### 10.11 Collateral Matters.

(a) Lenders hereby irrevocably authorize and direct Agent to release any Liens upon any Collateral (and any such Liens shall be automatically released, without any action by Agent or any other Person), (i) upon the Termination Date; (ii) in respect of property of any Subsidiary being sold or disposed of or transferred (including property owned by any Subsidiary being sold or disposed of or transferred) if the sale or Disposition or transfer is made in compliance with this Agreement and the Loan Documents (or otherwise is not prohibited) (and Agent may, in its discretion, request, and rely conclusively without further inquiry on a certificate from the Borrower certifying as such prior to Agent taking any action to evidence such release) or such sale or Disposition is approved by the Requisite Lenders (or such greater number of Lenders as may be required under Section 12.2); (iii) to the extent the applicable Collateral is or becomes Excluded Property and/or Excluded Principal Property; (iv) to the extent the applicable Collateral constitutes property leased to Credit Parties under a lease which has expired or been terminated in a transaction permitted under this Agreement; (v) to the extent the Credit Party owning such Collateral is released from its Obligations hereunder (pursuant to Section 13.11 or otherwise); or (vi) as required by the terms of the ABL Intercreditor Agreement. Upon request by Agent or Parent Borrower at any time, Lenders will confirm in writing Agent's authority to release any Lien upon particular types or items of Collateral pursuant to this Section 10.11. In addition, the Lenders hereby authorize Agent, to subordinate any Lien granted to or held by Agent upon any Collateral to any Lien on such asset permitted pursuant to paragraph (6)(C) of the definition of Permitted Lien. In addition, the Guaranty of the Obligations by, and the liens on the assets of, any Restricted Subsidiary which is designated as an Unrestricted Subsidiary will automatically be terminated and released at the time of such designation.

(b) Promptly, and in any event not later than five (5) Business Days' following written request by Parent Borrower, Agent shall (and is hereby irrevocably authorized and directed by Lenders to) execute such documents as may be necessary to evidence the release (or subordination) of its Liens upon such Collateral as contemplated by Section 10.11(a); provided, however, that (i) Agent shall not be required to execute any such document on terms which, in Agent's opinion, would expose Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of Credit Parties in respect of) all interests retained by Credit Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral to the extent contemplated by the Collateral Documents. Co-Collateral Agent shall act in concert with Agent in matters delegated to the both of them under this Agreement; however, in the event of any disagreement or dispute between Agent and Co-Collateral Agent in any such matter, the determination or decision of Agent shall, in all cases, control.

10.12 Additional Agents. None of the Lenders or other entities identified on the facing page of this Agreement as a "syndication agent", "arranger" or "bookrunner" shall have any right, power, obligation, liability, responsibility or duty under this Agreement or any other Loan Document other than those applicable to all Lenders as such. No Agent, Lender, "syndication agent", "arranger" or "bookrunner" has any fiduciary relationship with or duty to any Credit Party arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between Agent and Lenders, on one hand, and the Credit Parties, on the other hand, in connection herewith or with such other Loan Documents is solely that of debtor and creditor. Without limiting the foregoing, none of the Lenders so identified shall have or be deemed to have any fiduciary relationship with any other Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other entities so identified in deciding to enter into this Agreement or any other Loan Document or in taking or not taking action hereunder or thereunder. If necessary or appropriate Agent may appoint a Person to serve as separate collateral agent under any Loan Document. Each right and remedy intended to be available to Agent under the Loan Document shall also be vested in Agent. Secured Parties shall execute and deliver any instrument or agreement that Agent may request to effect such appointment. If such Person appointed by Agent shall die, dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of Agent, to the extent permitted by applicable law, shall vest in and be exercised by Agent until appointment of a new agent.

10.13 Distribution of Materials to Lenders and L/C Issuers.

(a) Borrowers acknowledge and agree that the Loan Documents and all reports, notices, communications and other information or materials provided or delivered by, or on behalf of, Borrowers hereunder (collectively, the "Borrower Materials") may be disseminated by, or on behalf of, Agent, and made available to, the Lenders and L/C Issuers by posting such Borrower Materials on an E-System (the "Borrower Workspace"). Borrowers authorize Agent to download copies of its logos from its website and post copies thereof on the Borrower Workspace. Borrowers hereby acknowledge that certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive MNPI) (each, a "Public Lender"). Borrowers hereby agree that they will use commercially

reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (i) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof, (ii) by marking Borrower Materials “PUBLIC,” Borrowers shall be deemed to have authorized Agent and the Lenders to treat such Borrower Materials as either publicly available information or not material information (although it may be sensitive, confidential and proprietary) with respect to Borrowers, their Subsidiaries or their securities for purposes of United States federal and state securities laws, (iii) all the Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Borrower Workspace designated “Public Investor”, and (iv) Agent shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Borrower Workspace not designated “Public Investor.”

(b) Each Lender and L/C Issuer represents, warrants, acknowledges and agrees that (i) the Borrower Materials may contain MNPI concerning Borrowers, their Affiliates or their securities, (ii) it has developed compliance policies and procedures regarding the handling and use of MNPI, and (iii) it shall use all such Borrower Materials in accordance with Section 12.8 and any applicable laws and regulations, including federal and state securities laws and regulations.

(c) If any Lender or L/C Issuer has elected to abstain from receiving MNPI concerning Borrowers, their Affiliates or their securities, such Lender or L/C Issuer acknowledges that, notwithstanding such election, Agent and/or Borrowers will, from time to time, make available syndicate-information (which may contain MNPI) as required by the terms of, or in the course of administering the credit facilities, including this Agreement and the other Loan Documents, to the credit contact(s) identified for receipt of such information on the Lender’s or L/C Issuer’s administrative questionnaire who are able to receive and use all syndicate-level information (which may contain MNPI) in accordance with such Lender’s or L/C Issuer’s compliance policies and Contractual Obligations and applicable law, including federal and state securities laws; provided that if such contact is not so identified in such questionnaire, the relevant Lender or L/C Issuer hereby agrees to promptly (and in any event within one (1) Business Day) provide such a contact to Agent and Borrower Representative upon oral or written request therefor by Agent or Borrower Representative. Notwithstanding such Lender’s or L/C Issuer’s election to abstain from receiving MNPI, such Lender or L/C Issuer acknowledges that if such Lender or L/C Issuer chooses to communicate with Agent, it assumes the risk of receiving MNPI concerning Borrowers, their Affiliates or their securities.

10.14 Agent. Notwithstanding anything to the contrary set forth in this Agreement, all determinations of Agent under the Loan Documents shall be made by Agent.

10.15 Intercreditor Agreement. The Lenders and the other Secured Parties hereby irrevocably authorize and instruct Agent to, without any further consent of any Lender or any other Secured Party, amend, extend, supplement, restate, replace, waive or otherwise modify the ABL Intercreditor Agreement, provided that (i) the consent of the Co-Collateral Agents shall be required in connection with any amendment, extension, supplement, restatement, replacement,

waiver or modification, other than any amendment, extension, supplement, restatement, replacement, waiver or modification of the type described in clause (i) or (ii) of Section 12.2 (g) and (ii) no such amendment, extension, supplement, restatement, replacement, waiver or modification (other than any such amendment, extension, supplement, restatement, replacement, waiver or modification of the type described in clause (i) or (ii) of Section 12.2(g)) shall modify the terms of the ABL Intercreditor Agreement in any manner that is adverse to the Secured Parties in any material respect. The Lenders and the other Secured Parties irrevocably agree that (x) Agent may rely exclusively on a certificate of an Officer of Parent Borrower as to whether the Liens governed by the ABL Intercreditor Agreement and the priority of such Liens as contemplated thereby are not prohibited and (y) the ABL Intercreditor Agreement entered into by Agent shall be binding on the Secured Parties, and each Lender and the other Secured Parties hereby agrees that it will take no actions contrary to the provisions of, if entered into and if applicable, the ABL Intercreditor Agreement. The foregoing provisions are intended as an inducement to any provider of any Indebtedness not prohibited by Section 7.1 hereof to extend credit to the Credit Parties and such persons are intended third-party beneficiaries of such provisions.

#### 10.16 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of Agent and not, for the avoidance of doubt, to or for the benefit of Borrowers or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Advances, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE

84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) such Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Agent and not, for the avoidance of doubt, to or for the benefit of Borrowers or any other Credit Party, that Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Advances, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

11. ~~ASSIGNMENT AND PARTICIPATIONS; SUCCESSORS AND ASSIGNS~~ ASSIGNMENT AND PARTICIPATIONS; SUCCESSORS AND ASSIGNS

11.1 Assignment and Participations.

(a) Subject to the terms of this Section 11.1, any Lender may make an assignment, or sell participations in, at any time or times, the Loan Documents, Loans, Letter of Credit Obligations and any Commitment or any portion thereof or interest therein, including any Lender's rights, title, interests, remedies, powers or duties thereunder, to an Eligible Assignee. Any assignment by a Lender shall be subject to the following conditions:

(i) Assignment Agreement. Any assignment by a Lender shall require (A) the execution of an assignment agreement (the "Assignment Agreement") substantially in the form attached hereto as Exhibit 11.1(a) or otherwise in form and substance reasonably satisfactory to and acknowledged by Agent and (B) the payment of a processing and recordation fee of \$3,500 by the assignor or assignee to Agent (unless such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund). Agent, acting as Borrowers' agent, shall maintain at one of its offices listed in Section 12.10 (as may be updated from time to time pursuant to Section 12.10), a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of each Lender pursuant to the terms hereof from time to time (the "Register"). Agent shall accept and record into the Register each Assignment Agreement that it receives which is executed and delivered in accordance with the terms of this Agreement. The entries in the Register shall be conclusive, absent manifest error, and Borrowers, Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this

Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrowers and the Lenders, at any reasonable time and from time to time upon reasonable prior notice.

(ii) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in Section 11.1(a)(ii)(A), the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment Agreement with respect to such assignment is delivered to Agent or, if "Effective Date" is specified in the Assignment Agreement, as of the Effective Date) shall not be less than \$5,000,000, and in increments of \$1,000,000, unless each of (1) Agent and (2) so long as no Event of Default under Sections 9.1(a), (j) or (k) has occurred and is continuing, Borrowers, otherwise consent (each such consent not to be unreasonably withheld or delayed, and Borrowers shall be deemed to have consented to such assignment unless Borrower Representative shall have objected thereto by written notice to Agent within ten (10) Business Days after having received such Assignment Agreement).

(iii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this Section 11.1(a)(iii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate tranches on a non-pro rata basis (if any).

(iv) Required Consents. No consent shall be required for any assignment except to the extent required by Section 11.1(a)(ii)(B) and, in addition:

(A) the consent of Borrowers for any assignment (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund or (z) such assignment is to or by MSSF in connection with the initial syndication of the Loans and Commitments; provided that Borrowers shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Agent within ten (10) Business Days after having received written notice thereof;

(B) the consent of Agent (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for assignments in respect of any Revolving Loan or Commitment if such assignment is to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the consent of each L/C Issuer (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for any assignment in respect of the Swing Line Loans.

(b) In the case of an assignment by a Lender under this Section 11.1, the assignee shall have, to the extent of such assignment, the same rights, benefits and obligations as all other Lenders hereunder. The assigning Lender shall be relieved of its obligations hereunder with respect to its Commitments or assigned portion thereof from and after the date of such assignment. Each Borrower hereby acknowledges and agrees that any assignment shall give rise to a direct obligation of Borrowers to the assignee and that the assignee shall be considered to be a “Lender”. In all instances, each Lender’s liability to make Loans hereunder shall be several and not joint and shall be limited to such Lender’s Pro Rata Share of the applicable Commitment. In the event Agent or any Lender assigns or otherwise transfers all or any part of the Obligations, Agent or any such Lender shall so notify Borrowers and Borrowers shall, upon the request of Agent or such Lender, execute new Notes in exchange for the Notes, if any, being assigned. Notwithstanding the foregoing provisions of this Section 11.1, (i) any Lender may at any time pledge the Obligations held by it and such Lender’s rights under this Agreement and the other Loan Documents to a Federal Reserve Bank, and any Lender that is an investment fund may assign the Obligations held by it and such Lender’s rights under this Agreement and the other Loan Documents to another investment fund managed by the same investment advisor; provided, that no such pledge to a Federal Reserve Bank shall release such Lender from such Lender’s obligations hereunder or under any other Loan Document and (ii) no assignment shall be made to any Credit Party, any Subsidiary of a Credit Party or any Affiliate of a Credit Party.

(c) A Lender may at any time, without consent of or notice to any Borrower or Agent, sell participations to any Person (other than a natural person or Parent Borrower, any Subsidiary or any Affiliate thereof, or any Disqualified Institution (to the extent that the list of Disqualified Institutions have been made available to all Lenders)) in all or a portion of such Lender’s rights and/or obligations under this Agreement; provided that any participation by a Lender of all or any part of its Commitments shall be made with the understanding that all amounts payable by Borrowers hereunder shall be determined as if that Lender had not sold such participation, and that the holder of any such participation shall not be entitled to require such Lender to take or omit to take any action hereunder except actions directly affecting (i) any reduction in the principal amount of, or interest rate or Fees payable with respect to, the Loans participated; (ii) any extension of the final maturity date thereof; and (iii) any release of all or substantially all of the Collateral or the value of the Guarantees (other than in accordance with the terms of this Agreement, the Collateral Documents or the other Loan Documents). Solely for purposes of Sections 2.11, 2.13 and 2.14 each Borrower acknowledges and agrees that a participation shall give rise to an obligation of Borrowers to the participant and the participant shall be considered to be a “Lender”; provided, that, such participant (A) shall not be entitled to receive any greater payment under Sections 2.13 and

2.14 than the applicable Lender from whom it received its participation would have been entitled to receive with respect to the participation sold to such participant and (B) complies with the provisions of Sections 2.13(d), 2.14(d) and 2.14(g) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrowers, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register. Except as set forth in this paragraph, no Borrower or Credit Party shall have any obligation or duty to any participant and shall continue to deal solely and directly with the Lender selling the participation. Neither Agent nor any Lender (other than the Lender selling a participation) shall have any duty to any participant and may continue to deal solely with the Lender selling a participation as if no such sale had occurred. Notwithstanding anything to the contrary contained in the Loan Documents, no Lender may assign or sell a participation to any Person that is not an Eligible Assignee and participations shall not require Borrowers' or Agent's prior written consent.

(d) Except as expressly provided in this Section 11.1, no Lender shall, as between Borrowers and that Lender, or Agent and that Lender, be relieved of any of its obligations hereunder as a result of any sale, assignment, transfer or negotiation of, or granting of participation in, all or any part of the Loans, the Notes or other Obligations owed to such Lender.

(e) Any Lender may furnish information concerning Credit Parties in the possession of such Lender from time to time to assignees and participants (including prospective assignees and participants); provided that such Lender shall obtain from assignees or participants confidentiality covenants substantially equivalent to those contained in Section 12.8.

(f) No Lender shall assign or sell participations in any portion of its Loans or Commitments to a potential Lender or participant, if, as of the date of the proposed assignment or sale, the assignee Lender or participant would be subject to capital adequacy or similar requirements under Section 2.14(a), increased costs under Section 2.14(b), an inability to fund LIBOR Loans under Section 2.14(c), or withholding taxes in accordance with Section 2.13(a).

(g) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender"), may grant to a special purpose funding vehicle (an "SPC"), identified



as such in writing by the Granting Lender to Agent and Borrowers, the option to provide to Borrowers all or any part of any Loans that such Granting Lender would otherwise be obligated to make to Borrowers pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan; and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if such Loan were made by such Granting Lender. No SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). Any SPC may (i) with notice to, but without the prior written consent of, Borrowers and Agent assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by Borrowers and Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guaranty or credit or liquidity enhancement to such SPC. This Section 11.1(g) may not be amended without the prior written consent of each Granting Lender, all or any of whose Loans are being funded by an SPC at the time of such amendment. For the avoidance of doubt, the Granting Lender shall for all purposes, including, without limitation, the approval of any amendment or waiver of any provision of any Loan Document or the obligation to pay any amount otherwise payable by the Granting Lender under the Loan Documents, continue to be the Lender of record hereunder.

11.2 Successors and Assigns. This Agreement and the other Loan Documents is binding on and inures to the benefit of each Credit Party, Agent, Co-Collateral Agent, Lender and their respective successors and assigns (including, in the case of any Credit Party, a debtor-in-possession on behalf of such Credit Party), except as otherwise provided herein or therein. No Credit Party may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the prior express written consent of Agent and all of the Lenders; provided that Agent and the Lenders shall be deemed to have consented to any assignment, transfer, hypothecation or conveyance of rights, benefits, obligations or duties to any successor of a Credit Party as a result of the consummation of a merger, consolidation, amalgamation or other fundamental change or transaction permitted under Section 7. Any such purported assignment, transfer, hypothecation or other conveyance by any Credit Party without the prior express written consent of Agent and all of the Lenders shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of each Credit Party, Agent, Co-Collateral Agent and Lenders with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents (other than the Indemnified Persons).

11.3 Certain Prohibitions. No assignment or participation may be made to any Borrower, any Affiliate of any Borrower, Non-Funding Lender or a natural person.

## 12. ~~MISCELLANEOUS~~MISCELLANEOUS

12.1 Complete Agreement; Modification of Agreement. This Agreement shall become effective when it shall have been executed by Borrowers, the other Credit Parties signatory hereto, the Lenders, the L/C Issuers, Agent and Co-Collateral Agent. Thereafter, it shall be binding upon and inure to the benefit of, but only to the benefit of, Borrowers, the other Credit Parties party hereto, Agent, Co-Collateral Agents, the Swing Line Lender, each L/C Issuer and each Lender, their respective successors and permitted assigns. Except as expressly provided in any Loan Document, none of any Borrower, any other Credit Party, any Lender, any L/C Issuer or Agent shall have the right to assign any rights or obligations hereunder or any interest herein. The Loan Documents constitute the complete agreement between the parties with respect to the subject matter thereof and may not be modified, altered or amended except as set forth in Section 12.2. Any letter of interest, commitment letter, fee letter or confidentiality agreement, if any, between any Credit Party and any Agent or any Lender or any of their respective Affiliates, predating this Agreement and relating to a financing of substantially similar form, purpose or effect shall be superseded by this Agreement.

### 12.2 Amendments and Waivers.

(a) Except for actions expressly permitted to be taken by Agent, no amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, or any consent to any departure by any Credit Party therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrowers and by Requisite Lenders, Supermajority Lenders or all directly and adversely affected Lenders as provided in Section 12.2(c). Except as set forth in clauses (b) and (c) below, all such amendments, modifications, terminations or waivers requiring the consent of any Lenders shall require the written consent of Requisite Lenders.

(b) No amendment, modification, termination or waiver of or consent with respect to any provision of this Agreement that waives compliance with the conditions precedent set forth in Section 3.1 or Section 3.2 to the making of any Loan or the incurrence of any Letter of Credit Obligations shall be effective unless the same shall be in writing and signed by Requisite Lenders and Borrowers. Notwithstanding the immediately preceding sentence, no amendment or modification with respect to any provision of this Agreement that either (i) increases the advance rates with respect to the Borrowing Base above those in existence on the Amendment No. ~~36~~ Effective Date or (ii) amends or modifies the definition of the Borrowing Base or any defined term used therein (to the extent such amendment or modification would have the effect of making more credit available) shall be effective unless the same shall be in writing and signed by Agent, Supermajority Lenders and Borrowers (except, for the avoidance of doubt, any Incremental Revolving Loan Amendment effectuated in order to implement Permitted Incremental FILO Loans which comply in all respects with the Permitted FILO Tranche Conditions, or any amendment or modification with respect to any provision of any such Incremental Revolving Loan Amendment, may be effected with the consent of Agent, Co-Collateral Agents and each Incremental Lender providing such Incremental Revolving Loans, but without the consent of any other Lender, so long as the amendments or modifications set forth in such Incremental Revolving Loan Amendment comply with the requirements set forth in, and are limited to amendments or

modifications of the type described in, Section 2.16). Notwithstanding anything contained in this Agreement to the contrary, no waiver or consent with respect to any Default or any Event of Default shall be effective for purposes of the conditions precedent to the making of Loans or the incurrence of Letter of Credit Obligations set forth in Section 3.2 unless the same shall be in writing and signed by Agent and Requisite Lenders.

(c) No amendment, modification, termination or waiver shall, unless in writing and signed by Agent and each Lender and L/C Issuer directly affected thereby: (i) increase the principal amount of any Lender's Commitment (which action shall be deemed only to affect those Lenders whose Commitments are increased); (ii) reduce the principal of, rate of interest on, composition of interest on (i.e., cash pay or payment-in-kind) or Fees payable with respect to any Loan or Letter of Credit Obligations of any affected Lender (provided, however, in each case, the waiver of any Default or Event of Default or the implementation or revocation of Default Rate interest shall not constitute a reduction in the rate of interest or any Fee); (iii) extend the final maturity date of the principal amount of any Loan of any Lender; (iv) waive, forgive, defer, extend or postpone any payment of interest or Fees or other Obligations as to any affected Lender (provided, however, in each case, the waiver of any Default or Event of Default or the implementation or revocation of Default Rate interest shall not constitute a reduction in the rate of interest or any Fee); (v) release all or substantially all of the Guaranties or, except as otherwise permitted herein or in the other Loan Documents, release (or, except as contemplated by the ABL Intercreditor Agreement, subordinate the Lien of Agent in), or permit any Credit Party to sell or otherwise dispose of all or substantially all of the Collateral (which action shall be deemed to directly affect all Lenders and all L/C Issuers); (vi) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans that shall be required for Lenders or any of them to take any action hereunder; (vii) amend or waive this Section 12.2 or the definitions of the term "Requisite Lenders" or "Supermajority Lenders"; (viii) amend the allocation and waterfalls in Section 2.9 (except, for the avoidance of doubt, that any Incremental Revolving Loan Amendment effectuated in connection with implementing Permitted Incremental FILO Loans may be effected with the consent of Agent, Co-Collateral Agents and each Incremental Lender providing such Permitted Incremental FILO Loans, but without the consent of any other Lender) or (ix) amend the definition of Pro Rata Share or Section 10.7. Furthermore, no amendment, modification, termination or waiver affecting the rights or duties of Agent or L/C Issuer, under this Agreement or any other Loan Document, including any increase in the L/C Sublimit or any release of any Guaranty requiring a writing signed by all of the Lenders or release of any Collateral requiring a writing signed by all Lenders, shall be effective unless in writing and signed by Agent or L/C Issuer, as the case may be, in addition to Lenders required hereinabove to take such action. Notwithstanding anything in this Section 12.2 to the contrary, this Agreement and the other Loan Documents may be amended by Agent, Co-Collateral Agents and each Credit Party party to an Incremental Revolving Loan Amendment in accordance with Section 2.16, to incorporate the terms of any Incremental Revolving Loans (including any Permitted Incremental FILO Loans) or increased Commitments and the related Loans thereunder and to provide for non-pro rata borrowings and payments of any amounts hereunder as between the Loans and any Incremental Revolving Loans, or increased Commitments in connection therewith, or to establish any Commitments with respect to Permitted Incremental FILO Loans as a separate "class" of Loans hereunder, in each case with the consent of Agent, Co-Collateral Agents and each Incremental Lender providing such

Permitted Incremental FILO Loans pursuant to such Incremental Revolving Loan Amendment, but without the consent of any other Lender. Notwithstanding anything in this Section 12.2 to the contrary, Parent Borrower and Agent may enter into a LIBOR ~~Successor Amendment~~, successor amendment, and such amendment shall be effective at the times and upon the terms described in Section 2.15. Each amendment, modification, termination or waiver shall be effective only in the specific instance and for the specific purpose for which it was given. No amendment, modification, termination or waiver shall be required for Agent to take additional Collateral pursuant to any Loan Document. No amendment, modification, termination or waiver of any provision of any Note shall be effective without the written concurrence of the holder of that Note. No notice to or demand on any Credit Party in any case shall entitle such Credit Party or any other Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 12.2 shall be binding upon each holder of the Obligations at the time outstanding and each future holder of the Obligations. Any amendment, modification, waiver, consent, termination or release of any Bank Product Documents or Secured Hedge Agreement may be effected by the parties thereto without the consent of the Lenders.

(d) If, in connection with any proposed amendment, modification, waiver or termination requiring the consent of all Lenders or all directly and adversely affected Lenders, the consent of Requisite Lenders is obtained, but the consent of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in this Section 12.2(d) being referred to as a “Non-Consenting Lender”), then, with respect to this Section 12.2(d), so long as Agent is not a Non-Consenting Lender, at Borrower Representative’s request, Agent or a Person reasonably acceptable to Agent shall have the right with Agent’s consent (but shall have no obligation) to purchase from any such Non-Consenting Lenders, and any such Non-Consenting Lenders agree that they shall, upon Agent’s request, sell and assign to Agent or such Person, all of the Commitments of any such Non-Consenting Lenders for an amount equal to the principal balance of all Loans held by such Non-Consenting Lenders and all accrued interest and Fees with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed Assignment Agreement. In the event that a Non-Consenting Lender does not execute an Assignment Agreement pursuant to Section 11.1 within five (5) Business Days after receipt by such Non-Consenting Lender of notice of replacement pursuant to this Section 12.2(d) and presentation to such Non-Consenting Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 12.2(d), Borrower Representative shall be entitled (but not obligated) to execute such Assignment Agreement on behalf of any such Non-Consenting Lender, and any such Assignment Agreement so executed by Borrower Representative, the replacement Lender and Agent, shall be effective for purposes of this Section 12.2(d) and Section 11.1.

(e) Upon the Termination Date, Agent shall deliver to Borrowers termination statements, security releases and other documents necessary or appropriate to evidence the termination of the Liens securing payment of the Obligations.

(f) Notwithstanding anything to the contrary contained in this Section 12.2, in the event that Borrowers request that this Agreement be modified or amended in a manner

that would require the unanimous consent of all of the Lenders and such modification or amendment is agreed to by the Requisite Lenders, then with the consent of Borrower Representative, Agent and the Requisite Lenders, Borrower Representative, Agent and the Requisite Lenders shall be permitted to amend this Agreement without the consent of the Non-Consenting Lenders to provide for (i) the termination of the Commitment of each Non-Consenting Lender at the election of Borrower Representative, Agent and the Requisite Lenders, (ii) simultaneously with the Commitment termination provided for in the foregoing clause (i), the addition to this Agreement of one or more other financial institutions (each of which shall be acceptable to Agent), or an increase in the Commitment of one or more of the Requisite Lenders (with the written consent thereof), so that the total Commitment after giving effect to such amendment shall be in the same amount as the total Commitment immediately before giving effect to such amendment, so long as such new or increased Commitments are on the same terms and provisions (including, without limitation, economic terms with respect to interest rates, pricing, fees, maturity date, etc.) as the Commitment terminated pursuant to the foregoing clause (i), (iii) if any Loans are outstanding at the time of such amendment, the making of such additional Loans by such new financial institutions or Requisite Lender(s), as the case may be, as may be necessary to repay in full, at par, the outstanding Loans of the Non-Consenting Lenders immediately before giving effect to such amendment and (iv) such other modifications to this Agreement as may be appropriate to effect the foregoing clauses (i)-(iii).

(g) Notwithstanding the foregoing, no Lender's consent is required to enter into any amendment, extension, supplement, restatement, replacement, waiver or other modification to the ABL Intercreditor Agreement (i) that is for the purpose of adding the holders of Indebtedness permitted hereunder (or a Senior Representative with respect thereto) as parties thereto, as expressly contemplated by the terms of the ABL Intercreditor Agreement (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor or subordination agreement as, in the good faith determination of Agent, are required to effectuate the foregoing; provided that such other changes are not adverse, in any material respect, to the interests of the Lenders), (ii) that is expressly contemplated by the ABL Intercreditor Agreement or (iii) that is otherwise permitted by Section 10.15 hereof; provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of Agent hereunder or under any other Loan Document without the prior written consent of Agent, as applicable.

(h) Further, notwithstanding anything to the contrary contained in this Section 12.2, technical and conforming modifications to the Loan Documents may be made with the consent of Parent Borrower and Agent (but without the consent of any Lender) to the extent necessary to cure any ambiguity, omission, defect or inconsistency; provided, that Agent shall notify the Lenders of any such proposed modifications and no such modification shall become effective if the Requisite Lenders have objected thereto within five (5) Business Days after the delivery of such notice.

12.3 Fees and Expenses. Parent Borrower shall reimburse (or shall cause to be reimbursed): (i) Agent, Co-Collateral Agents and Lead Arrangers for all reasonable documented fees, reasonable documented out-of-pocket costs and expenses (including the reasonable documented fees and reasonable documented out-of-pocket expenses of one firm of counsel);

and (ii) Agent, Co-Collateral Agents and Lead Arrangers (and, with respect to clauses (b), (c) and (d) below, all Lenders and all L/C Issuers for all reasonable documented out-of-pocket fees, costs and expenses, including the reasonable documented fees, reasonable documented out-of-pocket costs and expenses of one firm of counsel for Agent, Co-Collateral Agents, Lead Arrangers, L/C Issuers and Lenders, taken as a whole, and a single local counsel in each relevant jurisdiction and in the case of an actual or potential conflict of interest where Agent, any Co-Collateral Agent, any Lead Arranger, any L/C Issuer or any Lender affected by such conflict informs Agent of such conflict and thereafter retains its own counsel, of another firm of counsel for such affected Person), incurred in connection with the negotiation, preparation and filing and/or recordation of the Loan Documents, and incurred in connection with:

(a) any amendment, modification or waiver of, consent with respect to, or termination of, any of the Loan Documents or advice in connection with the syndication and administration of the Loans made pursuant hereto or its rights hereunder or thereunder;

(b) any litigation, contest, dispute, suit, proceeding or action (whether instituted by Agent, any Co-Collateral Agent, any L/C Issuer, any Lender, any Credit Party or any other Person and whether as a party, witness or otherwise) in any way relating to the Collateral, any of the Loan Documents and the transactions contemplated thereby or any other agreement to be executed or delivered in connection herewith or therewith, including any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof; in connection with a case commenced by or against any or all of the Credit Parties or any other Person that may be obligated to Agent by virtue of the Loan Documents; including any such litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the Loans during the pendency of one or more Events of Default; provided, that no Person shall be entitled to reimbursement under this clause (b) in respect of any litigation, contest, dispute, suit, proceeding or action to the extent any of the foregoing results from such Person's (or such Person's Related Person's) gross negligence, bad faith, material breach or willful misconduct (in each case as determined by a court of competent jurisdiction in a final and non-appealable judgment); provided, further, that no Indemnified Person will be indemnified for any such cost, expense or liability to the extent of any dispute solely among Indemnified Persons other than claims against Agent, in such capacity in connection with fulfilling any such roles;

(c) any attempt to enforce any remedies of Agent against any or all of the Credit Parties or any other Person that may be obligated to Agent or any Lender by virtue of any of the Loan Documents, including any such attempt to enforce any such remedies in the course of any work-out or restructuring of the Obligations during the pendency of one or more Events of Default;

(d) any workout or restructuring of the Obligations upon the occurrence and during the continuance of one or more Events of Default; and

(e) efforts to (i) monitor the Loans or any of the other Obligations, (ii) evaluate, observe or assess any of the Credit Parties or their respective affairs, and (iii) subject to the limitations contained herein verify, protect, evaluate, assess, appraise, audit, collect, sell, liquidate or otherwise dispose of any of the Collateral; including, as to each of

clauses (a) through (d) above, all reasonable and documented professionals fees, including, but not limited to appraisers', field examiners' and attorneys' fees arising from such services and other advice, assistance or other representation, including those in connection with any appellate proceedings, and all reasonable documented out-of-pocket expenses, costs, charges and other fees incurred by such professionals in connection with or relating to any of the events or actions described in this Section 12.3. All amounts under this Section 12.3 shall be payable no later than 20 days after written demand therefore (together with reasonably detailed supporting documentation submitted to a Financial Officer of Borrower Representative).

12.4 No Waiver. Agent's, any L/C Issuer's or any Lender's failure, at any time or times, to require strict performance by the Credit Parties of any provision of this Agreement or any other Loan Document shall not waive, affect or diminish any right of Agent, such L/C Issuer or such Lender thereafter to demand strict compliance and performance herewith or therewith. Any suspension or waiver of an Event of Default shall not suspend, waive or affect any other Event of Default whether the same is prior or subsequent thereto and whether the same or of a different type. Subject to the provisions of Section 12.2, none of the undertakings, agreements, warranties, covenants and representations of any Credit Party contained in this Agreement or any of the other Loan Documents and no Default or Event of Default by any Credit Party shall be deemed to have been suspended or waived by Agent or any Lender, unless such waiver or suspension is by an instrument in writing signed by an officer of or other authorized employee of Agent and the applicable Requisite Lenders, and directed to Borrowers specifying such suspension or waiver.

12.5 Remedies. Agent's, Co-Collateral Agents', L/C Issuers' and Lenders' rights and remedies under this Agreement shall be cumulative and nonexclusive of any other rights and remedies that Agent, any Co-Collateral Agent, any L/C Issuer or any Lender may have under any other agreement, including the other Loan Documents, by operation of law or otherwise. Recourse to the Collateral shall not be required.

12.6 Severability. Wherever possible, each provision of this Agreement and the other Loan Documents shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any other Loan Document shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement or such other Loan Document.

12.7 Conflict of Terms. Except as otherwise provided in this Agreement or any of the other Loan Documents by specific reference to the applicable provisions of this Agreement, if any provision contained in this Agreement conflicts with any provision in any of the other Loan Documents, the provision contained in this Agreement shall govern and control.

12.8 Confidentiality. Each Lender, each L/C Issuer Agent and each Co-Collateral Agent agrees to maintain, the confidentiality of information obtained by it pursuant to any Loan Document and designated in writing by any Credit Party as confidential or disclosed under circumstances where it is reasonable to assume that such information is confidential (the "Information"), except that such Information may be disclosed by any Lender, any L/C Issuer,

Agent (i) with Borrower Representative's consent, (ii) to Related Persons of such Lender, L/C Issuer or Agent or any Co-Collateral Agent, as the case may be, that are advised of the confidential nature of such Information and are instructed to keep such Information confidential in accordance with the terms hereof, (iii) to the extent such information presently is or hereafter becomes (A) publicly available other than as a result of a breach of this Section 12.8 or (B) available to such Lender, L/C Issuer, Co-Collateral Agent or Agent or any of their Related Persons, as the case may be, from a source (other than any Credit Party) not known by them to be subject to disclosure restrictions, (iv) to the extent disclosure is required by applicable law or other legal process or requested or demanded by any Governmental Authority, including any governmental bank regulatory authority (in which case Agent shall notify Borrower Representative, to the extent not prohibited by law or legal process; provided that no notice shall be required in the case of disclosure to bank regulatory authorities having jurisdiction over Agent, any Co-Collateral Agent, any Lender or any L/C Issuer), (v) to the extent necessary or customary for inclusion in league table measurements, (vi) (A) to the National Association of Insurance Commissioners or any similar organization, any examiner or any nationally recognized rating agency or (B) otherwise to the extent consisting of general portfolio information that does not identify Credit Parties, (vii) to current or prospective assignees or participants, direct or contractual counterparties to any Swap Contracts and to their respective Related Persons, in each case to the extent such assignees, participants, counterparties or Related Persons agree to be bound by provisions substantially similar to the provisions of this Section 12.8 (and such Person may disclose information to their respective Related Persons in accordance with clause (ii) above), (viii) to any other party hereto, (ix) in connection with the exercise or enforcement of any right or remedy under any Loan Document, in connection with any litigation or other proceeding to which such Lender, L/C Issuer, Co-Collateral Agent or Agent or any of their Related Persons is a party or bound, or to the extent necessary to respond to public statements or disclosures by Credit Parties or their Related Persons referring to a Lender, L/C Issuer, Co-Collateral Agent or Agent or any of their Related Persons, (x) to the National Association of Insurance Commissioners, CUSIP Service Bureau or any similar organization, regulatory authority, examiner or nationally recognized ratings agency and (xi) to any actual or prospective party (or its managers, administrators, trustees, partners, directors, officers, employees, agents, advisors and other representatives) to any swap or derivative or similar transaction under which payments are to be made by reference to Borrowers and their obligations, this Agreement or payments hereunder, in each case to the extent such Persons agree to be bound by provisions substantially similar to the provisions of this Section 12.8. In the event of any conflict between the terms of this Section 12.8 and those of any Loan Document, the terms of this Section 12.8 shall govern.

Notwithstanding anything to the contrary set forth herein or in any other written or oral understanding or agreement to which the parties hereto are parties or by which they are bound, the parties acknowledge and agree that (i) any obligations of confidentiality contained herein and therein do not apply and have not applied to the federal tax treatment and federal tax structure of the Loans (the "Tax Structure") (and any related transactions or arrangements) from the commencement of discussions between the parties, and (ii) each party (and each of its employees, representatives or other agents) may disclose to any and all persons, without limitation of any kind, the Tax Structure and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to the Tax Structure. The preceding sentence is intended to cause the Tax Structure to be treated as not having been offered under



conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the IRC, and shall be construed in a manner consistent with such purpose. Each party hereto acknowledges that it has no proprietary or exclusive rights to the Tax Structure.

12.9 GOVERNING LAW. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ANY OF THE LOAN DOCUMENTS, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THE LOAN DOCUMENTS AND THE OBLIGATIONS SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT STATE AND ANY APPLICABLE LAWS OF THE UNITED STATES. EACH PARTY HERETO HEREBY CONSENTS AND AGREES THAT THE STATE OR FEDERAL COURTS LOCATED IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK, NEW YORK SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE CREDIT PARTIES, AGENT AND LENDERS PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS RELATED TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS; PROVIDED, THAT AGENT, LENDERS AND THE CREDIT PARTIES ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF NEW YORK COUNTY; PROVIDED, FURTHER, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF AGENT. EACH CREDIT PARTY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH CREDIT PARTY HEREBY WAIVES ANY OBJECTION THAT SUCH CREDIT PARTY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. EACH PARTY HERETO HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINT AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO SUCH CREDIT PARTY AT THE ADDRESS SET FORTH IN SECTION 12.10 AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF SUCH CREDIT PARTY'S ACTUAL RECEIPT THEREOF OR FIVE (5) BUSINESS DAYS AFTER DEPOSIT IN THE UNITED STATES MAIL, PROPER POSTAGE PREPAID.

12.10 Notices.

(a) Addresses. All notices, demands, requests, directions and other communications required or expressly authorized to be made by this Agreement shall, whether or not specified to be in writing unless otherwise expressly specified to be given by

any other means, be given in writing and (i) addressed to (A) the party to be notified and sent to the address or facsimile number indicated in this Section 12.10 (or to such other address as may be hereafter notified by the respective parties hereto), or (B) the party to be notified at its address specified on the signature page of this Agreement or any applicable Assignment Agreement, (ii) to the extent given by a Credit Party posted to any E-System set up by or at the direction of Agent in an appropriate location or (iii) addressed to such other address as shall be notified in writing (A) in the case of Borrower Representative, Agent and Swing Line Lender, to the other parties hereto and (B) in the case of all other parties, to Borrower Representative and Agent. Transmission by electronic mail (including E-Fax, even if transmitted to the fax numbers set forth in clause (i) above) shall not be sufficient or effective to transmit any such notice under this clause (a) unless such transmission is an available means to post to any E-System. Notice addresses as of the Amendment No. 36 Effective Date shall be as set forth below:

- (i) If to Agent and MSSF as Co-Collateral Agent, at

Morgan Stanley Senior Funding, Inc.  
1300 Thames Street, 4<sup>th</sup> Floor  
Thames Street Wharf  
Baltimore, Maryland 21231  
Telephone No.: (917) 260-0588  
Email for Borrowers: [agency.borrowers@morganstanley.com](mailto:agency.borrowers@morganstanley.com)  
Email for Lenders: [msagency@morganstanley.com](mailto:msagency@morganstanley.com)  
For all E-System postings: [borrower.documents@morganstanley.com](mailto:borrower.documents@morganstanley.com)

with copies to:

Davis Polk & Wardwell LLP  
  
450 Lexington Avenue  
New York, New York 10017  
Attention: Kenneth Steinberg  
Fax No.: (212) 450-5736  
Telephone No.: (212) 450-4566

- (ii) If to ~~JPMorgan Chase Bank~~Citibank, N.A., as Co-Collateral Agent, at

~~JPMorgan Chase Bank~~Citibank, N.A.  
~~3424 Peachtree Road NE, Suite 2300~~388 Greenwich Street, 4<sup>th</sup> Floor  
~~Atlanta, Georgia 30326~~  
New York, NY 10013  
Attention: ~~Credit Risk Manager~~—~~XPO Logistics~~Allister Chan  
Telephone No.: ~~404-926-2784~~(212) 723-6257

Email: [lia.cornejo@jpmorgan](mailto:lia.cornejo@jpmorgan)[Allister.Chan@citi.com](mailto:Allister.Chan@citi.com)

with copies to:

Davis Polk & Wardwell LLP

450 Lexington Avenue  
New York, New York 10017  
Attention: Kenneth Steinberg  
Fax No.: (212) 450-5736  
Telephone No.: (212) 450-4566

(iii) If to any Borrower, to Borrower Representative, at

XPO Logistics, Inc.  
Five American Lane  
Greenwich, Connecticut 06831  
Attn: Karlis P. Kirsis  
Fax: (203) 629-7073  
Telephone No.: (203) 489-1598  
Email: Karlis.Kirsis@xpo.com

with a copy to:

Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, New York 10019

Attention: Gregory E. Pessin  
Fax: (212) 403-2359  
Telephone No: (212) 403-1359

Attention: John R. Sobolewski  
Fax: (212) 403-2340  
Telephone No: (212) 403-1340

(iv) If to any L/C Issuer: See Annex D

(b) Effectiveness.

(i) All communications described in clause (a) above and all other notices, demands, requests and other communications made in connection with this Agreement shall be effective and be deemed to have been received (i) if delivered by hand, upon personal delivery, (ii) if delivered by overnight courier service, one Business Day after delivery to such courier service, (iii) if delivered by mail, five (5) Business Days after deposit in the mail, (iv) if delivered by facsimile or electronic mail (other than to post to an E-System pursuant to clause (a) above) upon sender's receipt of confirmation of proper transmission, and (v) if delivered by posting to any E-System, on the later of the date of such posting in an

appropriate location and the date access to such posting is given to the recipient thereof in accordance with the standard procedures applicable to such E-System. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to any Person (other than Borrower Representative or Agent) designated in Section 12.10 to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice.

(ii) The posting, completion and/or submission by any Credit Party of any communication pursuant to an E-System shall constitute a representation and warranty by the Credit Parties that any representation, warranty, certification or other similar statement required by the Loan Documents to be provided, given or made by a Credit Party in connection with any such communication is true, correct and complete in all material respects (to the extent required under the Loan Documents) except as expressly noted in such communication or E-System.

(c) Each Lender shall notify Agent in writing of any changes in the address to which notices to such Lender should be directed, of addresses of its lending office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as Agent shall reasonably request.

12.11 Section Titles. The Section titles and Table of Contents contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

12.12 Counterparts. This Agreement may be executed in any number of separate counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or Electronic Transmission shall be as effective as delivery of a manually executed counterpart hereof.

12.13 **WAIVER OF JURY TRIAL**. BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, THE PARTIES HERETO KNOWINGLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AMONG AGENT, LENDERS, L/C ISSUERS AND ANY CREDIT PARTY ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH, THIS

AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS RELATED THERETO.

12.14 Press Releases and Related Matters. Each Credit Party consents to the publication by Agent or any Lender of customary advertising material relating to the financing transactions contemplated by this Agreement using Borrower's name, product photographs, logo or trademark. Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

12.15 Reinstatement. This Agreement shall remain in full force and effect should any petition be filed by or against Borrowers for liquidation or reorganization, should Borrowers become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver, interim receiver, receiver and manager or trustee be appointed for all or any significant part of Borrowers' assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

12.16 Advice of Counsel. Each of the parties represents to each other party hereto that it has discussed this Agreement and, specifically, the provisions of Sections 12.9 and 12.13, with its counsel.

12.17 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

12.18 Patriot Act Notice. Each Lender and Agent (for itself and not on behalf of any Lender) hereby notifies the Credit Parties that pursuant to the requirements of the Patriot Act, such Lender and Agent may be required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of the Credit Parties and other information that will allow such Lender and Agent, as the case may be, to identify the Credit Parties in accordance with the Patriot Act.

12.19 Currency Equivalency Generally; Change of Currency.

(a) For the purposes of making valuations or computations under this Agreement (but not for purposes of the preparation of any financial statements delivered pursuant hereto), and in particular, without limitation, for purposes of valuations or computations under Sections 2.1, 2.2, 2.3, 4, 6, 7 and 9, unless expressly provided otherwise, where a reference is made to a dollar amount the amount is to be considered as the amount in

Dollars and, therefore, each other currency shall be converted into the Dollar Equivalent thereof.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as Agent may from time to time specify with Parent Borrower's consent to appropriately reflect a change in currency of any country and any relevant market conventions or practices relating to such change in currency.

12.20 Judgment Currency.

(a) If, for the purpose of obtaining or enforcing judgment against any Credit Party in any court in any jurisdiction, it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 12.20 referred to as the "Judgment Currency") an amount due under any Loan Document in Dollars (the "Obligation Currency"), the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding (i) the date of actual payment of the amount due, in the case of any proceeding in the courts of any jurisdiction that will give effect to such conversion being made on such earlier date, or (ii) the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the applicable date as of which such conversion is made pursuant to this Section 12.20 being hereinafter in this Section 12.20 referred to as the "Judgment Conversion Date").

(b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 12.20(a), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual receipt for value of the amount due, the applicable Credit Party shall pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date. Any amount due from a Credit Party under this Section 12.20(b) shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of any of the Loan Documents.

(c) The term "rate of exchange" in this Section 12.20 means the rate of exchange at which Agent would, on the relevant date at or about 1:00 p.m. (New York time), be prepared to sell the Obligation Currency against the Judgment Currency.

12.21 Electronic Transmissions.

(a) Authorization. Subject to the provisions of Section 12.10(a), each of Agent, Lenders, each Credit Party and each of their Related Persons, is authorized (but not required) to transmit, post or otherwise make or communicate, in its sole discretion, Electronic Transmissions in connection with any Loan Document and the transactions contemplated therein. Each Borrower and each Lender party hereto acknowledges and agrees that the use of Electronic Transmissions is not necessarily secure and that there are

risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing the use of Electronic Transmissions.

(b) Signatures. Subject to the provisions of Section 12.10(a), (i)(A) no posting to any E-System shall be denied legal effect merely because it is made electronically, (B) each E-Signature on any such posting shall be deemed sufficient to satisfy any requirement for a “signature” and (C)(i) each such posting shall be deemed sufficient to satisfy any requirement for a “writing”, in each case including pursuant to any Loan Document, any applicable provision of any Code, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural applicable law governing such subject matter, (ii) each such posting that is not readily capable of bearing either a signature or a reproduction of a signature may be signed, and shall be deemed signed, by attaching to, or logically associating with such posting, an E-Signature, upon which Agent, each Co-Collateral Agent, each Lender and each Credit Party may rely and assume the authenticity thereof, (iii) each such posting containing a signature, a reproduction of a signature or an E-Signature shall, for all intents and purposes, have the same effect and weight as a signed paper original and (iv) each party hereto or beneficiary hereto agrees not to contest the validity or enforceability of any posting on any E-System or E-Signature on any such posting under the provisions of any applicable law requiring certain documents to be in writing or signed; provided, however, that nothing herein shall limit such party’s or beneficiary’s right to contest whether any posting to any E-System or E-Signature has been altered after transmission.

(c) Separate Agreements. All uses of an E-System shall be governed by and subject to, in addition to Section 12.10 and this Section 12.21, the separate terms, conditions and privacy policy posted or referenced in such E-System (or such terms, conditions and privacy policy as may be updated from time to time, including on such E-System) and related Contractual Obligations executed by Agent and Credit Parties in connection with the use of such E-System.

(d) LIMITATION OF LIABILITY. ALL E-SYSTEMS AND ELECTRONIC TRANSMISSIONS SHALL BE PROVIDED “AS IS” AND “AS AVAILABLE”. NONE OF AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS WARRANTS THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY E-SYSTEMS OR ELECTRONIC TRANSMISSION AND DISCLAIMS ALL LIABILITY FOR ERRORS OR OMISSIONS THEREIN. NO WARRANTY OF ANY KIND IS MADE BY AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS IN CONNECTION WITH ANY E-SYSTEMS OR ELECTRONIC COMMUNICATION, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS. Each Borrower, each other Credit Party executing this Agreement and each Lender agrees that Agent has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System.

12.22 Independence of Provisions. The parties hereto acknowledge that this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, and that such limitations, tests and measurements are cumulative and must each be performed, except as expressly stated to the contrary in this Agreement.

12.23 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and legal benefit of the Credit Parties, the Lenders, the L/C Issuers, Agent, Co-Collateral Agents, Lead Arrangers, for the purposes of Section 2.11, the Indemnified Persons and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. Neither Agent nor any Lender nor any Credit Party (except as otherwise specifically provided under the Loan Documents) shall have any obligation to any Person not a party to this Agreement or the other Loan Documents.

12.24 Relationships between Lenders and Credit Parties. Borrowers acknowledge and agree that the Lenders are acting solely in the capacity of an arm's length contractual counterparty to Borrowers with respect to the Loans and other financial accommodations contemplated hereby and not as a financial advisor or a fiduciary to, or an agent of, Borrowers or any other Person. Additionally, no Lender is advising Borrowers or any other Person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. Borrowers shall consult with their own advisors concerning such matters and shall be responsible for making their own independent investigation and appraisal of the transactions contemplated hereby, and the Lenders shall have no responsibility or liability to Borrowers with respect thereto. Any review by the Lenders of Borrowers, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Lenders and shall not be on behalf of Borrowers. Each Lender may have economic interests that conflict with those of the Credit Parties, their stockholders and/or their affiliates.

12.25 ABL Intercreditor Agreement. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document: (a) the Liens granted to Agent for the benefit of the Secured Parties pursuant to the Loan Documents and the exercise of any right related to any U.S. Collateral shall be subject, in each case, to the terms of the ABL Intercreditor Agreement, (b) in the event of any conflict between the express terms and provisions of this Agreement or any other Loan Document, on the one hand, and of the ABL Intercreditor Agreement, on the other hand, the terms and provisions of the ABL Intercreditor Agreement shall control, and (c) each Lender (and, by its acceptance of the benefits of any Collateral Document, each other Secured Party) hereunder (i) acknowledges that it has received a copy of the ABL Intercreditor Agreement, (ii) agrees that it will be bound by and take no actions contrary to the provisions of the ABL Intercreditor Agreement and (iii) authorizes and instructs Agent and, where applicable, each Co-Collateral Agent, to execute the ABL Intercreditor Agreement on behalf of such Secured Party and to enter into such amendments thereto as contemplated by Section 12.2(g) hereof.

### 13. GUARANTYGUARANTY

#### 13.1 Guaranty.



(a) Each U.S. Credit Party hereby agrees that such U.S. Credit Party is jointly and severally liable for, and hereby absolutely and unconditionally guarantees to Agent, Lenders, Hedge Banks and their respective successors and assigns, the full and prompt payment (whether at stated maturity, by acceleration or otherwise) and performance of, all Obligations owed or hereafter owing to Agent and Secured Parties by each other Credit Party. Each Canadian Credit Party hereby agrees that such Credit Party is jointly and severally liable for, and hereby absolutely and unconditionally guarantees to Agent and Lenders and their respective successors and assigns, the full and prompt payment (whether at stated maturity, by acceleration or otherwise) and performance of, all Obligations owed or hereafter owing to Agent and Secured Parties by each other Canadian Credit Party. Each Credit Party agrees that its guaranty obligation hereunder is a continuing guaranty of payment and performance and not of collection, that its obligations under this Section 13 shall not be discharged until the Termination Date, and that its obligations under this Section 13 shall be absolute and unconditional, irrespective of, and unaffected by,

(i) the genuineness, validity, regularity, enforceability or any future amendment of, or change in, this Agreement, any other Loan Document or Secured Hedge Agreement or any other agreement, document or instrument to which any Credit Party is or may become a party;

(ii) the absence of any action to enforce this Agreement (including this Section 13) or any other Loan Document or Secured Hedge Agreement or the waiver or consent by Agent and Lenders or Hedge Banks, as applicable, with respect to any of the provisions thereof;

(iii) the existence, value or condition of, or failure to perfect its Lien against, any security for the Obligations or any action, or the absence of any action, by Agent and Lenders or Hedge Banks in respect thereof (including the release of any such security);

(iv) the insolvency of any Credit Party;

(v) any amendment, alteration, novation or variation in any manner and to any extent (and irrespective of the effect of the same on any Guarantor) of any of the Obligations, any liabilities and obligations of any surety, and any security of any one or more of the Secured Parties' arrangements with the Credit Parties or any other Person; or

(vi) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor.

Each Credit Party shall be regarded, and shall be in the same position, as principal debtor with respect to the Obligations guaranteed hereunder.

(b) Each Credit Party expressly represents and acknowledges that it is part of a common enterprise with the other Credit Parties and that any financial accommodations by Lenders, Hedge Banks or any of them, to any other Credit Party hereunder and under the other Loan Documents or Secured Hedge Agreements are and will be of direct and indirect interest, benefit and advantage to all Credit Parties.

13.2 Waivers by Credit Parties. Each Credit Party expressly waives, to the extent permitted by law, all rights it may have now or in the future under any statute, or at common law, or at law or in equity, or otherwise, to compel Agent or any other Secured Party to marshal assets or to proceed in respect of the Obligations guaranteed hereunder against any other Credit Party, any other party or against any security for the payment and performance of the Obligations before proceeding against, or as a condition to proceeding against, such Credit Party. It is agreed among each Credit Party, Agent, Co-Collateral Agent, L/C Issuers, Lenders and other Secured Parties that the foregoing waivers are of the essence of the transaction contemplated by this Agreement and the other Loan Documents and that, but for the provisions of this Section 13 and such waivers, Agent, Co-Collateral Agent, L/C Issuers, Lenders and other Secured Parties would decline to enter into this Agreement. Each Credit Party expressly waives diligence, presentment and demand (whether for non-payment or protest or of acceptance, maturity, extension of time, change in nature or form of the Obligations, acceptance of further security, release of further security, composition or agreement arrived at as to the amount of, or the terms of, the Obligations, notice of adverse change in any Credit Party's financial condition or any other fact which might increase the risk to another Credit Party).

13.3 Benefit of Guaranty; Stay of Acceleration. Each Credit Party agrees that the provisions of this Section 13 are for the benefit of the Secured Parties and their respective successors, transferees, endorsees and assigns, and nothing herein contained shall impair, as between any other Credit Party and Agent or any other Secured Party, the obligations of such other Credit Party under the Loan Documents or Secured Hedge Agreements.

13.4 Subordination of Subrogation, Etc. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, and except as set forth in Section 13.7, each Credit Party hereby expressly and irrevocably subordinates to payment of the Obligations any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off and any and all defenses available to a surety, guarantor or accommodation co-obligor until the Termination Date. Each Credit Party acknowledges and agrees that this subordination is intended to benefit Agent and the other Secured Parties and shall not limit or otherwise affect such Credit Party's liability hereunder or the enforceability of this Section 13, and that Agent, the other Secured Parties and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 13.4.

13.5 Election of Remedies. If Agent or any other Secured Party may, under applicable law, proceed to realize its benefits under any of the Loan Documents giving Agent or such other Secured Party a Lien upon any Collateral, whether owned by any Credit Party or by any other Person, either by judicial foreclosure or by non-judicial sale or enforcement, Agent or any other Secured Party may, at its sole option, determine which of its remedies or rights it may pursue without affecting any of its rights and remedies under this Section 13. If, in the exercise of any of its rights and remedies, Agent or any other Secured Party shall forfeit any of its rights or remedies, including its right to enter a deficiency judgment against any Credit Party or any other Person, whether because of any applicable laws pertaining to "election of remedies" or the like, each Credit Party hereby consents to such action by Agent or such other Secured Party and waives any claim based upon such action, even if such action by Agent or such other Secured Party shall result in a full or partial loss of any rights of subrogation that such Credit Party might otherwise have had but for such action by Agent or such other Secured Party. Any election of

remedies that results in the denial or impairment of the right of Agent or any other Secured Party to seek a deficiency judgment against any Credit Party shall not impair any other Credit Party's obligation to pay the full amount of the Obligations. In the event Agent or any other Secured Party shall bid at any foreclosure or trustee's sale or at any private sale permitted by law or the Loan Documents, Agent or such other Secured Party may bid all or less than the amount of the Obligations and the amount of such bid need not be paid by Agent or such other Secured Party but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Agent, other Secured Party or any other party is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Section 13, notwithstanding that any present or future law or court decision or ruling may have the effect of reducing the amount of any deficiency claim to which Agent or any Lender might otherwise be entitled but for such bidding at any such sale.

13.6 Limitation. Notwithstanding any provision herein contained to the contrary, each Credit Party's liability under this Section 13 shall be limited to an amount not to exceed as of any date of determination the greater of:

(a) the amount of all Loans advanced to (and Letter of Credit Obligations incurred on behalf of) Borrowers and;

(b) the amount that could be claimed by Agent and the other Secured Parties from such Credit Party under this Section 13 without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar foreign or domestic statute or common law after taking into account, among other things, such Credit Party's right of contribution and indemnification from each other Credit Party under Section 13.7.

13.7 Contribution with Respect to Guaranty Obligations.

(a) To the extent that any Credit Party shall make a payment under this Section 13 of all or any of the Obligations (other than Loans made to that Borrower for which it is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments then previously or concurrently made by any other Credit Party, exceeds the amount that such Credit Party would otherwise have paid if each Credit Party had paid the aggregate Obligations satisfied by such Guarantor Payment in the same proportion that such Credit Party's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each Credit Party as determined immediately prior to the making of such Guarantor Payment, then, following the Termination Date, such Credit Party shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Credit Party for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the “Allocable Amount” of any Credit Party shall be equal to the maximum amount of the claim that could then be recovered from such Credit Party under this Section 13 without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

(c) This Section 13.7 is intended only to define the relative rights of the Credit Parties and nothing set forth in this Section 13.7 is intended to or shall impair the obligations of the Credit Parties, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of, and subject to the limitations contained in, this Agreement, including Section 13.1. Nothing contained in this Section 13.7 shall limit the liability of any Borrower to pay the Loans made directly or indirectly to that Borrower and accrued interest, Fees and expenses with respect thereto for which such Borrower shall be primarily liable.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Credit Parties to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Credit Parties against other Credit Parties under this Section 13.7 shall be exercisable upon the full and indefeasible payment of the Obligations and the termination of the Commitments.

13.8 Liability Cumulative. The liability of each Credit Party under this Section 13 is in addition to and shall be cumulative with all liabilities of such Credit Party to Agent and Lenders under this Agreement and the other Loan Documents to which such Credit Party is a party or in respect of any Obligations or obligation of the other Credit Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13.9 Obligations of the Canadian Credit Parties. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, (i) no Canadian Credit Party shall be liable or in any manner responsible for, or be deemed to have guaranteed, directly or indirectly, whether as a primary obligor, guarantor, indemnitor, or otherwise, and none of their assets shall secure, directly or indirectly, any Obligations of any U.S. Borrower or U.S. Guarantor (including, without limitation, principal, interest, fees, penalties, premiums, expenses, charges, reimbursements, indemnities or any other Obligations) under this Agreement or any other Loan Document, (ii) no Collateral or other assets of any Canadian Credit Party nor any collections on or proceeds of, any such Collateral or other assets shall be applied to the Obligations of any U.S. Borrower or U.S. Guarantor under this Agreement or any other Loan Document and (iii) no Canadian Credit Party shall be obligated to make any payment hereunder or under any other Loan Document on behalf of, or with respect to, any Obligation of any U.S. Borrower or U.S. Guarantor.

13.10 Name of Agreement. (a) Immediately and automatically upon the Restatement Date, Parent Borrower hereby terminates all “Commitments” under (and as defined in) the

Existing Credit Agreement. The Lenders party hereto that are also party to the Existing Credit Agreement, who collectively constitute the “Requisite Lenders” under the Existing Credit Agreement, hereby waive any requirement of prior notice for termination of all such “Commitments”. Morgan Stanley Senior Funding Inc., as Agent under the Existing Credit Agreement, agrees to enter into a customary payoff letter relating to the Existing Credit Agreement acknowledging the payment in full of the obligations under the Existing Credit Agreement and the related Loan Documents (other than “Bank Products Obligations” and “Secured Hedging Obligations”, each as defined in the Existing Credit Agreement) and authorizing any necessary or desirable filings or other actions to evidence the payment in full of such obligations promptly following the Restatement Date.

(b) The parties hereto acknowledge and agree that this Agreement is referred to as being an “amendment and restatement” of the Existing Credit Agreement as a matter of convenience and that this Agreement shall for all purposes be treated as a replacement and refinancing of the Existing Credit Agreement and the “Obligations” thereunder.

13.11 Release of Borrowers and Guarantors. The Obligations of any Credit Party (other than Parent Borrower) shall automatically terminate and be of no further force or effect and such Credit Party shall be automatically released from all obligations under this Agreement and all the Loan Documents upon:

(a) the sale, disposition, exchange or other transfer (including through merger, consolidation amalgamation or otherwise) of the Capital Stock (including any sale, disposition or other transfer following which the applicable Credit Party is no longer a Restricted Subsidiary), of the applicable Credit Party if such sale, disposition, exchange or other transfer is made in a manner not in violation of this Agreement; ~~or~~ provided that, if such transaction would result in the Aggregate Revolving Credit Exposure exceeding the Available Credit on a pro forma basis immediately after giving effect to such transaction, the Borrowers shall have repaid outstanding Loans or cash collateralized Letter of Credit Obligations in the manner set forth in Section 2.2 to the extent required to avoid any such excess, in accordance with Section 2.3(b)(i); or

(b) the designation of such Credit Party as an Unrestricted Subsidiary in accordance with the provisions of the definition of “Unrestricted Subsidiary”; ~~or~~ provided that, if such designation would result in the Aggregate Revolving Credit Exposure exceeding the Available Credit on a pro forma basis immediately after giving effect to such designation, the Borrowers shall have repaid outstanding Loans or cash collateralized Letter of Credit Obligations in the manner set forth in Section 2.2 to the extent required to avoid any such excess, in accordance with Section 2.3(b)(i); or

(c) (i) such Subsidiary becomes an Excluded Subsidiary (as evidenced by a notice in writing from an Officer of Parent Borrower); so long as, in the case of this clause (i) (solely with respect to a transaction as a result of which a Wholly Owned Subsidiary would become an Excluded Subsidiary due to clause (h) of the definition thereof), if such transaction would result in the Aggregate Revolving Credit Exposure exceeding the Available Credit on a pro forma basis immediately after giving effect to such transaction, the Borrowers shall have repaid outstanding Loans or cash collateralized Letter of Credit

Obligations in the manner set forth in Section 2.2 to the extent required to avoid any such excess, in accordance with Section 2.3(b)(i); or (ii) Parent Borrower re-designates a Designated Guarantor as an Excluded Subsidiary, so long as, in the case of this clause (ii), prior to such re-designation Parent Borrower shall have delivered to Agent an updated Borrowing Base Certificate reflecting that no Overadvance shall have occurred after giving pro forma effect to the removal from the Borrowing Base of such Designated Guarantor's assets; or

(d) repayment of all of the Loans and termination of all of the Commitments hereunder.

(e) Additional Borrowers. Upon the request of Parent Borrower from time to time, any direct or indirect Wholly Owned Restricted Subsidiary that is a Domestic Subsidiary or organized under the laws of Canada (or any province or territory thereof) (including any such Subsidiary that is already a Guarantor at such time) may become a U.S. Borrower or a Canadian Borrower, respectively, hereunder, effective upon the execution and delivery to Agent by such Wholly Owned Restricted Subsidiary, of (i) an instrument of accession or joinder to this Agreement, (ii) any other Collateral Documents and other documents that such Domestic Subsidiary would be required to deliver pursuant to Section 6.12 if it were becoming a Guarantor (with such modifications thereto as are reasonably necessary to accommodate such Subsidiary becoming a Borrower and not a Guarantor) as may be reasonably requested by Agent and (iii) all documentation and other information required by Governmental Authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, in each case to the extent requested by Agent from Parent Borrower.

13.12 Acknowledgement and Consent to Bail-In of EEA Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of ~~an EEA~~the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by ~~an EEA~~the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion, of such liability into shares or other instruments of ownership in such EEA Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and

that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of ~~any EEA~~ the applicable Resolution Authority.

13.13 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Secured Hedge Agreements or any other agreement or instrument that is a QFC (such support, “QFC Credit Support” and each such QFC a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special ~~Resolutions~~ Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 13.13, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

[SIGNATURE PAGES FOLLOW]



**EXHIBIT B-1**  
**To**  
**Amendment No. 6**

[See attached]

**ANNEX C**  
**TO**  
**CREDIT AGREEMENT**

**COMMITMENTS AS OF THE SEPARATION EFFECTIVE DATE**

<b>Lender(s)</b>	<b>Commitment</b>	<b>Canadian Commitment<sup>2</sup></b>	<b>Swing Line Commitment<sup>3</sup></b>
Citibank, N.A.	\$94,000,000	\$13,000,000	\$0
Barclays Bank PLC	\$94,000,000	\$12,000,000	\$0
Credit Agricole Corporate and Investment Bank	\$94,000,000	\$12,000,000	\$0
Morgan Stanley Bank, N.A.	\$45,800,000	\$7,000,000	\$0
Morgan Stanley Senior Funding Inc.	\$13,500,000	\$0	\$50,000,000
Bank of America, N.A.	\$59,300,000	\$7,000,000	\$0
BNP Paribas	\$59,300,000	\$7,000,000	\$0
Capital One, National Association	\$59,300,000	\$7,000,000	\$0
Credit Suisse AG, Cayman Islands Branch	\$59,300,000	\$7,000,000	\$0
Deutsche Bank AG New York Branch	\$59,300,000	\$7,000,000	\$0
Goldman Sachs Bank USA	\$59,300,000	\$7,000,000	\$0
JPMorgan Chase Bank, N.A. *Canadian Sublimit to be funded through JPMorgan Chase Bank, N.A., Toronto Branch	\$59,300,000	\$7,000,000	\$0
Wells Fargo Bank, N.A. *Canadian Sublimit to be funded through Wells Fargo Capital Finance Corporation Canada	\$59,300,000	\$7,000,000	\$0

<sup>2</sup> Canadian Commitment constitutes a subfacility of the aggregate Commitments.

<sup>3</sup> Swing Line Commitment constitutes a subfacility of the aggregate Commitments.

U.S. Bank National Association	\$59,300,000	\$0	\$0
City National Bank	\$25,000,000	\$0	\$0
HSBC Bank USA, N.A.	\$25,000,000	\$0	\$0
KeyBank National Association	\$25,000,000	\$0	\$0
MUFG Union Bank, N.A.	\$25,000,000	\$0	\$0
The Bank of Nova Scotia	\$25,000,000	\$0	\$0
TOTAL	\$1,000,000,000	\$100,000,000	\$50,000,000

**EXHIBIT B-2**  
**To**  
**Amendment No. 6**

[See attached]

**ANNEX D**  
**TO**  
**CREDIT AGREEMENT**

**L/C ISSUER FRONTING SUBLIMIT AMOUNTS AS OF THE SEPARATION EFFECTIVE DATE**

<b>L/C Issuer</b>	<b>L/C Issuer Fronting Sublimit Amount</b>	<b>Alternative Currencies for Letters of Credit</b>
Citibank, N.A.	\$50,000,000	Euros, Pounds Sterling, Singapore Dollars
Barclays Bank PLC	\$50,000,000	Euros, Pounds Sterling, Singapore Dollars
Credit Agricole Corporate and Investment Bank	\$50,000,000	Euros, Pounds Sterling, Singapore Dollars
Morgan Stanley Bank, N.A.	\$32,000,000	Euros, Pounds Sterling, Singapore Dollars
BNP Paribas	\$32,000,000	Euros, Pounds Sterling, Singapore Dollars
Deutsche Bank AG New York Branch	\$32,000,000	Euros, Pounds Sterling, Singapore Dollars
JPMorgan Chase Bank, N.A.	\$32,000,000	Euros, Pounds Sterling, Singapore Dollars
U.S. Bank National Association	\$32,000,000	Euros, Pounds Sterling, Singapore Dollars
Wells Fargo Bank, N.A.	\$32,000,000	Euros, Pounds Sterling, Singapore Dollars
The Bank of Nova Scotia	\$8,000,000	Euros, Pounds Sterling, Singapore Dollars
<b>TOTAL</b>	<b>\$350,000,000</b>	

**Schedule A-1**  
**To**  
**Amendment No. 6**

BOUNCE LOGISTICS, LLC  
CON-WAY MULTIMODAL INC.  
JACOBSON LOGISTICS COMPANY, L.C.  
JACOBSON TRANSPORTATION COMPANY, INC.  
JHCI HOLDING USA, INC.  
MANUFACTURERS CONSOLIDATION SERVICE OF CANADA, INC.  
XPO AIR CHARTER, LLC  
XPO CNW, INC.  
XPO COURIER, LLC  
XPO CUSTOMS CLEARANCE SOLUTIONS, LLC  
XPO DEDICATED, LLC  
XPO ENTERPRISE SERVICES, LLC  
XPO GLOBAL FORWARDING, INC.  
XPO INTERMODAL SERVICES, LLC  
XPO INTERMODAL SOLUTIONS, INC.  
XPO INTERMODAL, INC.  
XPO LAND HOLDINGS, LLC  
XPO LAST MILE CANADA INC.  
XPO LAST MILE HOLDING, INC.  
XPO LAST MILE, INC.  
XPO LOGISTICS CARTAGE, LLC  
XPO LOGISTICS DRAYAGE, LLC  
XPO LOGISTICS EXPRESS, LLC  
XPO LOGISTICS FREIGHT, INC.  
XPO LOGISTICS MANAGED TRANSPORTATION, LLC  
XPO LOGISTICS MANUFACTURING, LLC  
XPO LOGISTICS NLM, LLC  
XPO LOGISTICS PORT SERVICES, LLC  
XPO LOGISTICS TRANSPORT SERVICES, LLC  
XPO LOGISTICS WORLDWIDE GOVERNMENT SERVICES, LLC  
XPO LOGISTICS, LLC  
XPO LTL HOLDINGS, LLC  
XPO LTL SOLUTIONS, LLC  
XPO MANUFACTURING HOLDINGS, LLC  
XPO NAT SOLUTIONS, LLC  
XPO PROPERTIES, INC.  
XPO SERVCO, LLC  
XPO STACKTRAIN, LLC  
XPO TRANSPORT, LLC  
PDS TRUCKING, INC.  
XPO DISTRIBUTION SERVICES, INC.



## XPO Logistics Completes Spin-Off of GXO Logistics

**GREENWICH, Conn. – August 2, 2021** – XPO Logistics, Inc. (NYSE: XPO) today announced that it has completed the previously announced spin-off of GXO Logistics, Inc., creating two independent, publicly traded companies. XPO is a leading provider of freight transportation services, primarily less-than-truckload transportation and truck brokerage services, and GXO is the largest pure-play contract logistics provider in the world. XPO shares will continue to trade on the New York Stock Exchange under the symbol “XPO” and, effective today, GXO will begin “regular way” trading on the NYSE under the symbol “GXO.”

Brad Jacobs, chairman and chief executive officer of XPO Logistics, said, “With the timely completion of our spin-off, XPO and GXO are moving forward with powerful momentum as independent public companies. I want to thank the many people whose work over the past eight months has made this initiative a reality. We’ve given both businesses a clear line of sight to unlocking their full potential.”

The separation was completed through a distribution to XPO stockholders of one share of GXO common stock for every one share of XPO common stock held as of the close of business on the record date for the distribution, July 23, 2021. GXO shares were distributed at 12:01 a.m. Eastern Time on August 2, 2021 in a distribution that is intended to be tax-free to XPO stockholders for U.S. federal income tax purposes.

Goldman Sachs & Co. LLC acted as financial advisor and Wachtell, Lipton, Rosen & Katz acted as legal advisor in connection with the separation.

### **About XPO Logistics**

XPO Logistics, Inc. (NYSE: XPO) is a leading provider of freight transportation, primarily a top-three provider of truck brokerage and less-than-truckload (LTL) capacity in North America. XPO helps companies to de-risk their supply chains by moving their goods using cutting-edge technology. XPO Connect™, the company’s proprietary automated freight marketplace, is one of the fastest-growing digital brokerage platforms in the industry. XPO provides capacity at scale to 50,000 shippers through a global network of 744 locations and approximately 40,000 employees. The company is headquartered in Greenwich, Conn., USA. Visit [xpo.com](http://xpo.com) for more information, and connect with XPO on Facebook, Twitter, LinkedIn, Instagram and YouTube.

### **Forward-Looking Statements**

*This press release includes 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, including the statements above regarding benefits of the contemplated spin-off transaction, as well as the expected performance of the company after*

*the spin-off. Any forward-looking statements contained herein are based on our management's current beliefs and expectations, but are subject to a number of risks, uncertainties and changes in circumstances, which may cause the company's actual results or actions to differ materially from what is expressed or implied by these statements. Such risks include, but are not limited to: uncertainties as to the impact of the spin-off on the company's business, as well as the disclosure contained under the heading "Risk Factors" in the company's filings with the U.S. Securities and Exchange Commission. We disclaim any obligation to update these forward-looking statements other than as required by law.*

**Investor Contact**

Tavio Headley  
+1-203-413-4006  
tavio.headley@xpo.com

**Media Contact**

Joe Checkler  
+1-203-423-2098  
joe.checkler@xpo.com





## XPO Logistics Announces Board of Directors for Post-Spin-Off Company

**GREENWICH, Conn. – August 2, 2021** – XPO Logistics, Inc. (NYSE: XPO), a leading global provider of freight transportation services, today announced that its new slate of directors has become effective with the closing of its spin-off transaction. XPO completed the spin-off of its global logistics segment as GXO Logistics at 12:01 a.m. Eastern Time on August 2, 2021.

As previously announced, Brad Jacobs, XPO's chief executive officer, will continue as chairman. AnnaMaria DeSalva and Michael Jesselson will remain in the roles of vice chairman and lead independent director, respectively, and Adrian Kingshott will continue to serve as director.

XPO has appointed four new board members, replacing directors who resigned from the XPO board to join the GXO board. The new XPO directors are:

**Jason Aiken**, chief financial officer of General Dynamics Corporation, and former chief financial officer of Gulfstream Aerospace Corporation, a General Dynamics subsidiary.

**Mary Kissel**, executive vice president and senior policy advisor with Stephens Inc., former senior advisor to the US Secretary of State, and formerly with The Wall Street Journal as a member of the Editorial Board and editorial page editor for Asia-Pacific.

**Allison Landry**, former senior transportation research analyst with Credit Suisse, covering the trucking, railroad, airfreight and logistics industries.

**Johnny C. Taylor, Jr.**, chief executive officer of the Society of Human Resources Management (SHRM), and former senior executive with IAC/Interactive Corp, Viacom's Paramount Pictures and Blockbuster Entertainment Group, among others.

Brad Jacobs, chairman and chief executive officer of XPO Logistics, said, "We've added four outstanding independent directors to the wealth of experience we retained following the spin-off. This is our most diverse board composition yet, with an emphasis on the financial, cultural and market opportunities of our business. Our growth strategy will have powerful support."

Biographies of XPO's directors and their board committee assignments have been or will be filed with the U.S. Securities and Exchange Commission and can be found on [xpo.com](http://xpo.com).

### **About XPO Logistics**

XPO Logistics, Inc. (NYSE: XPO) is a leading provider of freight transportation, primarily a top-three provider of truck brokerage and less-than-truckload (LTL) capacity in North America. XPO helps companies to de-risk their supply chains by moving their goods using cutting-edge technology. XPO Connect™, the company's proprietary automated freight marketplace, is one of the fastest-growing digital brokerage platforms in the industry. XPO provides truck capacity at scale to 50,000 shippers through a global network of 744 locations and approximately 40,000

employees. The company is headquartered in Greenwich, Conn., USA. Visit [xpo.com](http://xpo.com) for more information, and connect with XPO on Facebook, Twitter, LinkedIn, Instagram and YouTube.

**Investor Contact**

Tavio Headley  
+1-203-413-4006  
[tavio.headley@xpo.com](mailto:tavio.headley@xpo.com)

**Media Contact**

Joe Checkler  
+1-203-423-2098  
[joe.checkler@xpo.com](mailto:joe.checkler@xpo.com)

**XPO Logistics, Inc.**  
**Unaudited Pro Forma Condensed Consolidated Financial Statements**

On August 2, 2021, XPO Logistics, Inc. (“XPO”) completed the previously announced separation of its Logistics segment (the “Separation”), which was accomplished by the distribution of 100% of the outstanding common stock of GXO Logistics, Inc. (“GXO”) to XPO shareholders as of the close of business on July 23, 2021, the record date for the distribution (the “Distribution”). XPO shareholders received one share of GXO common stock for every share of XPO common stock held at the close of business on the record date. Following the Separation, GXO is an independent public company whose common stock trades on the New York Stock Exchange under the symbol “GXO”.

The following unaudited pro forma condensed consolidated financial information is presented to illustrate the estimated effects of the Separation. The unaudited pro forma condensed consolidated statements of operations of XPO for the three months ended March 31, 2021 and for each of the three years ended December 31, 2020, 2019, and 2018 reflect XPO’s results of operations as if the Distribution had occurred on January 1, 2018. The unaudited pro forma condensed consolidated balance sheet of XPO as of March 31, 2021 assumes that the Distribution had occurred on March 31, 2021. Beginning in the third quarter of 2021, GXO’s historical financial results for periods prior to the Distribution will be reflected in XPO’s consolidated financial statements as discontinued operations.

The unaudited pro forma condensed consolidated financial statements and the accompanying notes should be read in conjunction with:

- the audited consolidated financial statements and accompanying notes and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in XPO’s Form 10-K for the year ended December 31, 2020 and
- the unaudited condensed consolidated financial statements and accompanying notes and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in XPO’s Form 10-Q for the three months ended March 31, 2021.

The Historical column in the unaudited pro forma condensed consolidated financial statements reflects XPO’s historical financial statements for the periods presented and does not reflect any adjustments related to the Distribution and related events.

Amounts in the GXO Separation column in the unaudited pro forma condensed consolidated financial statements were derived from GXO’s unaudited combined financial statements included in GXO’s amended Form 10 filed with the Securities and Exchange Commission in July 2021. Certain reclassifications have been made to the historical presentation of GXO to conform to the presentation used by XPO.

The pro forma financial information has been prepared by XPO for illustrative and informational purposes only in accordance with Regulation S-X Article 11, Pro Forma Financial Information, as amended. The pro forma financial information is based on various adjustments and assumptions and is not necessarily indicative of what XPO’s consolidated statements of operations or consolidated statement of financial condition actually would have been had the Separation been completed as of the dates indicated or will be for any future periods. The pro forma financial statements do not purport to project the future financial position or operating results of XPO following the completion of the Separation. The pro forma financial information does not include adjustments to reflect any potential synergies or dis-synergies that may result from the Separation.

XPO Logistics, Inc.  
**Unaudited Pro Forma Condensed Consolidated Balance Sheet**  
As of March 31, 2021  
*(In millions)*

	Historical Consolidated	GXO Separation	Transaction Adjustments	Notes	Pro Forma XPO
<b>ASSETS</b>					
<b>Current assets</b>					
Cash and cash equivalents	\$ 629	\$ (414)	\$ 196	(a) (b) (c) (d)	\$ 411
Accounts receivable, net of allowances	3,137	(1,293)	9	(a)	1,853
Other current assets	505	(327)	95	(a) (e)	273
<b>Total current assets</b>	<b>4,271</b>	<b>(2,034)</b>	<b>300</b>		<b>2,537</b>
<b>Long-term assets</b>					
Property and equipment, net of accumulated depreciation	2,651	(815)	(18)	(a)	1,818
Operating lease assets	2,602	(1,733)	(2)	(a)	867
Goodwill	4,554	(2,048)	—		2,506
Identifiable intangible assets, net of accumulated amortization	955	(307)	—		648
Other long-term assets	336	(183)	52	(b)	205
<b>Total long-term assets</b>	<b>11,098</b>	<b>(5,086)</b>	<b>32</b>		<b>6,044</b>
<b>Total assets</b>	<b>\$ 15,369</b>	<b>\$ (7,120)</b>	<b>\$ 332</b>		<b>\$ 8,581</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>					
<b>Current liabilities</b>					
Accounts payable	\$ 1,329	\$ (480)	\$ 1	(a)	\$ 850
Accrued expenses	1,966	(877)	45	(a) (d) (f) (m)	1,134
Short-term borrowings and current maturities of long-term debt	88	(32)	—		56
Short-term operating lease liabilities	533	(379)	—		154
Other current liabilities	260	(126)	(23)	(n)	111
<b>Total current liabilities</b>	<b>4,176</b>	<b>(1,894)</b>	<b>23</b>		<b>2,305</b>
<b>Long-term liabilities</b>					
Long-term debt	5,162	(586)	(314)	(a) (b) (d)	4,262 (o)
Deferred tax liability	378	(65)	24	(g) (n)	337
Employee benefit obligations	178	(36)	(13)	(g)	129
Long-term operating lease liabilities	2,086	(1,367)	—		719
Other long-term liabilities	475	(129)	—		346
<b>Total long-term liabilities</b>	<b>8,279</b>	<b>(2,183)</b>	<b>(303)</b>		<b>5,793</b>
<b>Stockholders' equity</b>					
Convertible perpetual preferred stock	—	—	—		—
Common stock	—	—	—		— (o)
Additional paid-in capital	1,988	—	—		1,988
Retained earnings / XPO investment	983	(2,903)	501	(a) (b) (c) (d) (e) (f) (g) (m) (n)	(1,419)
Accumulated other comprehensive loss	(195)	(16)	107	(g)	(104)
<b>Total stockholders' equity before noncontrolling interests</b>	<b>2,776</b>	<b>(2,919)</b>	<b>608</b>		<b>465</b>
Noncontrolling interests	138	(124)	4	(g)	18
<b>Total equity</b>	<b>2,914</b>	<b>(3,043)</b>	<b>612</b>		<b>483</b>
<b>Total liabilities and equity</b>	<b>\$ 15,369</b>	<b>\$ (7,120)</b>	<b>\$ 332</b>		<b>\$ 8,581</b>

See accompanying notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

**XPO Logistics, Inc.**  
**Unaudited Pro Forma Condensed Consolidated Statements of Operations**  
**For the Three Months Ended March 31, 2021**  
*(In millions, except per share data)*

	Historical Consolidated	GXO Separation	Transaction Adjustments	Notes	Pro Forma XPO
<b>Revenue</b>	\$ 4,774	\$ (1,822)	\$ 37	(a) (h)	\$ 2,989
Cost of transportation and services	2,328	(264)	36	(a) (h)	2,100
Direct operating expense	1,656	(1,308)	2	(h) (i)	350
Sales, general and administrative expense	588	(220)	45	(i) (m)	413
<b>Operating income</b>	<u>202</u>	<u>(30)</u>	<u>(46)</u>		<u>126</u>
Other income	(26)	1	9	(a) (g)	(16)
Foreign currency (gain) loss	(2)	—	—		(2)
Debt extinguishment loss	8	—	—		8
Interest expense	69	(5)	(9)	(i) (j) (l)	55
<b>Income before income tax provision</b>	<u>153</u>	<u>(26)</u>	<u>(46)</u>		<u>81</u>
Income tax provision	35	(9)	(12)	(n)	14
<b>Net income</b>	<u>118</u>	<u>(17)</u>	<u>(34)</u>		<u>67</u>
Net income attributable to noncontrolling interests	(3)	3	—		—
<b>Net income attributable to XPO</b>	<u>\$ 115</u>	<u>\$ (14)</u>	<u>\$ (34)</u>		<u>\$ 67</u>
<b>Net income attributable to common shareholders</b>	\$ 115				\$ 67
<b>Basic earnings per share</b>	\$ 1.08				\$ 0.63
<b>Diluted earnings per share</b>	\$ 1.02				\$ 0.59
<b>Weighted-average common shares outstanding</b>					
Basic weighted-average common shares outstanding	106				106
Diluted weighted-average common shares outstanding	112				112

See accompanying notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

**XPO Logistics, Inc.**  
**Unaudited Pro Forma Condensed Consolidated Statements of Operations**  
**For the Year Ended December 31, 2020**  
*(In millions, except per share data)*

	Historical Consolidated	GXO Separation	Transaction Adjustments	Notes	Pro Forma XPO
<b>Revenue</b>	\$ 16,252	\$ (6,195)	\$ 142	(a) (h)	\$ 10,199
Cost of transportation and services	7,852	(849)	135	(a) (h)	7,138
Direct operating expense	5,837	(4,539)	5	(a) (h) (i)	1,303
Sales, general and administrative expense	2,172	(791)	199	(f) (h) (i) (k) (m)	1,580
<b>Operating income</b>	391	(16)	(197)		178
Other income	(79)	2	31	(a) (g)	(46)
Foreign currency (gain) loss	(3)	—	—		(3)
Debt extinguishment loss	—	—	7	(d)	7
Interest expense	325	(24)	(31)	(i) (j) (l)	270
<b>Income before income tax provision</b>	148	6	(204)		(50)
Income tax provision	31	(16)	(42)	(n)	(27)
<b>Net income</b>	117	22	(162)		(23)
Net income attributable to noncontrolling interests	(7)	9	—		2
<b>Net income attributable to XPO</b>	\$ 110	\$ 31	\$ (162)		\$ (21)
<b>Net income attributable to common shareholders</b>	\$ 79				\$ (46)
<b>Basic earnings per share</b>	\$ 0.87				\$ (0.50)
<b>Diluted earnings per share</b>	\$ 0.78				\$ (0.50)
<b>Weighted-average common shares outstanding</b>					
Basic weighted-average common shares outstanding	92				92
Diluted weighted-average common shares outstanding	102				92

See accompanying notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

**XPO Logistics, Inc.**  
**Unaudited Pro Forma Condensed Consolidated Statements of Operations**  
**For the Year Ended December 31, 2019**  
*(In millions, except per share data)*

	Historical Consolidated	GXO Separation	Transaction Adjustments	Notes	Pro Forma XPO
<b>Revenue</b>	\$ 16,648	\$ (6,094)	\$ 133	(a) (h)	\$ 10,687
Cost of transportation and services	8,303	(879)	136	(a) (h)	7,560
Direct operating expense	5,679	(4,421)	(10)	(a) (h) (i)	1,248
Sales, general and administrative expense	1,845	(644)	113	(h) (i)	1,314
<b>Operating income</b>	821	(150)	(106)		565
Other income	(54)	—	28	(a) (g)	(26)
Foreign currency (gain) loss	9	1	—		10
Debt extinguishment loss	5	—	—		5
Interest expense	292	(33)	26	(j)	285
<b>Income before income tax provision</b>	569	(118)	(160)		291
Income tax provision	129	(37)	(31)	(n)	61
<b>Net income</b>	440	(81)	(129)		230
Net income attributable to noncontrolling interests	(21)	21	—		—
<b>Net income attributable to XPO</b>	\$ 419	\$ (60)	\$ (129)		\$ 230
<b>Net income attributable to common shareholders</b>	\$ 379				\$ 208
<b>Basic earnings per share</b>	\$ 3.95				\$ 2.17
<b>Diluted earnings per share</b>	\$ 3.57				\$ 1.96
<b>Weighted-average common shares outstanding</b>					
Basic weighted-average common shares outstanding	96				96
Diluted weighted-average common shares outstanding	106				106

See accompanying notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

**XPO Logistics, Inc.**  
**Unaudited Pro Forma Condensed Consolidated Statements of Operations**  
**For the Year Ended December 31, 2018**  
*(In millions, except per share data)*

	Historical Consolidated	GXO Separation	Transaction Adjustments	Notes	Pro Forma XPO
<b>Revenue</b>	\$ 17,279	\$ (6,065)	\$ 129	(h)	\$ 11,343
Cost of transportation and services	9,013	(917)	129	(h)	8,225
Direct operating expense	5,725	(4,362)	(8)	(h) (i)	1,355
Sales, general and administrative expense	1,837	(643)	98	(h) (i)	1,292
<b>Operating income</b>	<u>704</u>	<u>(143)</u>	<u>(90)</u>		<u>471</u>
Other income	(109)	14	39	(a) (g)	(56)
Foreign currency (gain) loss	3	(1)	—		2
Debt extinguishment loss	27	—	—		27
Interest expense	217	(30)	31	(j)	218
<b>Income before income tax provision</b>	<u>566</u>	<u>(126)</u>	<u>(160)</u>		<u>280</u>
Income tax provision	122	(36)	(32)	(n)	54
<b>Net income</b>	<u>444</u>	<u>(90)</u>	<u>(128)</u>		<u>226</u>
Net income attributable to noncontrolling interests	(22)	20	—		(2)
<b>Net income attributable to XPO</b>	<u>\$ 422</u>	<u>\$ (70)</u>	<u>\$ (128)</u>		<u>\$ 224</u>
<b>Net income attributable to common shareholders</b>	\$ 390				\$ 207
<b>Basic earnings per share</b>	\$ 3.17				\$ 1.68
<b>Diluted earnings per share</b>	\$ 2.88				\$ 1.53
<b>Weighted-average common shares outstanding</b>					
Basic weighted-average common shares outstanding	123				123
Diluted weighted-average common shares outstanding	135				135

See accompanying notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.



**XPO Logistics, Inc.**  
**Notes to Unaudited Pro Forma Condensed Consolidated Financial Statements**

The unaudited proforma condensed financial statements include the following pro forma adjustments:

- (a) The assets and liabilities and operating results of certain legal entities reflected as part of the Separation were not transferred to GXO in connection with the Distribution. Additionally, the assets and liabilities of certain businesses not reflected as part of the Separation were transferred to GXO in connection with the Distribution. The following table provides the impact of these entities to the Unaudited Pro Forma Condensed Balance Sheet:

<i>(In millions)</i>	<b>March 31, 2021</b>
Cash and cash equivalents	\$ 3
Accounts receivable, net	9
Other current assets	(5)
Property and equipment, net	(18)
Operating lease assets	(2)
Accounts payable	1
Accrued expenses	4
Long-term debt	(4)

The following table provides the impact of these entities to the Unaudited Pro Forma Condensed Consolidated Statements of Operations for the applicable periods:

<i>(In millions)</i>	<b>Three Months Ended</b>		<b>Years Ended</b>	
	<b>March 31,</b>		<b>December 31,</b>	
	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
Revenue	\$ 4	\$ 13	\$ 7	\$ —
Cost of transportation and services	4	9	5	—
Direct operating expenses	—	1	1	—
Other income	(1)	(3)	(2)	(2)

- (b) Reflects the settlement of \$405 million of outstanding loans with GXO, consisting of \$457 million due to XPO from GXO and \$52 million due to GXO from XPO. In connection with the spin-off, \$135 million of loans with European subsidiaries were cash settled and \$270 million of loans were a contribution by XPO.
- (c) Reflects a cash payment from GXO to XPO of \$978 million in connection with the Separation. The \$978 million includes the settlement of \$135 million of outstanding loans reflected in (b) above.
- (d) Reflects the estimated repayment of debt of \$774 million and related accrued interest of \$11 million as part of the Separation together with the write-off of unamortized deferred financing costs of \$7 million. The write-off of deferred financing costs has been reflected as an adjustment of retained earnings, net of tax.
- (e) Reflects the amendment of the existing securitization program to repurchase \$100 million of XPO trade receivables from GXO.
- (f) Subsequent to March 31, 2021, XPO anticipates it will incur additional non-recurring costs of approximately \$50 million to complete the Separation. These costs primarily relate to transactional advisory and professional fees associated with regulatory filings and separation activities. These costs have been reflected as an adjustment to sales, general and administrative expenses, as well as retained earnings, net of tax.

- (g) Reflects GXO's assumption of 100% of the plan assets and obligations related to a United Kingdom Pension Plan and related impact to the statement of operations of pension income of \$10 million for the three months ended March 31, 2021 and \$34 million, \$30 million and \$41 million for the years ended December 31, 2020, 2019 and 2018, respectively. The net plan liability of \$13 million and related deferred tax asset of \$3 million were transferred from XPO to GXO, with the obligations associated with such plans resulting in XPO reducing accumulated other comprehensive loss, net of tax.
- (h) Reflects adjustments primarily for intercompany transactions between XPO and GXO which will no longer be eliminated in consolidation subsequent to the Separation. The transactions, which represent services provided by XPO to GXO and vice-versa, are expected to continue subsequent to the Separation and will be recorded as third-party revenue and expenses in the consolidated statement of operations of XPO.

The following table provides the impact of these intercompany transactions to the Unaudited Pro Forma Condensed Consolidated Statements of Operations for the applicable periods:

<i>(In millions)</i>	Three Months Ended March 31,		Years Ended December 31,	
	2021	2020	2019	2018
Revenue	\$ 33	\$ 129	\$ 126	\$ 129
Cost of transportation and services	32	126	131	129
Direct operating expenses	1	1	1	1
Sales, general and administrative expenses	—	2	(6)	(1)

- (i) Reflects general corporate overhead costs and other amounts which were historically allocated to GXO but do not meet the requirements to be reported as a component of discontinued operations of \$43 million for the three months ended March 31, 2021 and \$140 million, \$107 million and \$90 million for the years ended December 31, 2020, 2019 and 2018, respectively. These costs include, but are not limited to, information technology, human resources, accounting, sales and sales operations, procurement, executive services, legal, corporate finance and communications.
- (j) Represents the elimination of net intercompany interest expense for loans between GXO and XPO for \$5 million for the three months ended March 31, 2021 and \$22 million, \$26 million and \$31 million for the years ended December 31, 2020, 2019 and 2018, respectively.
- (k) Reflects the impact of the transition services agreement, which results in incremental sales, general and administrative expenses of \$3 million not included in XPO's historical combined financial statements.
- (l) Reflects the reduction in interest expense of \$13 million and \$50 million to give effect to the estimated repayment of debt described in (d) above for the three months ended March 31, 2021 and the year ended December 31, 2020, respectively.
- (m) Reflects stock-based compensation expense for awards issued in conjunction with announcement of Separation of \$2 million for the three months ended March 31, 2021 and \$9 million for the year ended December 31, 2020, respectively.
- (n) Reflects the tax impact associated with the transaction adjustments at the applicable statutory income tax rates in effect within the respective tax jurisdictions during the periods presented.
- (o) The pro forma statements do not reflect proceeds of approximately \$385 million, net of fees and expenses, received from a registered underwritten equity offering we completed in July 2021. We intend to use these proceeds to repay a portion of our outstanding debt and for general corporate purposes.