
**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): October 31, 2022

XPO LOGISTICS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-32172
(Commission File Number)

03-0450326
(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 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 November 1, 2022 at 12:01 a.m. Eastern Time of the previously announced separation (the “Separation”) of the tech-enabled brokered transportation platform of XPO Logistics, Inc. (“XPO” or the “company”) from the company’s less-than-truckload transportation segment and European transportation business. The Separation was effected by the transfer of the company’s North American truck brokerage business, as well as its services for managed transportation, last mile and freight forwarding, from the company to RXO, Inc. (“RXO”) and the distribution of all of the outstanding shares of RXO common stock to the company’s stockholders (the “Distribution”). The company’s stockholders of record as of the close of business on October 20, 2022 (the “Record Date”) received one share of RXO 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 RXO common stock in the Distribution.

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

Item 1.01. Entry into a Material Definitive Agreement.

In connection with the Distribution, the company entered into several agreements with RXO 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 October 31, 2022), and an Intellectual Property License Agreement (entered into on October 24, 2022, as disclosed in the company’s Current Report on Form 8-K filed with the Securities and Exchange Commission (“SEC”) on October 25, 2022).

A summary of the material terms of the Separation and Distribution Agreement, Transition Services Agreement, Tax Matters Agreement and Employee Matters Agreement can be found in the section entitled “Certain Relationships and Related Party Transactions” in the Information Statement, dated October 17, 2022, furnished as Exhibit 99.1 to the company’s Current Report on Form 8-K filed with the SEC on October 20, 2022, which summary is incorporated herein by reference. The summary is qualified in its entirety by reference to the Separation and Distribution Agreement, Transition Services Agreement, Tax Matters Agreement and Employee Matters Agreement filed as Exhibits 2.1, 10.1, 10.2, and 10.3, respectively, to this Current Report on Form 8-K, each of 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 November 1, 2022 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.

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

Resignation and Appointment of Directors and Officers

As previously announced by the company, effective as of the completion of the Distribution, AnnaMaria DeSalva, Adrian Kingshott and Mary Kissel resigned from the company’s board of directors and joined the board of directors of RXO, and Bella Allaire, Mario Harik and Irene Moshouris were each appointed as a director of the company. In addition, as previously announced by the company, Mario Harik was appointed chief executive officer of the company and Brad Jacobs was appointed executive chairman of the company’s board of directors, each effective as of the completion of the Distribution.

Certain Equity Award Modifications

Contingent upon and effective as of the completion of the Distribution, the outstanding performance-based restricted stock unit (“PSU”) awards granted in both 2018 and 2019 to each of Brad Jacobs, Mario Harik and Troy Cooper were modified by converting the 2018 PSU award and 2019 PSU award held by each individual into a single time-based vesting restricted stock unit (“RSU”) award. For Brad Jacobs and Mario Harik (i) the RSU award vests on December 31, 2024 generally subject to continued employment by the executive (or in the case of Brad Jacobs, continued service on the company’s board of directors) through the vesting date and (ii) the after-tax shares received upon settlement of the RSU awards are subject to a lock up which prohibits transfers of such shares through December 31, 2025. For Troy Cooper, the RSU award vests upon the completion of the Distribution and the lock up is through December 31, 2024.

Item 9.01. Financial Statements and Exhibits.

(b) Pro Forma Financial Information

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 June 30, 2022 and the unaudited pro forma combined statement of operations for the six months ended June 30, 2022 and the years ended December 31, 2021, 2020 and 2019, are attached hereto as Exhibit 99.2 and incorporated herein by reference.

(d) Exhibits.

Exhibit No.	Description
2.1	Separation and Distribution Agreement, dated as of October 31, 2022, by and between XPO Logistics, Inc. and RXO, Inc.
10.1	Transition Services Agreement, dated as of October 31, 2022, by and between XPO Logistics, Inc. and RXO, Inc.
10.2	Tax Matters Agreement, dated as of October 31, 2022, by and between XPO Logistics, Inc. and RXO, Inc.
10.3	Employee Matters Agreement, dated as of October 31, 2022, by and between XPO Logistics, Inc. and RXO, Inc.
99.1	Press Release, dated November 1, 2022
99.2	Unaudited pro forma consolidated financial information
104	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: November 1, 2022

XPO LOGISTICS, INC.

By: /s/ Ravi Tulsyan
Ravi Tulsyan
Chief Financial Officer

SEPARATION AND DISTRIBUTION AGREEMENT

BY AND BETWEEN

XPO LOGISTICS, INC.

AND

RXO, INC.

DATED AS OF OCTOBER 31, 2022

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EXHIBITS

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

SEPARATION AND DISTRIBUTION AGREEMENT

This SEPARATION AND DISTRIBUTION AGREEMENT, dated as of October 31, 2022 (this “Agreement”), is by and between XPO Logistics, Inc., a Delaware corporation (“Parent”), and RXO, 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, (i) 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, (ii) the other Separation Transactions are intended to qualify for the applicable intended tax treatment set forth in a Tax Opinion, as applicable, and (iii) 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) with respect to the transactions referred to in clause (i) and the applicable transactions referred to in clause (ii);

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.

“Adversarial Action” shall have the meaning set forth in Section 6.7(a).

“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 1.1.

“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.

“Available Parent Policies” shall mean the Policies of Parent as in effect as of the Distribution Date and listed on Schedule 5.1.

“Benefit Plan” shall have the meaning set forth in the Employee Matters Agreement.

“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.

“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.

“Confidential Information” shall have the meaning set forth in Section 6.9(a).

“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 November 1, 2022, 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., Eastern 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 to the extent 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.

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

“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, or 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 (i) applicable premium adjustments (including reserves and retrospectively rated premium adjustments), (ii) any costs or expenses incurred in the collection thereof and (iii) any reimbursement obligations under “fronted” or similar insurance policies; 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 or registrations 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 or registrations 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 or registrations 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 or registrations for any of the foregoing (“Copyrights”); (e) 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 (f) 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 OpCo 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 Expedited Rules” has the meaning set forth in Section 7.3.

“Known Counsel” has the meaning set forth in Section 6.10.

“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 Intellectual Property” shall have the meaning set out in Section 2.2(b)(iii).

“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 the SpinCo Names. 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 mean the Policies of Parent or any other member of the Parent Group in place immediately or at any time prior to the Effective Time.

“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 and programs, reinsurance policies and insurance contracts of any kind, including property, cargo, 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 such date as is 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.

“Separation Transactions” means the Contribution, the Distribution and the other transactions contemplated by this Agreement and the Plan of Reorganization.

“Shared Contract” means each Contract of any member of either Group with a Third Party, that relates in any material respect to both the SpinCo Business and the Parent Business, in each case that is set forth on Schedule 2.8.

“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 June 30, 2022, as presented in the Information Statement made available to the Record Holders.

“SpinCo Business” shall mean the North American truck brokerage business, as well as the services for managed transportation, last mile and freight forwarding, of Parent and its relevant Subsidiaries, as such businesses and services were conducted at any time prior to the Effective Time by either Party or any of their current or former Subsidiaries, and as described in the Form 10. 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, in each case, immediately prior to the Distribution (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), including rights to recover any amounts under such contracts and agreements:

(i) 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;

(ii) any license agreement entered into prior to the Effective Time exclusively related to the SpinCo Business;

(iii) 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 that is exclusively related to the SpinCo Business;

(iv) 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;

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

(vi) 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;

(vii) 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;

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

(ix) 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;

(x) the SpinCo Leases; and

(xi) any contracts, agreements or settlements set forth on Schedule 1.2.

“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 (a) all Intellectual Property Rights (other than Registered IP) owned by either Party or any member of its Group as of the Effective Time and exclusively used or exclusively held for use in the SpinCo Business, (b) any Registered IP set forth on Schedule 1.3, and (c) any other Intellectual Property Rights set forth on Schedule 1.3.

“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; provided that SpinCo IT does not include any Software licensed from a third party.

“SpinCo Leases” shall have the meaning set forth in the definition of SpinCo Real Property.

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

“SpinCo Names” means the names, Marks or logos set forth on Schedule 1.4, 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 the Parent Names.

“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 that is listed or described on Schedule 1.5(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 that are set forth on Schedule 1.5(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 used or held for use in the SpinCo Business as of the Effective Time and capable of being copied (for example, documentation), including the Software set forth on Schedule 1.6 and (b) any Technology that constitutes know-how or knowledge of SpinCo Group Employees, to the extent related to the SpinCo Business, but in each case excluding the Technology and the Software set forth on Schedule 2.2(b) (ix) and Information Technology. For purposes of clarity, SpinCo Technology does not include any Intellectual Property Rights.

“Statement” shall have the meaning set forth in Section 2.9(g).

“Straddle Period” shall have the meaning set forth in Section 2.13.

“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 copies of 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 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).

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

“Transferred Entities” shall mean the entities set forth on Schedule 1.7.

“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), and without modifying the provisions of Section 2.11, (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 or special warranty deeds, stock powers, certificates of title, assignments of contracts and other instruments of transfer, conveyance and assignment, and take such other corporate actions, in each case, as and to the extent Parent determines are 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, and take such other corporate actions, in each case, as and to the extent Parent determines are 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 during the 24 months following 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 use reasonable best efforts to 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 during the 24 months following 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 use reasonable best efforts to promptly assume, or cause to be assumed, such Liability and agree to faithfully perform or discharge such Liability in accordance with this Agreement. Any transfer, conveyance, acceptance or assumption made pursuant to this Section 2.1(c) shall be treated by the Parties for all purposes of this Agreement as if it had occurred immediately prior to the Distribution (or such earlier effective date as provided in any Transfer Document), except as otherwise required by applicable Law or a Final Determination.

(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 and all other equity, partnership, membership, joint venture and similar interests set forth on Schedule 2.2(a)(i);

(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 Marks 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) (collectively, the “Parent Intellectual Property”);

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

(v) 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 or retained by, or allocated to, 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;

(vi) 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;

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

(viii) 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 (vii) 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)(i);

(ii) all Liabilities to the extent relating to, arising out of or resulting from actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing at or after the Effective Time of any member of the Parent Group, in each case that are not SpinCo Liabilities; and

(iii) 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, in each case that are not SpinCo Liabilities.

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. Any transfer, conveyance, acceptance or assumption made pursuant to this Section 2.4(d) shall be treated by the Parties for all purposes of this Agreement as if it had occurred immediately prior to the Distribution (or such earlier effective date as provided in any Transfer Document), except as otherwise required by applicable Law or a Final Determination.

(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. Any transfer, conveyance, acceptance or assumption made pursuant to this Section 2.4(h) shall be treated by the Parties for all purposes of this Agreement as if it had occurred immediately prior to the Distribution (or such earlier effective date as provided in any Transfer Document), except as otherwise required by applicable Law or a Final Determination.

(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, respectively, (i) the Party or the relevant member of its Group that has assumed the Liability with respect to such guarantee 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 its Group, agrees 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, the Parties shall, and shall cause the members of their respective Groups to, use their respective reasonable best efforts to work together to divide, partially assign, modify or replicate (in whole or in part) the respective rights and obligations under and in respect of each Shared Contract, such that each Party or the member of its Group shall, as of the Effective Time, (i) be entitled to the related portion of the rights and benefits inuring to its respective businesses, (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 or their 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 (or member of its Group) in trust for the use and benefit of the Party (or member of its Group) entitled thereto and, promptly following receipt by such Party (or member of its Group) 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, Parent shall deliver to SpinCo a good faith calculation of the aggregate amount of cash and cash equivalents (net of any overdrafts) held by the SpinCo Group as of the Effective Time (the "Final Cash Balance"). Parent's calculation of the Final Cash Balance shall be final, binding, conclusive and non-appealable on SpinCo for all purposes of this Agreement and, for the avoidance of doubt, shall not be subject to further adjustment as a result of payments required to be made by one party to the other after the Effective Time under this Agreement or under any of the Ancillary Agreements.

(h) 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 Cash Balance by Parent. 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 Cash Balance by Parent. Any such payment shall be treated by the Parties for all purposes as an adjustment to the Cash Transfer that occurred immediately prior to the Distribution.

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, SPECIAL WARRANTY 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 \$450,000,000 (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 in its sole discretion) 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 financial 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 connection with the Distribution, 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 or Notice of Internet Availability of the Information Statement to be mailed 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 or Notice of Internet Availability of the Information Statement shall have been mailed 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 Separation, the Distribution, the Contribution and the other transactions contemplated by this Agreement and the Plan of Reorganization shall have been completed in accordance with the Plan of Reorganization (other than those steps that are expressly contemplated to occur at or after the Effective Time);

(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 (or shall cause SpinCo to) promptly issue a press release or 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, members, 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, members, 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, members, 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, members, 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, members, 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 to the extent 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 provided in or resulting from any other contract or agreement that is entered into after the Distribution between one Party (or a member of such Party's Group), on the one hand, and the other Party (or a member of such Party's Group), on the other hand;

(v) 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

(vi) 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 any portion of the underlying obligation giving rise to such Action is a SpinCo Liability, SpinCo shall indemnify Parent for such portion of 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. 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 to the extent 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 discharge in accordance with their respective terms any SpinCo Liabilities, 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) any guarantee, indemnification or contribution obligation, surety bond or other credit support agreement, arrangement, commitment or understanding in respect of a SpinCo Liability, that is provided by any member of the Parent Group and 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. 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 to the extent 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 discharge in accordance with their respective terms any Parent Liabilities, 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) any guarantee, indemnification or contribution obligation, surety bond or other credit support agreement, arrangement, commitment or understanding in respect of a Parent Liability, that is provided by any member of the SpinCo Group and 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 (i) Insurance Proceeds that actually reduce the amount of, or are paid to the applicable Indemnitee in respect of, such Liability and (ii) other amounts recovered (net of any out-of-pocket costs or expenses incurred in, or Taxes imposed with respect to, the collection thereof and net of any reimbursements) from any Person that actually reduce the amount of, or are paid to the applicable Indemnitee in respect of, such Liability ("Third-Party Proceeds"). 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 Third-Party Proceeds recovered (net of any out-of-pocket costs or expenses incurred in, or Taxes imposed with respect to, the collection thereof and net of any reimbursements) 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 Third-Party Proceeds 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 Third-Party Proceeds (net of any out-of-pocket costs or expenses incurred in, or Taxes imposed with respect to, the collection thereof and net of any reimbursements) 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 and Third-Party 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 or Third-Party Proceeds, and an Indemnitee need not attempt to collect any Insurance Proceeds or Third-

Party 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 thirty (30) 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. 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, delayed or conditioned), 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.

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 as a result of such failure. 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 Indemnatee in connection with any Third-Party Claim, such Indemnifying Party shall be subrogated to and shall stand in the place of such Indemnatee as to any events or circumstances in respect of which such Indemnatee 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 and subject to the terms of Section 4.5 and this Section 4.6.

(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 (other than pursuant to the terms hereof), 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, including before any court, arbitrator, mediator or administrative agency anywhere in the world, and further (on behalf of itself, the members of such Party's Group and any other Person claiming through it) waives and releases any claim or defense against any Person, 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 unlawful, a breach of a fiduciary or other duty, void, unenforceable, unconscionable, inequitable, or otherwise improper 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 unlawful, a breach of a fiduciary or other duty, void, unenforceable, unconscionable, inequitable, or otherwise improper for any reason; or (c) the provisions of this Article IV or any Ancillary Agreement are unlawful, a breach of a fiduciary or other duty, void, unenforceable, unconscionable, inequitable, or otherwise improper 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. In connection with the foregoing, SpinCo will (i) if requested by Parent, execute assumption agreements or similar contracts in connection with any Policy and provide for replacement of accounts or collateral, in each case such that Parent is not required to extend payments on behalf of SpinCo in connection with such Policy and (ii) arrange for direct payment of any amounts

owed by a member of the SpinCo Group in connection with insurance or self-insurance-related claims arising from SpinCo or any other members of the SpinCo Group.

(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 applicable insurance policies then in effect prior to the Effective Time), on behalf of the applicable member of the SpinCo Group (with such member of the SpinCo Group entitled to their portion of Insurance Proceeds resulting from or arising out of any such claims) under Available Parent Policies, but solely to the extent that such Available 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 Available Parent Policies shall be subject to the terms and conditions of such Available 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, as promptly as is reasonably practicable;

(ii) 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

(iii) 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 an Available 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 applicable

Available Parent Policy aggregate. In the event that Parent elects not to reinstate the applicable Available 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 Available 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) 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, premium adjustments, indemnity payments, settlements, judgments, legal fees, allocated claims expenses, claim handling fees and expenses, administrative costs, personnel time and other expenses incurred by Parent or any other member of the Parent Group in connection with any Parent Policy to the extent resulting from the operations or activities of, or the pursuit of any claims on behalf of, SpinCo or any other members of the SpinCo Group, whether such expenses arise from SpinCo or any other members of the SpinCo Group, employees of SpinCo or any other members of the SpinCo Group, or Third Parties.

(d) 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. From and after the Effective Time, SpinCo shall maintain 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.

(e) In connection with Parent’s pursuit of a claim on behalf of SpinCo or any other member of the SpinCo Group under any Available 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 Available 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 Available Parent Policy.

(f) 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.

(g) 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.

(h) 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 ten percent (10%).

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 Use of Parent Names.

(a) Except as expressly provided in this Section 5.4, 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 an entity name, corporate name, trade name, d/b/

a or similar name 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 5.4(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 the 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 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 5.4 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 5.4 shall inure to the sole and exclusive benefit of the Parent Group.

(e) Notwithstanding the foregoing, nothing in this Section 5.4 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. Further, nothing in this Section 5.4 shall require the SpinCo Group to cease any use of the Parent Names embedded in the source code of any Software included in the SpinCo Technology where such Parent Name is not visible to a user of such Software.

5.5 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 5.5(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 5.5(a) at the time of such transaction, such transaction (and resulting operations of such business) shall not be deemed a breach of this Section 5.5(a) if the consolidated assets or revenue earnings attributable to the Prohibited Business represent no greater than twenty percent (20%) of the resulting Person's consolidated assets or revenue.

(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 5.5 would be irreparable and impossible to measure and (ii) the remedies at law for any breach or threatened breach of this Section 5.5, 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 5.5 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 5.5 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 5.5 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 only 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 and the Employee Matters 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.

(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 (an "Adversarial Action"), 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 use their commercially reasonable efforts to 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, compromise or settlement, as the case may be, and shall otherwise cooperate in such defense, compromise or settlement, 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, other than Adversarial 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 (other than in connection with an Adversarial Action).

(f) Without limiting any provision of this Section 6.7 and except with respect to an Adversarial Action, 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 or the Employee Matters 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 or the Employee Matters 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, solely for the purposes of asserting all privileges and protections that may be asserted under applicable Law, 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. The Parties recognize that legal and other professional services will be provided following the Effective Time, which services will be rendered, unless agreed otherwise, 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 or receive 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.

(c) Subject to the remaining provisions of this Section 6.8, the Parties agree that Parent shall be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities not allocated pursuant to Section 6.8(b) or Section 6.10 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.

(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 information relating to the Dispute 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 (a) 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, and (b) for the avoidance of doubt, the Parties will maintain the confidentiality of the information subject to the shared privilege from third parties in accordance with Section 6.9.

(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 (unless prohibited by Law) 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.* 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 to the extent concerning the Parent Business or the Parent Group (in the case of SpinCo) or the SpinCo Business or the SpinCo Group (in the case of Parent) (such Group's "Confidential Information") that is either in its possession (including such Confidential 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 Information other than for such purposes as shall be expressly permitted hereunder or thereunder, except, in each case, to the extent that such Confidential 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 Information, or (iii) independently developed or generated without reference to or use of any Confidential Information of the other Party or any member of such Party's Group. If any Confidential 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 Information shall be used only as required to perform such services.

(b) *No Release.* Each Party agrees not to release or disclose, or permit to be released or disclosed, any Confidential Information to any other Person, except (1) to 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), (2) to any nationally recognized statistical rating organization as it reasonably deems necessary, solely for the purpose of obtaining a rating of securities or other debt instruments upon normal terms and conditions; (3) if such Party or its respective Group is required or compelled to disclose any such Confidential Information by judicial or administrative process or by other requirements of Law or stock exchange rule or is advised by outside counsel in connection with a proceeding brought by a Governmental Authority that is advisable to do so, (4) as required in connection with any legal or other proceeding by one Party against the other Party or in respect of claims by one Party against the other Party brought in a proceeding, (5) as necessary in order to permit a Party to prepare and disclose its financial statements, tax returns or other required disclosures, (6) as necessary for a Party to enforce its rights or perform its obligations under this Agreement or any Ancillary Agreement and (7) to Governmental Authorities in accordance with applicable procurement regulations and contract requirements; provided, however, that, with respect to clause (1) hereof: (A) such Representatives shall keep such Confidential Information confidential and will not disclose such Confidential Information to any other Person and (B) each Party agrees that it is responsible to the other Party for any action or failure to act that would constitute a breach or violation of Section 6.9(a) by any such Representative; with respect to clause (2) hereof, the Party whose Confidential Information is being disclosed or released to such rating organization is promptly notified thereof; and, with respect to clauses (3) and (4) hereof, that the Person required to disclose such Confidential Information shall provide the applicable Person to which such Confidential Information relates prompt and, to the extent reasonably practicable and legally permissible, prior notice of such disclosure and shall use reasonable best efforts to cooperate, at the expense of the requesting Person, in seeking any appropriate protective arrangements requested by such Person. In the event that such other Person fails to receive such appropriate protective arrangements in a timely manner, the Person that is required to disclose such Confidential Information of the other Group may thereafter disclose, or cause to be disclosed, only that portion of Confidential Information that is legally required to be disclosed, and the disclosing Person shall (x) provide the other Party with a copy of the Confidential Information so disclosed, in the same form and format so disclosed, together with a list of all Persons to whom such Confidential Information was

disclosed, in each case, to the extent legally permitted, and (y) use reasonable best efforts to ensure that confidential treatment is accorded to such Confidential Information.

(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 have or have access to confidential or proprietary information personal information relating to Third Parties that was received by the other Party or members of the other Party's Group that may subject to confidentiality or non-disclosure agreements,, privacy policies, and 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 to hold, protect and use, such information in accordance with the terms of such confidentiality or non-disclosure agreements, privacy policies, and applicable privacy, data protection and other applicable Laws. With respect to confidentiality or non-disclosure agreements and privacy policies, these obligations shall only apply if and to the extent the Party that originally received the information provides the applicable agreement or privacy policy to the other Party and identifies the information subject to the agreement or policy with sufficient specificity to enable the other Party to comply with the agreement or policy.

6.10 Conflicts Waiver. Each of the Parties acknowledges, on behalf of itself and each other member of its Group, notwithstanding anything to the contrary contained herein or imposed by operation of law, that Parent has retained Paul, Weiss, Rifkind, Wharton & Garrison LLP, Wachtell, Lipton, Rosen & Katz and their affiliated businesses (collectively, the "Known Counsel") to act as its counsel in connection with this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby. SpinCo hereby agrees on behalf of itself and each member of its Group that, notwithstanding anything to contrary contained herein or imposed by operation of law, in the event that a dispute (whether or not related to this Agreement, the Ancillary Agreements, or the transactions contemplated hereby and thereby) arises between or among (x) any member of the SpinCo Group, any SpinCo Indemnitee or any of their respective Affiliates, on the one hand, and (y) any member of the Parent Group, any Parent Indemnitee or any of their respective Affiliates, on the other hand, any Known Counsel may represent any member of the Parent Group, any Parent Indemnitee or any of their respective Affiliates in such dispute even though the interests of such Person may be directly adverse to, or conflict with the legal or economic interests of, any Person described in clause (x), and even though such Known Counsel may have represented or provided advice to a Person described in clause (x) in a matter substantially related to such dispute, or may be handling ongoing matters for a Person described in clause (x), and even though such Known Counsel may have or previously have had confidential or privileged information of a Person described in clause (x) that may be related to such dispute, and SpinCo hereby waives, on behalf of itself and each other Person described in clause (x), as applicable, any conflict of interest or claim to confidentiality in connection with such representation by such Known Counsel, and SpinCo hereby agrees, on behalf of itself and each other Person described in clause (x), as applicable, not to seek to disqualify such Known Counsel in connection with such representation. SpinCo, on behalf of itself and each other member of its Group, irrevocably authorizes any Known Counsel to disclose or provide any of its confidential or privileged information existing as of the date hereof to Parent or any other member of the Parent Group, and to otherwise use or disclose that information in accordance with Parent's direction. Each of SpinCo and Parent, on

behalf of itself and each other member of its Group, agrees to take, and to cause their respective then-Affiliates to take, all steps necessary to implement the intent of this Section 6.10. Each of SpinCo and Parent, on behalf of itself and each other member of its Group, further agrees that each Known Counsel and its respective partners and employees are third-party beneficiaries of this Section 6.10, and may seek to enforce, without limitation, this Section 6.10.

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 Comprehensive Arbitration Rules and Procedures with Expedited Procedures (“JAMS Expedited 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. The arbitrators shall be empowered to fully and finally determine the arbitrability of any claim (including whether a Dispute is within the scope of the Parties' agreement to arbitrate).

(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 Expedited 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 Expedited 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 Expedited 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, enhanced, treble, 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 preliminary relief by an emergency arbitrator pursuant to Section 7.4, the arbitrator(s) may affirm or disaffirm that relief, and the Parties will seek modification or rescission of the interim relief as necessary to accord with that decision. The award of the arbitrator(s) shall be final and binding on the Parties, and may be entered or enforced in any court of competent jurisdiction, including, without limitation any state or federal court within the state of Delaware (which the parties hereby agree have jurisdiction over them to enforce any such award). The initiation of an Officer Negotiation Request, CEO Negotiation Request, or arbitration pursuant to this Article VII will toll the applicable statute of limitations for the duration of any such proceedings (not to exceed thirty (30) days, unless the Parties agree otherwise). 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.*

(d) The Parties agree that any arbitration hereunder shall be kept confidential, and that the existence of the proceeding and all of its elements (including any pleadings, briefs or other documents or evidence submitted or exchanged, any testimony or other oral submissions, and any awards) shall be deemed confidential, and shall not be disclosed beyond the arbitrator(s) and JAMS, the Parties, their counsel, and any Person necessary to the conduct of the proceeding, except as and to the extent required by law and to defend or pursue any legal right. In the event any Party makes application to any court in connection with this Article VII (including any proceedings to enforce a final award), that party shall take all steps reasonably within its power to cause such application, and any exhibits (including copies of any award or decisions of the arbitrator(s)) to be filed under seal, shall oppose any challenge by any third party to such sealing, and shall give the other Party immediate notice of such challenge.

7.4 Emergency Relief. Notwithstanding the foregoing provisions of this Article VII, (a) a Party may seek preliminary provisional or injunctive 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 in such event, that Party shall apply to JAMS for the appointment of a single emergency arbitrator to consider any request for, and if appropriate grant, such provisional or injunctive relief, and (b) either Party may initiate arbitration before the expiration of the periods specified in Section 7.1 and Section 7.2 if such Party has submitted an Officer Negotiation Request and/or a CEO Negotiation Request and the other Party has failed to comply with Section 7.1 and/or Section 7.2 in good faith with respect to such negotiation.

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, but subject to the express limitations of this Agreement and of the Ancillary Agreements, 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.

(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) Effective at the Effective Time, 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 Chief Compliance Officer & Deputy General Counsel,
Christopher J. Signorello
E-mail: [email address]

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

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attention: Scott A. Barshay
Steven J. Williams
E-mail: sbarshay@paulweiss.com
swilliams@paulweiss.com

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

RXO, Inc.
11215 N. Community House Road
Charlotte, NC 28277
Attention: Chief Legal Officer & Secretary, Jeff Firestone
E-mail: [email address]

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

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attention: Scott A. Barshay
Steven J. Williams
E-mail: sbarshay@paulweiss.com
swilliams@paulweiss.com

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

RXO, Inc.
11215 N. Community House Road
Charlotte, NC 28277
Attention: Chief Legal Officer & Secretary, Jeff Firestone
E-mail: [email address]

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

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attention: Scott A. Barshay
Steven J. Williams
E-mail: sbarshay@paulweiss.com
swilliams@paulweiss.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 (and, for the avoidance of doubt, shall be pursued in accordance with Article VII). 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 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 (i) 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 October 31, 2022.

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: Chief Financial Officer

RXO, INC.

By: /s/ Jeff Firestone

Name: Jeff Firestone
Title: Chief Legal Officer & Secretary

TRANSITION SERVICES AGREEMENT

BY AND BETWEEN

XPO LOGISTICS, INC.

AND

RXO, INC.

DATED AS OF OCTOBER 31, 2022

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TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (this “Agreement”) is entered into as of October 31, 2022, by and between XPO Logistics, Inc., a Delaware corporation (“Parent”), and RXO, 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 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 the date hereof (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 set forth 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.

“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.

“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.

“Deliverables” has the meaning set forth in Section 4.02.

“Dispute” has the meaning set forth in Section 9.15(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., Eastern Time, on the Distribution Date.

“e-mail” has the meaning set forth in Section 9.09.

“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 set forth in the Separation and Distribution Agreement.

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

"Information Statement" has the meaning set forth in the Separation and Distribution Agreement.

"Intellectual Property License Agreement" has the meaning set forth in the Separation and Distribution Agreement.

"Intellectual Property Rights" has the meaning set forth in the Separation and Distribution Agreement.

"Interest Payment" has the meaning set forth in Section 5.02.

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

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

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

"Non-Income Taxes" has the meaning set forth in Section 5.03(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 set forth in the Separation and Distribution Agreement.

“Personal Information” means all information concerning an identified or identifiable person, as well as all information defined as “personal information,” “personally identifiable information,” “personal health information,” or the equivalent under any Law concerning the collection, use, storage or processing of such information.

“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 8.03.

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

“Recipient Indemnitees” has the meaning set forth in Section 8.04.

“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 set forth 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 6.02 and (b) the earlier of the date, if any, specified for termination of such Service on the Schedules hereto or eight (8) months from the Distribution 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.

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

(a) 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;

(b) 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

(c) 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 set forth in the Separation and Distribution Agreement.

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

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

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

“Termination Charges” shall mean, with respect to the termination of any Service pursuant to Section 5.02(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) At any time 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 Service(s) set forth therein shall be deemed

“Services” provided under this Agreement, in each case subject to the terms and conditions of this Agreement.

(c) At any time after the date of this Agreement and during the term of this Agreement, if (i) 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 an Additional Service pursuant to Section 2.01(b), or (ii) Parent 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 an Additional Service pursuant to Section 2.01(b) then, in each case, if such Party provides written notice to the other Party during the term of this Agreement requesting such additional work project support or resources, the Party receiving such notice 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 neither Party 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 such Party’s or its Subsidiaries’ businesses; and provided, further, that neither Party shall 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 the Party providing the Project Work shall be billed at the rate set forth in the Schedules hereto under the heading “Project Work”). In connection with any request for Project Work in accordance with this Section 2.01(c), the Parties shall negotiate in good faith the terms of a supplement to the applicable Schedule. 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; provided, however, that Provider shall not be obligated, in connection with obtaining any such Third Party consent, to contribute any capital, pay or grant any consideration or concession in any form (including by providing any letter of credit, guaranty or other financial accommodation) to any Person, other than, in each case, reasonable out-of-pocket expenses, attorneys' fees and recording or similar fees incurred by Provider or any of its Subsidiaries, all of which shall be promptly reimbursed by Recipient. 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 agree 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 increase(s) 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 7.04, RECIPIENT ACKNOWLEDGES AND AGREES THAT ALL SERVICES ARE PROVIDED ON AN “AS-IS,” “WHERE 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 Schedules 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 two thousand dollars

(\$2,000.00) 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 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 Provider or its Affiliates. Each agreed-upon change shall be documented by an amendment in writing to the applicable Schedule. Each such amendment 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 change to the applicable Service(s) 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.

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.

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 in good faith 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 in good faith 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 INTELLECTUAL PROPERTY

Section 4.01 Intellectual Property Ownership. As between the parties, subject to the terms of the Separation and Distribution Agreement, the Intellectual Property License Agreement and any other Ancillary Agreements, any Intellectual Property Rights owned or licensed by one party or any of its Affiliates that are provided to the other party or any of such other party's Affiliates or third-party providers or third-party vendors pursuant to this Agreement shall remain the property of the party providing such Intellectual Property Rights, or the Affiliates of such party that provides same. 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 4.02 Deliverables. Provider acknowledges and agrees that, to the fullest extent permitted under applicable Law, any and all materials, products, data, data files, records, reports, documentation, deliverables, work product or other information (including any Intellectual Property Rights therein, collectively, "Deliverables") generated with respect to the Services shall be deemed "works made for hire" as that phrase is defined in the Copyright Revision Act of 1976 (17 U.S.C. §101) for Recipient and shall be the sole and exclusive property of Recipient. In the event that for any reason the Deliverables are not deemed "works made for hire," Provider agrees

to (and shall cause its Affiliates or third-party contractors to) use commercially reasonable efforts to assign and transfer, and does hereby assign and transfer, to Provider, any and all of Provider's rights, title, and interest in and to such Deliverables. Provider shall (and shall cause its Affiliates or third-party contractors to) execute and deliver any and all instruments and other documents and take such other actions as may be reasonably necessary or reasonably requested by Recipient to document the aforesaid assignment and transfer the Deliverables to Recipient or its Affiliates, as the case may be, or to enable Recipient to secure, register, maintain, enforce or otherwise fully protect its rights in and to the Deliverables. Provider hereby waives any and all of its moral rights that Provider may have in the Deliverables.

Section 4.03 Limited License. Each Party, on behalf of itself and its Affiliates, hereby grants, and shall cause its third-party contractors to grant, to the other Party and its Affiliates, a limited, royalty-free, fully paid-up, worldwide, non-sublicensable (except to third-parties solely to the extent required for the receipt or provision, as the case may be, of any Service), non-exclusive, non-transferable license, solely for the duration of any applicable Service, to use the Intellectual Property Rights owned by or licensed to such party or any of its Affiliates, solely to the extent necessary for, as the case may be, Provider to provide the Services and Recipient to receive and use the Services. Except as expressly identified in this Article IV, nothing contained in this Agreement shall be deemed to grant one party, by implication, estoppel or otherwise, any license rights, ownership rights or other rights in any Intellectual Property Rights owned by the other party (or any Affiliate or third-party contractor of the other party).

Section 4.04 Software Licenses or Services. With respect to any software license or access to software-based services that are provided under or as part of a Service, (i) Recipient shall comply with the terms and conditions of the vendor/licensor applicable to such software license or service, and (ii) Recipient understands that Provider shall, subject to Section 2.02(b), use commercially reasonable efforts to share access to such software license or service, but that Provider might not be able to procure consent to such shared access despite reasonable efforts, in which case Provider shall cooperate in good faith with Recipient in Recipient's efforts to contract directly with the applicable software vendor (which software/service fees shall be Recipient responsibility); provided, however, that Provider shall not be required to contribute capital, pay or grant any consideration or concession in any form (including by providing any letter of credit, guaranty or other financial accommodation) to any Person in order to obtain or make any consent that is required in order for Provider to provide such software license or service (other than reasonable out-of-pocket expenses, attorneys' fees and recording or similar fees, all of which shall be reimbursed by the Recipient, as promptly as reasonably practicable).

ARTICLE V BILLING; TAXES

Section 5.01 Procedure. Recipient shall pay, or cause to be paid to, Provider the Charges 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 Charges, 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. Any billing Dispute shall be handled pursuant to the procedures set out in Section 9.15; provided, that notwithstanding the existence of any Dispute, Recipient shall promptly pay any undisputed amount(s) .

Section 5.02 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 5.03 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 5.04 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 5.05 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 (1) such request during any calendar quarter. 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 VI TERM AND TERMINATION

Section 6.01 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 6.02, 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 Recipient in a manner consistent with its operations during the Service Baseline Period, by providing written notice to 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, 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 Provider, in no event shall 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. In no event shall the aggregate term (*i.e.*, the initial Service Period plus any extension period(s), including any extension periods previously permitted under this Agreement) for any Service exceed a period of twenty-four (24) months after the Distribution Date.

Section 6.02 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 6.04, 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 fifteen (15) 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 9.15) 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 fifteen (15) 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 9.15) 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 6.03 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 6.02, 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 6.04 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 6.02(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 VI, Article VIII and Article IX, all confidentiality obligations under this Agreement and Liability for all due and unpaid Charges and Termination Charges shall continue to survive indefinitely.

Section 6.05 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 VII CONFIDENTIALITY; PROTECTIVE ARRANGEMENTS

Section 7.01 Parent and SpinCo Obligations. Subject to Section 7.04, 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 7.02 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 7.01 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 7.04, 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 7.03 Privacy and Data Protection Laws. Each Party shall comply with all applicable state, federal and foreign Laws relating to the collection, use, processing, or storage of Personal Information that are or that may in the future be applicable to the provision of the Services under this Agreement.

Section 7.04 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 VIII
LIMITED LIABILITY AND INDEMNIFICATION**

Section 8.01 Limitations on Liability.

(a) SUBJECT TO SECTION 8.02 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 8.01(a) and Section 8.01(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 VI, (ii) the Parties' respective obligations under Section 8.03 or (iii) the willful misconduct or fraud of or by the Party to be charged.

Section 8.02 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 8.02 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 6.02(a) or to seek specific performance in accordance with Section 9.16. Any request for re-performance in accordance with this Section 8.02 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 8.03 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, bad faith, willful misconduct or fraud of any Provider Indemnitee.

Section 8.04 Provider Indemnity. Subject to the limitations in Section 8.01(a) and Section 8.01(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 8.05 Recipient Indemnity. Subject to the limitations in Section 8.01(a) and Section 8.01(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 8.06 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 IX MISCELLANEOUS

Section 9.01 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 9.01 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 9.02 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 9.03 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 9.04 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 9.05 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 9.06 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 9.07 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 9.08 Third-Party Beneficiaries. Except as provided in Article VIII 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 9.09 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 9.09):

If to Parent, to:

XPO Logistics, Inc.
Five American Lane
Greenwich, CT 06831
Attention: Chief Compliance Officer & Deputy General Counsel,
Christopher J. Signorello
E-mail: [email address]

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

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attention: Scott A. Barshay
Steven J. Williams
E-mail: sbarshay@paulweiss.com
swilliams@paulweiss.com

If to SpinCo, to:

RXO, Inc.
11215 N. Community House Road
Charlotte, NC 28277
Attention: Chief Legal Officer & Secretary, Jeff Firestone
E-mail: [email address]

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

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attention: Scott A. Barshay
Steven J. Williams
E-mail: sbarshay@paulweiss.com
swilliams@paulweiss.com

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

Section 9.10 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.

Section 9.11 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 VI or this Section 9.11. 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 fifteen (15) consecutive days (it being understood that Recipient shall not be required to provide any advance notice of such termination to Provider).

Section 9.12 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 9.13 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 9.14 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 9.15 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 (including in reasonable detail the basis for 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 of the submission of such Dispute, then either Party may pursue the remedy set forth in Section 9.15(b).

(b) If the procedures set forth in Section 9.15(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 9.15(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 9.16 Specific Performance. Subject to Section 9.15, 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 (and, for the avoidance of doubt, shall be pursued in accordance with Section 9.15 or Article VII of the Separation and Distribution Agreement, as applicable). 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. 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 9.15 and this Section 9.16 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 9.17 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 9.18 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 9.19 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 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 (i) 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 October 31, 2022.

Section 9.20 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: Chief Financial Officer

RXO, INC.

By: /s/ Jeff Firestone

Name: Jeff Firestone

Title: Chief Legal Officer & Secretary

[Signature Page to Transition Services Agreement]

TAX MATTERS AGREEMENT

BY AND BETWEEN

XPO LOGISTICS, INC.

AND

RXO, INC.

DATED AS OF OCTOBER 31, 2022

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TAX MATTERS AGREEMENT

This TAX MATTERS AGREEMENT, dated as of October 31, 2022 (this “Agreement”), is by and between XPO Logistics, Inc., a Delaware corporation (“XPO”) and RXO, 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 October 31, 2022 (the “Separation and Distribution Agreement”), providing for (i) the separation of the SpinCo Group from the XPO Group (the “Separation”) and, following the Separation, (ii) the distribution, on a pro rata basis, to holders of XPO Shares on the Record Date of 100% of 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) directly or indirectly contribute the SpinCo Assets to SpinCo and cause SpinCo to directly or indirectly 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 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; and

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.

“Contribution” shall have the meaning set forth in the Recitals. For the avoidance of doubt, qualification of the Contribution (including as part of the External Separation Transaction) as part of a transaction described in Section 368(a)(1)(D) and Section 355(a) of the Code relates to only the portion of the Contribution that comprises of any legal contribution to, or assumption by, RXO in connection with the Contribution of any SpinCo Assets or SpinCo Liabilities legally held by XPO.

“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 direct 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, it being understood and agreed that written guidance shall include any intended tax treatment set forth in the Plan of Reorganization.

“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.

“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 Managed Transportation, LLC, a limited liability company that will have elected pursuant to Treasury Regulations Section 301.7701-3 to be treated as an association taxable as a corporation for Federal Income Tax purposes (“Managed Transport”), of XPO Logistics Worldwide Canada Inc. and any and all other assets held by and liabilities of Managed Transport and (b) the distribution by XPO CNW, Inc. of Managed Transport, to XPO 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 an 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.

“Joint Return Tax Attributes” shall have the meaning set forth in Section 4.09(b)(i).

“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.

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

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

“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.

“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 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.

“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 customary 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 Deconsolidation Date and ending on the two-year anniversary of the Deconsolidation Date.

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

“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 Awards” shall have the meaning set forth in the Employee Matters 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).

“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)(ii)(A).

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

“SpinCo Group Employees” 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 Deconsolidation Date.

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

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

“State Credit” shall mean any Tax credit for a particular State.

“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 the assumption described in Section 7.07 shall be required only to the extent provided for in Schedule 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 Section 355(a) of the Code, (ii) as a transaction in which the stock distributed thereby is “qualified property” for purposes of Section 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 Assets” shall mean the Parent Assets.

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

“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 an 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 an XPO Foreign Combined Income Tax Return and (ii) shall instead be a Separate Return of such member of the SpinCo Group.

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

“XPO Liabilities” shall mean the Parent Liabilities.

“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 the 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).

(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 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 XPO Separate Return or any 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 or required to be reported on any SpinCo Separate Return or any 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).

(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 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 Taxes.* (i) XPO shall be responsible for any and all State Other Taxes due with respect to or required to be reported on any XPO Separate Return or any 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 or required to be reported on any SpinCo Separate Return or any 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, 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).

(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 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 Taxes*. (i) XPO shall be responsible for any and all Foreign Other Taxes due with respect to or required to be reported on any XPO Separate Return or any 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 or required to be reported on any SpinCo Separate Return or any 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 2.05 *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 or 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 interpreted and applied by XPO in its sole and absolute discretion. With respect to the XPO Federal Consolidated Income Tax Return for the taxable year that includes the Distribution, XPO may determine in its sole and absolute 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).

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 the Deconsolidation Date;
- (b) XPO State Combined Income Tax Returns, XPO Foreign Combined Income Tax Returns and any other Joint Returns that XPO determines, in its sole and absolute discretion, 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 determines, in its sole and absolute discretion, 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 Deconsolidation Date and (b) SpinCo Separate Returns required to be filed (taking into account extensions) after the 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), such Tax Return shall be prepared in accordance with past practices, accounting methods, elections, conventions, transfer pricing and Tax positions ("Past Practices") used with respect to the Tax Returns in question (unless there is no

“reasonable basis” (or comparable standard under state, local or foreign law) 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” (or comparable standard under state, local or foreign law) 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, as determined by XPO in its sole and absolute discretion, 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 in its sole and absolute discretion.

(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 Tax Item on a Tax Return, or otherwise treat such Tax Item, in a manner that is inconsistent with the manner such Tax 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, in its sole and absolute discretion, 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, in its sole and absolute discretion, 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 XPO determines, in its sole and absolute discretion, 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 Income Taxes or State Income Taxes, upon the reasonable request of SpinCo, if (i) such SpinCo

Carryback is necessary to prevent the loss of the Federal Income 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 determination, in its sole and absolute discretion, 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, subject to Section 4.07.

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

(a) *General.* XPO shall use commercially reasonable efforts to determine or cause its designee to determine, in XPO's sole and absolute discretion, the portion, if any, of (i) any Tax Attribute that must (absent a Final Determination to the contrary) be apportioned to (1) SpinCo or any member of the SpinCo Group from any member of the XPO Group and (2) 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 (ii) the amount of Tax basis and earnings and profits (including, for the avoidance of doubt, PTEP) to be apportioned to (1) SpinCo or any member of the SpinCo Group from any member of the XPO Group and (2) 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.

(b) *Tax Attributes.*

(i) Except as provided in clause (ii), all Tax Attributes with respect to consolidated Federal Income Tax of the XPO Affiliated Group and all Tax Attributes with respect to any consolidated, combined or unitary State Income Tax or Foreign Income Tax, in each case as of the Deconsolidation Date and arising in respect of a Joint Return ("Joint Return Tax Attributes") shall be apportioned to XPO or any member of the XPO Group for use on the final XPO Federal Consolidated Income Tax Return, any final XPO State Combined Income Tax Return, any final Foreign Combined Income Tax Return or any other final Joint Return, as applicable, that includes SpinCo or any member of the SpinCo Group.

(ii) Any Joint Return Tax Attributes remaining after the filing of the applicable final Joint Return pursuant to clause (i) that, as determined by XPO in its sole and absolute discretion, were generated by SpinCo or any member of the SpinCo Group and may be apportioned to SpinCo or any member of the SpinCo Group shall be apportioned to SpinCo or any member of the SpinCo Group; *provided* that in the case of a State Credit, such State Credit shall be apportioned to the Group and to the member of such Group that generated such State Credit, to the extent allowable by law.

(c) *Notices.* Any written notice delivered by XPO pursuant to this Section 4.09 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 its sole and absolute discretion, 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 *Section 367 Transactions.* SpinCo will not take or fail to take, and will not cause or permit any member of its Group to take or fail to take, any action that would cause XPO or any member of the XPO Group or SpinCo or any member of the SpinCo Group to recognize gain under Section 367 of the Code or the Treasury Regulations promulgated thereunder, to the extent such action is described in the Plan of Reorganization or notified in writing by XPO to SpinCo within 180 days following the Deconsolidation Date.

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 (or cause to be paid) 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 (or cause to be paid) 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 Governmental 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 provided in Section 6.01(b), (i) XPO shall be entitled to any refund (and any interest thereon received from the applicable Tax Authority) of Taxes that are related to a Joint Return and for which XPO is responsible pursuant to Section 2.02, 2.03 or 2.04 and of Taxes related to any XPO Separate Return, (ii) SpinCo shall be entitled to any refund (and any interest thereon received from the applicable Tax Authority) of Taxes that are related to a Joint Return and for which SpinCo is responsible pursuant to Section 2.02, 2.03 or 2.04 and of Taxes related to any SpinCo Separate Return and (iii) a Company receiving a refund to which the other 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; *provided, 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, as determined by XPO in its sole and absolute discretion.

(b) 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 as determined by XPO in its sole and absolute discretion, 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(b) 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 an 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(b) equals such recalculated amount.

(c) 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 Affiliate of any Company) shall be obligated to make a payment otherwise required pursuant to this Section 6.01(c) 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.

(d) No later than 30 days after a Tax Benefit described in Section 6.01(c) 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(d), 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(d). 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.

(e) Any Party that realizes a Tax Benefit generated under an agreement pursuant to which the applicable advisor is compensated on a contingency fee basis is responsible for such contingency fee, regardless of the Party that executed such agreement.

Section 6.02 XPO and SpinCo Income Tax Deductions in Respect of Certain Equity Awards and Incentive Compensation. To the extent permitted by applicable law, Income Tax deductions arising by reason of exercises of options or vesting or settlement following the Distribution of Parent Awards or SpinCo Awards held by any Person shall be claimed (i) in the case of a Parent Group Employee or Former Parent 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 boards of directors of XPO and SpinCo, XPO shall be entitled only to the deductions arising in respect of Parent Awards or SpinCo Awards in existence at the time of the Distribution or (in the case of Parent Awards) issued by XPO thereafter, and SpinCo shall be entitled only to the deductions arising in respect of SpinCo Awards issued by SpinCo following the Distribution.

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 Deconsolidation 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 Section 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 (including the Plan of Reorganization), 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 this Agreement, the Separation and Distribution Agreement, any of the Ancillary Agreements, 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 Sections 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 Affiliates 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 (D) 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) 7 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) 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 and absolute 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 its sole and absolute discretion 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 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 Deconsolidation 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 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) *Joint Returns.* In the case of any Tax Contest with respect to any Joint Return that was filed prior to the Deconsolidation Date or for which XPO is otherwise the Responsible Company, XPO shall have exclusive control over such Tax Contest, including exclusive authority with respect to any settlement of such Tax liability, subject to Section 10.02(b), and shall be solely responsible for any Tax liability resulting from such Tax Contest (and all accounting, legal and other professional fees and court costs incurred in connection therewith). In the case of any Tax Contest with respect to any Joint Return for which SpinCo is the Responsible Company, SpinCo shall have exclusive control over such Tax Contest, including exclusive authority with respect to any settlement of such Tax liability, subject to Section 10.02(b), and shall be solely responsible for any Tax liability resulting from such Tax Contest (and all accounting, legal and other professional fees and court costs incurred in connection therewith).

(b) *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) 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 to 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) 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 to become liable for any Shared Taxes and, in each case, which SpinCo has the right to administer and control pursuant to Section 10.02(d), XPO shall have the right to elect to assume control of such Tax Contest, in which case the provisions of Section 10.02(b)(i)(B) shall apply.

(c) *XPO Separate Returns*. In the case of any Tax Contest with respect to any XPO Separate Return, XPO shall have exclusive control over such Tax Contest, including exclusive authority with respect to any settlement of such Tax liability, subject to Section 10.02(b), and shall be solely responsible for any Tax liability resulting from such Tax Contest (and all accounting, legal and other professional fees and court costs incurred in connection therewith).

(d) *SpinCo Separate Returns.* In the case of any Tax Contest with respect to any SpinCo Separate Return, SpinCo shall have exclusive control over such Tax Contest, including exclusive authority with respect to any settlement of such Tax liability, subject to Section 10.02(b), and shall be solely responsible for any Tax liability resulting from such Tax Contest (and all accounting, legal and other professional fees and court costs incurred in connection therewith).

(e) *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) in connection with any Tax Contest controlled by XPO described in this Section 10.

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 in its sole and absolute discretion, 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, as determined by XPO in its sole and absolute discretion, 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 higher 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 *Specified Matters*. Notwithstanding anything to the contrary in this Agreement, the provisions of Schedule A shall, in addition to the provisions of this Agreement, apply to the matters set forth therein. In the event of any conflict between the provisions of Schedule A and any provision in this Agreement, the provisions of Schedule A shall govern.

Section 17.02 *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 17.02):

If to XPO, to:

XPO Logistics, Inc.
Five American Lane
Greenwich, Connecticut 06831
Attention: Chief Financial Officer, Ravi Tulsyan
E-mail: [email address]

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

If to XPO, to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Jeffrey B. Samuels
Scott M. Sontag
E-mail: jsamuels@paulweiss.com
ssontag@paulweiss.com

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

RXO, Inc.
11215 N. Community House Road
Charlotte, NC 28277
Attention: Chief Legal Officer & Secretary, Jeff Firestone
E-mail: [email address]

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

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Jeffrey B. Samuels
Scott M. Sontag
E-mail: jsamuels@paulweiss.com
ssontag@paulweiss.com

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

RXO, Inc.
11215 N. Community House Road
Charlotte, NC 28277
Attention: Chief Legal Officer & Secretary, Jeff Firestone
E-mail: [email address]

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

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019

If to XPO, to:

Attention: Jeffrey B. Samuels

Scott M. Sontag

E-mail: jsamuels@paulweiss.com

ssontag@paulweiss.com

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

Section 17.03 *Binding Effect*. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 17.04 *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 17.05 *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 17.06 *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 17.07 *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 17.08 *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 17.09 *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 17.10 *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 17.11 *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 17.12 *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 17.13 *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 17.14 *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 17.15 *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 17.16 *Specific Performance*. Notwithstanding anything to the contrary in this Agreement or the Separation and Distribution Agreement (or any Ancillary Agreement), in the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of Section 7.01(b) or Section 7.02, XPO shall have the right, without first pursuing the procedures set forth in Section 14, to specific performance and injunctive or other equitable relief in respect of its 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. SpinCo agrees 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. SpinCo also waives any requirements for the securing or posting of any bond with such remedy.

Section 17.17 *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: Chief Financial Officer

RXO, INC.

By: /s/ Jeff Firestone
Name: Jeff Firestone
Title: Chief Legal Officer & Secretary

[Signature Page to the Tax Matters Agreement]

EMPLOYEE MATTERS AGREEMENT

BY AND BETWEEN

XPO LOGISTICS, INC.

AND

RXO, INC.

DATED AS OF OCTOBER 31, 2022

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EMPLOYEE MATTERS AGREEMENT

This EMPLOYEE MATTERS AGREEMENT, dated as of October 31, 2022 (this "Agreement"), is by and between XPO Logistics, Inc., a Delaware corporation ("Parent"), and RXO, 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 (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-incontrol 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 (other than any SpinCo LTD Recipient).

“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.

“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) Plan” shall mean 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 the Parent Performance-Based RSU Awards and Parent 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 the Con-Way Inc. 2005 Deferred Compensation Plan for Executives and Key Employees.

“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 Group Employees” shall have the meaning set forth in Section 3.01(a).

“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 Performance-Based RSU Award” shall mean a restricted stock unit award that is subject to performance-based vesting (including, without limitation, any such award that is subject to a gating performance condition relating to the occurrence of the Distribution prior to a specified date) 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 the 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 RSU Awards, and Post-Separation Parent Performance-Based RSU Awards, collectively.

“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(b), 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(a), 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.

“Restricted Employees” shall have the meaning set forth in Section 3.04(a).

“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.

“Sign-On Obligations” shall have the meaning set forth in Section 2.04(a)(ii).

“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 5.02.

“SpinCo 401(k) Trust” shall have the meaning set forth in Section 5.02(a).

“SpinCo Awards” shall mean SpinCo Performance-Based RSU 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 Section 5.03(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 5.03.

“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).

“SpinCo LTD Recipient” shall mean any individual who would otherwise be a SpinCo Group Employee or Former SpinCo Group Employee but is receiving long-term disability benefits under a Parent Welfare Plan on the Distribution Date.

“SpinCo Non-Equity Incentive Practices” shall mean the corporate non-equity incentive practices, as established by SpinCo before or as of the Effective Time pursuant to Section 2.03(a) and Section 4.04(a).

“SpinCo Omnibus Plan” shall mean the SpinCo 2022 Omnibus Incentive Plan, as established by SpinCo as of the Effective Time pursuant to Section 2.03(a) and Section 4.01.

“SpinCo Performance-Based RSU Award” shall mean an award of performance-based restricted stock units that is subject to performance-based vesting assumed and granted by SpinCo pursuant to the SpinCo Omnibus Plan in accordance with Section 4.02(b).

“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(a).

“SpinCo Stock Value” shall mean 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 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 and the Liabilities thereunder, 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. For the avoidance of doubt, SpinCo shall reimburse Parent for the cost of headhunter or placement fees payable in connection with the hiring of SpinCo Group Employees in connection with the Separation.

(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 (the "Sign-On Obligations"), 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. SpinCo shall make a good faith effort to seek, or cause the applicable member of the SpinCo Group to seek, repayment of any Sign-On Obligations to the extent that there exists a contractual right to repayment that is legally enforceable by SpinCo or the applicable 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 (other a SpinCo LTD Recipient)) (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, including any individual receiving long-term disability benefits under a Parent Welfare Plan) 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) change the employment status of any Employee from “at-will,” to the extent that such Employee is an “at-will” employee under applicable Law or (ii) 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); provided that with respect to clause (ii) in the case of a SpinCo LTD Recipient who is able to return to employment following the commencement of long-term disability benefits under a Parent Welfare Plan, SpinCo shall comply with any requirements relating to such employment rights of such SpinCo LTD Recipient and such obligations and any related Liabilities shall be obligations and related Liabilities of SpinCo Group. For the avoidance of doubt, the reemployment rights of any SpinCo Group Employee who becomes eligible for long-term disability benefits under a Parent Welfare Plan subsequent to the Effective Time shall remain a Liability of the SpinCo Group. 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 and 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 or a change in control entitling any SpinCo Group Employee or Parent Group Employee to non-compete, severance, change in control, or other payments or benefits.

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, 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, Parent Group hereby assigns to the SpinCo Group all of Parent Group's obligations, rights and benefits relating to restrictive covenants (including without limitation noncompetition and nonsolicitation covenants) contained in all Individual Agreements between the Parent Group and any SpinCo Group Employee or Former SpinCo Group Employee, only as such obligations, rights and benefits pertain to the SpinCo Business which shall also include the rights, obligations and benefits of the Parent Group under any such Individual Agreement pertaining to work product or confidential information that relate solely to the SpinCo Business. This assignment and transfer shall operate to assign and transfer any and all associated enforcement rights of Parent Group with respect to the same and SpinCo Group shall, with respect to such transferred rights, obligations and benefits, be the real party in interest. The Parties agree that Parent Group fully retains any and all rights, obligations and benefits under all Individual Agreements, including rights of enforcement relating to Parent Group and SpinCo Group Employees and Former Employees, relating to work product, confidential information and restrictive covenants (including without limitation noncompetition and nonsolicitation covenants), as they pertain to Parent Business.

(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) *RSU Awards*. Each Parent RSU Award that is outstanding as of immediately prior to the Effective Time shall be treated as follows:

(i) *Parent RSU Concentration Awards*. If the holder is a Parent Group Employee covered by Schedule A to this Agreement, 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) *SpinCo RSU Concentration Awards*. If the holder is a SpinCo Group Employee (except to the extent provided by Schedule B to this Agreement) 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.

(iii) *Basket RSU Awards.* If the holder is an Employee covered by Schedule C to this Agreement, such award shall be converted, as of the Effective Time, into a Post-Separation Parent RSU Award and 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 (i) the number of Parent Shares subject to the Post-Separation Parent RSU Award shall be equal to the number of Parent Shares subject to the corresponding Parent RSU Award immediately prior to the Effective Time, and the number of SpinCo Shares subject to the 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 Parent RSU Award immediately prior to the Effective Time by (B) the Distribution Ratio.

(b) *Performance-Based RSU Awards.* Each Parent Performance-Based RSU Award that is outstanding as of immediately prior to the Effective Time shall be treated as follows:

(i) *Parent Performance-Based RSU Concentration Awards.* If the holder is a Parent Group Employee covered by Schedule A to this Agreement, or a Former Employee (other than a Former Parent Group Employee who is being paid for consulting services by Parent as of the Distribution Date), such Parent Performance-Based RSU Award 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, 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 (including by deeming the applicable performance-based vesting conditions to be achieved based on a designated performance level).

(ii) *SpinCo Performance-Based RSU Concentration Awards.* If the holder is a SpinCo Group Employee (except to the extent provided by Schedule B to this Agreement), such Parent Performance-Based RSU Award shall be converted, as of the Effective Time, into a SpinCo Performance-Based 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 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 SpinCo Shares subject to such SpinCo 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 SpinCo Ratio. The

applicable performance-based vesting conditions may be modified in a manner determined by the Parent Compensation Committee prior to the Effective Time (including by deeming the applicable performance-based vesting conditions to be achieved based on a designated performance level).

(iii) *Basket Performance-Based RSU Awards.* If the holder is an Employee covered by Schedule C to this Agreement or a Former Parent Group Employee who is being paid for consulting services by Parent as of the Distribution Date, such award shall be converted, as of the Effective Time, into a Post-Separation Parent Performance-Based RSU Award and a SpinCo Performance-Based 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 Performance-Based RSU Award immediately prior to the Effective Time; provided, however, that from and after the Effective Time (i) the number of Parent Shares subject to the Post-Separation Parent Performance-Based RSU Award shall be equal to the number of Parent Shares subject to the corresponding Parent Performance-Based RSU Award immediately prior to the Effective Time, and the number of SpinCo Shares subject to the SpinCo 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 Parent Performance-Based RSU Award immediately prior to the Effective Time by (B) the Distribution Ratio. The applicable performance-based vesting conditions may be modified in a manner determined by the Parent Compensation Committee prior to the Effective Time (including by deeming the applicable performance-based vesting conditions to be achieved based on a designated performance level), provided that in all events the adjusted performance-based vesting conditions for a Parent Group Employee or a Former Parent Group Employee who is being paid by Parent for performing consulting services at the Distribution Date will relate to the performance of the Parent Group and the adjusted performance-based vesting conditions for a SpinCo Group employee will relate to the performance of the SpinCo Group.

(c) *Settlement; Tax Withholding and Reporting.*

(i) *Settlement.* After the Effective Time, Post-Separation Parent Awards, regardless of by whom held, shall be settled by Parent and SpinCo Awards, regardless of by whom held, shall be settled by SpinCo.

(ii) *Withholding.*

(A) Upon the vesting, payment or settlement, as applicable, of SpinCo Awards, SpinCo shall be solely responsible for ensuring the satisfaction of all applicable Tax withholding requirements on behalf of each SpinCo Group Employee and for ensuring the collection and transfer of applicable employee withholding Taxes by the SpinCo stock plan administrator to Parent or a member of the Parent Group designated by Parent with respect to each Parent Group Employee or Former Employee (with Parent or the designated member of the Parent Group being responsible for remittance of the applicable employee Taxes and payment and remittance of the applicable employer Taxes relating to Parent Group Employees and Former Employees to the applicable Governmental Authority).

(B) Upon the vesting, payment or settlement, as applicable, of Post-Separation Parent Awards, Parent shall be solely responsible for ensuring the satisfaction of all applicable Tax withholding requirements on behalf of each Parent Group Employee or Former Employee and for ensuring the collection and transfer of applicable employee withholding Taxes by the Parent stock plan administrator to SpinCo or a member of the SpinCo Group designated by SpinCo with respect to each SpinCo Group Employee (with SpinCo the designated member of the SpinCo Group being responsible for remittance of the applicable employee Taxes and payment and remittance of the applicable employer Taxes relating to SpinCo Group Employees to the applicable Governmental Authority).

(iii) *Reporting.* Following the Effective Time, Parent shall be responsible for all income Tax reporting in respect of Post-Separation Parent Awards and SpinCo Awards held by Parent Group Employees, Former Employees and Parent Directors, and SpinCo shall be responsible for all income Tax reporting in respect of Post-Separation Parent Awards and SpinCo Awards held by SpinCo Group Employees and Transferred Directors.

(iv) *Forfeitures.* Following the Effective Time, if any Post-Separation Parent Award shall fail to become vested, such Post-Separation Parent Award shall be forfeited to Parent and if any SpinCo Award shall fail to become vested such SpinCo Award shall be forfeited to SpinCo.

(d) *Cooperation.* Each of the Parties shall establish an appropriate administration system to administer, in an orderly manner, the withholding and reporting requirements with respect to all awards. Each of the Parties shall work together to unify and consolidate all indicative data and payroll and employment information on regular timetables and make certain that each applicable Person's data and records in respect of such awards are correct and updated on a timely basis. The foregoing shall include information required for Tax withholding and remittance, compliance with trading windows, and compliance with the requirements of the Exchange Act and other applicable Laws. In order to facilitate the foregoing matters, each Party shall maintain, at its own expense, Morgan Stanley Shareworks as its stock plan administrator (or such other party as may be agreed between Parent and SpinCo) for the period commencing at the Effective Time and ending no earlier than the earlier of (i) the fifth (5th) anniversary of the Effective Time and (ii) the date on which there are no longer outstanding any Post-Separation Parent Awards and SpinCo Awards.

(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 (i) 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 (ii) with respect to SpinCo Awards, shall be deemed to refer to a "Change in Control" as defined in the

SpinCo Omnibus Plan. With respect to (A) SpinCo Awards held by Parent Group Employees and Former Employees, treatment of such awards in connection with a change in capitalization at SpinCo, change in control of SpinCo, or other corporate event of SpinCo, shall in all events be consistent with the treatment of similar types of SpinCo equity awards then held by employees of the SpinCo Group and (B) Post-Separation Parent Awards held by SpinCo Group Employees, treatment of such awards in connection with a change in capitalization at Parent, change in control of Parent, or other corporate event of Parent, shall in all events be consistent with the treatment of similar types of Parent equity awards then held by employees of the Parent Group.

(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. For the avoidance of doubt, SpinCo shall not be required to establish or maintain an employee stock purchase plan.

Section 4.04. Non-Equity Incentive Practices and Plans.

(a) *Corporate Bonus Practices.*

(i) The Parent Compensation Committee shall determine the level of achievement of any applicable annual cash incentive goals that do not relate exclusively to the RXO business for the period from January 1, 2022 through the latest practicable date prior to the Effective Time and SpinCo shall determine the amount of the annual cash incentive payments with respect to such period for SpinCo Group Employees and Former SpinCo Group Employees who are otherwise eligible to receive such payments pursuant to the SpinCo Non-Equity Incentive Practices based on such performance determination. Subject to the first sentence of this Section 4.04(a)(i), (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 and (ii) 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 and any bonus payable to a Parent Group Employee who was covered immediately prior to the Effective Time under a SpinCo Non-Equity Incentive Practices 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 Pension Plan.

(a) *Retention of Pension 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. SpinCo 401(k) Plan.

(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 the SpinCo 401(k) Plans and a trust with respect to each SpinCo 401(k) Plan (each trust, a "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, including design changes to address otherwise increased costs and availability of plan design for a smaller group. SpinCo shall undertake to obtain a favorable determination letter with respect to each SpinCo 401(k) Plan if any such plan is not a preapproved plan with a favorable determination letter or opinion from the IRS.

(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 respective 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. Such transfers shall be made in kind and shall include the transfer of outstanding loans. Any Asset and Liability transfers pursuant to this Section 5.02 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.

(c) *Transfer of Liabilities.* Effective as of the Effective Time but subject to the Asset transfer specified in Section 5.02(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) Plan.* Each SpinCo 401(k) Plan shall provide that:

(i) SpinCo Group Employees shall be eligible to participate in the 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) Plan and the SpinCo 401(k) Plan, respectively, shall have the authority with respect to the Parent 401(k) Plan and the SpinCo 401(k) 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 ERISA and the terms of the applicable plan documents.

Section 5.03. 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, including design changes to address increased costs and availability of plan design for a smaller group.

(b) *Transfer of Account Balances.* No later than forty-five (45) 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 5.03 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 5.03(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; and

(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.

(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 a Parent Deferred Compensation Plan immediately prior to the Effective Time and has made an irrevocable salary deferral election for the 2022 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 foregoing, promptly following the end of the 2022 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.

Section 6.02. 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 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.

Section 6.03. Notice Requirement. In the event any SpinCo Group Employee who is a participant in a Parent Deferred Compensation Plan terminates employment or service with the SpinCo Group, written notice of such termination shall be provided by SpinCo to Parent within fifteen (15) days following such termination of service.

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, including design changes to address increased costs and availability of plan design for a smaller group. 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. 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 is a participant in a Parent Retiree Medical Plan. 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; *provided* that neither any SpinCo Group Employee nor any Former SpinCo Group Employee shall be entitled to additional service credit for services to a member of the SpinCo Group for any period following the Distribution Date or eligibility based on attaining a specified age subsequent to the Distribution Date. For the avoidance of doubt, (i) Parent or members of the Parent 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.

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. 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. 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.

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 providing long-term disability benefits under a Parent Welfare Plan with respect to any Parent Group Employee or Former Parent Group Employee (including any SpinCo LTD Recipient) and with respect to any SpinCo Group Employee and any Former SpinCo Group Employee who is on short-term disability on the Distribution Date and who subsequently becomes eligible to receive long-term disability benefits under a Parent Welfare Plan that provides long-term disability benefits but only with respect to benefits arising from long-term disability claims incurred by any SpinCo Group Employee or Former SpinCo Group Employee prior to the Distribution Date and only to the extent such individual is entitled to such benefit. For this purpose, a disability claim shall be considered incurred on the date of the occurrence of the event or condition giving rise to disability. For the avoidance of doubt, if at the Distribution Date, a SpinCo Group Employee is on short-term disability due to an event or condition that occurred prior to the Distribution Date, such Employee shall remain a SpinCo Group Employee and to the extent such SpinCo Group Employee becomes entitled to long-term disability benefits under a Parent Welfare Plan, Parent shall be liable to provide long-term disability benefits under the Parent Welfare Plan but only to the extent such individual is entitled to such benefit. Except as provided in this Section 7.05, 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 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: Chief Compliance Officer & Deputy General Counsel,
Christopher J. Signorello
E-mail: [email address]

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

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Attention: Scott A. Barshay
Steven J. Williams
E-mail: sbarshay@paulweiss.com
swilliams@paulweiss.com

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

RXO, Inc
11215 N. Community House Road

Charlotte, NC 28277

Attention: Chief Legal Officer & Secretary, Jeff Firestone
E-mail: [email address]

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

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019-6064

Attention: Scott A. Barshay
Steven J. Williams
E-mail: sbarshay@paulweiss.com
swilliams@paulweiss.com

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

RXO, Inc

11215 N. Community House Road
Charlotte, NC 21277

Attention: Chief Legal Officer & Secretary, Jeff Firestone
E-mail: [email address]

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

Paul, Weiss, Rifkind, Wharton & Garrison LL
1285 Avenue of the Americas
New York, New York 10019-6064

Attention: Scott A. Barshay
Steven J. Williams
E-mail: sbarshay@paulweiss.com
swilliams@paulweiss.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 the 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 (and for the avoidance of doubt, shall be pursued in accordance with Article VII of the Separation and Distribution Agreement). 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 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 (i) 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 October 31, 2022.

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
Title: Chief Financial Officer

RXO, INC.

By: /s/ Jeff Firestone
Name: Jeff Firestone
Title: Chief Legal Officer & Secretary



XPO Completes Spin-Off of RXO

GREENWICH, Conn. – November 1, 2022 – [XPO](#) (NYSE: XPO) today announced that it has completed the previously announced spin-off of RXO, Inc., creating two independent, publicly traded companies. XPO is a leading provider of less-than-truckload transportation in North America, and RXO is the fourth largest US truckload broker. XPO shares will continue to trade on the New York Stock Exchange under the symbol “XPO” and, effective today, RXO will begin “regular way” trading on the NYSE under the symbol “RXO.”

Brad Jacobs, executive chairman of XPO, said, “With the spin-off complete, XPO and RXO have both launched from positions of strength as independent public companies. I want to thank the many people who have worked to make our strategic plan a success and created powerful new avenues for value creation.”

The separation was completed through a distribution to XPO stockholders of one share of RXO common stock for every one share of XPO common stock held as of the close of business on the record date for the distribution, October 20, 2022. RXO shares were distributed at 12:01 a.m. Eastern Time on November 1, 2022 in a distribution that is intended to be tax-free to XPO stockholders for U.S. federal income tax purposes.

BofA Securities, Inc., Goldman Sachs & Co. LLC and Morgan Stanley & Co. LLC acted as financial advisors and Paul, Weiss, Rifkind, Wharton & Garrison LLP and Wachtell, Lipton, Rosen & Katz acted as legal advisors in connection with the separation.

About XPO

XPO (NYSE: XPO) is one of the largest providers of asset-based less-than-truckload (LTL) transportation in North America, with proprietary technology that moves goods efficiently through its network. Together with its business in Europe, XPO serves approximately 43,000 shippers with 564 locations and 38,000 employees. The company is headquartered in Greenwich, Conn., USA. Visit 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 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

XPO

+1-203-413-4006

tavio.headley@xpo.com

Media Contact

Karina Frayter

XPO

+1-203-484-8303

karina.frayter@xpo.com

XPO Logistics, Inc.
Unaudited Pro Forma Condensed Consolidated Financial Statements

On November 1, 2022, XPO Logistics, Inc. (“XPO”) completed the previously announced separation of its asset-light, tech-enabled brokered transportation platform (the “RXO Separation”), which was accomplished by the distribution of 100% of the outstanding common stock of RXO, Inc. (“RXO”) to XPO shareholders as of the close of business on October 20, 2022, the record date for the distribution (the “Distribution”). XPO shareholders received one share of RXO common stock for every share of XPO common stock held at the close of business on the record date. Following the RXO Separation, RXO is an independent public company whose common stock trades on the New York Stock Exchange under the symbol “RXO”. Additionally, in March 2022, XPO sold its North American intermodal operation (“Intermodal”) (“Intermodal Sale”) and recorded a \$434 million pre-tax gain on the sale, net of transaction costs, during the first six months of 2022. The Intermodal Sale (together with the RXO Separation, the “Separations”) was part of a single plan of disposal. The Separations together qualify for discontinued operations under U.S. GAAP upon the RXO Separation.

The following unaudited pro forma condensed consolidated financial information is presented to illustrate the estimated effects of the Separations. The unaudited pro forma condensed consolidated statements of operations of XPO for the six months ended June 30, 2022 and for each of the three years ended December 31, 2021, 2020, and 2019 reflect XPO’s results of operations as if the Distribution had occurred on January 1, 2019. The unaudited pro forma condensed consolidated balance sheet of XPO as of June 30, 2022 assumes that the Distribution had occurred on June 30, 2022. Beginning in the fourth quarter of 2022, RXO’s and Intermodal’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, 2021; 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 six months ended June 30, 2022.

The historical consolidated 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 Separations and related events.

Amounts in the RXO separation column in the unaudited pro forma condensed consolidated financial statements were derived from RXO’s unaudited condensed combined financial statements and the audited combined financial statements included in RXO’s Information Statement, dated October 17, 2022, filed by RXO with the Securities and Exchange Commission. Amounts in the Intermodal disposition column in the unaudited pro forma condensed consolidated financial statements were derived from XPO’s underlying financial records for the periods presented. The transaction adjustments reflect the impact of events that are directly attributable to the Separations, are factually supportable, and with respect to the condensed consolidated statements of operations, are expected to have a continuing impact on 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 Separations 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 Separations. The pro forma financial information does not include adjustments to reflect any potential synergies or dis-synergies that may result from the Separations.

XPO Logistics, Inc.
Unaudited Pro Forma Condensed Consolidated Balance Sheet
As of June 30, 2022
(In millions)

	Historical Consolidated	RXO Separation	Intermodal Disposition	Transaction Adjustments	Notes	Pro Forma
ASSETS						
Current assets						
Cash and cash equivalents	\$ 436	\$ (212)	\$ —	\$ —	(a) (b)	\$ 224
Accounts receivable, net of allowances	2,190	(1,107)	—	—		1,083
Other current assets	271	(32)	—	—		239
Current assets of discontinued operations	19	—	—	—		19
Total current assets	2,916	(1,351)	—	—		1,565
Long-term assets						
Property and equipment, net of accumulated depreciation	1,799	(114)	—	—		1,685
Operating lease assets	832	(170)	—	—		662
Goodwill	2,284	(630)	—	—		1,654
Identifiable intangible assets, net of accumulated amortization	522	(90)	—	—		432
Other long-term assets	287	(17)	—	—		270
Total long-term assets	5,724	(1,021)	—	—		4,703
Total assets	\$ 8,640	\$ (2,372)	\$ —	\$ —		\$ 6,268
LIABILITIES AND STOCKHOLDERS' EQUITY						
Current liabilities						
Accounts payable	\$ 1,153	\$ (615)	\$ —	\$ —		\$ 538
Accrued expenses	1,106	(291)	—	15	(b) (c) (g)	830
Short-term borrowings and current maturities of long-term debt	55	—	—	—		55
Short-term operating lease liabilities	142	(47)	—	—		95
Other current liabilities	159	(4)	—	—		155
Current liabilities of discontinued operations	19	—	—	—		19
Total current liabilities	2,634	(957)	—	15		1,692
Long-term liabilities						
Long-term debt	2,857	—	—	(545)	(b)	2,312
Deferred tax liability	325	(51)	—	—		274
Employee benefit obligations	118	—	—	—		118
Long-term operating lease liabilities	689	(127)	—	—		562
Other long-term liabilities	310	(38)	—	—		272
Total long-term liabilities	4,299	(216)	—	(545)		3,538
Stockholders' equity						
Common stock	—	—	—	—		—
Additional paid-in capital	1,187	—	—	—		1,187
Retained earnings / XPO investment	672	(1,201)	—	530	(a) (b) (c) (g)	1
Accumulated other comprehensive loss	(152)	2	—	—		(150)
Total equity	1,707	(1,199)	—	530		1,038
Total liabilities and equity	\$ 8,640	\$ (2,372)	\$ —	\$ —		\$ 6,268

See accompanying notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

XPO Logistics, Inc.
Unaudited Pro Forma Condensed Consolidated Statement of Operations
For the Six Months Ended June 30, 2022
(In millions, except per share data)

	Historical Consolidated	RXO Separation	Intermodal Disposition	Transaction Adjustments	Notes	Pro Forma
Revenue	\$ 6,705	\$ (2,538)	\$ (308)	\$ 82	(d)	\$ 3,941
Cost of transportation and services (exclusive of depreciation and amortization)	4,590	(1,925)	(226)	82	(d)	2,521
Direct operating expense (exclusive of depreciation and amortization)	750	(111)	(26)	—		613
Sales, general and administrative expense	668	(327)	(19)	51	(e) (g)	373
Depreciation and amortization expense	231	(42)	(5)	6	(e)	190
Gain on sale of business	(434)	—	—	434	(f)	—
Transaction and integration costs	35	(21)	—	—		14
Restructuring costs	10	(3)	—	—		7
Operating income	855	(109)	(32)	(491)		223
Other income	(29)	1	(2)	—		(30)
Debt extinguishment loss	26	—	—	—		26
Interest expense	68	—	—	(11)	(j)	57
Income from continuing operations before income tax provision	790	(110)	(30)	(480)		170
Income tax provision	160	(27)	(7)	(85)	(k)	41
Income from continuing operations	630	(83)	(23)	(395)		129
Net loss from continuing operations attributable to noncontrolling interests	—	—	—	—		—
Net income from continuing operations attributable to XPO	\$ 630	\$ (83)	\$ (23)	\$ (395)		\$ 129
Net income attributable to common shareholders	\$ 630					\$ 129
Basic earnings per share from continuing operations	\$ 5.49					\$ 1.12
Diluted earnings per share from continuing operations	\$ 5.45					\$ 1.12
Weighted-average common shares outstanding						
Basic weighted-average common shares outstanding	115					115
Diluted weighted-average common shares outstanding	116					116

See accompanying notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

XPO Logistics, Inc.
Unaudited Pro Forma Condensed Consolidated Statement of Operations
For the Year Ended December 31, 2021
(In millions, except per share data)

	Historical Consolidated	RXO Separation	Intermodal Disposition	Transaction Adjustments	Notes	Pro Forma
Revenue	\$ 12,806	\$ (4,689)	\$ (1,077)	\$ 163	(d)	\$ 7,203
Cost of transportation and services (exclusive of depreciation and amortization)	8,945	(3,681)	(832)	163	(d)	4,595
Direct operating expense (exclusive of depreciation and amortization)	1,391	(192)	(100)	—		1,099
Sales, general and administrative expense	1,322	(539)	(103)	75	(e) (h)	755
Depreciation and amortization expense	476	(81)	(20)	11	(e)	386
Transaction and integration costs	37	(2)	—	7	(e) (c)	42
Restructuring costs	19	(2)	—	2	(e)	19
Operating income	<u>616</u>	<u>(192)</u>	<u>(22)</u>	<u>(95)</u>		<u>307</u>
Other income	(59)	(1)	1	—		(59)
Debt extinguishment loss	54	—	—	9	(i)	63
Interest expense	211	—	—	(22)	(j)	189
Income from continuing operations before income tax provision	<u>410</u>	<u>(191)</u>	<u>(23)</u>	<u>(82)</u>		<u>114</u>
Income tax provision	87	(41)	3	(25)	(k)	24
Income from continuing operations	<u>323</u>	<u>(150)</u>	<u>(26)</u>	<u>(57)</u>		<u>90</u>
Net loss from continuing operations attributable to noncontrolling interests	—	—	—	—		—
Net income from continuing operations attributable to XPO	<u>\$ 323</u>	<u>\$ (150)</u>	<u>\$ (26)</u>	<u>\$ (57)</u>		<u>\$ 90</u>
Net income attributable to common shareholders	\$ 323					\$ 90
Basic earnings per share from continuing operations	\$ 2.88					\$ 0.80
Diluted earnings per share from continuing operations	\$ 2.82					\$ 0.79
Weighted-average common shares outstanding						
Basic weighted-average common shares outstanding	112					112
Diluted weighted-average common shares outstanding	114					114

See accompanying notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

XPO Logistics, Inc.
Unaudited Pro Forma Condensed Consolidated Statement of Operations
For the Year Ended December 31, 2020
(In millions, except per share data)

	Historical Consolidated	RXO Separation	Intermodal Disposition	Transaction Adjustments	Notes	Pro Forma
Revenue	\$ 10,199	\$ (3,357)	\$ (786)	\$ 113	(d)	\$ 6,169
Cost of transportation and services (exclusive of depreciation and amortization)	6,950	(2,568)	(616)	113	(d)	3,879
Direct operating expense (exclusive of depreciation and amortization)	1,235	(174)	(82)	—		979
Sales, general and administrative expense	1,210	(455)	(66)	57	(e)	746
Depreciation and amortization expense	470	(76)	(23)	7	(e)	378
Transaction and integration costs	75	(14)	(1)	7	(e)	67
Restructuring costs	31	(10)	—	1	(e)	22
Operating income	<u>228</u>	<u>(60)</u>	<u>2</u>	<u>(72)</u>		<u>98</u>
Other income	(44)	(3)	—	—		(47)
Debt extinguishment loss	—	—	—	—		—
Interest expense	307	—	—	—		307
Income from continuing operations before income tax provision	<u>(35)</u>	<u>(57)</u>	<u>2</u>	<u>(72)</u>		<u>(162)</u>
Income tax provision	(22)	(14)	9	(16)	(k)	(43)
Income from continuing operations	<u>(13)</u>	<u>(43)</u>	<u>(7)</u>	<u>(56)</u>		<u>(119)</u>
Net loss from continuing operations attributable to noncontrolling interests	3	—	—	—		3
Net income from continuing operations attributable to XPO	<u>\$ (10)</u>	<u>\$ (43)</u>	<u>\$ (7)</u>	<u>\$ (56)</u>		<u>\$ (116)</u>
Net income attributable to common shareholders	\$ (41)					\$ (141)
Basic earnings per share from continuing operations	\$ (0.45)					\$ (1.54)
Diluted earnings per share from continuing operations	\$ (0.45)					\$ (1.54)
Weighted-average common shares outstanding						
Basic weighted-average common shares outstanding	92					92
Diluted weighted-average common shares outstanding	92					92

See accompanying notes to Unaudited Pro Forma Condensed Consolidated Financial Statements.

XPO Logistics, Inc.
Unaudited Pro Forma Condensed Consolidated Statement of Operations
For the Year Ended December 31, 2019
(In millions, except per share data)

	Historical Consolidated	RXO Separation	Intermodal Disposition	Transaction Adjustments	Notes	Pro Forma
Revenue	\$ 10,681	\$ (3,141)	\$ (919)	\$ 100	(d)	\$ 6,721
Cost of transportation and services (exclusive of depreciation and amortization)	7,359	(2,414)	(724)	100	(d)	4,321
Direct operating expense (exclusive of depreciation and amortization)	1,186	(162)	(77)	—		947
Sales, general and administrative expense	1,068	(399)	(61)	43	(e)	651
Depreciation and amortization expense	467	(74)	(20)	6	(e)	379
Transaction and integration costs	5	(1)	—	—		4
Restructuring costs	35	(9)	(1)	—		25
Operating income	561	(82)	(36)	(49)		394
Other income	(13)	2	—	—		(11)
Debt extinguishment loss	5	—	—	—		5
Interest expense	268	—	—	—		268
Income from continuing operations before income tax provision	301	(84)	(36)	(49)		132
Income tax provision	60	(22)	3	(11)	(k)	30
Income from continuing operations	241	(62)	(39)	(38)		102
Net loss from continuing operations attributable to noncontrolling interests	—	—	—	—		—
Net income from continuing operations attributable to XPO	\$ 241	\$ (62)	\$ (39)	\$ (38)		\$ 102
Net income attributable to common shareholders	\$ 201					\$ 75
Basic earnings per share from continuing operations	\$ 2.09					\$ 0.78
Diluted earnings per share from continuing operations	\$ 1.89					\$ 0.71
Weighted-average common shares outstanding						
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.

Notes to Unaudited Pro Forma Condensed Consolidated Financial Statements

The unaudited pro forma condensed consolidated financial statements include the following pro forma adjustments:

- (a) Reflects a cash payment from RXO to XPO of \$554 million in connection with the RXO Separation.
- (b) Reflects the estimated repayment of debt of \$545 million, which is net of unamortized deferred financing costs of \$6 million, and a penalty for early repayment of \$3 million as part of the RXO Separation. The write-off of deferred financing costs and accrued interest of \$3 million and the prepayment penalty have been reflected as an adjustment of retained earnings, net of tax. A portion of the debt that XPO plans to repay is subject to a cash tender offer that is currently scheduled to expire on November 17, 2022.
- (c) Subsequent to June 30, 2022, XPO anticipates it will incur additional non-recurring costs of approximately \$6 million to complete the RXO Separation. These costs primarily relate to transactional advisory and professional fees associated with separation activities. These costs have been reflected as Transaction and integration costs, as well as retained earnings, net of tax.
- (d) Reflects adjustments primarily for intercompany transactions between XPO and RXO and Intermodal, which will no longer be eliminated in consolidation subsequent to the Separations. The transactions, which represent services provided by XPO to RXO and Intermodal and vice-versa, are expected to continue subsequent to the Separations and will be recorded as third-party revenue and expenses in the consolidated statement of operations of XPO.
- (e) Reflects general corporate overhead costs and other amounts which were historically allocated to RXO and Intermodal but do not meet the requirements to be reported as a component of discontinued operations of \$45 million for the six months ended June 30, 2022 and \$90 million, \$72 million and \$49 million for the years ended December 31, 2021, 2020 and 2019, 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.
- (f) Represents the elimination of the gain on sale of Intermodal.
- (g) Reflects stock-based compensation expense for awards issued in conjunction with announcement of the RXO Separation of \$12 million for the six months ended June 30, 2022.
- (h) Reflects the impact of a transition services agreement, which results in incremental sales, general and administrative expenses of \$1 million not included in XPO's historical consolidated financial statements.
- (i) Reflects the debt extinguishment loss, including penalty for early repayment, related to the repayment of XPO's debt as described in (b) above.
- (j) Reflects the reduction in interest expense of \$11 million and \$22 million to give effect to the estimated repayment of debt described in (b) above for the six months ended June 30, 2022 and the year ended December 31, 2021, respectively.
- (k) 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.